



November 23, 2018, 2018

Submitted electronically via: Notice.comments@irs.counsel.treas.gov

CC:PA:LPD:PR (Notice 2018-71)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2018-71: Employer Credit for Paid Family and Medical Leave

Dear Sir or Madam:

The National Business Group on Health is pleased to respond to the Department of the Treasury's and Internal Revenue Service's request for comments regarding the employer credit for paid family and medical leave under section 45S of the Internal Revenue Code.

The National Business Group on Health represents [420 primarily large employers](#), including 74 of the Fortune 100, who voluntarily provide group health and welfare benefits to over 55 million American employees, retirees, and their families. Our members employ and provide benefits under a wide variety of work arrangements, including full-time, part-time, seasonal, and temporary. They often have multiple lines of business in multiple locations and tailor work and benefit arrangements to the specific needs of each line of business.

As our members continue to develop group health and welfare plan designs and comply with applicable legal requirements, including those under the 2017 tax reform law, primary concerns will be:

- (1) Minimizing the administrative and cost burdens associated with those requirements and
- (2) Having flexibility to provide comprehensive health and welfare benefits in the most efficient, cost-effective way possible while taking into account the needs of different employee populations.

Having flexibility to adapt administrative processes to current and future benefit arrangements will reduce compliance burdens and allow plan sponsors to devote more resources to maintaining and developing high-quality, cost-effective health and welfare benefits for employees and their dependents.

I. Applying Code § 45S

We generally support the use of existing terms and standards for purposes of administering the credit under § 45S. We also appreciate the Treasury Department and Service's providing flexibility in complying with §45S notice requirements. However, our members are concerned that some parts of the guidance in Notice 2018-71 will present administrative challenges.

Specifically, many plan sponsors may not have certain information in a readily available format, including:

- Whether employees take leave for FMLA purposes or other purposes, given that some employers provide paid leave for purposes other than those specified in the FMLA;
- Whether employees take leave for to care for individuals specified in the FMLA or other individuals, given that some employers provide paid leave to care for individuals other than those specified in the FMLA; and
- Whether paid leave is granted pursuant to state/local law or the FMLA, given that these requirements frequently overlap.

We encourage the Treasury Department and the Service, in developing guidance, to provide as much flexibility as possible when interpreting these requirements and thereby minimize administrative burdens for employers and employees.

II. Relief from Applicable Penalties

As stated above, Code § 45S's requirements as proposed may involve substantial administrative costs as our members collect the required information from their recordkeeping systems and coordinate with third-party service providers. Therefore, it is likely that Forms 8994 and 3800 will include inadvertent errors, at least in the first year's filings. Therefore, we recommend that the Service provide relief from applicable penalties when filers can show they made good faith efforts to comply with Form 8994 and 3800 requirements.

We believe that the above recommendations, if implemented, will reduce administrative and cost burdens and allow group health and welfare plan sponsors much-needed flexibility in claiming the credit under §45S.

Thank you for considering our comments and recommendations. Please contact me or Debbie Harrison, the National Business Group on Health's Assistant Director of Public Policy, at (202) 558-3004 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Marcotte". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Brian J. Marcotte
President and CEO