



October 1, 2015

CC: PA: LPD: PR (Notice 2015-52)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submitted via electronic mail: notice.comments@irs.counsel.treas.gov

To Whom It May Concern:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists nationally. We are pleased to have the opportunity to provide comments in response to Notice 2015-52, "Excise Tax on High-Cost Employer-Sponsored Health Coverage." NAHU greatly appreciates the IRS and Department of Treasury's willingness to hear from stakeholders on this important issue.

The members of NAHU work on a daily basis to help millions of individuals and employers purchase, administer, and utilize health insurance coverage. Over the past five years, our members have worked directly and tirelessly with employers of all sizes to help them implement health plan changes related to the Patient Protection and Affordable Care Act (ACA). NAHU members are already working with employers to make modifications to their plan designs in anticipation of the implementation of the excise tax, so we have a critical interest in the development of all implementation guidance moving forward. Furthermore, we believe our members' direct experience regarding how employer-sponsored plans are currently structured and administered could be helpful to you as you develop additional regulatory action relative to the excise tax. A representative group of health insurance agents and brokers helped to develop these comments, which have been organized by topic, so please note that they reflect the views of experts who fully understand the needs and interests of today's group health insurance purchasers.

Overview

The ACA created the 40% excise tax for high-cost employer-sponsored health plans as an attempt to control health plan costs by providing a financial consequence to employers opting to offer their employees very expensive health insurance benefit packages and as a funding mechanism for the law. The stated intention of the tax at the time of the ACA's passage was to only target a very small percentage of health plans. However, due to its structure, the excise tax is expected to affect millions of Americans right away and will hit all types of employers and employee benefit plans. Since the tax is designed in such a way that penalizes employers for healthcare cost factors they cannot control, like having employees with larger families or dependents with high-cost medical conditions and disabilities, locations in high-cost areas, and company size, among many others, employers across the country are extremely nervous about its implementation.



Employers make decisions that affect the structure of their benefit plans years in advance, and employers of all sizes and types are already beginning to make plan changes based on what they anticipate §4980 I excise tax regulatory requirements may be in 2018. Employer fear about the looming tax and its potential cost, both in terms of actual dollars and human resource expenses, is negatively affecting employer-based coverage right now. Employers are currently making 2016 and 2017 plan year decisions about employee cost-sharing, employee access to account-based plans, plan deductible levels and benefit structures, employee access to enhanced plan components like wellness programs and worksite benefit clinics, and more all in an information vacuum. In the absence of concrete information about how plan costs will be valued and aggregated, how tax calculations, payments and notifications will be handled, and how allowances for age, gender, and high-risk occupations will be applied, employers are assuming the worst and making very tough decisions that impact employees. Furthermore, without information on how the excise tax's initial threshold amount levels will be adjusted to account for 2018 costs, employers cannot reasonably predict their initial tax exposure.

The lack of final information about the excise tax is creating a great deal of economic uncertainty and confusion with regard to employee benefit planning. In order for any employer to continue to offer qualified coverage, the costs of their group benefit plan must be affordable for the employer, as well as for the employee. We understand that it is the Administration's intent to issue at least one proposed regulation regarding the application of the excise tax to high-cost plans once feedback from this guidance and from Notice 2015-16, which was published earlier this year, has been fully reviewed. We urge the Administration to do so as soon as is feasible and provide employers with an opportunity to test their current plan designs and provide substantive feedback to the Administration as to the workability of the proposed rules, particularly as far as small and mid-sized employers are concerned.

Person That Administers the Plan Benefits

For excise-tax applicable coverage that is not an HSA, Archer MSA or FSA, or coverage provided under a fully insured group health plan, the ACA statute specifies the "person that administers the plan benefits" is the coverage provider liable for the excise tax. However, the ACA statute and other preexisting health insurance laws do not define the phrase "person that administers the plan benefits" so Notice 2015-52 offers two potential options for designating the entity liable for other applicable coverage. The first proposal would be establishing that the entity that makes day-to-day plan operating decisions, such as the third-party administrator, is liable. The second would be establishing liability for the entity with ultimate plan decision-making authority, such as the plan sponsor.

NAHU members believe very strongly that the IRS and Department of Treasury should utilize the second proposed approach and that the employer plan sponsor should be designated the "person who administers the benefits." NAHU members believe that ultimate liability for the tax must rest with the entity with overarching control over the health plan's structure and choices for employees. The tax was designed to influence employer behavior and choices, and while NAHU believes that this is a flawed premise and the tax will be assessed on many factors largely beyond employer control, NAHU members also feel it would be wrong to assign liability for the tax to a vendor over the employer. Plus, there may not be vendors who would want to assume such responsibility. NAHU members, who include many third-party administrators and others who have day-to-day responsibility over employer benefit plans but not ultimate authority, indicate that they will be unwilling and unable to assume such great liability on behalf of their employer clients. Another concern is that other applicable coverage types will largely be self-funded employer benefit plans, and these plans very often have multiple day-to-day administrative entities who oversee



various components of the plan. Coordinating liability and declaring one or another administrator primary for liability purposes would be very complicated.

NAHU also supports the second approach because if the employer retains liability for the tax, then the overall tax liability for the employer would be less. If a third-party vendor is designated as the coverage provider for self-funded plans, then affected employers will be required to pay additional amounts above total tax liability owed to account for any additional income tax that must be paid by the benefits administrator that receives and remits the tax payment. If the self-funded employer plan is considered the coverage issuer, then there will be no "tax on the tax" for such an employer to pay.

In terms of administration, if the second approach proposed in Notice 2015-52 is chosen, for single employer plans, the plan documents clearly indicate the plan sponsor and it is a single entity. Notice 2015-52 asks for comments on administrative concerns for identifying an ultimate authority for collectively bargained multiemployer plans. NAHU believes that the IRS and Department of Treasury will need to recognize that there will also be complicating factors in terms of establishing the ultimate plan authority for various types of multiple employer plans, including employer plans that will be aggregated according to § 4980 I(f)(9).

In the case of Multiple Employer Welfare Arrangements (MEWAs) and Multiple Employer Trusts (METs), the plan documents will not clearly identify each employer. However, NAHU believes that each employer, by choosing to enter into such a plan arrangement on behalf of its employees, would be the ultimate decision-maker for its share of the plan. As such, NAHU recommends that the IRS and Department of Treasury create a provision to allow for individual participating employer liability for the purposes of §4980 I. This provision should also include disclosure requirements so that employers will understand their potential liabilities and responsibilities when entering into such a plan arrangement.

Concerning employer plans that will be aggregated according to § 4980 I(f)(9), NAHU members report that in many of these situations, particularly in controlled group situations, the individual corporate entities involved will have their own separate plan arrangements with their own distinct plan documents and sponsors. While the statute may require aggregation of these plans for the purposes of determining tax liability, NAHU strongly urges that controlled group employers be allowed to assume their tax liability and payment and notification responsibilities on an entity level, much as they do for § 4980 H.

With regard to Taft-Hartley plans, the sponsoring union would be clearly identifiable in the plan documents. However, if a union will be considered the coverage provider, NAHU would appreciate clarification about whether the union then would need to treat any increased premiums charged to remit the tax as taxable income.

Finally, if the IRS and the Department of Treasury decide to utilize the second approach and deem the employer or plan sponsor the "person that administers the plan benefits," then NAHU would appreciate it if subsequent rulemaking specified that while employers or plan sponsors would retain ultimate liability for the payment of the tax and all related calculations, valuations, payments and notification, nothing would prohibit such employers from employing a vendor to complete these tasks on their behalf.

Employer Aggregation



Based on our membership's extensive dealings with employers and NAHU members' wide-ranging knowledge about employee benefit plan designs of those employers that will fall under the §4980 I employer aggregation requirements, NAHU is extremely concerned about whether it will even be feasible to administer the aggregation standard outlined in the law. Employers are already struggling with the aggregation rules as they apply to the employer-shared responsibility requirements, and those rules merely determine whether various employers qualify as applicable large employers according to §4980 H. Employer aggregation as it relates to §4980 I will be far more complicated, as most corporate entities that will be aggregated operate entirely separate health benefit plans and have entirely separate workforces. NAHU believes that combining these entities in order to value coverage and determine potential excise tax liability is going to be an extremely difficult and confusing process for employers, and the potential for mistakes and flawed compliance is enormous. As such, the more information, guidance, and examples the IRS can provide to affected employers, as soon as possible, the better.

One of NAHU's biggest concerns with the employer aggregation requirement is that thousands of affected employers will have to aggregate their coverage liability with other corporate entities that have their own distinct benefit plans. These other entities could be located in other parts of the country in higher-cost areas. They could have different employee populations, including different ages of employees, which could result in different costs. The different corporate entities could allow for different kinds of account-based plans for employees. They could have different health plan structures and different cost-containment philosophies. In short, employers in this situation will have little to no control over the benefit plan choices or healthcare cost liabilities of the other corporate entities or locations in their aggregation group. To complicate matters more, these entities also often have completely separate payroll and accounting systems from one another, which will make aggregation all the more difficult.

To make things at least slightly simpler for aggregated employers, NAHU suggests mirroring the employer shared responsibility requirement structure in terms of tax liability and payment whenever possible. For example, the law may require aggregating coverage valuation for tax liability purposes but NAHU believes that the IRS and Department of Treasury could allow for tax payment, notification, and reporting at the entity level. The IRS and Department of Treasury should also consider allowing for age, gender, and high-cost industry adjustments to apply at the entity level. In addition, NAHU believes that the current Administration should consider offering transition relief with regard to penalty enforcement for aggregated employers to give everyone time to adjust to a completely new coverage-valuation system.

To make the overall coverage-valuation process simpler for all employers, including those that are that are part of a controlled group or other multiple-employer plan arrangements, NAHU believes that the Department of Treasury and IRS should establish safe harbors for plan valuation. NAHU supports exempting all plans that merely provide minimum essential coverage (MEC) as opposed to minimum value coverage from tax liability and establishing that all Gold level and lower small-group market metal plans are not subject to the excise tax. For large-group market employers and self-funded employee benefit plans, NAHU recommends that the IRS and Department of Treasury establish a standard that all group coverage that falls below a 90% actuarial value is also exempt from the tax.

Cost of Applicable Coverage



Taxable Period

NAHU members support the IRS and Department of Treasury's proposal to use the calendar year as the taxable period for all plans and to promote consistency with the employer responsibility requirements and other ACA taxes and fees that impact employer plans and are based on the calendar year. However, given that an enormous number of employer plans are structured on a non-calendar-year basis, NAHU members propose that the IRS and Department of Treasury allow plan sponsors of non-calendar-year employer-sponsored plans to assign an entire employer-sponsored plan year, as defined by the plan documents, to a particular tax year so that employers are able to make reasoned plan-design decisions for the whole year at one time and will be much better positioned to estimate their tax liability at any point in the coverage year. NAHU believes this would be allowable based on §4980 I(d)(2)(D), which gives excise tax liability allocation determination discretion to the Secretary of the Treasury. This is the same authority proposed for use in Part Three Sections V and VI of Notice 2015-52 for variations to be allowed for account-based plans.

Otherwise, employers might start the calendar year with coverage in place that falls under the threshold amounts and then could be hit with an unanticipated rate increase at their plan renewal period that would trigger tax liability for the remaining months of the calendar year unless employee benefits were radically adjusted. However, if accommodations were made for non-calendar-year plans, employers would not need to make rash decisions and there would be better benefit cost and plan-design stability for employees. To achieve this assignment of an entire plan year to a particular tax year, NAHU believes non-calendar-year employer plans in particular should be granted transition relief with regard to implementation and tax liability enforcement. Furthermore, annual coverage limit adjustments should be adjusted for these plans accordingly.

Determination Period

Notice 2015-52 solicits comments on how to address calculation and payment issues with regard to the run-off claims or experience-rated plans. NAHU members believe that issues with regard to the run-off claims or experience-rated plans in calculating the amount of the applicable tax in a timely manner to facilitate notification and payment can be achieved, particularly if employers are allowed to assign their entire plan benefit year to one particular tax year and if the IRS and Department of Treasury establish clear guidance and rules to accommodate this concern, such as allowing transition relief for non-calendar-year plans, good-faith compliance enforcement standards once tax liability is enforced, ample time for all employers to calculate potential liability and make notifications, and not requiring excise tax payments to be made until at least the second quarter payment period of each year (July 31), as is done for the payment of the Patient-Centered Outcomes Research Institute (PCORI) fee.

NAHU also notes that employers must make benefit design decisions and budget for their healthcare expense well in advance of the plan year. This means that employers will need to assess any potential excise tax well in advance of the healthcare plan year. Employers will need to determine the cost of the coverage, the threshold amounts, and the adjustments to the thresholds prior to the beginning of the year. Therefore, it is imperative that all information to be provided by IRS and Department of Treasury that is necessary for employers to determine whether the cost of their health plan options exceeds the thresholds – including the indexed threshold amounts and age and gender adjustment table – be provided well in advance of that taxable period. NAHU further recommends that regulatory guidance provide that employers be given the choice of calculating the cost of applicable coverage in advance of the taxable period or at the end of the taxable period.



Finally, NAHU feels very strongly that as the Administration moves forward with §4980 I excise tax regulations, the valuation formula for the cost of applicable coverage should not be based on the identical standard as COBRA rate valuation standards. As we noted in our comments on Notice 2015-16, COBRA rates are determined in advance and must account for actual claims costs, which is very different proposition than valuation for tax purposes. However, it is important to note that no matter how the valuation standard is ultimately resolved, the history of COBRA rate-setting and administration does show that this issue can be effectively addressed by the private marketplace. Private employer-sponsored plans have been fairly and routinely addressing how to account for run-off claims and experience rating in COBRA situations for decades. The use of safe harbors for coverage valuation, such as exempting all plans that fall below 90% actuarial value or all small-group plans that fall under the Platinum metal level from tax liability, would also make this issue simpler for employers and other coverage providers.

Exclusion from the Cost of Applicable Coverage of Amounts Attributable to the Excise Tax

NAHU supports the Administration's proposal to exclude any portion of the cost of coverage attributable to the excise tax reimbursement from the cost of applicable coverage. NAHU also supports excluding the complete cost of the income tax reimbursement from the cost of applicable coverage. NAHU believes that health insurance issuers and other affected entities that may be deemed liable for the tax should be able to separately bill for such costs and therefore exclude them from the cost of applicable coverage. Health insurance issuers have been able to develop line-item billing for other ACA-related taxes and fees, and NAHU expects, with appropriate guidance, transition relief and direction, the private market will accommodate this in the case of the excise tax as well.

NAHU also believes that the IRS and Department of Treasury could make the separate billing process administratively feasible for coverage issuers by establishing safe harbors for the valuation of benefits. If pure minimum essential coverage that is not minimum value coverage is exempted, as well as if all coverage that falls below either the Platinum metal level standard or a 90% actuarial value was exempt, then coverage issuers would be able to administratively manage tax reimbursement much more effectively due to the smaller scope. Furthermore, if the IRS and Department of Treasury allowed for either for employers to be given the choice of calculating the cost of applicable coverage in advance of the taxable period or at the end of the taxable period, or permitted voluntary monthly reporting by the employer to the affected payers about potential tax liability for the year, or allowed snapshot reporting to the affected coverage providers based on a specific plan date, these means could help the coverage provider accurately assess its excessive costs in advance and accurately bill employers for any needed premium gross-up.

Income Tax Reimbursement Formula

In addition to supporting the concept that income tax reimbursement can be excluded from the cost of coverage subject to the excise tax under § 4980 I, NAHU supports the use of the tax formula used to calculate tax gross-ups as a means of determining the amount of excludable income tax reimbursement. With regard to the two proposed options outlined in Notice 2015-52 for the application of the gross-up formula, NAHU members believe that a health insurance issuer's actual marginal rate should be used for the calculation rather than a blended standard marginal rate for all issuers. Issuer marginal tax rates could vary significantly, given differences between state and local premium taxes by jurisdiction, among other factors. The use of the issuer's accurate rate will be much fairer for all consumers, including the individual employees who will ultimately bear the cost of this tax. NAHU members who work for issuers indicate that they can reliably estimate their marginal tax rates prior to the beginning of the year. Therefore, NAHU suggests that regulatory guidance provide that health insurers may use a reasonable



estimate of their marginal tax rate to determine the amount of the income tax reimbursement excluded from the cost of coverage.

Allocation of Contributions to HSAs, Archer MSAs, FSAs and HRAs

Applicable coverage under §4980 I includes coverage provided under certain HSAs, Archer MSAs, FSAs and HRAs, and Notice 2015-52 contains a proposal to allocate contributions to account-based plans be allocated on a pro-rata basis over the course of the plan year, based on authority granted in §4980 I(d)(2)(D). For account-based plans where the employer makes a true cash-based contribution to the account, NAHU would support the IRS and Department of Treasury Department's proposal to distribute the employer contribution amount included in the valuation on a prorated basis. However, it is critical that the valuation be done and counted by plan year. Then the employer should be allowed to "assign" that plan year into a tax year, because the plan year and the tax year may not match. Alternatively, the employer should be able to have a debit/credit system to work with, so even though a determination valuation is accounted monthly, if the overall amount for the tax year is lower than the threshold, then there would be no tax liability.

With regard to Health Savings Accounts (HSAs), it is NAHU's view that these accounts do not constitute applicable coverage because they are not group health plans. Consequently, neither employer nor employee contributions to HSAs should be taken into account in determining the cost of applicable coverage.

As for Health Reimbursement Arrangements (HRAs), NAHU does not support the proposed pro-rata accounting approach because no actual cash contribution is ever made by the employer to the employee. Given the difference in the design structure between HRAs, which utilize purely employer money that may or may not ever actually be allocated and spent based on beneficiary circumstance and account-based plans like MSAs and HSAs that contain actual funds controlled by the employee, the amounts designated as the value of an HRA for a given plan year should be treated differently. NAHU believes the valuation of HRAs should be determined on the amount actually spent on the employee out of the HRA allowance in a given plan year. In the case of HRAs that are designed with rollover provisions (a fairly common plan design), the FSA flex credit model proposed should be employed but based on the amount actually spent by the employer to reimburse employee costs during the given plan year. So if a consumer carried over \$500 of HRA money from the previous year to a new plan year and then spent \$1,000 of new-year HRA money and \$500 of the carry-over funds in the new plan year, then only the \$1,000 of spend should be counted toward the coverage valuation in the new plan year.

Cost of Applicable Coverage under FSAs with Employer Flex Credits

NAHU supports the Flexible Spending Account (FSA) flex credit safe harbor approach outlined in Notice 2015-52 to avoid double-counting of FSA funds that have been carried over by employees from previous years. NAHU believes that with clear guidance, employers and their FSA administrators would be able to account for the administration of the flex credit and salary adjustments proposed with regard to the valuation of coverage for the purposes of the § 49080 I excise tax and that the safe-harbor approach would be of great benefit to both employers and employees that value FSAs as an important employee benefit option.

Inclusion in Applicable Coverage of Self-Insured Coverage Includible in Income under §105(h)

NAHU does not support the proposal to include excess health insurance reimbursements according to §105(h) in the coverage cost valuation with regard to the cost of applicable coverage subject to the §4980 I outlined in Notice



2015-52. NAHU believes that, ultimately, the cost of the excise tax will be passed down to the individual consumer/employee level, and individual highly compensated employees already pay individual income tax on any excess reimbursements they may receive. NAHU believes that §4980 I prohibits double taxation and the impact of including §105(h) includible income in coverage valuations would be double taxation to the employee.

Age and Dollar Adjustments to the Dollar Limit

Employers and other coverage issuers are desperate for more information about what will be required from their end regarding the determination of their potential excise tax liability. The immediate development of tools for entities with excise tax liability to help them determine whether their applicable coverage offerings will be affected by the tax, such as the tables described in section four of Notice 2015-52, needs to be a top Administration priority. Furthermore, these tools need to be as clear and easy to use as possible. Lessons learned from the development of the minimum-value calculator for employer plans should be applied whenever possible when developing these tables. NAHU urges the Administration to finalize these tables soon as is feasible each year to provide employers and other coverage providers with the opportunity to test their current plan designs and provide substantive feedback to the Administration as to the workability of the tables, particularly as far as small and mid-sized employers are concerned.

NAHU further recommends that the Department of Treasury and IRS provide that the employer's employee population characteristics be determined based on the enrolled employee populations. Basing the age and gender adjustment only on the employees enrolled in healthcare coverage is appropriate because the cost of applicable coverage is driven exclusively by the employees who are enrolled in coverage. Using the enrolled employee population is also consistent with the proposal in the notice to make the adjustments and calculations separately for self-only coverage and other-than-self-only coverage. To perform these calculations separately, the employer must determine the numbers of employees who actually enrolled in each coverage tier.

To make the age and gender calculation work, coverage providers will need to pick a snapshot date of the plan's enrollment. Notice 2015-52 proposes all employers utilizing the first day of the plan year as established by the plan documents as that snapshot date, rather than calendar year. However, it is important for the Administration to recognize that huge numbers of employer plans use plan-year dates that vary from the calendar year. That is why NAHU believes that employers with non-calendar-year plans should be able to assign a whole health plan year to a specific tax year for excise tax liability purposes rather than paying taxes and determining tax liability on parts of two plan years. Furthermore, it is NAHU's recommendation that the Department of Treasury and IRS permit employers to choose any snapshot date, provided that the date is within 90 days prior to the plan's anniversary date specified in its summary plan description to determine the age and gender characteristics of its employee population. Use of the first day of the calendar year would be problematic because employers will need to determine the age and gender composition of their employee population well in advance of the first day of the plan year to assess whether the cost of their health coverage options may exceed the threshold. Using a date within 90 days of the plan year anniversary would ensure employers flexibility and give them the ability to accurately assess their tax exposure, while at the same time allowing for the use of a relatively accurate employee census for the affected plan year.

Notice 2015-52 also asks for comments on whether the development of the proposed age and gender adjustment tables should take into account the age rating scale in use in the small-group market. NAHU believes that



attempting to overlay the small-group market age rating standards on this table would be confusing and not necessarily yield an accurate result. A far better means for protecting employees and employers in the small-group market, particularly in terms of simplifying administration relative to the tax, would be to allow a safe harbor for small-employer coverage based on actuarial value metal tiers of coverage of the major medical plan(s).

Finally, NAHU recommends that the Department of Treasury and IRS use a representative national claims database to develop the age and gender adjustment tables rather than using claim costs under the FEHBP BCBS standard option. Looking at claims from plans offered nationwide will provide a more accurate reflection of the national workforce. There is concern that the population covered under the FEHBP BCBS standard option is relatively older and does not reflect the gender balance of the national workforce and includes the impact of selection. The FEHBP BCBS standard option age and gender claims curve will not be representative of the national workforce claims curve.

Notice and Payment

Notice of Calculation and Applicable Share of Excess Benefits

NAHU members believe the process of calculating §4980 I excise tax liability and providing notifications as required by §4980 I(c)(4) (A) will be administratively cumbersome to many employers, especially smaller employers. We strongly urge you to keep the reporting processes simple and be cognizant of the costs and administrative burdens that complicated and/or redundant reporting requirements will place on our employer-provided healthcare system. Furthermore, NAHU believes that the potential for miscalculations, confusion, and inadvertent errors that will have a profound impact on coverage providers, employers, and individual employees is extraordinarily high. Certainly, the potential for confusion and errors will be the greatest in the initial years of implementation, but NAHU members feel that as long as the excise tax on high-cost employer-sponsored health coverage is in effect, accounting for its administration will be hugely burdensome to employers. As such, NAHU urges the development of safe harbors, particularly concerning coverage-valuation methods, as well as transition relief for employers and coverage providers, including a good-faith enforcement standard, through at least 2020. NAHU also supports payment liability by entity in the case of multi-employer plans and other aggregated employers for both the initial years of the tax implementation and all out-years.

To make the coverage-valuation and notification processes easier for employers, and to provide potentially affected coverage providers with greater information, NAHU believes that the IRS and Department of Treasury should consider establishing processes for providing nonbinding monthly reporting summaries by the employer to the affected payment entities. Giving the coverage providers a monthly overview of potential liability could be of great benefit in facilitating timely notices and payment determinations. Another means that could be used would be reporting based on a snapshot of group enrollment and costs at the nine-month mark in the applicable plan year, similar to the snapshot-reporting approach used by employers and issuers to calculate the ACA's Transitional Reinsurance Program (TRP) fee. As with the TRP fee, NAHU encourages the IRS and Department of Treasury to give employers multiple calculation and notification options, and apply a good-faith enforcement standard. Employers should also be given the choice of calculating the cost of applicable coverage in advance of the taxable period or at the end of the taxable period. Finally, whatever method(s) are allowed, it is critical that clear guidance, relevant examples, and reporting tools be provided to employers as soon as possible so that they can evaluate resource needs and develop the necessary infrastructure needed for excise tax calculations, reporting and notifications in a timely manner.



Payment of the §4980I Excise Tax

NAHU supports the proposal outlined in Notice 2015-52 to designate the filing of Form 720, the Quarterly Excise Tax Return, as the method for the payment of the tax. We believe that the designation of a single particular quarter of the year for excise tax payment is also a sound idea. This methodology is already known to the employers and health insurance issuers likely to be impacted by this excise tax payment since it is also the payment method used for the payment of the PCORI fee. NAHU suggests designating the second quarter (July 31) as the time for excise-tax payment, as that is also the quarter designated for PCORI fee payment, thereby making the process simpler for employers and issuers. Furthermore, by designating the second quarter as the time for excise-tax payment, employers and issuers will have more lead time for things like aggregating costs, preparing notifications, accounting for run-off claims and establishing separate billing for the tax costs. If the IRS and Department of Treasury would like to separate the payment of the excise tax with the PCORI fee payment, then we suggest the use of the third quarter for excise tax payment designation.

Conclusion and Immediate Need For Additional Guidance

NAHU sincerely appreciates the opportunity to provide comments on Notice 2015-52. We look forward to reviewing additional guidance on the excise tax, including a comprehensive proposed implementation rule, in the near future. We urge you to make as much additional information about the excise tax's implementation requirements as you can available to our nation's employers as soon as possible, since they are making benefit decisions for the years ahead in an information vacuum right now. In particular, employers need information about how the adjustments will be made to the statutory thresholds to bring them up to current medical care cost levels, how the coverage valuation will be calculated and how adjustments for gender, age, and high-risk industries will be applied. Furthermore, clear guidance is needed for aggregated employer plans, and all employers should be assured of safe harbors, transition relief, and good-faith enforcement standards.

NAHU is grateful for the IRS and Department of Treasury's willingness to consider the point of view and resource needs of employers and their benefit advisors in this process, as well as your recognition of how the nuances of real-world benefit administration matter as excise tax implementation decisions are being finalized. NAHU will be pleased to provide you with input and actual employer benefit plan information as implementation of the ACA's excise tax provisions move forward. If you have any questions or need additional information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters