

117TH CONGRESS  
1ST SESSION

# H. R. 5318

To streamline the employer reporting process and strengthen the eligibility verification process for the premium assistance tax credit and cost-sharing subsidy.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2021

Mr. THOMPSON of California (for himself and Mr. SMITH of Nebraska) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) The Department of the Treasury and the  
2           Internal Revenue Service should work together with  
3           other relevant departments and agencies to identify  
4           and implement methods to minimize compliance bur-  
5           dens on businesses, insurance carriers, and individ-  
6           uals.

7           (2) Such collaboration should strike an appro-  
8           priate balance between sufficient reporting to en-  
9           force the law and protecting the privacy of individ-  
10          uals.

11 **SEC. 3. VOLUNTARY PROSPECTIVE REPORTING SYSTEM.**

12          (a) IN GENERAL.—Not later than 1 year after the  
13          date of the enactment of this Act, the Secretary of the  
14          Treasury, in consultation with the Secretary of Health and  
15          Human Services, the Secretary of Labor, and the Admin-  
16          istrator of the Small Business Administration, shall de-  
17          velop and implement guidance providing for a prospective  
18          reporting system meeting the requirements of subsection  
19          (b). Such system shall be available for use by employers  
20          on a voluntary basis beginning not later than January 1,  
21          2022.

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

24                 (1) voluntary reporting by each participating  
25                 employer that offers minimum essential coverage to

1 its full-time employees and their dependents under  
2 an eligible employer-sponsored plan, not later than  
3 45 days before the first day of the annual open en-  
4 rollment period under section 1311(c)(6)(B) of the  
5 Patient Protection and Affordable Care Act (42  
6 U.S.C. 18031(c)(6)(B)) for each calendar year, of—

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

10 (B) a certification of—

11 (i) whether coverage meeting the defi-  
12 nition of minimum essential coverage in  
13 section 5000A(f) of the Internal Revenue  
14 Code of 1986 is offered to the full-time  
15 employees (within the meaning of section  
16 4980H of such Code) of the employer;

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

19 (iii) whether such coverage is offered  
20 to dependents of employees;

21 (iv) whether such coverage is offered  
22 to spouses of employees;

23 (v) whether such coverage meets the  
24 minimum value requirement of section  
25 36B(c)(2)(C)(ii) of such Code;

1 (vi) whether such coverage satisfies  
2 the requirements to qualify for one of the  
3 affordability safe harbors promulgated by  
4 the Secretary of the Treasury for purposes  
5 of section 4980H of such Code; and

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

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

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

16 (E) a list of all employer identification  
17 numbers of the employer for entities that em-  
18 ploy employees within the employers control  
19 group under subsection (b), (c), (m), or (o) of  
20 section 414 of the Internal Revenue Code for  
21 1986;

22 (2) processes necessary to ensure that Ex-  
23 changes, the Federal Marketplace Data Services  
24 Hub, and the Internal Revenue Service can securely  
25 and confidentially access the information described

1 in paragraph (1) as necessary to carry out their re-  
2 spective missions, and to provide to the Secretary of  
3 Health and Human Services additional information  
4 relating to eligibility determinations for advance pay-  
5 ment of the premium tax credits under section 36B  
6 of such Code and the cost-sharing subsidies under  
7 section 1402 of the Patient Protection and Afford-  
8 able Care Act (42 U.S.C. 18071);

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

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

22 (c) EMPLOYER NOTIFICATION OF EMPLOYEE EN-  
23 ROLLMENT IN EXCHANGE PLANS.—Subparagraph (J) of  
24 section 1311(d)(4) of the Patient Protection and Afford-  
25 able Care Act (42 U.S.C. 18031(d)(4)(J)) is amended by

1 striking “to each employer” and all that follows through  
2 “(and the effective date of such cessation); and” and in-  
3 serting “to each employer—

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

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

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

19 “(f) EXEMPTION.—If, through the system created  
20 pursuant to section 3(a) of the Commonsense Reporting  
21 Act of 2021, an employer provides prospective reporting  
22 for any calendar year that meets the requirements of sec-  
23 tion 3(b)(1) of such Act, such employer shall be treated  
24 as satisfying the return requirements of subsections (a),  
25 (b), and (c) for such year.”.

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

7       (f) ACCESS TO THE NATIONAL DIRECTORY OF NEW  
8 HIRES.—Subsection (i)(3) of section 453 of the Social Se-  
9 curity Act (42 U.S.C. 653) is amended by adding at the  
10 end the following new sentence: “The Secretary of the  
11 Treasury and the Secretary of Health and Human Serv-  
12 ices shall have access to the information in the National  
13 Directory of New Hires for purposes of administering sec-  
14 tion 36B and 4980H of the Internal Revenue Code of  
15 1986 and section 1402 of the Patient Protection and Af-  
16 fordable Care Act (42 U.S.C. 18071). Subsection (k)(3)  
17 shall not apply to information received for purposes of the  
18 administration of such sections 36B and 4980H of such  
19 Code and section 1402 of such Act.”.

20       (g) IMPROVING EMPLOYEE ACCESS TO ACCURATE  
21 EINS.—Not later than 1 year after the date of the enact-  
22 ment of this Act, the Secretary of the Treasury shall de-  
23 velop and implement guidance for allowing any employee  
24 of an employer to receive, on request, the employer’s em-  
25 ployer identification number for purposes of section 6056

1 of the Internal Revenue Code of 1986. Employers shall  
2 provide the employer's employer identification number for  
3 purposes of section 6056 of the Internal Revenue Code  
4 of 1986 on employee pay statements.

5 (h) FUNDING FOR VOLUNTARY PROSPECTIVE RE-  
6 PORTING SYSTEM.—There is authorized to be appro-  
7 priated to the Secretary of the Treasury, the Secretary  
8 of Health and Human Services, the Secretary of Labor,  
9 and the Administrator of the Small Business Administra-  
10 tion such sums as are necessary to carry out this section.

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

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

15 “For purposes of subparagraph (B)(i), in the case of  
16 an individual other than the primary insured, if the health  
17 insurance issuer or the employer is unable to collect or  
18 maintain information on the TINs of such individuals  
19 (other than for purposes of this section), the Secretary  
20 may allow the individual's full name and date of birth to  
21 be substituted for the name and TIN. In the event the  
22 Secretary allows the use of the individual's full name and  
23 date of birth in lieu of the TIN, the Social Security Ad-  
24 ministration shall assist the Internal Revenue Service in  
25 providing data matches to determine the TIN associated



1 with the name and date of birth provided by the Internal  
2 Revenue Service with respect to such individual.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to returns the due date for which  
5 is after the date that is 60 days after the date of the enact-  
6 ment of this Act.

7 **SEC. 5. ELECTRONIC STATEMENTS.**

8 (a) IN GENERAL.—Subsection (c) of section 6056 of  
9 the Internal Revenue Code of 1986 is amended by adding  
10 at the end the following new paragraph:

11 “(3) ELECTRONIC DELIVERY.—An individual  
12 shall be deemed to have consented to receive the  
13 statement under this subsection in electronic form if  
14 such individual has affirmatively consented at any  
15 prior time, to the person who is the employer of the  
16 individual during the calendar year to which the  
17 statement relates, to receive such statement in elec-  
18 tronic form. The preceding sentence shall not apply  
19 if the individual revokes consent in writing with re-  
20 spect to the statement under this subsection.”.

21 (b) STATEMENTS RELATING TO HEALTH INSURANCE  
22 COVERAGE.—Subsection (c) of section 6055 of the Inter-  
23 nal Revenue Code of 1986 is amended by adding at the  
24 end the following new paragraph:

1           “(3) ELECTRONIC DELIVERY.—An individual  
2       shall be deemed to have consented to receive the  
3       statement under this subsection in electronic form if  
4       such individual has affirmatively consented at any  
5       prior time, to the person required to make such  
6       statement (such as the provider of the individual’s  
7       health coverage), to receive in electronic form any  
8       private health information (such as electronic health  
9       records), unless the individual revokes such consent  
10      in writing.”.

11       (c) EFFECTIVE DATE.—The amendments made by  
12      this section shall apply to statements the due date for  
13      which is after December 31, 2021.

14      **SEC. 6. TIME FOR APPEAL.**

15       (a) IN GENERAL.—Section 4980H(d) of the Internal  
16      Revenue Code of 1986 is amended by adding at the end  
17      the following new paragraph:

18           “(4) TIME FOR APPEAL.—The Secretary shall  
19       allow an applicable large employer 90 days from the  
20       date on which notice and demand is issued under  
21       paragraph (1) to such applicable large employer to  
22       appeal the assessment of any assessable payment  
23       provided by this section.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to assessments in taxable years be-  
3 ginning after the date of the enactment of this Act.

4 **SEC. 7. STATUTE OF LIMITATIONS ON PENALTY ASSESS-**  
5 **MENT.**

6 (a) IN GENERAL.—Section 4980H(d) of the Internal  
7 Revenue Code of 1986, as amended by section 6, is  
8 amended by adding at the end the following new para-  
9 graph:

10 “(5) STATUTE OF LIMITATIONS ON PENALTY  
11 ASSESSMENT.—With respect to an assessment of an  
12 assessable payment under paragraph (1), the statu-  
13 tory period for such assessment shall expire at the  
14 end of the 3-year period beginning on the date on  
15 which such assessable payment should have been  
16 made, as determined by the Secretary.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to assessments in taxable years be-  
19 ginning after the date of the enactment of this Act.

20 **SEC. 8. 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, 2020—

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, 2022, and ending on December 31, 2022, 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, 2023, 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. 9. 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 2021” 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.

○