

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

January 29, 2014

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Commissioner Koskinen:

The Committee on Oversight and Government Reform is conducting oversight of the Internal Revenue Service's implementation of the Patient Protection and Affordable Care Act (ACA). Specifically, the Committee is interested in how the IRS is implementing the law in a manner to minimize confusion, uncertainty, and degraded customer service for taxpayers. We are writing to request documents and information to help the Committee understand any new requirements taxpayers will face when they file their 2014 tax returns.

The Affordable Care Act's Impact on IRS Customer Service

Starting this year, millions of Americans will be required to file additional paperwork with their 2014 tax return. Individuals that claim a premium tax credit must file Form 8962, and individuals who lacked health insurance for any part of the year must use Form 8965 to either claim an exemption or determine their penalty amount.¹ Tax professionals have noted the new forms are complicated, and many taxpayers are wholly unfamiliar with the new requirements.² In fact, it appears the biggest beneficiaries of the ACA's changes to our tax system may be private tax preparation companies. While discussing the effects the new health care law will have on the upcoming tax preparation season, H&R Block Chief Executive Officer Bill Cobb stated "tax complexity is a good thing for H&R Block."³

Furthermore, reconciliation of advance payments of the premium tax credit risks could upend many Americans' financial expectations. As noted in IRS Publication 5152, taxpayers who elected to have all or part of the credit paid in advance must reconcile the advance payments with the actual credit, which will be determined when they file a 2014 return.⁴ The *Wall Street Journal* reported "millions of Americans who got subsidies under the law may find they are getting smaller-than-expected refunds or owe the IRS because the credits they received to offset their insurance premiums were too large."⁵ H&R Block estimated that more than *half* of the individuals who received health insurance premium tax credits may have to repay all or part of the subsidy.⁶ Furthermore, according to the Treasury Department as many as six million people may need to pay a penalty for lacking coverage for all or part of 2014.⁷

¹ Carole Feldman, *New Tax Forms to Fill Out on Health Insurance Coverage*, ASSOCIATED PRESS, Jan. 13, 2015.

² *Id.*; see also Bernie Becker, *IRS chief optimistic on ObamaCare*, THE HILL, Jan. 15, 2015.

³ Ross Kerber, *H&R Block to see Obamacare boost: CEO*, REUTERS, Jan. 7, 2015.

⁴ I.R.S. Publication 5152 (Rev. 8-2014), available at <http://www.irs.gov/pub/irs-pdf/p5152.pdf> (last accessed Jan. 16, 2015).

⁵ Stephanie Armour and Louise Radnofsky, *Affordable Care Act Creates a Trickier Tax Season*, WALL ST. J., Jan. 1, 2015.

⁶ Ross Kerber, *H&R Block to see Obamacare boost: CEO*, REUTERS, Jan. 7, 2015.

⁷ Elise Viebeck, *Feds: Up to 6 million will face Obamacare penalty*, THE HILL, Jan 28, 2015.

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The complexity created by the ACA, coupled with the inevitable shock that will be felt by many Americans as their tax bills skyrocket, threatens to cause confusion during the 2014 filing season. In a comprehensive report to Congress on January 14, 2015, the National Taxpayer Advocate warned that Americans “are likely to receive the worst levels of taxpayer services since at least 2001, when the IRS implemented its current performance measures.”⁸

Compounding the problem is the expectation the IRS will not be able to provide adequate customer service for taxpayers with questions or concerns about the new filing requirements. In an e-mail to IRS employees, you stated:

We now anticipate an even lower level of telephone service than before, which raises the real possibility that fewer than half of taxpayers trying to call us will actually reach us. During Fiscal Year 2014, 64 percent were able to get through. Those who do reach us will face extended wait times that are unacceptable to all of us.⁹

Previously, you blamed congressional budget cuts for any degradation in customer service.¹⁰ The basis for this claim is unclear. In fact, Congress *increased* the IRS’s budget for taxpayer services in the most recent appropriations bill, from \$2.123 billion in FY 2014 to \$2.157 billion in FY 2015.¹¹

IRS Contingency Plans with Respect to *King v. Burwell*

On November 7, 2014, the Supreme Court announced it will consider whether Section 36B of the Internal Revenue Code permits the IRS to extend premium tax credit subsidies to health insurance coverage purchased through the federal exchange. Oral arguments are scheduled for March 4, 2015, and a decision is expected by late June. A decision in favor of the petitioners would overturn provisions of the IRS final rule that extend the subsidy to coverage purchased in the 34 states that utilize the federal exchange.¹²

We are concerned the IRS may not be adequately prepared for the possibility of that outcome. As best we can tell, the extent of the IRS’s planning for the Supreme Court’s consideration of this matter is a three-sentence statement on the IRS website. On a page called “The Affordable Care Act: What’s Trending,” the IRS website states:

It’s important for individuals receiving advance payments of the premium tax credit to know that at this time, nothing has changed and tax credits remain available. Whether enrolled in coverage through a federally-run or state-run Health Insurance Exchange, also known as a Marketplace, individuals do not need to take any additional action or make any changes in response to the announcement by the Supreme Court. We will provide any updates on IRS.gov/aca.¹³

⁸ John McKinnon, *IRS Woes Keeping Taxpayers on Hold*, WALL ST. J., Jan. 14, 2015.

⁹ *IRS chief warns of refund delays, poor customer service this tax year*, FoxNews.com, Jan. 15, 2015, available at <http://www.foxnews.com/politics/2015/01/15/irs-chief-warns-refund-delays-poor-customer-service-this-tax-year/> (last accessed Jan. 16, 2015).

¹⁰ Rachel Blade, *IRS service degraded, taxpayers to pay price*, POLITICO, Jan. 14, 2015.

¹¹ *Compare Consolidated Appropriations Act, 2014*, Pub. L. 113-76, 128 Stat. 5, 188 (2014) to *Consolidated and Further Continuing Appropriations Act, 2015*, Pub. L. No. 113-235, 128 Stat. 2130 (2014).

¹² Health Insurance Premium Tax Credit, 77 Fed. Reg. 30377 (May 23, 2012).

¹³ IRS website, “The Affordable Care Act: What’s Trending,” available at <http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/The-Affordable-Care-Act-What%E2%80%99s-Trending> (last visited Jan. 16, 2015).

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The IRS could prevent confusion and uncertainty by preparing revisions to the Health Care Premium Tax Credit rule, providing taxpayer guidance on the implications of a ruling adverse to the IRS, and informing Congress of possible contingency plans.

To enable the Committee to better understand the IRS's implementation of the Affordable Care Act, please provide responses to the following requests for information as soon as possible, but no later than February 13, 2015:

1. All documents and communications since January 1, 2014, referring or relating to IRS messaging, communications and public statements with respect to taxpayer services.
2. All documents and communications since January 1, 2014, referring or relating to how ACA-related forms and penalties will impact taxpayer services.
3. All documents and communications referring or relating to internal estimates concerning reconciliation of advance payments of the premium tax credit, including but not limited to those documents relating to:
 - a. The number of individuals whose tax refund will decrease, or tax bill will increase, due to reconciliation.
 - b. The average and median amount of such decrease and increase.
4. In addition to internal estimates concerning reconciliation of advanced payments of the premium tax credit, use your best efforts to identify the number of individuals whose tax refund decreased, or tax bill increased, due to reconciliation so that you may be able to provide this information when the filing season is over.
5. All documents and communications referring or relating to steps taken by the IRS to inform taxpayers receiving subsidies about how *King v. Burwell* could affect them and their families.
6. A description of all contingency planning for the event that the Supreme Court holds the IRS may not permissibly extend subsidies to the federal exchange.
7. All documents and communications since January 1, 2013, referring or relating to contingency plans for the event that the Supreme Court holds for the petitioners in *King v. Burwell*, including, but not limited to:
 - a. All drafts of a revised rule concerning the health insurance premium tax credit.
 - b. All communications to or from any IRS employee referring or relating to the health insurance premium tax credit.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in

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electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions regarding this request, please contact Sean Hayes or Brian Daner of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Jim Jordan
Chairman
Subcommittee on Health Care,
Benefits and Administrative Rules



Mark Meadows
Chairman
Subcommittee on Government Operations

Enclosures

cc: The Honorable Elijah Cummings, Ranking Minority Member

The Honorable Matt Cartwright, Ranking Minority Member
Subcommittee on Health Care, Benefits and Administrative Rules

The Honorable Gerald E. Connolly, Ranking Minority Member
Subcommittee on Government Operations

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.