

**WRITTEN TESTIMONY OF
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ENFORCEMENT
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
ON IMPLEMENTATION OF THE AFFORDABLE CARE ACT
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Introduction

Chairman Issa, Ranking Member Cummings and Members of the Committee, my name is Sarah Hall Ingram and I am Director, Affordable Care Act Office, Services and Enforcement, at the IRS. I appreciate the opportunity to appear before you today to discuss the work the IRS is doing to fulfill our responsibilities under the Affordable Care Act. As explained in more detail below, the full scope of IRS activities in relation to Affordable Care Act implementation goes far beyond the business processes and procedures being overseen by my office and encompasses several major functions within the agency.

The IRS is charged with implementing the tax-related provisions of the Affordable Care Act. Our most substantial effort in this regard involves the delivery of premium tax credits that will help millions of American families access affordable private health insurance coverage through the new Health Insurance Marketplaces, also known as Exchanges. The Department of Health and Human Services (HHS) has principal responsibility for defining the structure and operations of the Marketplaces. For the Federally-sponsored Marketplace, HHS has additional responsibilities, including the deployment and ongoing management of the HealthCare.gov website. Open enrollment for insurance purchased through the Marketplaces, both Federal and state, began on October 1, 2013, and coverage can begin as soon as January 1, 2014.

The IRS has a supporting role in the development and operation of the Marketplaces, which is to provide data and computational services to the Marketplaces for use in making determinations about citizen eligibility for assistance. In addition, the IRS is responsible for implementing the tax provisions in the Affordable Care Act, most of which are already implemented, such as the branded prescription drug fee, the tanning tax and the medical device excise tax. This testimony focuses on the two most significant tax provisions that go into effect in 2014 and affect many individual taxpayers – the premium tax credit and the individual shared responsibility payment.

IRS implementation of the tax provisions of the Affordable Care Act represents the collaborative work of all parts of the IRS, and this testimony reflects the collective

knowledge of several major functions within the agency. The testimony is designed to provide the committee with a global perspective on the activities being undertaken by the IRS in regard to its Affordable Care Act responsibilities, all of which have required and continue to require significant advance preparation, beginning with the establishment of enterprise-wide governance and planning processes. As the Director of the Affordable Care Act Office under Services and Enforcement, I do not oversee the other three offices with key responsibilities for implementing the Affordable Care Act -- Information Technology, IRS' Office of Safeguards and the Chief Counsel's office -- so I will generally be able to speak to only the issues that fall within the jurisdiction of my office.

Our implementation efforts in regard to the Affordable Care Act tax provisions fall into three categories:

- **Employing information technology** to securely facilitate data sharing with HHS and state agencies, to assist them in determining whether an individual who is applying for insurance coverage qualifies for financial assistance, including the premium tax credit. Our use of information technology will also play a key role going forward in integrating the various tax-related provisions into the tax administration infrastructure;
- **Protecting the safety and privacy of taxpayer data** being shared among Federal and state entities under the Affordable Care Act. This includes both the establishment of safeguards before data is released and the ongoing monitoring of safeguarding practices; and
- **Updating and improving business processes and systems** to facilitate tax return filing and compliance with the tax-related provisions of the Affordable Care Act, including the premium tax credit and the individual shared responsibility requirement. Our business activities are also being updated to provide customer service, education and outreach to help taxpayers comply with Affordable Care Act tax-related provisions that affect them.

I am pleased to report that the systems and processes the IRS has developed to support enrollment in the Marketplaces were launched on schedule and are working as planned. We have handled all requests received to date via the HHS Federal Data Services Hub, which is explained in more detail below. We are meeting our goals, and we have processed all transactions as intended.

Our data protection efforts are also working as intended. Prior to October 1, we ensured that data security agreements were approved for all entities scheduled to receive taxpayer information – including the Federally-facilitated Marketplace, state Marketplaces and Medicaid offices.

In addition, we have been working to ensure that individuals who seek information about obtaining insurance coverage through the Marketplaces are steered to the resources that can best help them. For example, the prerecorded information phone lines we set up for

this purpose were operational as of October 1, along with other methods of providing information, such as links on our website, IRS.gov, directing users to heathcare.gov. Information about Marketplace enrollment will also be available to walk-in customers at our Taxpayer Assistance Centers, once the current lapse in appropriations ends and the IRS returns to normal operations.

Let me now describe for you in more detail the work that the IRS has been doing in each of the three categories mentioned above.

IRS Information Technology Work Supporting Implementation of the Affordable Care Act

When an individual seeks to purchase insurance through a Marketplace, and requests financial assistance, the Marketplace must determine what assistance, if any, the applicant may qualify for, such as the premium tax credit or Medicaid. As part of assembling data for that determination, the Marketplace requests Federal taxpayer data. Upon request from the Marketplace, the IRS securely provides, for each applicant, some limited tax data¹ from the applicant's most recently filed Federal income tax return. State Medicaid and Children's Health Insurance Program agencies may also choose to request the tax data for their eligibility determinations.

It is important to understand exactly how this information is being transferred from the IRS to the Marketplace. The Affordable Care Act designates HHS as the conduit for all Federal agency information being shared with the Marketplace. The taxpayer data supplied by the IRS is transmitted over secure, encrypted channels to the HHS Federal Data Services Hub, which was developed to facilitate these and other data transfers. The data hub does not store taxpayer information, but merely routes that information to authorized users. The Marketplace, which requests and receives each data packet through the HHS data hub, uses the available tax information, together with data from other third parties and the applicant, to predict the applicant's 2014 income and to determine the assistance, if any, for which the applicant qualifies. At no time is tax information displayed to anyone who is not authorized to receive it.

To facilitate the sharing of tax return data with the Marketplace, the IRS has new information technology systems and services, and has built a secure interface with the HHS data hub. Interagency testing of these systems, services and connections was completed prior to October 1, and they were deployed on schedule.

¹ For each person on an application, the Marketplace request contains the person's name, SSN and relationship to the tax filer. This enables the IRS to correctly locate and associate the limited relevant data from return records. The IRS then returns information authorized under section 6103(l)(21) of the Internal Revenue Code, including limited income data from the face of the return, family size and filing status. The Marketplace will use this tax information, together with data from other sources, to make its determination about predicted 2014 income and eligibility for various programs.

Separate from the process of providing limited tax return data to the Marketplace, the IRS also is responsible for providing a computational service, known as the Premium Tax Credit Computation Engine, if the Marketplace determines that an applicant is eligible for, and interested in, advance payments of the premium tax credit directly to the insurer for insurance purchased through the Marketplace. After the Marketplace has determined a predicted 2014 income figure, and without identifying the applicant, the Marketplace submits a few data elements – such as a Marketplace-determined income figure and family size, and the Marketplace benchmark plan premium – for the IRS’ computational service through the HHS data hub, and receives back a single figure: the maximum advance premium tax credit resulting from those data inputs. Nothing in this computational process identifies individuals or contains tax data. The IRS merely provides a mathematical service, which supports consistent math at enrollment and on the later tax return, regardless of whether the inputs change.

Going forward, IRS information technology efforts will also extend to incorporating provisions such as the premium tax credit into our tax administration and compliance responsibilities, commencing with 2014 tax returns filed in 2015. Work is already underway to build the systems necessary to support this aspect of Affordable Care Act implementation, which is described in more detail later in this testimony.

Protecting Safety and Privacy of Data

Let me turn now to the steps that the IRS has taken and continues to take to ensure the safety and security of the data being shared under the Affordable Care Act.

It is important to note that safeguard requirements and reviews handled by the IRS are distinct and separate from the overall secure operation of the data systems beyond the IRS infrastructure. As the agency that oversees the data hub, HHS has the responsibility for the computer security testing procedures related to the Marketplaces’ entire information systems operation. Documentation of the data hub security testing with the Marketplaces is handled by HHS.

The information sharing taking place under the Affordable Care Act comes against the backdrop of very strong confidentiality protections as specified in the tax laws. In general, section 6103 of the Internal Revenue Code prohibits the IRS from sharing tax return data with anyone outside the agency. Over the years, however, Congress has created a series of narrow exceptions to the restrictions in section 6103. Those exceptions allow the IRS to share taxpayer information for specific purposes and with proper safeguards. For example, the IRS is permitted to disclose tax return information to other Federal agencies and state tax authorities to facilitate efficient tax administration. The Affordable Care Act provides a specific exception to section 6103 for information sharing activities that the IRS will perform under the Affordable Care Act.

The IRS is well positioned to provide the needed safeguards, given the longstanding experience it has in overseeing the transmission of data to Federal and state agencies

under previously enacted exceptions to section 6103. Agencies receiving return information from the IRS must meet significant safeguarding requirements, including strict recordkeeping and proper handling, storage and disposal of tax records.

The IRS Office of Safeguards has the responsibility for monitoring the nearly 300 Federal and state agencies that currently are permitted to receive tax return data, to ensure they are complying with all requirements. IRS Publication 1075, *Tax Information Security Guidelines for Federal, States and Local Agencies*, provides detailed background and procedures for data recipients.

In regard to the Affordable Care Act, the IRS has in place a robust security process and controls that it has used successfully in numerous other data exchanges. The IRS has coordinated efforts with HHS to ensure that computer security requirements and proper safeguard protections were incorporated into the HHS approval process for Marketplaces. IRS officials have also worked closely with the Marketplaces to ensure that the necessary safeguard procedures are in place before any Federal tax information can be provided.

Among our collaborative efforts, the IRS and HHS have entered into a Computer Matching Agreement to meet the requirements of the Computer Matching and Privacy Protection Act. This agreement details the operations of the data exchange, as well as various disclosure restrictions and other requirements. The IRS and the Center for Medicare and Medicaid Services have entered into an Information Exchange Agreement covering the use of HHS systems by the Marketplaces to transmit monthly and annual information reports to the IRS, and also covering use of the Premium Tax Credit Computation Engine by the Marketplaces. The IRS and CMS also have an Interconnection Security Agreement covering the security of the connection between the agencies

The IRS holds the Marketplaces and state agencies seeking tax return data under the Affordable Care Act to stringent data protection requirements. Before one of these entities can begin receiving tax return information, it must submit a Safeguard Procedures Report (SPR) to the IRS, and the IRS must approve it. This report details the steps that the entity has established or plans to take to protect the confidentiality of the tax records it will be handling. To prepare these entities for their data protection responsibilities, we spent several years educating them as they developed their systems. We provided ongoing technical support to state security teams to assist in preparation of their SPRs and helped them securely incorporate Federal tax information into their specific technology environments.

If any entities fail to establish adequate safeguards, taxpayer data will be withheld from them. Thus far, the IRS has approved SPRs for the HHS data hub, the Federal Marketplace, and all individual marketplaces that requested approval prior to October 1, along with eight Medicaid offices that also sought approval.

Going forward, we will continue working with HHS and all other entities involved to ensure adequate data safeguards are in place, and we will provide ongoing oversight to

ensure that all entities involved in data sharing continue to meet the safeguarding requirements. In particular, the entities referenced above that have been approved to receive tax return information will be subject to oversight on an accelerated basis, with the review cycle scheduled to begin in October 2013.

Ongoing Tax Administration Responsibilities Related to the Affordable Care Act

In addition to our data sharing and computation services to support the open enrollment season at the Marketplaces, the IRS is also focused on preparing for Affordable Care Act provisions that will have an impact on IRS forms and procedures beginning with the 2015 filing season, as well as additional customer service and education activities. Two key provisions are the premium tax credit and the individual responsibility requirement.

Premium Tax Credit. As noted above, individuals may be eligible to receive advance payments of the premium tax credits, paid directly to the insurer, for private insurance that they purchase through the Marketplace.

The Marketplace determines the eligibility for, and amount of, any advances based on a variety of data. If the individual elects to reduce the monthly premium by the advance payment, the Marketplace initiates the request for each monthly payment, which is made by the Treasury Department. At the end of the coverage year, taxpayers who opted for advance payments of the credit will reconcile these payments on their 2014 tax returns filed in 2015. Upon filing tax returns, these taxpayers will calculate the actual credit they qualified for based on their 2014 income. If the actual credit is larger than the sum of advance payments received during the year, the taxpayer will be entitled to additional credit on the tax return. If the actual credit is smaller than the sum of the advance payments, the taxpayer will owe the difference, subject to a sliding scale of income-based repayment caps included in the Affordable Care Act, as amended. If the taxpayer did not choose the advance assistance but at the end of the year qualifies for a premium tax credit, the taxpayer may claim the entire credit at that time. The IRS will be required to promptly process accurate returns while also efficiently identifying and stopping any erroneous claims for the credit.

The IRS will provide educational material, forms and instructions for taxpayers and their advisors to understand the provisions and accurately prepare 2014 tax returns to be filed in early 2015. In addition, the IRS is preparing to provide information and answer questions about tax issues on those returns in a variety of formats: live and pre-recorded telephone answers; enhanced website information and self-help tools; and educational materials and events.

By partnering with other agencies, tax practitioners and industry stakeholders, the IRS has worked to ensure that information about the premium tax credit and the advance payment assistance is accurately described for the open enrollment process this fall. Looking forward, the IRS is already engaged with partners and stakeholders on ramping up the effort heading toward the 2015 filing season – including working with tax return

preparers and the software industry to ensure individuals have the information and tools they need to accurately prepare and file their annual tax returns.

To facilitate tax administration, the Marketplaces will be transmitting to the IRS – over secure, encrypted channels – enrollment information for individuals purchasing coverage through those Marketplaces. This transactional information will include the fact and cost of coverage, and information on any advance payments of the premium tax credit made during the coverage year to the taxpayer’s insurance company on his or her behalf. While certain identifying information, such as name and SSN, is required to support the tax return processing, no personal health information is ever provided. The IRS will reconcile the information with what the individuals report on their tax returns so that the IRS can verify whether they received the proper amount of credit, are owed more, or must repay any excess advance payments. This information will help the IRS speed processing of returns and spot erroneous claims for the credit. It is important to note that individuals who enroll in coverage through the Marketplaces – whether or not they receive advance payments of the premium tax credit – will receive an annual information return from the Marketplaces to support the accurate preparation of their returns.

The IRS already routinely receives third-party information that helps it verify the accuracy of tax returns, and we have longstanding policies in place related to the safety and privacy of this information. We will use this experience to guide us in making sure that any Affordable Care Act-related taxpayer information we receive is properly safeguarded.

Individual Shared Responsibility Requirement. The individual shared responsibility requirement provides that, beginning in 2014, individuals who can afford health insurance coverage must have minimum essential coverage, qualify for one of the statutory exemptions, or make a payment with their returns.

Most individuals will have coverage through one of a number of sources, such as: the individual’s workplace; a government program such as Medicare or Veterans’ benefits; or, starting in 2014, the new Marketplaces. When preparing their 2014 tax returns, these individuals will simply check a box to report the fact that they have health insurance coverage. There are also a number of individuals who will be exempt from the individual responsibility requirement, such as those with incomes below the tax filing threshold or those for whom premiums are not affordable. Most individuals who qualify for an exemption and otherwise need to file a tax return will provide the exemption information with their returns. The small minority of individuals who do not have coverage and do not qualify for an exemption will simply be able to calculate their individual responsibility payment on their tax returns.

The process for individuals and the IRS to verify coverage will be very similar to the one that we have used for years to verify wages and withholding. Importantly, the information that insurers or the Marketplaces will provide to the individual and the IRS will show the fact of insurance coverage, and will not include any personal health information. The IRS will perform any necessary follow-up with taxpayers by written

correspondence, and will allow taxpayers time to gather the information needed to respond, or get help in understanding the details of the individual shared responsibility requirement. The law also clearly specifies that the IRS will not use levies or file notices of Federal tax lien if taxpayers have unpaid amounts related to the individual coverage provision. Moreover, taxpayers will not be criminally prosecuted for non-payment of this amount.

Preparing for 2015 Filing Season and Beyond. In regard to both the premium tax credit and the individual shared responsibility requirement, preparations are already well underway to modify forms and instructions, enhance education and outreach to taxpayers and their advisors, and update our systems and processes in time for the 2015 filing season. In 2015, our emphasis will be on education, outreach and technical assistance so that taxpayers have the information, tools and the know-how to properly complete their returns. Once employer and insurer information reporting begins for 2015, we will have additional tools to improve our ability to monitor and enforce compliance with both provisions. That said, the IRS is also focusing on ensuring that returns that erroneously or fraudulently claim refundable premium tax credits (or fail to reconcile advance payments) are efficiently identified and addressed.

Preventing Return-Related Errors and Ensuring Compliance

As noted above, the IRS' efforts in regard to implementation of the Affordable Care Act are divided into three distinct functions – the use of information technology to facilitate data sharing and prepare for tax filing seasons; efforts to safeguard and protect taxpayer data; and updating and improving business processes and systems to facilitate reporting and payments on tax returns to comply with the tax-related Affordable Care Act provisions. We have worked and continue to work diligently to synthesize these separate functions in order to deliver on our responsibilities under the Affordable Care Act at each stage of implementation.

An excellent example of bringing these various functions together in support of one aim involves the efforts we are making to reduce inadvertent taxpayer errors and maximize return-related compliance. To prepare for the 2015 filing season, we are prepositioning third-party data before the first returns are filed, and we are using existing antifraud detection indicators and filters in regard to the Affordable Care Act-related returns, as we do for all 1040s. In addition, we will continue to use experience and analytics to ensure that ongoing non-Affordable Care Act enhancements to fraud detection tools and algorithms continuously incorporate Affordable Care Act issues and experience.

Specifically in regard to the individual shared responsibility requirement, we are in the development stage for forms, processes and systems that will be needed by individuals to voluntarily comply and by the IRS to identify returns where individuals who do not obtain coverage fail to report an exemption or include the necessary payment with their return. We expect that in the first year it will be critical to emphasize educating and assisting taxpayers about this new requirement to support voluntary compliance. In

addition, as with any new provision, the IRS will be able to develop error-detection systems in relation to the requirement, as we gain a more robust sense of where the risks of noncompliance exist and leverage new third-party reporting.

We are also focusing e on the premium tax credit due to its size and refundable credit character. In addition to the data, tools and systems that the IRS uses to battle tax fraud of all kinds, we have some particular tools for enforcing proper payments involving this credit. As mentioned above, the Marketplaces will be providing the IRS with key 2014 transactional data prior to the beginning of the 2015 tax filing season. Having this pre-positioned transactional data will allow the IRS to efficiently sort for the basic qualification and computational elements of the premium tax credit as each tax return is processed. While the IRS does not share publicly all of the tools and techniques used for detecting noncompliance, it is important to note that the IRS will be able to determine, for example, whether:

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

Conclusion

Chairman Issa, Ranking Member Cummings, thank you again for the opportunity to update you on the efforts we are making to support the new Marketplace system, to protect and safeguard Federal tax information, and to ensure compliance with the premium tax credit and individual shared responsibility requirement provisions of the Affordable Care Act. Our efforts to date are operating as planned and we are working hard to meet the milestones ahead. This concludes my testimony. I would be happy to take your questions and will do my best to answer any that are within my jurisdiction as Director of the Affordable Care Act Office in the Services and Enforcement Division, which, as I mentioned above, is only one of the four offices with primary responsibility for implementing the Affordable Care Act.

Sarah Hall Ingram serves as the Director of the Affordable Care Act Office under the Deputy Commissioner for Services and Enforcement. Ms. Ingram has been leading the office since December 2010. She coordinates ACA implementation efforts across the business divisions, and collaborates with ACA offices in Information Technology, Chief Counsel, and Data Safeguards on the overall IRS implementation of the tax provisions of the ACA.

Before this assignment, Ms. Ingram served as the Commissioner of the Tax Exempt and Government Entities Division beginning in Spring 2009, overseeing offices administering the tax law governing employee retirement plans, tax-exempt organizations, tax-exempt bonds, Indian tribal governments, and federal, state and local governments. From 2006 to 2009, she served as Chief of Appeals, where she was responsible for overseeing the operations of the administrative forum for taxpayers contesting an IRS compliance action. From 2004 to 2006, she was the Deputy Commissioner, TE/GE, after serving as Division Counsel/Associate Chief Counsel (TE/GE) from 1999 to 2004.

Ms. Ingram began her IRS career in the former Tax Litigation Division in 1982 and served, successively, as Employee Plans Litigation Counsel, Special Counsel to the Chief Counsel and, starting in 1994, Associate Chief Counsel (Employee Benefits and Exempt Organizations). In 1999, she was appointed to the new position of Division Counsel/Associate Chief Counsel (TE/GE), overseeing the provision of legal services to the TE/GE Division and its customers, as well as other parts of the IRS.

Sarah is a graduate of Yale University and received her law degree from Georgetown University Law Center. She is a member of the Bar of the District of Columbia.