NATIONAL REVIEW ONLINE

Excuses, Excuses

Obama apologists explain why delaying the employer mandate is no big deal.

By: Michael Tanner, *senior fellow at the Cato Institute and author of* Leviathan on the Right: How Big-Government Conservatism Brought Down the Republican Revolution. – July 10, 2013

The Obama administration and its various apologists in the media have long since elevated excuse making to something of an art form. This is, after all, an administration that once blamed high unemployment rates on ATM machines. Even by those standards, however, the excuses surrounding the administration's decision to delay implementation of Obamacare's employer mandate rise to imaginative new heights.

Among them:

It really wasn't important anyway. Obamacare supporters were quick to suggest that the employer mandate was such a minor part of the law that delaying it was all but meaningless. White House spokesman Jay Carney explained it this way: "Numerous experts agree on this matter that the decision to postpone this provision of the Affordable Care Act will have no significant impact on implementation overall of the Affordable Care Act."

Those experts included Jonathan Chait of *The New Republic*, who insisted that "the employer mandate that the Obama administration is delaying is not a central part of the law." Likewise, Noam Levey wrote in the *Los Angeles Times* that "the so-called employer mandate is not as central to the law as other provisions." And the *Washington Post* editorialized that delaying the mandate "is no policy disaster, and it certainly doesn't indict the whole law."

If the provision is so unimportant, one might wonder why it was included in the law in the first place, given its potential for reducing employment. Then again, the Congressional Budget Office expects this provision to generate $140 billion in fines by 2023, so perhaps it's not as negligible as is being portrayed.

Those claiming that the employer mandate's impact is minor point out that 94 percent of American companies currently have fewer than 50 employees and therefore would not have fallen under the mandate anyway. And the remaining 6 percent of businesses, which employ the vast majority of American workers, generally provide health insurance already.

However, it is more than misleading to pretend that the mandate only impacts businesses with 50 employees or more. Most small companies aspire to become bigger ones. A company with 45 workers may not be affected by the mandate today, but they may hope to have 50 employees in the future. The employer mandate will significantly increase the cost of achieving that goal. And for companies with slightly more than 50 employees, many will consider the potential advantages of reducing the number of full-time employees below 50 in order to avoid the mandate. Therefore the mandate is likely to sweep up a large number of companies on both sides of 50 employees.

It is also important to remember that simply offering insurance wouldn't necessarily satisfy the mandate. Businesses have to provide a specific "minimum essential benefits" package that may be more extensive and costly than what they offer today. And while existing plans were temporarily grandfathered, any significant change in such a plan would force the business to come into full compliance. Even Obama's Treasury Department estimates that eventually most small and medium-sized businesses will have to change their plans. Therefore, even those businesses that already provide insurance could face higher costs under the mandate.

All of this is why, according to a recent Gallup poll, 41 percent of small businesses said they have already held off on plans to hire new employees, and 38 percent said they've pulled back on plans to expand their businesses in other ways. Worse, 11 percent indicate that they have already laid off workers or cut back their hours.

That actually sounds pretty important.

It was the Republicans' fault. Somehow the Obama administration couldn't find a way to rely on its most frequent excuse, blaming things on former President Bush, but it still tried to shift responsibility to its other bogeymen, Republicans and the Tea Party. Several Democrats and columnists said that the Obama administration was forced to delay the flawed mandate because obstructive Republicans wouldn't work with them. "The Obama Treasury Department delayed the mandate because it knew Congress wasn't going to fix it," Dave Weigel wrote in *Slate*.

On MSNBC's *Morning Joe*, presidential adviser–turned–media flack David Axelrod managed to suggest that the employer mandate was delayed because Senate minority leader Mitch McConnell fears a tea-party primary. Implementing Obamacare, Axlerod said, is "more difficult because of this determined opposition. Mitch McConnell has been leading the charge. As you guys know, he is all about the Tea Party these days because he's worried about a primary within his own party, hired Rand Paul's campaign manager and now he can't be more active enough [sic] in trying to scuttle the Affordable Care Act. These are obstacles that other programs haven't faced."

But Republicans have voted to fix, not just this flawed provision, but the legislation's other failures as well, some 37 times — as Democrats continually point out. The problem isn't that Republicans are unwilling to correct bad legislation; it is that they haven't been satisfied to make it just a tiny bit less bad.

Besides, passing legislation that won't work, then relying on your opponents to "fix" it, strikes me as a suboptimal strategy.

We are really helping business. Even if Republicans are forcing President Obama to do this unimportant thing, it is said, we should be happy, because the delay is really part of the administration's plan to help American business. "In our ongoing discussions with businesses we have heard that you need the time to get this right. We are listening," said White House adviser Valerie Jarrett.

But a one-year delay does nothing to solve the underlying problem for businesses. Nearly all economists agree that the amount of compensation each worker receives should be a function of his or her productivity, and the employer is indifferent to the makeup of that compensation between wages, taxes, insurance premiums, or other costs associated with that worker's employment. Mandating an increase in a worker's compensation (through the provision of health insurance, or more costly health insurance) increases the worker's operating costs without increasing the worker's productivity. Therefore, employers must therefore find ways to offset the added costs imposed by the mandate.

Come January 1, 2015, businesses will still face that additional cost.

This was always part of the plan.Besides, administration supporters argue, we shouldn't be surprised if the administration changes, delays, or drops part of the law. They always planned to change those parts of the law that they found inconvenient. As Jay Carney put it, "We are flexible, because that's the right thing to do and to be." And as Jarrett explained, "As we implement this law, we have and will continue to make changes as needed."

The administration has a point. This is hardly the first provision of Obamacare that the administration has unilaterally rewritten. Remember, this administration has already dropped or delayed provisions ranging from the CLASS Acts's long-term-care program to the Small Business Health Option (SHOP) program. This will come in handy when the administration is unable to meet other provisions of the law, such as the October 1 deadline for start-up of insurance exchanges.

The administration has also shown a penchant for rewriting parts of the law it doesn't like. For instance, the IRS has issued rules providing subsidies through federally run exchanges, despite explicit language in the legislation limiting such subsidies to state-run exchanges.

It is oddly reassuring to know that the actual language of the legislation, including the dates that are specified for provisions to take effect, is essentially meaningless. But wouldn't it have been easier to avoid that whole 2,500-page-bill thing and simply pass a law saying that the president can implement whatever he thinks health-care reform should be, however he wants, whenever he wants?

Oh yeah? Well, children can stay on their parent's policy until age 26!Unsurprisingly, as Obamacare as a whole becomes increasingly unpopular — the latest polls show that more Americans now oppose the law than at any time since it was first passed — its advocates continue to call attention to those individual aspects of the law that remain popular. However, with more and more aspects of the law falling apart, they are increasingly forced to fall back on a tiny handful of provisions implemented years ago. In particular, Obamacare supporters would be lost without the bill's provision allowing adult children to stay on their parent's policy until their 26th birthday. Senator Jack Reed (D., R.I.) was the latest to invoke this. Asked about delaying the employer mandate, he quickly retorted, "We already have seen many benefits from Affordable Care. Parents can keep their children on the plan until they're 26. There are many things."

Obamacare costs some $2.7 trillion, reworks the entire U.S. health-care system, raises premiums, and imposes massive burdens on American businesses, workers, doctors, and patients. But your 24-year-old doesn't have to buy his own insurance. Hooray.

These excuses may not be very convincing, but given the number of Obamacare disasters to come, the administration will undoubtedly have plenty of opportunities to work on them.