



**Reforming the IRS Employer Reporting System
Tax Form 1095, Tax Letter 226-J**

Legislation: *Commonsense Reporting Act of 2019*

- *S. 2366 – Senators Mark Warner (D-VA) & Rob Portman (R-OH)*
- *H.R. 4070 – Representatives Mike Thompson (D-CA) & Adrian Smith (R-NE)*

Issue: Tax Code sections 6055 and 6056 created under the Affordable Care Act require employers, insurance carriers, and Exchanges to report numerous pieces of data annually to the Internal Revenue Service (IRS) and to individuals (1094/1095 forms). This data is used to verify compliance with the individual and employer mandates and administer advanced premium tax credits and cost sharing subsidies in the state and federally-facilitated insurance Exchanges.

- Section 6055 requires employers who offer self-funded plans and insurers administering fully-insured plans to file a return with the IRS and provide a statement to each individual who is covered by a plan that constitutes minimum essential coverage.
- Section 6056 requires applicable large employers subject to the ACA's employer mandate to file a return with the IRS and provide a statement to each full-time employee with information regarding the offer of employer-sponsored health care coverage.

The data is transmitted to the IRS and employers and insurers mail 1095 forms to individuals after a coverage year has ended (i.e., data for the prior calendar year is sent to the IRS and individuals between January and March of the next year). The current IRS system issues a Letter 226-J to inform an employer of a tax penalty if the data is not matched to an individual's tax return, regardless of the employer's offer of coverage to a full-time employee. An employer has only 30 days to appeal.

- Because this data is reported after a coverage year has ended, it is not used by state and federal Exchanges to make individual eligibility determinations for a tax credit and cost sharing subsidy during open enrollment season.
- Under the ACA, an individual is not eligible for a tax credit or subsidy in an Exchange if he or she is a full-time employee and has an offer of coverage from the employer that meets the employer mandate.
- If the IRS determines, during post-enrollment data reconciliation process, that an individual Exchange enrollee who is a full-time employee with an offer of employer coverage was ineligible for a tax credit or subsidy, the individual must pay back the full value of the Exchange coverage tax credit or subsidy to the IRS.
- Additionally, the current retrospective IRS system is issuing 226-J tax penalty letters to employers who complied with the law's employer mandate requirements, leaving the employer vulnerable to tax penalties or requiring additional administrative costs and compliance burdens to appeal the letters.

Solution: S. 2366/H.R. 4070 provides individual consumers with much-needed safety nets, employers with relief from the burdensome reporting requirements, and state and federal Exchanges with an additional tool to verify tax credit and subsidy eligibility.



Commonsense Reporting Act
S. 2366/H.R. 4070

Creates a voluntary prospective reporting system: Permits employers to voluntarily report upfront to the IRS general information about their health plan for the current plan year which will help increase the accuracy of eligibility determinations for Exchange tax credits; state and federally-facilitated Exchanges will access information securely through the Data Services Hub in determining individual eligibility for tax credits; the IRS will use the information to more accurately issue 226-J tax penalty letters.

Streamlines the reporting process: Eases reporting burdens for employers who use the voluntary prospective reporting system by requiring 6056 reporting statements only for those employees for whom the employer has received notification that the employee or their dependents purchased coverage through an Exchange rather than issuing reporting statements for the entire workforce.

Protects privacy: Provides clarification that the IRS can accept full names and dates of birth in lieu of dependents' and spouses' Social Security numbers and requires the Social Security Administration assist in the data-matching process.

Modernizes transmission of information to individuals: Allows for electronic transmission of employee and enrollee statements rather than requiring this information be provided only by paper statement sent through the mail, thus reducing administrative costs and compliance burdens.

Establishes oversight of reporting verification: Requires the Government Accountability Office (GAO) to study the functionality of the prospective reporting system, including the accuracy of information collected, the number of employers electing to report under such system, and any changes that have arisen.