



July 30, 2013

Honorable Paul Ryan  
Chairman  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515

Re: *Analysis of the Administration's Announced Delay of Certain Requirements Under the Affordable Care Act*

Dear Mr. Chairman:

This letter responds to your request that the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) assess the effect of the recently announced one-year delay in the imposition of penalties for certain large employers and the corresponding delay in the implementation of two reporting requirements for certain large employers and health insurance coverage providers under the Affordable Care Act (ACA).<sup>1</sup> On July 2, 2013, the Department of the Treasury announced that those penalties and reporting requirements would be delayed until 2015.<sup>2</sup>

### **How CBO Accounts for New Information in Its Estimates**

CBO typically updates its baseline budget projections at specific times each year to reflect legislative action, economic changes, and other developments. Generally, the budgetary impact of legislation being considered in the House or Senate is measured relative to the most recent spring baseline. Accordingly, the projections that CBO published in May of this year have been adopted by the budget committees as the official scorekeeping baseline for this Congressional session.

During the course of a year, however, events sometimes occur that are different from those anticipated in developing the baseline projections. In such cases, CBO follows long-standing procedures governing when and how to take into account such developments, which sometimes include the enactment of legislation, actions by the courts, or decisions by executive branch agencies.

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1. The Affordable Care Act comprises the Patient Protection and Affordable Care Act and the health care provisions of the Health Care and Education Reconciliation Act of 2010 and, in the case of this document, the effects of subsequent related judicial decisions, statutory changes, and administrative actions.
  2. Mark J. Mazur, "Continuing to Implement the ACA in a Careful, Thoughtful Manner," *Treasury Notes* (July 2, 2013), <http://go.usa.gov/jKeH>.

If new information indicates that an action or event that would affect CBO's baseline has happened or definitely will happen (such as a Supreme Court decision, for example, or an agency issuing a final rule or making an official announcement that clearly indicates an intended action by the Administration), CBO incorporates that information in its next regular baseline update. In addition, CBO immediately takes that information into account in assessing what will happen under current law when it analyzes the effects of legislation being considered by the Congress, even if the agency has not published new baseline projections.

### **New Information Affecting the Estimated Budgetary Impact of the ACA's Coverage Provisions**

The Administration recently made an announcement and issued final regulations regarding implementation of the ACA that will affect the budgetary impact of that law. Those actions dealt with certain penalties, reporting requirements, and verification procedures.

Under the ACA, certain large employers that do not offer health insurance coverage that meets the affordability standard defined in that law will be subject to penalties. In addition, insurers and certain other health coverage providers (primarily employers that self-insure) will be required to report the names of those receiving coverage, and certain large employers will be required to report on the health insurance coverage offered to their full-time employees. On July 2, 2013, the Administration announced its decision to delay for one year the penalties for certain large employers that do not provide affordable coverage, as well as to delay reporting requirements for insurers and employers.

In addition, the Administration recently released final regulations specifying the procedures to be used to ascertain and verify whether people applying for tax credits for premiums on insurance provided through the exchanges have an affordable offer of coverage from their employer and what their income is.<sup>3</sup> Under the ACA, applicants for premium tax credits will be required to provide information in their application about any coverage by their employer for which they are eligible. The exchanges will check available databases to verify that information, but, for many applicants, no supporting information will be available. In those cases, exchanges will be required to contact employers to verify the information for a statistically valid sample of applicants; some of the exchanges operated by states had planned to rely on the Department of Health and Human Services (HHS) to perform that follow-up verification. However, the final regulations indicate that HHS will not conduct follow-up verification on behalf of state-based exchanges until January 1, 2015, one year later than expected. As a result, in 2014 only, if an applicant's attestation cannot be verified through available databases, state-based exchanges will have the option to accept the attestation as final without conducting further verification. However, that option applies to state-based exchanges only; HHS indicated in the final rule that federally facilitated exchanges will pursue follow-up verification for a statistically valid sample of applicants in 2014, as expected.

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3. Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment, 78 Fed. Reg. 42160 (July 15, 2013), <http://go.usa.gov/jKe5>.

Also, under the ACA, applicants for premium tax credits will be required to provide information about their household's income, to be verified through electronic sources of information about people's income, such as tax returns and Social Security Administration records. If the income reported by an applicant is significantly less than the amount of his or her income indicated by other available data or if data to verify a household's income are not available, then the exchange will request supporting documentation from the applicant. For 2014 only, the final rule allows exchanges to request additional documentation either from such applicants or from a statistically valid sample of those applicants. For an applicant that is not contacted by exchanges to provide further documentation, advance payments of premium tax credits will be based on the applicant's attestation. However, the law also provides that if an individual's advance payments exceed the amount of the premium tax credits to which he or she is entitled on the basis of his or her actual year-end tax return, that person may be required to repay some or all of the credits, subject to certain limits based on income.

### **Updated Estimates of the Budgetary Effects of the ACA Reflecting Recent Actions by the Administration**

Following its usual procedures for incorporating new information in its estimates, CBO now assumes that penalties on employers and certain reporting requirements will not be enforced in 2014. In its May 2013 baseline projections, CBO projected that the insurance coverage provisions of the Affordable Care Act would have a net cost to the federal government of \$1,363 billion over the 10-year period from 2014 to 2023 (see the attached table).<sup>4</sup> As a result of the Administration's announcement and recently issued final rules, the net cost is now estimated to be \$1,375 billion—\$12 billion more than previously estimated. The largest change is a \$10 billion reduction in penalty payments by employers that would have been collected in 2015. (Penalties assessed for 2014 would have been collected in 2015.) Costs for exchange subsidies are expected to increase by \$3 billion. Other small changes, including an increase in taxable compensation resulting from fewer people enrolling in employment-based coverage, will offset those increases by about \$1 billion, CBO and JCT estimate.

The budgetary effects other than the loss of revenues from penalty payments stem primarily from changes in how many people will obtain insurance coverage and from what source. CBO and JCT expect that some large employers that would have offered health insurance coverage to their employees in 2014 will no longer do so as a result of the one-year delay of penalties for those that do not offer affordable coverage. However, most large employers currently offer health insurance coverage to their employees, and because the delay is only for one year, CBO and JCT expect that few employers will change their decisions about offering such coverage.

Further, as a result of the temporarily looser procedures for verifying offers of employment-based coverage, CBO and JCT expect that some additional workers with affordable offers from their employer will obtain subsidized coverage through exchanges in 2014. However, applicants for subsidies will still have to provide exchanges with information about how to contact their

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4. The ACA includes many other provisions that, on net, will reduce federal budget deficits. Taking the coverage provisions and other provisions together, CBO and JCT estimated that the ACA will reduce deficits over the next decade. See Congressional Budget Office, letter to the Honorable Paul Ryan regarding the potential budgetary impact of H.R. 45 (May 15, 2013), [www.cbo.gov/publication/44215](http://www.cbo.gov/publication/44215).

employer and will have to sign a statement indicating that their answers are accurate to the best of their knowledge; moreover, employers will be notified of employees who qualify for premium tax credits. Consequently, although CBO and JCT expect that the verification process will have significant effects on people's behavior in coming years, the temporary loosening of verification procedures in 2014 is estimated to have only a small effect.

CBO and JCT also anticipate that the change in procedures for verifying income will have only a slight impact on the number of enrollees in the exchanges and on the accuracy of their income reporting because the Internal Revenue Service will be able to identify misreporting when it compares reported income with tax returns at year-end.

In addition, CBO and JCT expect that the delay in implementing reporting requirements will have only a negligible effect on sources of insurance coverage and on revenues collected through the penalties for individuals who do not obtain coverage in 2014. Although CBO and JCT expect that the reporting requirements will have significant effects on people's behavior in coming years, the projected effects on coverage and revenues from penalties for 2014 (which will be collected in 2015) are already lower than the projected collections in subsequent years to allow for initial difficulties in implementing those provisions of the law. Moreover, the Administration has said that it will encourage insurers and self-insured employers to voluntarily comply with the reporting requirements and report the names of those covered to the Treasury.

All told, as a result of the announced changes and new final rules, roughly 1 million fewer people are expected to be enrolled in employment-based coverage in 2014 than the number projected in CBO's May 2013 baseline, primarily because of the one-year delay in penalties on employers. Of those who would otherwise have obtained employment-based coverage, roughly half will be uninsured and the others will obtain coverage through the exchanges or will enroll in Medicaid or the Children's Health Insurance Program (CHIP), CBO and JCT estimate. In particular, fewer than half a million additional people are expected to be uninsured in 2014 than the number projected in the May baseline.

### **Related Issues**

With those changes incorporated in CBO's assessment of what will occur under current law, legislation that would enact into law those announced changes and final rules would have no budgetary effect. Thus, CBO and JCT recently estimated that enacting H.R. 2667, a bill that would essentially codify the Administration's July 2 announcement, would not affect direct spending or revenues.<sup>5</sup>

CBO and JCT have not estimated the impact of a permanent change in penalties on employers and reporting requirements for insurers and employers. Both individuals and employers would probably react differently to permanent changes than to temporary ones. Specifically, the projected annual budgetary impact from a permanent elimination of those penalties and reporting requirements would be larger than the effects shown here for three reasons. First, with a permanent elimination of penalties, more employers would decide not to offer coverage to their

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5. See Congressional Budget Office, cost estimate for H.R. 2667, the Authority for Mandate Delay Act (July 16, 2013), [www.cbo.gov/publication/44424](http://www.cbo.gov/publication/44424).

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employees, thereby increasing the number of people who obtained coverage in the exchanges or through Medicaid or CHIP; few employers are likely to drop health insurance from their employees' compensation packages for just one year. Second, CBO and JCT expect that many of the incentives created by the ACA will have more impact on people's behavior after 2014 because people will gain greater understanding of the provisions of the law over time; hence, changes in those incentives in 2014 are expected to have less impact than they would if they were implemented in later years. Third, because the cost of health care and health insurance will increase in future years, the budgetary impact of any changes in the implementation of the coverage provisions of the ACA would also grow over time.

I hope this information is helpful to you. If you have any questions, please feel free to contact me or CBO staff. The primary staff contacts for this analysis are Jessica Banthin and Sarah Masi.

Sincerely,

A handwritten signature in cursive script that reads "Douglas W. Elmendorf".

Douglas W. Elmendorf  
Director

Enclosure

cc: Honorable Chris Van Hollen  
Ranking Member

Identical letters sent to the Honorable Dave Camp, Honorable Fred Upton, Honorable John Kline, Honorable Jeff Sessions, Honorable Orrin G. Hatch, and Honorable Lamar Alexander.

## Changes in Estimates of the Effects of Insurance Coverage Provisions in the Affordable Care Act

|  | May 2013 Baseline | Current-Law Projections<br>Incorporating Recent<br>Administrative Action <sup>a</sup> | Difference |
|--|-------------------|---|------------|
| <b>Changes in Insurance Coverage in 2014<br/>(Millions of nonelderly people, by calendar year)</b>               |                   |   |            |
| Medicaid and CHIP  | 9                 | 9   | *          |
| Employment-Based <sup>b</sup>  | *                 | -1  | -1         |
| Nongroup and Other <sup>c</sup>  | -2                | -2  | *          |
| Insurance Exchanges  | 7                 | 7   | *          |
| Uninsured <sup>d</sup>   | -14               | -13   | *          |
| <b>10-Year Effects on the Federal Deficit, Fiscal Years 2014 to 2023<sup>e,f</sup><br/>(Billions of dollars)</b> |                   |   |            |
| Medicaid and CHIP Outlays  | 710               | 710   | **         |
| Exchange Subsidies and Related Spending <sup>g</sup>   | 1,075             | 1,077   | 3          |
| Small-Employer Tax Credits <sup>h</sup>  | <u>14</u>         | <u>14</u>   | <u>0</u>   |
| <b>Gross Cost of Coverage Provisions</b>   | <b>1,798</b>      | <b>1,801</b>  | <b>3</b>   |
| Penalty Payments by Uninsured Individuals  | -45               | -45   | **         |
| Penalty Payments by Employers <sup>h</sup>   | -140              | -130  | 10         |
| Excise Tax on High-Premium Insurance Plans <sup>h</sup>  | -80               | -80   | 0          |
| Other Effects on Tax Revenues and Outlays <sup>i</sup>   | <u>-171</u>       | <u>-172</u>   | <u>-1</u>  |
| <b>Net Cost of Coverage Provisions</b>   | <b>1,363</b>      | <b>1,375</b>  | <b>12</b>  |

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

Notes: The Affordable Care Act comprises the Patient Protection and Affordable Care Act and the health care provisions of the Health Care and Education Reconciliation Act of 2010 and, in the case of this document, the effects of subsequent related judicial decisions, statutory changes, and administrative actions.

CHIP = Children's Health Insurance Program; \* = between -500,000 and 500,000 people; \*\* = between -\$500 million and \$500 million.

a. Mark J. Mazur, "Continuing to Implement the ACA in a Careful, Thoughtful Manner," *Treasury Notes* (July 2, 2013), <http://go.usa.gov/jKeH>.

Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment, 78 Fed. Reg. 42160 (July 15, 2013), <http://go.usa.gov/jKe5>.

b. The change in employment-based coverage is the net result of projected increases in and losses of offers of health insurance from employers and changes in enrollment by workers and their families.

c. The effects are almost entirely for nongroup coverage; "other" includes Medicare.

d. The count of uninsured people includes unauthorized immigrants as well as people who are eligible for but not enrolled in Medicaid.

e. Excludes effects on the deficit of other provisions of the act that are not related to coverage, which in the aggregate reduce deficits. Also excludes federal administrative costs subject to appropriation.

f. Negative numbers indicate a decrease in the deficit; positive numbers indicate an increase in the deficit.

g. Includes spending for high-risk pools, premium review activities, loans to consumer-operated and -oriented plans, and grants to states for the establishment of exchanges. The effects of recent administrative actions are entirely on exchange subsidies.

h. The effects on the deficit include the associated effects of changes in taxable compensation on revenues.

i. The effects are almost entirely on revenues.