

115TH CONGRESS
1ST SESSION

S. 1908

To streamline the employer reporting process and strengthen the eligibility verification process for the premium assistance tax credit and cost-sharing subsidy.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2017

Mr. WARNER (for himself and Mr. PORTMAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To streamline the employer reporting process and strengthen the eligibility verification process for the premium assistance tax credit and cost-sharing subsidy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Commonsense Report-
5 ing Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Department of the Treasury and the
9 Internal Revenue Service should work together with

1 other relevant departments and agencies to identify
2 and implement methods to minimize compliance bur-
3 dens on businesses, insurance carriers, and individ-
4 uals.

5 (2) Such collaboration should strike an appro-
6 priate balance between sufficient reporting to en-
7 force the law and protecting the privacy of individ-
8 uals.

9 **SEC. 3. VOLUNTARY PROSPECTIVE REPORTING SYSTEM.**

10 (a) IN GENERAL.—Not later than 1 year after the
11 date of the enactment of this Act, the Secretary of the
12 Treasury, in consultation with the Secretary of Health and
13 Human Services, the Secretary of Labor, and the Admin-
14 istrator of the Small Business Administration, shall de-
15 velop and implement guidance providing for a prospective
16 reporting system meeting the requirements of subsection
17 (b). Such system shall be available for use by employers
18 on a voluntary basis beginning not later than January 1,
19 2019.

20 (b) REQUIREMENTS.—The system created under sub-
21 section (a) shall include—

22 (1) voluntary reporting by each participating
23 employer, not later than 45 days before the first day
24 of the annual open enrollment period under section
25 1311(e)(6)(B) of the Patient Protection and Afford-

1 able Care Act (42 U.S.C. 18031(c)(6)(B)) for each
2 calendar year, of—

3 (A) the name and employer identification
4 number of the employer;

5 (B) a certification of—

6 (i) whether coverage meeting the defi-
7 nition of minimum essential coverage in
8 section 5000A(f) of the Internal Revenue
9 Code of 1986 is offered to the full-time
10 employees (within the meaning of section
11 4980H of such Code) of the employer;

12 (ii) whether such coverage is offered
13 to part-time employees of the employer;

14 (iii) whether such coverage is offered
15 to dependents of employees;

16 (iv) whether such coverage is offered
17 to spouses of employees;

18 (v) whether such coverage meets the
19 minimum value requirement of section
20 36B(c)(2)(C)(ii) of such Code;

21 (vi) whether such coverage satisfies
22 the requirements to qualify for one of the
23 affordability safe harbors promulgated by
24 the Secretary of the Treasury for purposes
25 of section 4980H of such Code; and

1 (vii) whether the employer reasonably
2 expects to be liable for any shared respon-
3 sibility payment under section 4980H of
4 such Code for such year;

5 (C) the months during the prospective re-
6 porting period that such coverage is available to
7 individuals described in clauses (i) through (iv)
8 of subparagraph (B); and

9 (D) what waiting periods, if any, apply
10 with respect to such coverage;

11 (2) processes necessary to ensure that Ex-
12 changes, the Federal Marketplace Data Services
13 Hub, and the Internal Revenue Service can securely
14 and confidentially access the information described
15 in paragraph (1) as necessary to carry out their re-
16 spective missions, and to provide to the Secretary of
17 Health and Human Services additional information
18 relating to eligibility determinations for advance pay-
19 ment of the premium tax credits under section 36B
20 of such Code and the cost-sharing subsidies under
21 section 1402 of the Patient Protection and Afford-
22 able Care Act (42 U.S.C. 18071);

23 (3) a process to allow Exchanges to follow up
24 with employers in order to obtain additional reason-
25 ably necessary information relating to an employee's

1 eligibility for such advance payment or such cost-
2 sharing subsidies, and to allow an employee to re-
3 ceive notification of any problem in verifying such
4 eligibility; and

5 (4) a process to allow employers using the sys-
6 tem to provide timely updates to the Federal Mar-
7 ketplace Data Services Hub regarding any cancella-
8 tion of coverage or significant change in coverage for
9 participating employees that would change the infor-
10 mation reported under paragraph (1).

11 (c) EMPLOYER NOTIFICATION OF EMPLOYEE EN-
12 ROLLMENT IN EXCHANGE PLANS.—Subparagraph (J) of
13 section 1311(d)(4) of the Patient Protection and Afford-
14 able Care Act (42 U.S.C. 18031(d)(4)(J)) is amended by
15 striking “to each employer” and all that follows and in-
16 serting “to each employer—

17 “(i) the name of each employee of the
18 employer who enrolls in a qualified health
19 plan for a plan year, or whose dependents
20 enroll in such a plan, at the time of such
21 enrollment; or

22 “(ii) the name of each employee of the
23 employer described in subparagraph (I)(ii)
24 who ceases coverage under a qualified

1 health plan during a plan year (and the ef-
2 fective date of such cessation); and”.

3 (d) EXEMPTION FROM REPORTING REQUIREMENT
4 UNDER INTERNAL REVENUE CODE OF 1986.—Section
5 6056 of the Internal Revenue Code of 1986 is amended
6 by redesignating subsection (f) as subsection (g) and by
7 inserting after subsection (e) the following new subsection:

8 “(f) EXEMPTION.—If, through the system created
9 under section 3(a) of the Commonsense Reporting Act of
10 2017, an employer provides prospective reporting for any
11 calendar year that meets the requirements of section
12 3(b)(1) of such Act—

13 “(1) such employer shall be treated as satis-
14 fying the return requirements of subsections (a) and
15 (b) for such year, and

16 “(2) such employer shall be treated as satis-
17 fying the requirements of subsection (c) for such
18 year if the employer—

19 “(A) furnishes the statement described in
20 such section to those employees of the employer
21 whose names have been provided to the em-
22 ployer by an Exchange under section
23 1311(d)(4)(J)(i) of the Patient Protection and
24 Affordable Care Act regarding enrollment of the
25 employee or a dependent in a qualified health

1 plan (as defined in section 1301 of such Act)
2 through the Exchange, and

3 “(B) furnishes a copy of such statement
4 with respect to such employees to the Sec-
5 retary.”.

6 (e) THIRD-PARTY FILING.—An employer may con-
7 tract with a third party to make the report under sub-
8 section (b)(1) without affecting the employer’s treatment
9 as having satisfied the return requirements of subsections
10 (a) and (b) of section 6056 of the Internal Revenue Code
11 of 1986.

12 (f) ACCESS TO THE NATIONAL DIRECTORY OF NEW
13 HIRES.—Subsection (i)(3) of section 453 of the Social Se-
14 curity Act (42 U.S.C. 653) is amended by adding at the
15 end the following new sentence: “The Secretary of the
16 Treasury and the Secretary of Health and Human Serv-
17 ices shall have access to the information in the National
18 Directory of New Hires for purposes of administering sec-
19 tion 36B and 4980H of the Internal Revenue Code of
20 1986 and section 1402 of the Patient Protection and Af-
21 fordable Care Act (42 U.S.C. 18071). Subsection (k)(3)
22 shall not apply to information received for purposes of the
23 administration of such sections 36B and 4980H of such
24 Code and section 1402 of such Act.”.

1 (g) IMPROVING EMPLOYEE ACCESS TO ACCURATE
2 EINS.—Not later than 1 year after the date of the enact-
3 ment of this Act, the Secretary of the Treasury shall de-
4 velop and implement guidance for allowing any employee
5 of an employer to receive, on request, the employer’s em-
6 ployer identification number for purposes of section 6056
7 of the Internal Revenue Code of 1986.

8 (h) FUNDING FOR VOLUNTARY PROSPECTIVE RE-
9 PORTING SYSTEM.—It is the sense of Congress that build-
10 ing and maintaining the voluntary prospective reporting
11 system described in this section will require appropriations
12 to the Secretary of the Treasury, the Secretary of Health
13 and Human Services, the Secretary of Labor, and the Ad-
14 ministrator of the Small Business Administration, and
15 that necessary sums to carry out the requirements of this
16 section should be appropriated for such purpose.

17 **SEC. 4. PROTECTION OF DEPENDENT PRIVACY.**

18 (a) IN GENERAL.—Paragraph (1) of section 6055(b)
19 of the Internal Revenue Code of 1986 is amended by add-
20 ing at the end the following flush sentence:

21 “For purposes of subparagraph (B)(i), in the case of
22 an individual other than the primary insured, if the
23 health insurance issuer or the employer is unable to
24 collect or maintain information on the TINs of such
25 individuals (other than for purposes of this section),

1 the Secretary may allow the individual's full name
2 and date of birth to be substituted for the name and
3 TIN. In the event the Secretary allows the use of
4 the individual's full name and date of birth in lieu
5 of the TIN, the Social Security Administration shall
6 assist the Internal Revenue Service in providing data
7 matches to determine the TIN associated with the
8 name and date of birth provided by the Internal
9 Revenue Service with respect to such individual.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to returns the due date for which
12 is after the date that is 60 days after the date of the enact-
13 ment of this Act.

14 **SEC. 5. ELECTRONIC STATEMENTS.**

15 (a) IN GENERAL.—Subsection (c) of section 6056 of
16 the Internal Revenue Code of 1986 is amended by adding
17 at the end the following flush sentence:

18 “An individual shall be deemed to have consented to re-
19 ceive the statement under this section in electronic form
20 if such individual has affirmatively consented at any prior
21 time, to the person who is the employer of the individual
22 during the calendar year to which the statement relates,
23 to receive such statement in electronic form. The pre-
24 ceding sentence shall not apply if the individual revokes

1 consent in writing with respect to the statement under this
2 section.”.

3 (b) STATEMENTS RELATING TO HEALTH INSURANCE
4 COVERAGE.—Subsection (c) of section 6055 of the Inter-
5 nal Revenue Code of 1986 is amended by adding at the
6 end the following new paragraph:

7 “(3) ELECTRONIC DELIVERY.—An individual
8 shall be deemed to have consented to receive the
9 statement under this subsection in electronic form if
10 such individual has affirmatively consented at any
11 prior time, to the person required to make such
12 statement (such as the provider of the individual’s
13 health coverage), to receive in electronic form any
14 private health information (such as electronic health
15 records), unless the individual revokes such consent
16 in writing.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to statements the due date for
19 which is after December 31, 2017.

20 **SEC. 6. GAO STUDIES.**

21 (a) STUDY OF PROSPECTIVE REPORTING SYSTEM.—
22 Not later than July 1, 2020, the Comptroller General of
23 the United States shall conduct a study evaluating, with
24 respect to the period beginning on January 1, 2019, and
25 ending on December 31, 2019, the functionality of the

1 prospective reporting system established under section 3
2 of this Act, including the accuracy of information col-
3 lected, the number of employers electing to report under
4 such system, and any challenges that have arisen.

5 (b) REPORT.—The results of the study under sub-
6 section (a) shall be reported to the Committees on Finance
7 and Health, Education, Labor, and Pensions of the Senate
8 and the Committees on Ways and Means, Energy and
9 Commerce, and Education and the Workforce of the
10 House of Representatives.

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