

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 12, 2014

The Honorable Jack Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave, N.W.
Washington, DC 20220

Dear Secretary Lew:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is investigating the implementation of the Patient Protection and Affordable Care Act (PPACA), including the recent decision to further delay and modify mandates included in the law.

As enacted, the PPACA requires that all employers with 50 or more employees provide health coverage that meets requirements established by the law. Last summer, the Department of the Treasury ("Treasury") announced via blog post that it would delay this requirement by one year, until 2015. On February 10, 2014, the administration announced that it would extend this deadline by one additional year for those employers with 50 to 99 employees. Employers with more than 99 employees will see their obligations modified as well, with a requirement to offer coverage to 70 percent of their full-time employees in 2015 and 95 percent starting in 2016.¹ These delays and modifications are explicitly at odds with the text of the PPACA.

This Committee has sought information about the legal basis for these delays and modifications of the law, as well as the process Treasury has followed in their development and issuance. Shortly after Treasury announced the first delay of the employer mandate, we requested twice in writing that you provide supporting documents and information relating to your decision.² The requested materials included your analysis of the constitutional or statutory authority to implement the PPACA in direct violation of its text; we also sought memoranda or analysis discussing the employer mandate's impact on businesses, and the discussions between Treasury and other agencies about a delay. To date, Treasury has failed to produce all materials requested. It has not produced any internal memoranda or documents that show the department's

¹ Juliet Eilperin and Amy Goldstein, *White House delays health insurance mandate for medium-sized employers until 2016*, WASHINGTON POST, Feb. 10, 2014.

² Letters from Rep. Fred Upton, Chairman, H. Comm. on Energy & Commerce to Jack Lew, Secretary, Department of Treasury (July 3, 2013 & Aug. 21, 2013).

analysis that convinced it to delay the mandate. Further, Treasury has not provided any memoranda relating to its legal, statutory, or constitutional analysis for the delays.

The Oversight and Investigations Subcommittee convened a hearing on July 18, 2013, to examine this issue. Testifying on behalf of Treasury, Mr. J. Mark Iwry, Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy, could not provide specific information about the decision-making process used to determine the need for, and legality of, these delays. He did, however, testify that Treasury had no current plans to delay additional provisions of the PPACA.³

Since the passage of the law, the administration has delayed numerous deadlines and effective dates set forth in the statute. These delay announcements have only increased with the failed launch of the HealthCare.gov website. For example, just days before the October 1 launch of the online exchanges, the administration announced that small businesses would not be able to shop online until November 1, 2013.⁴ Not long after, the administration extended the deadline for individuals to enroll in health insurance.⁵ Next, the start of the PPACA's second year of enrollment was delayed.⁶ Then, over the Thanksgiving holiday, the administration quietly announced that it would be delaying the small businesses exchanges for a year.⁷ For Christmas, the administration announced that Treasury would delay the individual mandate for those whose plans were cancelled because of the PPACA.⁸ HealthCare.gov's problems led to numerous moving deadlines and delays on when individuals would need to buy a plan in order for coverage to begin in 2014.⁹

Even the truth was up for delay: HealthCare.gov's initial troubles were blamed on interest in the PPACA.¹⁰ Today we know volume was not the culprit: the site could not even handle a few hundred users at launch.¹¹

It is time for Treasury to provide the legal and factual information underpinning its decisions to delay key provisions of the PPACA. We request that you complete your production of documents and information responsive to the Committee's requests set forth in the July 3 and August 21, 2013, letters no later than February 21, 2014. In addition, to better understand Treasury's second delay of the employer mandate, we ask that you provide the following information and documents no later than Tuesday, February 25, 2014:

³ Elise Viebeck, *Top Treasury official: No more Obamacare delays looming*, THE HILL, July 18, 2013.

⁴ Louise Radnofsky, Christopher Weaver and Sarah Needleman, *Online Health Exchanges for Small Businesses Hit Snag*, THE WALL STREET JOURNAL, Sept. 26, 2013.

⁵ Sandhya Somashekhar, Amy Goldstein and Juliet Eilperin, *Americans will have an extra six weeks to buy health coverage before facing penalty*, WASHINGTON POST, Oct. 23, 2013.

⁶ Susan Levine, *HHS to delay 2015 enrollment by a month*, POLITICO, Nov. 21, 2013.

⁷ Sarah Kliff, *Obamacare's online SHOP enrollment delayed by one year*, WASHINGTON POST, Nov. 27, 2013.

⁸ Clara Ritger, *Obama Administration to Delay Individual Mandate for Some*, NATIONAL JOURNAL, Dec. 19, 2013.

⁹ *HHS announces small extension for Obamacare sign-up, bigger delay next year*, FOX NEWS, Nov. 22, 2013; Amy Goldstein and Juliet Eilperin, *Obama administration quietly extends health-care enrollment deadline by a day*, WASHINGTON POST, Dec. 23, 2013.

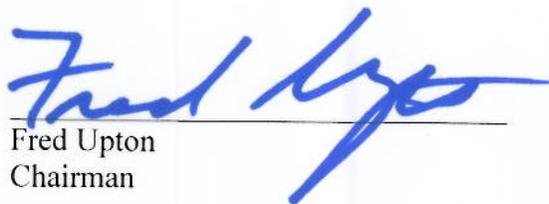
¹⁰ Tim Mullaney, *Obama adviser: Demand overwhelmed HealthCare.gov*, USA TODAY, Oct. 6, 2013.

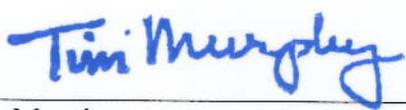
¹¹ Lena H. Sun and Scott Wilson, *Health insurance exchange launched despite signs of serious problems*, WASHINGTON POST, Oct. 21, 2013.

1. All memoranda or analyses of the constitutional or statutory authority of Treasury to delay the PPACA requirements that were considered or relied upon by Treasury when deciding to again delay the PPACA's employer mandate.
2. All memoranda or analyses relating or referring to the costs or burdens of the PPACA's requirements on employers with more than 50 employees, and on employers with more than 100 employees, and the impact of delaying these requirements that were considered or relied upon by Treasury when deciding to again delay the PPACA's employer mandate.
3. All memoranda or analyses referring or relating to the costs or penalties for individuals under the PPACA that have been prepared for or by Treasury.
4. Identify the federal departments, agencies, and offices that were consulted, informed, or contacted about Treasury's decision to again delay the employer mandate, including but not limited to the Department of Health and Human Services (HHS) and the Executive Office of the President (EOP). In addition, please identify the officials or staff who were consulted at those departments, agencies, and offices, and the dates they were first informed.
5. All documents exchanged between or among Treasury, HHS, and the EOP referring or relating to the latest delay of the employer mandate and, specifically, feedback or analysis provided by HHS or the EOP to Treasury.

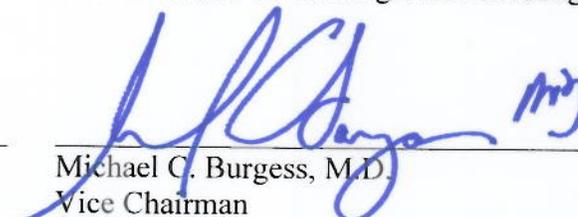
Instructions for responding to the Committee's document request are included as an attachment to this letter. Thank you for your prompt attention to this matter. If you have questions or wish to discuss your responses or production, please contact Karen Christian or Sean Hayes with Committee Staff at (202) 225-2927.

Sincerely,


Fred Upton
Chairman


Tim Murphy
Chairman
Subcommittee on Oversight and Investigations


Joseph R. Pitts
Chairman
Subcommittee on Health


Michael C. Burgess, M.D.
Vice Chairman
Subcommittee on Oversight and Investigations



Joe Barton
Chairman Emeritus



Marsha Blackburn
Vice Chairman

cc: The Honorable Henry Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health