

**Written Testimony of J. Mark Iwry
Senior Advisor to the Secretary and
Deputy Assistant Secretary for Retirement and Health Policy
U.S. Department of the Treasury
Before the House Committee on Ways and Means Subcommittee on Health**

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Chairman Brady, Ranking Member McDermott, and Members of the Subcommittee, I appreciate the opportunity to testify on the recent decision to provide transition relief with respect to certain requirements of the Affordable Care Act (“ACA”).

On July 2, 2013, the Treasury Department announced that it would provide one-year transition relief (for 2014) with respect to three provisions of the ACA: (i) the information reporting requirements that apply to insurance companies, self-insuring employers, and certain other entities that provide minimum essential health coverage under section 6055 of the Internal Revenue Code (the “Code”); (ii) the information reporting requirements that apply to applicable large employers under section 6056 of the Code, and (iii) the employer shared responsibility provisions under section 4980H of the Code. On July 9, 2013, we published formal guidance describing this transition relief. A copy of that guidance, Notice 2013-45, is attached.

Background

Section 6055 requires annual information reporting by health insurers, 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 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 paid with respect to the employee. 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 paid with respect to the employee (for example, if the coverage offered either does not provide minimum value or is not affordable to that full-time employee).

Information Reporting

The Treasury Department is providing this transition relief after reviewing written comments addressing the employer and insurer information reporting requirements and discussions with stakeholders (including employers, governmental entities, and others) regarding the requirements. Employers and their representatives requested transition relief for 2014 because of concerns about the difficulty or cost of complying with the reporting requirements, the desire that reporting be simplified and the lead times necessary to adapt information gathering and reporting systems and implement the reporting requirements effectively. We recognize that the

vast majority of employers that will need to do this reporting already provide health coverage to their workers, and we want to make sure employers will be able to comply with the reporting requirements effectively and efficiently.

To address these concerns, the Treasury Department announced that an additional year – 2014 – will be provided before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two primary concerns expressed in stakeholder comments and discussions. First, it allows for additional dialogue on and consideration of ways to simplify the new reporting requirements consistent with effective implementation of the law. Second, it gives employers additional time, which many have requested, to adapt health coverage and reporting systems as they move toward making health coverage affordable and accessible for their employees. Once reporting rules have been issued, employers, insurers, and other reporting entities are encouraged to voluntarily implement information reporting in 2014, in preparation for the 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.

Employer Shared Responsibility

We recognize that this transition relief for reporting will make it impractical to determine which employers owe shared responsibility payments for 2014. Accordingly, we have extended this transition relief to the employer shared responsibility payments.

A brief explanation may be helpful in understanding how providing a transition year for employer reporting affects implementation of the employer shared responsibility provisions. Under those provisions, an applicable large employer generally must offer affordable, minimum value health coverage to its full-time employees or an “assessable payment” under the employer responsibility provisions may apply if one or more of its full-time employees qualifies for and receives a premium tax credit with respect to health insurance coverage purchased on a Health Insurance Marketplace (Marketplace). The employer information reporting is integral to the administration of the employer shared responsibility provisions.

Because an employer typically will not know whether a full-time employee received a premium tax credit, the employer generally will not have all of the information needed to determine whether it owes an assessable payment under the employer responsibility provisions. Recognizing that employers generally will not have all of the necessary information, the statute does not require the employer to calculate an assessable payment or file returns submitting such a payment. To implement these provisions, after receiving the information returns filed by applicable large employers and the information about employees claiming the premium tax credit for any given calendar year, the Internal Revenue Service will determine whether any of the employer’s full-time employees received the premium tax credit and, if so, whether an assessable payment 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.

Because of the transition relief for employer reporting for 2014, it generally will not be possible to match up the information from employers with the information about individuals claiming a premium tax credit for 2014. As a result, the 2014 transition relief for employer reporting will make it impractical to determine which employers owe assessable payments for 2014.

Accordingly, no such payments will be assessed for 2014. However, in preparation for the application of the reporting requirements and employer responsibility provisions beginning in 2015, employers and other affected entities are encouraged to voluntarily comply with the reporting provisions for 2014, as noted earlier, and employers are encouraged to maintain or expand health coverage in 2014.

Authority to Grant Transition Relief

Notice 2013-45 is an exercise of the Treasury Department's longstanding administrative authority under section 7805(a) of the Internal Revenue Code.

This administrative authority has been used to provide transition relief for taxpayers seeking to comply with new legislation, and to provide a wide range of other guidance. In particular, on a number of prior occasions across Administrations, this authority has been used to postpone the application of new legislation when immediate application would have subjected taxpayers to unreasonable administrative burdens or costs. 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, 2011.¹

Effect on Other ACA Provisions

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 beginning in 2014.

¹ 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).

Individuals will continue to be eligible for a premium tax credit by enrolling in a qualified health plan through the 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. Nor does this transition relief affect the effective date of other ACA provisions, including the individual responsibility provisions, the insurance market reforms, and the various revenue provisions. While the 2014 transition relief for employer reporting would make it impractical, as noted earlier, to implement the employer responsibility provisions, it would not have a comparable impact on implementation of the individual responsibility provisions, which, as a practical matter, are necessary for implementing the ACA's insurance market reforms that guarantee access to affordable insurance for individuals.

Conclusion

As you know, the Affordable Care Act is projected to provide health coverage for nearly 30 million additional Americans. Together with the other departments involved, we are implementing the ACA to build on the progress already made toward better and more affordable coverage. We welcome the opportunity to further work with the Committee to achieve these objectives. Thank you, and I look forward to answering your questions.