

Commonsense Reporting Act – S. 2366

February 7, 2020

The Honorable Mark Warner (VA)
U.S. Senate
703 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Rob Portman (OH)
U.S. Senate
448 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators Warner and Portman:

On behalf of 181 million Americans insured by employment-based health coverage and employers represented by the organizations below, we write with our support for the bipartisan Commonsense Reporting Act (S. 2366) to reform the annual health information reporting process under the Internal Revenue Service (IRS).

The current IRS reporting system established under the Affordable Care Act (ACA) causes confusion for individuals and families seeking coverage through the federally facilitated and state-based Exchanges, and exposes employers that are complying with the ACA mandate to misguided tax penalties and compliance costs.

The IRS retrospective reporting system requires an employer to report data long after Exchange open enrollment and the completion of a coverage year. During this time period, our full-time employees could apply for individual coverage, for varying reasons, and receive a federal tax subsidy through healthcare.gov or a state marketplace – even though the employee is ineligible. Because the IRS does not permit employers to report pertinent information about the type of health coverage offered to full-time employees prior to Exchange open enrollment period, subsidies are given out without real-time data and this exposes employees to IRS enforcement actions.

As the IRS reconciles tax returns for individuals who have received an Exchange subsidy and who have claimed to be a full-time employee of a business, the IRS is issuing 226-J tax penalty letters to that business regardless of the employer's reporting data. The current retrospective reporting system essentially deems an employer guilty for non-compliance with the ACA employer mandate unless that employer appeals the 226-J tax penalty letter to prove their innocence. Despite the IRS' claims that 226-J tax penalty letters are settled at no penalty to the employer, that business must accrue massive compliance costs to successfully appeal an IRS penalty letter.

Under your Commonsense Reporting Act, S. 2366, employers would be provided with a second, voluntary option to report the most relevant information about the type of coverage offered to full-time employees, dependents and spouses to the IRS prior to Exchange open enrollment. Providing this voluntary, prospective reporting option will enable businesses to populate the Exchange datahub used by healthcare.gov and state marketplaces with real-time employer coverage data to help consumers navigate their appropriate coverage needs and healthcare home. Prospective reporting will also reduce misguided 226-J tax penalty letters to employers which will provide relief and eliminate compliance costs to businesses.

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The streamlined, voluntary prospective reporting system under S. 2366, the Commonsense Reporting Act, provides clarification to millions of American consumers and relief to businesses of all sizes.

Sincerely,

Alabama Restaurant & Hospitality Association
Alabama SHRM State Council
Alaska Cabaret, Hotel, Restaurant, & Retailers Association
Alaska SHRM State Council
America's Health Insurance Plans
American Eagle Outfitters, Inc.
American Hotel & Lodging Association
American Rental Association
American Staffing Association
Arizona Association of Health Underwriters
Arizona SHRM State Council
Southern Arizona Association of Health Underwriters
Arkansas Hospitality Association
Arkansas SHRM State Council, Inc.
Associated Builders and Contractors, Inc.
Associated General Contractors of America
AssuredPartners of New Jersey, LLC
Auto Care Association
Automotive Aftermarket Association of the Mid-South, Inc.
Automotive Aftermarket Association Southeast, Inc.
Biggs Insurance Services
Brinker International
CAWA - Representing the Automotive Parts Industry (CA, NV, AZ)
California Association of Boutique and Breakfast Inns
California Association of Health Underwriters
California Hotel and Lodging Association
California Restaurant Association
California State Council of SHRM
Hotel Association of Los Angeles (CA)
Long Beach Hospitality Alliance (CA)
Inland Empire Association of Health Underwriters (CA)
Golden Gate Association of Health Underwriters (CA)
Ventura County Association of Health Underwriters (CA)
Cascade Valley Insurance
Colorado Restaurant Association
Colorado State Association of Health Underwriters
Colorado SHRM State Council
Northern Colorado Association of Health Underwriters
Conover Beyer Associates
Connecticut SHRM State Council

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Crisp Insurance Advisors, an Alera Group Company
Delaware Association of Health Underwriters
Delaware Restaurant Association
Delaware SHRM State Council
Florida Restaurant and Lodging Association
Florida Retail Federation
Southwest Florida Association of Health Underwriters
Food Marketing Institute
HR Florida State Council, Inc.
Gulf Coast Health Underwriters of Florida
Georgia Hotel & Lodging Association
Georgia Restaurant Association
Georgia SHRM State Council
North East Association of Health Underwriters (GA)
Global Financial Resources, Inc.
Hardenbergh Insurance Group
Hawaii SHRM State Council
Home Furnishings Association
HR Policy Association
Idaho Lodging and Restaurant Association
Idaho Retailers Association
Idaho SHRM State Council
Illinois Restaurant Association
Illinois SHRM State Council
Illinois State Association of Health Underwriters
Downtown Chicago Chapter Association of Health Underwriters (IL)
Indiana Restaurant & Lodging Association
Indiana State Association of Health Underwriters
HR Indiana SHRM
Greater Northern Indiana Association of Health Underwriters
International Franchise Association
Iowa Association of Health Underwriters
Iowa SHRM State Council
The Kansas State Council of SHRM, Inc.
Keller Stonebraker Insurance
Kentucky SHRM State Council
Central Kentucky Association of Health Underwriters
Kistler Tiffany
Lobosco Insurance Group, LLC
Louisiana Restaurant Association
Louisiana SHRM State Council
Lubenow Agency
Maine Association of Health Underwriters
Hospitality Maine
Maine SHRM State Council
Maryland Hotel & Lodging Association

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Maryland Retailers Association
Maryland SHRM State Council, Inc.
Massachusetts Restaurant Association
Massachusetts SHRM State Council
Michigan Association of Health Underwriters
Michigan SHRM State Council
Michigan Tire Dealers Association (Michigan Retailers Association)
Midwest Automotive Parts & Service Association
Minnesota Association of Health Underwriters
Hospitality Minnesota
Minnesota SHRM State Council
Mississippi Hospitality and Restaurant Association
Mississippi State Council of SHRM
Missouri Restaurant Association
Missouri Retailers Association
Missouri State Council of SHRM, Inc.
Springfield Association of Health Underwriters (MO)
St. Louis Association of Health Underwriters (MO)
Montana SHRM State Council
National Association of Health Underwriters
National Association of Home Builders
National Association of Wholesaler-Distributors
National Federation of Independent Business
National Grocers Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
Nebraska Association of Health Underwriters (Lincoln Chapter)
Nebraska Hotel & Lodging Association
Nebraska Restaurant Association
Nebraska Retail Federation
Nebraska SHRM State Council
Nevada Association of Health Underwriters
Nevada SHRM State Council
Retail Association of Nevada
Northern Nevada Association of Health Underwriters
New Hampshire SHRM State Council
New Jersey Gasoline, C-Store, Automotive Association
New Jersey Restaurant & Hospitality Association
Garden State Council of SHRM, Inc. (NJ)
Monmouth Ocean Association of Health Underwriters (NJ)
New Mexico Restaurant Association
New Mexico SHRM State Council
New York Association of Health Underwriters
New York State Restaurant Association
New York State SHRM, Inc.

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North Carolina Association of Health Underwriters
North Carolina SHRM State Council
Independent Garage Owners of North Carolina
Coastal Association of Health Underwriters (NC)
Triangle Association of Health Underwriters (NC)
Western North Carolina Association of Health Underwriters
North Dakota SHRM State Council
Northwest Automotive Trades Association
Ohio Restaurant Association
Ohio SHRM State Council
Greater Cincinnati Association of Health Underwriters (OH)
Oklahoma Hotel and Lodging Association
Oklahoma Restaurant Association
Oklahoma Retail Merchants Association
Oklahoma SHRM State Council
Tulsa Association of Health Underwriters (OK)
Oregon Association of Health Underwriters
Oregon Restaurant & Lodging Association
Oregon SHRM State Council
Otterstedt Insurance Agency
Partnership for Employer-Sponsored Coverage
Pennsylvania Restaurant & Lodging Association
Pennsylvania SHRM State Council
Greater Philadelphia Association of Health Underwriters (PA)
Premier Benefit Services
Rhode Island SHRM State Council
Sage Benefit Advisors
Savoy Associates
Self-Insurance Institute of America
Service Station Dealers of America and Allied Trades
Society for Human Resource Management
South Carolina Association of Health Underwriters
South Carolina Restaurant and Lodging Association
South Carolina SHRM State Council
South Dakota Retailers Association
South Dakota SHRM State Council
Tennessee Association of Health Underwriters
Tennessee SHRM State Council
Middle Tennessee Association of Health Underwriters
Mid South Association of Health Underwriters (TN)
Texas Association of Health Underwriters
Texas Hotel & Lodging Association
Texas Restaurant Association
Texas Roadhouse
Texas SHRM State Council
East Texas Association of Health Underwriters

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The Bank of San Antonio Insurance Group
The Council of Insurance Agents & Brokers
The Hyland Group Inc.
The Malone Company
Upshaw Insurance Agency
Utah Association Health Underwriters
Utah Human Resource State Council
Utah Restaurant Association
Vermont Chamber of Commerce
Vermont SHRM State Council
Virginia Restaurant, Lodging & Travel Association
Virginia SHRM State Council
Washington Association of Health Underwriters
Washington Retail Association
Washington State SHRM
Watkins Group
West Virginia SHRM State Council
Wisconsin Restaurant Association
Wisconsin SHRM State Council
Woodmanee & Co.
W.S. Badcock Corp.
Wyoming SHRM State Council
Zeller Insurance, LLC