

**DESCRIPTION OF H.R. 3801,
THE “EMPLOYER REPORTING IMPROVEMENT ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
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Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3801, the “Employer Reporting Improvement Act.” This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3801, the “Employer Reporting Improvement Act”* (JCX-15-23), June 5, 2023. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. TIN Reporting Flexibility

Present Law

Under the Patient Protection and Affordable Care Act (“PPACA”),² persons (including health insurance issuers and employers that self-insure) that provide minimum essential coverage³ to any individual during a calendar year (“reporting entities”) must report certain health insurance coverage information to both the covered individual and to the Internal Revenue Service (“IRS”).⁴

The information required to be reported includes: (1) the name, address, and taxpayer identification number (“TIN”) of the primary insured, and the name and TIN of each other individual obtaining coverage under the policy; (2) the dates during which the individual was covered under the policy during the calendar year; (3) whether the coverage is a qualified health plan offered through an Exchange;⁵ (4) the amount of any premium tax credit or cost-sharing reduction received by the individual with respect to such coverage; and (5) such other information as the Secretary may require.

If health insurance coverage is provided through an employer-provided group health plan, the reporting entity is also required to report the name, address and employer identification number of the employer, the portion of the premium, if any, required to be paid by the employer, and any other information the Secretary may require to administer the tax credit for eligible small employers.⁶

The reporting entity is required to report the above information, along with the name, address and contact information of the reporting insurer, to the IRS on or before February 28 (March 31 if filing electronically) of the year following the calendar year to which the information relates.⁷ The reporting entity is required to report the above information, along with the name, address and contact information of the reporting entity, to the covered individual on or before January 31 of the year following the calendar year for which the information is required to be reported to the IRS.⁸

² Pub. L. No. 111-148, March 23, 2010, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, March 30, 2010.

³ As defined in section 5000A.

⁴ Sec. 6055.

⁵ An Exchange established under section 1311 of the PPACA.

⁶ Under section 45R.

⁷ Treas. Reg. sec. 1.6055-1(f)(1).

⁸ Treas. Reg. sec. 1.6055-1(g)(4)(i).

A reporting entity that fails to comply with these reporting requirements is subject to the penalties for failure to file an information return and failure to furnish payee statements, respectively.⁹

Under Treasury regulations,¹⁰ the IRS permits reporting entities to submit names and birthdates (instead of TINs) for both the primary insured and each other individual insured under the same policy if the reporting entity is unable to collect such individuals' TINs through "reasonable efforts."¹¹ Reasonable efforts generally include three solicitations (one initial and two annual solicitations during the two years following enrollment) to collect the individual's TIN.¹²

Description of Proposal

Under the proposal, the Secretary may allow for any covered individual's full name and date of birth to be substituted for the individual's name and TIN if the reporting entity is unable to collect information on the TIN of such individual.

Effective Date

The proposal is effective for returns for which the due date is after December 31, 2024.

⁹ Sec. 6724(d)(1)(B)(xxiv), (d)(2)(GG); Treas. Reg. sec. 1.6055-1(h).

¹⁰ Treas. Reg. sec. 1.6055-1(e)(ii), (iii).

¹¹ See T.D. 9660, 79 Fed. Reg. 13220, March 10, 2014.

¹² *Ibid.*

B. Electronic Statements

Present Law

For a description of the reporting requirements generally applicable to persons that provide minimum essential coverage, see part A of this document.

Employer shared responsibility for health coverage

In general

An applicable large employer may be subject to a tax, referred to as the employer-shared responsibility payment (“ESRP”) for a month if one or more of its full-time employees is certified to the employer as receiving for the month a premium tax credit (“PTC”) for health insurance purchased on an Exchange or reduced cost-sharing for the employee’s share of expenses covered by such health insurance.¹³ Whether an applicable large employer owes an ESRP and the amount of any penalty 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 by the employer and, if the employer offers such a group health plan, whether the coverage offered is affordable and provides minimum value.

Definition of applicable large employer

“Applicable large employer” generally means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year.¹⁴ 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.¹⁵

Employer shared responsibility 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 certified as benefiting from PTCs or reduced cost-sharing, the employer

¹³ Sec. 4980H. PTCs for health insurance purchased on an 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.

¹⁴ Sec. 4980H(c)(2). Additional rules apply, for example, in the case of an employer that was not in existence for the entire preceding calendar year. *Ibid.*

¹⁵ The rules for determining controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) apply.

may be subject to an ESRP of \$2,880 (for 2023)¹⁶ (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees minus 30, regardless of the number of full-time employees so certified.

Generally, an employee who is offered minimum essential coverage under an employer-sponsored plan is not eligible for a PTC or reduced cost-sharing unless the coverage is unaffordable or fails to provide minimum value.¹⁷ However, if an employer offers its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan but at least one full-time employee is certified as being allowed PTC or reduced cost-sharing (because the coverage is unaffordable or fails to provide minimum value), the employer may be subject to an ESRP of \$4,320 (for 2023) (divided by 12 and applied on a monthly basis) multiplied by the number of such full-time employees. The ESRP 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.¹⁸

Employer reporting of offers of health insurance coverage

Each applicable large employer subject to the ESRP must report certain health insurance coverage information to both its full-time employees and to the IRS.¹⁹

The information required to be reported includes: (1) the name, address and employer identification number of the employer; (2) a certification as to whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan; (3) the number of full-time employees of the employer for each month during the calendar year; (4) the name, address and TIN of each full-time employee employed by the employer during the calendar year and the number of months, if any, during which the employee (and any dependents) was covered under a plan sponsored by the employer during the calendar year; and (5) such other information as the Secretary may require.

Applicable large employers that offer employees and dependents the opportunity to enroll in minimum essential coverage also must report: (1) the length of any waiting period with respect to such coverage; (2) the months during the calendar year during which the coverage was available; (3) the monthly premium for the lowest cost option in each of the enrollment

¹⁶ Sec. 4980H(a), (c). Pursuant to Notice 2015-87, the IRS publishes annual updates to these values at <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>.

¹⁷ 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 9.12 percent (for 2023) of household income (this percentage is updated as needed to reflect cost-of-living changes, see Rev. Proc. 2022-34, 2022-33 I.R.B. 143), 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.

¹⁸ Sec. 4980H(b).

¹⁹ Sec. 6056.

categories under the plan; and (4) the employer's share of the total allowed costs of benefits under the plan.

The employer is required to file the return and transmittal to the IRS on or before February 28 (March 31 if filing electronically) of the year succeeding the calendar year to which it relates.²⁰ The employer is required to report to each full-time employee the above information required to be reported with respect to that employee, along with the name, address and contact information of the reporting employer, on or before January 31 of the year following the calendar year for which the information is required to be reported to the IRS.²¹ An employer that fails to comply with these reporting requirements is subject to the penalties for failure to file an information return and failure to furnish payee statements, respectively.²²

Electronic furnishing of statements

Provided certain conditions are met, the IRS allows both applicable large employers fulfilling reporting requirements related to offers of health insurance coverage and reporting entities fulfilling reporting requirements related to minimum essential coverage to furnish the required statements to covered individuals electronically.²³ Covered individuals must consent to receiving electronic statements and must be permitted to withdraw consent.²⁴

Description of Proposal

Under the proposal, applicable large employers²⁵ and reporting entities²⁶ are permitted to furnish statements to a covered individual electronically if the individual has previously consented at any prior time, to the employer of the individual during the relevant calendar year or relevant reporting entity, to receive such statement in electronic form, so long as the individual has not revoked consent in writing. The proposal thus generally codifies the existing regulations permitting electronic reporting under sections 6055 and 6056.

²⁰ Treas. Reg. sec. 301.6056-1(e).

²¹ Employers have an automatic extension of 30 days after January 31 to furnish this information to covered individuals. Treas. Reg. sec. 301.6056-1(g)(1).

²² Sec. 6724(d)(1)(B)(xxv), (d)(2)(HH); Treas. Reg. sec. 301.6056-1(i).

²³ Treas. Regs. secs. 1.6055-2; 301.6056-2. The applicable conditions generally relate to consents and withdrawals, notice requirements, and access periods.

²⁴ *Ibid.*

²⁵ With regard to section 6056.

²⁶ With regard to section 6055.

Effective Date

The proposal is effective for statements for which the due date is after December 31, 2024.

C. Time for Response

Present Law

For a description of the employer-shared responsibility payment (“ESRP”), see part B of this document.

Generally, when the IRS has made an initial finding that an applicable large employer may be liable for an assessment of the ESRP, the IRS sends the employer a letter (currently, Letter 226-J), which typically provides that the employer has 30 days to respond regarding the proposed assessment.

Description of Proposal

Under the proposal, the Secretary is required to allow applicable large employers at least 90 days from date of the first letter which informs the employer of a proposed assessment of the ESRP (currently, Letter 226-J) to respond to the proposed assessment before taking any further action with respect to such proposed assessment.

Effective Date

The proposal is effective for assessments proposed in taxable years beginning after the date of the enactment.

D. Statute of Limitations on Penalty Assessment

Present Law

For a description of the employer-shared responsibility payment (“ESRP”), see part B of this document.

Generally, the IRS may assess a tax or additional amount with respect to a tax within three years of the filing of a tax return.²⁷ Numerous exceptions to this limitations period are provided, including expanded periods based on substantial omissions or failure to file a required tax return. In 2019, the IRS Office of Chief Counsel opined in advice to a field office that there is no statute of limitations regarding whether an applicable larger employer may be liable for the ESRP payment because there is no tax return filed to report an employer’s liability for the ESRP.²⁸

Description of Proposal

Under the proposal, a special six-year limitations period is added to replace the general three-year limitations period under section 6501 for assessments of the ESRP under section 4980H. The statute of limitations begins on the due date of the applicable large employer’s return under section 6056 (relating to the requirement that applicable large employers subject to the ESRP report certain information related to offers of health insurance coverage), or the date the return is filed, if later.

Effective Date

The proposal is effective with respect to returns which are due after December 31, 2024.

²⁷ Sec. 6501.

²⁸ Office of the Chief Counsel Memorandum, Statute of Limitations for IRC § 4980H, 20200801F, December 26, 2019, available at <https://www.irs.gov/pub/irs-lafa/20200801f.pdf>.

E. Estimated Revenue Effects of the Proposal

The estimated effect of the proposal on Federal fiscal year budget receipts is a loss of less than \$500,000 for the period 2023-2033. The estimate is provided by the Joint Committee on Taxation staff in collaboration with the Congressional Budget Office.