AMENDMENT NO.______ Calendar No._____

Purpose: To provide employers the option to provide free choice vouchers to employees to pay for coverage purchased through an exchange.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

H.R. 3590

AMENDMENT NO. 3117

To amend the statute

By Wyden

To: Amdt. No. 2786

Refer

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. Wyden (for himself and Ms. Collins) to the amendment (No. 2786) proposed by Mr. Reid

Viz:

1 On page 164, between lines 2 and 3, insert the following:

2 SEC. 13. OPTIONAL FREE CHOICE VOUCHERS.

3 (a) In General.—Any employer may provide a free choice voucher to any employee of such employer, but only if such employer offers free choice vouchers to—
(1) in the case of an offering employer, all employees of such employer who are eligible to participate in an employer-sponsored plan described in subsection (e)(1), and

(2) in the case of any other employer, all employees of the employer.

(b) Free Choice Voucher.—

(1) Amount.—

(A) Offering Employers.—

(i) In General.—In the case of an offering employer, the amount of the free choice voucher provided under subsection (a) shall be equal to the monthly portion of the cost of the eligible employer-sponsored plan which would have been paid by the employer if the employee were covered under the plan with respect to which the employer pays the largest portion of the employee’s premium. Such amount shall be equal to the amount the employer would pay for an employee with self-only coverage unless such employee elects family coverage (in which case such amount shall be the amount the employer would pay for family coverage).
(ii) Determination of Cost.—The cost of any health plan shall be determined under the rules similar to the rules of section 2204 of the Public Health Service Act, except that such amount may be adjusted for age and category of coverage in accordance with regulations established by the Secretary.

(B) Other Employers.—In the case of any other employer, the amount of the voucher provided under subsection (a) shall be not greater than the amount equal to the lowest cost bronze plan of the individual market in the rating area in which the employee resides which—

(i) is offered through an Exchange, and

(ii) provides—

(I) in the case of an employee electing self-only coverage, self-only coverage, and

(II) in any other case, family coverage.

(2) Use of Vouchers.—An Exchange shall credit the amount of any free choice voucher pro-
vided under subsection (a) to the monthly premium
of any qualified health plan in the Exchange in
which the qualified employee is enrolled and the of-
fering employer shall pay any amounts so credited to
the Exchange.

(3) PAYMENT OF EXCESS AMOUNTS.—If the
amount of the free choice voucher exceeds the
amount of the premium of the qualified health plan
in which the qualified employee is enrolled for such
month, such excess shall be paid to the employee.
Any amount paid to the employee under the pre-
ceding sentence shall not be taken into account in
determining the rate of pay of the employee under

(e) OFFERING EMPLOYER.—For purposes of this sec-
tion, the term “offering employer” means any employer
who—

(1) offers minimum essential coverage to its
employees consisting of coverage through an eligible
employer-sponsored plan; and

(2) pays any portion of the costs of such plan.

(d) OTHER DEFINITIONS.—Any term used in this
section which is also used in section 5000A of the Internal
Revenue Code of 1986 shall have the meaning given such
term under such section 5000A.
(e) ACCELERATED ACCESS TO EXCHANGES.—Notwithstanding section 1312(f)(2)(B)—

(1) beginning in 2015, each State may allow issuers of health insurance coverage in the large group market in the State to offer qualified health plans in such market through an Exchange, but only in connection with employers who provide free choice vouchers under subsection (a); and

(2) if a State under paragraph (1) allows issuers to offer qualified plans in the large group market through an Exchange, the term "qualified employer" (as defined in section 1312(f)(2)) shall include a large employer that—

(A) provides free choice vouchers to its employees under subsection (a); and

(B) elects to make all full-time employees eligible for 1 or more qualified health plans offered in the large group market through the Exchange.

(f) EXCLUSION FROM INCOME FOR EMPLOYEE.—

(1) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 139C the following new section:
"SEC. 139D. FREE CHOICE VOUCHERS.

"Gross income shall not include the amount of any free choice voucher provided by an employer under part I of subtitle D of title I of the Patient Protection and Affordable Care Act to the extent that the amount of such voucher does not exceed the amount paid for a qualified health plan (as defined in section 1301 of such Act) by the taxpayer."

(2) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting after the item relating to section 139C the following new item:

"Sec. 139D. Free choice vouchers."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(g) DEDUCTION ALLOWED TO EMPLOYER.—

(1) IN GENERAL.—Section 162(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: "For purposes of paragraph (1), the amount of a free choice voucher provided under part I of subtitle D of title I of the Patient Protection and Affordable Care Act shall be treated as an amount for compensation for personal services actually rendered."
(2) **Effective Date.**—The amendments made by this subsection shall apply to vouchers provided after December 31, 2013.

(h) **Voucher Taken Into Account in Determining Premium Credit.**—

(1) IN GENERAL.—Subsection (b)(2) of section 36B of the Internal Revenue Code of 1986, as added by section 1401, is amended by adding at the end the following new flush sentence:

"The amount of any monthly premium under subsection subparagraph (A) and the amount of the adjusted monthly premium for the second lowest cost silver plan under subparagraph (B) shall be reduced by the amount of any free choice voucher provided to the taxpayer under section ______ of the Patient Protection and Affordable Care Act."

(2) **Effective Date.**—The amendment made by this subsection shall apply to taxable years beginning after December 31, 2013.

(i) **Coordination With Employer Responsibilities.**—

(1) **Shared Responsibility Penalty.**—

(A) IN GENERAL.—Subsection (c) of section 4980H of the Internal Revenue Code of
1986, as added by section 1513, is amended by adding at the end the following new paragraph:

"(3) **SPECIAL RULES FOR EMPLOYERS PROVIDING FREE CHOICE VOUCHERS.**—The assessable payment imposed under paragraph (1) shall be reduced (but not below zero) by the amount of any free choice voucher provided to a full-time employee under section ____ of the Patient Protection and Affordable Care Act for any month during which such employee is enrolled in a qualified health plan with respect to which an applicable premium credit or cost-sharing subsidy is allowed or paid with respect to such employee."

**(B) EFFECTIVE DATE.**—The amendment made by this paragraph shall apply to months beginning after December 31, 2013.

**(2) NOTIFICATION REQUIREMENT.**—Section 18B(a)(3) of the Fair Labor Standards Act of 1938, as added by section 1512, is amended—

**(A) by inserting “and the employer does not offer a free choice voucher” after “Exchange”; and**

**(B) by striking “will lose” and inserting “may lose”.
