

New Winners and Losers in the Obamacare Delay

By: David Francis, Eric Pianin, Josh Boak - July 5, 2013

The Obama administration confirmed this week what many have suspected for months: that the employer mandate in the Affordable Healthcare Act is not ready for prime time.

After months of complaints by business leaders and Republicans, the White House postponed for a year the mandate that businesses with 50 or more employees offer health care insurance to full-time workers, or pay a \$2,000 per head penalty.

Mark J. Mazur, the assistant Treasury secretary for tax policy, wrote in a blog post Tuesday afternoon that the delay enables the government to improve its reporting requirements, while providing employers with more time to develop health care options. But the move was laden with important political and policy implications—that were missing from Mazur’s statement.

The postponement raises uncertainties about both the economy and a 2014 election in which Democrats hope to preserve their Senate majority.

While the number of businesses that would have been forced to provide insurance is relatively miniscule, growing publicity about companies considering layoffs and cutting back employee hours to avoid the mandate has caused a headache for the administration.

In fact, an estimated 96 percent of all firms in the United States—or 5.8 million out of 6 million businesses – have fewer than 50 full time employees and therefore are exempt from this part of the Affordable Care Act. Only 10,000 of those 5.8 million firms would face employer responsibility requirements.

"The vast majority of employers who were subject to the mandate already offer health care coverage to their workers, so really not a whole lot should change, one way or another," Larry Levitt, a senior vice president at the Kaiser Family Foundation, told The Fiscal Times this week.

Yet even if few would have been impacted, the one-year delay in the employer mandate is raising new questions about the fate of Obamacare that could define the 2014 mid-term elections. If the employer mandate isn't ready, is the individual mandate behind schedule as well? Will the White House and industry be able to develop regulations by 2015, or will they languish until the next administration? And will the new insurance exchanges be ready to begin operating Oct. 1 in all 50 states and the District of Columbia?

These uncertainties will continue to dog the administration, but there are clear winners and losers in the aftermath of the latest delay. Here's a breakdown of who's celebrating this 4th of July weekend, who's wringing their hands over the future of Obamacare, and who's still in limbo.

WINNERS

Medium size businesses: The one-year delay in the employer mandate directly addresses complaints from businessmen and trade associations about the burden of the Affordable Care Act's reporting requirements and confusion about rules that are still being finalized.

Questions about the law are as basic as determining what actually constitutes a full-time and part-time employee, in addition to how much information businesses are required to provide the IRS to determine whether employees qualify for government subsidies in the new insurance exchanges.

According to William Dunkelberg, chief economist at the National Federation of Independent Businesses (NFIB), few companies with more than 50 full-time workers were prepared for implementation.

"The government's not ready, employers aren't ready, the exchanges aren't ready, and businesses aren't ready," Dunkelberg told The Fiscal Times. "Chaos is expensive, so it's probably a good decision."

"It's going to be a mess," he added. "It's going to be very difficult for years to get this sorted."

Republicans: As some analysts suggest, the administration's surprise announcement could undercut Republican plans to make Obamacare the centerpiece of their midterm elections strategy –and might prove a boon to the Democrats. Yet the one-year delay fits nicely into the GOP narrative that the Affordable Care Act is so unwieldy that it threatens to undermine the economic recovery.

House Speaker John Boehner (R-Ohio), said that the decision "means even the Obama administration knows the 'train wreck' will only get worse." House Ways and Means Committee Chairman Dave Camp, R-Mich., said the decision to give corporate America a free pass on the employer mandate while continuing to force average, everyday Americans to abide by the law "is deeply disturbing, and it raises serious questions about the effects associated with the decision."

Next year, Democrats must defend 21 Senate seats to the Republicans' 14. The GOP had already begun targeting Senate Democrats who voted for the health law in 2009. And the House has voted 37 times since taking control of the chamber in 2011 to repeal Obamacare, symbolic measures that died in the Senate.

The Federal Budget and the Economy: The tax penalties on companies that do not provide insurance were slated to raise a modest \$5 billion in revenue next year, the CBO estimated. That

equals less than two-tenths of a percent of the \$3 trillion in taxes the government will receive next year, meaning that the delay has a minimal short-term impact on the budget.

But the postponement does remove a source of economic pressure this fall. Implementation of Obamacare was the leading fear of mid-range companies, according to an April survey. It was also scheduled to begin right as the White House and Congress try to reach an agreement on the budget and the debt ceiling, an event that could prove disastrous if negotiations breakdown.

LOSERS

Congress: Obama simply did an end-run around Congress, ignoring a deadline written into a law passed by Capitol Hill and largely upheld by the Supreme Court.

Michael F. Cannon, a health care expert with the libertarian Cato Institute, noted that the administration acted unilaterally to delay the employer mandate, without congressional assent. He said it was “the latest indication that we do not live under a Rule of Law, but under a Rule of Rulers who write and rewrite laws at whim.”

Unseemly partisanship and political gridlock inside Congress rules out the possibility of Obamacare being fine-tuned by lawmakers. Instead, House Republicans likely will simply continue to fume, while Democrats will wonder why the administration acted unilaterally without consulting them.

Individuals without Health Insurance: The delay robs employees at medium-sized or larger businesses without insurance of the chance to get coverage through work. Many of them will have the opportunity to purchase affordable health care on one of the new insurance exchanges being set up by states and the federal government, but it’s not clear whether all the exchanges will be up and running on time. And unless they purchase insurance, they are subject to a penalty, even as their employers are being exempted from any penalties for at least the next year.

According to Howard Rosen, an accountant at Conner Ash in St. Louis, individuals should be angry that businesses with 50 or more employees no longer face a monetary penalty for failing to provide insurance to their workers. “That’s not what I expect from a Democratic president,” he said.

The Individual Mandate: The government has admitted it is not prepared for small businesses. How far behind is it on individuals?

Recent reports do not paint a pretty picture for Obamacare supporters. Many state exchanges aren’t complete, and a recent Government Accountability Office report found that the IRS is similarly unprepared to take the lead in implementation of the law. Add anger over letting businesses off the hook and the prospect for a delay grows.

“I think in the next 90 days we’ll see that happen. I would expect it right around Labor Day,” Rosen said, referencing the fact that the White House announced the delay during a slow holiday week.

Obama: Health care reform is the president's signature accomplishment. Without it, his list of accomplishments is alarmingly short.

"The problem the president and the administration is going to have is [explaining] their signature wins," said Peter Hart, a prominent Democratic pollster. "If they end up sort of whittling away health care and then follow that up with whittling away immigration reform, then you think, boy they've given away an awful lot for ... political peace."

Even if Obamacare does survive, implementation could stretch into the next administration, taking the shine off the accomplishment. Obama might be remembered as the man who passed a major health care reform law, but his successor – perhaps Hillary Clinton – could be the one to take credit for implementing it. And if a Republican is elected, it might disappear completely.