LEGAL PROCESSING DIVISION
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Notice 2015-16

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SMALL BUSINESS COUNCIL OF AMERICA

May 15, 2015,

CC:PA:LPD:PR (Notice 2015-16)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20004

VIA FIRST CLASS MAIL AND EMAIL (Notice.comments@irscounsel.treas.gov)

RE: Section 4980I – Notice 2015-16

To Whom It May Concern:

The Small Business Council of America (SBCA)[1] hereby submits these comments in response to Notice 2015-16 addressing Internal Revenue Code ("IRC") Section 4980I. The SBCA appreciates this opportunity to share its insights on the impact that the regulations promulgated pursuant to IRC 4980I could have on small business and to offer recommendations on how to avoid negative impacts on small business in the implementation of this Section.

If not carefully implemented, the IRC Section 4980I excise tax has the potential to result in significant harm to America's small businesses and their employees.

By its very nature, it is clear that the 4980I excise tax will impose new technical and administrative obligations on employers. When the excise tax goes into effect, employers will be required to perform detailed calculations to determine whether or not their plans are subject to the excise tax. This will pose a significant challenge for small businesses in particular who are too small to have HR or sophisticated accounting departments. Small businesses will have to determine how to measure the cost of applicable coverage, which in addition to figuring out which health benefits are required to be included in this calculation, will require them to figure out the cost of the primary health plan. In the context of small business health plans, many which are now rated on an individual-by-individual age-rated basis, it will be particularly burdensome to

[1] The SBCA is a national nonprofit organization which has represented the interests of privately-held and family-owned businesses on federal tax, health care and employee benefit matters since 1979. The SBCA, through its members, represents well over 20,000 enterprises in retail, manufacturing and service industries, virtually all of which provide health insurance and retirement plans.

determine whether the excise tax applies. Once a small business has determined whether the excise tax applies, many will either be required to modify their plans to avoid the excise tax or face other administrative requirements involved with the calculation and reporting of the excise tax. While these new technical and administrative challenges will be faced by all employers, they will be most significantly felt by small employers who do not have the same infrastructure and revenues to absorb the burden as their larger counterparts do.

Beyond the administrative element, the increased premiums associated with the 4980I excise tax may cause small business owners to conclude that the cost of sponsoring a health plan outweighs the benefit and motivate these employers to stop offering health plans. While the 4980I excise tax is technically imposed on the insurer, it is widely expected that the insurers will charge the cost of the excise tax back to the employer in the form of a premium surcharge. Many small businesses will already be facing significant premium increases in 2016 when their health plans are reclassified and subjected to the rules of the small group market. Under the ACA a small employer is defined as one with up to 100 employees. However, the ACA gave states the option through 2015 to define a small employer as one with up to 50 employees. Many states have chosen to do this. This option will end in 2016 and those employers with between 50 and 100 employees who were previously given "large group" status will be required to comply with the rules of the small group market. This is expected to result in significant premium increases for these reclassified employers. With many small employers' premiums expected to increase significantly in 2016, another increase within two years could force many small businesses across the tipping point and result in small employers ceasing to offer health plans.

In order to avoid imposing undue burdens on small businesses that could result in the termination of health plans, the SBCA urges the Treasury Department and Internal Revenue Service to grant small businesses transition relief from the 4980I excise tax. Providing transition relief for businesses with up to 100 employees will notably decrease the potential burden on small employers. Transition relief would both allow small businesses time to transition into the small group market before having to address the excise tax, as well as allow an opportunity for the potential impact of the 4980I excise tax to be better assessed and for standards and practices for handling the excise tax to be developed.

Providing transition relief in this situation would be extremely helpful for small businesses and would certainly not be unprecedented. Notice 2013-45 provided small businesses with less than 100 employees with one year of transition relief from the ACA's employer shared responsibility provision. Even more helpful to small businesses, Notice 2012-9 provided businesses filing under 250 W-2s annually with indefinite transition relief from the requirement that the value of health coverage be reported on the W-2. As in these prior instances, transition relief in this situation would allow small businesses more time to allocate the resources necessary for them to address the changes to the law as well as provide them with an opportunity to learn from the experiences of their larger counterparts.

The SBCA thanks the Treasury Department and the Internal Revenue Service for their careful consideration of these issues and for providing stakeholders like the SBCA with an opportunity to provide input in advance of proposed rules.

Sincerely,

Paula Calimafde
Chair
Small Business Council of America