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TO: CIAB

FROM: Scott Sinder
Kate Jensen
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RE: Commonsense Reporting Act of 2017

On October 3, 2017, Senators Rob Portman (R-OH) and Mark Warner (D-VA) introduced the Commonsense Reporting Act of 2017 ([S. 1908](#)).¹ The bill aims to streamline employer reporting requirements under the Affordable Care Act (ACA). Below, we have provided an overview of the legislation and a brief comparison of this proposal to prior employer reporting bills.

Overview of S. 1908

The bill contains the following central provisions:

- Establishes a voluntary prospective reporting system, which would be developed and implemented by the Secretary of the Treasury in coordination with others. Under the bill, the system must:
 - Permit employers to voluntarily report general information (i.e., name, employer identification number, certifications concerning the coverage offered, availability of coverage, and information about waiting periods) to the IRS no later than 45 days before the first day of open enrollment;

¹ Representatives Diane Black (R-TN) and Mike Thompson (D-CA) introduced a companion bill in the House (H.R. 3919), though no text is currently available. We will monitor and report on the status and content of the bill upon its publication.

- Include processes necessary to ensure that the Exchanges, the Federal Marketplace Data Services Hub, and the Internal Revenue Service can securely and confidentially access the information necessary to carry out their respective missions (and provide the Secretary of Health and Human Services (HHS) any additional information needed for eligibility determinations for advance payment of premium tax credits and cost-sharing subsidies);
 - Contain processes to allow Exchanges to follow up with employers to obtain additional information concerning an employee’s eligibility; and
 - Allow employers to provide updates to the Federal Marketplace Data Services Hub regarding cancellation of coverage or significant changes in coverage.
- Exempts employers who use the voluntary prospective reporting system from Section 6056(a)-(b) return requirements (employers certify to the IRS whether they offered health coverage and information about such coverage on Form 1094-C), and requires Section 6056(c) reporting statements (employers furnish statements to full-time employees on Form 1095-C) only for those employees for whom the employer has received notification that the employee purchased coverage through an Exchange.
 - Clarifies that the IRS can accept full names and dates of birth in lieu of dependents’ and spouses’ tax identification numbers.
 - Permits electronic transmission of Section 6055 and 6056 reporting statements if the employee or enrollee has affirmatively consented, at any prior time, to receive the statement or “any private health information” in an electronic form.
 - Requires the Comptroller General to conduct a study evaluating the functionality of the voluntary prospective reporting system.

Comparison to Prior ACA Employer Reporting Legislation

Overall, the bill text is nearly identical to an earlier version introduced by Senators Portman and Warner during the 114th Congress, with small technical adjustments. The language more noticeably varies, however, from the Commonsense Reporting and Verification Act of 2015 introduced by Representatives Black and Thompson. Specifically, the Black-Thompson bill did not include several smaller provisions that are included in the current Senate bill, such as:

- Requiring Exchanges to, at a minimum, provide certain information to each employer (i.e., the name of each employee who enrolls in a qualified health plan, or the name of each employee who ceases coverage under a qualified health plan);
- Granting the Secretary of Treasury and the Secretary of HHS access to the information in the National Directory of New Hires to administer certain provisions of the ACA; and
- Expressing the sense of the Congress that adequate funds should be appropriated to maintain the voluntary prospective reporting system.

Additionally, the Black-Thompson bill from last Congress contained two additional sections that are not included in the current bill. The first required the Comptroller General to conduct a study

on the first three years of employer reporting after enactment of the legislation; the second concerned the eligibility verification process for subsidies under the ACA.

Finally, an earlier iteration of the bill introduced solely by Senator Warner during the 113th Congress was focused primarily on the protection of employee and enrollee privacy, and notably did not include the establishment of the voluntary prospective reporting system.