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The Honorable Kevin Brady
Chairman
House Ways & Means Committee
Subcommittee on Health
1102 Longworth House Office Building
Washington, DC 20515

The Honorable Jim McDermott
Ranking Member
House Ways & Means Committee
Subcommittee on Health
1106 Longworth House Office Building
Washington, DC 20515

Dear Chairman Brady and Ranking Member McDermott:

On behalf of the Retail Industry Leaders Association (RILA), I appreciate the Subcommittee holding a hearing on the final rules for the Affordable Care Act's (ACA) employer mandate, Code section 4980H, and reporting requirements, Code sections 6055 and 6056. RILA, the trade association of the world's largest and most innovative retail companies, product manufacturers and service suppliers, is committed to ensuring employer-sponsored health coverage remains a viable option for the nearly 170 million Americans receiving coverage today. For the millions of employers committed to providing employees and their families with quality and affordable healthcare, one of the most significant challenges is the implementation of the ACA.

Since enactment of the ACA, RILA and the Employers for Flexibility in Health Care (E-Flex) Coalition, a coalition of leading trade associations and businesses that have large ratios of variable-hour workforces, have provided comprehensive policy recommendations to the Internal Revenue Service (IRS), and Departments of the Treasury, Health and Human Services, and Labor, on the numerous employer requirements under the ACA. Specifically, RILA, its member companies, and the E-Flex Coalition developed extensive policy recommendations on the 4980H, 6055, and 6056 requirements.

While the regulatory development process for 4980H and dialogue with the Treasury Department were productive, and yielded a favorable outcome for retailers, the same cannot be said for the regulatory development process for 6055 and 6056 reporting requirements. We remain extremely frustrated that our meetings with the IRS on the 6055 and 6056 rules were few and not productive, and the comment process was not as constructive as it was it was under 4980H. The final rules do little to streamline the reporting process or address possible inaccurate tax credit eligibility determinations.

Employer Shared Responsibility – Code section 4980H

RILA and our members companies appreciate the flexibility included in the final 4980H rules. We also value the time that Treasury officials spent with our member companies on the telephone and in-person regarding various operational issues and policy ideas that directly impact employers, especially

retailers who have large variable hour workforces. These discussions and policy developments yielded positive results in the 4980H rules. Specifically, retailers appreciate that the final rules included:

- *Transition relief for non-calendar year plans.* Due to the nature of the retail industry where busy business seasons often occur during the fall and end of the year, many retailers utilize a non-calendar year plan year so employee focus and company resources are not taken away from the business of selling goods and services in order to make benefits selections and implement a new plan year. With the final rules, the employer mandate is effective for plan years beginning on or after January 1, 2015. Many retailers have plan years that straddle January 1. This relief means that these businesses do not have to change their plan mid-year to comply with the 4980H requirements.
- *Codification of the look-back measurement period.* Due to the nature of the retail industry, hours worked can fluctuate based on employee preference and business needs. The three-to twelve-month look-back measurement period followed by a stability period is a flexible approach that can avoid the revolving door, or churn effect of employees bouncing between employer-sponsored plans, coverage through an Exchange, or a federal program such as Medicaid or Medicare. The stability would benefit employees by maintaining consistent and predictable coverage, while also benefiting employers by avoiding the burdensome administration costs associated with a frequently changing employment status.
- *Codification of three affordability test safe harbor options.* The law's affordability test based on household income is problematic to businesses. Employers do not know and legally should not know an employee's household income. The final rules' inclusion of three safe harbor methods that are not based on household income is welcomed.

Reporting Requirements – Code sections 6055 and 6056

RILA noted to the IRS and Treasury numerous times that the collection and remittance of the data required under sections 6055 and 6056 will prove to be an extremely daunting task for retailers. There is no uniformity in the way employers track this data, or whether the tracking is done in-house or through a third-party vendor. The requirements under 6055 and 6056 will require employers to gather data from multiple IT systems and vendors. The administration complexities of being required to report on 6055 and 6056 to both the IRS and employees/plan enrollees is mindboggling to retailers.

Prior to release of the final rules, we urged the Administration to take into consideration: the need to streamline the reporting process as to lessen compliance and cost burdens on retailers in an economically-challenging environment; the significant amount of time it will take for employers to comply with regulations and build new or modify existing IT systems; and the security of uploading sensitive, personally identifiable information into federal or state databases.

The final rules do little to streamline or lessen the administrative burdens of the 6055 and 6056 requirements. While the rules allow for combined reporting for 6055 and 6056, they do nothing to ease the burdens of the amount of data that is required to be collected and reported.

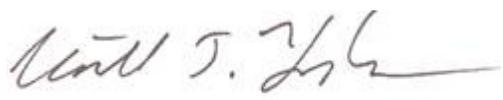
Additionally, the so-called alternative reporting methods are complicated and narrow, and are not likely to be used by retailers. These alternative methods also run counter to the flexibility included in the 4980H rules. Specifically, the qualifying offers method requires an employer to offer a plan with an affordable test based on federal poverty level (FPL) to all employees, spouses, and dependents for all 12 months of the calendar reporting year. The 4980H rules provide employers with two options in addition to the FPL in meeting the affordability test and do not require employers to offer coverage to spouses. Due to the variable nature of the retail workforce and retailers use of non-calendar year plans, it is unlikely that many retailers would likely qualify for this method that requires consistency for all 12 months of a calendar year.

RILA and its member companies remain concerned that individuals may inadvertently be approved for tax credits through the Exchanges based upon misinformation about employer-sponsored coverage that actually meets the 4980H requirements. As we have discussed with the IRS and Departments, we feel there are ways to enable a smoother transition to ACA enactment and compliance for Exchanges, the Departments, individuals, and employers. We also believe that streamlining and simplifying the reporting requirements would be beneficial from a technological stand-point to the IRS and Exchanges. One such concept is the establishment of a federal government website/portal in which an employer can pre-certify at the beginning of its plan year that at least one of its plans complies with the employer shared responsibility requirements – by meeting the affordability and minimum value tests. This data can be shared with and utilized by Exchanges when individuals apply for coverage, and could significantly reduce the “pinging” of employers by Exchanges when individuals apply for coverage. This concept was not included in the final rules.

RILA and the E-Flex Coalition are exploring legislative options for reforming the 6055 and 6056 requirements. A first step in reforming these requirements, RILA worked with Senator Mark Warner and his colleagues in developing S. 2176, the Commonsense Reporting Act of 2014. S. 2176 would provide businesses with relief from having to collect and report on Social Security numbers for all plan enrollees and implement an opt-out system with respect to employees receiving information electronically. S. 2176 would also require the Departments of the Treasury, Health and Human Services, and Labor to conduct a study and report to Congress on the development of a prospective reporting system, a concept that RILA strongly supports.

Thank you again for holding this important hearing. RILA looks forward to continuing to work with the Ways and Means Committee and your colleagues in Congress in a bi-partisan manner to strengthen and improve the employer-sponsored health system, and lessen the burdens of the ACA requirements on retail employees and retail job creators.

Sincerely,



Bill Hughes
Senior Vice President, Government Affairs