

The Honorable G.K. Butterfield (D-NC)

Question 1:

Thank you, Deputy Assistant Secretary Iwry, for your testimony. At the June 26th hearing of this Subcommittee, we heard from business owners who unanimously agreed during questioning that they embrace the goal of the Affordable Care Act to make affordable insurance available to every single American. Those business leaders also agreed during questioning that good corporate citizens should look for responsible ways to comply with the law. What I took from that hearing is that businesses have accepted this is the law of the land and are committed to working with us to ensure that implementation of the Marketplaces and other aspects of the law go smoothly

The Treasury Department Appears to be working closely with many of these stakeholders to find the best way to ensure the law of the land is implemented effectively. The Administration's decision to provide transition relief preserves the ability of business employees and individuals to access tax credits offered by the ACA starting in 2014. And there will still be safeguards in place to prevent access to premium tax credits in error. Once the Marketplaces are up and running, more than 30 million additional Americans, including 137,000 of my constituents in eastern North Carolina who currently lack health insurance, will be able to benefit from more comprehensive and more affordable health insurance under the ACA.

The Treasury's decision to delay implementation of certain requirements under the Affordable Care Act is designed to help businesses come in compliance with the law, while enabling people to be able to participate in the Marketplaces set to begin in 2014. If I am an employee of a business in Goldsboro, North Carolina who wishes to purchase a qualified health plan from the Marketplaces and I qualify under the law for a credit, will I still be able to receive that credit regardless of transition relief? Will transition relief impact in any way the ability of individuals to access the Marketplaces and receive affordable health insurance?

The decision to provide transition relief with respect to the reporting and employer responsibility requirements under the Affordable Care Act is designed to help businesses come into compliance (as well as provide more time to develop simplified, streamlined reporting rules), without delaying people's ability to participate in the Marketplaces and obtain a premium tax credit. Individuals who wish to purchase coverage under a qualified health plan in the Marketplaces and who qualify for a premium tax credit will still be able to receive the credit starting in 2014. The transition relief provided by the Treasury Department and Internal Revenue Service in Notice 2013-45 will not impair anyone's eligibility for a premium tax credit under the Affordable Care Act. Likewise, this transition relief generally will have no impact on the ability of individuals to access the Marketplaces and receive affordable health coverage.

Question 2:

Can you describe the safeguards and income verification steps in place that ensure an employee from a company in, for instance, Elizabeth City, North Carolina will not receive a premium credit in error? What type of penalties will be in place for individuals who try to receive credits they do not qualify for?

Both the Marketplaces and the IRS have safeguards in place to prevent those who are not eligible for these benefits from receiving them. The Marketplaces are required by the statute and HHS regulations to verify eligibility criteria. The IRS is building systems to collect, match, and leverage available data to verify premium tax credit claims on individuals’ income tax returns.

The Affordable Care Act includes penalties to address false claims for benefits by applicants. For example, individuals applying at a Marketplace submit their application under the penalty of perjury. Where appropriate, the IRS may also apply existing tax penalties and sanctions.

Question 3:

The decision to move forward with transition relief for 2014 came with a great deal of outreach and communication with stakeholders. As I mentioned earlier, we recently heard from a panel of businesses before this committee who embraced the goal of the law to provide affordable health insurance to all Americans and believed good corporate citizens should make efforts to comply with the law. In Treasury’s communications with these stakeholders, have you found that most businesses have accepted this law, aim to comply with it, and are interested in finding ways to provide affordable health care to their employees? Would you say that transition assistance will make it easier for businesses that embrace the goals of the ACA to comply with the law?

Most of the stakeholders that have communicated with the Treasury Department about the Affordable Care Act have contacted us about specific issues that are of particular interest to them and have not expressed their views on the Affordable Care Act as a whole. Most of those communications and interactions, however, seem to reflect a desire to comply with the Affordable Care Act and provide affordable health care to employees.

Question 4:

You mentioned that employers and affected entities may voluntarily comply with reporting provisions from 2014. It is encouraging that employer who embrace the ACA are preparing to assist with the implementations of this law, even though they will not be required to for another year. Can you provide some examples of employers who are preparing to report voluntarily in 2014? Will employers who voluntarily report information in 2014 be responsible for "assessable payments"? Will employers who do voluntarily report in 2014 be rewarded for doing so?

Reporting entities will be encouraged to voluntarily implement information reporting in 2014 (when reporting will be optional), in preparation for the full application of the reporting provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015. Notice 2013-45 provides that no employers will be responsible for assessable payments under Code section 4980H for 2014, including employers that voluntarily implement information reporting for that year.

The Honorable Tim Murphy (R-PA)

Question 1:

Please submit the information you have on the burdens and costs for individuals and businesses.

To minimize costs and administrative tasks for businesses and individuals, and to provide greater flexibility, Treasury and the IRS have sought to develop, among other things, simplified information reporting methods. For example, the preamble to the proposed regulations implementing Section 6056 information reporting states that stakeholders provided comments suggesting that, "at least for some employers, the collection, assembling and processing of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because the employee will be ineligible for a premium tax credit. Treasury and the IRS have considered these comments in formulating the potential simplified reporting methods described in this section. If Treasury and the IRS adopt one or more of these simplified reporting methods, they would be optional alternatives to the general reporting method set forth in the proposed regulations, which could substantially reduce the data elements reported using the general method." The preamble also invites comments on "potential simplified reporting methods and on other possible simplified approaches that would benefit employers while providing sufficient and timely information to individual taxpayers and the IRS."

Question 2:

Please provide all notes, emails, and other related documents with respect to the communication of the Treasury Department’s authority to be able to make the decision to delay the employer mandate.

The Treasury Department’s authority to be able to make the decision to provide transition relief derives from 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, including Notice 2011-69 regarding the Airport and Airway Extension Act, Part IV (signed August 5, 2011); Notice 2007-54 regarding the Small Business and Work Opportunity Act of 2007; and Notice 2000-5 regarding the Tax Relief Extension Act of 1999.

Question 3:

Please submit all documents related to the discussions regarding the Treasury Department’s analysis of the constitutionality of the delay.

The authorities Congress provided under section 7805(a) of the Internal Revenue Code allowed the Treasury Department to make the decision to provide transition relief. This authority has been used to postpone the application of new legislation on a number of prior occasions across Administrations.

Question 4:

Do you have the authority to offer multi-employers waivers? If so, what will they be?

Certain multiemployer health plans have asked the Treasury Department whether the premium tax credit under the Affordable Care Act would be available to individuals who are covered by a multiemployer health plan. Under the Affordable Care Act, an individual who is covered by an eligible employer-sponsored plan is not eligible to receive a premium tax credit. The conclusion that an individual cannot benefit from both the exclusion from taxable income for employer-provided health coverage under an eligible employer-sponsored plan and the premium tax credit provided by the Affordable Care Act applies whether the individual is covered by a single-employer plan or a multiemployer plan. Similarly, the statute also would not allow an employee who was offered minimum essential coverage under an eligible employer-sponsored plan that provided minimum value and was deemed “affordable” for the employee to receive a premium tax credit, even if the employee declined the coverage.

The Administration is committed to implementing the Affordable Care Act in a manner that makes health care more effective and affordable for all Americans, including those covered by multiemployer plans. We intend to continue working with employers, labor organizations, and all other stakeholders who have ideas on how best to preserve high-quality existing coverage while new coverage is extended to those who do not have it – in all cases in accordance with the statutory terms of the Affordable Care Act.

Question 5:

Was there any communication between people within the Treasury Department and any other government agency regarding the delay of the employer mandate? If so, please provide any communication.

Treasury decided to provide transition relief after receiving feedback over the course of 2012 and 2013. Treasury has been engaged in a dialogue with stakeholders, including employers, insurers, and governmental entities. Stakeholders submitted comments on the information reporting provisions of both section 6055 and section 6056. At various points in the process, Treasury has discussed the reporting provisions with others, including government offices that help coordinate the efforts of the multiple federal agencies involved in implementing the Affordable Care Act. Ultimately, Treasury decided to provide an additional year as a transition period before the Affordable Care Act employer and insurer reporting requirements would first apply. We also extended this transition relief to the employer responsibility provisions under section 4980H, which would have been impractical to implement without the reporting information.

Question 6:

What are the costs to American businesses of complying with the reporting requirements?

a. Please provide all communication regarding the costs to American businesses.

Treasury decided to provide transition relief after receiving feedback over the course of 2012 and 2013. Stakeholders – including the U.S. Chamber of Commerce, the Business Roundtable, the Blue Cross Blue Shield Association, Aetna, the National Association of Health Underwriters, and the American Benefits Council – submitted comments on the information reporting provisions of both section 6055 and section 6056. Particular comments expressed concern about the anticipated difficulty or cost of complying with the reporting requirements, the desire that the reporting process be made as simple as possible, and the need for adequate lead time to adapt information gathering and reporting systems to implement the reporting requirements effectively.

Treasury and the IRS have sought to develop simplified information reporting methods to minimize costs and administrative tasks for businesses. The preamble to the proposed regulations implementing Section 6056 information reporting states that stakeholders have provided comments suggesting that, “at least for some employers, the collection, assembling and processing of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because the employee will be ineligible for a premium tax credit. Treasury and the IRS have considered these comments in formulating the potential simplified reporting methods described in this section. If Treasury and the IRS adopt one or more of these simplified reporting methods, they would be optional alternatives to the general reporting method set forth in the proposed regulations, which could substantially reduce the data elements reported using the general method.” The preamble also invites comments on “potential simplified reporting methods and on other possible simplified approaches that would benefit

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employers while providing sufficient and timely information to individual taxpayers and the IRS.”

The Honorable Michael C. Burgess (R-TX):

Question 1:

Please provide any records related to the date you found out that the mandate for businesses was going to be delayed.

The transcript of my July testimony before the Committee documents that I knew sometime in June 2013 that transition relief would be granted with respect to the employer shared responsibility provisions.

Question 2:

Please provide any documents related to communications with Valarie Jarrett related to the delay of the mandate.

Consistent with my testimony before this committee in July, I do not recall communicating with Ms. Jarrett about Treasury’s decision to provide transition relief.

The Honorable Phil Gingrey (R-GA):

Question 1:

Please provide a list of employer stakeholders that weighed in and helped you make this decision to delay the employer mandate.

Treasury decided to provide transition relief after receiving feedback and reviewing statements and comments from stakeholders, including employers, insurers, governmental entities and others. Particular comments expressed concern about the anticipated difficulty or cost of complying with the reporting requirements, the desire that the reporting process be made as simple as possible, and the need for adequate lead time to adapt information gathering and reporting systems to implement the reporting requirements effectively. Treasury recognized that transition relief for reporting would make it impractical to determine which employers owed employer shared responsibility payments and therefore provided transition relief with respect to the employer responsibility provisions as well. Among the entities that weighed in were the following:

- American Benefits Council
- Aetna
- America’s Health Insurance Plans
- Aon Hewitt
- BlueCross BlueShield Association
- Business Roundtable

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- Cigna
- Corporate Health Care Coalition
- Employers for Flexibility in Health Care
- Families USA
- HR Policy Association
- Information Reporting Program Advisory Committee
- National Association of Health Underwriters
- National Business Group on Health
- National Coordinating Committee for Multiemployer Plans
- National Immigration Law Center
- National Payroll Reporting Consortium
- Retail Industry Leaders Association
- State of Tennessee, Department of Finance and Administration
- UPMC Insurance Services Division
- U.S. Chamber of Commerce
- World at Work

The Honorable Steve Scalise (R-LA):

Question 1:

Did you or Mark Mazur have any conversations with HHS about the decision to delay the employer mandate? If so, please provide any documents related to communications.

Treasury decided to provide transition relief after receiving feedback over the course of 2012 and 2013. Treasury has been engaged in a dialogue with stakeholders, including employers, insurers, and governmental entities. Such stakeholders – including the U.S. Chamber of Commerce, the Business Roundtable, the Blue Cross Blue Shield Association, Aetna, the National Association of Health Underwriters, and the American Benefits Council – submitted comments on the information reporting provisions of both section 6055 and section 6056. At various points in the process, Treasury has discussed the reporting provisions with others, including government offices that help coordinate the efforts of the multiple federal agencies involved in implementing the Affordable Care Act. Ultimately, Treasury decided to provide an additional year as a transition period before the Affordable Care Act employer and insurer reporting requirements would first apply. We also extended this transition relief to the employer responsibility provisions under section 4980H, which would have been impractical to implement without the reporting information.

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Question 2:

Please provide the names of all individuals who communicated with HHS and the dates and times that they communicated with HHS about delaying the employer mandate.

Treasury decided to provide transition relief after receiving feedback over the course of 2012 and 2013. Treasury has been engaged in a dialogue with stakeholders, including employers, insurers, and governmental entities. Such stakeholders – including the U.S. Chamber of Commerce, the Business Roundtable, the Blue Cross Blue Shield Association, Aetna, the National Association of Health Underwriters, and the American Benefits Council – submitted comments on the information reporting provisions of both section 6055 and section 6056. At various points in the process, Treasury has discussed the reporting provisions with others, including government offices that help coordinate the efforts of the multiple federal agencies involved in implementing the Affordable Care Act. Ultimately, Treasury decided to provide an additional year as a transition period before the Affordable Care Act employer and insurer reporting requirements would first apply. We also extended this transition relief to the employer responsibility provisions under section 4980H, which would have been impractical to implement without the reporting information.

The Honorable Cory Gardner (R-CO):

Question 1:

When was the President made aware of the Treasury Department’s decision to delay the employer mandate?

The President addressed the decision to provide transition relief in his remarks at an August 9, 2013 press conference. I do not have personal knowledge of when the President was made aware of the transition relief.

Question 2:

How many IRS personnel are currently working with you on the implementation of this law?

It is our understanding, based on recent information provided to us by the IRS, that the IRS has just under 700 full-time equivalent staff working on the tax law changes included in the Affordable Care Act.

Question 3:

Please provide the Treasury Department’s cost estimate on how much money it will cost American businesses to comply with this law?

To minimize costs and administrative tasks for businesses and individuals, and to provide greater flexibility, Treasury and the IRS have sought to develop, among other things, simplified information reporting methods. For example, the preamble to the proposed regulations implementing section 6056 information reporting states that stakeholders provided comments suggesting that, “at least for some employers, the collection, assembling and processing of the necessary data into an appropriate format for filing may not be necessary if the employer offers sufficient coverage to make it unlikely that the employer will be subject to an assessable payment under section 4980H because the employee will be ineligible for a premium tax credit. Treasury and the IRS have considered these comments in formulating the potential simplified reporting methods described in this section. If Treasury and the IRS adopt one or more of these simplified reporting methods, they would be optional alternatives to the general reporting method set forth in the proposed regulations, which could substantially reduce the data elements reported using the general method.” The preamble also invites comments on “potential simplified reporting methods and on other possible simplified approaches that would benefit employers while providing sufficient and timely information to individual taxpayers and the IRS.”

The Honorable Morgan Griffith (R-VA):

Question 1:

Is there any case that references a time when the Treasury Department used Section 7805(a) to stop the implementation of a section of the law and a court has said they have authority?

The Treasury Department has exercised its administrative authority to postpone the application of new legislation on a number of prior occasions across Administrations of both parties.

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 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, 2011 and before August 8, 2011. *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,

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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).

The Honorable Bill Johnson (R-OH):

Question 1:

If an analysis conducted by the Treasury Department revealed that there was a need to delay the individual mandate, do you have the authority to delay the individual mandate?

While the 2014 transition relief for employer reporting would make it impractical for the IRS to administer the employer responsibility provisions of the Affordable Care Act, the IRS has determined that that transition relief will not have a comparable impact on implementation of the individual responsibility provisions. Accordingly, it is unnecessary to delay the individual responsibility provisions. Moreover, as a practical matter, the individual responsibility provisions are necessary to implement the Affordable Care Act’s insurance market reforms that guarantee health security for Americans, such as prohibiting discrimination against people with preexisting conditions.

The Honorable Billy Long (R-MO):

Question 1:

Please name companies that you have talked to that helped the Treasury Department make the decision to delay the employer mandate.

Treasury decided to provide transition relief after receiving feedback and reviewing statements and comments from stakeholders, including employers, insurers, governmental entities and others. Particular comments expressed concern about the anticipated difficulty or cost of complying with the reporting requirements, the desire that the reporting process be made as simple as possible, and the need for adequate lead time to adapt information gathering and reporting systems to implement the reporting requirements effectively. Treasury recognized that

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transition relief for reporting would make it impractical to determine which employers owed shared responsibility payments and therefore provided transition relief with respect to the employer responsibility provisions as well.

Among the entities that weighed in were the following:

- American Benefits Council
- Aetna
- America’s Health Insurance Plans
- Aon Hewitt
- BlueCross BlueShield Association
- Business Roundtable
- Cigna
- Corporate Health Care Coalition
- Employers for Flexibility in Health Care
- Families USA
- HR Policy Association
- Information Reporting Program Advisory Committee
- National Association of Health Underwriters
- National Business Group on Health
- National Coordinating Committee for Multiemployer Plans
- National Immigration Law Center
- National Payroll Reporting Consortium
- Retail Industry Leaders Association
- State of Tennessee, Department of Finance and Administration
- UPMC Insurance Services Division
- U.S. Chamber of Commerce
- WorldatWork