

COMMONSENSE REPORTING ACT OF 2021

Reforming the Affordable Care Act's IRS Employer Reporting System

H.R. 5318: Representatives Mike Thompson (D-CA) & Adrian Smith (R-NE)
Senators Mark Warner (D-VA) & Rob Portman (R-OH)

ISSUE

- The way in which the Internal Revenue Service (IRS) administers the employer reporting requirements under the Affordable Care Act (ACA) does not make sense for employers, consumers, Exchanges, and the IRS itself.
- The employer reporting system is the linchpin to the whole ACA Exchange coverage system, individual eligibility for tax credits, and the employer mandate.
- The system is not user friendly for consumers, and overly and needlessly subjects employers to threats of tax penalties and additional accounting and legal costs.
- The IRS has an 82% error rate in administering the current employer reporting system.

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 used to verify compliance with the employer and individual mandates and administer premium tax credits and cost sharing subsidies for health coverage through the state and federal insurance Exchanges.

- An individual is only eligible for an Exchange tax credit if he or she is not a full-time employee and meets income standards OR is a full-time employee, meets income standards and did not receive an offer of employer health coverage or the employer health coverage offered did not meet the law's employer mandate rules.
- Under the law, if the IRS determines that an individual was ineligible for a tax credit after it was issued by the Exchange, the individual must pay the full value of the health plan back to the IRS (i.e. \$5,000 for self-only coverage, \$20,000 for family coverage).
- Data is transmitted to the IRS and given to individual enrollees through Forms 1094 and 1095 between January and March for the preceding calendar year coverage period.
- 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 has been assuming that an employer is in violation of the employer mandate if an individual claiming to be a full-time employee of that employer receives an Exchange tax credit, regardless of the data that the employer reports to the IRS.
- The IRS will mail a Letter 226-J tax penalty notice to the employer based on the Exchange tax credit rolls, 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 start the process to prove they did not violate the employer mandate. The employer incurs 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 The appeal was done at a cost to the employer.

¹ [HHRG-115-GO27-Transcript-20180417.pdf](https://www.congress.gov/records/hrgs/HHRG-115-GO27-Transcript-20180417.pdf)



SOLUTION

The **Commonsense Reporting Act** provides individual consumers with a much-needed safety net, employers with relief from tax penalty threats and compliance burdens, and state and federal Exchanges with critical information to verify tax credit eligibility. The legislation enables employers to report employer-sponsored health plan information to the IRS immediately 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 the type of coverage the employer offers or if he or she should enroll in their employer's health plan;
- Protects individuals from having to pay the IRS back for the value of Exchange insurance;
- Protects employers from having to incur additional accounting and legal costs and business worries, on top of the compliance costs of the reporting requirements, to appeal an IRS Letter 226-J tax penalty notice;
- Utilizes the current IRS IT reporting system and Exchange Data Hub, 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 report under the current law end-of-calendar-year process with requirement to send a Form 1095 to all enrolled employees.

Commonsense Reporting Act

Creates a voluntary prospective reporting system: Permits employers to voluntarily report general information to the IRS about their ACA-compliant 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 the value of the Exchange plan. 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 enrolled employees. Enables electronic transmission of a Form 1095 when individually requested.

Provides additional tax compliance relief: Extends the Letter 226-J appeals time from the current 30 days to 90 days, better aligning with remote working and business operation needs during the pandemic and beyond. 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.