

House Committee on Oversight and Government Reform

Statement of Mark W. Everson

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Good morning Chairman Issa, Ranking Member Cummings and members of the House Committee on Oversight and Government Reform. I am pleased to testify before the committee on the challenges facing the IRS in implementing healthcare reform. My name is Mark W. Everson and I served as commissioner of internal revenue from May 2003 through May 2007. I am currently Vice-Chairman of alliantgroup, L.P., a provider of specialty tax services for small and medium-sized businesses. The views I will express today are my own, and not those of alliantgroup, although I would note that some of the concerns I have about healthcare reform arise from conversations with the many CPAs alliantgroup works with across the country.

Introduction

Let me state from the outset that I do not consider myself an expert on healthcare. Nor am I here to advocate for or against repeal of the law or of any of its component parts. That having been said, it is clear to all observers that the IRS faces significant challenges in executing its assigned responsibilities under the Patient Protection and Affordable Care Act ("Affordable Care Act"). The Government Accountability Office has called the work facing the IRS "a massive undertaking." In my testimony I will touch on specific areas of concern pertaining to certain major provisions of the new law, and offer my thoughts on the broader risks to tax administration brought about by housing so much of the reform apparatus within the IRS.

The National Taxpayer Advocate has said that "With proper planning and funding, the IRS is fully capable of implementing healthcare reform." I am not so sure. Certainly I know from my own experience at the IRS that the service does its level

best when asked to take on new duties by Congress. I am confident it is doing just that right now, and will continue to do so over the next several years as it strives to implement the Affordable Care Act. But what the IRS is being asked to take on is really quite staggering. As one senior official not given to exaggerate said to me recently, "It will be a heavy lift." Further, given the complexities of the provisions and the number of parties involved in making the system operate, it is not clear to me that the statutory scheme enacted into law is workable mechanically, even given Herculean efforts by the IRS and others. But whether or not the IRS is successful in implementing healthcare reform, there is a second and equally important question: will tax administration be damaged in the process?

Challenges Facing the IRS in Implementing the Affordable Care Act

When the IRS implements new legislation it typically faces three broad challenges: meeting statutory deadlines; resource constraints; and interpreting complicated statutory provisions and adjusting operations accordingly. Let me comment on these issues before turning to specific concerns. I believe Congress has on the whole provided reasonable timelines for implementing the Affordable Care Act. The major provisions of the new law phase in over a number of years, affording the service the chance to plan its activities and to address both policies and procedures. As to resources, it is of course critical that the IRS have adequate staff and operating funds to make the many systems and operational changes required by healthcare reform. This is a subject of ongoing inquiry by the Congress, and is not the focus of my testimony.

As we know all too well, complexity is an enduring and unfortunate feature of the tax code, and something with which the IRS deals on a regular basis. Nevertheless, complexity permeates the Affordable Care Act and will prove daunting to even the IRS. I would add that complexity associated with healthcare reform will also pose difficulties for taxpayers, both businesses and individuals, and for tax practitioners who will be called upon to help their clients understand and meet new obligations under the law. The National Taxpayer Advocate has cited complexity of the tax code as the "most serious problem" facing taxpayers.

The Affordable Care Act certainly makes this problem worse, damaging tax administration as a whole.

I have a number of specific concerns relating to IRS implementation of the Affordable Care Act. Many of these issues have been raised by others and I would note that the list is non-exhaustive. The following simply strike me as the most important:

Major Systems/Information Technology Requirements:

The IRS collects a vast amount of data and could not execute its tax administration duties without successful operation of the many major information systems upon which it relies. A large number of these systems require constant updating because of unrelenting changes to the tax code. Meeting its ongoing obligations in the systems domain is essential for the IRS, and has grown ever more difficult in recent years with the sharp growth of identity theft. Healthcare reform cannot help but compete with the service's almost overwhelming, regular systems workload. The Affordable Care Act will confront the IRS with the need to collect new kinds of information and to interact with many additional parties. Some of those parties, like the exchanges, will be newly established entities, further complicating the task of modifying existing systems and developing new ones. In several areas the new law will require more or less constant updating of information pertaining to an individual's circumstances. Much of the data capture and analysis performed by the IRS allows the service time to cleanse and match data before using it to determine tax liability, a grace period which the new law in several areas will not allow. Taken together, the systems and IT challenges facing the IRS in implementing healthcare reform pose great risk.

Data Security and Protection of Taxpayer Information:

If there was any one thing that kept me up at night when I served as commissioner, it was the worry that the IRS would belch forth the personally identifiable information of millions of Americans, either through our own error or by having our systems compromised by others. Protection of taxpayer

information is a priority at the IRS from top to bottom, and depends both on the integrity of its systems and the actions of individual parties. The IRS enters into strict protocols with states and other taxing authorities before sharing taxpayer information. Under the new law, the IRS will be sharing taxpayer information with any number of additional parties, many of which will be going through growing pains of their own as noted above. A significant data breach, even if caused by others, would shake America's faith in the IRS and could be catastrophic for tax administration and revenue collection.

Assumption by the IRS of the Obligation to Establish Benefits Eligibility:

Our system of voluntary compliance obligates taxpayers to compile information and report data on their tax return in order to fix a tax liability. Much of this data is later matched with third party reporting information to verify its accuracy. Under healthcare reform, eligibility for advance payments of the premium assistance tax credit or cost sharing reductions will be determined largely from information supplied by the IRS rather than in an application from the individual seeking the benefit. This is an important shift in responsibility. When Exchanges inform an individual that they are ineligible for a benefit to which they think they are entitled because of information from the IRS, there will be a great deal of confusion.

The New Concept of Household Income:

Household income—defined under the Affordable Care Act to include the income of dependents and not just the taxpayer—is a factor in determining an individual's eligibility for the premium assistance tax credit or appropriate cost sharing reduction. This is also a significant departure from existing standards for assessment of tax under the tax code, where household income is nowhere to be found. This change cannot help but further complicate tax compliance, cause confusion and burden the IRS.

Fragmented Responsibility and Authority for Operations; Potential Uneven Application of the Law:

In addition to my service as commissioner of internal revenue, during the Reagan Administration I was Deputy Commissioner of the INS, where I oversaw implementation of the Immigration Reform and Control Act of 1986. Both the Immigration and Nationality Act and the Internal Revenue Code are complicated statutory schemes, making the INS (now part of the Department of Homeland Security) and the IRS difficult to manage. However, one advantage in each organization was a clear chain of command and fixed responsibility for execution of the law. I consider the IRS steady and reliable, but hardly agile. In implementing healthcare reform, the IRS will be highly reliant on other governmental entities and external partners, compounding management challenges. The fragmentation of operational workload increases the difficulty of execution, and will require an extraordinary amount of coordination with other players in the healthcare system on the part of the service.

An objective of tax administration is consistent application of the law—that is, similarly situated taxpayers should get the same answer whether filing in Newark or in Seattle. It doesn't always work out that way, but that is the standard, at least since 1998 when the IRS was reorganized along functional lines (individual taxpayers, small businesses, large businesses and tax exempt entities) rather than geographic lines. The Affordable Care Act grants significant operational and policy waiver authority to the Exchanges, which will put the IRS in the difficult position of explaining the application of differing policies across the country under a single federal statute.

The Reconciliation Process Associated with the Premium Assistance Tax Credit:

This provision has been widely commented upon. I agree with those who have voiced concerns that this particular facet of healthcare reform will cause a great deal of consternation for taxpayers and problems for the IRS because of the statutory construction of the benefit—based on prior year return information--and its potential, but unanticipated recapture from the taxpayer if his or her circumstances have changed and repayment of the credit is required down the road.

The Introduction of Complexity in Their Dealings with the IRS to Many Taxpayers who File Simple, Refund Returns:

While it is true that the tax code is extremely complex, that is not the case for the majority of filers, who do not itemize their deductions or have complex financial transactions to report. Still, these filers of often relatively simple returns will experience the greatest impact of the complex standards of the Affordable Care Act because of their income levels or the fact that they are more likely to not have health insurance. In addition, the IRS will find itself in the middle between employers and employees, obligated to explain information supplied by the other party.

The Impact of Specific Limitations on IRS Enforcement Mechanisms:

Under the new law, the IRS can only enforce penalties associated with the individual mandate through refund offsets, and is prohibited from employing liens or levies, traditional enforcement tools. Variability in procedures increases the risk of inefficiency or error in any operation, the IRS included.

Issues Associated with Improper Classification of Employees:

The IRS has struggled for years to prevent improper classification of individuals as contractors by employers, rather than as employees, in order to avoid employment taxes. Because employers are subject to different obligations under the Affordable Care Act based on the size of their workforce, in all likelihood this problem will grow in magnitude because of the new statute, with implications not just for compliance with the healthcare law, but also for employment and tax laws more generally.

Increased Burden on CPAs:

The United States enjoys a high level of compliance with its tax laws when compared with other nations. To achieve this favorable result, the tax system depends not only on the integrity of taxpayers and the efforts of the IRS, but also on private practitioners, the attorneys and accountants who to a very real degree serve as the arms and legs of the tax system. Tax practitioners not only help

individuals and businesses understand their tax obligations, but also often serve as general financial advisors helping clients navigate government regulations of all sorts. This is especially true for the small and medium-sized businesses which employ two thirds of all private sector workers, and don't have sophisticated tax and human resources staffs poised to explain the intricacies of healthcare reform. The sheer volume of changes associated with the Affordable Care Act, as well as the nature and complexity of certain of its provisions, will be tough for practitioners to absorb, increasing stress across the tax system as a whole. At this stage, CPAs and small and medium-sized businesses are perhaps best described as flummoxed by the Affordable Care Act. This is a problem which is magnified by the disgust and near panic gripping CPAs arising from the inability of Congress to successfully resolve tax matters critical to business, and the failure to provide even a modest amount of certainty for investment planning.

Additional Points Concerning the Impact of Healthcare Reform on Tax Administration

Before concluding, there are three additional points which I think are integral to gauging the potential impact of the Affordable Care Act upon the IRS:

Healthcare Reform Comes at a Difficult Moment for the IRS:

1985 was the last time the IRS failed to deliver a successful filing season and get refunds out on a timely basis, now a distant memory. The 2013 filing season will almost surely be the greatest challenge to the IRS since that date because of delayed congressional action on numerous tax provisions. The rapidly increasing problem of identity theft will greatly compound the task. Tax reform may also draw much of the service's attention next year if it advances and becomes a serious possibility. Even a large organization like the IRS has a limited number of senior executives capable of directing major activities. To the extent that healthcare absorbs their time, tax administration will suffer.

Independence of the Service:

For important and well understood reasons, the IRS operates with a great deal of independence, both from other government agencies and the White House itself.

Even though I had served in the Executive Office of the President as Deputy Director for Management of OMB, I felt in some ways as though I had moved to Siberia when I began my appointment as commissioner. They even dropped me off the Bush White House Christmas party list! I can only recall one meeting in four years where I participated in a discussion with White House staff and officials of other agencies covering a policy matter. I was there to explain limitations on the use of taxpayer information in connection with establishing work eligibility, part of the discussion of potential immigration reform.

I worry that such direct participation of the service in a major non-tax, administration initiative has the potential to erode the historic independence of the IRS. Let me stress that I have every faith in the integrity and leadership of Commissioner Shulman and the members of his team, and that I am unaware of specific problems arising from the regulatory or implementation process. It is also true that the IRS has engaged in interagency collaboration in the past under certain important pieces of legislation, most notably ERISA. Nevertheless, I fear that the IRS is on a slippery slope as regards its traditional independence due to being so intertwined with a major domestic policy initiative like healthcare reform.

Insertion of the IRS into Political Discourse:

The recent Supreme Court decision upholding the centerpiece of the Affordable Care Act based on the taxing powers of Congress has shifted debate over the merits of the legislation back into the political process. Unfortunately, it would appear that some opponents of the reform act will demonize the IRS in order to build a case for overturning the law. The most striking example is the disturbing comparison of the IRS to the Gestapo by the incendiary governor of Maine, Paul LePage. Reuters quotes LePage as having said, "What I am trying to say is the Holocaust was a horrific crime against humanity and, frankly, I would never want to see that repeated. Maybe the IRS is not quite as bad—yet." Attacks upon the IRS of this kind are unconscionable and will ultimately take their toll on the service, its people, and the ability of the IRS to collect the revenue which largely funds our government. The IRS did draw down its enforcement activities in the

late 90's and early in the last decade after a savaging in the political arena. The country could afford it then. We were running budget surpluses. Now we need the money.

I have raised a number of concerns regarding healthcare implementation by the IRS. There are of course others. I would suggest that even if the service is successful in executing the long list of tasks assigned to the IRS under the Affordable Care Act, there is still an unquantifiable but real risk that healthcare reform will falter or perhaps even fail because of the sheer number of moving parts and complexity of the new system. Let's hope healthcare reform is not a modern day version of the *Vasa*, the top heavy Swedish warship which in 1628 sank minutes into its maiden voyage, less than 400 feet from shore. The damage to tax administration of any such failure would be serious and long term.

Thank you.

Mark W. Everson

Mark W. Everson has extensive government and private sector experience in operating and staff positions, both in the United States and overseas. Everson is the Vice-Chairman of alliantgroup, LP. Based in Houston, alliantgroup is a leading provider of specialty tax services for small and medium-sized businesses.

Everson served as the 46th commissioner of internal revenue, from May 2003 through May 2007. In addition to his service at the IRS, Everson's federal government experience includes appointments at the Office of Management & Budget, the Department of Justice—both in the Office of the Attorney General and at the Immigration and Naturalization Service, and at the United States Information Agency. Everson has also served in state government. As a member of the cabinet of Indiana governor Mitch Daniels Everson was commissioner of the Department of Administration and then commissioner of the Department of Workforce Development, the state agency that oversees Indiana's unemployment insurance system, and workforce training and adult education programs. Everson was also President and CEO of the American Red Cross.

Everson worked for over ten years with American National Can, which was for most of that time a part of the French industrial group Pechiney. While at American National Can, Everson served as plant manager of a beverage can factory in Chicago; managing director of the company's Turkish subsidiary; vice president of the glass division in Indiana; and finally as corporate senior vice-president of Pechiney in France. He began his career in New York as an auditor with Arthur Andersen & Co.

Everson lives in Indianapolis, Indiana. He has four children and two grandchildren.

**Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)**

Name: Mark W. Everson

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

I have not received any federal grants or contracts since October 1, 2009.

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

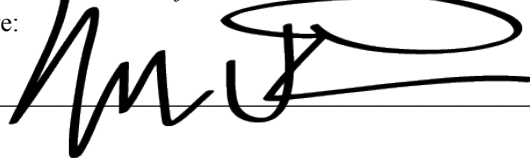
I am not testifying on behalf of any entity. However, I am currently employed as Vice Chairman of alliantgroup, L.P., a provider of specialty tax services.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

alliantgroup, L.P. has not received any federal grants or contracts since October 1, 2009. However, alliantgroup, L.P. assisted other taxpayers in claiming the qualifying therapeutic discovery project credit/grant in 2010.

I certify that the above information is true and correct.

Signature:



Date: 7/31/2012
