

116TH CONGRESS
1ST SESSION

S. 2366

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

JULY 31, 2019

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 2019”.

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 2020.

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

22 (1) voluntary reporting by each participating
23 employer that offers minimum essential coverage to
24 its full-time employees and their dependents under
25 an eligible employer-sponsored plan, not later than

1 45 days before the first day of the annual open en-
2 rollment period under section 1311(c)(6)(B) of the
3 Patient Protection and Affordable Care Act (42
4 U.S.C. 18031(c)(6)(B)) for each calendar year, of—

5 (A) the name and employer identification
6 number for purposes of section 6056 of the In-
7 ternal Revenue Code of 1986 of the employer;

8 (B) a certification of—

9 (i) whether coverage meeting the defi-
10 nition of minimum essential coverage in
11 section 5000A(f) of the Internal Revenue
12 Code of 1986 is offered to the full-time
13 employees (within the meaning of section
14 4980H of such Code) of the employer;

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

17 (iii) whether such coverage is offered
18 to dependents of employees;

19 (iv) whether such coverage is offered
20 to spouses of employees;

21 (v) whether such coverage meets the
22 minimum value requirement of section
23 36B(c)(2)(C)(ii) of such Code;

24 (vi) whether such coverage satisfies
25 the requirements to qualify for one of the

1 affordability safe harbors promulgated by
2 the Secretary of the Treasury for purposes
3 of section 4980H of such Code; and

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

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

12 (D) what waiting periods, if any, apply
13 with respect to such coverage; and

14 (E) a list of all employer identification
15 numbers of the employer for entities that em-
16 ploy employees within the employers control
17 group under subsection (b), (c), (m), or (o) of
18 section 414 of the Internal Revenue Code for
19 1986;

20 (2) processes necessary to ensure that Ex-
21 changes, the Federal Marketplace Data Services
22 Hub, and the Internal Revenue Service can securely
23 and confidentially access the information described
24 in paragraph (1) as necessary to carry out their re-
25 spective missions, and to provide to the Secretary of

1 Health and Human Services additional information
2 relating to eligibility determinations for advance pay-
3 ment of the premium tax credits under section 36B
4 of such Code and the cost-sharing subsidies under
5 section 1402 of the Patient Protection and Afford-
6 able Care Act (42 U.S.C. 18071);

7 (3) a process to allow Exchanges to follow up
8 with employers in order to obtain additional reason-
9 ably necessary information relating to an employee's
10 eligibility for such advance payment or such cost-
11 sharing subsidies, and to allow an employee to re-
12 ceive notification of any problem in verifying such
13 eligibility; and

14 (4) a process to allow employers using the sys-
15 tem to provide timely updates to the Federal Mar-
16 ketplace Data Services Hub regarding any cancella-
17 tion of coverage or significant change in coverage for
18 participating employees that would change the infor-
19 mation reported under paragraph (1).

20 (c) EMPLOYER NOTIFICATION OF EMPLOYEE EN-
21 ROLLMENT IN EXCHANGE PLANS.—Subparagraph (J) of
22 section 1311(d)(4) of the Patient Protection and Afford-
23 able Care Act (42 U.S.C. 18031(d)(4)(J)) is amended by
24 striking “to each employer” and all that follows through

1 “(and the effective date of such cessation); and” and in-
 2 serting “to each employer—

3 “(i) the name of each employee of the
 4 employer who enrolls in a qualified health
 5 plan for a plan year, or whose dependents
 6 enroll in such a plan, at the time of such
 7 enrollment; or

8 “(ii) the name of each employee of the
 9 employer described in subparagraph (I)(ii)
 10 who ceases coverage under a qualified
 11 health plan during a plan year (and the ef-
 12 fective date of such cessation); and”.

13 (d) EXEMPTION FROM REPORTING REQUIREMENT
 14 UNDER INTERNAL REVENUE CODE OF 1986.—Section
 15 6056 of the Internal Revenue Code of 1986 is amended
 16 by redesignating subsection (f) as subsection (g) and by
 17 inserting after subsection (e) the following new subsection:

18 “(f) EXEMPTION.—If, through the system created
 19 pursuant to section 3(a) of the Commonsense Reporting
 20 Act of 2019, an employer provides prospective reporting
 21 for any calendar year that meets the requirements of sec-
 22 tion 3(b)(1) of such Act—

23 “(1) such employer shall be treated as satis-
 24 fying the return requirements of subsections (a) and
 25 (b) for such year; and

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

4 “(A) furnishes the statement described in
 5 such section to those employees of the employer
 6 whose names have been provided to the em-
 7 ployer by an Exchange under section
 8 1311(d)(4)(J)(i) of the Patient Protection and
 9 Affordable Care Act regarding enrollment of the
 10 employee or a dependent in a qualified health
 11 plan (as defined in section 1301 of such Act)
 12 through the Exchange; and

13 “(B) furnishes a copy of such statement
 14 with respect to such employees to the Sec-
 15 retary.”.

16 (e) THIRD-PARTY FILING.—An employer may con-
 17 tract with a third party to make the report under sub-
 18 section (b)(1) without affecting the employer’s treatment
 19 as having satisfied the return requirements of subsections
 20 (a) and (b) of section 6056 of the Internal Revenue Code
 21 of 1986.

22 (f) ACCESS TO THE NATIONAL DIRECTORY OF NEW
 23 HIRES.—Subsection (i)(3) of section 453 of the Social Se-
 24 curity Act (42 U.S.C. 653) is amended by adding at the
 25 end the following new sentence: “The Secretary of the

1 Treasury and the Secretary of Health and Human Serv-
 2 ices shall have access to the information in the National
 3 Directory of New Hires for purposes of administering sec-
 4 tion 36B and 4980H of the Internal Revenue Code of
 5 1986 and section 1402 of the Patient Protection and Af-
 6 fordable Care Act (42 U.S.C. 18071). Subsection (k)(3)
 7 shall not apply to information received for purposes of the
 8 administration of such sections 36B and 4980H of such
 9 Code and section 1402 of such Act.”.

10 (g) IMPROVING EMPLOYEE ACCESS TO ACCURATE
 11 EINS.—Not later than 1 year after the date of the enact-
 12 ment of this Act, the Secretary of the Treasury shall de-
 13 velop and implement guidance for allowing any employee
 14 of an employer to receive, on request, the employer’s em-
 15 ployer identification number for purposes of section 6056
 16 of the Internal Revenue Code of 1986. Employers shall
 17 provide the employer’s employer identification number for
 18 purposes of section 6056 of the Internal Revenue Code
 19 of 1986 on one of the following documents of the employ-
 20 er’s election:

21 (1) Health Insurance Marketplace Coverage
 22 Options Notice required under section 18B of the
 23 Fair Labor Standards Act.

1 (2) Summary of Benefits and Coverage de-
 2 scribed in section 2715 of the Patient Protection
 3 and Affordable Care Act (42 U.S.C. 18071).

4 (3) Marketplace Employer Coverage tool.

5 (4) Annual benefits enrollment materials dis-
 6 tributed to employees, including through an intranet
 7 or an online portal accessible by employees.

8 (5) Employee pay statements or Form W-2.

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

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

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

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

1 (other than for purposes of this section), the Secretary
 2 may allow the individual's full name and date of birth to
 3 be substituted for the name and TIN. In the event the
 4 Secretary allows the use of the individual's full name and
 5 date of birth in lieu of the TIN, the Social Security Ad-
 6 ministration shall assist the Internal Revenue Service in
 7 providing data matches to determine the TIN associated
 8 with the 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 new paragraph:

18 “(3) ELECTRONIC DELIVERY.—An individual
 19 shall be deemed to have consented to receive the
 20 statement under this subsection in electronic form if
 21 such individual has affirmatively consented at any
 22 prior time, to the person who is the employer of the
 23 individual during the calendar year to which the
 24 statement relates, to receive such statement in elec-
 25 tronic form. The preceding sentence shall not apply

1 if the individual revokes consent in writing with re-
 2 spect to the statement under this subsection.”.

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, 2019.

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

21 (a) STUDY OF FIRST YEARS OF EMPLOYER REPORT-
 22 ING.—

23 (1) IN GENERAL.—The Comptroller General of
 24 the United States shall conduct a study that evalu-

1 ates, with respect to the period beginning on Janu-
2 ary 1, 2015, and ending on December 31, 2018—

3 (A) the notification of employers by Ex-
4 changes established under title I of the Patient
5 Protection and Affordable Care Act (Public
6 Law 111–148) that a full-time employee of the
7 employer has been determined eligible for ad-
8 vance payment of premium tax credits under
9 section 36B of the Internal Revenue Code of
10 1986 or cost-sharing subsidies under section
11 1402 of such Act (42 U.S.C. 18071), including
12 information regarding—

13 (i) the data elements included in the
14 employer notification;

15 (ii) the process by which the notifica-
16 tion forms were developed and sent to em-
17 ployers, including whether the process pro-
18 vided for a formal notice and comment pe-
19 riod;

20 (iii) whether employers report that
21 such notifications provided sufficient and
22 relevant information for them to make ap-
23 propriate decisions about whether to utilize
24 the appeals process;

1 (iv) the total number of notifications
 2 sent to employers and the timeline of when
 3 such notifications were sent;

4 (v) differences in the notification proc-
 5 ess between the marketplace facilitated by
 6 the Federal Government and the State-
 7 Based Marketplaces; and

8 (vi) challenges that have arisen in the
 9 notification process, and recommendations
 10 to address these challenges; and

11 (B) the extent to which the Secretary of
 12 Health and Human Services has established a
 13 separate appeals process for employers who re-
 14 ceived such a notification to challenge the eligi-
 15 bility determination, as required by section
 16 1411(f)(2) of the Patient Protection and Af-
 17 fordable Care Act (42 U.S.C. 18081(f)(2)).

18 (2) REPORT.—Not later than 1 year after the
 19 date of the enactment of this Act, the Comptroller
 20 General shall submit to the Committees on Finance
 21 and Health, Education, Labor, and Pensions of the
 22 Senate and the Committees on Ways and Means,
 23 Energy and Commerce, and Education and Labor of
 24 the House of Representatives a report on the results
 25 of the study conducted under paragraph (1).

1 (b) STUDY OF PROSPECTIVE REPORTING SYSTEM.—

2 (1) IN GENERAL.—The Comptroller General of
 3 the United States shall conduct a study that evalu-
 4 ates, with respect to the period beginning on Janu-
 5 ary 1, 2020, and ending on December 31, 2020, the
 6 functionality of the prospective reporting system es-
 7 tablished pursuant to section 3, including the accu-
 8 racy of information collected, the number of employ-
 9 ers electing to report under such system, and any
 10 challenges that have arisen in implementing such
 11 system.

12 (2) REPORT.—Not later than July 1, 2021, the
 13 Comptroller General shall submit to the Committees
 14 on Finance and Health, Education, Labor, and Pen-
 15 sions of the Senate and the Committees on Ways
 16 and Means, Energy and Commerce, and Education
 17 and Labor of the House of Representatives a report
 18 on the results of the study conducted under para-
 19 graph (1).

20 **SEC. 7. TAX COMPLIANCE.**

21 (a) IN GENERAL.—Section 6724(d)(1)(B)(xxv) of the
 22 Internal Revenue Code of 1986 is amended by inserting
 23 “or, in the case of an employer to which section 6056(f)
 24 applies, section 3(b)(1) of the Commonsense Reporting
 25 Act of 2019” before “, or”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to returns required to be filed after
3 the date of the enactment of this Act.

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