

Hearing on the Treasury Department's Final Employer Mandate and Employer Reporting Requirements Regulations

HEARING
BEFORE THE
SUBCOMMITTEE ON HEALTH
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

April 8, 2014

SERIAL 113-HL10

Printed for the use of the Committee on Ways and Means

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C O N T E N T S

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WITNESSES

Mr. Charles P. Blahous Ph.D.
Public Trustee, Social Security and Medicare Boards of Trustees

Witness Statement [[PDF](#)]

Mr. Robert Reischauer Ph.D.
Public Trustee, Social Security and Medicare Boards of Trustees

Witness Statement [[PDF](#)]

Hearing on the Treasury Department's Final Employer Mandate and Employer Reporting Requirements Regulations

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

The subcommittee met, pursuant to call, at 2:00 p.m., in Room B-318, Rayburn House Office Building, Hon. Kevin Brady [chairman of the subcommittee] presiding. [Advisory](#)

Chairman [Brady](#). This subcommittee will come to order. Today's hearing will examine two very important and complex regulations implementing the reporting requirements of the Affordable Care Act mandates on local businesses and workers. These regulations are long overdue. Businesses have been forced to wait 4 years since the passage of the law for the Treasury Department to finalize these rules. In the meantime, the regulatory process has set off controversy, political firestorms, and executive delays, and most importantly, this process is again raising the question of fairness.

Why is big business receiving better treatment than individual Americans? Why is it fair to enforce some of the law but not others? And why is it fair to force some to comply while others are getting passes and delays? Another significant question that needs asking, and we will be hoping you answer today, what does any of this have to do with true healthcare reform? For all the problems that did exist in our healthcare system prior to the Affordable Care Act, the voluntary employer based system was working. 160 million Americans received coverage from their employer, the largest source of health coverage in America.

The worse part about these regulations, they do nothing to lower the cost of healthcare, the purported purpose of the Affordable Care Act. Instead, this law adds layers upon layers of new costs, burdens, and concerns about the privacy of government, forcing businesses to gather and report private information about workers' healthcare. I know workers aren't really comfortable with the IRS gathering and holding data on their personal healthcare insurance decisions and their family's for their lifetime. Why does the government need to know and track that? Survey after survey of companies and health benefit experts show employers believe the ACA will add to their cost, not lower them.

Unfortunately, local businesses must now keep track of such new terms as look-back period, stability, aggregation rules, and minimum value. To ensure they follow these burdensome government requirements, they will worry if their healthcare plan meets the Federal Government's definition of affordability. They must now develop reporting systems, invest in a new information technology system, and worry about security of personal data about their workers and their workers' families they will be required to entrust to the scandal prone IRS, and they must grapple with the reality that the information they collect and transmit to the Federal Government will be the main proof the IRS uses to enforce the wildly unpopular mandate that workers must buy government approved healthcare or pay a tax against their own employees.

Our witness today is Mark Iwry, a senior advisor to the Treasury secretary and acknowledged expert on employee benefits law. I appreciate you coming back to the committee to discuss these important issues. I am confident that Mr. Iwry will be able to answer any questions about the technical detail of both regulations.

But Mr. Iwry, here is my practical concern. I believe you are the only person in America who is capable of understanding these regulations. I am confident you understand how they relate to specific employer/employee relationships and arrangements, but I seriously doubt many companies do.

I know the business owners in my district with multiple franchises, low profit margins, and high worker turnover have little idea how all this is supposed to work. I know they most likely don't have the extra money lying around to invest in the IT required to comply with the information reporting requirements.

These are complex issues, and that is why the White House delayed the mandate on companies, but a 1 year delay does not make any of this less complex, for the businesses in my district or anyone else's, so I ask, what does anything have to do -- this have to do with true healthcare reform that lowers healthcare costs?

Finally, the American people still have not been given an adequate answer about questions of fairness. We understand the mandate on businesses is costly. That is why you gave big business a break. Why is it fair to not give the same break to individual Americans and their families? Many families are frightened by the Affordable Care Act; the new plans they didn't want, the higher premiums, the doctors, and hospitals they can no longer see.

They are not alone. Congressional Budget Office has stated that 8 million Americans are going to lose their healthcare insurance at work as a result of the Affordable Care Act. That isn't fair and it certainly isn't healthcare reform. These are the questions surrounding these controversial reporting regulations. We hope to gain more insight today.

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

I now recognize Ranking Member Dr. McDermott for his opening statement.

Mr. McDermott. Thank you, Mr. Chairman.

Well, you heard a good deal of wringing of hands here and those gnashing teeth from the Republicans about this hearing today, about how the ACA is unworkable. Of course, this is all fantasy. It is another stunt cooked up by the Republicans to satisfy the extremist of the Koch brothers and the producers at Fox News. Let's start with some facts.

Thanks to ACA, every American now has health security because they can no longer be locked out of the market or discriminated against because of a pre-existing condition. More than seven million people have signed up for health insurance through the federal and state based marketplaces. More than 11 million have been determined eligible for Medicaid between October and February this year, and three million adults are now covered by their parent's coverage. These are real people, real stories, real progress, not actors, paid by extremist PAC money to appear in fraudulent GOP attack ads. Sorry, the fight has been lost for the Republicans on ACA. The law is succeeding, and all the focus here is about the ACA are not going to change that. These bogus hearings like today's proceedings only delay the inevitable.

What you are hearing argued today is, the government shouldn't have given time to business to implement it. If we had went ahead and done it, then the claim would have been we ran too fast, so it sort of like is the porridge too hot or is it too cold or is it just right. This day is coming when the Republicans will attempt to

destroy the ACA by spinning and turning to fix it or be loving it to death, but today, the cries are about employer responsibility regulations, which were designed by the Treasury to help employers transition to the new ACA requirements. Certainly you ought to be able to acknowledge that truth, that the economy has improved since the ACA became the law.

We got eight million new jobs since the ACA came, and you could say it is because of ACA. I won't but some could. Today's Republican cries certainly won't acknowledge that this week's Gallup Poll confirmed that the uninsured rate in America is the lowest since 2008. This reduction to an uninsured rate of 15 percent is driven by the coverage enrollment under ObamaCare.

Declines in the uninsured rate were largest among low income and black people in this country. Instead, Republicans will surely offer up again a series of mistruths and half truths and misinformation, so be clear, the CBO has definitely stated that there is no compelling evidence that part-time employment has increased as a result of ACA. We can also be clear that the ACA eliminates job lock, empowering Americans to change jobs, to become entrepreneurs, and to leave work to take care of a child or a sick loved one.

But most importantly, Republican misinformation has nothing to do with the story of a constituent of mine named Ingrid. In 2008, she had a terrible fall in her home. She was rushed to an emergency room where she was cared for and her life was saved. Yet Ingrid was struck with a \$23,000 hospital bill, which she didn't have. She couldn't afford health insurance. A few months later she was forced to sell her home to pay off the hospital bill. Today, she is happy, healthy, and covered because of ACA. She no longer has to choose between food on her table or life-sustaining medicine. She doesn't have to make that choice. Due to the health security act, she has both.

So, before Republicans who have to plan to replace -- whoever will plan to replace ACA, join the real world and inevitably drop this sad effort to kill a law that saves lives and saves money, they will stage a few more repeal votes, I am sure, on the floor. This won't be the last one, we will have hearings, because they will not give up the attempt to deny that it is the law of the land and it is working.

They will likely expend a little more elbow energy trying to throw Ingrid off and the millions others back into the cold harsh winter of no health coverage, no peace of mind, and no protection. I can't wait for the day when we can get to work actually fixing the things in the law that need to be fixed, and that day will come as sure as I am sitting here.

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 department assistant secretary for Retirement and Health Policy, U.S. Department of Treasury, Mr. Iwry, you are recognize for 5 minutes.

Mr. Iwry. Mr. Chairman, thank you.

Ranking Member McDermott, members of the subcommittee, I appreciate the opportunity to testify on the recently issued final regulations regarding the employer shared responsibility provisions and the information reporting provisions of the Affordable Care Act.

The employer responsibility provisions are contained in section 4980H of the Internal Revenue Code. Final regulations under section 4980H were published in February. Excuse me. The information reporting provisions for employers and insurers are in section 6056 and 6055 of the code, and final regulations relating to information reporting were published last month and will be used to help administer the employer and the individual shared responsibility provisions and the premium tax credits.

The final regulations provide employers with the guidance they need to comply with the employer responsibility provisions and provide flexible and practical means of doing so. Before developing the proposed regulations, Treasury issued 4 successive notices describing potential approaches to implementing the employer responsibility provisions and invited public comment on each. The comments and comments on the proposed regulations from a wide range of stakeholders were considered carefully in developing the final rules.

The rules contain various simplifications, including an optional look-back measurement period to make it easier and more practical for businesses to determine whether employees are full-time, if their hours vary between full-time and part-time, and if they are seasonal employees.

This look-back measurement period was designed based on existing employer healthcare practices to be helpful and administrable. The rules also provide 3 optional alternative safe harbors that make it easy for employers to determine whether the coverage they offer is affordable to employees, and the final rules provide guidance, largely prompted by comments on the proposed regulations on whether employees of certain types or in certain occupations are considered full-time, including volunteers such as volunteer firefighters and first responders, seasonal employees, and adjunct faculty.

While about 96 percent of U.S. employers are exempt from the employer shared responsibility provisions because they have fewer than 50 employees, for the 4 percent of employers to whom the provisions do apply, the rules provide a gradual phase-in which is described in my written statement.

With respect to information reporting, many of the comments received before and after issuance of the proposed regulations urged that the final rules provide streamlined ways to comply, especially for employers offering highly affordable coverage to all or virtually all of their full-time employees, and many comments requested that the rules permit use of a single form for self-insuring employers that are reporting under both section 6056 and 6055.

Accordingly, the final regulations were issued with a view to simplifying and streamlining the proposed reporting rules to make them as practical and workable as possible, consistent with effective implementation of the law. That includes the need to provide individuals with the information that they need to complete their tax returns accurately for purposes of the individual shared responsibility provisions and potential eligibility for the premium tax credit, and providing the IRS with the information it needs for effective and efficient tax administration.

Final rules contain several key simplifications. Employers that self-insure will have a streamlined way to report under the both employer and the insurer reporting provisions using a single consolidated form. In addition, employers that make a qualifying offer to any of their full-time employees are provided a simplified alternative to reporting monthly employee specific information on those individuals.

Together with the other agencies in the executive branch, Treasury is implementing the Affordable Care Act to provide affordable, quality, health coverage for millions of American families.

We welcome the opportunity to continue our work with the committee to achieve those objectives.

Thank you, Mr. Chairman, and I look forward to answering the committee's questions.

Chairman Brady. Thanks, Mr. Iwry. I know you have worked very close with businesses to implement the mandate on companies and their reporting requirements. Treasury has received compliments from employers on the work on the mandate, not so much about the reportable requirements, and these employer groups you worked with most closely that are the most upset about these new reporting requirements. In other words, they aren't misinformed. They understand the rules.

The retail industry leaders association call these regulations mind boggling for businesses of all sizes. National Restaurant Association described the regulations as overwhelming, it will create a morass of confusion for restaurant operators, typical small businesses in our communities.

I assume you believe you did the very best you could, so is there a problem with the Affordable Care Act that needs to be changed to make this workable or did Treasury get the regulations wrong?

Mr. Iwry. Mr. Chairman, first of all, I would suggest that the employer reporting regulations, are not excessively complex. The final regulations do provide simplified reporting methods that we expect many employers, especially when they have time to study and digest the rules, will be able to use. For example, an employer making a qualifying offer to full-time employees would be able to report in a very summary fashion. Employers that are self-insuring will be able to use a single consolidated form for the 6056 and the 6055 reporting, and for employers that don't qualify for the simple simplified reporting methods, we don't think that in fact the reporting rules are asking for more than is reasonably necessary to administer the statute.

At the employer level, name and address and employer I.D. number, contact person, basic information necessary to check compliance. At the employee level, generally, the individual's offer of coverage, whether they received an offer of affordable minimum value coverage from the employer, whether they took the offer, whether they enrolled in it, and if the individual is going to apply for a premium tax credit, we need to know whether the employer did make them an offer that would preclude them from eligibility for the premium tax credit.

And Mr. Chairman, since these credits are available on a monthly basis, the information reporting is monthly, but we made the greatest effort we could to simplify and to try to streamline talking to a lot of employers, employer organizations, in the process. Where it is possible not to use month-by-month reporting, we provided an option to just have a one code for the whole year if the information is sufficiently uniform across the year. If it is possible to avoid detailed information such as what was the dollar amount of the offer to the employee, which the statute asks for because the employee would not be entitled to a premium tax credit if they had an offer from the employer that was affordable, that was not more than 9.5 percent of their household income.

We have looked for ways to help employers avoid having to do any work that could be avoidable, to incur any cost that might be avoidable or might be reduced. If an employer makes an offer that is sufficiently affordable to the individual, they wouldn't have to indicate what the dollar amount the individual would have had to pay is, as long as it is below an amount that would preclude the individual from being eligible for a tax credit, in any event.

We are just trying to look to the bottom line, Mr. Chairman, in order to streamline things as much as possible for the business, and that includes, of course, small as well as larger businesses.

Chairman Brady. Mr. Iwry, I don't question your intention or the hard work you did to put these together. That is not at issue here, but I have read the simplified approach, and coming at it from a chamber of commerce background working with local businesses having filed these myself, even the simplified form approach, extremely complex, and I think burdensome and so limiting. I predict very few businesses will be able to use that approach. I just tell you that from my viewpoint.

So, a couple of quick points. You last testified before this committee on July 17th in the wake of the Treasury blog post "Delaying the Mandate on Businesses." You explain the command of the Treasury believed it had the authority under IRC 7858 to delay the employer mandate.

We asked several times in a straightforward question if that gives you the authority to delay the employer mandate, does it also give you the authority to delay the individual mandate, if that was the policy the White House chose to pursue. At the time you said we have not analyzed the question. I know we have had

9 months to look at this issue. So at this point, 9 months later, what was the result of your analysis? Do you have the authority to delay the mandate on individuals and families?

Mr. Iwry. Mr. Chairman, thank you for that question.

What we have done has been to take back the comments of the committee at that hearing, raising the question should the individual responsibility provision be the subject of transition relief as well? We had thought about that carefully before the hearing, of course, but because the committee was interested in that and raised the question again, we considered it further and concluded that there is not good reason to delay individual shared responsibility, and if I could share our thinking with you, Mr. Chairman, first of all --

Chairman Brady. Can I ask this because I think we recognize you decided not to provide that same fairness for individuals, and I know you have a list of reasons why, but the question is, do you have the authority to delay that mandate for individuals?

Mr. Iwry. Mr. Chairman, if we don't believe that it is appropriate to be delaying that provision, if we believe that it is actually fair to individuals to keep that provision in place because it helps protect them from preexisting condition exclusions, from various aggressive practices that used to be possible in the insurance industry in the market, then we don't reach the question whether we have legal authority.

There are a lot of things that we don't think we should do. We can't be, and wouldn't be considering whether we have the same authority that we have with respect to the employer responsibility where there is good reason to have given stakeholders the additional time that they very much asked for. There is good reason there to consider whether we had authority to do what was necessary.

In the case of the individual responsibility provision, individuals who can't afford to pay that, don't have to pay it. As you know, sir, there is a hardship exemption that HHS can provide for people who can't afford it. People who can't afford the coverage but want the coverage, they can get that through premium tax credits or Medicaid, so we did not see a reason to --

Chairman Brady. So the point being is that --

Mr. Iwry. -- provide more phase in.

Chairman Brady. -- you have chosen not to for the reasons outlined, but the question still is do you have the authority to. You didn't have the authority to extend tax credits to those outside the exchanges, you did that. So you didn't have the authority to extend the deadline for signing up, but you did that.

So a basic question again is, do you have the authority, whether you choose to use it or not, to extend the individual mandate?

Mr. Iwry. Congressman --

Chairman Brady. In your view. Because I know 9 months ago you assured us you would analyze it and get us back that answer, so what is the answer to the question.

Mr. Iwry. Congressman, we did analyze whether there was any reason to extend the time for the individual responsibility provision, beyond the statutory phase in or extension that is provided for 2014 and for 2015, such that the provision does not apply fully until 2016.

So, on top of that statutory phase in, as you know, 1 percent of pay this year; 2 percent, 2015; 2.5 percent, these are the maximums, by 2016. So the statute has phased that in.

We don't see a reason to add administrative phase ins on top of the statutory phase in, and indeed, we do think, Mr. Chairman, sincerely that this individual shared responsibility provision makes possible the key insurance reforms which have had even bipartisan support in Congress.

Chairman Brady. Sure. So, do you have the authority, should you choose to, to extend the individual mandate, to delay it?

Mr. Iwry. Mr. Chairman, that is a question that we don't reach because we do not believe that we have any cause to or that we should delay it, and therefore, we don't have the predicate for entering into the analysis of whether we would have legal authority.

There are so many other things that we do not believe we should do. We certainly don't reach the question in those other areas, whether we have the legal authority to do something that we believe is unnecessary.

Chairman Brady. Have you done -- since you chose not to, have you done the analysis? Maybe we will go back to when you told us you would go back and do the analysis, did you do that?

Mr. Iwry. Mr. Chairman, again, what we did was to --

Chairman Brady. No, I recognize -- the good news is you are talking to a committee that has been following your work very closely, but did you go back and do the analysis on the authority to extend it?

Mr. Iwry. We don't think we have the authority to extend something that -- a provision that -- where there is no need. There is no need in terms of administrability. Individuals can fill out their tax forms to indicate very readily whether they have paid their -- whether they have coverage, and if they don't, whether they are exempt, and if they are not exempt, to make the payment. The tax forms are easy for individuals to complete in that regard. Lord knows I am not suggesting our tax system as a whole is simple or easy to navigate, but this particular task for the individual is not a difficult task.

Employers, by contrast, in complying with the employer responsibility rules, have more to deal with. They are providing the plans for all of their employees.

Chairman Brady. So, I just want and I want to give you plenty of time to answer, so you could do it in very clear way. So your answer is you do not have the authority to extend the individual mandate because you don't see the need to?

Mr. Iwry. Well, Mr. Chairman, let me make clear. I am not one of the practicing lawyers at the Treasury Department. My role is not to do the legal analysis. I am not a policy person, but I am --

Chairman Brady. But the analysis -- and I'm not -- you did do the analysis as promised?

Mr. Iwry. Mr. Chairman, I would like to go back, if I may, to the hearing record and to the transcript to make sure that I am understanding what we undertook.

Obviously, we are happy to help you and to be cooperative in your important oversight work, so if I am misunderstanding what we agreed to do in July, then that is on me, Mr. Chairman.

Chairman Brady. But absent that -- I mean, at the time they said we have not analyzed, we are going to do that.

Simple question, did you do the analysis?

Mr. Iwry. I did not do a legal analysis of the authority to extend a provision that we don't believe should be extended, and it would not be good for the American people to extend.

Chairman Brady. If you have done the analysis, you would be glad to forward that to us? If it has been done as of this date, you would be glad to share that with the committee?

Mr. Iwry. Mr. Chairman, I will be happy to go back to my legal counsel colleagues at Treasury. We have an excellent legal team, very experienced, very knowledgeable and take this question back to them and see what they have to say and then get back to you.

Chairman Brady. Perfect. Thanks, Mr. Iwry.

Mr. Iwry. Thank you, Mr. Chairman.

Chairman Brady. Dr. McDermott.

Mr. McDermott. I am a little puzzled by the line of questioning. It sounds like the way you operate in Treasury, I am not a lawyer either, so I'm going to share that with you. You decide is there something we should do to make this thing work, and then you look to see if you have authority to do that. Is that a fair shortcut to the answer of what you do?

Mr. Iwry. First, Dr. McDermott, if I may just clear something up of less importance. I am a lawyer but a recovering one, if I may say, and I am not part of the legal counsel team at Treasury. I am more involved in the policy, but if you could clarify your question for me.

Mr. McDermott. The question is, Mr. Brady went at you about seven different ways like a good reporter or a good lawyer about whether or not you had done the analysis about whether you had the authority, but your answer was, over and over again, I didn't -- we never got to that point because we didn't think it was something that needed to be done or even looked at. If it was something we thought need to be done, we would have then done the analysis can we do it. Is that fair?

Mr. Iwry. Mr. McDermott, I am in general agreement with the way you are approaching this. You know, the authority to provide regulations in general, under the tax code, including to provide transition relief on those occasions where transition relief is worth considering, is contained in the statute, section 7805(a) of the Internal Revenue Code, and the statutory language reads as follows: It says that the Secretary of the Treasury, and I quote, "shall prescribe all needful rules and regulations for the enforcement of the tax code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

In other words, rules that are necessary, including transition relief that may be called for, and the authority has been used to postpone the application, or to provide -- of new legislation, to provide transition relief with respect to the effectiveness, timing of new legislation, on various occasions, across administrations of both parties, for more than 2 decades. I am not aware of any instance where the Treasury Department provided a transition relief in a case where they believed that it was not appropriate to provide transition relief.

Mr. McDermott. I should hope not.

Mr. Iwry. And the list of examples, which is not a complete list that we provided to the committee in our testimony last year in July and then again in letters to the committee, examples of past exercises of this well established authority under 7805(a) of the tax code, exercises the Treasury discretion, to give transition relief, that list of instances, and again, I am sure there are more than that. That wasn't intended to be illustrative, are all instances where the Treasury concluded that there was a legitimate need for more time,

that stakeholders who were affected, taxpayers who were affected by the law would be able to implement it effectively if they had more time, and in some cases, the tax system as a whole would need more time in order to --

Mr. McDermott. Let me interrupt you. My time is almost gone.

I want to enter something in the record from the National Retail Foundation, which -- or Federation, which represents 42 million Americans, and their tax counsel says "the Administration" -- this is a quote, "should receive a gold medal for recognizing the enormous complexities of the Affordable Care Act and its agility and flexibility in working with retailers and others in crafting these much needed common sense reforms and provisions. Continuing simplicity, streamlining, and clarification of the Affordable Care Act are in the best interest of the employers and the employees and the Administration and the Congress. The National Retail Federation will continue its constructive conversations with the Congress and the Administration itself, plus members, with compliance."

It sounds like at least one business organization, a fairly large one, thought you did a good job in working out what needed to be done, and I think that is really what is necessary for people to understand here. You are talking about 5 percent of employers are covered by this, since 95 percent have less than 50 employees, and 95 percent of those already give coverage to their employees, so we are talking about a very small number of people who apparently the chairman hears from. I don't hear from them, frankly.

Chairman Brady. Thank you, Doctor. Without objection, the letter will be introduced.

[The information follows: [The Honorable Jim McDermott](#)]

Chairman Brady. The votes are occurring. I would like to ask Chairman Johnson to ask his question, and then we will recess after votes and reconvene after votes continue.

Mr. Johnson.

Mr. Johnson. Mr. Iwry, as you know I am chairman of the Social Security subcommittee, and one of my long-standing priorities has been to protect American Social Security numbers. This new health law requires the IRS to collect massive new amounts of personal information, including Social Security numbers, when identifying theft and privacy are growing concerns of all Americans. How many Americans will have their Social Security numbers collected, stored, and reported? All of them that are involved in healthcare, right?

Mr. Iwry. Mr. Chairman --

Mr. Johnson. Let me ask you another one if you can't answer that. Who will collect the Social Security numbers? Is it employers, insurers, or both?

Mr. Iwry. Mr. Johnson, regarding your first question, I believe that the Social Security numbers are now collected as part of the 1040 form that applies to -- that is filed by tens of millions of American taxpayers. We are happy to get you the exact number. My recollection is that there are more than 100 million tax filing units, and they provide taxpayer I.D. numbers, typically Social Security numbers, currently to the IRS.

Mr. Johnson. Well, how are we going to protect them? You know we are losing them.

Mr. Iwry. Sir, we share very much that concern. The importance of maintaining the security and privacy of the information is a high priority. The IRS has been very vigilant about that.

Over its history, and we all, I think, recognize as you are suggesting, sir, that recent events in the private sector, for example, underscore the importance of the point you are making that privacy and security are key, but we don't think that we are taking risks with privacy and security in the case of these reporting provisions.

Mr. Johnson. Well, but under this law, you are giving those numbers to your employer. Now we just give them to the IRS when we file our tax return. How are you going to protect those numbers?

Mr. Iwry. Mr. Johnson, many employers do have the Social Security numbers. Typically employers have the Social Security numbers of their employees now. We recognize, though, that there is a legitimate balancing here and that, you know, we agree with your concern that privacy and security of the personal data be treated with the utmost care and seriousness. And these reporting provisions are intended to give effect to that concern, and one way that they do that, one way that they do that, sir, is that when taxpayer identification numbers are provided as part of the Affordable Care Act reporting, for the purpose of making sure that the tax system is in fact running the way it should and that people are not being charged with individual responsibility payments. When in fairness they shouldn't be because they did have coverage or that people get -- in order to make sure people don't get premium tax credits that they are not entitled to under the law, the Social Security numbers or the other taxpayer identification numbers that are collected for the purpose of making sure that the tax administration is proper and appropriate, those are provided by the employer or the reporting entity -- it could be an insurance company, to the IRS -- and a statement is provided to the individual, to the employee as well.

But that statement, which is the document that might otherwise present more of an issue here because it is not going through that existing safe channel from employers to the IRS, that statement will have a truncated, a truncated taxpayer I.D. number.

In other words, those are the numbers that many of us now see on our documents that have some of the digits of the Social Security number and then the rest Xed out for security so that if that statement falls into the wrong hands, the Social Security number is still secure.

Mr. Johnson. Well, that is not very convincing. I think it is going to be tough to assure every American that their most private information is safe from criminals because they are attacking us every day.

Thank you, Mr. Chairman.

Chairman Brady. Thank you, Mr. Chairman.

We are short on vote time. We will recess after the votes.

[Recess.]

Chairman Brady. Let's reconvene the hearing.

Thanks for being patient, Mr. Iwry, appreciate it very much, and the audience as well.

So, the chair recognizes Mr. Pascrell.

Mr. Pascrell. Thank you, Mr. Chairman.

Good morning, good afternoon, and good evening. Open enrollment began October the 1st. More than 7 million Americans have enrolled in private coverage and 3 million have enrolled in Medicaid or the Children's Health Insurance Program. Yesterday, Gallop announced for the fourth straight time that the rate of uninsured Americans has declined and is now at the lowest level recorded since 2008.

Before the ACA, many people were paying for plans that didn't provide them with the coverage they need, the plans they purchased at high out-of-pocket costs, pocket costs and artificially low caps on coverage. Americans were denied coverage for preexisting conditions, and insurance companies arbitrarily increased their premiums to the point where they couldn't afford insurance. My colleagues on the other side refuse to acknowledge any benefits that have resulted from this law.

Let me interject this. Back 9 years ago when we passed that Part D in an excruciating vote 3 o'clock, 4 o'clock in the morning. I don't know if you remember that. But at that time, if you remember what happened after it, Democrats mostly voted against it. Republicans voted it, and the reason why we passed it were your votes. Most of us had campaigned against it before the vote. And what did we do? We went back into our districts.

I remember the first three towns I went to, Clifton, Wayne, and Nutley, in my district at that time, and talked and said, look, I was against it, but this is going to be a good benefit down the road, it has got some kinks, it has got some problems, but we will work those things out over the years. And my brother Tom Price said at the time, at the beginning of Part D rollout, most American people heard only about what was wrong with the program. Doesn't that sound familiar?

My good friend Sam Johnson I worked very closely with this year, said to CMS officials, you guys have done a super job. So, despite what had happened, automatic enrollment of dual eligibles took us into 2, 3, 4, 5 months after the passage. There were serious, serious problems.

Low income beneficiaries were not receiving the payment assistance that they were eligible. There was big confusion about those roles. States had to step in to pay for seniors' drugs. In fact, in New Jersey, they had to come up with \$20.6 million because the rollout was not working.

Enrollment wasn't nearly what it needed to be, what they expected it to be. By February, late February of 2006, only 5.3 million seniors had signed up, where nearly 20 million seniors were without drug coverage.

Now, let me say this, Mr. Chairman, this hearing is simply another attempt by your colleagues to spread misinformation, chip away at the ACA, to distract from the fact that this law has already helped millions of Americans get quality affordable -- you know, admit that some things are right. We have admitted that some things are wrong. Can't you bring yourselves to that so that to work together, think how many more people would be enrolled?

If the governors would have not been complicit, been cooperative, think how many more people would have been enrolled? If the governors who chose not to accept Medicaid money into their coffers of their own state to help the poor, think how many more people would have been enrolled in Medicare over the 3-and-a-half million that are enrolled since this program went into effect?

Most disappointed to see delays related to the Affordable Care Act. I appreciate Treasury's desire to make sure the employer responsibility provisions are well crafted and incorporate the feedback of the business community in other stakeholders before moving forward with implementation. From my perspective, the final rule published by Treasury in February, addresses a number of concerns that I have heard from the business community.

Mr. Iwry, can you please discuss Treasury's process for soliciting feedback from the business community and other stakeholders, and Number two, can you tell the committee what some of that feedback was and how Treasury addressed the stakeholders' concerns? That is the bottom line.

Chairman Brady. Mr. Iwry, we have about 5 seconds left in the time allotted, so perhaps you could do it by a letter to Mr. Pascrell and the committee, would be helpful.

Mr. Iwry. Happy to do that, Mr. Chairman.

Chairman Brady. Your time expired.

Mr. Gerlach.

Mr. Gerlach. Thank you, Mr. Chairman.

I want to refer back to our colleague Mr. McDermott's opening statement, when he said that it is fantasy, pure fantasy that the Republicans contend that the ACA is unworkable. If that is the case, why did you do these delays?

Mr. Iwry. Mr. Gerlach, we do not believe that the ACA, the Affordable Care Act is unworkable. The reason we did provide transition relief in accordance with Treasury's authority to do so under the tax code, with respect to the employer shared responsibility provisions is that stakeholders made the case to us. Businesses --

Mr. Gerlach. That it was unworkable to them?

Mr. Iwry. Made the case to us, sir, that with more time --

Mr. Gerlach. Why did they need more time?

Mr. Iwry. With more time they would be able to better adapt their reporting systems, they --

Mr. Gerlach. So under the timeframe that the law allowed, they did not have the time to conform their systems to what was being required of them; that is why they requested more time?

Mr. Iwry. Congressman, the business community started out in dialogue with us on what their top priorities would be --

Mr. Gerlach. I am just asking why did they solicit and seek more time that these delays now allow them, why did they seek more time? And you apparently, as the department, assented to that --

Mr. Iwry. Right.

Mr. Gerlach. Assented to that and you gave them more time.

Mr. Iwry. We did, sir. And the reason they sought more time, as it was explained to us on many occasions, was not generally that they thought they could not comply but that they thought it would be much more effective, it would be much less difficult if they have the time to study the rules, to digest them, to adapt their systems, whether it is for collecting information or expanding their plan to cover people.

Mr. Gerlach. Did they ever explain to you that they would have to put more manpower into complying with the regulations? Did they explain to you it would cost more money for them for information technology changes? Did they talk to you about the increased cost that they would experience for legal charges and accounting changes? Did they explain all of those items that would make it very, very difficult for them to comply with the law the way it was written?

Mr. Iwry. Congressman, starting as long as 3 years ago when we began an intensive dialogue with stakeholders, the business community as well as other stakeholders, the points were made that if the rules

were not made simple and administrable enough, then they would impose costs that might otherwise be avoidable.

Mr. Gerlach. Did you ever seek then to try to independently assess what the implication, what the increased cost would be on the employer community that is affected by this employer mandate? Did you go out and do an independent study that is something similar to the American Health Policy Institute study on large employers that this ACA, over 10 years, is going to increase their cost by 151 billion to 186 billion?

Did you do any independent assessment as a department about what the increased burdening of this mandates would have on those employers of over 50?

Mr. Iwry. Congressman, throughout the Treasury's notice and comment rulemaking process --

Mr. Gerlach. Did you do a study, sir?

Mr. Iwry. We assess, do our best --

Mr. Gerlach. Sir, did you do a study, independently, to determine what the increased cost would be on those over 50 employees to determine what they would experience under these mandates? It is a very simple question.

Mr. Iwry. Congressman, we talked and listened to --

Mr. Gerlach. I know you talked and listened. You said that over and over again. Did you do an independent study? Would you please answer the question?

Mr. Iwry. Congressman, I would be happy to answer it.

Mr. Gerlach. Please do.

Mr. Iwry. I am not aware of --

Mr. Gerlach. Thank you. You are not aware of any independent study. Is that your answer?

Mr. Iwry. I am not aware of a Treasury Department study of the cost of --

Mr. Gerlach. Thank you. Why do you think that was not done?

Mr. Iwry. -- the employer responsibility provision.

Mr. Gerlach. Why do you think that was not done if there was no study done? Why? Why didn't you do that to independently determine what the impact of this law was going to have on those employers?

Mr. Iwry. Congressman, we were getting a considerable amount, considerable amount of specific feedback from employers --

Mr. Gerlach. So it was unnecessary?

Mr. Iwry. -- all through the process.

Mr. Gerlach. So it was unnecessary?

Chairman Brady. Mr. Iwry, all time is expired. Perhaps you can answer that by --

Mr. Gerlach. I will follow up with some additional questions, Mr. Iwry, if I may, and I would appreciate your very specific response to the questions.

Mr. Iwry. I will be happy to respond.

Mr. Gerlach. Thank you.

Chairman Brady. Dr. Price.

Mr. Iwry. Thank you.

Mr. Price. Thank you, Mr. Chairman, and thank you, Mr. Iwry, appreciate you being here.

Dr. McDermott opened his comments by saying that he felt this was a bogus hearing; do you think this is a bogus hearing?

Mr. Iwry. Congressman, I think the committee has an important oversight role to play with respect to Treasury Department, and I very much respect and I know the Treasury Department and the IRS very much respects the committee's prerogatives and the committee's important role and function in oversight.

Mr. Price. And when requests are made of members of the executive branch, it is incumbent upon the executive branch to comply with those requests, isn't it?

Mr. Iwry. Congressman, certainly the executive branch, the Administration, and I can only speak for, of course, Treasury, in my case, but we view the requests of this committee with respect, of course, and we take the committee's requests seriously and view the committee's role as not only legitimate but important.

Mr. Price. Thank you.

You mentioned that this employer reporting requirement only hits 4 percent of employers out there. Is that an accurate statement?

Mr. Iwry. Mr. Price, the employer responsibility requirements, including the employer reporting requirements, apply to employers that have at least 50 full-time employees or full-time equivalent employees.

Mr. Price. About 4 percent. I have only got a little time.

Mr. Iwry. And that that is about 4 percent of the total number of employers in the United States.

Mr. Price. And how many employees is that?

Mr. Iwry. It is a considerable number of employees, and I would do not know offhand, as I is it here, the exact number, but I have seen the data, sir, and we would be happy to --

Mr. Price. That would be great.

Mr. Iwry. -- get you the exact --

Mr. Price. I think it is around --

Mr. Iwry. -- number of the best data that we have.

Mr. Price. I think it is around 90 million, I think, somewhere in that ballpark, but I would look forward to that response.

Mr. Price. I want to follow up on Mr. Gerlach's line of questioning. You mentioned, and I think this quote is accurate, that the request of the employers is, quote, "to get the basic information to check compliance", unquote.

Did you all -- I know you didn't do a study, but did you all estimate what that costs an employer to comply with that requirement?

Mr. Iwry. Congressman, you are asking whether we estimated what it would cost the employer to comply with which requirement?

Mr. Price. With the employer required reporting requirements on their employees, and whether or not they have been provided a -- been eligible for a subsidy or credit?

Mr. Iwry. We have not, to my knowledge, that is, I am not aware of the Treasury, and there may be some other --

Mr. Price. So it just wasn't --

Mr. Iwry. Maybe in the executive branch that did this, but I am not aware that Treasury went beyond the very intensive dialogue and --

Mr. Price. Would the fact --

Mr. Iwry. -- with the gathering from the business community.

Mr. Price. But you just didn't think it was important enough to do that.

Mr. Iwry. Congressman, we felt it was very important to --

Mr. Price. To hear from them.

Mr. Iwry. -- balance, to take the costs into account, and that is why we asked the business community --

Mr. Price. So what are the costs? I mean, you are going to take the costs into account, you have to know what the costs are, right?

Mr. Iwry. Certainly, and Congressman, depending on the specific provision, depending on how particular rules are simplified or the degree to which they are simplified, the cost is going to vary. The businesses themselves didn't have generally --

Mr. Price. I understand. I have got just a little time, and I want to get to another question.

Mr. Iwry. Yes, sir.

Mr. Price. This starts this year. There will be credits and subsidies that will be provided to employees based upon this information. There will be some errors made just because of the nature of the beast. When an error is made and an employee gets a subsidy or a credit that they are not eligible for in hindsight, is the IRS going to go back and get that money back from that taxpayer?

Mr. Iwry. Congressman, let me address that this way. The Affordable Care Act provides that if an individual obtains a premium tax credit based on information that turns out to be either not correct or not current and based on the current final information such as the income of that household for the year in which the coverage, and therefore, the premium tax credit was provided, the law provides for a reconciliation process in connection with the individual filing their tax return with the IRS. So --

Mr. Price. That means getting that money back from that taxpayer.

Mr. Iwry. There could be either an additional tax credit that the person is entitled to. If they claimed less than they were entitled to, for example, it might turn out that their income was actually lower than what was anticipated.

Chairman Brady. Mr. Iwry, I apologize --

Mr. Price. My time is expired.

I look forward to providing some questions in written form and look forward to a proper response.

Chairman Brady. Thank you very much.

Mr. Smith is recognized.

Mr. Smith. Thank you, Mr. Chairman, and thank you, too, Mr. Iwry, for your time here today.

Many Nebraskans have expressed their concern to me that many of the changes made to this healthcare law have been made without congressional approval, and I was wondering, is the Administration working on legislation that they would -- to propose before Congress to codify any of these changes that have already been made?

Mr. Iwry. Congressman, are you referring to the transition relief with respect to the employer shared responsibility provisions?

Mr. Smith. Really any of the -- can you agree that there have been many changes made or delays in timeframes and so forth that have been issued? Is the Administration working on anything to propose that in the form of legislation?

Mr. Iwry. Congressman, the Treasury Department, and I can speak for only with respect to Treasury since that is where I work, the Treasury Department has exercised its authority to provide various safe harbors for businesses and other stakeholders, transition relief for stakeholders of various kinds pursuant to its well established and long held authority. Under section 7805(a) of the Internal Revenue Code, we have authority to interpret the tax code and particularly, sir, when there is a new law, what the statute refers to as an alteration of the law relating to internal revenue, authority with respect to a new law to issue rules and regulations to give effect to it, and when we get the kind of credible comments from stakeholders that we received regarding the need for more transition relief in some cases or as much simplification and streamlining as possible, which we have tried our best to do in the case of the reporting as well as the employer responsibility regulation.

Mr. Smith. There are many folks who are concerned that the executive authority is not being used appropriately, and would the Administration be open to, from your perspective, be open to proposing legislation that would codify any of these changes?

Mr. Iwry. Congressman, the kind of practical common sense interpretations, of the tax statutes at issue that Treasury has provided in connection with employer responsibility, regulations, and the reporting regulations, are consistent with Treasury's existing statutory authority. That statute exists in the form of Section 7805A of the Internal Revenue Code as it has been in effect, not only recently, but for years and for more than two decades, sir.

Mr. Smith. So, no legislation would be necessary, is what you are saying?

Mr. Iwry. No legislation would be necessary, beyond since we have the legislative authority in 7805A to issue the rules and regulations that we have issued with respect to employer responsibility and employer an insurer reporting. That legislation is already on the books, and we have exercised it in much the same way that Treasury Department under previous administrations, both Republican and Democrat, have exercised that existing statutory authority.

Mr. Smith. Okay. Following up on Mr. Johnson's questions relating to the information associated with the Social Security numbers and other information, has the IRS tested if they have the ability to process and protect the gathering of the information that certainly I would think would be shared at a much greater velocity as there are more questions being asked on the tax returns relating to health care?

Mr. Iwry. Congressman, this is not a matter of personal health information being shared with the IRS. We are talking about --

Mr. Smith. But has the IRS tested the security of that information to your knowledge?

Mr. Iwry. I believe -- to my knowledge, sir, and I am at Treasury, I don't work in the IRS per se, but my understanding is that the IRS constantly checks its systems to make sure that the kind of security of information and privacy that the committee is expressing concern about and that the administration is likewise extremely concerned be kept, maintained in as tight a way as possible, as protective a way as possible for the American taxpayer and the American people in general, that the IRS continually makes sure that its systems are secure and do protect individual taxpayer information from breaches of security or breaches of privacy.

And, indeed, the current system where employers obtain Social Security numbers from individuals and where Social Security numbers are placed on the tens of millions of 1040 returns that are filed every year, the Social Security numbers on millions of 1099 reports, numbers collected by financial institutions and submitted to the IRS on those reports, that is all part of that system, and I know the IRS takes the utmost care with that.

Mr. Smith. Thank you, Mr. Iwry.

My time has expired.

Chairman Brady. Mr. Kind.

Mr. Kind. Thank you, Mr. Chairman.

Mr. Iwry, thank you for coming to provide a little bit of clarification today.

Take us back if you will as far as the Treasury's determination for the one year moratorium on the employer reporting requirements under Section 7805A, the transitional discretion authority, because it just seemed to me that when I heard the administration make the announcement for the one-year delay, it was based on the feedback that the administration was getting from the business community. In essence we are saying it is not that we don't want a report, it is just that we need more time to upgrade our systems and our software so that when we do report, we are going to be able to report as accurately as possible.

And I think to the administration's credit, you heard that feedback from the business community and said all right, fine then we understand this could be difficult in the initial stages, so we will exercise 7805 discretion with this and give you a little bit more time to upgrade your system so that you can report accurately a little bit. Is that close to the finding or the determination that the administration used as far as the one year delay in reporting?

Mr. Iwry. Mr. Kind, I agree with you. The factual predicates for the exercise of our well-established authority under the tax code to issue rules and regulations, including ones that would provide appropriate transition relief in connection with a change in law, that was very much a part of the factual predicate; and there were a whole variety of organizations from the plan sponsor community, including employer organizations with members that did not sponsor or have yet to sponsor health plans for their employees who asked for additional time.

And as you say, many of them indicated we are prepared to comply with this. Many of them said frankly we think this is a good law, we think that this will help the American people. Obviously there is a diversity of opinion on that in the business community, but many of them did say in any event, we know this is the law of the land, and we are prepared to comply with it. Please just give us additional time. And, Mr. Kind, that is not unusual.

When major legislation is enacted, I think one thing that probably everyone can agree on here, I would imagine, is that this legislation is major, this is big. When something is, when a significant reform is enacted, when major legislation is enacted, it is very common, very typical, for Treasury's notice and comment rulemaking process, to elicit very detailed, thoughtful, informative comments from the stakeholders, from the taxpayers, including the business community, that shed more light on how the statute needs to be applied, that shed light on the practical concerns or challenges that any major piece of legislation poses.

Mr. Kind. Just so we are clear, this is clearly not the first administration that has invoked section 7805A authority for transitional relief. In fact, I have had an opportunity to review in the past the letter the Treasury did submit to Chairman Camp of this committee highlighting some of the specific instances in the past where previous administrations have invoked this authority as well; is that correct?

Mr. Iwry. Mr. Kind, that is very true. We submitted a list of instances that illustrate that for more than the last 20 years, the Treasury Department has exercised its authority under 7805A of the tax code, to provide transition relief of various kinds to a limited degree, limited in scope, limited in time, with respect to a variety of new tax-related legislation.

And it has been very typical for the taxpayer community to say, no, you know, we have studied this law; and we now realize, particularly through the process of proposed regulations and comments, that everything is more complicated than it first appears. It is not just the Affordable Care Act.

Mr. Kind. Mr. Chairman, I would ask unanimous consent that that letter be submitted for the record for purposes of this hearing.

Chairman Brady. Without objection.

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

Mr. [Kind](#). Mr. Iwry, it just seems like the administration is in a tough position given the political debate surrounding the Affordable Care Act. You're damned if you do, and you're damned if you don't. If you don't provide some transitional relief, you are going to get criticized for doing that, and if you do provide relief, you are criticized for not helping make the program collapse because things just aren't ripe yet or timely in compliance.

So, I would encourage the administration to continue using the pragmatic discretion that you have working with the business community to try to make this work for all Americans.

Thank you, Mr. Chairman.

Chairman [Brady](#). Mr. Iwry, thanks for being here today. As you know, there are continued concerns about the cost in compliance for the regulations, so we are going to continue this dialogue going forward.

And, secondly, please do check on the analysis that was done on the authority. I would like to have that forwarded to the committee. I will follow with a letter to you to that effect.

So, again, thank you very much, and thanks for being patient during the votes.

Mr. [Iwry](#). Thank you very much, Mr. Chairman.

Chairman [Brady](#). This subcommittee is adjourned.

[Whereupon, at 3:55 p.m., the subcommittee was adjourned.]

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