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Flash: Does Delay of Employer Mandate Open the Door for More ACA Delays?

In the ultimate 4th of July surprise, the Treasury Department announced this evening – in a blog post – that the department is delaying for one year the reporting requirements related to the employer mandate under the Affordable Care Act. This news is not a surprise given that the agency still has not issued any guidance on employer reporting requirements.

What is a big surprise is that the agency is also delaying until 2015 the employer shared responsibility requirements (i.e., the employer mandate and associated penalties). The post states:

> *"We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015."*

Delaying the employer mandate will allow the Administration to focus on its primary goal of rolling out the health insurance exchanges for individuals. The Treasury notice states that its actions won't impact access to insurance subsides under the ACA. However, a key question for a person to qualify for subsidies is whether his/her employer provides coverage that provides "minimum value." It's not clear how this standard will be met without reporting requirements, but we will explore this further.

Today's move begs the question of whether any ACA provisions might be delayed. Democrats have grown increasingly concerned that a bumpy rollout of the ACA and premium shock could cost them politically in the mid-term elections. And a one-year delay will simply move the employer mandate closer to the 2014 election timeframe.

We think today's action could open the door to additional delays, especially for some of the more onerous insurance provisions. Health insurers have been seeking a phase-in of the 3:1 age rating and guarantee issue requirements that many argue are likely to result in premium shock, especially for younger people. The Administration has said it does not have the statutory authority to phase-in the insurance requirements, so it's hard to see how it suddenly has the authority to delay the entire employer mandate, which is also mandated by the ACA for 2014. We expect others to highlight this apparent contradiction, and would not be surprised if it sparks a major campaign when lawmakers return from July 4th recess.

We also would not be surprised if the small business or SHOP exchanges are delayed one year. The Administration has already delayed a key provision for the small employer (SHOP Act) that would have allowed employees of small firms the option to choose from among all the plans in an exchange. Without a delay, it remained to be seen if many small businesses would purchase coverage through exchanges in 2014, especially given reports that insurers aren't very interested in participating in those exchanges.

Finally, it's highly unusual for an agency to issue such impactful guidance in such an informal manner. Both the IRS and Treasury have an entire hierarchy of communications, from bulletins and guidance, to revenue rulings and formal regulations. Presumably the timing and format of the communication is intended to minimize the inevitable "Obamacare train wreck" headlines sparked by the delay. However, we think it highly doubtful that media and pundits will hold fire on this juicy bit of news just because of the holiday.

The Treasury blog post can be found here.

Analyst Certification
The following analysts hereby certify (1) that their views about any and all of the subject companies and securities discussed in this report are accurately expressed and (2) that no part of their compensation was, is, or will be directly or indirectly related to the specific recommendations or views expressed in this report: Kim Monk and Rob Smith.

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