

Second Hearing on the Delay of the Employer Mandate Penalties and Reporting Requirements

HEARING
BEFORE THE
SUBCOMMITTEE ON HEALTH
OF THE
COMMITTEE ON WAYS AND MEANS
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C O N T E N T S

[Advisory of July 17, 2013 announcing the hearing](#)

WITNESSES

Mr. J. Mark Iwry
Sr. Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health
Policy, US Department of the Treasury

Witness Statement [[PDF](#)]

Second Hearing on the Delay of the Employer Mandate Penalties and Reporting Requirements

U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:00 a.m. in Room 1100, Longworth House Office Building, Hon. Kevin Brady [Chairman of the Subcommittee] presiding. [Advisory](#)

*Chairman Brady. The Subcommittee will come to order. This is our second hearing on the controversial decision by the Treasury Department to delay for one year President Obama's Affordable Care Act mandate, forcing local businesses to offer Government approved health care or pay a tax.

Today at last we will hear directly from the Treasury Department.

What families and workers in my District are asking is this: is it not unfair to grant business relief from the Government mandate but still force average workers to comply with the mandate? If the President's health care law is not ready for business, how is it ready for my family, my child, my loved one?

That has both families and workers worried and wondering why the White House is not listening to us. This is not fair.

The President has proclaimed, "The law is working the way it is supposed to," and the White House, Treasury and Health and Human Services continue to repeatedly assure the public everything is on schedule.

Here is what is not on schedule -- the Class Act, repealed, the 1099 business reporting requirement, repealed, small business exchanges, delayed, mandate on employers, delayed. The data hub, behind schedule. Income-verification, postponed. Employer insurance verification, delayed.

This is the Affordable Care Act acting the way it is supposed to? While the goal of the July 4th holiday blog post was to down play the latest embarrassing admission of failure, it accomplished the opposite. It made clear ObamaCare is not ready. Nowhere near ready.

While the temporary relief from the employer mandate was welcomed news, it did not solve the serious problems our local businesses are struggling with under ObamaCare. In fact, the President's health care law and this troubled implementation are causing more confusion and more uncertainty that will continue to stop local businesses from hiring.

Workers are seeing fewer hours and smaller paychecks. That is not fair. Businesses are struggling to find the money to pay for higher health care costs under ObamaCare. That is not fair.

Our neighbors are struggling to find full time work, more than 20 million of them in America, and are finding fewer jobs to apply for. That is not fair.

Workers who depend on affordable health care for their families and loved ones do not get the same special treatment the businesses are getting from the White House. How is that fair? How are workers supposed to comply with the law?

The Federal law says that before getting a subsidy, they have to determine if you have an offer of affordable coverage that meets the Government's approval. Are they supposed to contact their employer or their spouse's employer? What if they get it wrong?

One witness last week laid it out very clearly. They can face a fine of up to \$25,000.

No wonder this law remains unpopular with Americans, with a poll saying 56 percent of Americans, a clear majority, want to see the individual mandate delayed. Even prominent labor union leaders are now predicting ObamaCare will shatter their health care benefits and destroy the backbone of the middle class.

Why is the White House ignoring the voices of middle class Americans? Why are they not listening to average workers? This is Washington, so we can predict that some will attempt to dismiss these questions by saying it is all just politics, that Republicans are trying for the 38th or 39th time to repeal ObamaCare.

Remember, it is the White House that delayed this important mandate, not Republicans.

Others will claim the employer mandate is not really important, although in this very Committee, they fiercely defend the mandate as one of the twin pillars of ObamaCare.

Still others will hysterically claim postponing the mandate will harm children with preexisting conditions and young people wanting to stay on their parents' plans until age 26, but of course, those laws stay firmly in place, if we treat workers the same as businesses have been treated by the White House.

Today, the Treasury Department's acknowledgment that it is not ready for businesses is the first step. The obvious next step is to acknowledge the same problems exist under

ObamaCare for individuals, and the same relief should be given to families and workers. That would be fair.

Before I recognize Ranking Member, Dr. McDermott, for the purposes of an opening statement, I ask unanimous consent that all members' written statements be included in the record. Without objection, so ordered.

*Chairman Brady. I now recognize Ranking Member, Dr. McDermott, for his opening statement.

*Mr. McDermott. Thank you, Mr. Chairman. Welcome, Mr. Iwry. I want to thank you for coming to talk to us today, although I cannot necessarily promise you a kind reception as you may have already had a glimmer.

My Republican colleagues appear very upset by this decision despite its support by the business community. They are so upset that they have already run to the Floor and put bills out there to repeal all these mandates without having hearings. They are not even following the regular order in the Congress.

They have decided to use this delay, which will not hinder the rest of implementation, to target a much more important provision of the Affordable Care Act, that is the individual mandate.

It seems they have discovered in themselves a repressed populism they reserve for special occasions when it serves their no tax/no regulation agenda. Repeal and replace is a great way to tell voters what they want to hear.

We are going to keep all the things you like, covering your kids until age 26, closing the prescription doughnut hole, banning the discrimination based on preexisting conditions, and get rid of all those things you do not like, eliminating free riders and telling employers to pay their fair share. That is what they are promising.

This is easy to say because they do not intend to fulfill the "replace" part of it. If they did, they would have to come face to face with the hard truth that one makes the other. The individual mandate makes possible the ability to give people insurance. Guaranteed insurance coverage without a mandate is not insurance at all. It is just elected bill payment.

Given the opportunity, who would not put off paying until they need to use their insurance if they knew they could get it at any time. Some states have tried to implement reform with all benefits and none of the costs.

Washington State, my own state, has been through this, 1993, we put in an universal mandate and we put in insurance reform that ended denial for preexisting conditions, without any leverage to keep healthy people on the insurance rolls, however, when they

repealed the individual mandate, only the priciest patients remained and insurers began a financial death spiral.

Under Mitt Romney, the Republican Presidential candidate, Massachusetts got it right with an individual mandate, employer mandate and subsidies, the uninsured rate was cut to 5.5 percent. When the insurance industry had guaranteed customers, it could take everyone without decimating the market.

Romney called the individual mandate "The personal responsibility principle." Everybody in this country should be personally responsible for themselves to the extent they can, and explained that it was essential to "getting everyone the health insurance they deserve and need."

While this may sound bipartisan now, we have to remember this idea of a mandate came from the right. George W. Bush used it to make his health care plan proposal work. In 2000, Jim McCleary, who sat on this Committee, was once the Chair of this Subcommittee and the Ranking Member of the Ways and Means Committee, as well as a member of the RNCC, he supported an individual mandate.

Here is what he said. "We need to think of a better way to deliver some health insurance to everybody in this country." As far as I am concerned, that means an individual mandate. Gingrich supported it. Indeed, the then Republican Minority made it the foundation of their alternative to the efforts by Mrs. Clinton in the early 1990s.

All the way back to 1989, the Heritage Foundation, a think tank that no one would accuse of being moderate much less liberal, released a proposal with some credit as the mandate's first appearance.

Even President Nixon relied on an employer mandate in his reform plan.

Personal responsibility and eliminating free riders is usually, and I emphasize "usually," the hallmark of conservative policy making. People should be responsible for themselves. The reason they want to get rid of a safety net, people should be responsible for themselves.

After decades of Republican support for an individual mandate, what has changed? Republicans know that health reform only works if everyone has skin in the game.

At some point, I have to ask, do they really want it to work? Do they want to help some Americans get affordable coverage?

If you will not accept the Republican and ACA ideas, what is left? I never wanted a mandate personally. Asking the business community to be responsible for covering our insurance does not make much sense to me. I fought for a single payer system that recognizes that our Government has a social and financial stake in the health of all our citizens.

The private insurer market system won. The Republicans won this debate when the ACA was put in the way it was. This is a compromise that we found, everyone participates, so no one is denied.

Endless futile attempts to repeal will not help anyone nor do non-existent replacement plans. We have done this, this is the 38th time. We will do it this afternoon about 3:30 or 4:00.

The American people deserve a health care system that works. Let's get on with the show and let people get the coverage they need and deserve.

I yield back the balance of my time.

*Chairman Brady. Today we will hear from Mr. Mark Iwry, Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy at the U.S. Department of the Treasury.

Mr. Iwry, welcome, and you are recognized for five minutes.

*Mr. Iwry. Thank you, Mr. Chairman. Chairman Brady, Ranking Member, Dr. McDermott, members of the Subcommittee, good morning. Appreciate the opportunity to testify on the recent decision to provide transition relief with respect to certain requirements of the Affordable Care Act.

On July 2, the Treasury Department announced that it would provide one-year transition relief for 2014 with respect to three provisions that were added to the Internal Revenue Code by the Affordable Care Act.

First, the information reporting requirements for insurance companies, self-insuring employers, and other entities that provide health coverage.

Second, the information reporting requirements for employers that are subject to the employer shared responsibility provisions, and third, the employer shared responsibility provisions.

On July 9, we published formal guidance, Notice 2013-45, that provides and describes this transition relief.

Treasury is providing the transition relief after reviewing written comments on the employer and insurer information reporting requirements and after related discussions with employers and other stakeholders.

Employers and their representatives have requested transition relief for 2014 because of concerns about the difficulty or costs 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 reporting effectively.

We recognize 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 reporting effectively and efficiently.

To address these concerns, Treasury announced that an additional year, 2014, will be provided before the employer and insurer reporting requirements begin, and this is designed to meet two primary concerns that stakeholders have expressed.

First, to allow for additional dialogue on and consideration of ways to simplify the new reporting process, consistent with effective implementation of the law.

Second, to give employers more time which many have requested to adapt health coverage and reporting systems as they move forward toward making coverage available and accessible to their workforce.

Once reporting rules have been issued, employers and other reporting entities are encouraged to report voluntarily in 2014, and allowing time for real world testing of reporting systems that year will contribute to a smoother transition to full implementation in 2015.

Employer reporting is integral to administration of the shared responsibility provisions for employers and because of the 2014 transition relief for reporting, it generally will not be possible for the IRS to match up the information from employers with the information about individuals claiming a premium tax credit for 2014 with the result that the transition relief for reporting will make it impractical to determine which employers owe a shared responsibility payment for 2014.

Accordingly, we have extended the transition relief to the employer shared responsibility provisions so that no payments of that sort will be assessed for 2014.

In preparation for the application of the reporting and employer responsibility provisions in 2015, employers and others are encouraged to voluntarily report in 2014 and to maintain and expand health coverage in 2014.

The transition relief does not affect employees or other individuals' access to premium tax credits available in 2014. People will continue to be eligible for a premium tax credit by enrolling in a qualified plan in the marketplace if their household income is within a specified range, nor does this transition relief affect the effective date of other ACA provisions, including the individual responsibility provisions and the insurance market reforms.

While the 2014 transition relief for reporting by employers would make it impractical to implement the employer responsibility provisions, it would not have a comparable effect 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.

As you know, this Act is projected to provide coverage for tens of millions of Americans and Treasury is implementing together with other departments to build on the progress already made to better and more affordable coverage.

We appreciate the opportunity to further work with the Committee to achieve these objectives, and I look forward to answering your questions.

*Chairman Brady. Thank you, Mr. Iwry. The American Congress learned of this controversial decision via an obscure blog post on the eve of the 4th of July, July 2 to be exact. This is a major blockbuster decision. It was not made in just one afternoon.

When did the Treasury Department make the final decision that ObamaCare was not ready for businesses?

*Mr. Iwry. Mr. Chairman, let me start by saying that my responsibilities relate to policy, health tax policy. There are others who are responsible for communications, media relations, congressional relations, public affairs.

I would be happy to put you in touch with the appropriate people on detailed questions of the mode of announcement and timing.

*Chairman Brady. Mr. Iwry, let me just say you are very well respected in the policy area, you have a long and distinguished record. That is why we are very pleased you are here.

The title of this is "Hearing on the delay of employer mandate." The timing is based on the policy, the decision that the policy would not be ready for businesses, and a postponement was appropriate.

This is not a press issue. This is not a communication issue. When did Treasury make the final policy decision that ObamaCare would not be ready for individuals (sic) and must be postponed?

*Mr. Iwry. Mr. Chairman, Treasury made the decision that employers' requests for more time to comply with the reporting requirements were valid requests and meritorious shortly before this transition relief for employer reporting was announced.

*Chairman Brady. Some time in June?

*Mr. Iwry. The decision was made, I would say yes, some time in June. It was considered for a while --

*Chairman Brady. For a while before that.

*Mr. Iwry. For a while. It was very carefully thought through by a whole variety of --

*Chairman Brady. Early June, mid-June, late June, just before the announcement?

*Mr. Iwry. I cannot really be more specific. The decision was made in a very deliberate way.

*Chairman Brady. Sure.

*Mr. Iwry. It was obviously something that took into account an evolving body of evidence.

*Chairman Brady. Sure.

*Mr. Iwry. Requests from employers, input from those who do the reporting.

*Chairman Brady. Sure. Once the Treasury Department made that decision in June, when did it inform the White House of that very important decision?

*Mr. Iwry. There was a continual process of consultation as there typically is. This reflected the usual coordination between departments --

*Chairman Brady. You are saying you kept the White House informed throughout the long deliberate considerations?

*Mr. Iwry. The White House was certainly informed and we coordinated on the analysis of whether this was an appropriate direction to go.

*Chairman Brady. A couple of thoughts. I have questions about this whole timeline. I think the American public certainly does. On June 7, when the President proclaimed the law is working the way it is supposed to, had you already been in contact with the White House that you were considering delaying one of the twin pillars of his health care law?

*Mr. Iwry. Mr. Chairman, the marketplaces are on target to take enrollment on 1/1/14 and to start their open enrollment period on October 1, 2014.

*Chairman Brady. I understand, we have been following the timeline very carefully because so many deadlines have been missed. The question was since you just testified you kept the White House informed throughout the whole deliberate process, was the White House aware of your decision to postpone this, a possibility, when the President told the American public, everything is great, it is working the way it is supposed to?

I am just trying to understand if there is a disconnect between the Treasury and the White House in this area.

*Mr. Iwry. Mr. Chairman, the Treasury and the White House have been closely coordinating in this whole policy area as have the other departments that are involved, HHS, Department of Labor --

*Chairman Brady. That has raised a great question. When did you inform HHS and the Secretary of your decision that ObamaCare would not be ready for businesses?

*Mr. Iwry. The decision, Mr. Chairman, respectfully, was to give employers more time.

*Chairman Brady. For reporting, and therefore postpone it for one year. When did Treasury -- again, we are thrilled you are here. You have a great reputation. We know you know this issue inside and out. There is no question about that. Because you know what the topic of the hearing is, when did the Treasury Department inform HHS?

*Mr. Iwry. Mr. Chairman, I have not been involved in all the conversations, all the meetings, all the phases of the decision making process.

*Chairman Brady. I do not really expect any human being to be able to be in all those meetings, but when was HHS informed?

*Mr. Iwry. I would be happy to take that question back to the people who have been involved.

*Chairman Brady. Right. Was any Member of Congress or their staff informed of this decision ahead of the July 2 blog post?

*Mr. Iwry. Again, Mr. Chairman, my role is not a congressional relations' role. I am not able to give you a good answer to that question, a reliable answer to that question. I will be more than happy to take that back.

*Chairman Brady. Can I ask you this from a policy standpoint, clearly the decision was made that ObamaCare is not ready for businesses. As we sit here today, do you think the Affordable Care Act today is ready for implementation for workers and their families?

*Mr. Iwry. Definitely, Mr. Chairman.

*Chairman Brady. It is definitely ready today? The exchanges are set up?

*Mr. Iwry. It is on the path today. It is not supposed to be implemented, of course, today. I take your question to be is it on the path to be ready when it needs to be ready on January 1, 2014.

*Chairman Brady. The reason I asked is you probably believe Treasury has the legal authority to postpone the employer mandate; correct?

*Mr. Iwry. I am confident we do.

*Chairman Brady. You have the legal authority to postpone the individual mandate; correct? If you can do one, obviously you can do both.

*Mr. Iwry. Mr. Chairman, the questions of legal authority are ones we take very seriously and deliberately.

*Chairman Brady. You obviously researched the one on the employer mandate, and the individual mandate is its twin brother, so the answer is yes, you probably believe you do?

*Mr. Iwry. We would not necessarily apply the same analysis to any other provision. The decision to provide transition relief, while one that Treasury as you know has taken on a variety of occasions under different Administrations --

*Chairman Brady. I think what our big worry is you had the legal authority in your mind to postpone this for businesses, for Warren Buffett, and you knew at the time the individual mandate is not ready either. It is not available for workers.

Why did you make the decision that Warren Buffett gets relief from ObamaCare but Joe Six Pack does not? Why does an average worker have to comply with the law on time, on schedule, but the businesses who have lobbyists and the ability to talk directly to you and the White House, why do they get relief and why did not the average workers today get the same relief?

*Mr. Iwry. Mr. Chairman, we believe workers today are getting a tremendous benefit from this law.

*Chairman Brady. Did you see the letter from -- do you think labor unions represent workers? Yes.

*Mr. Iwry. Of course, Mr. Chairman.

*Chairman Brady. There you go, not a leading question, just kind of obvious. Labor unions have come out, leaders have come out full force this week saying ObamaCare will shatter their health care and undermine the backbone of middle class Americans.

The majority of Americans are saying to the White House, look, we are worried. We want this postponed for us as well.

Is the White House listening to the voices of average workers or just listening to the voices of business?

*Mr. Iwry. Mr. Chairman, the White House and the Administration as a whole is certainly listening to the voices of average workers, and in fact, it is the average workers who are the driving motivation for this very critical health care reform that provides premium tax credits --

*Chairman Brady. They are asking to be treated as fairly as businesses are. Warren Buffett gets a break, Joe Six Pack does not, the single mom working at the restaurant does not.

Final question. There are a lot of missed deadlines already. We expect there will be more. The Labor Day holiday is coming up. Are there any Twitter accounts of interns at Treasury we should be monitoring over the Labor Day weekend for any more announcements on the Affordable Care Act?

*Mr. Iwry. Mr. Chairman, if I may, the tax benefits of this law for individuals are of historic proportion. The insurance market reforms, eliminating preexisting condition exclusions and so forth are of historic significance.

The focus really is on the American people.

*Chairman Brady. Those provisions, by the way, and I know you verified this, stay in place if the individual mandate is also postponed; correct?

*Mr. Iwry. It is problematic.

*Chairman Brady. The law stays in place because postponing the individual mandate has no impact on children age 26 or any of the other provisions of the law.

*Mr. Iwry. Mr. Chairman, I think policy, health policy experts across the political spectrum have made clear that if you do not have individual responsibility, personal individual responsibility to maintain health coverage, the key insurance market reforms that the American people deserve and are so eager to have will not be workable.

*Chairman Brady. The health policy experts also say if you cannot verify your employer is offering affordable coverage or Government approved coverage, it is very difficult without major fraud possibilities to force workers to buy Government approved health care or pay a tax.

Thank you, Mr. Iwry. Dr. McDermott?

*Mr. McDermott. Mr. Iwry, you are being treated to an old political trick. Confusion is the greatest way to kill something. My distinguished Chairman tries to confuse.

The fact is that 95 percent of companies with over 50 percent are now providing health coverage to their employees; is that correct?

*Mr. Iwry. Ninety-five percent of employers, approximately, with more than 50 employees are providing health coverage. Many of them have been doing so for a long time.

*Mr. McDermott. The experience in Massachusetts when they put in an employer mandate, did companies drop their insurance for their employees?

*Mr. Iwry. The evidence in Massachusetts, Dr. McDermott, suggests that companies did not drop their insurance, that in general, companies retained their coverage for employees.

*Mr. McDermott. In fact, the figures showed that they actually increased their coverage during that period of time. This business about an employer mandate being the linchpin where the whole tent comes down if we take that out is clearly not the issue.

It is a reporting question of how many people you have working 35 or 40 or whatever hours and that kind of stuff.

On the other hand, as you point out, the individual mandate is essential to the insurance principle. If you are going to cover everybody in this room, you have to have everybody in here paying into the program, on some level. Either the Government pays in through Medicaid or individuals pay in. Otherwise, if we had this whole group over here that just sits out and says I am not going to join this thing, I am going to wait until I get sick and then I am going to jump in, what is the effect on the insurance industry of having 10, 20, 15 percent, whatever, sitting outside and jumping in every time they are sick?

*Mr. Iwry. We know, Dr. McDermott, that the effect of adverse election tends to be to drive up the costs for the insurer and hence the premiums for the individual. Without some protection against people waiting until they are sick to acquire the insurance and protection against people who then get better, drop the insurance after they feel they do not need the immediate care, that is really critical to the preexisting condition, the guaranteed availability of coverage, and the other fundamental insurance reforms that protect people.

*Mr. McDermott. That probably explains why Governor Romney, a noted conservative Republican, put the individual mandate into the program in Massachusetts, because he knew on an insurance basis, it would not work if you did not have everybody in.

That has been the experience all across the country. Washington State in 1993 put in an individual mandate and guaranteed issue. We gave the two pieces. Then the legislature took out the individual mandate and left the guaranteed issue. Within three years, we had no individual sales, individual coverage in the State of Washington. All the companies left, every single one of them left.

That is really what is at stake here it seems to me. To say the employer mandate is connected to that really is a ruse to get us into a big argument about bringing the whole program down.

Is there anything that you feel you have not had a chance to explain? I will give you another minute or so.

*Mr. Iwry. There are a number of things, Dr. McDermott, and I am sure we will get to those. One point building on what you just said is that the guaranteed issue, that is the ability of people to get insurance, small businesses to be able to get insurance for their people, the guarantee that if you get sick, you will not be deprived of your health coverage, that the pricing will not be prohibitive because somebody in the small business workforce is sick or because the individual or someone in their family needs a lot of care, those insurance market reforms, including the protection from preexisting condition exclusions, will go into effect together with the marketplaces, the access to coverage, the tax benefits to assist people to afford coverage, all of that will go into effect at the beginning of 2014 as scheduled.

As you point out, it is the employer reporting and responsibility that are getting transitioned.

*Chairman Brady. Thank you, Mr. Iwry. The time has expired. Mr. Johnson?

*Mr. Johnson. Thank you, Mr. Chairman. Mr. Iwry, you have already answered some of the questions. You said the law is not working as it was supposed to and you decided to delay the employer mandate.

Why was a blog post used to notify people about that significant change? Is that not an unusual method of passing along such important information?

*Mr. Iwry. Mr. Johnson, my responsibilities at Treasury are policy as opposed to communications. I was not involved in the decision as to how to accompany the formal guidance that in the usual way reflected a Treasury decision, how to accompany that with --

*Mr. Johnson. You do not control the way you announce things. Let me ask another question. The announcement of the delay in the employer mandate really came as a big surprise with less than six months to go before it was to be put into place. What do you think that means for business owners who are planning decisions as well, and do you think they now have more or less certainty as to where Federal policy is headed, and do you think they are more or less confused about what will be in place in 2015, and will it only be a year delay, could it be two years or five years?

*Mr. Iwry. Mr. Johnson, I am happy to answer all of those questions.

*Mr. Johnson. Go ahead.

*Mr. Iwry. First of all, the business community was the ones that requested additional time. We listened to everybody, all the stakeholders, not just the business community,

representatives of individuals, individuals themselves, people across the spectrum of those who are involved in our health care system.

It was the employers who provide the vast majority of coverage to American workers who told us we could use a little more time, we are implementing these reporting provisions, we are implementing the systems we need for employer responsibility.

In the course of our very extensive back and forth with them, Congressman, lots of interaction, they have increasingly over the past few months made the point that they need a little more time in order to implement this smoothly and they could use if possible some simplification or greater flexibility in the form or timing of the reporting provisions.

*Mr. Johnson. How many companies did you hear from?

*Mr. Iwry. We heard from both individual companies and associations that represent hundreds and thousands of companies. I know congressmen and Congress heard from them, too.

There have been requests for more time to do the implementation from a wide range of organizations, particularly in the retail industry, in the restaurant sector, food service, but even more broadly across American industry, organizations like the Chamber of Commerce, the Retail Industry Leaders Association, the National Restaurant Association and the National Retail Federation.

They have been saying for the last year, and indeed, have testified before Congress, that a little more time for implementation, an one year delay is what most of the ones asking for more time have focused on. An one year delay would make a tremendous difference in their ability to implement the system changes they need to make efficiently and smoothly for their workers and for all concerned.

*Mr. Johnson. Individuals do not have that same problem?

*Mr. Iwry. Congressman, individuals have a very different way of interacting with the system, all of which is geared to deliver benefits to them. I am happy to lay that out and discuss it with you and your colleagues.

The individual reporting requirements are much more akin to what people do now on their 1040 tax returns.

*Mr. Johnson. Yes, it is just going to cost them more. Thank you. My time has expired.

*Chairman Brady. Thank you. Mr. Thompson?

*Mr. Thompson. Thank you, Mr. Chairman. Thank you, Mr. Iwry, for being here today. I said this last week when we had a hearing. I am not particularly tickled by the

delay but I would rather have the delay than rush this thing through and get something that does not work.

The truth of the matter is this is working. We are seeing good results. I have a list of them that I was given today just in my District, 7,500 young adults in the District now have health through their parents' plans; more than 6,000 seniors are getting discounts on their prescription drugs; 100,000 seniors and 194,000 individuals are able to have preventive services; 224,000 individuals are saving money through rebates from their insurance; 38,000 kids with preexisting conditions now have access to health care coverage.

This is all good stuff. In the New York Times this morning, there was an article that says the states approved their rates for 2014 and they will see at least a 50 percent lower on average than those currently available in New York today.

These are all indications that things are going in the right direction. I am okay with the delay to make sure they continue to go in the right direction.

I have been having meetings in my District with business folks trying to provide information on how businesses and the employees of businesses can benefit by ObamaCare.

I found it remarkable that the number of businesses that show up to my meetings with employees far lower than the 50 full time employees, the overwhelming majority of people in these meetings, and they have no idea for the most part that they are under no employer responsibility provisions.

As a matter of fact, when they come to these meetings for the first time, it seems many of them are finding out that not only do they not fall under this provision, but they may have access to a marketplace where they can get insurance for themselves and their employees at a much more competitive price.

I have pointed out the New York Times' story. This is true. These lower rates are true in California, Oregon, Montana and the District of Columbia.

I think we have a good story to tell. I would suggest that my colleagues on the other side of the aisle who are critical of this, instead of having more Floor votes to try to repeal the good work that we are trying to accomplish, that we do better outreach and make sure folks understand the benefits of this and help them get enrolled in these money saving health care providing programs that are out there.

You had mentioned in both your testimony and I think to one of the questions that the number of employees that are affected by the employer responsibility portion, I think you said 95 percent of employers have fewer than 50 full time employees, is that correct?

*Mr. Iwry. Approximately.

*Mr. Thompson. We are talking about five percent of employees that are impacted by this provision.

*Mr. Iwry. Congressman, it is 95 percent of employers roughly have less than the 50 employee workforce. The number of employees, of course, is different because there are a lot of employees concentrated in businesses of different sizes, not uniformly distributed.

I think your point is very well taken, that the majority of employers are either not subject to this employer responsibility at all or in the case of the employers that are over 50 in terms of their workforce and are subject to employer responsibility to offer coverage, 95 percent or so of those have been providing coverage, already provide coverage to their workforce.

*Mr. Thompson. The businesses that have contacted you, the businesses you are working cooperatively with in postponing for a year this provision, what is it they are looking for? Why do they want this delay?

Is it because they think Congress is going to repeal ObamaCare or they want to make it work for their employees?

*Chairman Brady. Mr. Iwry, time has expired, if you could respond in writing to Mr. Thompson's question.

*Mr. Thompson. Thank you, Mr. Chairman.

*Chairman Brady. Mr. Ryan?

*Mr. Ryan. Thank you. Mr. Iwry, I have a couple of tracks I want to go down. I am going to ask you some basic specific questions, if you can give me some brief specific answers, I would appreciate that because we only have five minutes.

The law was sold on the pretext that it would not add to the deficit, that if you liked what you had, you could keep it with respect to your health insurance.

I would like to assume that in doing your analysis to delay this, you ran other analyses as to what the effects would be on the economy, on Federal revenues, on health insurance and the like.

Did the Administration do an analysis on the employer sponsored health insurance market and whether or not insurance coverage levels would be changed?

Was there an analysis that looked into whether or not with the advent of ObamaCare and the imposition of the law employers are going to start dropping coverage?

*Mr. Iwry. Mr. Ryan, there was indeed a thorough analysis both within the Administration and as you know --

*Mr. Ryan. We are familiar with the private sector analyses that were done. Would you please share the Administration's analyses about the effects of the employer market that led to help make this decision?

*Mr. Iwry. As I was saying, sir, there was clearly analysis within the Administration of the impact of the Affordable Care Act as it was being considered by Congress, as well as extensive analysis, as you know by the Congressional Budget Office.

*Mr. Ryan. Right.

*Mr. Iwry. With the aid of the Joint Committee on Taxation, and by a myriad of private sector analysts, economists, experts, of the impact of the Affordable Care Act on jobs --

*Mr. Ryan. Jobs, revenues, spending. Was that analysis done by the Administration this year?

*Mr. Iwry. The analysis by the Administration is actually continual. The economists at Treasury, at CEA, OMB, and other offices within the Administration, including HHS --

*Mr. Ryan. I assume you would do that. What we are asking for is share that with us so we see what you saw which helped lead to this decision to delay the employer mandate.

That is my request to you, share with us the Administration's analysis on revenues, on spending, on insurance coverage levels within the employer private system, so we can understand more that went into this decision.

That is question one. You are nodding your head. We will expect that.

Here is question two.

*Mr. Iwry. Congressman, if I may.

*Mr. Ryan. Yes.

*Mr. Iwry. The analysis is continual.

*Mr. Ryan. I understand that.

*Mr. Iwry. It is not there is necessarily a particular written report that is rendered at each point in time. The analysis of all the effects that you alluded to --

*Mr. Ryan. Clearly, you conducted an analysis to see the impact of this law and the reason for the delay. We would like to know what went into the decisions so we are better informed.

*Mr. Iwry. Of course, we will be more than happy to share with you what went into thinking --

*Mr. Ryan. Yes, okay. Stop, because we are running out of time. I do not want you to run the clock out on me.

Here is my concern with only delaying the employer mandate and not the individual mandate. We have this new data hub that is supposed to be set up to verify a person's information. It connects information from HHS, the Internal Revenue Service, Social Security Administration, Homeland Security, Department of Justice, state governments and other Federal agencies. Big undertaking.

If a person goes into the exchange and gets subsidies, to verify whether they qualify or not, they have to have been offered employer insurance. They have to have been offered employer insurance and if they have been offered adequate employer insurance, they cannot get subsidies.

You also have an income rule which you are now allowing them to attest to their income.

How can you not conclude you are not going to have a lot of fraud, a lot of confusion, a lot of abuse whereby individuals will get subsidized, exchange tax credits, when they were not qualified for it.

Then when the mandate kicks in a year from now, you will reconcile the records and you will find that there are a lot of people in this country that signed up for exchange subsidies that they were not entitled to, the law makes them claw that back, so they will get a massive tax bill from the IRS, taxing them for the exchange subsidies that they were not entitled to, now that in 2015, you have this information.

How is that not going to be the case if you only delay one of the mandates and not the other?

*Chairman Brady. Mr. Iwry, time has expired, if you could answer that question either in writing or to another member, that would be terrific.

Mr. Kind is recognized.

*Mr. Kind. Thank you, Mr. Chairman. Mr. Iwry, thank you for your testimony and the work that you are doing.

I imagine, just to get to Mr. Ryan's point, that it is not all that unlike people who file their tax returns, take certain deductions and expenditures, and there are possible audits that come from that. It is no different than what individuals or businesses do today.

That is a whole other subject. I am also, like Mr. Thompson, in the category of applauding the Administration's decision in this regard, that we feel it is important to get it right than to do it fast. I applaud the Administration's outreach to businesses large and small, to individual businesses and the associations, when you are receiving feedback they need more time, that some of this stuff is a little bit complicated.

My question is were you hearing from them that they cannot do this at all in the future or they just wanted some additional time in order to get their records and their systems in place so they can do a proper job of reporting this?

*Mr. Iwry. Mr. Kind, we were hearing from and Congress was hearing from broad segments of the plan sponsor community that they needed a little more time, and specifically, people such as representatives of the retail industries, food service and restaurant industries, and others within the business community, indicating they were adapting their systems, they were working on compliance with these requirements but needed a little more time.

*Mr. Kind. That response is not surprising to me because of my own individual outreach back home talking to businesses. I was hearing the same thing.

There are some things that they need a little bit more time in order to work through it with their systems, but they think they can get there.

Again, I find it a little bit humorous seeing these crocodile tears from the other side about staying on time and meeting the targets, and it's a failure.

With that approach, I asked the Department of Health and Human Resources if they could calculate for me, are the provisions in the Affordable Care Act, roughly 400, that have to be either implemented already or are on track of being implemented, what percentage of those are they going to be able to hit the target on.

Their response was out of the more than 400 ACA provisions that are funded in effect, the Administration has implemented or is scheduled to implement approximately 93 percent of them on time. Clearly, that is not 100 percent. I do not think anyone on this dias or any reasonable American would expect that a program as important as this, complex health care reform, would get 100 percent seamless transition with what needs to be done.

The ability to make adjustments and to be flexible in doing this, I think, is going to be an important component of how much help businesses and individuals receive under health care reform. I think Treasury's decision reflects that practicality.

The real news today is not this hearing that we are having yet again about the Administration's decision to delay the reporting requirements for businesses, the real news is what the New York Times reported that Mr. Thompson cited, health plan costs for New Yorkers set to fall 50 percent.

Mr. Chairman, I would ask unanimous consent to have this article inserted in the record at this time.

*Chairman Brady. Without objection.

[The information follows: [The Honorable Ron Kind](#)]

*Mr. Kind. In that article, it states "Beginning in October, individuals in New York City who now pay \$1,000 a month or more for coverage will be able to shop for health insurance for as little as \$308 monthly, and with Federal subsidies, the cost will be even lower."

This is what we are hearing from Oregon and places like Washington, California, Vermont, Maryland. This is what comes from the exchanges that is going to increase competition and transparency.

Again, this is exactly what the exchanges are meant to accomplish and this is exactly the type of information that is coming back.

Sometimes I wonder whether or not their greatest fear on the other side is not the delay and is not the hiccups but the fact that this has a chance of really being successful and helping businesses and individuals be able to obtain affordable and quality health care coverage.

Mr. Thompson also recited a fact sheet that all of us were given about the impact of the Affordable Care Act on our individual districts, from individuals to seniors to businesses. My numbers line up pretty much with what Mr. Thompson was reciting as well, of the positive benefits that are already going on, that people are feeling and seeing directly because of the effect of health care reform.

Mr. Chairman, I would ask again unanimous consent to have these fact sheets we were given today inserted into the record.

*Chairman Brady. Without objection.

[The information follows: [The Honorable Ron Kind 1](#)]

*Chairman Brady. I also would like to put into the record the HHS compilation of the provisions that have been implemented so that the public can see that as well.

*Mr. Kind. Mr. Iwry, it just seems as if the Administration is just trying to take a pragmatic approach to this. They are not trying to rush things whose time may not be ready yet for implementation.

That is certainly reflected in the outreach that you did, and again, I commend the Administration for listening to the businesses and associations and making this very reasonable and pragmatic decision.

*Chairman Brady. Thank you. Time has expired.

Mr. Roskam?

*Mr. Roskam. Thank you, Mr. Chairman. Mr. Iwry, on June 7, President Obama told the American public "This is working the way it is supposed to," referring to the Affordable Care Act.

As it turns out, that is not correct, is that not the point?

*Mr. Iwry. Respectfully, Mr. Roskam, I strongly disagree with that.

*Mr. Roskam. In your view, in other words, it is going just the way it was supposed to, it is working the way it is supposed to, and this delay was contemplated the way it was supposed to? Is that what you are testifying to today?

*Mr. Iwry. Congressman, the marketplaces will be --

*Mr. Roskam. Did he do the delay on purpose, was this contemplated, at the time we heard from Administration officials for the past several years that it is all on track, and in fact, the President put his personal imprimatur on this, this is working the way it is supposed to.

Are you saying the individual mandate and the blog post release on July 2 is the way it was supposed to go? Is that your testimony?

*Mr. Iwry. Congressman, the individual mandate, the individual responsibility provisions, are fully on track.

*Mr. Roskam. How about the employer mandate? This is not supposed to be that tough. You are not making the representation that the employer mandate is going the way it is supposed to. You are not saying that, are you?

*Mr. Iwry. Congressman, this is a very ambitious legislative --

*Mr. Roskam. It was not supposed to be like this; right? It was not supposed to be there was a release of a blog post that said it is going to be delayed. You are not going down that cul-de-sac where you are defending this as part of a plan, that it is going exactly the way -- I know you said you are not in the communications side of things and you are on the technical side.

Can I just give you a recommendation? Do not defend the delay as being on purpose, at least you are acknowledging with me that this was not intentional; right?

*Mr. Iwry. Congressman, as I was saying, this is a very major piece of legislation.

*Mr. Roskam. It sure is.

*Mr. Iwry. Historic benefits to the American people. There are various significant parts to provide coverage to tens of millions of people who have not had it before.

*Mr. Roskam. The point is it was not on purpose, the timing of this was not on purpose, and the delay of the employer mandate was not something you contemplated.

Moments ago, you were asked questions by the Chairman, what was the time line of this, and the communication, at least the representation to the Committee was this was basically a revelation, discussion and a decision that happened at Treasury with some consultation in the White House around June. Is that not right? Was that not your testimony?

*Mr. Iwry. Congressman, I believe the Chairman asked when the final decision was made as opposed to when the decision -- when the process of thinking about whether --

*Mr. Roskam. In other words, are you kidding me, did you have an inkling, did you have a foreshadowing that this was going to have to happen at the time when the President of the United States tells the American public it is working the way it is supposed to?

*Mr. Iwry. Congressman, the law as a whole is not something that I think anyone would have expected.

*Mr. Roskam. All right, there you go. Thank you for acknowledging that. Let me focus your attention on a statement you made a couple of minutes ago to Mr. Johnson.

You said individuals have a different way of interacting with the system. They sure do. To follow up on Mr. Ryan's point, if individuals, who are not represented by anybody except us, they do not have lobbyists, they are not part of some big coalition, they are just individuals, if they get on the wrong side of the law based on the characterization that Mr. Ryan had, here is what happens to them, and this is according to Mr. Jost who was a Democrat witness last week.

He said "There are serious consequences for applicants who misrepresent their employer coverage, applicants who receive tax credits for which they are ineligible, they will have to pay them back when they file their taxes."; Mr. Ryan's point. Negligent misrepresentation of eligibility information can cost a \$25,000 fine. Here is a tax form that the IRS requires under penalties of perjury, representations under penalties of

perjury, a criminal act, and yet you seem like you are very cavalier about this, this risk, this different way that individuals have of interacting with the system.

Yes. They are more on their own. I yield back.

*Chairman Brady. Thank you. Mr. Blumenauer is recognized.

*Mr. Blumenauer. Thank you, Mr. Chairman.

It has been interesting, sort of. I have tried to distance myself for a moment as I have listened to the back and forth, and wondering what this would look like from a normal person from a distance.

This controversial decision is controversial because people claim it is controversial. The notion somehow that we take 5 percent of the businesses who represent 1 percent of American employment and there is a year delay, is not earth-shattering.

This is not something I would think, as my friends have tried on a piecemeal basis -- I notice my good friend the chairman could not even reference exactly how many times they have tried to repeal it -- that somehow a small portion of the bill being delayed for a year creates such trauma and drama would be hard, I think, for a normal person to really create into some sort of massive controversy that merits drilling into the bureaucracy, the timing, trying to parse a general statement from the President about the bill working as intended.

To somehow that each tiny detail is exactly as contemplated is foolish. And we can do this with any of the landmark legislation that some of my Republican friends may be proud of and ask if every single detail is exactly as was contemplated. No revisions? No change? No modification? Of course not. That is hokum.

I am from one of those States where people have not spent all their time trying to derail it. And there are some that have. But in Oregon -- and I would ask, Mr. Chairman, unanimous consent to enter into the record two articles about how it is working in Oregon.

*Chairman Brady. Without objection.

[The articles referred to follow: [Oregon Article](#), [Oregon Article 1](#)]

*Mr. Blumenauer. How insurance rates have dropped. How thousands of people in my district are benefitting. And I would like to be included in Mr. Kind's unanimous consent because I think this is important.

The goal here ought to be to work to make health care more affordable and more effective for American people. We are burdened in this country, paying almost twice as much as any other country in the world for results, on average, that are mediocre. We get

sick more often. We take longer to get well. And we die sooner than some of those countries that my friends on the other side of the aisle have denigrated when we were in the process of debating health care reform.

In my State, we are making some progress. In my State, if everybody practiced medicine the way it is in my metropolitan area, we would live longer. We would not get sick as often. We would get well quicker. And we would not have a Medicare funding crisis.

This hearing is an example of why we are going to be continually stumbling forward, because the goal of some people in Congress is for the bill to fail. They did not work with us in a bipartisan way to try to refine it; there are changes that I would make.

I think this bill is maybe a B-minus. And it is not enacted the way that anybody in America would have done so, but we had a complete breakdown in the legislative process in the Senate, so it had to be adopted via reconciliation. And since then, no plan from my friends, who talk about repealing and replacing -- no plan that would come even close; and trying to put sand in the gears in every instance.

I think that is unfortunate. Planning for legislation to fail and make it harder on American employers, the health care system, and the people we represent, I think, is a sad expression of politics today. But in my State, look at the results.

*Chairman Brady. All time has expired.

*Mr. Blumenauer. You could do it in yours. Thank you. I yield back.

*Chairman Brady. Mr. Gerlach is recognized.

*Mr. Gerlach. Thank you, Mr. Chairman. Thank you for testifying today, Mr. Iwry.

I want to go back to the individual mandate provisions of the act relative to the employer mandate provisions, which under this notice has been suspended until 2015. The testimony you presented here today as well as prior correspondence from the Department of Treasury cites the legal authority for the delay in the employer mandate as being Section 7805(a), which is a general provision giving the Secretary of Treasury the ability to, in essence, promulgate rules and regulations for the enforcement of the title, as well as doing things necessary by reason of any alteration of law, a pretty general prescription of authority and what you call in your testimony longstanding administrative to grant transition relief.

Based upon that authority, Section 7805, would you not agree, then, that the Department of Treasury also has the ability under that section to suspend the employee mandate of the law?

*Mr. Iwry. Congressman, we have not analyzed the question whether that different provision, the individual responsibility provision, is one that we would have authority to provide transition relief for because the --

*Mr. Gerlach. Is there any specific other provision in the act or any other prior decision by the Department or any other rule or regulation that would prohibit you from delaying the individual mandate compared to just using Section 7805 authority to suspend the employer mandate?

It seems like it is a pretty broad license of authority under that section. So why would that section not also apply to the individual mandate?

*Mr. Iwry. Congressman, the authority you are referring to under 7805(a), in particular, when used to provide transition relief with respect to the timing of implementation of a statute, is exercised very carefully in order to provide in circumstances where the facts make it clear that the statute presents -- that the timing without a transition relief provision, that the timing would present administrative difficulties that are very considerable.

*Mr. Gerlach. My colleague, Mr. Roskam, and prior to him Mr. Ryan, highlighted the problems that individuals, if they continue to face the mandate, may experience relative to penalties in the future.

So the question is, by way of fairness, is it fair to suspend the mandate on employers but not suspend the mandate on employees? And I would note a July 9th letter to Chairman Fred Upton of the Energy and Commerce Committee from the Department of Treasury indicating that on prior occasions, that same Section 7805 was used by the Department to relieve responsibility for payment of taxes in air transportation services and in other situations.

So given the fact that the Supreme Court has ruled that this individual mandate is in fact a tax, and the fact that this Section 7805 has been used in the past by the Department to relieve individual taxpayers of taxpayer responsibility because, at the discretion of the Department, it was an important thing to do, why is it not fair to individuals now under the Affordable Care Act to have their mandate of taxes be relieved and suspended while the employer mandate is also being suspended when you clearly have the authority, the discretion under 7805, to do that?

*Mr. Iwry. Congressman, the decision to provide transition relief in response to the requests from those in the plan sponsor community for more time to complete the successful and efficient implementation of their reporting systems was made very deliberately after assessing the credibility of those --

*Mr. Gerlach. And you made mention in the last few minutes about the number of different employers that contacted you about that need. Did you get any input from individuals about the need to not have an individual mandate placed upon them? Did you

get anything on your website, in mail, emails, from individuals around the country that did not want to see this individual mandate implemented?

*Chairman Brady. Time has expired. If you could answer that question in writing, sir, I would appreciate it very much.

Mr. Pascrell is recognized.

*Mr. Pascrell. Thank you, Mr. Chairman. And Mr. Chairman, I have got to give credit where credit is due. You run a very civil discussion, questions. But it is pretty bizarre when you think about here we are again trying to undermine the law, when you come right down to it.

*Chairman Brady. You had me on the first part of that statement.

*Mr. Pascrell. I meant it.

The Affordable Care Act is complex, no question about it. It was passed. It contains skyrocketing costs. We could not sustain the system as it was. Many companies are going bankrupt, and to give uninsured Americans access to affordable health coverage. And I think we need to ensure that that is done. That should be our priority.

This delay should not be just another excuse for obstructionism. I think we should be working to ensure that this law is implemented effectively. It seems more productive to me than voting over 38 times to repeal it.

Mr. Iwry, thank you for participating today. You are a senior advisor in the Treasury Department to the Secretary. Correct?

*Mr. Iwry. Correct, Congressman.

*Mr. Pascrell. Many of my friends on the other side of the aisle are asking why the Administration would delay this component of the law and not delay the individual mandate. They are fond of a talking point that says that if the Administration is delaying the employer mandate, they should delay the individual mandate. You have heard that many times.

This is comparing, to me, apples to refrigerators on a scale and scope quite different. How many businesses does the employer mandate impact?

*Mr. Iwry. Congressman, I do not have that exact figure with me, but we would be happy to get back to you with an answer. But it is, as you know, 95 percent of the American employer community that is smaller than 50 employees and therefore is not subject to the employer mandate.

*Mr. Pascrell. Well, if we apply that --

*Mr. Iwry. That is, 95 percent of businesses are not subject to the employer responsibilities.

*Mr. Pascrell. If we apply those numbers, it is about 10,000 businesses, in my math. It comes to that figure. Is that far off or am I in the ballpark?

*Mr. Iwry. Happy to confirm that or check that for you, Congressman.

*Mr. Pascrell. Would you do that? Which is 1 percent of the workers. Correct?

*Mr. Iwry. Congressman, it is about 5 percent of the employers that are large enough --

*Mr. Pascrell. I am talking about the workers now.

*Mr. Iwry. Right. When it comes to workers, the percentages are different --

*Mr. Pascrell. Right.

*Mr. Iwry. -- and I do not have them in front of me. But of the 5 percent of the employers, 95 percent of those already provide coverage.

*Mr. Pascrell. Well, I will stand corrected. If you would come back to me with that, I would appreciate that when you have time.

*Mr. Iwry. Certainly, Congressman.

*Mr. Pascrell. One percent of the workers will still have the option of using the exchanges to purchase health care. I am not talking about the businesses. I am saying the total number of workers.

According to a just-released Urban Institute study, repealing the individual mandate would cause the uninsurance rate, if I can use that term, to be a full 50 percent higher than it would be with full implementation of the law. Am I in the ballpark?

*Mr. Iwry. Congressman, be happy to review that study and give you our views.

*Mr. Pascrell. Pretty startling if it is true. And I did not pick these numbers off the shelf. You go through the Labor Department with numbers and you start making divisions and multiplication, and that is what I come up with.

Now, this is in addition, now. If that is true, and you are going to get back to us, 13.7 million people without insurance, an additional 13.7 million without insurance. I think making sure these 13.7 million Americans have health insurance on January 1st should be our focus here today and tomorrow and the next day. If the majority wants to discuss the plight of the individual, that is who we should be talking about.

I yield back, Mr. Chairman.

*Chairman Brady. Time is expired.

Dr. Price?

*Mr. Price. Thank you, Mr. Chairman. And I want to just say to my friend from New Jersey who just spoke, what we are simply trying to do is to make certain that the health care system works for patients and doctors especially, because that is where all of us interact with the health care system, is when we become ill and have to go see our doctor.

It is clear that the Administration and the Treasury Department now see that it does not work for employers. So what we are asking is, well, how about just plain folks? How about my neighbor? How about the couple that run the corner grocery store in my neighborhood? What about them?

Mr. Gerlach asked you at the end of his time, have you heard from any individuals who have had concerns about the ACA and the implementation?

*Mr. Iwry. Congressman, we have had interaction with and comments from, certainly, organizations that represent individuals, and the Administration has --

*Mr. Price. Any just plain folks?

*Mr. Iwry. The Administration has heard from thousands and thousands of individuals about various provisions of the Affordable Care Act.

*Mr. Price. And their concern about the implementation thereof. Is that right?

*Mr. Iwry. Congressman, I think that the input from individuals has been on all sorts of aspects, and many of them, I believe, very supportive of the Affordable Care Act.

*Mr. Price. Many of them opposed as well, though, I would suspect. That is what we get in our office. Right?

*Mr. Iwry. I assume that the input from individuals has spanned the spectrum of views.

*Mr. Price. Absolutely. Absolutely. So if the Administration is saying, okay, we are going to listen to the employer -- and God bless you for doing so. Thank you very much. We have been telling you this for three and a half years, or three years now -- should we not listen to just plain folks?

Is there not a rationale that could be made that if we are going to give this kind of year's relief for employers, for businesses, to comply with all of the machinations of this complex law, should we not give that same relief to just plain American people?

*Mr. Iwry. Congressman, my understanding is that, among other channels, that many individuals communicate with various parts of the Government -- HHS, the White House, et cetera --

*Mr. Price. No. But the question is, should we not give that same relief, that same delay?

*Mr. Iwry. -- and that much of what individuals are asking for is the protection from preexisting condition exclusions, the protection from being denied --

*Chairman Brady. The chairman clearly identified that a delay in the individual mandate would not exclusion that portion of the law. Is that not correct? Have you had any discussions at Treasury about the possibility of a delay of the individual mandate?

*Mr. Iwry. Mr. Price, I am not part of all the discussions at Treasury, of course.

*Mr. Price. Have you? Have you been involved in any discussions at Treasury and the IRS to consider a delay in the individual mandate?

*Mr. Iwry. Congressman, we have not.

*Mr. Price. Have you, Mr. Iwry, had any discussions at all about considering a delay in the individual mandate?

*Mr. Iwry. Congressman, I do not recall being part of any discussion that involved a view on our part, or my part, that there would be a necessity to provide more transition relative than Congress has already provided for individuals under the individual responsibility provisions, the transition relief that is phased in that provides a much lower level of penalty in 2014 and lower in 2015 with the --

*Mr. Price. But you were involved with the discussions about the delay in the employer mandate. Is that correct?

*Mr. Iwry. Congressman, very much involved in discussions about whether transition relief was needed with respect to the employer reporting and the broader employer responsibility requirements.

*Mr. Price. I have got just a few more seconds, and I appreciate that.

*Mr. Iwry. Yes.

*Mr. Price. The question is about this 95 percent of employers who employ more than 50 individuals currently cover their employees with health coverage. Five percent do not. Do you know how many that is? How many folks is that? How many employees in that 5 percent?

*Mr. Iwry. The 5 percent of employers who are over 50 that do not offer coverage currently?

*Mr. Price. Correct. Correct.

*Mr. Iwry. Be happy to get you that figure.

*Mr. Price. The thorough analysis that you all said you did, these are the individuals that are now thrown into the individual mandate. Right? These are the folks that now have to provide coverage for themselves. And I look forward to following up.

Thank you, Mr. Chairman.

*Chairman Brady. Thank you.

Mr. Smith is recognized.

*Mr. Smith. Thank you, Mr. Chairman. And thank you to Mr. Iwry for being here today to share your insight.

Can you tell us what the first indicator was that you detected that would eventually lead to this delay in the employer mandate? Was it just the weighing in of business folks, or were there other indicators?

*Mr. Iwry. Mr. Smith, as I know you appreciate, we are in continual contact with stakeholders. And --

*Mr. Smith. But more specifically, what would you say was an early indicator?

*Mr. Iwry. And for at least the last year or so, a number of major representatives of large portions of our economy, people such as the retail industry --

*Mr. Smith. Okay. So it was concerns by the private sector that were raised that were the earliest indicators that perhaps this needed to see a delay?

*Mr. Iwry. Mr. Smith, I am not sure I would be comfortable in trying to reconstruct the earliest indicator. But clearly, a very prominent request, a very pronounced request for additional time has been coming -- very publicly, not to Treasury in particular as opposed to anyone else -- but to anyone who would listen, certainly to Congress and congressional testimony and in press releases and public statements from industry, that more time on the reporting systems issues to adapt their systems to the reporting rules, to collect information that they would need to collect more efficiently and at lower cost.

*Mr. Smith. Right. So then on the reporting issue, are you saying that the Administration will not be efficient the reporting? Explain again how this can be done without Congress codifying the very desire for the one-year delay?

*Mr. Iwry. Congressman, happy to do that. The announcement that we have made indicates that one additional year would be provided before the reporting requirements for the entities that are required to report, employers if they have coverage --

*Mr. Smith. And so that is authorized in the law itself?

*Mr. Iwry. The law itself provides for the reporting requirements for insurers, employers --

*Mr. Smith. But for the delay?

*Mr. Iwry. The delay is one that we have made pursuant -- that the transition relief is something that we have provided pursuant to our authority under the Tax Code, Section 7805(a), to provide when necessary --

*Mr. Smith. So did this authority exist before the passage of the Affordable Care Act?

*Mr. Iwry. Congressman, not only did the authority exist, but it has been exercised by administrations on both sides of the aisle on a variety of occasions to provide appropriate and necessary transition relief, not just to employers but to taxpayers generally, when the circumstances persuade the Treasury Department that additional time would be consistent with the furtherance of what Congress intended when it enacted the particular requirement at issue.

*Mr. Smith. Okay. And now, shifting gears a bit, if an individual qualifies for a subsidy that is conditional upon employer provisions of health insurance, but there would be the delay for the employer provision. This was touched on earlier. Can we really effectively still mandate the individual situation when the employer mandate is not in place?

*Mr. Iwry. Congressman, the transition relief with respect to the employer responsibility does not at all make it impractical for individuals to be able to report --

*Mr. Smith. But it is a condition upon which an individual would qualify for a subsidy. Is that correct?

*Mr. Iwry. If an individual wants to apply for a subsidy for a premium tax credit, there are a number of conditions that apply, including the individual's income, whether the individual actually has acquired coverage --

*Chairman Brady. Yes. Time is expired. Thank you, sir.

Mr. Rangel. Thank you, Mr. Chairman.

Thank you, Mr. Iwry. You seem to be hesitating in a lot of the responses from the questions that are being asked of you. And it is my observation it is because they sent the wrong person here to answer.

You have indicated, and your record shows, that you are involved in policy, and this Committee needs someone that is involved in politics because there is no question that no one cares about what the policy is and no one cares whether the President delayed anything.

Actually, most anything that the President wants, the majority party in the House, they do not want. If the President actually walked on water, I am certain that the Speaker's group would be saying that the President cannot swim and that we ought to take another look at him.

Now, it is very unusual for me to remember any circumstance where a major piece of legislation is being opposed and suggested that it be repealed when they have a President, the sponsor of the legislation, in office. And so I do not think you have to be a politician to answer that.

If the Republicans were to repeal the Affordable Care Act, does it appear that the President of the United States would veto it?

*Mr. Iwry. If the --

*Mr. Rangel. If a repeal is passed by the House and Senate, which is almost politically impossible, in your opinion would not the President veto it?

*Mr. Iwry. My understanding, Mr. Rangel, is that that is certainly the case.

*Mr. Rangel. And everybody in the House of Representatives and the Senate, they know this. And so obviously, they do not give a darn about your policy or the President's policy. It is here to embarrass the President or the Administration as it relates to doing what they want done. They not only want it delayed, they want it out. There will be bills on the floor to delay and to repeal other parts of the bill.

My question, to put on your policy hat, is if their political goals and legislative goals were achieved, what would be in place to provide health care for Americans? What would be there?

*Mr. Iwry. Mr. Rangel, if this legislation were repealed --

*Mr. Rangel. Wiped out.

*Mr. Iwry. -- we would continue to see tens of millions of Americans, more than 50 million, without coverage, so many of whom would get coverage as a result of this act.

We would continue to see insurance taken away from people because they have gotten sick or the pricing --

*Mr. Rangel. Well, what about young people? Would they be able to get on their parents' insurance program up until 26? Would that be available to them if it was repealed?

*Mr. Iwry. It would not. It would not, Mr. Rangel.

*Mr. Rangel. Okay. What about the prescription drugs discounts that are provided in this law for seniors? Would that be available if this was repealed?

*Mr. Iwry. No, sir.

*Mr. Rangel. Okay. Now, what about these preventive services, not waiting until you get sick but to be able to see a doctor and to get medical advice and help before you get sick? Would that be available if we repeal ObamaCare?

*Mr. Iwry. It would not, and it would not be required to be provided at no cost.

*Mr. Rangel. What about the lifetime? Is it possible that you could make insurance companies keep you insured for life, or could they continue, as they had in the past, to just cut you off?

*Mr. Iwry. That is another protection of the law that would not be in effect if the law were not in effect.

*Mr. Rangel. And if you were applying for health insurance and they said, well, you have been sick before, we do not want to take you, if you wiped out ObamaCare, would they be forced to --

*Chairman Brady. All time has expired.

*Mr. Rangel. My time has expired. Send a politician down here next time, Mr. Iwry.

*Chairman Brady. Mr. Iwry, thank you for your brief, clear, concise answers. I hope that will continue as we go in the hearing.

Mr. Kelly?

*Mr. Kelly. I thank you, Chairman, and Mr. Iwry, thank you so much for being here. I was reading over your resume. It is really impressive. I mean, there is no question about you being an authority on this.

So with that in mind -- and you are also a graduate of the Harvard Law School, I am understanding. Let me ask you, because this is the crux of this whole problem. Where I

am from, back home, people expect to be treated fair and equally under the law. The Patient Protection Affordable Care Act is a law. Correct? So I think there is a natural feeling that I should be treated fairly and equally under it.

Now, the question then comes down to, what is the definition of fair? Now, I will tell you what. Fair is defined as, "Marked by impartiality and honesty; free from self-interest, prejudice, or favoritism." But back where I am from, you know what it means? You treat me the same way you treat somebody else. That is all it means. I think that is kind of -- you do not have to have a law degree to understand that.

The other thing is equal. What does equal mean? "It is of the same measure, quantity, amount, or a number as another. Like in quality or status." But I thought the part that was best is, "Like for each member of a group, class, or society."

So now on July 2nd, there was a decision made and, according to your testimony, there was great deliberation over this. Is that true?

*Mr. Iwry. Congressman, there was very careful deliberation.

*Mr. Kelly. Okay. Listen. I have got to tell you. I am real simple. A yes or no is easy for me.

So there was great deliberation. Yes? Was there also consideration of, if we do this with the employer mandate, what do we do with the individual mandate? Any discussion on that? And that is just a yes or no question.

*Mr. Iwry. Congressman, there was consideration --

*Mr. Kelly. Mr. Iwry, I am not trying to be a wise guy with you, but you do not to build me a watch. Please just tell me the time. Yes or no, was there a discussion on the individual mandate?

*Mr. Iwry. Congressman, as the employer responsibility provision transition relief was considered --

*Mr. Kelly. I am going to ask for more time. Was there a discussion on the individual mandate? Because you said there was quite a discussion on the employer mandate. My question to you: Was there a discussion on the individual mandate? It is yes or no, sir. It is a very easy question.

*Mr. Iwry. Congressman, the individual responsibility provision, how it would be affected and how it might interact if transition relief was given on the employer responsibility reporting provisions and the other employer requirements, consideration of the potential impact --

*Mr. Kelly. Consideration. So there was discussion?

*Mr. Iwry. -- was certainly --

*Mr. Kelly. There was discussion?

*Mr. Iwry. -- was certainly given.

*Mr. Kelly. All right. There was discussion on it. Now, I do not want to be disrespectful, but I only have a little bit of time, and I need you to answer the questions as I ask. These are all yes or noes, really.

My question do you is, do you know what a deadline is? I looked these things up. I am concerned about this because I have never seen an organization that pays less attention to deadlines than this organization. Deadlines really are not deadlines, not in the government sector. Now, the private sector, if there is a deadline, by golly, you are held to that deadline, and if not you are held responsible and accountable for not meeting it.

But here, you know what? We will pick and choose what we want to do. We will figure out what is fair and equal depending on what we want to do. A deadline is: "A date or time before which something must be done." Okay. The deadlines were all established under the law. Go back to March 23, 2010. That is when we started working this. My goodness, it is over three and a third years, and we are still trying to figure this out.

Now, I have got to tell you. I am an employer. And you just sit there and I keep hearing about, well, you do not understand. For big people, it did not matter. Well, a lot of big people got waivers on it.

I am just tired of getting jerked around from being out in the public sector, and I am tired of hearing all these different excuses of why it could not be done. This is absolutely pathetic, that we have to stand here and have this type of a conversation when the answers are all yes and no answers, and the truth of the matter is we keep hearing the overwhelming support.

My friends keep saying, but you know what? We should delay this. We have to take our time. My goodness, we do not want to rush this through. Is it not a shame they did not use that same philosophy back in 2010? Would it not have been a little bit easier?

I have got to tell you that I have great respect for Treasury. I know you have 115,000 people that work there, and you guys go through \$14 billion of taxpayer money every year to run that. But I expect a little better performance, and I expect a little better return on the investment by the American taxpayers. This is unraveling before our very eyes.

So I would just ask you: You have said that you guys studied it, that you talked about it. There was intense -- maybe not intense, but there was a lot of discussion on it. July 2nd it comes out. Boom, we put it on a blog. We cannot even tell the American people the right way. We wait until Friday afternoon, which is the way everything comes out of this Administration. And then we drop this bomb on them.

So the individual mandate has to be kept in there. It cannot be considered. Even though we did it for the employer mandate, we cannot do it for the individual. Yes or no?

*Chairman Brady. Time has expired.

Mr. Reed?

*Mr. Kelly. All right. Good deal.

*Mr. Reed. Thank you, Mr. Chairman. And thank you for the testimony today, sir.

I share the concern about this decision of the Administration for the employer mandate. But what I would like to do in our exchange here today is to clearly get an understanding from Treasury's perspective and for my constituents as to what you did over the last three and a half years since the enactment of this law in March 2010.

What are your concrete steps going forward as to what Treasury needs to do, will do, and that we can hold you accountable to so that 12 months from now or as we come up on the 2015 deadline, we are not faced with another last-minute announcement through an internet blog saying, well, you know, we are not ready again.

So the question I have for you, sir, is what did Treasury do? You knew this employer mandate was coming the last three and a half years. What did you do to prepare for that? Where did you fail? Because clearly you failed because you did not meet the deadline. And what are you going to do over the next 12 months, in detail, to make sure that we do not have another delay going forward?

So let's start with, what did you do? What did you organizationally do?

*Mr. Iwry. So, Congressman, what Treasury did, has done, with respect to the employer responsibility part of the Affordable Care Act includes an extensive set of guidance that involved five rounds of interaction, through written comments, with the private sector and the whole stakeholder community.

*Mr. Reed. So those guidance are documents you prepared based on input to say what to the employers?

*Mr. Iwry. We have issued proposed regulations in December of 2012 that told taxpayers they could rely on the rules in those proposed regulations for implementations --

*Mr. Reed. So it took two years. So it took two years to get those proposed rules ready to go. So where do we stand today on those rules, and where are we going over the next 12 months?

*Mr. Iwry. So, Congressman, those proposed rules tell taxpayers that they can rely on those rules for implementation in 2014; that the rules embody the results of the intense dialogue with plan sponsors and stakeholders in all parts of the economy --

*Mr. Reed. So if those rules are all done, why do you need any delay?

*Mr. Iwry. The --

*Mr. Reed. That is what I am hearing. You are telling me that the rules are done, and you have given guidance to the industry and to employers. And then you comment the same breath and say, we need a delay. That does not make sense to me. Explain to me why I am wrong.

*Mr. Iwry. Congressman, I am happy to explain. The employer responsibility proposed rules relate to most aspects of employer responsibility under the law. Employers asked us to give priority to those particular rules, to do that first, in our discussions with them when we asked them, what is most important? What is the critical path?

The reporting requirements are not part of that proposed regulation. The employer --

*Mr. Reed. So you are going to do the reporting requirements as part of that proposal because it was too complicated for you to deal with the reporting requirements, or because the employers said, well, we just want you to focus there first rather than on the reporting requirements? Is that what your testimony is?

*Mr. Iwry. Congressman, employers told us that of the very significant different portions of this legislation that need to be digested and implemented and worked out in regulations. The employer reporting requirements were generally something that they thought we should do not as the first priority or the first step, but rather as a second step after the main body of employer responsibility requirements.

*Mr. Reed. Okay. My time is running short. So now going forward, what are you going to do over the next 12 months that I can hold you accountable to next time you come up here and ask for a delay?

*Mr. Iwry. Congressman, we are moving forward now to take advantage of the feedback we have received from plan sponsors and other stakeholders on the reporting requirements in the form of written comments, which we have asked for and gotten. And we are now moving to prepare proposed regulations on those.

*Chairman Brady. All time has expired.

Mr. Crowley?

*Mr. Crowley. Thank you, Mr. Chairman. Thank you for allowing me to participate. I am not a member of the subcommittee, and I appreciate the opportunity. Mr. Iwry, thank you for your testimony today.

While I know this hearing is focused on the employer responsibility requirement, I want to point out something about the individual responsibility requirement as well. Today's New York Times, as I know my colleague from Wisconsin, Mr. Kind, mentioned earlier, highlights that in New York's marketplace, individual policies are expected to see a rate drop of 50 percent or greater.

That is a huge success of the Affordable Care Act, or ObamaCare, because the major thing that has changed in New York's market is the addition of all those healthy people into these plans. This is a tangible success, and proof that all the doom and gloom of my colleagues on the other side is not likely to come to pass.

I believe that most employers will continue to offer health insurance coverage. My Republican colleagues want to use the ACA as a scapegoat for business decisions that may well be happening irrespective of health reform. But I am confident that the overwhelming majority of businesses who offer coverage today without any requirements will continue to do so.

Mr. Iwry, are there not a number of surveys suggesting that employers will continue to offer coverage?

*Mr. Iwry. Mr. Crowley, we do think that there is a good reason to believe that employers that have been offering coverage will indeed continue to offer coverage in 2014, that employers will not drop coverage in 2014 simply because of the one-year transition relief with respect to the employer reporting and because of the employer reporting with respect to the employer responsibility.

*Mr. Crowley. And it is not just your believe, I want to point out for the record. A survey by the International Foundation of Employee Benefit Plans found that most employers, 99 percent of employers, will continue to offer coverage. Is that not true or correct?

*Mr. Iwry. Congressman, I do not have that survey in front of me. But be happy to review it and get back to you on that. But that is consistent in general with our expectation that employers will continue to provide coverage.

*Mr. Crowley. Thank you, Mr. Iwry. Clearly, employers view providing health insurance as good for business and will continue to do so. In a recent survey, over two-thirds of employers said they value offering health insurance because it helps them retain current employees as well as attract future employees.

Having healthy employees is also important for reduced absenteeism and increased productivity, which I know my Republican colleagues would all support. So I thank you,

Mr. Iwry, for your testimony today. If you have anything more to add, I would yield you time, if you have more additional information you want to provide.

*Mr. Iwry. Mr. Crowley, I would add I think it is important to note that another reason that employers have been providing health coverage to such a great extent, and another reason to expect employers to continue doing so in 2014 as they look to the 1/1/2015 implementation date for the employer responsibility provisions, is the very considerable tax advantages associated with employer-sponsored health coverage, that is, the employee's ability to not recognize income on the value of the employer coverage provided to the employee, the income tax exclusion, the payroll tax exclusion, and the employer's payroll tax exclusion for the employer-sponsored health coverage.

Those advantages have continued and will continue throughout to make it particularly advantageous for employers to provide coverage, in addition to the factors that you mentioned.

*Mr. Crowley. Thank you, Mr. Iwry.

And Mr. Chairman, once again thank you for allowing me to participate in the subcommittee hearing. Thank you. I yield back the balance.

*Chairman Brady. You bet. Thank you.

Dr. Boustany?

*Mr. Boustany. Thank you, Mr. Chairman. And Mr. Iwry, thank you for being here today.

You are widely acknowledged as a preeminent employee benefits lawyer in this country, and I know you have spent three-plus years working on the regulations attendant upon the statute dealing with the employer mandate.

You, the Administration, now have acknowledged it is not ready, not ready for prime time. Clearly, it is complicated. You have a talented team around you. You are one of the preeminent lawyers in this area. And yet there is an admission it is not ready.

You have met with industries, various stakeholders, and all of this, as have we. We have heard lots of testimony on this. And so I just want to run through a couple of industry sectors and get your opinion, basically a yes or no.

Do you think that the employer mandate statute would have a particularly large impact on employment practices for the franchise industry, franchisees? I mean, we have seen a lot of reports and various articles about this.

*Mr. Iwry. Congressman, you are asking whether we think that the employer requirements --

*Mr. Boustany. Yes.

*Mr. Iwry. -- would have an impact on --

*Mr. Boustany. Their employment practices, their hiring. Will it affect the franchise owners? Will it affect restaurants, individually-owned restaurants? What about retailers? Grocers? Small businesses?

*Mr. Iwry. Right. All of the franchise operations and small businesses, restaurants and so forth, that have fewer than 50 employees, as defined in this legislation, would be completely unaffected.

*Mr. Boustany. No. I understand that. But what about those right at that mark? What about those that are just above? Do you acknowledge that many of them are shifting to part-time employees to try to work with this statute as it is implemented?

*Mr. Iwry. Congressman, I do not think we have seen evidence yet that a lot of these employers are in fact shifting. Clearly there has been conversation about whether they would, to what extent.

*Mr. Boustany. We are seeing it in our congressional districts. I mean, we are hearing it directly from employers who are making those kinds of changes. And so I guess I would follow up with this. We have slow growth. Record unemployment. People are not looking for work. People are out of work, particularly in the younger demographic.

What does a one-year delay do on this when you have acknowledged it is very complex, you have been at it over three years, and you have not come up with the final package on how this is implemented? Health care is complicated enough, and yet now we are putting this additional, very complex set of regulations, potentially, on these business owners in a very sluggish economy.

What is one year going to get us? What kind of certainty will that provide for these business owners?

*Mr. Iwry. Congressman, we have been in very close touch with business owners -- small business, large business. We have had many, many conversations at the nuts and bolts level about how this law would potentially affect them and about what we can do to make it more workable, as workable as possible for them, and as easy as possible for them to work with and help their employees get coverage.

What we have done as a result of all that is to actually be ready. We have put out employer responsibility rules and employers --

*Mr. Boustany. But you are not ready because you have asked for a one-year delay on this. We are trying to understand, what does a one-year delay get us after three years of

very hard work trying to put this in place? To me, it is an admission that we have something that is far too complex and probably should be repealed.

*Mr. Iwry. Congressman, the one-year delay is in response to the employer requests for more time for them to adapt their systems of information reporting and for us, if we can, to find a way to simplify or streamline that particular aspect of the employer requirements, if we can find more ways to make it easier and more cost-effective for employers that are already providing coverage to their employees.

*Mr. Boustany. That is a very big "if." That is a very big "if."

*Mr. Iwry. Congressman, we have had a good experience working with employers and finding creative ways to make the other employer requirements more workable. We hope to do the same, if we can, with respect to reporting.

*Chairman Brady. All time has expired.

The topic of this hearing was the delay in the employer mandate and the fairness and equality of treating workers differently than the treatment of businesses. I want to thank you, Mr. Iwry, for being here today.

Since you were not informed of the key elements of the timetable earlier in testimony, you agreed you would provide promptly in writing to the committee when the Treasury Department made the final decision on the employer mandate, when they informed the White House of this decision, when they informed the HHS, and the answer to the question of, were any Members of Congress or the staff notified of this decision ahead of the blog post.

I would encourage you to provide that promptly within the week, a week, to this Committee. Agreed?

*Mr. Iwry. Mr. Chairman, we will certainly be happy to respond to your request. I cannot speak for the whole Department in terms of the exact timing for details, but we will be happy to work with your staff and cooperate.

*Chairman Brady. We figured that out with -- thank you.

As a reminder, any member wishing to submit a question for the record will have 14 days to do so. If any questions are submitted to Mr. Iwry, we ask the witness to respond in a timely manner.

With that, the subcommittee is adjourned.

[Whereupon, at 11:54 a.m., the subcommittee was adjourned.]