

## **Committee on Oversight and Government Reform**

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## **Committee on Ways and Means**

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### **Administration Conducted Inadequate Review of Key Issues Prior to Expanding Health Law's Taxes and Subsidies**

**Joint Staff Report  
U.S. House of Representatives**

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## Executive Summary

In the summer of 2012, the House Committee on Oversight and Government Reform and House Committee on Ways and Means launched separate investigations into the joint Internal Revenue Service (IRS) and Treasury Department rule extending the premium subsidies created by the Patient Protection and Affordable Care Act (PPACA) to individuals purchasing coverage in federal exchanges.<sup>1</sup> According to many legal experts, the IRS rule is precluded by the PPACA statute and incompatible with PPACA's legislative history.<sup>2</sup> These experts found that PPACA expressly and consistently restricts certain provisions (notably premium-assistance tax credits, cost-sharing subsidies, employer-mandate penalties, and in certain cases individual-mandate penalties) to states with "an Exchange established by the State," as opposed to an exchange established by the federal government in states that elected not to establish their own exchange.

For example, in July 2012, the Congressional Research Service's American Law Division (CRS) produced a ten page analysis, including an in-depth review of the statutory text, of the joint IRS and Treasury decision to extend premium subsidies to individuals purchasing coverage in federal exchanges. According to CRS's legal experts, "a strictly textual analysis of the plain meaning of the provision would likely lead to the conclusion that IRS's authority to issue the premium tax credits is limited only to situations in which the taxpayer is enrolled in a state-established exchange. Therefore, an IRS interpretation that extended tax credits to those enrolled in federally facilitated exchanges would be contrary to clear congressional intent, receive no *Chevron* deference, and likely be deemed invalid."<sup>3</sup> Many experts have indicated that the IRS's rule to allow premium subsidies in federal exchanges, compared to a strict textual reading that would disallow such subsidies, will lead to hundreds of billions of dollars in spending and higher taxes that were not authorized by Congress.<sup>4</sup>

Late in 2012, the House Committee on Ways and Means joined the House Committee on Oversight and Government Reform in its investigation of the IRS rule. Over the past 18 months, the Committees received several briefings and held numerous hearings with key IRS and Treasury personnel involved with the development of the rule. Respective staffs from both Committees have reviewed documents *in camera* at the Treasury Department. The focus of the Committees' investigation was whether IRS and Treasury conducted an adequate review of the statute and legislative history prior to coming to its conclusion that PPACA's premium subsidies would be allowed in federal exchanges.

The evidence gathered by the Committees indicates that neither IRS nor the Treasury Department conducted a serious or thorough analysis of the PPACA statute or the law's legislative history with respect to the government's authority to provide premium subsidies in

<sup>1</sup> Health Insurance Premium Tax Credit, 77 Fed. Reg. 30377 (May 23, 2012).

<sup>2</sup> Jonathan H. Adler and Michael F. Cannon, *Taxation Without Representation: The Illegal IRS Rule to Expand Tax Credits Under the PPACA*, 23 Health Matrix 119, 120 (2013); Jennifer Staman and Todd Garvey, CONG. RESEARCH SERV., *Legal Analysis of Availability of Premium Tax Credits in State and Federally Created Exchanges Pursuant to the Affordable Care Act*, (2012).

<sup>3</sup> Staman & Garvey, *supra* note 2.

<sup>4</sup> Adler & Cannon, *supra* note 2, at 120.