



## *The Committee on Energy and Commerce*

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### Memorandum

July 16, 2013

To: Subcommittee on Oversight and Investigations

From: Majority Committee Staff

Subject: Hearing entitled “Patient Protection and Affordable Care Act: Implementation in the Wake of Administrative Delay.”

On Thursday, July 18, 2013, at 1:30 p.m. in 2123 of the Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing examining the administration’s recent announcements regarding the employer mandate and eligibility verification requirements contained in the Patient Protection and Affordable Care Act (PPACA).

#### **I. Witnesses**

J. Mark Iwry  
Senior Advisor to the Secretary  
Deputy Assistant Secretary for Retirement and Health Policy  
U.S. Department of Treasury

#### **II. Background**

On July 2 the Department of the Treasury announced that the administration would “provide an additional year before the [PPACA] mandatory employers and insurer reporting requirements begin.”<sup>1</sup> According to this statement, the decision was made after the administration engaged in “a dialogue with businesses” and that the administration is pursuing changes in the law’s implementation and requirements based on their feedback.

Shortly after this announcement, the Energy and Commerce Committee Majority wrote to the Treasury Department asking for information on their decision to delay the employer mandate.<sup>2</sup> Mark Mazur, Assistant Secretary for Tax Policy at the Department of Treasury, wrote to the Energy and Commerce Committee last week and described the delay as follows:

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<sup>1</sup> Mark J. Mazur, Continuing to Implement the ACA in a Careful, Thoughtful Manner, U.S. Department of the Treasury, [www.treasury.com/connect/blog](http://www.treasury.com/connect/blog) (last visited July 11, 2013).

<sup>2</sup> <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20130703HHS.pdf>

The Treasury Department is providing this transition relief after having engaged in a dialogue with stakeholders (including employers, governmental entities, and others) and reviewing written comments about the employer and insurer reporting requirements. We received comments requesting transition relief due to concerns about complying with the reporting requirements and the time needed to implement them effectively.<sup>3</sup>

Because of these concerns, Treasury informed the Committee in a letter dated July 9, 2013, that it would provide an additional year “before the ACA mandatory employer and insurer reporting requirements begin” in order to accomplish two goals. First, the time delay would allow Treasury to consider ways to simplify the new reporting requirements. Second, it “will provide additional time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees.” Treasury extended this delay to include the penalties that employers would pay for not providing health care coverage as well. A copy of Treasury’s response is attached to this memorandum.

Three days after announcing that the employer mandate would be delayed for a year, the administration announced in a 606-page rule that it would relax the requirements for verification of income and health coverage status in the 16 States and District of Columbia that are setting up their own exchanges. These exchanges may rely on the attestations of the applicants combined with random sampling for errors. The Committee has asked the administration to provide more information on the procedures that will be in place to protect the use of taxpayer funding.<sup>4</sup>

### **III. Issues**

The following issues will be examined at the hearing:

- What “employers, governmental entities, and others” did the Treasury Department engage with in a dialogue about delaying the employer mandate?
- What concerns did employers raise about the employer mandate and the need to delay?
- Will employers be required to perform any functions related to the employer mandate in 2013?
- Was any analysis or thought given to a delay of the employer mandate impacting the number of individuals applying for health care coverage in the Exchanges and how that may impact the overall cost of the PPACA?
- How will the administration guarantee that without a robust verification process the PPACA will not be subject to waste, fraud, or abuse?

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<sup>3</sup> Letter from Mark J. Mazur to Chairman Fred Upton, July 9, 2013.

<sup>4</sup> <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/letters/20130709HHS.pdf>

**IV. Staff Contacts**

If you have any questions regarding the hearing, please contact Karen Christian or Sean Hayes at (202) 225-2927.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

July 9, 2013

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Upton:

Thank you for your letter to Secretary Lew dated July 3, 2013, regarding implementation of the Affordable Care Act (“ACA”). Because your letter concerns a matter of tax policy, it was referred to me.

Your letter asks about the decision, announced on July 2, 2013, to provide transition relief with respect to three provisions of the ACA: reporting by certain employers under section 6056 of the Internal Revenue Code (“the Code”); reporting by insurance companies, self-insuring employers, and other entities that provide health coverage under section 6055 of the Code; and the employer shared responsibility provisions under section 4980H of the Code.

The Treasury Department is providing this transition relief after having engaged in a dialogue with stakeholders (including employers, governmental entities, and others) and reviewing written comments about the employer and insurer reporting requirements.<sup>1</sup> We received comments requesting transition relief due to concerns about complying with the reporting requirements and the time needed to implement them effectively. We recognize that the vast majority of businesses that will need to do this reporting already provide health coverage to their workers, and we want to make sure that businesses are able to comply with the reporting requirements effectively and efficiently.

To address these concerns, we are providing an additional year before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide additional time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders – including those responsible employers that already provide their full-time workforce with coverage far exceeding the minimum employer shared responsibility requirements – in an effort to minimize the reporting, consistent with effective implementation of the law.

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<sup>1</sup> These written comments are publically available at [www.regulations.gov](http://www.regulations.gov).

We recognize that this transition relief for reporting will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. Today, we published formal guidance describing this transition relief. See Notice 2013-45.

The Notice is an exercise of the Treasury Department's longstanding administrative authority to grant transition relief when implementing new legislation like the ACA. Administrative authority is granted by section 7805(a) of the Internal Revenue Code.

This authority has been used to postpone the application of new legislation on a number of prior occasions across Administrations. For example, the Small Business and Work Opportunity Act of 2007 made changes to the standards return preparers must follow to avoid penalties. The amendments were effective May 25, 2007. On June 11, 2007, the Treasury Department released Notice 2007-54 providing that the IRS would follow the standards in prior law in determining whether to assert penalties for returns due on or before December 31, 2007. Similarly, the Airport and Airway Extension Act, Part IV (signed August 5, 2011) reinstated the air transportation and aviation fuels excise taxes retroactively to July 23, 2011, when they had expired. On September 9, 2011, the Treasury Department released Notice 2011-69 providing that the excise taxes would not be imposed on purchases of air transportation services made after July 22, 2011 and before August 8, 2011.<sup>2</sup>

Once the reporting regulations have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

Finally, it is important to note that this transition relief does not affect employees' or other individuals' access to the premium tax credits available under the ACA, nor does it have any effect on the effective date of any other provision of the ACA, including the insurance market reforms, the individual responsibility provisions, and the various revenue provisions. As you know, the ACA is projected to provide health insurance for nearly 30 million additional Americans. Together with the other departments involved, we are implementing the ACA to build on the progress we have already seen in making health coverage better and more affordable.

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<sup>2</sup> See also, e.g., Notice 2000-5 (waiving corporate penalties for certain estimated taxes due December 15, 1999, which were affected by the retroactive amendment of section 6655 by the Tax Relief Extension Act of 1999); Notices 2005-29, 2006-2, and 2007-4 (postponing the statutory effective date of the section 470 loss disallowance rules applicable to certain pass-through entities); Notices 2005-94, 2006-100, 2007-89, and 2008-115 (waiving reporting of certain deferred compensation under section 409A for 2005 through 2008 and, subsequently, until the year after final regulations are published); Announcement 95-48, Notice 96-64, and Notice 99-40 (postponing the effective date of various statutory changes in qualification rules affecting governmental plans by deeming these plans to satisfy those requirements until a later date); Notice 2010-91 (postponing the statutory effective date for 3% withholding on contractors under section 3402(t)); Notice 2011-88 (postponing the effective date for required backup withholding payments made in settlement of payment card and third-party network transactions, as enacted by the Housing Assistance Tax Act of 2008); Notice 2012-34 (postponing the statutory effective date for amendments to the cost basis reporting regime enacted by the Energy Improvement and Extension Act of 2008); and Notice 2013-14 (extending the statutory deadline for submitting a pre-screening notice to claim the Work Opportunity Tax Credit).

Sincerely,



Mark J. Mazur  
Assistant Secretary for Tax Policy

Enclosure

cc: The Honorable Tim Murphy  
The Honorable Marsha Blackburn  
The Honorable Michael C. Burgess  
The Honorable Joe Barton  
The Honorable Joseph R. Pitts  
The Honorable Phil Gingrey  
The Honorable Billy Long  
The Honorable Steve Scalise  
The Honorable Cory Gardner  
The Honorable Bill Johnson  
The Honorable Pete Olson  
The Honorable Gregg Harper  
The Honorable Renee Ellmers  
The Honorable Henry Waxman  
The Honorable Diana DeGette  
The Honorable Frank Pallone

Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)

NOT-129718-13

## **Notice 2013-45**

### **I. PURPOSE AND OVERVIEW**

This notice provides transition relief for 2014 from (1) the information reporting requirements applicable to insurers, self-insuring employers, and certain other providers of minimum essential coverage under § 6055 of the Internal Revenue Code (Code) (§ 6055 Information Reporting), (2) the information reporting requirements applicable to applicable large employers under § 6056 (§ 6056 Information Reporting), and (3) the employer shared responsibility provisions under § 4980H (Employer Shared Responsibility Provisions). This transition relief will provide additional time for input from employers and other reporting entities in an effort to simplify information reporting consistent with effective implementation of the law. This transition relief also is intended to provide employers, insurers, and other providers of minimum essential coverage time to adapt their health coverage and reporting systems. Both the information reporting and the Employer Shared Responsibility Provisions will be fully effective for 2015. In preparation for that, once the information reporting rules have been issued, employers and other reporting entities are encouraged to voluntarily comply with the information reporting provisions for 2014. This transition relief through 2014 for the information reporting and Employer Shared Responsibility Provisions has no effect on the effective date or application of other Affordable Care Act provisions.

### **II. BACKGROUND**

Sections 6055, 6056, and 4980H were added to the Code by §§ 1502, 1514, and 1513, respectively, of the Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, Pub. L. No. 111-148.<sup>1</sup> Section 6055 requires annual information reporting by health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage. Section 6056 requires annual information reporting by applicable large employers relating to the health insurance that the

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<sup>1</sup> Section 4980H was amended by § 1003 of the Health Care and Education Reconciliation Act of 2010 (HCERA) (enacted March 30, 2010, Pub. L. No. 111-152) and was further amended by § 1858(b)(4) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112-10). Section 6056 was amended by §§ 10106(g) and 10108(j) of the ACA and was further amended by § 1858(b)(5) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. In this notice, the term Affordable Care Act refers to the ACA and HCERA, collectively.

employer offers (or does not offer) to its full-time employees. Section 4980H(a) imposes an assessable payment on an applicable large employer that fails to offer minimum essential coverage to its full-time employees (and their dependents) under an eligible employer-sponsored plan if at least one full-time employee enrolls in a qualified health plan for which a premium tax credit is allowed or paid. Section 4980H(b) imposes an assessable payment on an applicable large employer that offers minimum essential coverage to its full-time employees (and their dependents) under an eligible employer-sponsored plan but has one or more full-time employees who enroll in a qualified health plan for which a premium tax credit is allowed or paid (for example, if the coverage offered either does not provide minimum value or is not affordable to that full-time employee).

### **III. TRANSITION RELIEF**

**Q-1.** When will the rules be published regarding § 6055 Information Reporting and § 6056 Information Reporting? How will these provisions apply for 2014?

**A-1.** The Affordable Care Act requires information reporting under § 6055 by insurers, self-insuring employers, government agencies, and certain other parties that provide health coverage and requires information reporting under § 6056 by applicable large employers with respect to the health coverage offered to their full-time employees. Proposed rules for the information reporting provisions are expected to be published this summer. The proposed rules will reflect the fact that transition relief will be provided for information reporting under §§ 6055 and 6056 for 2014. This transition relief will provide additional time for dialogue with stakeholders in an effort to simplify the reporting requirements consistent with effective implementation of the law. It will also provide employers, insurers, and other reporting entities additional time to develop their systems for assembling and reporting the needed data. Employers, insurers, and other reporting entities are encouraged to voluntarily comply with these information reporting provisions for 2014 (once the information reporting rules have been issued) in preparation for the full application of the provisions for 2015. However, information reporting under §§ 6055 and 6056 will be optional for 2014; accordingly, no penalties will be applied for failure to comply with these information reporting provisions for 2014.

**Q-2.** What does the 2014 transition relief for § 6056 Information Reporting mean for application of the Employer Shared Responsibility Provisions for 2014?

**A-2.** Under the Employer Shared Responsibility Provisions, an applicable large employer generally must offer affordable, minimum value health coverage to its full-time employees or a shared responsibility payment may apply if one or more of its full-time employees receive a premium tax credit under § 36B. The § 6056 Information Reporting is integral to the administration of the Employer Shared Responsibility Provisions. In particular, because an employer typically will not know whether a full-time employee received a premium tax credit, the employer will not have all of the



information needed to determine whether it owes a payment under § 4980H. Accordingly, the employer is not required to calculate a payment with respect to § 4980H or file returns submitting such a payment. Instead, after receiving the information returns filed by applicable large employers under § 6056 and the information about employees claiming the premium tax credit for any given calendar year, the Internal Revenue Service (IRS) will determine whether any of the employer's full-time employees received the premium tax credit and, if so, whether an assessable payment under § 4980H may be due. If the IRS concludes that an employer may owe such an assessable payment, it will contact the employer, and the employer will have an opportunity to respond to the information the IRS provides before a payment is assessed.

For this reason, the transition relief from § 6056 Information Reporting for 2014 is expected to make it impractical to determine which employers owe shared responsibility payments for 2014 under the Employer Shared Responsibility Provisions. Accordingly, no employer shared responsibility payments will be assessed for 2014. However, in preparation for the application of the Employer Shared Responsibility Provisions beginning in 2015, employers and other affected entities are encouraged to voluntarily comply for 2014 with the information reporting provisions (once the information reporting rules have been issued) and to maintain or expand health coverage in 2014. Real-world testing of reporting systems and plan designs through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

**Q-3.** Does this affect employees' access to the premium tax credit?

**A-3.** No. Individuals will continue to be eligible for the premium tax credit by enrolling in a qualified health plan through the Affordable Insurance Exchanges (also called Health Insurance Marketplaces) if their household income is within a specified range and they are not eligible for other minimum essential coverage, including an eligible employer-sponsored plan that is affordable and provides minimum value.

**Q-4.** What does this mean for other provisions in the Affordable Care Act?

**A-4.** This transition relief through 2014 for § 6055 Information Reporting, § 6056 Information Reporting, and the Employer Shared Responsibility Provisions has no effect on the effective date or application of other Affordable Care Act provisions, such as the premium tax credit under § 36B and the individual shared responsibility provisions under § 5000A.

#### **IV. DRAFTING INFORMATION**

The principal author of this notice is Kathryn Johnson of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Kathryn Johnson at (202) 927-9639 (not a toll-free call).