

## PPACA: Five Layers of Uncertainty

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The Patient Protection and Affordable Care Act (PPACA) discourages small businesses from hiring and expanding by smothering them under multiple layers of uncertainty. This essay will describe five sources of uncertainty, with a lengthier focus on the less-discussed fifth source.

### Four Uncertainties

(1) **Can we afford PPACA?** PPACA supporters claimed that the law would help control healthcare costs, but that claim now lies in shreds. Probable cost increases were discussed in [“Costs and The Law that Shall Not Be Named” \(10/4/10\)](#). Just this week, [a Kaiser survey](#) showed a stunning increase in health insurance premiums since the law passed. Premiums rose 3% in 2010, but then leaped by 9% in 2011. Also this week, there were indications that the Administration had [abandoned the fiscally unstable CLASS Act portion of PPACA](#).

(2) **What are the rules?** Much of PPACA was written in general terms; regulators will spend years writing the specifics. Example: a business with 50 or more employees will owe tens or hundreds of thousands of dollars a year in insurance premiums and/or penalties. But whether or not a firm is under, over, or at 50 depends on as-yet-unwritten definitions of part-timers, temps, and seasonal workers. Another still-unwritten regulation was described in [“Essential health Benefits: The Secretary’s Joystick” \(5/3/11\)](#).

(3) **Who must follow the rules?** PPACA invests officials with power to exempt specific businesses from certain provisions. The Department of Health and Human Services has granted some, but not all, businesses “mini-med waivers,” but has never explained the criteria by which waiver requests are granted or refused. See [“Small Business in Waiver World” \(3/9/11\)](#).

(4) **How will markets respond to the rules?** The many changes in PPACA greatly increase the vagaries of economic forecasting. How high will physicians’ charges rise as 30 million people gain insurance? How many insurers will continue to write policies? Will employers dump their employees into subsidized exchanges? What will happen to the cost of insurance premiums? [The HIT Hit: PPACA’s Health Insurance Tax \(6/14/11\)](#) describes uncertainty over the size of the Health insurance Tax.

### One More Uncertainty

(5) **Will the rules work?** PPACA is a complex piece of clockwork. Aside from rules, exemptions, and market responses, there’s another gaping maw of uncertainty: can the gears of the clockwork mesh?

(a) In October 2010, [Gene Steuerle \(Urban Institute\)](#) asked, “Can the new health subsidies be administered?” The new exchanges promise subsidies to tens of millions of households, with subsidies based on a household’s income, family size, insurance costs, and other variables. Under PPACA’s rules, millions will float in and out of eligibility for Medicaid and exchange subsidies. Steuerle asked whether it is feasible to track these flows: “For some reason, health reformers think they can do better than the welfare and tax systems and set up what is essentially a whole new transfer and tax system based on past annual rather than current income and then adjusted for changes during the current year.”

(b) In February 2011, [Benjamin Sommers \(Harvard\) and Sara Rosenbaum \(GWU\)](#) warned that PPACA's eligibility rules for Medicaid and for the new exchanges would result in millions of people bounced back and forth between different insurance coverage as their incomes fluctuate. They voiced concern that this bouncing between markets would drive some people to give up on health insurance altogether.

(c) In June 2011, [Paul Howard \(Manhattan Institute\) and Stephen Parente \(University of Minnesota\)](#) examined the information technologies required to manage the flows described by Steuerle and Sommers/Rosenbaum. Managing these information flows is critical to the health insurance exchanges that are supposed to form the heart of the small business health insurance market:

“For the first time, secure data feeds from the Departments of Homeland Security (establishing legal immigrant or US citizen status), Justice (for felon history), Treasury (for tax return information to impute income) and the Social Security Administration (establishing that the recipient is not deceased) would have to be combined. These data feeds would then have to be securely coordinated by the Department of Health and Human Services. There is no history of these agencies ever bringing their data together at this scale. It would qualify as the largest IT integration project in U.S. history. ... Next, all 50 states would have to integrate this data into 50 different versions of a Travelocity.com for health insurance – all while seamlessly shifting millions of recipients back and forth between private insurance and public programs like Medicaid and CHIP; allocating subsidies; and collecting insurance premiums.”

(d) In September 2011, [the Internal Revenue Service \(IRS\)](#) requested comments on its attempt to fix a serious flaw in PPACA. [“Premium Credits + Free Rider Provision = Mystery Tax” \(6/7/10\)](#) noted that PPACA's employer mandate subjected businesses to a “mystery tax” – large penalties based on private employee data that is irrelevant to and unobservable by the employer. To its credit, the IRS is striving to cope with a provision that may be impossible to administer but which is critical to PPACA's operation.

(e) Also in September 2011, the [National Governors Association \(NGA\)](#) warned that time was running out to fix a range of difficulties in implementing the health insurance exchanges. The report reiterated the problems described above: “[T]he requirements for interconnected, automated systems to determine Medicaid and subsidy eligibility, pose major challenges. Tight deadlines, severely strained budgets, and human resources shortages further complicate implementation in nearly every state.”

The report noted that “Federal guidance has yet to be released or finalized on many issues, confronting states with a lack of clarity on many issues – a problem frequently compounded both by insufficient detail and efforts to preserve apparently broad flexibility.” Other concerns included “uncertain and challenging timelines,” “a lack of clarity and detail,” and “concerns about costs.”

The NGA report discusses the practical information technology challenges presented by these eligibility determinations. Because of federal officials' lack of clarity, state procurement rules, and normal problems of IT implementation, states are worried that they cannot get their systems up and running in time for the 2014 opening of the exchanges. The report specifically mentioned how these shortcomings could impact small business health insurance markets.

## **Conclusion**

PPACA adds an extra measure of drag on an already-sputtering economy. For more than two decades, health insurance has been the biggest concern of small business. With the passage of PPACA, small

businesses have to say, “I don’t know what this law will cost me. I don’t know what the rules will be. I don’t know how they’ll be enforced. I don’t know what the insurance markets will look like during the next enrollment cycle. And it’s not clear that the new small business insurance market will be functional.” Many owners reluctantly conclude, “I won’t hire or expand until I know more.”