



VIA ELECTRONIC SUBMISSION

July 2, 2013

Attn: CC:PA:LPD:PR (REG-125398-12)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Minimum Value of Eligible Employer-Sponsored Plans and Other Rules Regarding the Health Insurance Premium Tax Credit

Associated Builders and Contractors, Inc. (ABC) submits the following comments to the Internal Revenue Service (IRS) and Department of Treasury (Treasury) in response to the above-referenced notice of proposed rulemaking published in the *Federal Register* on May 3, 2013, at 78 Fed. Reg. 86.

About Associated Builders and Contractors, Inc.

ABC is a national trade association representing 22,000 members from more than 19,000 construction and industry-related firms. ABC and its 72 chapters help members win work and deliver that work safely, ethically and profitably for the betterment of the communities in which they work. ABC member contractors employ workers, whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. Moreover, the vast majority of our contractor members are classified as small businesses.

Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value. This process assures that taxpayers and consumers will receive the most for their construction dollar.

Background

As a member of the Employers for Flexibility in Health Care (E-FLEX) Coalition, ABC submitted initial comments, dated October 31, 2011, June 11, 2012 and March 15, 2013 (refer to attachments), to the IRS and Treasury related to the method of determining minimum value and affordability of employer-sponsored plans.

E-FLEX is a coalition of leading trade associations and businesses in the retail, restaurant, hospitality, supermarket, construction, temporary staffing and other service-related industries, as well as employer-sponsored health plans insuring millions of American workers.

Over the past two years, members of the E-FLEX Coalition have been working with Administration officials to help ensure that employer-sponsored coverage—the backbone of the U.S. health care system—remains a competitive option for all full-time, part-time, temporary and seasonal employees.

ABC appreciates the constructive dialogue Treasury has maintained with the employer community regarding their ability to maintain flexible work options and affordable health coverage for their employees.

ABC's Comments in Response to IRS' and Treasury's Proposed Rule

ABC has strong concerns regarding the treatment of wellness program incentives under the May 3 proposed regulations. Specifically, employers that offer wellness programs and premium pricing differentials to incentivize participation must assume that employees will fail to satisfy the requirements of the programs when determining minimum value and affordability under Internal Revenue Code S. 4980H. We are disappointed that the rules permit employers to take into account only the value of wellness programs designed to prevent or reduce tobacco use. We strongly encourage the Administration to revise the final rule to account for the full value of all employer-sponsored wellness programs under Internal Revenue Code (IRC) §4980H.

Employers across the country have become increasingly interested in offering wellness programs to their employees. For the last several years, ABC members have embraced innovative approaches that encourage preventive health care, improve employee health outcomes, and reduce overall health care costs and premiums. Wellness programs offered by ABC members, such as health risk assessment, weight loss, exercise regimen, and gym enrollment, are a critical component of an employee's overall benefit package. These important benefits are increasingly valued by both employers and their employees.

The wellness programs offered by ABC members have contributed to employees making healthier lifestyle choices and improving individual participant health. Unfortunately, this effort could be undermined by limiting employers' contributions to programs only designed to prevent or reduce tobacco use. By not appropriately capturing the full value of employer-sponsored wellness programs, many ABC members may be forced to scale back their investment in such plans.

Additionally, failing to take into account employers' contributions to all wellness plans in the proposed regulations is contrary to the intent of the Affordable Care Act (ACA). ACA recognizes the value of wellness programs by increasing the size of the allowable incentive for employer-sponsored wellness programs, allowing for preventive care without cost sharing, and providing federal funding for other wellness programs.

Further, the insurance market rules that limit rating to tobacco use only are not analogous to the regulation's proposal to disregard employers' contributions to other wellness programs besides tobacco cessation. Insurer rating rules are distinct in purpose and participant impact. While insurer rating rules are used to set insurance premiums for an employer's group, employer-sponsored wellness programs are designed to improve individual participant health.


Finally, allowing employers credit for contributions only to programs designed to prevent or reduce tobacco use for purposes of IRC §4980H is unnecessary given the Administration's recently issued final regulations on nondiscriminatory wellness programs that provide even stronger protections for employees and dependents. Among other things, the protections provide employees with alternatives to satisfy wellness program criteria and make it easier for employees to qualify for wellness incentives.

The proposed minimum value regulations include a temporary transition rule for plan years beginning before January 1, 2015, which permits employers to measure affordability and minimum value as if all employees have met an employer's wellness program criteria. ABC urges the Administration to recognize the value of employer-sponsored wellness programs by applying the approach outlined in the transition rule to all plan years in the final rule, rather than providing such relief only on a temporary basis.

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Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Burr", with a long horizontal line extending to the right.

Geoffrey Burr
Vice President, Federal Affairs