

IRS CHALLENGES IN IMPLEMENTING THE AFFORDABLE CARE ACT

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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IRS CHALLENGES IN IMPLEMENTING THE AFFORDABLE CARE ACT

WEDNESDAY, APRIL 15, 2015

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:01 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Good morning. This hearing will come to order.

Commissioner Koskinen, I appreciate you coming here and preparing your testimony. I think we are all aware, probably painfully aware, that it is Tax Day today. We chose this day because we figured you are not particularly busy. But I know millions of Americans are trying to comply with our Tax Code. My wife was talking to me, actually last night—now, she is a former Internal Revenue Service (IRS) agent. And now that I have my job, she is actually doing our own family taxes, and she did ask me, when I retire from this gig, will I take it back over? But I think I am pretty satisfied with the current arrangement, so I would like to do that.

But, of course, it is Tax Day, which is different from Tax Freedom Day. So I did ask my staff to find out when that is, which means, that is the day when Americans actually have paid taxes to the Federal Government. All the money that they have earned up to that point in time on average goes to the Federal Government. Past that point they get to keep the fruits of their labor. Tax Freedom Day is April 24, which my recollection of this is actually starting to move back a little bit closer to the actual Tax Day. But it is still a very long period of time that we work for the Federal Government.

Now, as is my custom, I have got an opening statement, which I will ask unanimous consent to enter into the record.¹ And I always get it because Senator Carper is a nice man.

Senator CARPER. Reserving the right to object. I will not object.
Chairman JOHNSON. Without objection, it is entered.

¹The prepared statement of Senator Johnson appears in the Appendix on page 39.

What I would like to do is read something else, and this is the letter we received from a constituent, and I think it is pretty appropriate to read today. It is a little bit long, but if you would bear with me, I think this would set really the discussion that we need to have today, because it is a serious letter and there are some serious concerns.

“Senator Johnson: We are writing to you because we are not sure where else to turn and also to make you aware of yet another issue with our affordable health care. We are both retired. We live on a moderate annuity payment which we each have and Scott’s Social Security. We had been receiving a distribution from an additional retirement plan, which was discontinued in May 2014.”

By the way, let me mention this is written to me by Scott and Julie Thompson. They did allow me to use their name, which we are finding is getting more and more difficult to have taxpayers allow us to use their name because they are concerned if the IRS knows who they are and they are complaining about something at the IRS, they are afraid of being targeted. Now, that is pretty sad.

But, anyway, Scott and Julie Thompson were willing to let us use their name, so let me continue.

“In the spring of 2014, we moved back to Wisconsin from Colorado to care for Scott’s elderly, dying father. In doing that, we moved out of the network of our Colorado health insurance. With the changes in the health insurance for 2014, we were buying a high-deductible health insurance plan through an insurance agency in Colorado. At that time our income was too high for us to qualify for subsidized premiums.”

“In April 2014, we contacted the Health Insurance Marketplace because that was the contact for health insurance coverage for Wisconsin. We were unsure if we would be able to change insurance in the middle of the calendar year. We spoke with the Marketplace agent who informed us that we had two qualifying events: the move from Colorado out of the network of our health insurance and the substantial reduction in our income as of May 2014. We were told we were eligible for coverage through the Marketplace and arranged for coverage with a plan that has providers in our area, effective June 1, 2014. We were told that we were eligible for a premium credit and arranged the full premium credit would be applied toward our monthly premium, leaving us with a monthly cost we could afford, just over \$400 a month.” “We were told we needed to submit proof of our new current income by July 20, which we did. In response, we received a letter from the Marketplace dated September 20, 2014, stating, “We have verified your information. Your eligibility as described in your eligibility determination notice will continue unchanged.”

“Fast forward to February 2015. In the process of completing our 2014 Federal income taxes, we now find out that our total income for 2014 is being used as the basis for our eligibility for the health insurance coverage. With that, we are not eligible for subsidized premiums and are now told we must pay a penalty, returning the entire subsidy amount of \$11,550.”

“There is nothing in the reporting process which allows for taxpayers to report when there was a qualifying event. We knew that our income in the first half of 2014 was too high for us to be eligi-

ble for coverage. That is why we had to buy our own insurance in Colorado. We were very straightforward about our situation in coming back to Wisconsin when we spoke with the Marketplace in April. We were told that a qualifying event would make us eligible for the premium subsidy, even in mid-year.”

Now, again, this is a couple moving to Wisconsin to take care of a dying father. They followed all the rules. They talked to people they thought were knowledgeable. They were told they would be eligible for a subsidy. And now all of a sudden they are finding that they are going to have to pay back \$11,550 of subsidy.

I will continue: “Our entire gross annual income for 2014, including the distribution received for 4 months early in the year and Scott’s Social Security, is just over \$62,000. The penalty being imposed is \$11,550. This is 18.5 percent of our entire gross annual income. Considering the fact that it is being imposed via our income taxes, it is actually going to have to be paid out of our after-tax dollars, raising that percentage of our income even higher. And for a real ironic turn of events, we will possibly have to withdraw this money from a retirement account, which will create \$11,550 of income, which will probably create a penalty for our 2015 coverage.”

“We do not know what the threshold is for eligibility for health insurance, but an \$11,550 penalty on an annual income of approximately \$60,000 for two people seems excessive. We really do not have any options except to pay this penalty in order to file our Federal and State income taxes by April 15. We do intend to file an appeal with the Marketplace. We did not do anything criminal. We did exactly as we were told by the agents for the Marketplace. We paid for coverage even when it was very expensive so that we would be compliant with the new law.”

“Moving to Wisconsin was a difficult, emotional time for us. We were thrilled that our new circumstances would allow us to have some good health insurance coverage. We never expected that what we were told would not be true. It seems to us that there must be many other people who had things happen to them during the year that affected their health insurance and their ability to pay for it. Can you help us at all? Scott and Julie Thompson.”

Now, the sad fact of the matter is—and this is what this hearing is about—how the IRS is trying to comply with the Patient Protection and Affordable Care Act (ACA). That law is in place now. It did not particularly protect Scott and Julie Thompson. And there are thousands, if not millions, of Americans that we know lost their health care coverage, are paying higher amounts, are having to comply with now an even more complex tax system. And, of course, that is really the purpose of the hearing: How is the IRS trying to grapple—again, I have a great deal of sympathy for your agency in terms of the task it has trying to deal with and help taxpayers try and comply with the even added complexity of the Patient Protection and Affordable Care Act.

So, again, that is the purpose of the hearing. I am looking forward to your testimony and your answers to our questions.

With that, I will turn it over to our esteemed Ranking Member, Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thank you, Mr. Chairman. And, Commissioner Koskinen, it is great to see you. You have a tough job. Our jobs are not easy; you have a really tough job. And I just want to say thank you for your willingness to do this, to continue to serve the people of our country, and our thanks to those on the team that you lead for the difficult work they do. We do not make your job any easier. We do not make your job any easier because we do not fully fund the work that needs to be done, whether it is providing service to people or whether it is actually doing the audits and so forth to make sure that people are paying what they ought to be paying. We wait and delay passing Tax Code changes until it is well beyond any kind of reasonable deadline. We provide uncertainty in the Tax Code, and we expect you to come along and clean it up after us.

There is an old cartoon character, Pogo, who said, "We have seen the enemy and it is us." And many of the concerns that were cited by our Chairman can be really laid at our feet. My hope is that he will be able to help this constituent. People call my office every day for help in any variety of areas. And one of the reasons that people have called my office, probably thousands of times in the last 14 years, is because they did not have any health care coverage. And for a lot of them, health care was a visit to the emergency room or, frankly, just doing without. And that is not a good option either.

The question is: What are we going to do about it? People talked about doing something about it for years. And we did not. When Hillary Clinton was First Lady, she tried to do something about it, and it foundered and did not work out. And Barack Obama becomes President, and he says, "Well, let us give it another shot."

I serve on the Finance Committee, along with Senator Portman here. I do not know if he was with us when we did this work on the Finance Committee, but we tried a bipartisan effort for months involving three Democrats and three Republicans to try to figure out how to try to extend health care coverage to a lot of people that did not have it and rein in the growth of health care costs. And, frankly, after three or four efforts and months of trying led by Max Baucus and Chuck Grassley, two good friends, guys who worked across the aisle, we just could not do it. And in the end, we took two Republican ideas—the exchange, the marketplace, and creating large purchasing pools so that people did not have to be part of a big organization in order to get health care coverage and better coverage. We took that idea and we incorporated it into the law. And we took another Republican idea—thank you, Governor Romney—of the individual mandate, because the insurance companies said, "If you do not require people to get coverage, we will end up having to cover just the lame, the unhealthy, and the blind, and it is not an economically feasible approach."

So we ended up taking those two good ideas and incorporated them into the law, and one of the ideas behind the exchange, as you know, is that for people whose income is not great, we wanted them to be able to purchase health insurance through this purchasing pool to maximize their leverage. But for folks whose income is low, they get a tax credit, and the tax credit eventually phases out at, I think, 400 percent of poverty.

Whether the origin of those ideas was Republican or Democrat, I think they are good ideas. And the question is: How do we make it work? And one of the ways we make it work is to make sure that you have at the IRS the resources so when people call you with questions about this stuff, you can actually give them a good answer.

On Thursdays, tomorrow, our Senate chaplain, Barry Black, hosts a Bible study group. He does it every Thursday that we are in session for the most part. It includes Democrats and Republicans, those of us who need the most help. And one of the things he often shares with us is Matthew 25: "When I was hungry, did you feed me? When I was naked, did you clothe me? When I was sick and in prison, did you visit me? When I was thirsty, did you give me to drink?" Matthew 25 does not say anything about, "When I had no health care coverage, did you do anything for me?" Two thousand years ago I guess they were not thinking about that.

But it is very real to us today. We had some 40 million people who had no health care coverage just a few years ago, 40 million people. And today that number has been knocked down by about a third. And on behalf of all those people who have coverage, including the kids the—the young people up to the age of 26 who have coverage on their parents' plan, that is a very good thing that has happened. The question is: Can we do better at this? You bet we could. And we will. And my hope is that we will, as we go forward, instead of trying to kill the Affordable Care Act, we will find ways, in a bipartisan way, working with the administration to fix the problems that need to be fixed. And I am encouraged that we will do just that.

I have more in a statement here that I would like to enter for the record.¹ But I am happy that you are here and look forward to a good conversation. And if it is not perfect—as I like to say, let us make it better.

Thanks so much.

Chairman JOHNSON. So are you going to ask permission for that?
Senator CARPER. Yes.

Chairman JOHNSON. Without objection.

I would also like to ask that I enter the letter from the Thompsons into the record as well.² Without objection, so ordered.

Chairman JOHNSON. It is the tradition of this Committee to swear in witnesses, so, Commissioner, if you would please stand? Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KOSKINEN. I do.

Chairman JOHNSON. Thank you.

Commissioner John Koskinen is the Commissioner of the Internal Revenue Service. Prior to his appointment, Mr. Koskinen served as the Non-Executive Chairman of Freddie Mac from 2008 to 2012 and as Acting Chief Executive Officer (CEO) in 2009. Commissioner.

¹The prepared statement of Mr. Carper appears in the Appendix on page 42.

²Constituent letter submitted by Senator Johnson appears in the Appendix on page 52.

TESTIMONY OF HON. JOHN A. KOSKINEN,¹ COMMISSIONER, INTERNAL REVENUE SERVICE, U.S. DEPARTMENT OF THE TREASURY

Mr. KOSKINEN. Thank you, Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for the opportunity to appear before you today. In the spirit of without objection, I would like to have my entire testimony submitted for the record and give you a brief synopsis.

Chairman JOHNSON. So ordered.

Mr. KOSKINEN. The subject of today's hearing, IRS implementation of the tax-related provisions of the Affordable Care Act, is an important one and is discussed in detail in my written testimony. But before addressing the Affordable Care Act and because today is, as the Chairman noted, April 15, I would like to provide the Committee with an update on the tax return filing season.

I would also like to note that today marks the 60th anniversary of the April 15 tax deadline. Congress moved the deadline back from March 15 to April 15 starting in 1955 to provide more time for processing tax returns.

In some ways, this is like the start of a Dickens novel, as I have said in other contexts. It is the best of times; it is the worst of times.

Let us begin with the best of times. I am pleased to report that the 2015 filing season has gone smoothly in terms of tax return processing and the operation of our information technology (IT) systems. Thus far, the IRS has received more than 120 million tax returns from individuals on the way to an expected 150 million individual returns. We have issued more than 83 million refunds for more than \$230 billion. For the vast majority of taxpayers who did not have issues with their returns and who chose direct deposit, refunds moved quickly through the system and reached them in 21 days or less.

Since today is the filing deadline, I would like to remind anyone who has not finished their taxes that, while time is running out, anyone who cannot make the deadline can file an automatic 6-month extension.

Return processing this filing season has gone even better than anticipated given the challenges we faced beforehand. Along with our normal preparations, we also had to prepare for the tax-related Affordable Care Act changes and changes related to the Foreign Account Tax Compliance Act, and there was also late tax extenders legislation passed in December.

Integrating all of these changes into our antiquated IT systems and still being able to open filing season on schedule on January 20 was a great accomplishment by our experienced and dedicated employees. I deeply appreciate their commitment to the mission of the IRS and their hard work.

I also want to thank our partners in the tax industry, especially tax professionals and developers of tax software and other products. Without them, the filing season could not run smoothly.

We are also indebted to the more than 90,000 volunteers who help people prepare their returns at more than 12,000 volunteer in-

¹ The prepared statement of Mr. Koskinen appears in the Appendix on page 44.

come tax assistance sites all over the country each year. I am proud to say that many of these volunteers are current IRS employees or retirees.

Specifically regarding the IRS portion of the ACA, all indications are that most taxpayers have been able to fulfill their filing obligations without a great degree of difficulty. I would like to talk a little later about the letter you received.

We provided an array of communication products to taxpayers and tax preparers well in advance of the tax filing season. We also developed a special section on our website providing information about the Affordable Care Act. We also worked with software developers to ensure that the estimated 90 percent of taxpayers who were going to file using software or tax preparers would be easily able to provide the necessary information required by the ACA and file their returns without difficulty.

We believe these activities taken together were a big reason why processing of returns with shared responsibility payments and premium tax credits generally went smoothly. I would note that for the vast majority of people, the ACA provisions only took a moment or two to handle. All most taxpayers had to do was check a box when prompted by their tax software indicating that they had coverage.

Now a word about the worst of times. Return processing has gone smoothly if you are simply filing your return without questions or need to contact us. That is the situation most taxpayers found themselves in this tax season. But if you needed to contact us, it has been very difficult and a much less positive story.

Customer service both on the phone and in person has been far worse than anyone would want. It is a simple matter of not having enough people to answer the phones and provide services at our walk-in sites as a result of the cuts in our budget.

We are dismayed by the reports of taxpayers lining up outside our Taxpayer Assistance Centers hours before they open just to get service. Taxpayers who called us had long wait times on the phones. On bad days, fewer than 40 percent of the calls were able to reach a live assister, and that was often after a 30-minute wait or longer. This was frustrating not just for taxpayers but also for the IRS customer service representatives who want to have the resources to be able to provide much better customer service.

As we begin preparations next month for next year's filing season, one complicating factor is the need for us to implement as part of the ABLE Act the certification requirement for professional employer organizations on a tight timeline and without any additional funding.

Complicating matters still more is the work ahead of us to continue implementing the tax-related provisions of the ACA for the next filing season along with the expanded requirements for the Foreign Account Tax Compliance Act. And we expect another round of tax extender legislation later in the year which we hope will be passed well in advance of December.

So I am concerned that when I testify next year on the 2016 filing season, the report on the return processing front may not be as good as it was this year. The employees of the IRS will do everything they can to effectively and efficiently deliver next year's filing

season, but we need help. We need the Congress to pass any legislation regarding tax extenders as early as possible this year and to provide us additional resources in the 2016 budget. With that help, I am much more confident about the chances of delivering another smooth filing season for the Nation's taxpayers next year.

With regard to the letter the Chairman recited and received, obviously this is the first year of the program, and taxpayers are, in fact, and tax preparers are adjusting to the requirements of the act. There is a reference there to the penalty. It is not a penalty. It is actually a repayment of the premium advanced payment provided. We spent a significant amount of time last year, starting about a year ago, trying to remind taxpayers that if their circumstances changed during the year, particularly if their family size changed or if their income changed, either up or down, they should contact the marketplaces and advise them. It sounds as if they provided income information that was not properly applied to their situation, which is a relatively rare circumstance. It is actually the first time I have heard someone say that they got the wrong information from the health care marketplaces. We have encouraged most of the people who discovered that they have underestimated or overestimated their income and, therefore, have an adjustment in their premium tax credit, did it because it is difficult for all of us to estimate a year in advance what our income is going to be. But the indications are that close to half of the people, about 45 percent of the people, are actually getting a bigger refund because they overestimated their income to be careful; 50 to 55 percent are getting a smaller refund. Again, while we will not have full data for another 3 or 4 weeks, it does appear that there are relatively few people who are in a situation where they actually owe taxes as a result of having underestimated their income for the year.

I would stress that we are doing everything we can in this transition year to help taxpayers whatever their difficulties are. The Treasury Department issued a policy saying that, to the extent that taxpayers are having difficulty with their payments, either in terms of understanding exactly what they owe on April 15, or to the extent that they owe additional funds, there will not be any penalty for an inability to pay. You still owe interest and you still should file, but the Treasury has removed any penalties for difficulties in this transition year.

As I say, we have been delighted—and I think it is because over 90 percent of people used software—that we have not seen—and we monitor the calls we get every day—a significant response from the public with regard to any difficulties they are having. As I say, if you use the software, you just answer the questions. You never have to deal with the instructions. You never have to deal with the forms.

I am struck by the Chairman's concern, which it is my concern, and that is, the point that people are nervous about revealing their names if they have a problem because somehow they will then be disadvantaged in dealing with the IRS. I think it is critical for compliance and it is critical for just the operation of the tax system in the United States for every taxpayer to feel comfortable that they are going to be treated fairly no matter who they are, no matter

who they voted for in the last election, no matter what organization they belong to, and, in particular, they are going to be treated fairly even if they have a problem. We encourage not only our employees but taxpayers to let us know if things are not going the way they think they ought to or the way we think they are going to go, because the only way we will be able to fix systems, the only way we will be able to get better is if we know what the problems are.

So my encouragement to any taxpayer is if you have a problem, we are here to help you. As our revenue agents say, we distinguish between those trying to become compliant and those trying to cheat. If you are trying to become compliant and you have a problem—you have had a change in circumstances, you have difficulty with your ability to pay your taxes—we really want to work with you. We spend a significant amount of time and money trying to help taxpayers figure out what they owe and how to pay it. We have online installment agreements you can enter into if you cannot meet your payments when you file on April 15. We negotiate offers in compromise for people who have difficulty now and into the future meeting their tax obligations. And we simply want to stress that if you have a problem, we are here to help you.

I would also remind people, though, if you are going to try to cut corners and cheat, we actually are going to find you, and we will not be happy about that. But we are anxious, as I say, wherever a taxpayer has difficulty, to try to help them. I always say, “Call us and we will help.” I always get a little nervous when I say call us because I know how long it takes to get through. And as Senator Carper said, when we ask for more funds, it is not that we want to add back the 13,000 people that already have been retired from the agency and not replaced, but we do need funds in the interim while we are building toward the future to be able to have enough people simply to answer the phones when people call.

With that, I would be delighted to answer any questions you might have.

Chairman JOHNSON. Well, thank you, Mr. Commissioner.

I will say that this is not unusual that taxpayers are afraid to offer their names because of fear of retribution. That is very prevalent in people that certainly I talk to. And that is a real problem because of the targeting, and I think it makes it even more important that we actually hold people accountable, that the American people see that those that did the targeting are brought to some semblance of justice, and that it is actually correct in the IRS. This is a problem, and it is very prevalent. This is not just something that is unusual.

It did strike me, I was actually surprised, that this is the first time you have ever heard that the marketplace or one of the exchanges gave out incorrect information. I would think that because of the complexity of the law it would be far more prevalent.

Mr. KOSKINEN. I meant in terms of an individual being told the wrong information about the validity of their income. Obviously, as has been widely publicized in this first year, the Centers for Medicare and Medicaid Services (CMS) has been very forthcoming about the 1095 information returns and the errors that have appeared in some of those and have been trying to make sure that taxpayers get the updated, correct information in their 1095-As. I know CMS

has been working with thousands of taxpayers to make sure that the information in those 1095-As is correct. So to that extent, clearly in a transition year there have been a reasonable number of cases, but still compared to the 4.5 million taxpayers we expect to file, the numbers are surprisingly smaller than you would expect. But you are exactly right. As you would expect in the first year of one of these programs, some of the information returns have had to be corrected, have had to be updated. Some taxpayers, appropriately, have said the information in that return does not correspond with either the payments I have made or the premium support I have gotten. And there are 30,000 or 40,000 of those that are being worked through by CMS.

Chairman JOHNSON. I think correctly, and you did correctly state that what they are paying, the \$11,550, is not a penalty. It is just reimbursement of the subsidy that they were incorrectly provided. But, again, they view that as a penalty. You can kind of understand that.

Mr. KOSKINEN. I understand.

Chairman JOHNSON. They followed all the rules. I was just reading what they said. I take your point.

But speaking of penalties, one of the things I found interesting in the briefing packet here is that the average penalty paid by people, an individual decided to really exercise their freedom and not purchase insurance—by the way, is that a penalty or a tax, that \$95 or the greater of one percent? Is that a penalty or a tax? I forgot how that was ruled.

Mr. KOSKINEN. The ruling I think has been it is a tax. It is called the “shared responsibility payment.”

Chairman JOHNSON. OK. So my point being that the average tax, shared responsibility tax, is not the \$95 minimum. It is the one percent of income, which ends up being about \$172. Is that correct for this year?

Mr. KOSKINEN. I do not have that number, but clearly 95 is the minimum, but it goes to one percent of your income.

Chairman JOHNSON. And it is the greater of?

Mr. KOSKINEN. Yes. And it is \$95 for adults in your family. So if you have two or three people—

Chairman JOHNSON. So if you extrapolate that, that is about 80 percent higher than the minimum. So the average, 172 is 1.8 times the minimum of 95. So if you extrapolate that to next year, the minimum penalty will be \$325, correct?

Mr. KOSKINEN. Yes.

Chairman JOHNSON. Or one percent of your income, whichever is greater.

Mr. KOSKINEN. Next year it goes to 2 percent, I think.

Chairman JOHNSON. Oh, OK, it goes to 2 percent. OK. So I just did the math on one percent. It is going to double that then. So what I was looking at is \$325 times 1.8 percent would be 588, double that then. Correct? So the average tax penalty will be closer to \$1,200 next year.

Mr. KOSKINEN. Well, the one percent, you do not add both the 95 or the—

Chairman JOHNSON. I understand. I am just trying to extrapolate what this is going to be in the future.

Mr. KOSKINEN. Clearly, the statutory shared responsibility payment is geared to go up, and that is designed to encourage people to get health insurance.

Chairman JOHNSON. I am trying to figure out about what we can extrapolate that penalty will be next year. So you are saying it is the greater of \$325 or 2 percent of income?

Mr. KOSKINEN. That is right, but let me just check. I have experts here.

Chairman JOHNSON. Is that correct?

Mr. KOSKINEN. OK. The consensus is we think it goes to 2 percent. We would be happy to make that clear. In any event, either way, the statutory framework provides that the payment goes up if you do not have coverage in the second year to a reasonable higher amount than for the first year. So it will be increasingly encouraging people to buy health insurance.

Chairman JOHNSON. Right. So here is my point, because what gets laid out there is the \$95, the \$325, and the \$695. That is a number. And then as a percentage of income, the greater of. So this year, the percentage of income is really what drove it, so the average penalty was 1.8 times that minimum \$95. So if you extrapolate that, if it is one percent, it will be \$588 next year; if it double that, it will be \$1,176.

Mr. KOSKINEN. You would not—

Chairman JOHNSON. If you are talking as a percentage of income, that will be a pretty good extrapolation in terms of what the average penalty would be.

Mr. KOSKINEN. Right.

Chairman JOHNSON. If this year's is 172 at one percent, next year's at 2 percent will be \$1,176. And the third year of the implementation of Obamacare, then we could look for, instead of—not \$695 as the minimum penalty, extrapolate our experience from this year, it will be closer to \$2,500 will be the average penalty paid if Americans exercise their freedom and choose not to buy an individual policy. So I kind of want to lay that on the table there. That is what the government is going to tax—I think it is a penalty, but that is what we will tax the American people for not buying health care.

I was a little surprised—I should not have been surprised—that only 4 percent of the subsidies that are provided are calculated properly, and you say about half of them are calculated too high, half of them are calculated too low. Do you kind of expect that trend to continue? It is just going to always be difficult to calculate that and estimate it, correct?

Mr. KOSKINEN. No, I think what is going to happen, right now 70 percent of people, give or take a little, get refunds on their taxes generally, and they do that because we all over-withhold. Nobody knows exactly—well, if you get the same job and do not do anything different, you know what your income is going to be. But most taxpayers estimating their income understand you cannot estimate accurately, so they tend to over-withhold so that, in fact, they get a refund rather than having tax owed. We expect that taxpayers have done that—nobody tells them they have to do that. Taxpayers do that, learning the situation, we expect that what will happen is people will be careful in estimating their income as the

basis for calculating the premium tax credit, and they will make sure that they overestimate their income to make sure that, in effect, the adjustment is in their favor when they get to file their taxes.

So we expect that as consumers adjust to the law, increasingly what will happen is that there will be positive increases in refunds or declines in amounts owed because people will have adjusted to the fact that you want to be careful when you estimate your income and you want to build in the possibility that you will get a pay raise or your spouse will get a job, and if there is a big change, again, you should call the marketplace. But I think what we have seen in withholding generally is people are careful, and they basically in the case make sure that they have a refund coming rather than a tax owing.

Chairman JOHNSON. Very quickly, last question. How are you coming in terms of 100 percent income verification to really evaluate the correctness of those subsidies? Do we have 100 percent income verification now?

Mr. KOSKINEN. Well, to the extent we ever have 100 percent income verification—that is one of the reasons I say it would be nice to get W-2s in January rather than March. Most taxpayers are trying to be compliant. They provide us their income, and we then audit it over time when we get information returns. Ultimately it is as correct as what the taxpayers tell us and what the information returns do. We assume ultimately that the income provided to us after the fact is correct.

Chairman JOHNSON. OK. Thank you. Senator Carper.

Senator CARPER. Commissioner Koskinen, I often say, almost every day, find out what works, do more of that. When we are trying to figure out how to make sure that we did not end up with an insurance pool which was largely older people, sicker people, less healthy people, to try to find out what works. We turned to Massachusetts, the one State that actually tried to address this issue, set up exchanges for health care coverage, and Governor Romney and the State of Massachusetts established the individual mandate. That is really where we took that idea from. They were several years ahead of us, and we are just going through our first tax filing season where all this is before us and before your employees.

Massachusetts has been doing this for not just one year. They have had several years of experience. Do you have any idea, does anybody with you have some idea of has it smoothed out? Has it smoothed out over time as people become used to this, working with the exchanges, working with their Tax Code there? Has it gotten any easier?

Mr. KOSKINEN. Anybody know? At this point—and, again—

Senator CARPER. And what, if anything, can we learn from them?

Mr. KOSKINEN. I think we could probably learn a lot. The tax policy side of this in terms of what works or does not work really is—tax administration, the policy issues are Treasury, the administration, and the Congress. But in all that I have seen, I have not seen that there is an ongoing issue in Massachusetts which would lead you—

Senator CARPER. I have not heard about it, if there is one.

Mr. KOSKINEN. We have not, so that would lead you to conclude, to the extent the mandate still exists there, people have adjusted to it, and it has been implemented and executed without difficulty over time, because, as I say, policy is the issue of—people outside of tax administration, we have and I have personally just kept track of what is in the press, and I have not seen any indications that Massachusetts has run into any difficulties at this point.

Senator CARPER. OK. Good enough.

I want to go back to the example cited by our Chairman to make sure I understand this. Let us say a year ago my family and I thought we were going to earn about \$50,000 in 2014, and my wife got a job, and we ended up making twice that. We will say \$100,000. And we had felt at the beginning of the year we were going to be eligible for tax credits at a certain level toward the purchase of our health care through the exchange. And as it turns out, at the end of the year, because of her income, additional income that we had not anticipated, we were not eligible for either as much in tax credits or maybe any tax credit at all. And we will say in this example it turns out I got a tax credit for \$5,000, and ultimately I was not eligible for that. I had to pay that back, I presume through the Tax Code, through the filing. But that is not a penalty. That is basically an overpayment for a tax credit that was extended to me that I ultimately was not eligible for.

I want to make sure we are talking apples and apples here, but is what I just laid out, is that essentially what is happening in the situation that Senator Johnson shared?

Mr. KOSKINEN. Yes. Actually, it is important to understand where the money went. In effect, a taxpayer generally comes to the marketplace, buys a policy. It is determined what their premium is going to be and what portion of that premium paid to the insurance company will be paid on their behalf as a credit. So in the particular case here, or any case, at the end of the year what has happened is you bought insurance, the premiums have been paid to the insurance company, and the question is: How much of that premium you owe and how much was eligible for the credit?

So in this particular case, ultimately it was determined that the insurance was bought, that \$11,000 was a premium payment to the insurance company, and the question is in this particular case the taxpayer owes the premium, was not entitled to a credit for that premium paid. So it is not a penalty. It is not money that went to the taxpayer. It helped buy the insurance for the taxpayer.

It is one of the reasons we spent a lot of time last year and we are going to continue to spend time this year reminding people in your circumstance, for instance, where your situation changes, your wife gets a job, you get a pay raise of any significant amount, you should contact the marketplace and advise them of the change, and the premium advance payment will be adjusted accordingly. Therefore, over time we think that as more and more people get adjusted to the fact that it is not just a question of stopping payment, you actually need to make sure the marketplace is updated, as I said to the Chairman earlier, we expect over time people will make those calls and make those adjustments earlier. They also will be careful in their estimates of what they are going to earn to make

sure that they do not underestimate it. And so we think that this will work its way out to even a smoother filing system.

As I say, thus far—we monitor the calls that come in—we have not seen a significant number of calls with people who have problems. We know, as I said, there have been adjustments made by CMS, which runs the marketplace with any number of taxpayers, but even there, of the estimated 4.5 million taxpayers who will file returns reconciling the premium tax credit, the number of people affected is a relatively smaller percentage for the first year.

Senator CARPER. OK. Thank you.

Gene Dodaro was here sitting in your seat yesterday, by himself, and he spoke, as you have, pretty much without notes and did a terrific job. One of the questions that I asked him was what more can we do to help the IRS serve the people of this country to make sure that we are meeting our responsibilities as taxpayers, but also making sure that we are providing the kind of service that we would expect, hopefully the kind of service that—Claire McCaskill was auditor for the State of Missouri, and when I was State treasurer, we tried to provide really good service. And the State of Delaware Division of Revenue won the quality award a couple of years ago because they provide excellent service. We are very proud of that.

But it galls the hell out of me to know that people call the IRS and they have to wait forever to get somebody on the line, or they go to the IRS office and they have to wait to go see somebody. We are complicit in that. We in the Legislative Branch are complicit in that because we are not providing a reasonable amount of funding for the IRS.

Yesterday, Gene Dodaro said there are things that the IRS has done to be able to use the resources they have more efficiently, and he said this is good. He said there are some things that you have not done that they believe you ought to. And he said we should provide more in terms of resources, like three things. And what I would hope that we will do is act on his advice, and certainly with your participation and that of your team.

The last thing I want to say, we have a bunch of people who are preparing tax returns on which there is an earned income tax credit. We know there is a high improper payment related to earned income tax credits. A lot of those tax returns are prepared by people who are not credentialed. And I know you have been pushing for us to do something to better ensure that people who are helping millions of taxpayers prepare their returns have some reasonable amount of credentials. Would you just take a minute on that? I know I have run out of time, but this is an important point.

Mr. KOSKINEN. Yes. I would stress, as I said, we have a wonderful working relationship with the tax preparer community, and the vast majority know what they are doing, do a good job, work their way through the complexities of this Tax Code, which is obviously more complex than anybody wants it to be.

But there are about 400,000 of those tax preparers that have no credentials. They have not become enrolled agents. They are not CPAs, they are not lawyers. Of that 400,000, as I say, a lot of them study hard, work hard, and do provide a good service.

There are a group of them that do not have a lot of background, much training, and do their best but make a lot of mistakes. And then there is a small percentage of them that are crooks, that you can find them easily because you can drive through any center city and there will be a sign saying, "Come to us. We can help you get a better refund. We can get you a bigger refund. Just sign a blank return. We will take care of it for you."

And across the board we think people have noted numerous times it takes more credentials to cut your hair than to prepare your taxes. And at some point there ought to be some minimum qualifications before you can actually go to a taxpayer and say, "I will take care of your taxes for you." And we have a voluntary program. The courts ruled we did not have the authority to require minimum qualifications, so we have asked the Congress for legislation that would require some minimum level of continuing education just the way CPAs and lawyers and others have to just keep up.

Senator CARPER. Thank you. I would just ask my colleagues on this Committee, including those who serve on Finance, to see if we cannot address this. This is an issue that cries out to be addressed. Thanks so much.

Chairman JOHNSON. Thank you, Senator Carper. It does almost speak probably to the overregulation of the hair-cutting industry. [Laughter.]

For the record, because we got the information, my back-of-the-envelope calculation here on the penalties. The first year, \$95 or one percent of your income. This year it is about \$172. That is 1.8 times the minimum. Next year it is going to be 2 percent of income, so the \$325 minimum penalty times 1.8 times 2 is \$1,176, would probably be the extrapolated average penalty, tax, next year. The third year, \$695 times 1.8 is \$1,258 times 2.5 percent would be \$3,145. That is the extrapolated average penalty over the next couple years, 172, ramped up to about \$1,176, to the third year over \$3,000. So, with that—

Mr. KOSKINEN. I think part of the calculation is you either pay the minimum \$95 or the \$325 or the 1 or 2 percent, but you do not add them all up.

Chairman JOHNSON. I understand, whichever is greater. Again, I am just saying the average penalty goes from 172, probably to 1,176, probably to 3,146, in the ball park. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman. And, Commissioner, thank you for being here today. I usually see you over at the Finance Committee, and this I guess is really a Tax Day hearing, so it is appropriate to talk about the broader issues. But I want to focus in on the 1095-A issue that—the relationship to the Affordable Care Act. A couple months ago, as you know, the administration announced that it had sent out about 800,000 incorrect tax statements, and obviously it is very important to my constituents and folks around the country because they rely on these statements. I think they were initially told, do not worry about filing your taxes until we get a corrected statement, and then more re-

cently told go ahead and file your taxes and you will not be penalized based on information you relied on that is inaccurate.

So it has caused a lot of confusion, and I am sure you have heard a lot about it.

Mr. KOSKINEN. Yes.

Senator PORTMAN. I have, as I am sure many of my colleagues have. I have a constituent named Linda from Ohio. Unlike the Chairman's constituent, she is not interested in sharing her last name today, but she got the incorrect 1095-A from the marketplace in mid-January. She has been trying to correct it ever since. And, one of these stories of contacting folks at the IRS, February 15, she was informed by two different people her correction was denied. February 17, she received a phone call that it had not been denied, but it was in escalation. She was able to arrange a phone call between the supervisor and the marketplace, but, anyway, she was still not able to get a straight answer out of the system.

Mr. KOSKINEN. I would note that she is calling CMS, not the IRS. The issues about the 1095, the data in it, is all managed by CMS. And they do have a very vigorous customer service effort working through those kinds of questions.

Senator PORTMAN. I appreciate that and stand corrected. I believe she did call the IRS initially but was redirected—

Mr. KOSKINEN. Probably got referred to the CMS.

Senator PORTMAN. Yes. Anyway, lots of questions about how we can help solve this problem and really the scope of the problem. If you could today give us what the IRS' best estimate is of the percentage of people who received a subsidy in 2014 and have to repay a portion of that subsidy, do you have a sense of that?

Mr. KOSKINEN. We will not know because it takes us awhile to post, and it will be another 3 or 4 weeks. But thus far, it appears that slightly less than half of the people are getting an increased refund because they got smaller advance payment of the premium tax credit than they were entitled to, and that is based on their final income. About 50 to 55 percent are getting a smaller refund because they got too much advance payment beyond what they were—but they are still getting a refund, but it has an adjustment. And the adjustments are—we do not know what the dollars are. I have seen tax preparers estimating that their experience is that it is \$300 one way, \$500 another way.

We do not have information or indication of who actually as a result of having gotten too much of an advance payment to the insurance company on their behalf actually end up as a result owing tax, the situation that the Chairman's constituent is in. Thus far, the indications are—although, again, I would stress we will have better information in 2 or 3 weeks when we evaluate it is a small number of people in that category. That was what our estimate was, that to say the vast majority of people get a refund in any event, the swings in whether you got too much of an advance payment or too little of an advance payment are relatively modest enough that they are absorbed within the refund itself. But we will have much better data for you in probably about 3 weeks.

Senator PORTMAN. We would appreciate getting that data. Without answering the question today, just if we could submit the question to you today, and we will also submit more for the record, an

estimate of what that percent would be in terms of the folks receiving a subsidy that have to repay a portion of it if the income verification process were more accurate and working properly, because that is obviously one of the big challenges that we have.

The other issue that I think is going to continue to be something we hear about from our constituents is the State-Federal data sharing. There was a story in the Wall Street Journal—you probably saw it; I think it was yesterday—about Marta Champan from New Mexico. She expected to receive an \$850 Federal refund. Instead, she had to pay taxes, and the reason is that apparently the exchange did not account for her husband's Social Security benefits of \$9,000. So there may be a lot of reasons for that failure, but it gives me concern that the State-based exchanges might not be communicating properly with the Federal databases. It seems like the government should have been able to help her avoid that error.

In any event, she reports that she felt this was—a quote in the Wall Street Journal—“kind of a trick” that she would not have gotten the insurance had she understood its full price and now has dropped her plan for this year. So I guess my question for you there is: In terms of the information flow between the State and the Federal Government, do you believe that that is adequate? And how could that be improved?

Mr. KOSKINEN. At this point, about income verification I should explain a little how the process works. The taxpayer goes to the marketplace and makes an estimate of what they are going to earn.

Senator PORTMAN. Right.

Mr. KOSKINEN. For instance, if you enrolled last fall, you would estimate what you are going to earn in 2015. We then get pinged by the marketplace, either the State or the Federal marketplace, and asked for an income verification, and that income verification, surrounded by protections and not revealing it to anybody outside, basically says what was your earnings in the previous tax year. So in the case of the Social Security payment, if that was on the income the year before, that data would have gone back to the marketplace. So, in other words, suppose the taxpayer came and said, “I am going to make \$25,000 new year,” we would be asked what did they actually file the year before, and if that was \$42,000 or \$35,000 with some Social Security payments, that information would go back to the marketplace, and they would have a discussion with the applicant or make a note to the applicant that their estimate of income does not correspond with the verification.

The Inspector General (IG) looked at the income verification information we provided in the initial enrollment period over 15 to 20 million, and found that we were 99.5 percent accurate in terms of the information we gave both to the State and to the Federal marketplaces. So it ultimately is up to the consumer to make an estimate, just as I say we all do when we are filing our withholding estimates and our estimated tax payment estimates. What are we going to earn in the next year? Most people with any variety in their employment circumstances never know exactly what that is going to be. So, again, our expectation is that as the process moves, more and more people will understand they have to be careful about estimating their income. If you underestimate it and, therefore, get a bigger premium paid to the insurance company on your

behalf, it will all work out when you have to reconcile and you will pay it back. So our expectation is that those percentages of the number of taxpayers when they reconcile who get larger refunds will go up because just the same way people when they file their taxes, 60 to 70 percent of them get refunds, because they, in effect, overestimated what they are going to owe, so they will have a refund. And we think that is where it will work.

But in terms of the actual accuracy, the accuracy of the information that we are providing to verify the estimate provided by the taxpayer thus far is not a difficulty and not a problem, and the States get the same information from us automatically.

Senator PORTMAN. Commissioner, I have lots of other questions for you, and I will submit those for the record. And a lot of it to me goes to the process here. One of the things that the Inspector General, as you know, has said is that the ability to detect overpayment of subsidies is going to be tough until you have implemented a predictive and analytical fraud model. So I will submit some questions to the record about that process.

Again, I appreciate your service and the fact that it is going to be a complicated tax season for you, and we will be following up with more questions.

Mr. KOSKINEN. That would be fine.

Senator PORTMAN. Thank you.

Chairman JOHNSON. Thank you, Senator Portman. Senator Sasse.

OPENING STATEMENT OF SENATOR SASSE

Senator SASSE. Thank you, Mr. Chairman. Thank you, Mr. Commissioner, for being here.

Are you familiar with the Jonathan Adler piece in the Washington Post yesterday about the 100 to 400 percent Federal poverty level (FPL) qualification levels for the ACA?

Mr. KOSKINEN. No, I did not see that article.

Senator SASSE. OK. So he is summarizing essentially a Yale Journal of Regulation Piece about the ACA's authorities and who qualifies for the tax credits, and it is my understanding that it is 100 percent to 400 percent of the Federal poverty line. Correct?

Mr. KOSKINEN. I think that is right, yes.

Senator SASSE. OK. It looks like you all have written a rule essentially rewriting Section 36B of the statute that disregards the 100-percent income level. I am curious if that is true and how you have the legal authority to do that.

Mr. KOSKINEN. I am not aware of that. I will be delighted to get you information. I am not aware that we have done anything that would ignore the statutory framework.

Senator SASSE. OK, great. Thank you. We will followup with a letter and try to engage your staff and understand how that would work.

The particular concerns I have are related to the broad application of IRS discretion, obviously in the regulatory and rulemaking process, but also in particular cases. I think as the Chairman and Ranking Member mentioned, many of our constituents, when I travel Nebraska, there is genuine fear of the IRS because there is a lack of understanding about how discretion is applied by the

agency. And if Section 36B were rewritten, it is not clear that an employer would not be subject to employer mandate penalties if employees that they have that would have been Medicaid eligible end up on exchange through no fault of the employers, they could suffer a penalty in that case. So I would love to get more information about that.

Could you help us understand more broadly how policy decisions in the rulemaking process are made between the Department of Health and Human Services (HHS), the IRS, and the White House? You have 36 components of the ACA under your jurisdiction. Is that true?

Mr. KOSKINEN. Actually, all the tax provisions of the ACA come under our jurisdiction. As I said, as a general matter, our role in life is tax administration. So policy issues about what legislation ought to look like, what changes in this act ought to be, are decisions made by the Treasury, the White House, and the Congress ultimately. We simply implement what goes on.

Issuance of regulations is a joint effort between the Treasury Department and the IRS. We are a bureau of the Treasury Department. We do not issue regulations by ourselves. They technically have the authority, but obviously we design and draft regulations with an eye on what is the impact on tax administration.

If there is a policy decision about do you increase this or that, for instance, the policy decision about the penalty application, that is a decision by the Treasury Department. We get involved in that only to the extent that it is a question of what are the implications for tax administration and would it work better, easier, which is the best way for it to work.

But all of the policy issues are decided, again, by the administration and ultimately by the Congress in terms of legislative either recommendations or fixes.

Senator SASSE. So would that be true with regard to the credits for illegal immigrants as well, the decisions that were made about the refundability of credits for folks that under the ACA would not have qualified under the statute but appear to be getting credits in certain cases? The IRS plays no role in that rulemaking process?

Mr. KOSKINEN. In the rulemaking process, we participate in the discussions about if you are going to make that change—we may chime in on what we think the law is, but the policy decision—there is an Office of Tax Policy in the Treasury Department that is responsible for tax policy. We meet every 2 weeks going over regulations to make sure that as those regulations are designed, that they are designed with tax administration not only in mind but as a part of that to make sure that as the regulations get changed, they do not inadvertently either make life more difficult for taxpayers or more difficult for the administration of the tax laws.

Senator SASSE. Got you. So in the *King v. Burwell* case that we are going to probably have a ruling from the Court in June, when those decisions were made about credits in the States that did not have state-based exchanges, those decisions were made in the Treasury Department's Tax Policy Division?

Mr. KOSKINEN. Yes. Those interpretations of the policy issue are up to Treasury. We participate, as I say, in those issues giving our view as to how it would be for tax administration, what works or

does not work. But the policy calls and the development of the act to begin with are the responsibility of Treasury, the White House, HHS, and ultimately the Congress.

Senator SASSE. OK. So going back to the Chairman's opening issue with his constituent, if a decision was made—what was the number, \$11,000, Chairman Johnson, of a tax bill?

Chairman JOHNSON. Correct.

Senator SASSE. How will the decision be made about the timeline of repayment of that—you said you want to dispute calling it a "penalty," but that obligation that they have?

Mr. KOSKINEN. To repay the premium that went to the insurance company. That is tax administration, and so the taxpayer will either file their taxes and add the \$11,000 back that they owe. Or if they have difficulty with that, they will contact us. We keep encouraging them to do that. You do not have to hire somebody off late-night TV to come deal with the IRS. They can work on an installment agreement. Actually, you can develop an installment agreement yourself online, which is one of the new things we have developed over the last year.

If they have substantial financial difficulties, they can work with us about an offer in compromise to actually figure out how to settle it. Those are all tax administration issues, and we are responsible for those.

Senator SASSE. I am nearly into Senator McCaskill's time, so one last question. I earlier said 36 provisions. It is 34 provisions of the ACA. Who is the point person inside the IRS for the tax administration of all the new ACA authorities?

Mr. KOSKINEN. Ultimately the Commissioner is, which is why I am here. In other words, I have met every 2 weeks for the last 15 months with the IT people, the program office, the business people, working toward the implementation of—the development of the systems, the implementation of them, making sure this filing season got started. And so I am ultimately responsible.

Senator SASSE. And it is your judgment that the IRS is up to the task of administering all the new ACA authorities?

Mr. KOSKINEN. Thus far, I think the filing season has shown that we have done a remarkable job in the face of both the challenges, getting them into—we have a very—what I call fondly "a Model T" with a great sound system and a GPS system and a new engine, but it has applications running for 60 years. To pull that off, I am delighted. You could have made a lot of money betting on that result 15 months ago.

So I think we are up to it. I do think—and I have thought for a year about it—we do statutory mandates, so we will always have a highest priority of whatever statute you pass. But when our resources are cut, it means that we cannot do other things that we have discretion over. So it is tax enforcement, taxpayer service, improvement of our IT systems have to be put on hold. But I think in terms of the implementation of the Affordable Care Act, I could not be more pleased with what the employees of the IRS have been able to do.

Senator SASSE. Thank you, Commissioner.

Mr. KOSKINEN. Thank you.

Chairman JOHNSON. Thank you, Senator Sasse.

Let me just admit that back-of-the-envelope calculations are dangerous because my logic was in error. Really the extrapolation would be about \$172 times 2, it would be \$344 in the second year, and about \$430. So I want to correct the record. I was wrong. So it really looks like the minimum penalty would probably be the maximum penalty if we extrapolate it. So we are not talking about 3,000 bucks. We are really talking the 325 and 695 as being average. So I just want to correct that. Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you—

Mr. KOSKINEN. I appreciate your staff's input because I could not do that on my own.

Chairman JOHNSON. It was me. I was just thinking about it. It just seemed, man, that is why, I started going through that logic. This is unbelievable. And it was unbelievable, so I was wrong.

Mr. KOSKINEN. 435 sounds a lot better.

Senator MCCASKILL. Commissioner, everyone is offended at the notion—I was offended, everyone is offended, regardless of party or ideology—at the notion that the IRS would ever target groups based on their beliefs in this country. I understand the outrage. I understand the need to hold people accountable. But I would like you to explain that when we vent that frustration by cutting funding from your agency, who exactly we are punishing?

Mr. KOSKINEN. Well, as other people have noted, when you punish the IRS by cutting its budget, ultimately you are punishing taxpayers because you limit our ability to provide the service to them that our employees want to provide. The people who care most about it are the people working in our call centers, in our assistance centers, whose satisfaction comes from helping people, and they feel they do not have the resources to do that.

Senator MCCASKILL. Your budget has been cut by 18 percent since this scandal came up. What is the call wait now for a taxpayer who has a problem? What is the average amount of time they have to wait on the phone because you do not have enough personnel to answer the phones?

Mr. KOSKINEN. At this point, when you get through, if you get through, it on average would have taken you about 28 to 30 minutes.

Senator MCCASKILL. And what percentage of the phone calls can you even answer at this point after these draconian budget cuts that supposedly were punishing you, but as it turn out they are punishing my constituents who cannot talk to anybody because you have had to cut so many people?

Mr. KOSKINEN. About 60 percent of the calls this year are not going through, and that increases, that exacerbates the problem, because if you do not get through—we have had over 6 million—the phone industry calls and courtesy disconnects, they are basically when the system gets overloaded and we know you are going to be there too long, you will just simply get disconnected. So you aggravate the problem because what happens is people have to call back. So, on average, a lot of people are calling two, three, or four times just to get into that queue to wait for the half-hour.

Senator McCASKILL. And scams. We are going to have a hearing later today on the Aging Committee about the scam that is going on in this country where people make phone calls claiming to be the IRS. Then they basically steal money from victims through coercive efforts and misrepresentations on the phone. When you are able to go after the criminals, what is the return on investment for every dollar that you are given to go after the criminals? And I saw those criminals firsthand as a prosecutor who are using the IRS and the tax code to cheat all of us people in America who pay their taxes. What is the return on investment for every \$1 you get? What do you return to the Treasury in terms of your ability to go after the criminals?

Mr. KOSKINEN. Well, on enforcement alone, the return is over 10 times the amount. As a general matter, when you give us \$1, you get \$4 to \$6 back.

Senator McCASKILL. OK.

Mr. KOSKINEN. So we are the only agency in the government, if you give us money, we promise to give you more back.

Senator McCASKILL. And let me make sure I understand and make the point because, this sometimes—and I do not want to get to, well, maybe I will get to an aggressively partisan place here. When you estimate your taxes, you are deciding what you are going to make and what you are going to owe to the government. Then you decide what is going to be withheld. If you are right, if you are perfect, then it is even. You do not owe anything and you do not get anything back. But if you underestimate your income, you might owe more. If you get less, and if you overestimate, you might have to pay more. So this is something every taxpayer has to do every year, correct?

Mr. KOSKINEN. That is correct.

Senator McCASKILL. So really what we are doing with the ACA is exactly the same thing.

Mr. KOSKINEN. That is right.

Senator McCASKILL. The individual has to estimate whether or not they are entitled to get this amount of money for their insurance premium or if, in fact, they are entitled to that amount. If they estimate wrong, they are either going to get money back or they are going to owe money.

Mr. KOSKINEN. That is correct. And one of our goals is to try to educate the public—we have been doing that for a year—to understand that.

Senator McCASKILL. And they are going to get better and better at this.

Mr. KOSKINEN. They will, and all of our experience in all of these kinds of programs is after the first year, everybody then pays even closer attention and understands that it is not a free good.

Senator McCASKILL. OK.

Mr. KOSKINEN. That when you get a premium, advance payment, it ultimately has to be reconciled with the reality of your income.

Senator McCASKILL. And, finally, calling it a “personal responsibility tax” I have a couple of minutes, and I am going to take them. A 32-year-old man in America has enough money to either buy a new Harley or health insurance. And under the umbrella of freedom, he decides, “I want a new Harley.” And he goes out, and he

puts that Harley on the pavement, and he is life-flighted to the nearest hospital. In America, we do not say to him, "You know what? You decided to buy the Harley. We are going to let you die." Instead, we take him in the hospital and sometimes give him millions of dollars of health care. He goes bankrupt. The hospital has uninsured care.

Now, there is no magic fairy that I am aware of—I do not think there is one at the IRS—that comes into that hospital and pays the bill. So what happens when that happens? When that guy decided to buy the Harley instead of the health insurance, the hospital calls the insurance company and says, "We are going to have to charge you more for labor and delivery. We are going to have to charge you more for a knee replacement. We are going to have to charge you more for an angioplasty." Then, that insurance company calls the small business down the road and says, "You know what? I am going to have to raise your premiums." And those premiums have been going up by double digits every year for years prior to this reform.

Now the question we have here is one of personal responsibility, and I am lectured about personal responsibility from some of my friends on the other side of the aisle constantly. So the question is: Do we owe, all of us who pay insurance, should we pay a higher premium because he got to get a Harley? Or should he have personal responsibility to be able to cover his medical bills? And that is really the essence of this question.

We say you have to have insurance when you are driving a car because you might, in fact, harm someone else. Well, when you go into the hospital with uninsured care, you are passing those costs on to people who have taken personal responsibility.

So I get so tired of this notion that somehow this is the big arm of government instead of the notion that it is time in America we acknowledge that personal responsibility in the health care sector is just as important as personal responsibility in any other sector.

I feel better. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator McCaskill. Senator Ernst.

Senator CARPER. Mr. Chairman, could I just say something?

Chairman JOHNSON. Sure.

Senator CARPER. I am Tom Carper, and I approve that message. [Laughter.]

Chairman JOHNSON. Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman, and I would like to state for the record I do ride a Harley, I have insurance, and I wear personal protective gear. So, yes, thank you very much. I am personally responsible.

Mr. KOSKINEN. Did you all work this out beforehand?

Senator ERNST. No, we did not. Fortunately, I do not make that choice. I know what I can afford, and do so accordingly.

Anyway, a little bit more—I know Senator Sasse had brought up some good discussion about *King v. Burwell* where your role will be once that decision is made. If it goes the way I believe it should go, then we will have subsidies that have gone to States and to in-

dividuals that should not have gone to those individuals. But what do we do—and maybe you have thought about this—in those hybrid situations? There is a handful of States, of which Iowa is one. It is a hybrid exchange. It is neither State nor Federal. It is a combination of both. Have you thought through that and what role the IRS might be playing, Commissioner?

Mr. KOSKINEN. No, we have not. Basically there is no way for us—so we do not spend any time thinking about it—of trying to predict what the Court will hold and what it will decide in terms of how to parse through all of this and what the responsibilities are of States, the Federal Government, the Congress. And much like potential tax extenders, we basically, as I say, play the hand we are dealt. The Court will make a decision, and then we will respond.

The policy issues, back to the earlier questions, about what the implications are beyond tax administration will be decisions made by the Treasury Department and the administration. But at this point, we have enough challenges running the filing season and the program as it is, and so it is what we are focused on.

Senator ERNST. OK. I do appreciate that. I hope that once the decision is made we can all jump on that together and figure out how we are going to handle that situation. So I do appreciate that.

Since September 2014, Health and Human Services has dropped over 300,000 individuals from Obamacare because those individuals have failed to document their legal residency. So we do not know what their status is. Many of those were enrolled under the law for over a year, so 300,000 individuals. And during that time, many of them did receive premium assistance, tax credits, and cost-sharing subsidies for which they are not entitled. They cannot prove their residency; they are not entitled to those.

So under the administration's current policies, if an individual or family is unable to prove his or her citizenship or lawfully present status, HHS provides coverage and taxpayer-funded subsidies under the Affordable Care Act before the individual's legal status can be verified by any government agencies. So if citizenship or lawfully present status is not verified or cannot be verified, then those individuals are dropped. So, again, 300,000 individuals have been dropped from Obamacare. And because many of those are part of this 300,000, if they are illegal immigrants, they are not necessarily filing tax returns, and so I understand that it would be difficult for the IRS to try and recoup improper payments or credits or subsidies because they will not be subject to the reconciliation process when they file tax returns, because they do not file tax returns.

So how as the IRS are you able to handle that situation? What is the plan moving forward for those folks that were receiving credits or subsidies that are not filing?

Mr. KOSKINEN. Those determinations and qualifications were made by CMS and HHS, which runs Medicare and Medicaid and has experience on recouping improper payments or payments made in error. And so this is an area where they will be responsible for doing that.

Senator ERNST. That will not even be run through the IRS?

Mr. KOSKINEN. No. In other words, if they were not filing, they will—if the premiums have been paid on their behalf, at this point the idea is that CMS will pursue those to the extent that they pursue any other payments that they make, that turned out to be improper.

Senator ERNST. OK. I can see that this is going to be a very difficult situation with so many different entities that are involved with subsidies, with tax credits, one agency not knowing how another agency is going to handle it.

Mr. KOSKINEN. Well, no, we work together on that. There is not a gap. This has been, as somebody noted earlier, an effort that is not totally unique, but for us we spend a lot of time with CMS and have very good communications and working relationship with them. We spend a lot of conversation with the Treasury Department. As I note, we are bureau. But the policy issues are regularly reviewed by HHS and Treasury together. We chime in in terms of how it is going to affect tax administration, but I do not think there is any gap in where they are. As new issues come up, they obviously have to be resolved. But that is part of an ongoing discussion the agencies have.

Senator ERNST. OK. Well, I do appreciate that. I know it is a very difficult situation. You have been thrown into this, and I appreciate your service, and thank you for coming today to testify.

Thank you, Mr. Chairman.

Mr. KOSKINEN. Thank you.

Chairman JOHNSON. Thank you, Senator Ernst. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you, Chairman. Thank you, Commissioner, for being here.

So I wanted to ask you about a situation that we have been facing in New Hampshire, but I do not think New Hampshire is unique on this. I received a number of complaints from my local libraries that they did not receive the necessary tax forms and instruction booklets. So in New Hampshire, we happen to have a high percentage of people that actually will file by paper, and historically they have been able to go to their local library and get the tax forms so that they can do their taxes.

I wrote to you originally, I believe, in February about this issue, and the first response I got back, one of the primary reasons, you said, that these forms were not being provided to people at their libraries in New Hampshire was that the IRS budget was cut. But the reality is that on taxpayer services, Congress allocated the same amount of money. So why is it the IRS is unable to provide the same level of customer service this year? Because it is not just this library issue. For us in New Hampshire to have to go through the runaround that we did to get our libraries the basic tax forms so people could file their taxes, I mean, it just was kind of unbelievable to me when my staff told me all the runaround we were going through.

So can you help me understand why this is happening? And what troubles me even more is that the National Taxpayer Advocate recently testified before the Senate Appropriations Committee that this year taxpayers are receiving the worst levels of taxpayer serv-

ice since at least 2001, and the statistics are staggering in terms of 40 percent of the calls that the IRS is receiving from taxpayers are not being answered or responded to in any way.

Mr. KOSKINEN. Right, and the answer to that is we get an appropriation in buckets for enforcement, for operations, which is taxpayer service and information technology; IG and Taxpayer Advocate are off on the side. We also have user fees that go through part of our operating budget that the appropriators are aware of. Historically, we have never been fully funded for taxpayer service. The amount of money provided has been then supplemented by, on average, about \$150 million out of the various user fees that we charge.

Because in both 2014 and 2015 we were zeroed out in funding for the Affordable Care Act, we asked for \$300 million each year just for IT, and the Congress provided us zero. So the only way we could do it was to move money from wherever it was. So while the base appropriation for taxpayer service is the same, we had to take \$100 million out of our user fee allocation to taxpayer service to put it into information technology to implement the act. So we have a significantly smaller amount of money available for taxpayer service than we have had before, and the appropriators understand that because we go through that with them regularly.

We are as concerned as you are about the low level. As I said, I have now visited 37 cities. I have talked with, in town halls and otherwise, 13,000 IRS employees. And one of the common themes is not that they are overworked. One of the common themes is they want to help taxpayers. They get satisfaction out of answered questions. One of the concerns they had was when we told them they could only answer simple questions, not complicated questions, because complicated questions let the queue get longer.

So it is clear, and we have tried to make it clear, we told the Congress last year, the appropriators, that if our budget was flat let alone cut by \$350 million, we expected the level of service would drop to 53 percent. When we got cut by an additional \$350 million, we had no choice, because we have to implement the statutory mandates. We have to run the filing season. We collect over \$3 trillion for the government in the ordinary run of the filing season. So we cannot afford to have that not work. So when you cut our budget, the only places that get cut are enforcement, taxpayer service, and improvements in our information technology.

Now, with regard to the forms, first of all, as I hope I thought when I read the letter to you and signed it and talked to people—our experience has been 85 percent of the forms we have been sending out do not get used. So we have been actually providing a lot of forms for landfills. For the libraries, as, again, we have tried—we worked with the Library Association. We provided them the basic forms, not schedules and others, but we provided them a format that would allow them to make copies of any form they wanted. They could download and make other copies of those. Anybody could call us—we have a special line for documents—and ask for documents; we would mail them to you.

Now, there was as problem because with the extenders and the development of the forms, we could get them up online and you could download them online. You could go straight online to get

them. If you called us, it was going to take a few weeks longer before they actually got through the formal process.

So we tried for taxpayers to give them alternatives. The library concern, which I understand, was printing documents, making copies is not a free good, you know, whether it is 10 cents or 15 cents a copy. With limited budgets libraries are strained by that. But that is why we tried to encourage them to say for their constituents they could go online and download them themselves. Some people do not have access to—

Senator AYOTTE. The problem is the people are going to libraries do not necessarily have access to that.

Mr. KOSKINEN. Have access to the Web, and those people—we have tried to give visibility to it—could call a special line, and we would mail them the form.

Senator AYOTTE. Well, I literally had to send my staff repeatedly over to get these forms for people in New Hampshire, and, we were only able to get 10 at a time. It was a little crazy.

Let me just point out that from your testimony the one thing that people need to understand is you had to take money from the taxpayer services line to fund the implementation of the Affordable Care Act, essentially is what happened here.

Mr. KOSKINEN. Yes.

Senator AYOTTE. Because we funded you the same on taxpayer services, and you took the money to implement Obamacare.

Mr. KOSKINEN. The money you gave us for taxpayer service is spent on taxpayer service. We actually put \$50 million of user fees into it. It is the \$100 million we had to put into the statutory mandate, and we have to do statutory mandates. We do not have a choice—

Senator AYOTTE. Well, yes, and in the 2015 budget, the GAO found the IRS used \$12.1 million that was appropriated for taxpayer services to implement the Affordable Care Act.

Mr. KOSKINEN. Yes. We have no choice. If you pass an act, the Congress passed—as I have said, ironically, 3 days after our budget was cut by \$350 million, the Congress passed the ABLE Act with no additional funding and said, “You have until June 1 to do that,” and the Professional Employees Organization Act.

Senator AYOTTE. So before I leave—

Mr. KOSKINEN. We will do that because you have told us to do it. But the only way we do that is we have to find the money somewhere. We have to take it where we have discretion.

Senator AYOTTE. Right, so we are taking it from our core functions to do this.

Mr. KOSKINEN. That is correct.

Senator AYOTTE. I wanted to followup on an issue that—someone may have already asked you, but I want to followup, and that is the incorrect 1095-A forms sent to 800,000 individuals who enrolled in the health insurance through the Federal exchange. Do you know how many taxpayers in New Hampshire received an incorrect 1095-A form?

Mr. KOSKINEN. I do not. Those forms are provided and designed and filled out by CMS, so they would be the ones that—if anybody knows, they would know.

Senator AYOTTE. And do you think that the people who waited a little longer, as I understand, they are being treated differently and are still on the hook for paying, that if they owe a larger premium, that they—as I understand, there may be a distinction between those, depending on when they filed and how they are going to be treated. How are the people in this country that, were misled in terms of what they thought that they were going to be receiving or not receiving or having to pay, how are you going to treat those individuals? And what are we going to do with the lost revenue on that?

Mr. KOSKINEN. We have to sort through this. Of the 800,000, the estimate by CMS was about 50,000 had filed, and 750,000 were in the same pool, and the 50,000 could file amendment if they wanted to. So it is not a distinction.

In terms of being misled, we have had a long, I think informative decision that—and I think after the transition of the first year, people will understand it better. When you register and apply for insurance coverage, you make an estimate of what your income is going to be for the year going forward, the way we all make estimates when we file our estimated payments and withholding. You make that judgment. We then provide income verification about what your last tax return filings were so that the marketplace can determine whether, in fact, you have an accurate estimate going forward. And on that basis, a determination is made. First, by working through what the premium for your insurance is, and then a calculation is made, how much of that premium will be paid on your behalf to the insurance company in an advance payment.

One of the things that we have tried to make clear from our standpoint, because we wanted people to make sure if they had a change in circumstances, if they had a different estimate of what they were going to earn, they needed to go back to the marketplace so they would not have any bigger adjustment than necessary. But a lot of people actually, I think, went through and assumed that once they got the premium payment paid to the insurance company that somehow it was never going to get reconciled. Most people understood that it had to be reconciled, but a lot of people have, one way or the other, not understood that. We think going into next year everybody will understand when you make an estimate of your income and your family circumstances—if your income goes up, then you are entitled to less support for your insurance payment that goes forward. You still have the same insurance policy. It is just a question of how much do you pay, how much does the government pay. If the amount of income you are making goes up, you are going to be eligible for less. And if you let the marketplace know that immediately, it will adjust the advance payment immediately, and you will have no change or reconciliation at the end of the year.

So we have spent a lot of time, CMS has spent a lot of time over the last year trying to get people to understand as 2014 unrolled that if your estimate was wrong or changed, you needed to get back to the marketplace. A number of people did. That would mean you would get a 1095-A for the part of the year that you were under one coverage, and then you would get another 1095-A when your premium changed. So at the end you would know exactly what

your premiums were. We think that is going to get much better in the second year because everybody will have now been through it once and will understand that you are making an estimate of your income, and you just have to be careful that that is as close to what the reality is going to be as you can make it. And if it changes over the course of the year, you need to get back to the marketplace.

Senator AYOTTE. Thank you.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you. Commissioner, it is good to see you again. Thanks for the work you are trying to do for the American people and all that is going on. There is a tremendous amount that needs to be done. You have walked into the middle of a lot of chaos with laws that we all have some frustration with, and I appreciate what you are trying to do.

I want to talk through just a couple of things. We have talked before about the EITC and the identity theft issues. I want to just try to get a general sense of a timeline. You put together working groups. You are trying to get outside input on this. How do we get on top of this? We have a 22-percent estimated fraud rate over the EITC, somewhere around \$13 to \$16 billion in loss in that one program, and trying to be able to manage that.

The challenge has always been—this has been a high-priority issue of how to get on top of this. You have come in in the last 2 years. You walk into the middle of all this. What is the plan now to try to get on top of this \$13 to \$16 billion of loss?

Mr. KOSKINEN. It is a major challenge for us. I have been concerned about it since I started. When I started, the challenges were to implement the back end of the Affordable Care Act, the front end of the Foreign Account Tax Compliance Act (FATCA), deal with extenders, deal with the filing season, deal with overall identity theft. We have made progress, good progress in some areas, progress in all those areas except for EITC. And if you look back over it over the last 10 years, the percentage of improper payments and the dollar volume of those have been pretty much within a range and not changing.

Senator LANKFORD. Right. So how do we get on top of that? What is the plan for—

Mr. KOSKINEN. So the plan is I did put together a working group of everybody who knew anything about this to say we cannot keep doing the same thing—although we have tried a lot of stuff, we cannot keep doing it expecting somehow it is magically going to get better. So we went back to the drawing board.

and we asked for support from the Congress. We need to get W-2s earlier so we can front-end validate what people are asking for. We need to have what is called “correctable error authority.” We see in the returns when there are errors. Two people claim the same dependent. You have said you have four, and our database says you have two. We cannot make that correction without sending you a letter and entering into a formal negotiation or audit or exam, and there is a limit to what we can do. We did last year about 450,000 of those exams, but we have 27 million applicants. And to the extent that 20 percent of them, 4 or 5 million, are get-

ting the improper payment, we are never going to be able to audit our way out of the problem with resources.

So we have said if we had correctable error authority, we could make that correction, advise the taxpayer. The taxpayer would still have the right to come in and say, "No, the person who claimed the child was wrong," or, "I have really got three kids as opposed to one." So you would always have the ability to make that clear. But we would be able to make those corrections directly.

And then as we talked earlier, over 50 percent of the EITC returns are filed by tax preparers, and as I say, most of them know what they are doing. They tried to do the best they can. It is a complicated statute that if somebody wanted to simplify, we would be happy to support that. But it is complicated. So for an untrained preparer, it is very difficult to work through, so they are making honest mistakes.

Then as I say, there are crooks who are advertising, "Come with us. We know how to get you a good refund." We have tried to warn taxpayers. Certainly if your preparer says, "Just sign a blank return. I will take care of it for you," you better get another return preparer, because, A, you may never see the refund; B, the refund may have nothing to do with what your reality is.

So if we could get W-2s earlier, if we had correctable error authority, and if we had minimum requirements and qualifications training for tax preparers, we think the evidence is over the last 10 years we could make a dent in this problem. We are never going to get it to zero, but to me, you just cannot—I have told people you cannot keep running the system this way. It looks either like we do not know it is a problem or we do not care about it or we cannot do anything about it. I think we can.

Senator LANKFORD. And I would say that is a prime aspect of this Committee, is to be able to determine where we are stuck, let us know what we need to do so we can get it unstuck.

Mr. KOSKINEN. Right.

Senator LANKFORD. And you just articulated three different issues that you need Congress to be able to help with: the W-2 issue, correctable error authority, and simplify the statute, EITC, so there is less gray area, basically that it is more black and white of who gets it and who does not get it, and how that gets applied. Is that correct, those three that I am picking up?

Mr. KOSKINEN. What you got is really four. We need W-2s earlier.

Senator LANKFORD. Right.

Mr. KOSKINEN. We need correctable error authority. We need minimum requirements, qualifications for preparers. And if we could simplify the statute, it would be helpful.

Senator LANKFORD. All right. This again is something you are trying to manage in the middle of all the transition in Obamacare. In September 2014, HHS dropped 300,000 people saying that they did not have the correct documentation for legal residency status. Some of those individuals were already in the process with the tax credits and the subsidies and everything else. What is the plan to recoup? Is there a way to recoup? Is there just a loss? We have 300,000 people there that received a subsidy that HHS came later

back to and said no, they are not eligible for this after all? How is that working out?

Mr. KOSKINEN. As you can imagine, it is a complicated situation. Basically what they got was advance payments of the premium tax credit, so they actually never got to the tax credit form. Basically the government had made an advance payment to the insurance company on their behalf. And so as a general matter, the policy has been that HHS and CMS, who deal with Medicare and Medicaid payments that often sometimes are made improperly, are retrieving those. And so the basic policy is that CMS and HHS are responsible. But when the payments are made on the basis of improper identification, at that point recouping those or collecting them again is up to them.

Senator LANKFORD. So that is not up to you; that is up to HHS to—

Mr. KOSKINEN. That is right.

Senator LANKFORD. We have 300,000 people that apparently received that advance payment that do not have citizenship or do not have documentation for citizenship at this point, and they are receiving this advance payment. But that is over there.

Mr. KOSKINEN. That is over there, yes.

Senator LANKFORD. OK. Let me ask another issue on this. The law itself with the Affordable Care Act, the law prohibits employers from reimbursing or otherwise providing financial support to employees to help them pay for an individually purchased plan for these smaller businesses and individuals. So if someone says they are going to go out onto the general market, the employer is going to just provide them some sort of tax-free amount. In the past, employers, especially small businesses, would say, "OK, I cannot afford you a policy, but I know you are going to go buy something; I am going to try to find some way to be able to help you do that." My understanding is that is not legal anymore under the Affordable Care Act. Are you aware of what the tax policy is and the tax implications of that?

Mr. KOSKINEN. That is my understanding, that is the tax policy. Again, it is not a policy the IRS sets. It is a policy set by the Treasury Department in response to the statutory language.

Senator LANKFORD. Would the IRS have to carry out the penalty part of that, though, for the employer especially? Because my understanding is the employer actually—

Mr. KOSKINEN. Once somebody has decided either in the statute or the policy under the statute, what the policy is, the tax administration is our responsibility. So to the extent that once the rules are set, we are responsible for administering them so the penalties or the tax payments would be our responsibility.

Senator LANKFORD. So at this point there is a consequence that could come down on someone who is trying to help someone pay for their premiums out on the general market rather than providing an individual coverage?

Mr. KOSKINEN. Right. The Treasury Department has provided guidance in that regard, and so that point has been made.

Senator LANKFORD. Mr. Chairman, can I make just one quick comment as well?

Chairman JOHNSON. Sure.

Senator LANKFORD. The Kaiser Family Foundation has done a tremendous amount of research on all this and has done a very good job of getting the background. They listed in their research only 4 percent of households received the correct Obamacare subsidy. Now, again, that is not your responsibility to chase that down, but that becomes a big issue long term on managing, and it affects a lot of people as they go through all their tax planning and preparation. It is one of the aspects that has to be corrected. If we have 4 percent of these folks, according to the Kaiser Family Foundation, that are receiving the correct subsidy amount up front to know what they are dealing with, we have a major problem that needs to be dealt with, with CMS and HHS. Otherwise, they are trying to clean up the consequences of it.

Mr. KOSKINEN. I would just simply note that I am not sure we have a much higher percentage of people estimating their income and their withholding. In other words, what you are doing at the front end is making an estimate of what are you going to earn in the future. And that determines the advance payment you are entitled to. And so unless you know your job today and you know that no income is going to change, your family is not going to change, you are always going to be making an estimate that almost by definition is never going to be 100 percent.

Senator LANKFORD. So this basically sets up Americans to fail at this point, or it sets them up to where they are going to have to file multiple forms through the year to be able to update pay.

Mr. KOSKINEN. No, what is going to happen is what people do with their withholding. Right now the reason 60 to 70 percent of people get refunds is because they overestimate—

Senator LANKFORD. They guess high.

Mr. KOSKINEN [continuing]. And that is what we expect people will do here, is they will be careful about estimating their income. They will not try to make it down the last dollar. They will say, "I am going to overestimate my income to make sure that the premiums going to the insurance company I am entitled to, and that means I will probably get a bigger refund, because when it gets calculated, much like people getting refunds for their withholding and estimated tax payments, I will get a refund in April." And so it will be, I think, that normal taxpayer behavior, which is the way they behave generally.

Senator LANKFORD. Thank you. I yield back.

Chairman JOHNSON. Thank you, Senator Lankford.

Mr. Commissioner, in probably June of this year, the Supreme Court is going to be deciding on an IRS ruling in the *King v. Burwell* decision. Has the IRS done any planning in case that ruling comes down and is an adverse ruling in terms of your rule-making?

Mr. KOSKINEN. Well, as I said earlier, there are a wide range of possibilities of how the Court is going to rule in terms of both what it decides and how it decides it wants to have its ruling implemented. And in light of our challenges, just moving forward and actually, as I say, next month we have to start preparing for the next filing season, there is no way we can adjust the filing season planning trying to anticipate the various options. So much like we do

with tax extenders, we basically run on the assumption life will continue to look like it is, and then we have to adjust afterwards.

Chairman JOHNSON. So, bottom line, no planning whatsoever. If the Supreme Court rules the way I believe the law is written, that the subsidies can only be paid through exchanges established by the State, that is going to create some real problems for the IRS, correct?

Mr. KOSKINEN. But it depends on how the Court rules. The Court could rule—

Chairman JOHNSON. I understand that, but let us say they actually follow the law the way it is written, and they say that only subsidies can be paid through those exchanges established by the States, we have how many States that have Federal exchanges? How would you possibly handle that? Have you made any—again, my question is: Have you given any thought to that, any planning whatsoever in terms of that very possible eventuality here?

Mr. KOSKINEN. No, there will be a set of issues, just as with statutes, there are policy questions about how to implement them. Some statutes are passed, and then people are given more time to transition. So depending on what the Court decision is, there will be policy decisions made about how to transition from one point to another. But depending on the decision, it could make life much more complicated for everybody.

Chairman JOHNSON. You were not Commissioner when that ruling was handed down, correct?

Mr. KOSKINEN. That is correct.

Chairman JOHNSON. Did you ever look into or research how that ruling was developed?

Mr. KOSKINEN. No. I have a rule of life—I have spent 45 years parachuting into 20 years in the private sector, 20 years in the public sector, agencies and organizations under challenge. And my rule of life is play the hand you are dealt and move forward. And so that decision was made before I got here, and my job is to administer the agency as best I can where we are.

Chairman JOHNSON. So you have never looked into whether or not the IRS was working hand in glove with the White House and trying to get direction from them in terms of how they should rule on that?

Mr. KOSKINEN. No, except as a general matter, we do not work hand in glove with the White House on anything, but these policy discussions we have are primarily with the Treasury Department. The regulatory process is worked with the Treasury. But I have no idea who talked to whom and how that process and those decisions were made.

Chairman JOHNSON. OK. The IRS is also responsible for evaluating the exemptions for the individual mandate. How many Americans in general—or what is the estimate in terms of Americans that will qualify for the various exemptions that have been provided for?

Mr. KOSKINEN. At this point, as I say, we have not pulled that data out of the returns, so I cannot give you an answer on that. But the assumption was basically that probably more people would file for exemptions, hardship exemptions, or that they had coverage for part of the year than people who will pay the shared responsi-

bility payment. It will be, a number that we will actually see, and as I say, in 3 or 4 weeks we will be able to accumulate all of that data and understand where it is.

Chairman JOHNSON. And, again, those that will be granted exemptions, that is going to be pretty much on an honor system? Is there going to be any way of trying to verify that through a potential auditing process?

Mr. KOSKINEN. Yes, what we will do in all of these matters, as we always do, is the computer selects returns that have issues, whatever they are. When we go into those, then we look at everything. And so of the 75 percent, give or take a little, of Americans who have checked boxes saying they have coverage, if we actually have an issue with your return, we will ask you for backup support for the fact that you had coverage, because you said you did.

So we will track through, when somebody says, "Well, I had a hardship," and it turns out you made a lot of money, and we are auditing you on that basis, it will be noted that while you applied for this exemption, you do not seem to qualify for it. And then you are subject to, in effect, penalties and interest, and the penalties for purposely understating your income can over time mount up.

Chairman JOHNSON. Getting back to the couple that wrote me the letter and their \$11,550 of subsidy they have to repay and just the timing of that, at what point in time, if they are just unable to repay it—I mean, they were talking about because they do not have the cash on hand, they do not have the ability to pay other than potentially having to pull money out of their retirement fund—which there is a pretty high penalty for doing that, correct? I mean, if you pull money out of your retirement fund, there is, what, a 10-percent penalty on that, plus you have to count it as income?

Mr. KOSKINEN. If you have already retired and you are 59½, then you can pull money out of your retirement fund, and all you do is pay income tax on it. There is on—

Chairman JOHNSON. They are not retired. They are actually—well, they might have been retired.

Mr. KOSKINEN. If they are over 59½, they do not have that problem, other than you pay tax on it because that is how the fund works. If you are under 59½, then there is a penalty.

Chairman JOHNSON. OK. So, again, somebody in that situation that was working, that had to pay that back, if they had to pull out—they may be paying a penalty in that.

Mr. KOSKINEN. Right.

Chairman JOHNSON. What about the timing of paying the subsidy anyway?

Mr. KOSKINEN. As I have said, you can actually go online, and if you qualify—and in a case like this, you probably would—you can do an online installment agreement with us that would allow you to spread those payments over time. And you can do that online, or you can call us after the filing season, and hopefully you will be able to get through a little quicker. And you can arrange that. So you do not have to immediately take draconian steps to pay everything on time if you have legitimate concerns. And it sounds like in this particular case, an online installment agree-

ment—or an installment agreement, online or otherwise, would be an appropriate response.

Chairman JOHNSON. Over what time period would that be installment?

Mr. KOSKINEN. It depends on the situation, but it is usually over 3 to 5 years.

Chairman JOHNSON. Do they pay interest on that as well?

Mr. KOSKINEN. Yes, if you have not paid on time, then there is an interest charge, but there is no penalty charge.

Chairman JOHNSON. OK. What is the interest payment on that?

Mr. KOSKINEN. The interest rate goes at the government interest rate, which these days is, very low.

Chairman JOHNSON. OK. That is all I have. Senator Carper.

Mr. KOSKINEN. Not that I want to encourage people not to pay on time just because the interest rate is low.

Chairman JOHNSON. I understand.

Senator CARPER. My dad always used to say to my sister and me, “Just use some common sense.” When we were little kids growing up, “Just use some common sense.” My mother used to say to us growing up, she always said, “Treat other people the way you want to be treated, Golden Rule.”

In your response to Senator Johnson’s questions explaining how people can file online, go online and ask for an installment payment and pay no penalty but interest at the Government’s cost of borrowing, which is very low, that seems to me to be using some common sense. So it seems to me at least at first blush to be treating people the way I would want to be treated. So good for you.

When I had to walk out, I said to Senator Johnson, another Committee I serve on, Environment and Public Works (EPW), we focused on the Nuclear Regulatory Commission (NRC) today. My Subcommittee jurisdiction there has jurisdiction over the NRC, so I wanted to be there for that. So I am kind of in and out here. I walked in and you were responding to Senator James Lankford’s questions, sort of like, What can we do, what do we need to do to be of assistance?

I am a big believer in repetition, and I am going to ask you—this is important, and I just want to make sure we got this straight in terms of what we can be doing on this side of the dais to enable you and your folks to do a better job, a more cost-effective job. I just want to have you hit it again.

Mr. KOSKINEN. This was in the context of what can we do with what thus far has been an intractable problem of improper payments in the earned income tax credit area.

Senator CARPER. You may have answered this question—

Mr. KOSKINEN. But I am happy to repeat it again. The marketers say you have to make seven impressions before anybody hears you, so this will be two.

Senator CARPER. OK.

Mr. KOSKINEN. We need to get W-2s earlier so we can match up front. It would help us in a lot of ways, not just EITC, but in the EITC area it particularly would be helpful. We need what is called “correctable error authority” when we can see there is an error, either on a given return or a set of returns, that we now have to go out and audit, and we just do not have the resources. We probably

never would want to do it that way. If we can make the correction, send the correction notice to the taxpayer, they can always come back and say, "Well, I really do have three kids instead of one," or, "That other person who claimed the child, it is not my fault. I get credit for it."

The third point is that we need help, because over half the returns for EITC are by paid preparers, making sure there are some minimum qualifications for people who are filling out tax returns on behalf of someone else.

And then those are three things that are in what is called "the green book" that have been up on the Hill that weave out of that big telephone book, said these would be very important for EITC.

Then I said the fourth thing would be the statute is very complicated in terms of trying to figure out who is in charge and where the children are and who gets credit for them, who had them for more than 6 months and what the relationships are. So I think a lot of tax preparers and low-income people are stymied by that complication, and so if somebody wanted to step back and say it is a great program, it has bipartisan support, it always has had, it has been reputed to be Ronald Reagan's favorite poverty program, if there were a way to make it easier for people to figure out, both beneficiaries and their preparers, exactly who gets the credit and when, that would be helpful.

But the first three are things that could be done now that would immediately give us a significant opportunity to make a dent, a significant dent in the issue, and if we were given the tools, we should be held accountable for, in fact, making that improvement. It will not go to zero, but it is a situation where I think we cannot keep running it without beginning to make progress in limiting those improper payments.

Senator CARPER. Good. All right. Maybe one or two other quick ones. When you are sort of looking ahead and I do not know how long we will be fortunate that you will be our Commissioner at the IRS, but looking ahead into the future—

Mr. KOSKINEN. I think I have another 2½ fun-filled years.

Senator CARPER. Well, that is good. I am tempted to ask you what gives you joy in your work? I ask this of a lot of people.

Mr. KOSKINEN. That give me joy, two things. One is it is an important agency. It is critical to the function of the government. So, you do not get up on Monday morning having to worry about whether what you are doing is important.

The second thing is I have said it—and I do not say it for morale purposes or otherwise; I believe it. It is a wonderful workforce. As I say, I have talked to 13,000 employees across the country, and they are dedicated to the mission. A lot of their time is spent trying to help taxpayers. I have said it may take me awhile to convince people that we are from the IRS and we are here to help you. But we really do spend a lot of time trying to get information out, trying to help people in installment agreements, wherever it is. If you are trying to be compliant and trying to figure out how to pay your taxes, we want to help you do that.

And so it has been a remarkable experience dealing with employees. We have been under a lot of stress, a lot of pressure, a lot of attacks. And to go talk with them, I have 37 cities I have been to.

I have had lunch with 15 to 20 randomly selected employees in addition to the town halls. They are a remarkable group, and so it gives me great satisfaction to work with them, and it is a great honor for me to be the IRS Commissioner.

Senator CARPER. A couple years ago, I was listening to national public radio (NPR) on my way to the train station in the morning in Delaware, and they reported at the top of the news at 7 a.m., they said they had done an international survey. I guess some opinion research outfit had done an international survey and asked what is it that people most like about their jobs. And some people said they liked getting paid. Some people said that they liked having benefits—pension, health care, vacation time. Some people said they liked the folks they worked with. Some people said they liked the environment in which they worked.

Most people said what they really liked about their work was the fact that what they were doing was important and they felt they were making progress. That was it. What most people said the thing they liked about their work is what they were doing was important and they felt they were making progress.

And I find that we—God knows the work that you all are doing at the IRS is important. I think it was Oliver Wendell Holmes, what did he say? We need to have taxes in order to have a civilized society. We would have a less civilized society, that is for sure.

But we are not allowing you to make the kind of progress that you ought to be able to make, and I think with your leadership and stewardship and, frankly, some good advice from GAO from time to time, and others, you are making progress. But you are not making the kind that you want to make and, frankly, that we want, the kind of wait times that we hear people are on the phones and people showing up at the offices and waiting and waiting, not having forms available because of us, because we change the tax laws so late in the game. We have a job to do here in concert with you so that the people that we serve can feel better about the job that you are doing, and you can as well.

Thank you so much.

Chairman JOHNSON. Thank you, Senator Carper.

We always do give the witnesses a last chance at making a closing comment. If there is anything that was on your mind that you wanted to get off your chest here, we are happy to let you do that.

Mr. KOSKINEN. I appreciate it. I think it has been a very important discussion about a very important subject matter. I think hopefully it has been helpful to the Members of the Committee. I think we are on television as well, so my hope is that people watching have a better idea about the Affordable Care Act, how it works, the efforts that we are making to try to make sure that it goes as smoothly as possible for people, the issues that I hope are helpful for the public to understand, those who are participating in the marketplaces, what they should pay attention to. And, again, when their circumstances change, they should get back to the marketplace to make sure that their reconciliation at the end of the year is totally painless, in fact, as it goes.

But I do take Senator Carper's point that, yes, the IRS is important. People ask me why I have been at this now going on a year and a half, why I continue to seem to be energetic and enthusiastic

about it. And I have said again if you spent 45 years of your life doing turnarounds and dealing with agencies under stress, you have to be optimistic. You have to assume that it is going to get better; otherwise, it does grind you down a little. And so I am optimistic. I do think that there are people anxious to be supportive of us. I think we have a responsibility—I have tried to stress that—to spend taxpayer dollars carefully. We are given these monies from people who worked hard to provide them to us, and we have to make sure that we use the funds well. We have to make sure people understand when there are problems, my goal in life—it would be nice, as I said at my confirmation hearing, to have no problems and say that is our goal. But even with a shrunken workforce, it is 87,000 people. It is the world's most complicated Tax Code, and we deal with virtually every American and every American family.

So our goal needs to be—and I think we should be held accountable for it—that when we have a problem, things do not go the way we expected, that we find it quickly, we fix it quickly, and we are transparent about it. And taxpayers need to be comfortable and confident we are spending their money wisely, we are going to treat all of them the same, we are going to treat them fairly. We are going to do, even with the limited resources, over a million audits this year. I do not want individuals thinking, “I am getting audited because of something I said, somebody I contributed to.” I want them to understand there is an issue in their return that caused us to look at it. And if somebody else had that issue, we would be looking at them as well, because I do think it's basically a system that depends upon voluntary compliance. We collect \$3.1 trillion a year, primarily because Americans are trying to pay the right amount and do the right thing.

And so for that system to work, they have to have confidence in and be comfortable with the fact that tax administration is not a political enterprise. It is, in fact, designed to treat everybody fairly, to make sure that people pay their fair amount; if they have difficulty with it, that they can work with us to try to figure out how to deal with that. And if we can move in that direction, then we will be making progress in the most important way, which is to protect the voluntary tax compliance system of this country.

Chairman JOHNSON. Mr. Commissioner, I appreciate that. The fact of the matter is the agency has lost credibility, and that credibility needs to be restored. I hope you do everything you can to restore that credibility. I appreciate your service, your thoughtful testimony, your forthright answers to our questions.

This hearing record will remain open for 15 days until April 30 at 5 p.m. for the submission of statements and questions for the record. This hearing is adjourned.

Mr. KOSKINEN. Thank you.

[Whereupon, at 11:52 a.m., the Committee was adjourned.]

A P P E N D I X

Opening Statement of Chairman Ron Johnson *“IRS Challenges in Implementing the Affordable Care Act”* April 15, 2015

As prepared for delivery:

Good morning and welcome.

I would like to welcome our witness, IRS Commissioner John Koskinen. I look forward to your testimony, and thank you for being here to discuss the challenges the IRS is experiencing in implementing the Patient Protection and Affordable Care Act.

The 2015 tax filing season marks the first time that the IRS is responsible for implementing two major components of Obamacare: (1) enforcing the individual mandate by imposing a tax penalty on uninsured individuals and (2) reconciling advanced premium tax credits awarded to enrollees. Preparing and filing a tax return was already onerous. Now Obamacare has made it worse. The IRS has been tasked with implementing two of Obamacare's most complicated provisions.

The IRS is probably the most feared civilian agency of the federal government, and its track record over the last few years has not been good. We have strong evidence the IRS systemically targeted Americans for their political beliefs. During the congressional investigation of that targeting, the IRS claimed to have lost two years of emails from a key figure at the center of that scandal — only to have its inspector general's office recover some of those emails once it gained custody of the backup drives. The IRS is an agency that gave bonuses to employees who did not pay their own taxes and has re-hired hundreds of employees who had substantiated records of misconduct.

It is important that Congress exercise oversight to make sure that the IRS is spending taxpayer dollars responsibly. From reports in the news media and stories from my constituents back home, I am concerned that the IRS may be dropping the ball. Although Obamacare implementation comes with its challenges, the IRS has had five years since the law's passage to make sure it goes smoothly.

Tax season is a burdensome, challenging and expensive time for many Americans. According to the National Taxpayer Advocate, the total time burden of tax compliance is an incredible **6.1 billion hours**. That is equal to about 3 million employees working 40-hour work weeks year-round with just two weeks off. And individual filers spend an estimated **\$31.72 billion** on tax software and other out-of-pocket costs.

Because of Obamacare, filing season has become even more complex. The IRS Inspector General wrote that Obamacare “represents the largest set of tax law changes in more than 20 years.” However, the IRS Commissioner stated last week that “the system has worked flawlessly,” and “everyone seems to be comfortable, preparers and taxpayers, in preparing

their returns.” That statement contradicts news media reports, but is also at odds with the experience of hundreds of my constituents who have contacted my office asking for help with the IRS this tax season, mostly because of Obamacare.

Reports over the last few months suggest that ObamaCare implementation has not gone smoothly at the IRS. One report found that the IRS delayed refunds for “tens of thousands” of Obamacare enrollees because of missing subsidy data from state-run health insurance exchanges. According to National Taxpayer Advocate, Nina Olson, the tax refunds have been “held for quite a long time, since the beginning of the filing season.” For concerned taxpayers calling the IRS with questions, Olson said that IRS employees were instructed not to divulge information as to why their refunds are suspended.

When refunds do come in, they are smaller for many, especially for middle class Americans. Half of the Obamacare enrollees who received advanced premium tax credits are paying back a portion of their credit, and the average amount paid back is \$794. According to the Kaiser Family Foundation, middle-income households — with income between 300 and 400 percent of the national poverty level — will repay about 65 percent of their tax credits.

Despite the influx of questions from taxpayers about the new complexities associated with Obamacare, in January 2014, the IRS ended a free tax preparation program designed to help low-income and disadvantaged citizens, including citizens not proficient in English. Although Congress has specifically provided funding for taxpayer assistance services, the IRS has spent this money on other priorities. The National Taxpayer Advocate condemned the elimination of the tax assistance program and stated that “the government is largely turning its back on a significant number of taxpayers who require face-to-face assistance to comply with their tax obligations.”

Some taxpayers have faced an additional Obamacare complication when a glitch in HealthCare.gov used the wrong year’s data and sent about 800,000 erroneous 1095-A forms to taxpayers for their Obamacare subsidies. By the time the Centers for Medicare and Medicaid Services revealed its mistake, 50,000 individuals had already reportedly filed their taxes using the incorrect forms. Covered California, California’s state exchange, made a similar mistake by sending out incorrect forms to 100,000 individuals. While the IRS is not responsible for sending out the incorrect forms, the administration’s mistake increases the burden on taxpayers.

These mistakes affect real people. Earlier this month, I heard from Kelly, a nurse from North Fond du Lac, Wisconsin, who enrolled in Obamacare through HealthCare.gov last year. When Kelly started working more hours, she informed HealthCare.gov that her income had increased and she started paying an extra \$45 per month in premiums. Over the last three months, Kelly received **three** separate 1095-A forms from the Centers for Medicare and Medicaid Services, and all of them were incorrect. Kelly was unable to file her tax return in time because she did not have the correct information about her health insurance plan.

With reports of incorrect forms and unnecessary delays and real concerns from my constituents, I hope that today's hearing will help to give this committee and the taxpayers a better understanding of the current state of Obamacare implementation at the IRS.

Commissioner Koskinen has said many times that the solution to all these problems is more money. The truth is that the U.S. government has limited resources. Every agency must do more with less. There must be a renewed focus on responsible spending and budget allocation, and this requires taking an in-depth look at how money at the IRS is currently spent. Both the IRS Inspector General and the Taxpayer Advocate Service have encouraged the IRS to do so.

I appreciate the IRS commissioner's appearance here today and look forward to his testimony.

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Opening Statement of Ranking Member Thomas R. Carper
“IRS Challenges in Implementing the Affordable Care Act”
 April 15, 2015

As prepared for delivery:

Today's hearing is focused on the Internal Revenue Service's role in implementing the Affordable Care Act. It is important that we put this topic in the proper context. This past March marked the fifth anniversary of the Affordable Care Act. Because of it, thousands of Delawareans and millions of Americans have access to quality, affordable health care. For many, this is the first time they have been able to get health insurance.

Every Thursday when the Senate is in session, a group of us Senators get together for Bible study with the Senate Chaplain. He'll sometimes remind us of Matthew 25 and the moral obligation we have to the least of these among us: 'When I was hungry did you feed me, when I was naked did you clothe me, when I was thirsty did you give me something to drink, and when I was sick and imprisoned did you come to visit me?'

It doesn't say anything about 'when I didn't have any health care coverage or couldn't afford coverage, did you do anything about it?' But I think the message is the same. We have a moral obligation to the least of these in our society. And not just to people who are homeless or people who don't have anything to eat, but also to people who work hard but, before the enactment of the Affordable Care Act, didn't have access to decent health care.

The responsibility we have to look out for 'the least of these' drives much of my work in Congress. But as I strive to serve the least of these, I also believe that we have an obligation to do so in a fiscally responsible way. And to do that, we must ensure that government works well and taxpayer dollars are being used effectively and efficiently.

The good news is that Congress and the Administration, and our partners in state governments and the private sector, have made a lot of progress in the effort to provide all Americans with access to affordable health care. Before the Affordable Care Act, 40 million Americans were uninsured. This placed a significant burden on both our nation's health care system, as well as the health, well-being, and financial security of millions of Americans. Since the enactment of the Affordable Care Act, the number of uninsured Americans in our country has been reduced by 16.4 million Americans. This represents a 35 percent drop in the number of uninsured Americans since the beginning of the first open enrollment in October 2013.

Over 11 million Americans have enrolled in coverage through the health insurance Marketplace. Ten million more Americans now have coverage through Medicaid and the Children's Health Insurance Program. And young adults are now able to remain on their parents' health insurance plans up to age 26, giving them access to health insurance as they pursue their education and begin their careers.

The Affordable Care Act is also helping to reform our nation's insurance market and control the growth of premiums, saving Americans money. The Affordable Care Act prohibits individuals

from being denied coverage because of preexisting conditions, prohibits lifetime limits on care, prohibits women from being charged more for insurance because they are pregnant or may become pregnant, requires minimum levels of coverage, and requires coverage of preventative services without a copay.

Our job today is to determine what we can do to improve the implementation of the Affordable Care Act, and the IRS has a major part to play. The IRS has been successful so far in its responsibilities under the law by helping Americans afford quality health insurance coverage through tax credits in the insurance Marketplace. That's a remarkable accomplishment, especially when you consider how much Congress is requiring the IRS to do, and the fact that Congress has repeatedly enacted deep and damaging cuts to the agency's budget.

For the past five years, funding for the IRS has been reduced by \$1.2 billion, to its lowest level since 2008. When inflation is taken into account, the current funding level is comparable to that of 1998, even though the number of individual and business tax filers has increased by more than 30 million since then.

As Commissioner Koskinen will soon testify, those cuts have had real consequences. In 2014, taxpayers calling the IRS were waiting twice as long for an IRS response than they did in 2009. In addition, recent media reports have highlighted the long lines at IRS offices, and the frustration of IRS employees and taxpayers at call centers. This is all due to the IRS' increased workload and its shrinking resources.

The president's budget request of \$12.9 billion for the IRS for fiscal year 2016 would restore funding to the 2010 levels. It would increase resources for customer service and other critical needs that help taxpayers, and give the agency the flexibility it needs to rededicate itself to taxpayer service. It is clear that if we don't help the IRS do this, and instead we continue to underfund the agency, we're simply setting Commissioner Koskinen and his team up to fail. That would be irresponsible.

I agree that the IRS should continue its efforts to reduce costs and improve its efficiency as an agency, and I applaud Commissioner Koskinen for efforts to date that have saved \$47 million through better management of federal real estate and rent costs. However, Congress must help, not hinder, that improvement. Simply put, we must provide the agency with the resources and flexibility it needs to do its job and do it well.

By all accounts, the IRS has stepped up and met the new challenge of implementing a key aspect of the Affordable Care Act, despite Congress failing to provide adequate funding. That's important because as we all know, health care is an issue that touches us all personally. It affects each and every one of us, as well as our families.

I believe the Affordable Care Act has improved our nation's health care, but no law is perfect, nor is its implementation. One of my key principles is, 'If it's not perfect, make it better.' I know Commissioner Koskinen and his team are working to address the IRS' many responsibilities, including those required by the Affordable Care Act, and I look forward to hearing more about how we can build on the progress that is already being made.

**WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
COMMITTEE
ON IMPLEMENTATION OF THE AFFORDABLE CARE ACT
APRIL 15, 2015**

INTRODUCTION

Chairman Johnson, Ranking Member Carper and Members of the Committee, thank you for the opportunity to appear before you today to update you on the work that the IRS has done to fulfill our responsibilities under the Affordable Care Act (ACA) for this filing season.

The IRS has been charged with implementing the numerous tax-related provisions of the ACA. This testimony will focus on two major provisions that took effect last year – the premium tax credit and the individual shared responsibility provision. In preparation for the 2015 filing season, the IRS did substantial work to ready our business processes and systems to facilitate return filing and compliance with these two provisions, and to ensure that taxpayers would know how these two provisions would affect them at tax time.

I can report that with the exception of the continued erosion of taxpayer services due to budget cuts, the 2015 filing season has gone reasonably well, generally and as it relates specifically to taxpayers affected by the ACA provisions mentioned above. I will provide further details on the filing season later in this testimony.

I would note that all the work the IRS has done and continues to do to implement the major tax-related provisions of the ACA has occurred in the absence of funding that had been requested for this effort. Nonetheless, the IRS continues to deliver on its Congressionally-directed duties under the ACA and other legislation, including the Foreign Account Tax Compliance Act (FATCA).

EARLY ACA IMPLEMENTATION EFFORTS

The IRS' work in relation to the ACA started soon after the legislation was signed into law in March 2010, as the agency moved quickly to implement a number of tax-related provisions that became effective immediately. These provisions included: the Small Business Health Care Tax Credit; the tax credits and grants available for Qualifying Therapeutic Discovery Projects; the expansion of the tax

exclusion for student loan forgiveness for health care professionals working in underserved areas; and the Indoor Tanning Services Excise Tax. Other tax-related ACA provisions implemented by the IRS since 2010 include the Branded Prescription Drug Fee and the Health Insurance Provider Fee.

Another ACA implementation effort by the IRS has involved providing information to facilitate the delivery of advance payments of premium tax credits that are designed to help millions of American families obtain affordable health insurance coverage through the federal and state Health Insurance Marketplaces. While the operation of these Marketplaces is overseen by the Department of Health and Human Services (HHS), the IRS has the limited role of providing Marketplaces with data and computational services for use in their determinations about eligibility for financial assistance.

In particular, the IRS provides information through the Centers for Medicare and Medicaid Services' Data Services Hub in response to requests from the Marketplace for federal taxpayer return data. In response to such a request, the IRS securely provides certain limited tax data from the applicant's most recent federal income tax return, as specifically authorized by the ACA. State Medicaid and Children's Health Insurance Program agencies may also choose to request the tax data for their eligibility determinations.

Separate from the process of providing limited tax return data to the Marketplace for eligibility determinations, the IRS also supports the Marketplace by providing an optional computational service, known as the Premium Tax Credit Computation Engine. This computational service is used if an applicant chooses to have an advance payment of the premium tax credit sent straight to the insurer on a monthly basis throughout the year.

After the Marketplace determines a predicted annual income for the applicant, and without identifying the applicant, the Marketplace submits a few data elements to the IRS' optional computational service. The IRS, through this computational service, provides the Marketplace with a single figure: the maximum advance premium tax credit for which the applicant may be eligible based on those data inputs.

The systems and processes the IRS developed to support enrollment in the Marketplaces were launched on schedule in October 2013. The Treasury Inspector General for Tax Administration (TIGTA) issued a report in July 2014 on the IRS' performance in regard to the more than 27 million requests for federal taxpayer return data and the more than 11 million computational requests received between October 1, 2013 and March 31, 2014. TIGTA determined that the IRS provided accurate responses for 99.97 percent of the requests for return data and 100 percent of the computational requests that TIGTA reviewed.

During the 2015 open enrollment period, the IRS processed more than 25 million requests for federal tax return data and more than 17 million computational requests, with an average IRS response time of less than five seconds.

FILING SEASON PREPARATIONS

Let me turn now to our preparations for the 2015 filing season. Prior to this filing season, the IRS worked with its partners in the software and tax products industry on the ACA-related updates to tax software products, to ensure that any taxpayers affected by the ACA tax changes would be able to prepare their returns as quickly and easily as possible. About 91 percent of tax filers used software to prepare their returns, either directly or through their return preparer, which made this early preparation especially important.

With regard to the specific provisions of the ACA, the law allows eligible individuals to choose to have their insurer receive advance payments of the premium tax credit, the amount of which is based on a determination made by the Marketplace. Taxpayers who opted for advance payment of the credit during 2014 needed to reconcile that amount with the actual credit they were eligible to claim on their 2014 return.

When filing their returns, these taxpayers calculated the actual credit they qualified for based on their actual 2014 income using the new Form 8962, *Premium Tax Credit*, which they filed with their return. If the actual premium tax credit was larger than the sum of advance payments received by their insurer during the year, this increased the taxpayer's refund or reduced the tax liability. Conversely, if the actual credit was smaller than the sum of the advance payments, this reduced the taxpayer's refund or increased the tax liability, subject to a statutory sliding scale of income-based repayment caps.

The IRS also developed the Form 1095-A, *Health Insurance Marketplace Statement*, to facilitate the reconciliation process for the premium tax credit. Last year the IRS completed testing to ensure that our systems would be ready to accept this information from Marketplaces. I am pleased to report that our systems are operating as planned.

In addition to helping individuals calculate the premium tax credit, the Marketplace information is important because it helps the IRS ensure the credit is calculated and paid out correctly. In working to prevent incorrect payments involving this credit, the IRS not only has existing data, tools and systems used to address tax noncompliance generally, but the data from the Marketplaces also allows the IRS to efficiently sort for the basic qualification and computational elements of the premium tax credit. While the IRS does not share publicly all of the tools and techniques used for detecting noncompliance, it can be noted that the IRS is, for example, able to determine:

- Whether there is a record of anyone on the return having enrolled at a Marketplace (a basic requirement to claim the credit);
- Whether any advance payments made directly to the insurance company have been properly netted against the credit calculation; and
- If the tax return reports inaccurately high premium costs or inaccurately low advance payments as compared to the Marketplace data.

In some instances, enrollees received a Form 1095-A from the Marketplaces that needed to be corrected. In an effort to minimize the impact on taxpayers this first year, the Treasury Department announced that affected taxpayers who enrolled in qualifying Marketplace coverage and filed their income tax returns using information from the original Form 1095-A need not amend their returns based on corrected information they received from the Marketplace. The IRS will not pursue the collection of any additional taxes from these individuals based on updated information in the corrected forms.

Along with the premium tax credit, the IRS' preparations for the 2015 filing season in regard to the ACA also involved implementing the individual shared responsibility provision. Under this provision, individuals are required either to have qualifying health insurance coverage for each month of the year, have an exemption, or make an individual shared responsibility payment. I would note that the vast majority of taxpayers had coverage from one source or another, such as the individual's workplace, Medicare or Medicaid. These filers needed to do nothing more than check a box on their 2014 income tax return.

The statute contains exemptions from the individual shared responsibility provision. An exemption applies for individuals who:

- Have no affordable coverage options because the minimum amount they must pay for the annual premiums is more than eight percent of their household income;
- Have a gap in coverage for less than three consecutive months; or
- Qualify for an exemption for one of several other reasons, including, but not limited to, having a hardship that prevents them from obtaining coverage.

Most individuals who qualify for an exemption and otherwise need to file a tax return must provide the exemption information with their returns. Taxpayers used new Form 8965, *Health Coverage Exemptions*, to claim an exemption from the coverage requirement, and needed to include that form with their 2014 tax return.

Individuals who did not have coverage in 2014, and did not qualify for an exemption, needed to make an individual shared responsibility payment. A worksheet was provided in the instructions for the calculation of the individual shared responsibility payment, but filers were not required to attach the worksheet to the tax return.

In general, the payment amount is either a percentage of the individual's income or a flat dollar amount, whichever is greater. The amount owed is 1/12th of the annual payment for each month that a person or the person's dependents were not covered and were not exempt. For 2014, the payment amount was the greater of:

- 1 percent of the person's household income that is above the tax return threshold for their filing status; or
- A flat dollar amount, which is \$95 per adult and \$47.50 per child, limited to a maximum of \$285.

The individual shared responsibility payment is capped at the cost of the national average premium for the bronze level health plan available through the Marketplace for that year.

It is important to note that the IRS has been and continues to be ready to work with taxpayers who for financial reasons may have difficulty meeting their tax obligations. For example, taxpayers can go to IRS.gov to apply for an online payment agreement to stretch out their payments, or to request an Offer in Compromise. In addition, the IRS provides taxpayers with fast and convenient ways to make payments.

Along with building and improving our processes and systems, and developing and issuing new forms and instructions in advance of the filing season, a major component of the IRS' preparations for the 2015 filing season was centered on making sure taxpayers would know how these two major ACA provisions might affect them at tax time.

The IRS' goal in its ACA-related communication efforts has been to help people understand their responsibilities under the law, which in turn made their return filing experience easier this year. By providing this information in advance, we attempted to answer as many questions as possible before the filing season, to limit the number of people who would need to call us for help.

Through a variety of channels, we explained to taxpayers that:

- The individual shared responsibility provision requires that they and each member of their family have qualifying health insurance, a health coverage exemption, or make a payment when filing their return;
- Taxpayers with health coverage indicate this by simply checking a box on the return, and no further action is required;
- For taxpayers who qualify for an exemption from coverage, most exemptions can be claimed when they file their return, but some exemptions must be obtained from the Marketplace; and
- Those who do not have qualifying coverage or an exemption for each month of the year need to make an individual shared responsibility payment with their return.

We also communicated about the filing requirements for the premium tax credit, explaining to taxpayers that they had to file a federal tax return if they received any advance payments of the premium tax credit in order to reconcile those payments, and that they needed to use the information on the Form 1095-A they received from the Marketplace to calculate the credit at the time of filing.

The IRS has taken – and will continue to take – a number of steps to provide information to taxpayers about these provisions. For example:

- Our website, IRS.gov, has a section that is devoted to the ACA (www.irs.gov/aca). This section contains answers to many questions about the tax provisions, as well as links that take persons to online ACA resources of other federal agencies;
- The IRS has issued more than 45 plain-language Health Care Tax Tips. These and other IRS Tax Tips are sent to more than 660,000 email subscribers in the tax and legal community as well as partner groups. These tips and other ACA information have been picked up widely by the media;
- Thirty-nine YouTube videos addressing ACA issues were posted, including a series of question-and-answer sessions covering common taxpayer questions. We will continue to add additional videos, which also include videos in Spanish and American Sign Language;
- IRS officials provided outreach to key groups such as the software community, and presented information at numerous events, including last year's five IRS Nationwide Tax Forums for tax return preparers. More than 10,000 tax professionals attended the 2014 Tax Forums, where key parts of the ACA were highlighted prominently during these three-day events, which in total provided more than 40 different tax law seminars on the ACA; and
- The agency increased its use of social media to help people learn about the major ACA tax-related provisions. For example, we shared more than 100 Tumblr posts promoting the Health Care Tax Tips mentioned above, as well as the individual shared responsibility provision, the premium tax credit and the Small Business Health Care Tax Credit. The IRS also made use of Twitter, with 490 tweets promoting these and other ACA-related topics.

Additionally, the IRS established an automated ACA telephone line so that taxpayers would not need to wait for a live IRS assistor, but could get information quickly with recorded answers to commonly asked questions. In an effort to reach low-income taxpayers, training was provided on the ACA to more than 80,000 volunteers at more than 12,000 Volunteer Income Tax Assistance clinics around the country.

ASSESSMENT OF THE 2015 FILING SEASON

Let me turn now to an assessment of the 2015 filing season, which began on schedule on January 20, and in general has run smoothly in terms of processing tax returns. Through April 3, 2015, the IRS received more than 99 million individual income tax returns and issued more than 77 million refunds for approximately \$217 billion. Thus far the average refund is over \$2,800.

We opened the 2015 filing season on schedule despite the challenges we faced. I attribute this achievement to the dedication, commitment and expertise of the IRS workforce. Along with our normal work to get ready for the filing season, additional preparation was needed. This included the efforts described above to prepare for the tax-related ACA changes, as well as a significant amount of extra work to get ready for tax changes relating to FATCA. Additionally, we had to update our systems to reflect the passage of the tax extender legislation in December.

Our experience with the 2015 filing season indicates that taxpayers have taken advantage of the help we are offering online. As of April 4, there were more than 262 million visits to IRS.gov. Taxpayers have also used the “Where’s My Refund?” electronic tracking tool more than 187 million times so far this year.

Evidence thus far indicates that taxpayers affected by the tax-related ACA provisions generally have been able to fulfill their filing obligations, although given that this was the first year these two provisions affected the filing season, it was expected that taxpayers would have questions about them. We believe two factors had a particular impact on the relatively smooth taxpayer experience:

- First, as noted above, the IRS made every effort to communicate with taxpayers and preparers about the tax changes, beginning last year and continuing through the 2015 filing season. During the filing season, in fact, there has been steady demand for information and assistance on tax-related provisions of the act. There have been more than 4.4 million visits to the section on IRS.gov devoted to the ACA, and more than 300,000 recordings played on our automated ACA telephone line.
- The second factor was the use of tax preparation software for about 91 percent of all individual tax returns this filing season – either by the taxpayers themselves or by their preparers. As noted previously, the IRS worked with its partners in the software and tax products industry prior to this filing season on the ACA-related updates to tax software products, to ensure that any taxpayers affected by the ACA tax changes would be able to prepare their returns as quickly and easily as possible.

Although return processing has gone smoothly, both in general and as related to the ACA, it should be noted that our level of customer service this filing season has been unacceptably low, both in person and on the phone, despite the best

efforts of our employees. Our low service levels were the result of the budget cuts we have had to absorb. Funding for the agency has been reduced by \$1.2 billion over the last five years, dropping to \$10.9 billion in Fiscal Year (FY) 2015. The IRS is now at its lowest level of funding since 2008. If adjusted for inflation, the agency's budget is now comparable to where it was in 1998.

Since 75 percent of the IRS budget is personnel, the agency has been absorbing the budget cuts mainly by reducing our workforce. As a result, we ended FY 2014 with more than 13,000 fewer permanent full-time employees compared with 2010. We expect to lose another 3,000 or more through attrition by the end of this fiscal year.

This year, we were forced to substantially reduce hiring of extra seasonal help we usually have during the filing season. As a result, our phone level of service at the start of the filing season was 54 percent, and dipped below 40 percent toward the end of filing season. That means more than six out of every 10 people who call could not reach a live assistor. That is truly an abysmal level of service.

As for in-person assistance, during the filing season we were very concerned about the reports we received of taxpayers lining up outside our Taxpayer Assistance Centers (TACs) hours before they opened in order to get service.

Looking ahead to next year, I am concerned that the 2016 filing season will be another challenging one. As we begin preparations for the next filing season, one complicating factor is the need for the IRS to design and implement new programs enacted by Congress. For example, the IRS has been asked, as part of the Achieving a Better Life Experience (ABLE) Act, to build a certification process for professional employer organizations on a tight time frame and without any accompanying funding.

Another possible complication to the 2016 filing season involves the group of tax extender provisions that expired at the end of 2014. I am concerned about the possibility that Congress may not act on the extenders until very late in 2015. The IRS will need to adjust its forms and systems for any tax provisions that Congress decides to extend, so I hope that any extender package will be passed as soon as possible, to give the IRS and taxpayers maximum lead time to prepare for these changes.

CONCLUSION

Chairman Johnson, Ranking Member Carper and Members of the Committee, thank you again for the opportunity to update you on the work the IRS has done and continues to do to implement the tax-related provisions of the ACA. This concludes my statement, and I would be happy to take your questions.

Senator Johnson, We are writing to you because we are not sure where else to turn and also to make you aware yet another issue with our "Affordable" health care.

We are both retired. We live on a moderate annuity payment we each have and Scott's Social Security. We had been receiving a distribution from an additional retirement plan, which was discontinued in May 2014.

In the spring of 2014 we moved back to Wisconsin from Colorado to care for Scott's elderly, dying father. In doing that we moved out of the network of our Colorado health insurance. With the changes in health insurance for 2014, we were buying a high deductible health insurance plan through an insurance agency in Colorado. At that time our income was too high for us to qualify for subsidized premiums.

In April 2014 we contacted the Health Insurance Marketplace as that was the contact for health insurance coverage for Wisconsin. We were unsure if we would be able to change insurance in the middle of the calendar year. We spoke with a Marketplace agent who informed us we had TWO qualifying events – the move from Colorado out of the network of our health insurance AND the substantial reduction in our income as of May 2014. We were told we were eligible for coverage through the Marketplace and arranged for coverage with a plan that has providers in our area, effective June 1, 2014. We were told that we were eligible for a premium credit and arranged that the full premium credit would be applied towards our monthly premium – leaving us with a monthly cost we could afford (just over \$400/month)

We were told we needed to submit proof of our new, current income by July 20, which we did. In response we received a letter from the Marketplace dated September 22, 2014 stating "We have verified your information. Your eligibility as described in your eligibility determination notice will continue unchanged."

Fast forward to February 2015. In the process of completing our 2014 federal income taxes we now find out that our total income for 2014 is being used as the basis for our eligibility for the health insurance coverage. With that, we are not eligible for subsidized premiums and are now told we must pay a penalty, returning the entire subsidy amount - \$11,550. There is nothing in the reporting process which allows for taxpayers to report when there was a qualifying event. We knew that our income in the first half of 2014 was too high for us to be eligible for coverage. That is why we had to buy our own insurance in Colorado. We were very straightforward about our situation in coming back to Wisconsin when we spoke with the Marketplace in April. We were told that a qualifying event would make us eligible for the premium subsidy – even in mid-year.

Our entire gross annual income for 2014, including the distribution we received for 4 months early in the year and Scott's Social Security is just over \$62,000. The penalty being imposed is \$11,550. This is 18.5% of our entire gross annual income. Considering the fact that it is being imposed via our income taxes, it is actually going to have to be paid out of after-tax dollars, raising that percent of our income even higher. (And for a real, ironic turn of events – we will possibly have to withdraw this money from a retirement account, which will create \$11,550 of income, which will probably create a penalty for our 2015 coverage!) We don't know what the threshold is for eligibility for our health insurance, but an \$11,550 penalty on an annual income of approximately \$60,000 for two people seems excessive.

We really don't have any options except to pay this penalty in order to file our federal and state income taxes by April 15. We do intend to file an appeal with the Marketplace. We did not do anything criminal. We did exactly as we were told by the agents for the Marketplace. We paid for coverage, even when it was very expensive, so that we would be compliant with the new law. Moving to Wisconsin was a difficult, emotional time for us. We were thrilled that our new circumstances would allow us to have good health insurance coverage. We never expected that what we were told would not be true. It seems to us that there must be many other people who had things happen to them during the year that affected their health insurance and their ability to pay for it. Can you help us at all?

Scott and Julie Thompson

**Post-Hearing Questions for the Record
Submitted to Hon. John Koskinen
From Senator Michael B. Enzi**

“IRS Challenges in Implementing the Affordable Care Act”

April 15, 2015

1. There is concern that taxpayers are receiving premium tax credits for health plans purchased on exchanges that are inaccurate.

I understand that returns for 2014 are still being filed. When adequate information is available, please provide a detailed overview of the reasons that filers have had incorrect levels of premium tax credits.

For those who received a premium tax credit, please specify (1) what number or percentage of filers were given a higher tax credit than they should have received because of income information that was not updated by the taxpayer; (2) what number or percentage of filers were given a higher tax credit than they should have received because of income information that was not updated by IRS or the exchange in an accurate manner; or (3) what number or percentage of filers will receive a refund because their premium tax credit should have been larger?

Please provide the average amount of the overpayment and underpayment, if possible, in a manner that reflects the number of households or tax filers, as well as individuals in the household who received insurance coverage under the exchange plan.

IRS RESPONSE:

The operation of the Marketplaces is overseen by the Centers for Medicare & Medicaid Services (CMS), and the Marketplaces are responsible for determining whether an individual is eligible for advance payment of premium tax credits (APTC) and cost-sharing reductions (CSR). With respect to APTC and CSR, the IRS has the limited role of providing Marketplaces with data and computational services for use in their determinations about eligibility for financial assistance.

In particular, the IRS provides support to the process that each Marketplace goes through when an applicant seeking to purchase insurance through the Marketplaces also seeks financial assistance: that is, the Marketplaces must determine what assistance, if any, the applicant may qualify for, such as APTC. To make that determination, the Marketplaces request federal taxpayer return data from the IRS. In response to such a request, the IRS securely provides certain limited tax data from the applicant's most recent federal income tax return, as specifically authorized by the ACA.

Separate from the process of providing limited tax return data to the Marketplaces, the IRS also supports the Marketplaces by providing an optional computational service, known as the Premium Tax Credit Computation Engine. After the Marketplaces determine a projected annual income for the applicant, and without identifying the applicant, the Marketplaces submit a few data elements to the IRS' optional computational service. The IRS, through this computational service, provides the Marketplaces with a single figure: the maximum APTC for which the applicant may be eligible based on those data inputs.

The systems and processes the IRS developed to support enrollment in the Marketplaces were launched in October 2013. The Treasury Inspector General for Tax Administration (TIGTA) issued a report in July 2014 on the IRS' performance in regard to the more than 27 million requests for federal taxpayer return data and the more than 11 million computational requests received between October 1, 2013, and March 31, 2014. TIGTA determined that the IRS provided accurate responses for 99.97 percent of the requests for return data and 100 percent of the computational requests that TIGTA reviewed.

During the 2015 open enrollment period, the IRS processed more than 24 million requests for federal tax return data and more than 16 million computational requests, with an average IRS response time of less than five seconds.

Marketplaces determine APTC eligibility based on projected income and family size for the upcoming year. Eligible individuals who elected to have APTC sent to their insurance provider during the coverage year are required to reconcile those payments on their tax return with their Premium Tax Credits (PTC), which is based on actual income and family size as reported on the income tax return.

This filing season was the first in which taxpayers had to reconcile APTC amounts with PTC. Because APTC is based on a projection of income and family size, but PTC is based on actual income and family size, as reflected on the income tax return, there will usually be differences between APTC and PTC. This is similar to other tax reconciliation processes, such as taxes withheld from wages during the year.

On July 17, 2015, we reported preliminary results of the 2015 filing season related to the ACA to the Chair and Ranking Member of the tax-writing committees. That letter contains the data requested and therefore a copy is attached.

2. Please describe the process that was in place for the 2014 and 2015 plan years to communicate with The Department of Health and Human Services on any income level updates related to the eligibility process for premium tax credits, including anything related to the information used for automatic re-enrollment in exchange health plans for 2015.

For automatic re-enrollment for 2015 health plans, income information from previous years, potentially as early as 2012, may have been used.

For taxpayers who have been automatically re-enrolled in a health plan on a federally facilitated exchange, please share the number of those individuals who received an adjustment in their premium tax credit based on their 2014 tax filing?

What kind of information will be shared with HHS regarding the income level or premium tax credit eligibility for those who have been automatically re-enrolled in a health plan?

Has the Department of Health and Human Services or any individual or entity involved in the management of the health insurance exchanges inquired with the Department of Treasury, the Internal Revenue Service specifically, about any updates of the income information for those automatically re-enrolled in health plans for 2015?

IRS RESPONSE:

The process by which the Marketplaces request income and family size information from the IRS is described above. During open enrollment, this happens when an applicant seeks financial assistance (which includes consideration for APTC) and gives consent to request this information from the IRS. Requesting income and family size information also happens as Marketplaces go through their automatic re-enrollment process. The disclosure of such information is specifically authorized under the Affordable Care Act (ACA) as codified at 26 U.S.C. 6103(l)(21) and the regulations promulgated thereunder.

As discussed in the regulations, upon request, the IRS provides the income and family size information from the most recent income tax return available. It also provides the Marketplaces with the year of that tax return. The other specific data elements that are returned to Marketplaces are also specified in the regulations. Questions about how Marketplaces make eligibility determinations are better addressed to CMS.

It's my understanding that, for the 2015 coverage year, the Federally-facilitated marketplace followed procedures for annual redeterminations and reenrollments set out in guidance that can be found here: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-on-annual-redet-option-2015-6-26-14.pdf>

Importantly, for annual redetermination for the 2016 coverage year, the IRS will be providing a new data element that is available to Marketplaces for the first time based on the 2015 filing season. Specifically the IRS will be providing a "failure to reconcile flag" if IRS records indicate that a taxpayer had APTC paid on their behalf but did not file a 2014 income tax return (Form 1040 series) to reconcile those payments as required. Under HHS policy, these individuals are not eligible for APTC for 2016 until they file a return reconciling the earlier APTC. Additional details on the HHS policy for redeterminations and reenrollments for the 2016 plan year can be found here:

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/annual-redeterminations-for-coverage-42215.pdf>

3. The Affordable Care Act included a requirement for holders of tax-preferred health accounts, such as flexible spending arrangements (FSAs) and health savings accounts (HSAs), to first seek a doctor's prescription before using those accounts to purchase over-the-counter (OTC) medicines. Your agency issued a "frequently-asked questions" document in response to consumer confusion about this requirement. What challenges do consumers face in complying with this provision of the law? Have you seen the amount people are saving in those accounts has declined? Is the federal government seeing the savings the JCT projected in that portion of the bill when the ACA passed?

IRS RESPONSE:

Other than having to obtain the Doctor's prescription for the over-the-counter medication and, in the case of an employer sponsored health plan such as a flexible spending arrangement, having to provide that prescription to the plan administrator in order to obtain a reimbursement, we are not aware of any additional challenges faced by participants in complying with this requirement.

The amounts contributed to FSAs are not reported to the IRS and therefore the IRS does not have figures as to how many taxpayers participate in an FSA or the level at which they elect to participate.