



**Legislative Bulletin.....July 17, 2013**

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**H.R. 2667 – Authority for a Mandate Delay Act  
(Rep. Griffin, R-AR)**

**Order of Business:** H.R. 2667 is scheduled to be considered on Wednesday, July 17, 2013, under a closed rule ([H.Res. 300](#)) permitting no further amendments to the bill. The Rule provides one hour of general debate equally divided and controlled by the Chair and Ranking Member of the Committee on Ways and Means and one motion to recommit. Also, it directs the Clerk of the House to add the text of H.R. 2667, as passed by the House, as a new matter at the end of the text of H.R. 2668.

**Summary:** H.R. 2667 statutorily delays by one year the effective date established in sections 1513(d), 1514(d), and 1502(e) of Obamacare (P.L. 111-148). These sections make up the Shared Responsibility For Employers Regarding Health Insurance (and related reporting requirements), also known as the Employer Mandate, for months beginning after December 31, 2013, to months beginning after December 31, 2014.

Under current law, beginning January 1, 2014, Obamacare’s Employer Mandate requires applicable large employers to offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage<sup>1</sup> in an employer-sponsored health insurance plan. A penalty of up to \$3,000 per year for each full-time employee not enrolling in an employer’s health insurance plan will be assessed to large employers that either fail to offer the federal government approved health insurance to their full-time employees or offer it to their full-time employees, while at least one full-time employee receives an Obamacare premium tax

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<sup>1</sup>[Minimum essential coverage](#) is the standard by which an individual is considered to be in compliance with Obamacare’s Individual Mandate (26 U.S.C 5000A as created by section 1501 of Obamacare, P.L. 111-148). Minimum essential coverage includes coverage obtained through Exchanges, employer-sponsored coverage (including COBRA coverage and retiree coverage), non-group coverage, and coverage from federal programs such as Medicare and Medicaid. Insurance providers, alternatively, are required to meet the threshold of Essential Health Benefit standards in offering products to individuals or employers. For more information on Essential Health Benefit requirements consult this [CRS report](#) or this [CMS summary](#).

credit or cost-sharing subsidy. The Congressional Budget Office (CBO) [estimated](#) in May 2013 that these penalties would amount to \$10 billion assessed in FY2014 (collected in FY2015) and \$140 billion over FY2014-FY2023. Obamacare defines “applicable large employers” as employers who employ an average of at least 50 full time employees during the preceding calendar year for more than 120 calendar days, not including seasonal workers. The law defines full-time employees as those who are employed for at least 30 hours of service per week, which is contrary to the typical, industry standard 40-hour work.

The law also mandates that these large employers<sup>2</sup> report health coverage information about and to their full-time employees. The [Business Roundtable](#) characterized this as demanding “... substantial changes in administrative procedures and reprogramming of recordkeeping systems” including:

- the name, date, and employer identification number;
- certification of whether the employer offers the opportunity to enroll in minimum essential coverage under an eligible employer-provided health insurance plan, which must include the length of any waiting period for enrollment, the available coverage months in the calendar year, the monthly premium for the lowest costs option in each of the enrollment categories under the plan, the portion of the premium (if any) required to be paid by the employer, if the health insurance coverage is a qualified plan in the small group market offered through an Exchange, and the applicable large employer’s share of the total allowed costs of benefits provided under the plan;
- the number of full-time employees for each month during the calendar year;
- the name, address, and Tax Identification Number of each full-time employee during the calendar year and the months (if any) during which such employee (and dependents) were covered under any such health benefits plan; and
- such other information as required by the Secretary of Health and Human Services.

**Additional Background:** In the late afternoon of July 2, 2013, Mark J. Mazur, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, released a surprising and controversial [blog post](#) announcing that the Employer Mandate penalties and reporting requirements will be delayed from its statutory effective date beginning January 1, 2014, to January 1, 2015. Entitled, “Continuing to Implement the ACA in a Careful, Thoughtful Manner,” the post outlines how after “engaging in dialogue with businesses” over the past several months, the Obama Administration has heard about the complexity and need for more time for employers to be compliant with the law’s mandates as well as to allow simplification by the Administration of these new reporting requirements.

Three days later on July 5, 2013, the Friday after our nation’s 237th celebration of its independence from Great Britain, the Obama Administration’s Department of Health and Human Services issued a [606 page final rule](#) effectively waiving the requirement for [state-based](#)

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<sup>2</sup> Also, section 1502 of Obamacare requires Insurance providers offering minimum essential coverage to individuals to report: the name, address, and Taxpayer Identification Number of the primary insured and other dependents obtaining health insurance coverage; the dates of coverage during the calendar year; whether the coverage is a qualified health plan offered through an Obamacare Exchange, and the amounts (if any) of advance payments, cost-sharing subsidies, or premium tax credits.

[Obamacare Exchanges](#)<sup>3</sup> to verify income and employment eligibility for whether applicants for federal Premium Exchange tax credits and cost-sharing subsidies qualify. Essentially, the Administration is relying on an “honor system,” without independent verification by state-based Exchanges, for applicants to disclose accurate household income and whether they were offered qualified health insurance coverage by their employer. Applicants for new Obamacare subsidies from those 26 states that have refused to establish an Obamacare state-based Exchange and have defaulted to the federal government to establish a federal Exchange will be randomly audited to verify income and employer offer health coverage. Given the Administration’s hyper-political [history of enforcing only laws that it agrees with](#), it is unclear and probably unlikely that the Administration will enforce reclaiming any misappropriated subsidies to applicants who are later determined to have not been eligible for their receipt or—even worse, made intentional misrepresentations to fraudulently obtain subsidies not due. **Note**—the Senate Appropriations Committee on July 11, 2013, reported out S. 1284, the Department of Labor, Health, and Human Services, and Education Appropriations Act of 2014 that includes a Sense of the Senate language (Sec. 226) stating that “American Health Benefit Exchanges should verify annual household or individual income prior to making available premium tax credits under the Patient Protection and Affordable Care Act (Public Law 111-148).”

These two recent controversial announcements reveal what many Americans have known since the bill was signed into law: the law is a massive, burdensome, bureaucratic nightmare for all sectors of American society. It is unworkable, costly, and needs to be completely repealed. Specifically with regard to the Employer Mandate, the recent [survey](#) of small businesses commissioned by the U.S. Chamber of Commerce found:

- “Among small businesses that will be impacted by the employer mandate, one-half of small businesses say that they will either cut hours to reduce full time employees OR replace full time employees with part-timers to avoid the mandate. Twenty-four (24) percent say they will reduce hiring to stay under 50 employees.
- Seventy-one (71) percent of small businesses say the health care law makes it harder to hire.
- Only 30 percent say they are prepared for the requirements of the law, including participation in the marketplaces, and one-quarter say they are unaware of what is required.”

The Administration’s announced delay generates several important questions including:

- What claim of constitutional authority does the Obama Administration rely upon to ignore a statutorily-created effective date given that the Constitution’s Article II, Section 3 states that the President “shall take Care that the Laws be faithfully executed”? One former federal appellate judge [likens](#) this Executive decision to a Supreme Court statement long ago that “allowing the president to refuse to enforce statutes passed by Congress ‘would be clothing the president with a power to control the legislation of Congress, and paralyze the administration of justice.’”<sup>4</sup>

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<sup>3</sup> Defined in section 1311 of Obamacare as “American Health Benefit Exchanges.”

<sup>4</sup> *Kendall v. United States*, 1838.

- Why should the Exchanges be permitted to sign people up for coverage beginning next year when the proper income verification and employer offer of health insurance coverage systems are not in place?
- What impact do these announcements have on Exchange enrollment and federal spending figures? Some [reports](#) indicate that employers will have more incentive to dump their employees onto the Exchanges and thereby increase CBO's May 2013 [estimate](#) of \$26 billion of new Exchange subsidies and related spending in FY2014 and the 7 million people estimated to enroll in 2014 (as well as how many more than the estimated 7 million will lose their employer-sponsored health insurance by FY2023).
- Which other Obamacare provisions should be expected to be administratively delayed and under what timetable?
- Which parties are being consulted with regard to the law's implementation process?

Multiple House committees have [written letters](#) requesting documents and information surrounding these announcements and [scheduled hearings](#) to provide oversight of these matters with Obama Administration agency officials.

**Obamacare Repeal Considerations:** H.R. 2667, as well as its counterpart, H.R. 2668 which delays Obamacare's Individual Mandate, has generated a renewed discussion among conservatives that began in the 112<sup>th</sup> Congress about the right strategy to fully repeal Obamacare. Some conservatives have pause that these targeted delays of two of the most unpopular and onerous federal mandates tacitly acknowledge that Obamacare will proceed at a future date certain while giving the federal bureaucracy more time to better perfect its implementation. Also, these bills bring questions about how delaying the two provisions further the goal of [fully defunding](#) or repealing the law. Supporters of these two bills maintain that these bills build political and public momentum towards opposition of the entire law that will complement and help future efforts to entirely defund and repeal the law. Essentially, supporters explain that these two bills highlight the Administration's hypocrisy of sparing employers from the law's burdens for one year while choosing to allow individuals and families to comply with the Individual Mandate beginning this January. Additionally, supporters counter that the Administration will be just as capable, if not more capable, to perfect Obamacare if full implementation moves forward without delay. Lastly, given the burdens the mandates place on individuals and businesses, some supporters may feel a moral obligation to delaying as much of Obamacare as possible.

**RSC Bonus Fact:** A Boston Globe [article](#) last week reported that Massachusetts' Governor Deval Patrick will not veto state legislation that repeals Massachusetts' employer mandate in anticipation of the federal employer mandate taking effect, but that businesses will still be subject to a separate per-employee surcharge used to support a state unemployment insurance program.

**Outside Groups in Support:** The following groups wrote a [letter of support](#) for H.R. 2667 and H.R. 2668: Americans for Tax Reform, Alliance for Worker Freedom, Alexandria Tea Party, Freedom Works, Independent Women's Voice, Tea Party Patriots, Tea Party Express, National Taxpayers Union, Galen Institute, American Commitment, Campaign for Liberty, 60 Plus

Association, Let Freedom Ring, Concerned Women for America, Frontiers of Freedom, Restore America's Voice, Doctor-Patient Medical Association, and Obamacare Truth Squad.

These groups are also in support of the bill: Associated Builders and Contractors (key voting), Associated General Contractors, Council for Affordable Health Coverage, International Franchise Association, National Association of Health Underwriters, National Association of Manufacturers, National Federation of Independent Business (NFIB), National Retail Foundation, Small Business & Entrepreneurship Council, and the U.S. Chamber of Commerce (potentially key voting).

**Committee Action:** Representative Tim Griffin (R-AR) introduced H.R. 2667 on July 11, 2013. On that day, it was referred to the House Committee on Ways and Means. No further committee action has occurred on the bill.

**Administration Position:** The Statement of Administration Policy strongly opposes this bill and issued a veto threat on it.

**Cost to Taxpayers:** The Congressional Budget Office (CBO) released a cost [estimate](#) on July 16, 2013, on the bill stating that "Because H.R. 2667 essentially codifies the Administration's recent announcement, CBO and the staff of the Joint Committee on Taxation estimate that enacting H.R. 2667 would not affect direct spending or revenues." On July 10, 2013, House and Senate Republican Committee leaders [wrote](#) to CBO's Director Douglas W. Elmendorf requesting CBO and the Joint Committee on Taxation (JCT) provide estimates on Obamacare's full budgetary effect (including outlays, revenues, and the federal deficit) as a result of the Administration's actions to delay enforcement of the mandatory employer and insurer reporting requirements and employer penalties.<sup>5</sup> CBO and the JCT have not yet completed an analysis on the Administration's July 2, 2013 announcement's impact on spending and revenues under current law.

**Does the Bill Expand the Size and Scope of the Federal Government?** The legislation delays reporting requirements for employers and insurers for one year as well as financial penalties against employers that fail to meet the law's mandate to offer insurance. Also, according to CBO's May 2013 estimates, the bill delays assessing \$10 billion of employer penalty payments in FY2014.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No. It delays a private sector federal mandate on employers and insurers for one year.

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

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<sup>5</sup> The letter also requests CBO/JCT provide estimates of changes to insurance coverage, including the extent to which there is a substitution effect as a result of coverage offered through Obamacare, especially as it relates to employer-sponsored and retiree coverage. It also requests an estimate on the budgetary effects of a scenario where the Administration chooses to never implement the employer mandate and insurer reporting requirements.

**Constitutional Authority:** The Constitutional Authority Statement accompanying the bill upon introduction states, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution.”

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## **H.R. 2668 – Fairness for American Families Act (Rep. Young, R-IN)**

**Order of Business:** H.R. 2668 is scheduled to be considered on Wednesday, July 17, 2013, under a closed rule ([H.Res. 300](#)) permitting no further amendments to the bill. The Rule provides one hour of general debate equally divided and controlled by the Chair and Ranking Member of the Committee on Ways and Means and one motion to recommit. Upon engrossment of the bill, the Rule directs the Clerk of the House to add the text of H.R. 2667, as passed by the House, as a new matter at the end of the text of H.R. 2668.

**Summary:** H.R. 2668 delays by one year the effective date from 2014 to 2015 of Obamacare’s “Requirement to Maintain Minimum Essential Coverage” (i.e., Individual Mandate, 26 U.S.C. 5000A as added by section 1501 of Obamacare, P.L. 111-148) while also delaying the related financial penalties assessed against individuals that do not comply with such federal mandate by one year. H.R. 2668’s one-year statutory delay of the Individual Mandate seeks to complement the Employer Mandate delay included in H.R. 2667 in response to the Obama Administration’s unilateral administrative delay of the Employer Mandate announced on July 2, 2013.

This mandate on most Americans, with exceptions for some described in this Congressional Research Service (CRS) [report](#), has been the face of opposition against Obamacare given its unprecedented federal requirement that private citizens purchase a federally-approved product or face financial penalties. The [Supreme Court upheld](#) this requirement last June, citing that the mandate is within Congress’ taxing authority. A recent [survey](#) suggests that it is still significantly unpopular with the American public.

According to CRS, individuals that do not maintain minimum essential coverage for themselves and their dependents beginning in 2014 may be required to pay a financial penalty for each month of noncompliance calculated as the *greater* of either a percentage of applicable income<sup>6</sup> that exceeds a filing threshold for each tax year or a flat dollar amount<sup>7</sup> assessed on each taxpayer and any dependents. The Congressional Budget Office’s (CBO) May 2013 [estimate](#) shows that \$2 billion of penalty payments (\$45 billion from FY2014-FY2023) will be assessed against individuals in FY2014 and collected in FY2015.

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<sup>6</sup> 1 percent in 2014, 2 percent in 2015, and 2.5 percent thereafter.

<sup>7</sup> \$95 in 2014, \$325 in 2015, and \$695 in 2016 and beyond (adjusted for inflation) assessed against each taxpayer and any dependents each taxable year. The amount is reduced by one-half for dependents under the age of 18, and the total family penalty is capped at 300% of the annual flat dollar amount.

Obamacare supporters in Congress, as well as in [court](#)<sup>8</sup>, have characterized the Individual Mandate as the central and necessary component to the vast scheme and regulatory maze of this federal government takeover of our nation's health care system due to its interaction with other Obamacare insurance market reforms guaranteeing coverage to all applicants and uniformly rating risks.<sup>9</sup> Without it, the “law doesn't work,” [according](#) to Health and Human Services Secretary Kathleen Sebelius and Attorney General Eric Holder.

Many studies predict that the costs of health insurance premiums will rise—and rise dramatically—as a consequence to Obamacare's major reforms scheduled to take effect next year. The House Energy and Commerce Committee released a [report](#) entitled the “Looming Premium Rate Shock” this May chronicling internal analyses provided by 17 of the nation's largest health insurance companies. It demonstrates that “consumers purchasing health insurance on the individual market may face premium increases of nearly 100 percent on average, with potential highs eclipsing 400 percent. Meanwhile, small businesses can expect average premium increases in the small group market of up to 50 percent, with potential highs over 100 percent.” A June 30, 2013, Wall Street Journal [analysis](#) suggests that healthy consumers could see insurance rates double or even triple when they look for individual coverage under Obamacare of coverage to be sold on the law's Exchanges while premiums paid by sicker people are set to become more affordable. These analyses contradict Obamacare supporters pledge to lower health insurance costs throughout the health care reform debate in 2009, in the lead up to Obamacare being signed into law on March 23, 2010, and still today.

**Outside Groups in Support:** The same groups listed in this support [letter](#) including the following groups that are key voting in support: Freedom Works and National Taxpayers Union.

**Committee Action:** Representative Todd Young (R-IN) introduced H.R. 2668 on July 11, 2013. On that day, it was referred to the House Committee on Ways and Means. No further committee action has occurred on the bill.

**Administration Position:** The Statement of Administration Policy strongly opposes this bill and issued a veto threat on it.

**Cost to Taxpayers:** The Congressional Budget Office (CBO) released a [letter](#) on July 16, 2013, to House Ways and Means Chairman Dave Camp (R-MI), which states that CBO and the JCT have not yet completed a cost estimate for the bill. They further explain that, on a preliminary basis, CBO/JCT expect the bill would reduce the deficit in FY2014 and over the FY2014-2023 period.

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<sup>8</sup> Page 23.

<sup>9</sup> According to CRS, delaying (or repealing) the Individual Mandate but leaving intact such market reforms would allow consumers to delay signing up for health insurance coverage until they need health care, potentially undermining the purpose of insurance. For consumers who do enroll in coverage, even with a delay of the mandate, insurance carriers will assume that the risk pool overall is sicker than what it would be if there was closer to full participation, so insurance rates may increase due to a sicker risk pool. This scenario is referred to as “adverse selection” where “a subpopulation taking out insurance is likely to have less favorable characteristics than the population in general.” David W. Pearce, ed., *MIT Dictionary of Modern Economics* (Cambridge, MA: MIT Press, 1992, pg.8).

**Does the Bill Expand the Size and Scope of the Federal Government?** The legislation delays the federal mandate requiring most Americans to obtain and maintain minimum essential health insurance coverage or else face financial penalties. Also, according to CBO's May 2013 estimate, the bill delays assessing \$2 billion of penalty payments in FY2014.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No. It delays a private sector federal mandate on individuals for one year.

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

**Constitutional Authority:** The Constitutional Authority Statement accompanying the bill upon introduction states, "Congress has the power to enact this legislation pursuant to the following: U.S. Const. art. I, Sec. 8."

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**NOTE:** *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*