114TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
114–655

STUDENT WORKER EXEMPTION ACT OF 2016

JULY 5, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 210]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 210) to amend the Internal Revenue Code of 1986 to exempt student workers for purposes of determining a higher education institution's employer health care shared responsibility, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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59–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Student Worker Exemption Act of 2016".

SEC. 2. STUDENT WORKERS EXEMPTED FROM DETERMINATION OF HIGHER EDUCATION INSTITUTION'S EMPLOYER HEALTH CARE SHARED RESPONSIBILITY.

(a) IN GENERAL.—Subsection (c) of section 4980H of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) EXCEPTION FOR STUDENT WORKERS.—

"(A) IN GENERAL.—Services rendered as a student worker to an eligible educational institution (as defined in section 25A(f)(2)) shall not be taken into account under this section as service provided by an employee.

"(B) STUDENT WORKER.—For purposes of this paragraph, the term 'student worker' means, with respect to any eligible educational institution (as so defined), any individual who—

"(i) is employed by such institution, and

"(ii) is a student enrolled at the institution and is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after December 31, 2015.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 210, as reported from the Committee on Ways and Means, exempts the hours worked by qualified student workers from counting towards the thresholds for the Employer Mandate under the Affordable Care Act (ACA) for an institution of higher education.

B. BACKGROUND AND NEED FOR LEGISLATION

The ACA mandates employers that employ more than 50 full-time equivalent workers (FTEs) to offer health care coverage to their workers or pay one of two penalties beginning in 2014. Full-time workers for the purposes of this employer mandate are defined as those who work at least 30 hours per week.

Guidance provided by the Treasury Department omitted service performed by students under Federal or State-sponsored work-study programs from counting in determining whether they are full-time employees for purposes of the mandate. However, this guidance did not extend to those students otherwise employed by the school.

The ACA's employer mandate was twice delayed by the Administration, revealing the complexities surrounding its implementation. Moreover, in times of record student debt, obstacles to providing school-based jobs for students should be removed. Student employment is an important way in which educational expenses can be paid off. The employer mandate places a budgetary constraint on colleges and universities that could discourage them from hiring student workers on a full-time basis. This bill will incentivize schools to provide more work opportunities for students who are trying to pay their educational expenses.

C. LEGISLATIVE HISTORY

BACKGROUND

H.R. 210 was introduced on January 8, 2015, and was referred to the Committee on Ways and Means.

COMMITTEE ACTION

The Committee on Ways and Means marked up H.R. 210, the "Student Worker Exemption Act of 2016," on June 15, 2016, and ordered the bill, as amended, favorably reported (with a quorum being present).

COMMITTEE HEARINGS

The policy issue surrounding employer mandates and their impact on access to health care have been discussed at three Ways and Means hearings during the 114th Congress:

- Subcommittee on Health Hearing on The Individual and Employer Mandates in the President's Healthcare Law (April 14, 2015);
- Full Committee Hearing on the Tax Treatment of Health Care (April 14, 2016); and
- Subcommittee on Health Member Day Hearing on Tax-Related Proposals to Improve Health Care (May 17, 2016).

II. EXPLANATION OF THE BILL

A. STUDENT WORKERS EXEMPTED FROM DETERMINATION OF HIGHER EDUCATION INSTITUTION'S EMPLOYER HEALTH CARE SHARED RESPONSIBILITY (SEC. 2 OF THE BILL AND SEC. 4980H OF THE CODE)

PRESENT LAW

Employer shared responsibility for health coverage

In general

Under the Patient Protection and Affordable Care Act ("PPACA"),[1] as amended by the Health Care and Education Reconciliation Act of 2010[2] (referred to collectively as the "Affordable Care Act" or "ACA"), an applicable large employer may be subject to a tax, called an "assessable payment," for a month if one or more of its full-time employees is certified to the employer as receiving for the month a premium assistance credit for health insurance purchased on an American Health Benefit Exchange or reduced cost-sharing for the employee's share of expenses covered by such health insurance.[3] As discussed below, whether an applicable large employer owes an assessable payment and the amount of any assessable payment depend on whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a group health plan sponsored

[1] Pub. L. No. 111–148.
[2] Pub. L. No. 111–152.
[3] Sec. 4980H. This is sometimes referred to as the employer shared responsibility requirement or employer mandate. An applicable large employer is also subject to annual reporting requirements under section 6056. Premium assistance credits for health insurance purchased on an American Health Benefit Exchange are provided under section 36B. Reduced cost-sharing for an individual's share of expenses covered by such health insurance is provided under section 1402 of PPACA.

by the employer and, if it does, whether the coverage offered is affordable and provides minimum value.[4]

Definitions of full-time employee and applicable large employer

For purposes of applying these rules, full-time employee means, with respect to any month, an employee who is employed on average at least 30 hours of service per week. Hours of service are to be determined under regulations, rules, and guidance prescribed by the Secretary of the Treasury ("Secretary"), in consultation with the Secretary of Labor, including rules for employees who are not compensated on an hourly basis.

Applicable large employer generally means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.[5] Solely for purposes of determining whether an employer is an applicable large employer (that is, whether the employer has at least 50 full-time employees), besides the number of full-time employees, the employer must include the number of its full-time equivalent employees for a month, determined by dividing the aggregate number of hours of service for that month (up to a maximum of 120 for any employee) of employees who are not full-time employees for the month by 120. In addition, in determining whether an employer is an applicable large employer, members of the same controlled group, group under common control, and affiliated service group are treated as a single employer.[6]

Assessable payments

If an applicable large employer does not offer its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is so certified to the employer, the employer may be subject to an assessable payment of $2,160 (for 2016)[7] (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees in excess of 30, regardless of the number of full-time employees so certified. For example, in 2016, Employer A fails to offer minimum essential coverage and has 100 full-time employees, 10 of whom receive premium assistance credits for the entire year.

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[4] Under the ACA, these rules are effective for months beginning after December 31, 2013. However, in Notice 2013–45, 2013–31 I.R.B. 116, Part III, Q&A–2, the Internal Revenue Service ("IRS") announced that no assessable payments will be assessed for 2014. In addition, in 2014, the IRS announced that no assessable payments for 2015 will apply to applicable large employers that have fewer than 100 full-time employees and full-time equivalent employees and meet certain other requirements. Section XV.D.6 of the preamble to the final regulations, T.D. 9655, 79 Fed. Reg. 8544, 8574–8575, February 12, 2014.

[5] Additional rules apply, for example, in the case of an employer that was not in existence for the entire preceding calendar year.

[6] The rules for determining controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) apply for this purpose. If the group is an applicable large employer under this test, each member of the group is an applicable large employer and subject to the employer shared responsibility requirement even if the member by itself would not be an applicable large employer. In addition, in determining assessable payments (as discussed herein), only one 30-employee reduction in full-time employees applies to the group and is allocated among the members ratably based on the number of full-time employees employed by each member.

[7] For calendar years after 2014, the dollar amounts (which were initially $2,000 and $3,000) are increased by the percentage (if any) by which the average per capita premium for health insurance coverage in the United States for the preceding calendar year (as estimated by the Secretary of HHS no later than October 1 of the preceding calendar year) exceeds the average per capita premium for 2013 (as determined by the Secretary of HHS), rounded down to the next lowest multiple of $10.

The employer's assessable payment is $2,160 for each employee over the 30-employee threshold, for a total of $151,200 ($2,160 multiplied by 70, that is, 100 minus 30).

Generally an employee who is offered minimum essential coverage under an employer-sponsored plan is not eligible for a premium assistance credit or reduced cost-sharing unless the coverage is unaffordable or fails to provide minimum value.[8] However, if an employer offers its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is certified as receiving a premium assistance credit or reduced cost-sharing (because the coverage is unaffordable or fails to provide minimum value), the employer may be subject to an assessable payment of $3,240 (for 2016) (divided by 12 and applied on a monthly basis) multiplied by the number of such full-time employees. However, the assessable payment in this case is capped at the amount that would apply if the employer failed to offer its full-time employees and their dependents minimum essential coverage. For example, in 2016, Employer B offers minimum essential coverage and has 100 full-time employees, 20 of whom receive premium assistance credits for the entire year. The employer's assessable payment before consideration of the cap is $3,240 for each full-time employee receiving a credit, for a total of $64,800. The cap on the assessable payment is the amount that would have applied if the employer failed to offer coverage, or $151,200 ($2,160 multiplied by 70, that is, 100 minus 30). In this example, the cap therefore does not affect the amount of the assessable payment, which remains at $64,800.

REASONS FOR CHANGE

The Committee believes that requiring eligible educational institutions to take student workers into account for purposes of the employer shared responsibility requirement discourages these educational institutions from offering work opportunities to their full-time students.

EXPLANATION OF PROVISION

Under the provision, for purposes of the employer shared responsibility requirement, services rendered as a student worker to an eligible educational institution[9] are not taken into account as services provided by an employee. For purposes of the provision, the term "student worker" means, with respect to any eligible educational institution, any individual who both (1) is employed by such institution, and (2) is a student enrolled at the institution and is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular academic program.

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[8] Under section 36B(c)(2)(C), coverage under an employer-sponsored plan is unaffordable if the employee's share of the premium for self-only coverage exceeds (for 2016) 9.66 percent of household income, and the coverage fails to provide minimum value if the plan's share of total allowed cost of provided benefits is less than 60 percent of such costs. Treas. Reg. sec. 1.36B–2(c)(3)(vi) provides guidance on the determination of whether coverage provides minimum value.

[9] Eligible educational institution is defined in section 25A(f)(2).

EFFECTIVE DATE

The provision applies to months beginning after December 31, 2015.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 210, the "Student Worker Exemption Act of 2016," on June 15, 2016.

MOTION TO REPORT THE BILL

The bill, H.R. 210, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 210, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2017–2026:

Fiscal years, in millions of dollars—											
2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–21	2017–26
[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	[2]	−1	−3

Note: Details do not add to totals due to rounding.
[1] It is estimated that this provision would have a negligible effect on insurance coverage.
[2] Loss of less than $500,000.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that there are no new or increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 30, 2016.

Hon. Kevin Brady,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 210, the Student Worker Exemption Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Huether.

Sincerely,

Keith Hall.

Enclosure.

H.R. 210—Student Worker Exemption Act of 2016

H.R. 210 would amend the Internal Revenue Code to modify the requirement under current law that some large employers who do not offer health insurance coverage that meets certain standards must pay a penalty if they have any full-time employees who receive a subsidy through a health insurance marketplace. Specifically, H.R. 210 would exclude work done by full-time students employed by eligible educational institutions from those requirements.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 210 would reduce revenues by about $3 million over the 2016–2026 period. JCT estimates that the bill would have no effect on revenues in 2016 and would reduce revenues by less than $500,000 each year thereafter through 2026. JCT also estimates that the bill would have a negligible effect on health insurance coverage.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting revenues or direct spending. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO and JCT estimate that enacting the bill would not increase on-budget deficits or net direct spending by more than $5 billion in any of the four 10-year periods beginning in 2027.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Peter Huether. The estimate was approved by Mark Booth, Unit Chief, Revenue Estimating.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 210, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON JUNE 15, 2016

	By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Effects	0	0	0	0	0	0	0	0	0	0	0	1	3

Source: Staff of the Joint Committee on Taxation.
Note: Components do not sum to total because of rounding.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 210 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 ("IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity

analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. Text of Existing Law Amended or Repealed by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

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SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.

(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—If—

(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(b) LARGE EMPLOYERS OFFERING COVERAGE WITH EMPLOYEES WHO QUALIFY FOR PREMIUM TAX CREDITS OR COST-SHARING REDUCTIONS.—

(1) IN GENERAL.—If—

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of $3,000.

(2) OVERALL LIMITATION.—The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed

the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE PAYMENT AMOUNT.—The term "applicable payment amount" means, with respect to any month, 1/12 of $2,000.

(2) APPLICABLE LARGE EMPLOYER.—

(A) IN GENERAL.—The term "applicable large employer" means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

(B) EXEMPTION FOR CERTAIN EMPLOYERS.—

(i) IN GENERAL.—An employer shall not be considered to employ more than 50 full-time employees if—

(I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

(ii) DEFINITION OF SEASONAL WORKERS.—The term "seasonal worker" means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) RULES FOR DETERMINING EMPLOYER SIZE.—For purposes of this paragraph—

(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) APPLICATION OF EMPLOYER SIZE TO ASSESSABLE PENALTIES.—

(i) IN GENERAL.—The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

(ii) AGGREGATION.—In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(F) EXEMPTION FOR HEALTH COVERAGE UNDER TRICARE OR THE VETERANS ADMINISTRATION.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under—

(i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or

(ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

(3) APPLICABLE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION.—The term "applicable premium tax credit and cost-sharing reduction" means—

(A) any premium tax credit allowed under section 36B,

(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

(C) any advance payment of such credit or reduction under section 1412 of such Act.

(4) FULL-TIME EMPLOYEE.—

(A) IN GENERAL.—The term "full-time employee" means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) ROUNDING.—If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

(6) OTHER DEFINITIONS.—Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

(7) TAX NONDEDUCTIBLE.—For denial of deduction for the tax imposed by this section, see section 275(a)(6).

(d) ADMINISTRATION AND PROCEDURE.—

(1) IN GENERAL.—Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) TIME FOR PAYMENT.—The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

(3) COORDINATION WITH CREDITS, ETC.—The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

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B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

* * * * * * *

SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.

(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—If—

(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(b) LARGE EMPLOYERS OFFERING COVERAGE WITH EMPLOYEES WHO QUALIFY FOR PREMIUM TAX CREDITS OR COST-SHARING REDUCTIONS.—

(1) IN GENERAL.—If—

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of $3,000.

(2) OVERALL LIMITATION.—The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE PAYMENT AMOUNT.—The term "applicable payment amount" means, with respect to any month, 1/12 of $2,000.

(2) APPLICABLE LARGE EMPLOYER.—

(A) IN GENERAL.—The term "applicable large employer" means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

(B) EXEMPTION FOR CERTAIN EMPLOYERS.—

(i) IN GENERAL.—An employer shall not be considered to employ more than 50 full-time employees if—

(I) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

(ii) DEFINITION OF SEASONAL WORKERS.—The term "seasonal worker" means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) RULES FOR DETERMINING EMPLOYER SIZE.—For purposes of this paragraph—

(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) APPLICATION OF EMPLOYER SIZE TO ASSESSABLE PENALTIES.—

(i) IN GENERAL.—The number of individuals employed by an applicable large employer as full-time employees during any month shall be reduced by 30 solely for purposes of calculating—

(I) the assessable payment under subsection (a), or

(II) the overall limitation under subsection (b)(2).

(ii) AGGREGATION.—In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduc-

tion under subclause (I) or (II) shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(F) EXEMPTION FOR HEALTH COVERAGE UNDER TRICARE OR THE VETERANS ADMINISTRATION.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under—

(i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or

(ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

(3) APPLICABLE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION.—The term "applicable premium tax credit and cost-sharing reduction" means—

(A) any premium tax credit allowed under section 36B,

(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and

(C) any advance payment of such credit or reduction under section 1412 of such Act.

(4) FULL-TIME EMPLOYEE.—

(A) IN GENERAL.—The term "full-time employee" means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) EXCEPTION FOR STUDENT WORKERS.—

(A) IN GENERAL.—Services rendered as a student worker to an eligible educational institution (as defined in section 25A(f)(2)) shall not be taken into account under this section as service provided by an employee.

(B) STUDENT WORKER.—For purposes of this paragraph, the term "student worker" means, with respect to any eligible educational institution (as so defined), any individual who—

(i) is employed by such institution, and

(ii) is a student enrolled at the institution and is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program.

[(5)] *(6)* INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

(i) such dollar amount, and

(ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) ROUNDING.—If the amount of any increase under subparagraph (A) is not a multiple of $10, such increase shall be rounded to the next lowest multiple of $10.

[(6)] *(7)* OTHER DEFINITIONS.—Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

[(7)] *(8)* TAX NONDEDUCTIBLE.—For denial of deduction for the tax imposed by this section, see section 275(a)(6).

(d) ADMINISTRATION AND PROCEDURE.—

(1) IN GENERAL.—Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) TIME FOR PAYMENT.—The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

(3) COORDINATION WITH CREDITS, ETC.—The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

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