

COMMONSENSE REPORTING ACT OF 2021

Reforming the Affordable Care Act's IRS Employer Reporting System

S. 3673: Senators Mark Warner (D-VA) & Rob Portman (R-OH)

H.R. 7774: Representatives Mike Thompson (D-CA) & Adrian Smith (R-NE)

ISSUE

- The employer reporting requirements under the Affordable Care Act (ACA) are needlessly burdensome and confusing for employers, consumers, Health Insurance Exchanges, and the IRS.
- The employer reporting system is the linchpin to the whole ACA Exchange coverage system, individual eligibility for tax credits, and the employer mandate. Accounting for employer-provided coverage is critical to any health insurance tax credit or other health insurance reform approach.
- The current system needlessly exposes employers to threats of tax penalties and additional accounting and legal costs¹.
- Because Marketplaces do not have employer data on a timely basis, consumers are often confused about their eligibility for premium tax credits, causing some individuals to be required to pay back tax credits they incorrectly received, sometimes years later.
- The current employer reporting system has an 82% error rate, reflecting the difficulties in reporting under the current system.²

BACKGROUND

The ACA requires employers, insurance carriers, and Exchanges to report numerous pieces of data annually to the IRS and to enrolled individuals under tax code Sections 6055 and 6056. This data is reported on a retrospective basis and is intended to be used to verify compliance with the employer mandate and to administer premium tax credits and cost sharing subsidies for healthcare coverage through the state and federal insurance Exchanges.

- An individual is only eligible for a premium tax credit if he or she meets income standards and does not have a valid offer of employer healthcare coverage that meets the law's employer mandate affordability rules.
- Under the law, if the IRS determines that an individual was ineligible for a tax credit after it was issued, the individual may be required to pay back the full value of the premium tax credit received.
- The IRS takes on average between 18- to 24-months after a calendar year coverage period has ended to cross reference data reported by Exchanges and an individual's tax return to determine if tax credit eligibility was correct.
- The IRS mails Letter 226-J tax penalty notice to the employer based on tax credits issued to individuals who work for them, seemingly without cross referencing the data reported by the employer, and the employer has only 30 days from the date of the IRS letter to appeal the penalty and prove they did not violate the employer mandate. The employer incurs high accounting and legal costs to fight the IRS.
- Acting IRS Commissioner Kautter testified to Congress that the IRS has overturned 82% of these Letter 226-J tax penalty notices on appeal.

¹ SHRM (the Society for Human Resource Management) research has shown that fulfilling current IRS reporting requirements comes at great time and expense to employers.

² [Joint Oversight Hearing Over the Internal Revenue Service. Serial No. 115-78.](#)

SOLUTION

The **Commonsense Reporting Act** enables employers to report employer-sponsored health plan information to the IRS prospectively, before annual fall open enrollment season in the state and federal Exchanges, instead of 14-months after that open enrollment period and an entire coverage year has ended.

The bill:

- Equips consumers and Exchanges with information to determine if an individual is eligible for a tax credit based on their employer's offer of coverage;
- Reduces the likelihood that an individual will have to pay back a premium tax credit incorrectly received;
- Protects employers from having to incur additional accounting and legal costs and business worries, on top of the requirement's compliance costs, to appeal an IRS Letter 226-J tax penalty notice;
- Utilizes the current IRS IT reporting system and Exchange Data Hub, thus does not require additional federal resources; and
- Provides employers with two compliance choices: prospectively report streamlined information authorized under the Commonsense Reporting Act OR continue to utilize the current end-of-calendar-year reporting process.

Commonsense Reporting Act

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

Protects consumer financial security and individual privacy: Provides Exchanges with a better verification tool and real-time employer plan information for tax credit determinations. This will help mitigate the threat of an individual having to pay the IRS back for a premium tax credit incorrectly received. 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 to assist in the data-matching process.

Protects employers and streamlines compliance burdens: Mitigates the threat to an employer of receiving a Letter 226-J tax penalty notice by enabling the employer to prospectively report information about an ACA-compliant health plan. Provides compliance relief by not requiring employers that choose to prospectively report to produce, print and mail Form 1095 for all employees. Enables electronic transmission of a Form 1095 when individually requested.

Provides additional tax compliance relief: Extends the Letter 266-J appeals time from the current 30 days to 90 days, better aligning with remote working and business operation needs during the pandemic. Establishes a tax penalty levy statute of limitations for the employer mandate to align with other Code levy and recordkeeping limitations.

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.