



*Affordable Care Act: Planning Efforts
for the Tax Provisions of the Patient
Protection and Affordable Care Act
Appear Adequate; However, the Resource
Estimation Process Needs Improvement*

June 14, 2012

Reference Number: 2012-43-064

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Phone Number | 202-622-6500

E-mail Address | TIGTACommunications@tigta.treas.gov

Website | <http://www.tigta.gov>



HIGHLIGHTS

AFFORDABLE CARE ACT: PLANNING EFFORTS FOR THE TAX PROVISIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT APPEAR ADEQUATE; HOWEVER, THE RESOURCE ESTIMATION PROCESS NEEDS IMPROVEMENT

Highlights

Final Report issued on June 14, 2012

Highlights of Reference Number: 2012-43-064 to the Internal Revenue Service Deputy Commissioner for Services and Enforcement.

IMPACT ON TAXPAYERS

The Patient Protection and Affordable Care Act of 2010 (ACA) includes the largest set of tax law changes in more than 20 years. The primary goal of the law was to reform health care. The tax-related provisions in the law have a key role in achieving that goal and affect millions of taxpayers. It is imperative that the IRS has adequate plans to revise or develop new forms, publications, and instructions; train IRS employees; and provide outreach to taxpayers and tax professionals.

WHY TIGTA DID THE AUDIT

This audit was initiated because the IRS is responsible for overseeing a significant part of the legislation that includes, but is not limited to, administration of additional taxes, penalties, and fees on individuals and employers; determinations of various exemptions from certain taxes; and oversight of new information reporting requirements. The new taxes, fees, and penalties account for approximately \$438 billion. TIGTA's objective was to assess the IRS's overall planning to implement the tax provisions of the new law.

WHAT TIGTA FOUND

The ACA contains many provisions that are to be implemented over the course of several years, including some that required implementation during the year the legislation was signed into law. TIGTA found that

appropriate plans had been developed to implement tax-related provisions of the ACA using well-established methods for implementing tax legislation. The IRS's plans addressed tax forms, instructions, and most of the affected publications, as well as employee training, outreach and guidance to taxpayers and preparers, computer programming, and data needs.

The IRS projected its Fiscal Years 2012 and 2013 ACA staffing needs to be 1,278 Full-Time Equivalents and 859 Full-Time Equivalents, respectively. The IRS has not projected staffing needs beyond Fiscal Year 2013. A lack of documentation to support the staffing requirements needed to implement the ACA precluded TIGTA from providing an opinion on the adequacy of staffing requests to support implementation. The IRS did not analyze each provision to determine the amount of staffing necessary to implement the provision.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS perform an analysis to evaluate the resources necessary to efficiently implement the provisions and ensure that this process is documented.

In their response to the report, IRS management agreed with the recommendation. The IRS plans to complete an evaluation by the end of Fiscal Year 2012 of the major ACA provisions for which implementation has not been completed and evaluate the resources needed for implementation, especially any with specialized skills.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 14, 2012

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR SERVICES AND
ENFORCEMENT**

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and Affordable Care Act
Appear Adequate; However, the Resource Estimation Process Needs
Improvement (Audit #201140025)

This report presents the results of our review in assessing the Internal Revenue Service's overall plan to implement the Patient Protection and Affordable Care Act of 2010¹ (ACA) provisions that affect tax administration. This audit was included in our Fiscal Year 2011 Annual Audit Plan and addresses the major management challenge of Implementing Tax Law Changes.

Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendation. Please contact me at (202) 622-5916 if you have questions or Rande Cook, Acting Assistant Inspector General for Audit (Returns Processing and Account Services) at (770) 617-6434.

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Table of Contents

Background	Page 1
Results of Review	Page 3
Appropriate Plans Have Been Developed to Implement Most Tax-Related Provisions of the Affordable Care Act.....	Page 3
The Internal Revenue Service Would Benefit From Improving the Quality of Its Resource Estimation Process	Page 10
<u>Recommendation 1</u> :.....	Page 11
Appendices	
Appendix I – Detailed Objective, Scope, and Methodology	Page 12
Appendix II – Major Contributors to This Report	Page 14
Appendix III – Report Distribution List	Page 15
Appendix IV – Affordable Care Act Provisions Reviewed.....	Page 16
Appendix V – Management’s Response to the Draft Report	Page 20



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Abbreviations

ACA	Patient Protection and Affordable Care Act of 2010
ESC	Executive Steering Committee
FTE	Full-Time Equivalent
HHS	Department of Health and Human Services
IRS	Internal Revenue Service
IT	Information Technology
MITS	Modernization and Information Technology Service
PMO	Program Management Offices
TIGTA	Treasury Inspector General for Tax Administration



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Background

The Patient Protection and Affordable Care Act of 2010¹ and the Health Care and Education Reconciliation Act of 2010² that made amendments to it (collectively referred to as the ACA hereafter) were both signed into law in March 2010 and together contain over 500 provisions. Over 40 of these provisions added to or amended the Internal Revenue Code. These provisions provide incentives and tax breaks to individuals and small businesses to offset health care expenses. They also impose penalties, administered through the tax code, for individuals and businesses that do not obtain health care coverage for themselves or their employees. Revenue provisions contained in the legislation are designed to generate \$438 billion³ to help pay for the overall cost of health care reform. Additionally, new reporting requirements have been established. Another intended purpose of the ACA is to make health insurance more affordable and available through incentives.

The Internal Revenue Service's (IRS) role with respect to the ACA is to implement and administer the various tax provisions included in the ACA. Implementation of the ACA presents a major challenge to the IRS as the ACA represents the largest set of tax law changes in more than 20 years and affects millions of taxpayers. Steps to implement the ACA provisions related to tax administration involve numerous actions such as revising or developing new forms, publications, and instructions; creating new computer programs; training IRS employees; revising Internal Revenue Manuals; issuing revenue procedures and regulations; and providing outreach to taxpayers and tax professionals. Although provisions of the ACA go into effect gradually over many years, some provisions required immediate action, including the Small Business Health Care Tax Credit, the Qualifying Therapeutic Discovery Credit, the Tanning Excise Tax, and the expanded Adoption Credit. These provisions were not included in this review but were audited separately.⁴ The effective dates of the ACA provisions range from Tax Year 2009 (retroactively) to Tax Year 2018.

The ACA represents the largest set of tax law changes in more than 20 years and presents a major challenge to the Internal Revenue Service.

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.

² Pub. L. No. 111-152, 124 Stat. 1029. (See Affordable Care Act, *infra*).

³ Joint Committee on Taxation, JCX-17-10, Estimated Revenue Effects of the Amendment in the Nature of a Substitute to H.R. 4872, the "Reconciliation Act of 2010," as Amended, in Combination With the Revenue Effects of H.R. 3590, the "Patient Protection and Affordable Care Act ('PPACA')," as Passed by the Senate and Scheduled for Consideration by the House Committee on Rules on March 20, 2010 (March 20, 2010).

⁴ Treasury Inspector General for Tax Administration (TIGTA) audit numbers 201140045, 201140040, 201140001, and 201140033, respectively.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

One major provision of the ACA reform is the requirement for individuals to maintain minimum essential health care coverage or face a continuous penalty. The penalty will be imposed on any taxpayer who, for any month after Calendar Year 2013, fails to maintain minimum essential health care coverage.

This review to evaluate the IRS's plan to implement ACA provisions related to tax administration was conducted by analyzing data obtained from the IRS National Headquarters Affordable Care Act Office located in Washington, D.C., during the period October 2010 through January 2012. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Results of Review

Appropriate Plans Have Been Developed to Implement Most Tax-Related Provisions of the Affordable Care Act

To begin the major task of implementing the tax-related provisions of the ACA, the IRS created the following Executive Steering Committees, Offices, and Teams (see Figure 1).

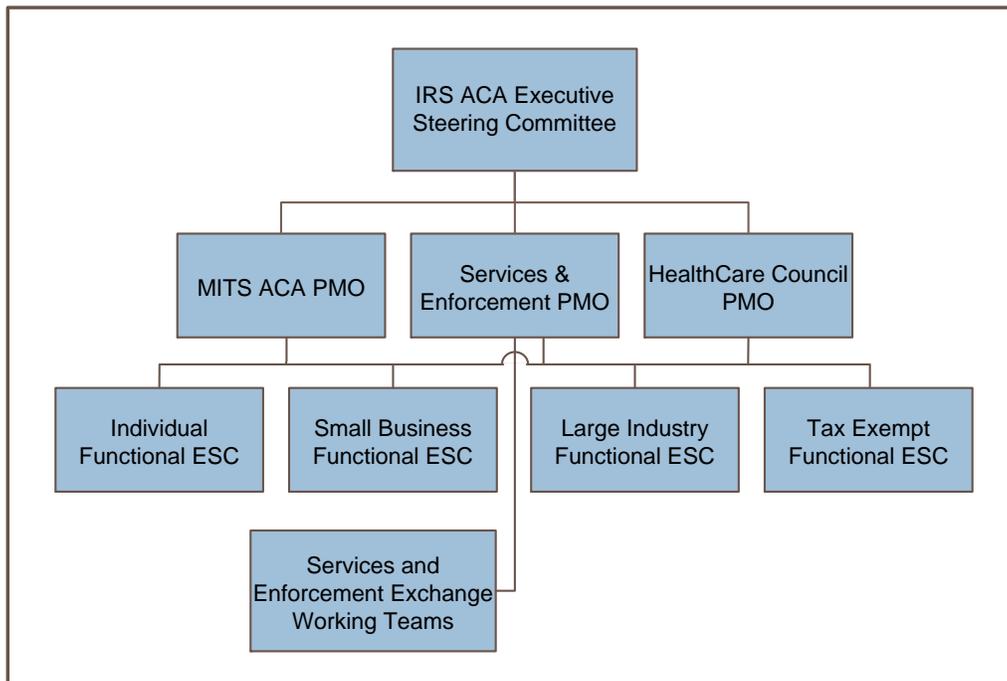
- The ACA Executive Steering Committee (ESC) is responsible for overall program coordination and implementation of the ACA across the IRS. This committee is co-chaired by the Deputy Commissioner for Services and Enforcement and the Deputy Commissioner for Operations Support. It also includes the IRS Chief of Staff and other IRS executives, including the business operating division commissioners, *et al.*
- Three program management offices (PMO): 1) Services and Enforcement; 2) Modernization and Information Technology Services (MITS);⁵ and 3) Health Care Council. These PMOs are accountable to the ESC for ACA implementation and work with the IRS business operating divisions to ensure efforts are successfully coordinated.
- Four functional ESCs, each led by an executive chair, have responsibility for specific provisions in the ACA that directly affect the four business operating divisions (Wage and Investment, Small Business/Self-Employed, Large Business and International, and Tax Exempt/Government Entities).
- The Services and Enforcement Exchange Working Teams are responsible for planning the implementation of the exchange provisions scheduled for 2014.

⁵ A separate TIGTA audit reviewed the planning efforts by the MITS organization and reported separately. See TIGTA, Ref. No. 2011-20-105, *The Modernization and Information Technology Services Organization Is Effectively Planning for the Implementation of the Affordable Care Act* (Sept. 2011).



Affordable Care Act: Planning Efforts for the Tax Provisions of the Patient Protection and Affordable Care Act Appear Adequate; However, the Resource Estimation Process Needs Improvement

Figure 1: ACA Executive Steering Committees, Offices, and Teams



Source: IRS National Headquarters Affordable Care Act Office.

Well-established methods are being used to implement ACA provisions

The IRS Legislative Affairs function is responsible for implementation planning and monitoring of legislation passed by Congress having significant impact on the IRS. Legislative Affairs uses the Legislative Analysis Tracking and Implementation Services system to help accomplish this responsibility. The system tracks all provisions, actions, and status of enacted legislation that affects the IRS. The system also tracks and monitors all initiatives and milestones.

In addition to the Legislative Analysis Tracking and Implementation Services system, the IRS is using other mechanisms for planning and tracking the progress of ACA provisions. For example, the Integrated Project Plan is being used for the exchange provisions.⁶ It shows that a plan exists for the exchanges with details such as milestones, deliverables, and detailed tasks. The IRS also created a sharepoint site⁷ to document ACA planning and implementation efforts. Each ESC as well as the PMOs has separate segments on the sharepoint site. Information on the sharepoint site includes, but is not limited to, ACA news releases, legal guidance, and

⁶ A health insurance exchange is a set of State-regulated and standardized health care plans from which individuals may purchase health insurance.

⁷ A content management system that allows groups to set up a centralized space for document sharing.

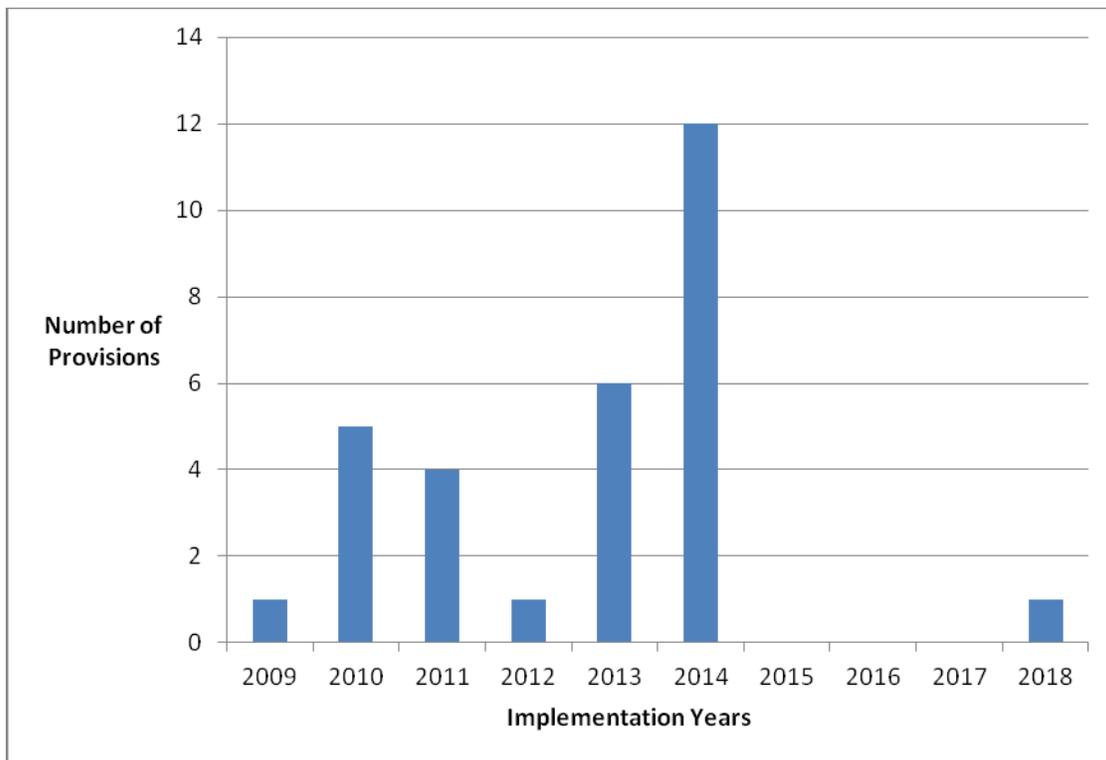


Affordable Care Act: Planning Efforts for the Tax Provisions of the Patient Protection and Affordable Care Act Appear Adequate; However, the Resource Estimation Process Needs Improvement

communications. The site is used to provide updates and coordinate efforts across operating divisions.

We analyzed the IRS’s preparations for implementing 30 major ACA provisions (see Appendix IV for the specific provisions reviewed) that appeared to require IRS action.⁸ Effective dates for the provisions reviewed varied widely, and the IRS was in various stages of preparation for each. Five provisions were effective during the same calendar year the legislation was enacted, while one provision is not effective until Calendar Year 2018. (Figure 2 indicates the effective dates of the provisions and the number of provisions in a particular year.)

Figure 2: Effective Dates of Provisions Reviewed



Source: TIGTA analysis of ACA provision effective dates.

⁸ We did not review specific provisions analyzed in other TIGTA audits as well as some minor provisions requiring minimal action by the IRS. Separate TIGTA audits were conducted on ACA provisions affecting the following topics: Qualifying Therapeutic Discovery Credit, Tanning Excise Tax, Small Business Health Care Tax Credit, and expanded Adoption Credit. Separate TIGTA audits are also reviewing ACA provisions affecting the Tax Exempt/Government Entities Division.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

We reviewed each of the 30 provisions to ensure the IRS has plans to address the following (as applicable):⁹

- Tax forms, instructions, and publications.
- Employee training.
- Outreach and guidance to taxpayers and preparers.
- Computer programming.
- Additional data needed to ensure compliance.

Eleven of the provisions reviewed during this audit related to the health insurance exchanges. The majority of the exchange provisions have an implementation date for tax years after December 31, 2013. The IRS had not developed detailed actions to implement these provisions at the time the audit was conducted. However, the IRS did have in place an ACA Exchange High-Level Roadmap (the Roadmap). The Roadmap details achievement milestones by calendar year quarter in implementing the exchange provisions for which the IRS is responsible. For example, the Roadmap includes preparation planning for ACA forms and changes to the individual income tax forms and schedules to accommodate the ACA exchange requirements. The Roadmap also includes plans for the issuance of proposed and final regulations for the penalty associated with not maintaining “minimal essential coverage” and includes additional guidance on information returns required by the ACA.

Tax Forms, Instructions, and Publications

Two tiers of controls are in place for ensuring that forms, instructions, and related publications are updated for ACA provisions. The first tier is the informed assessment conducted by the Tax Forms and Publications function. This function reviews new legislation and identifies a “first cut” of what forms, publications, and instructions need to be revised for every legislative provision.

The second tier is the business assessment, performed by subject matter experts in the business units and aided by the Tax Forms and Publications function. Often the business units will confirm what the Tax Forms and Publications function identified and may identify additional affected forms, publications, and instructions.

We determined that forms, publications, or instructions would need to be created or revised to address 18 of the ACA provisions included in our review. The IRS had created new forms and updated existing forms and publications or had documented plans to do so for most of these

⁹ We limited our analysis on two of the 30 provisions. We reviewed Section 9014 for compliance requirements only and Section 1409 for compliance and employee training requirements.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

provisions. We found three provisions that did not appear to have the related publications addressed in the IRS’s action reports.

We brought this issue to the IRS’s attention and, in response, it provided target dates for the update of the publications that had been overlooked. Figure 3 lists the documents not scheduled for updates and their status as of the date of this report.

Figure 3: Status of Publications Not Scheduled for Update

Section Number	Document	Current Status
1408 – Elimination of unintended application of cellulosic bio-fuel producer credit.	Publication 510	Updated
9012 – Elimination of deduction for expenses allocable to Medicare Part D subsidy.	Publication 502	Updated
10908 – Exclusion for assistance provided to participants in State student loan repayment programs for certain health professionals.	Publication 970	Updated

Source: IRS National Headquarters Affordable Care Act Office.

Employee Training

Although a certain amount of training is required for any tax law change, we determined that more in-depth training would be required for the following six provisions in our review:

- Section 1401 Refundable tax credit providing premium assistance for coverage under a qualified plan.
- Section 1405 Excise tax on medical device manufacturers.
- Section 1409 Economic substance doctrine and penalties.
- Section 1411 Procedures for determining eligibility for exchange participation, premium tax credits, reduced cost sharing, and individual responsibility exemptions.
- Section 9016 Modification of Code Section 833 treatment of certain health organizations.
- Section 9022 Establishment of simple cafeteria plans for small businesses. (For this provision, the IRS stated that it would not make changes to the employment tax training materials related to the ACA, but cases in the field were being monitored to determine if any specific issues would require additional guidance.)



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

With the exception of Sections 9016 and 9022, we found that the IRS planned specific training for each of these provisions that would be provided closer to the provisions' dates of impact to the field. Since Section 9016 took effect for tax years beginning after December 31, 2009, employee training was started and completed by September 2010, and additional training is scheduled for June of 2012. As for Section 9022 (as noted above), the IRS will monitor cases in the field and provide training as needed.

Outreach and Guidance to Taxpayers and Preparers

New legislation usually requires providing information to the public (taxpayers and tax preparers). This is especially true for the ACA, for which the IRS is implementing and controlling many new rules and regulations. The IRS provides information through many means, including tax forms, instructions and publications, news releases, fact sheets, flyers, tax tips, videos, and webinars. The IRS also issues notices requesting comments by those affected by the provisions to help identify further outreach needs.

Taxpayers and preparers need outreach and guidance in a large majority of the provisions we reviewed. With the exception of the few publications discussed earlier, guidance or outreach was completed or adequately planned for each of these provisions. For example, Section 1401, effective for tax years beginning after December 31, 2013, provides certain individuals who purchase qualified health care coverage through the exchanges a refundable income tax credit equal to the amount of the premium assistance credit. The IRS has a number of outreach efforts in process or planned for this provision, including development of forms, publications, and instructions to reflect the new refundable credit; updates to the Internal Revenue Manual; and development of regulations regarding the refundable tax credit. The IRS solicited comments from the public and will develop additional outreach if warranted.

Computer Programming

The IRS created the ACA-PMO to develop system solutions to support and execute the IRS's portion of the ACA. This office is responsible for achieving the goals, enhancing and extending existing applications, and managing and integrating the required components, which include building new services and applications. MITS organization management worked closely with the business teams to review the legislation. The MITS organization also analyzed the legislative requirements and existing architecture to determine the level of impact the legislation requirements would have on its legacy Information Technology (IT) environment.

We determined that 21 provisions included in our review would need IT support to accomplish implementation. The IRS had identified these needs and at the time of our review had made appropriate plans to deliver the needed IT support for all but two provisions, Sections 9005 and 9010. Although the IRS was aware it might need IT support to accomplish the requirements of these provisions, it had not yet made those determinations. The IRS informed us that it would discuss the necessary IT support regarding these provisions and make appropriate plans in



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

meetings planned for February and April of 2012. These provisions do not take effect until Calendar Year 2013 and Calendar Year 2014, respectively.

While the ACA-PMO reported that all programming changes scheduled to be operational between January and April of 2012 were on schedule, it also reported that certain ACA implementation risks related to the delivery of IT support remained. TIGTA has additional audits scheduled to monitor the development and delivery of IT support. TIGTA will address these concerns in those audits.

Additional data needed to ensure compliance

Ensuring compliance with the ACA will require compliance and enforcement resources, as well as the compilation of specific data. In certain instances, the IRS needs additional data beyond what it already captures or has available in order to ensure and enforce compliance. For example, Section 1405 provides for an excise tax equal to 2.3 percent of the price for a medical device sold by the manufacturer, producer, or importer. To ensure compliance with this provision, the IRS is obtaining data from the Food and Drug Administration to identify the manufacturers, producers, and importers that are subject to the tax.

We determined that the IRS would need additional data to address compliance issues or to otherwise implement the ACA requirements for at least eight of the provisions included in our review. These provisions include the following:

- Section 1401 Refundable tax credit providing premium assistance.
- Section 1405 Excise tax on medical device manufacturers.
- Section 1409 Economic substance doctrine and penalties.
- Section 1501 Requirement to maintain minimum essential coverage.
- Section 1513 Shared responsibility for employers.
- Section 6301 Patient-centered outcomes research trust fund (a fee will be imposed on each specified health insurance policy or self-insured plan whose plan year ends after September 30, 2012).
- Section 9008 Annual fees assessed on branded prescription pharmaceutical manufacturers and importers.
- Section 9014 Limitation on deductions for remuneration paid by health insurer providers.

For each of the eight provisions identified above, we found that the IRS has plans to address the compliance issues associated with the provisions.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

The Compliance Document Matching and Industry Fees function (a function within the MITS-PMO) is responsible for the design development, implementation, and support of new applications necessary to ensure compliance and prevent fraud.

The Internal Revenue Service Would Benefit From Improving the Quality of Its Resource Estimation Process

The IRS received funding for the implementation of ACA provisions from the Health Insurance Reform Implementation Fund administered by the Department of Health and Human Services (HHS) as provided for in the ACA. The legislation provided \$1 billion in funding to the IRS and other participating agencies for implementation work necessary during Fiscal Years 2010 and 2011. Some provisions were retroactive to Tax Year 2009, *e.g.*, Section 10908.¹⁰ Funding up to \$350 million was available to the IRS for implementation costs. The IRS requested and was provided more than \$20 million in Fiscal Year 2010 and obligated more than \$168 million for Fiscal Year 2011.

Our audit included an analysis of the preparations made by the IRS to ensure adequate staffing is available to effectively implement ACA provisions. As of May 2, 2011, the IRS reported that it had hired 495 new employees and had plans to hire an additional 87 new employees by the end of September 2011 to assist in implementing the provisions associated with the ACA. Actual ACA spending for Fiscal Year 2011 included 582 full-time equivalents (FTE).¹¹ In addition, the IRS absorbed some of the costs and work associated with implementing ACA provisions into its normal business operations and budget. The IRS projected its Fiscal Years 2012 and 2013 ACA staffing needs to be 1,278 FTEs and 859 FTEs, respectively. The IRS has not projected staffing needs beyond Fiscal Year 2013.

We expected to find a specific analysis of each provision to determine the amount of staffing necessary to implement the provisions. For example, for the ACA Small Business Health Care Tax Credit (Section 1421), the TIGTA obtained from the IRS specific projected FTE requirements necessary to implement the provision for specific IRS functions. This included staffing effects on collection, customer service, and returns processing. Then, based on the specific needs of each function, an overall number of FTEs was determined as necessary to implement this provision.

However, the IRS did not perform similar analyses for each provision. We were, therefore, unable to determine whether the IRS has an adequate workforce in place or planned, and we are concerned with the methods used to project the number of employees needed.

¹⁰ Any student loan that is forgiven, which is intended to provide increased health coverage in an underserved area, shall not be included in gross income.

¹¹ A measure of labor hours in which one FTE is equal to eight hours multiplied by the number of compensable days in a particular fiscal year.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

In a previously issued report,¹² TIGTA expressed similar concerns regarding the process used to estimate IRS staffing levels. In that report, TIGTA stated that when estimating staffing levels of revenue officers, the IRS did not determine the number needed to address the available workload. Instead, it primarily estimated the revenue officer staffing level based on a budget figure provided by the IRS Chief Financial Officer.

The methods used for estimating ACA staffing requirements appear similar to the process used in estimating revenue officer staffing levels based on the documentation provided by the IRS. It appears that the IRS has had difficulty in estimating the number of employees it needs to hire to complete work that is routinely completed in the normal course of business (the revenue officer estimates). Our concern with the ACA implementation centers around the estimation of the number of employees needed to perform work created by the ACA that is completely new to the IRS.

For example, Section 9007 of the ACA requires charitable hospitals to conduct a community health needs assessment at least once every three years and adopt an implementation strategy to meet the community needs identified through the assessment. The IRS is responsible for reviewing, at least once every three years, the community benefit activities of each hospital organization affected by this provision. The review of these assessments is a process new to the IRS, and estimating the staffing requirements for the reviews could be difficult. A key element of effective workforce planning is determining the size of the workforce needed to meet organizational goals and indentifying gaps between current and future workforce needs.

Without a more in-depth, scientific method for estimating staffing levels, the IRS is likely to overestimate or underestimate ACA staffing needs.

Recommendation

Recommendation 1: The Deputy Commissioner for Services and Enforcement should conduct an analysis to evaluate the resources necessary to efficiently implement the ACA provisions and ensure that this process is documented.

Management's Response: IRS management agreed with this recommendation. The IRS plans to complete, by the end of Fiscal Year 2012, an evaluation of the major ACA provisions where implementation has not been completed and evaluate the resources needed for implementation, especially any with specialized skills.

¹² TIGTA, Ref. No. 2011-30-039, *Challenges Remain to Balance Revenue Officer Staffing With Attrition and Workload Demands*, p.5 (May 2011).



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Appendix I

Detailed Objective, Scope, and Methodology

The objective of this review was to assess the IRS's overall plan to implement ACA¹ provisions that affect tax administration. To accomplish this objective, we:

- I. Evaluated whether the IRS had identified and scheduled the actions necessary to implement the ACA provisions affecting tax administration.
 - A. Reviewed the ACA and determined its affect on tax administration.
 1. Identified provisions of the ACA that affect the IRS.
 - a. Obtained a copy of the Commerce Clearing House's *Law, Explanation and Analysis – Patient Protection and Affordable Care Act 2010*.
 - b. Reviewed provisions applicable to tax administration in the ACA and determined their effective date.
 2. Analyzed tax administration provisions in the ACA that take effect during Tax Year 2010 and subsequent tax years and determined the steps the IRS must take to fully implement the provisions.
 - a. Determined whether new provisions require IRS employees to receive early or additional training in order to ensure that all outside inquiries receive the proper responses.
 - b. Determined whether taxpayers and practitioners needed to receive guidance and information to ensure that they were fully informed.
 - c. Assessed whether new provisions require the development of new or revised forms, schedules, instructions, or publications.
 - d. Analyzed each provision and determined whether computer programming was required.
 - e. Reviewed each provision and determined whether the IRS must capture third-party data in order to ensure compliance.
 - f. Determined whether provisions required new or expanded operations.

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

- B. Determined whether the IRS had identified actions necessary to implement the provisions, and determined what actions had been taken to ensure implementation.
 - 1. Contacted the IRS to discuss the steps taken to identify the actions needed to implement ACA provisions.
 - 2. Obtained and reviewed the Implementation Plan coordinated and developed by Legislative Affairs to ensure all actions identified as necessary in Step I.2.a-f were included in the plan.
- II. Determined whether the resources available to the IRS were adequate to ensure successful implementation of the provisions, and determined whether the IRS appropriately allocated those resources.
 - A. Determined whether the IRS identified funding requirements, and determined the steps taken to assess whether the allocated funding was adequate.
 - 1. Obtained budget data from the IRS business operating divisions to determine the funding available to implement the provisions reviewed.
 - 2. Interviewed IRS management to determine the analyses used to request and allocate funding to the provisions and ensure the allocations were adequate.
 - B. Interviewed IRS management regarding staffing needs for implementing specific provisions of the ACA to determine whether provisions requiring additional staffing were adequately addressed.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the IRS's processes for planning for implementation of the ACA provisions affecting tax administration and health care reform. We evaluated these controls by interviewing management and analyzing implementation plans and planning efforts.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Appendix II

Major Contributors to This Report

Michael E. McKenney, Assistant Inspector General for Audit (Returns Processing and Account Services)

Kyle R. Andersen, Director

Bill R. Russell, Audit Manager

W. George Burleigh, Lead Auditor

Dana M. Karaffa, Audit Evaluator

Jane G. Lee, Auditor



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Tax Exempt and Government Entities SE:T
Commissioner, Wage and Investment Division SE:W
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Deputy Commissioner, Tax Exempt and Government Entities SE:T
Deputy Commissioner, Wage and Investment Division SE:W
Director, Customer Account Services, Wage and Investment Division SE:W:CAS
Director, Compliance, Wage and Investment Division SE:W:CP
Director, Accounts Management, Wage and Investment Division SE:W:CAS:AM
Director, Reporting Compliance, Wage and Investment Division SE:W:CP:RC
Director, Submission Processing, Wage and Investment Division SE:W:CAS:SP
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Chief, Program Evaluation and Improvement, Wage and Investment Division
 SE:W:S:PEI
 Program Manager, Policy and Strategic Planning, Communications, Liaison, and
 Disclosure, Small Business/Self-Employed Division SE:S:CLD:PSP



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Appendix IV

Affordable Care Act Provisions Reviewed

This appendix presents the provisions from the ACA¹ reviewed during this audit. The provisions are listed by section number from the legislation, with a brief description of the provision.

Provision Section No.	Provision Explanation
1004 – Health insurance benefits extended to children under age 27	This provision extends benefits for medical care expenses under an employer-provided accident or health plan to any child of an employee who has not attained age 27 as of the end of the taxable year. A deduction is available equal to the amount paid for health insurance for the taxpayer, spouse, dependents, and child (who has not attained age 27). Effective on March 30, 2010.
1311 – Affordable choices of health benefit plans	Payments made to the States are used to set up exchanges. Later, the States must make payments to plans on behalf of individuals to defray the cost of the additional benefits. After 2013, the States report to the Secretary of the Treasury with a list of all taxpayers who qualify for the premium tax credit because their employer plan does not provide essential minimum coverage, is not affordable, and does not achieve required minimum actuarial value. Effective after December 31, 2013.
1401 – Refundable tax credit providing premium assistance for coverage under a qualified health plan	The amount of this credit depends on taxpayers' premiums in relation to their income levels and their incomes' relation to the poverty level. Eligible individuals' incomes must exceed 100 percent but not exceed 400 percent of the poverty level. Dependents are not eligible for the credit, and married couples must file a joint return to claim the credit. Applies to taxable years beginning after December 31, 2013.
1402 – Reduced cost-sharing for individuals enrolling in qualified health plans	Individuals whose incomes are between 100 percent and 400 percent of the poverty level can have their out-of-pocket limit decreased by two-thirds, one-half, or one-third. The Secretary of the Treasury will help to prescribe rules for calculating the poverty level. Effective after December 31, 2013.
1405 – Reconciliation Act Excise Tax on medical device manufacturers	A tax equal to 2.3 percent of the price for which a medical device is sold by the manufacturer, producer, or importer. Effective after December 31, 2012.
1408 – Elimination of unintended application of cellulosic bio-fuel producer credit	Modifies the cellulosic bio-fuel producer credit to exclude fuels that contain significant amounts of water, sediment, or ash. The purpose of this provision is to limit credits related to the use of "black liquor." Black liquor is a by-product of paper production that is reused as a fuel and then recycled back into the production cycle. Effective after December 31, 2009.

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Provision Section No.	Provision Explanation
1409 – Codification of economic substance doctrine and penalties	Clarifies economic substance doctrine and applies to penalties for underpayments attributable to transactions lacking economic substance, nondisclosed transactions, reasonable cause exceptions for underpayments and understatements, and erroneous claim for refund or credit to noneconomic substance transactions. Effective after March 30, 2010.
1411 – Procedures for determining eligibility for exchange participation, premium tax credits and reduced cost-sharing, and individual responsibility exemptions	A program is to be established that will help determine who is to be covered through an exchange and who qualifies for the premium tax credit or reduced cost sharing. The Secretary of the Treasury is required to verify household income and family size for purposes of eligibility. Effective no later than January 1, 2013.
1412 – Advance determination and payment of premium tax credits and cost-sharing reductions	The Secretary of the Treasury would make advance payments to issuers of the qualified health plans in order to reduce the premiums payable by these individuals. Illegal residents are not eligible. Effective after December 31, 2013.
1414 – Disclosures to carry out eligibility requirements for certain programs	Upon written request from the Secretary of HHS, the Secretary of the Treasury can disclose taxpayer information that is pertinent to health-related credits and plans. Effective after December 31, 2013.
1415 – Premium tax credit and cost-sharing reduction payments disregarded for Federal and Federally assisted programs	Advanced payments to eligible individuals are not to be included in income and are to be viewed as being made payable to qualified health plans and not to individuals. Effective for tax years ending after December 31, 2013.
1501 – Requirement to maintain minimum essential coverage	Those individuals who do not maintain minimum essential coverage will be imposed a penalty. Any penalty imposed shall be included in taxpayers' returns. Taxpayers at or below the poverty level will not be assessed the penalty. The IRS cannot assess a lien or levy on those individuals who do not pay the penalty. Effective after December 31, 2013.
1502 – Reporting of health insurance coverage	(Section 1502c) – By June 30 of each year, the IRS, in consultation with the Secretary of HHS, will send a notice to each individual who files a return and who is not enrolled in minimum essential coverage. Section 6055c – Statements of employer-provided coverage must be furnished to the Secretary of HHS by January 31 of each year. These must include plan participants and amounts paid by employer and employee. Effective for calendar years beginning after 2013.
1513 – Shared responsibility for employers	Any large employer (50+ full-time employees) that fails to provide its employees with the opportunity to enroll in a minimum essential coverage employer-sponsored plan or who has at least one employee qualify for the premium tax credit or any advanced payments, will be imposed an "assessable payment" equal to one-twelfth of \$2,000 times the number of full-time employees. Effective after December 31, 2013.
1514 – Reporting of employer health insurance coverage	Large employers must file a return in which they state whether or not they have provided health plans for their full-time employees and whether the plans meet at least the minimum essential coverage criteria. Effective after December 31, 2013.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Provision Section No.	Provision Explanation
6301 – Patient-centered outcomes research	A \$2 fee will be imposed on each specified health insurance policy or self-insured plan whose plan year ends after September 30, 2012. The \$2 is then multiplied by the average number of participants covered under the plan. The fee is designed to return net revenues for the Patient-Centered Outcomes Research Trust Fund. The Secretary of the Treasury will be the trustee. The fee will be adjustable based on national health expenditures. The fee would not apply to plan years and policies ending after September 30, 2019.
9001 – Excise tax on high cost, employer-sponsored health coverage	A 40 percent excise tax is imposed on high-cost, employer-sponsored coverage if the value of coverage exceeds \$10,200 (self-only) or \$27,500 (not self-only). Each coverage provider would be liable to pay the tax. Each employer would be responsible for calculating the amount of excess subject to the tax and will be assessed a penalty if calculated incorrectly. Effective for tax years beginning after December 31, 2017.
9002 – Inclusion of cost of employer-sponsored health coverage on Form W-2, <i>Wage and Tax Statement</i>	Employers must report the cost of employer-covered health coverage on Forms W-2. Amounts contributed to Archer Medical Savings Accounts, Health Savings Accounts, or Flexible Spending Arrangements are not included. Effective for taxable years after December 31, 2010.
9004 – Increase in additional tax on distributions from Health Savings Accounts and Archer Medical Savings Accounts not used for qualified medical expenses	Tax on distributions from Health Savings Accounts and Archer Medical Savings Accounts for unqualified medical expenses will increase to 20 percent (from the current 10 percent). Effective after December 31, 2010.
9005 – Limitation on health Flexible Spending Arrangements	Employer contributions to a health Flexible Spending Arrangement will not be treated as a qualified benefit unless an employee may not elect to have salary reduction contributions in excess of \$2,500. Previously there was no set limit. Effective after December 31, 2012.
9008 – Imposition of annual fee on branded prescription pharmaceutical manufacturers and importers	Any branded prescription drug manufacturer or importer who sells more than \$5 million to a specified government program in any given year will be assessed an annual fee. Agencies must report expenses to the Secretary of the Treasury on an annual basis. Amount owed will be based on market share. Effective after December 31, 2010.
9010 – Imposition of annual fee on health insurance providers	An annual fee will be imposed on health insurance providers whose written net premiums exceed \$25 million. The fee is an allocated amount based on market share, with the total industry fee starting at \$8 billion in 2014 and rising to \$14.3 billion in 2018 and an indexed amount after that. The fee is viewed as an excise tax. Each insurance provider that fails to file their premiums report will be assessed a penalty of \$10,000 plus the lesser of \$1,000 times the number of days late or the amount of the fee imposed for which the report was required. The fee does not apply to employers who self-insure their employees or certain government entities. The annual fee portion is effective after December 31, 2013.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Provision Section No.	Provision Explanation
9012 – Elimination of deduction for expenses allocable to Medicare Part D subsidy	A sponsor's deduction for Medicare Part D expenses will be eliminated. The amount otherwise allowable as a deduction for retiree prescription drug expenses is reduced by the amount of the excludable subsidy payments received. Effective after December 31, 2012.
9013 – Modification of itemized deduction for medical expenses	The applicable threshold for deducting medical expenses is increased from 7.5 percent to 10 percent of Adjusted Gross Income. A temporary waiver of this increase will apply to those attaining age 65 before the close of any taxable year between December 31, 2012, and January 1, 2017. Effective after December 31, 2012.
9014 – Limitation on excessive remuneration paid by certain health insurance providers	Compensation deductions for executive pay at certain health insurance companies cannot exceed \$500,000. The company has to provide insurance and receive premiums, and less than 25 percent of premiums received cannot be from minimum essential coverage plans. Effective tax years beginning after December 31, 2009, with respect to services performed after such date.
9015 – Additional hospital insurance tax on high-income taxpayers	An additional hospital insurance tax on high-income taxpayers. The additional tax is equal to 0.9 percent of wages of taxpayers whose wages exceed \$250,000 (joint) or \$125,000 (married filing separately) or \$200,000 (all others). In addition to the additional tax on wages, an additional tax equal to 0.9 percent of self-employment income will be assessed to those taxpayers whose self-employment income exceeds \$250,000 (joint) or \$200,000 (not joint). Effective after December 31, 2012.
9016 – Modification of Code Section 833 treatment of certain health organizations	Section 833 would not be applicable unless the amount of expenses for clinical services exceeds 85 percent of premiums received. Effective after December 31, 2009.
9022 – Establishment of simple cafeteria plans for small businesses	Small businesses which employ an average of 100 or fewer employees can set up a basic cafeteria plan. The employer would be required to make a contribution for each employee. The contribution could be a uniform percentage (not less than 2 percent of compensation) or a fixed amount (not less than 6 percent of compensation or twice the salary reduction contributions of each employee). The plan allows for broader exclusions than in the past, e.g., based on the number of hours worked, age, and years of service. Effective after December 31, 2010.
10108 – Free Choice Vouchers	An employer must offer free choice vouchers to employees whose required premium would exceed 8 percent of their household income but not exceed 9.8 percent, and whose household income does not exceed 400 percent of poverty level, and who do not participate in an employer's health plan. The voucher amount will be excluded from gross income to the extent it does not exceed plan cost. Employers who must do this are those who offer minimum essential coverage plans and pay a portion of each employee's premium. Effective after December 31, 2013.
10908 – Exclusion for assistance provided to participants in State student loan repayment programs for certain health professionals	Any student loan amount that is forgiven, which is intended to provide increased health coverage in an underserved area, shall not be included in gross income. Effective after December 31, 2008.



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Appendix V

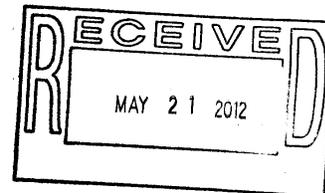
Management's Response to the Draft Report



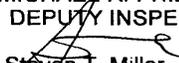
DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 21, 2012



MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: 
Steven T. Miller
Deputy Commissioner, Services and Enforcement

SUBJECT: Draft Audit Report – Affordable Care Act: Planning Efforts
For the Tax Provisions of the Patient Protection and Affordable
Care Act Appear Adequate; However, the Resource Estimation
Process Needs Improvement (201140025)

Thank you for the opportunity to review your draft report. We appreciate your acknowledgement of the scope of our planning and implementation efforts. As you noted, we are using well-established and proven methods involving the development of tax forms, instructions and publications; employee training; outreach and guidance to taxpayers and preparers; computer programming and data needs.

We also appreciate your feedback on resource estimation. As with any large-scale, multi-year endeavor, we will continue to adapt and refine our approach over time.

Attached is a detailed response outlining our corrective action.

Attachment



*Affordable Care Act: Planning Efforts for the
Tax Provisions of the Patient Protection and
Affordable Care Act Appear Adequate; However,
the Resource Estimation Process Needs Improvement*

Attachment

RECOMMENDATION 1:

The Deputy Commissioner for Services and Enforcement should conduct an analysis to evaluate the resources necessary to efficiently implement the ACA provisions and ensure that this process is documented.

CORRECTIVE ACTION:

We concur with this recommendation. By the end of FY12, we will complete an evaluation of the major ACA provisions where implementation has not yet been completed and evaluate the resources needed for implementation, especially any with specialized skills.

IMPLEMENTATION DATE:

November 15, 2012

RESPONSIBLE OFFICIAL(S):

Director, ACA Implementation Office

CORRECTIVE ACTION MONITORING PLAN:

We will monitor this action as part of our internal management control process.