



Research

Affordable Care Act at Four: Regulatory Costs Exceed Benefits by Twofold

SAM BATKINS | MARCH 24, 2014

After four years of [implementation](#), [countless delays](#), a [website disaster](#), and [constant litigation](#), the Affordable Care Act (ACA) celebrates its inauspicious birthday this week. From a regulatory perspective, the law has imposed more than \$27.2 billion in total private sector costs, \$8 billion in unfunded state burdens, and more than 159 million paperwork hours on local governments and affected entities. What's more troubling, the law has generated just \$2.6 billion in annualized benefits, compared to \$6.8 billion in annualized costs. In other words, the ACA has imposed 2.5 times more costs than it has produced in benefits.

| Most Burdensome ACA Regulations by Paperwork | |
|--|-------------------------------|
| <u>Regulation</u> | <u>Paperwork Burden Hours</u> |
| Small Business Reporting: Form 8941 | 40.2 Million |
| Net Investment Income Tax | 24 Million |
| Medicaid Eligibility Changes | 21.3 Million |
| Medicare, Medicaid, CHIP: Transparency | 10.5 Million |
| Individual Mandate Penalty | 7.5 Million |
| Total: 103.5 Million Burden Hours | |

PAPERWORK BURDENS

At more than 159 million paperwork hours, the ACA is in a class by itself. To date, Dodd-Frank, an equally transformational law, has imposed “only” [60 million](#) hours of paperwork. Sarbanes-Oxley financial reform legislation, passed in 2002, imposed 11.4 million hours.

To put the ACA's paperwork burdens in perspective, it would take 79,518 employees (more than the population of [Napa, California](#)) working 2,000 hours annually to complete the ACA's paperwork mandates. These burdens

obviously cost states and private entities time and money, which could otherwise be devoted to productivity, not regulatory compliance.

These burdens have had a notable impact on the paperwork budgets of the Department of Health and Human Services (HHS) and the Department of Treasury. When President Obama signed the Affordable Care in 2010, HHS's total paperwork burden was 541 million; today, HHS imposes more than 631 million hours of paperwork, an increase of roughly 90 million hours. Perhaps more remarkably, Treasury, which has had to implement several of the most burdensome mandates and penalties, has undergone an even more profound jump in regulatory requirements. In 2010, it imposed 6.3 billion hours of paperwork; today, it imposes more than 7.8 billion hours of paperwork, an increase of 23 percent.

MANDATES

In the past year, the administration implemented the individual mandate and parts of the employer mandate. Examining the statutory language, it would appear that mandating health insurance would impose significant burdens on individuals and employers. However, the administration's analysis largely punts on these questions.

The only regulatory analysis of the individual mandate is through the Paperwork Reduction Act. The administration estimates that 36 million Americans would spend 12.6 minutes complying with the mandate, for a total of 7.5 million hours annually. Beyond that figure, however, there are no other estimates for the regulation's economic impact.

The employer mandate dodged regulatory analysis [completely](#). The Small Business Administration (SBA) criticized the paucity of analysis: "Specifically, the SBA Chief Counsel for Advocacy stated the proposed regulations imposed a collection because they require employers to maintain records." There are no listed costs, benefits, or paperwork requirements in the employer mandate regulation. The administration ignored the SBA, and the public has little knowledge of the law's broader impact.

For what the administration has released, the public knows the law has \$6.8 billion in recurring annual costs, compared to just \$2.6 billion in monetized benefits. For comparison, higher taxes from the "American Taxpayer Relief Act of 2012" will impose an additional [\\$42 billion](#) in burdens this year. ACA regulations will compound that figure, resulting in close to \$49 billion in burdens from new taxes and ACA implementation alone.

EMPLOYMENT IMPACT

Plenty of ink has been spilled over the employment effects of the ACA. The Congressional Budget Office fueled the debate when it released a [report](#) estimating the law would "reduce the total number of hours worked, on net, by about 1.5 percent to 2.0 percent." The administration spun the report as good news, as the ACA was going to eliminate "job lock."

However, the CBO report was anything but good news for the administration or for the labor force. As AAF President Douglas Holtz-Eakin [noted](#), "[The ACA] raises wages needed to lure those recipients from their homes to the workplace – ObamaCare makes those 2.5 million jobs too expensive to be profitable and effectively kills them off."

SMALL BUSINESS IMPACT

The policy implications of the employer mandate, the parts that have been implemented, and the meager tax credit are well known. Perhaps less obvious are the numerous occasions when the administration conceded its ACA rules would impose significant costs on small businesses.

Under the Regulatory Flexibility Act and its amendments, agencies must determine if a regulation would impose a “significant economic impact on a substantial number of small entities” (SISNOSE). Agencies do not explicitly define this term, but HHS states that if a rule reduces revenue or raises prices by 3 to 5 percent within a five-year period, it imposes a SISNOSE. Regulations rarely trigger this threshold, but to date, the ACA has published 11 regulations that would have a significant economic impact on small businesses.

| ACA Rules Burdening Small Businesses | | |
|--|-----------------|-------------------------|
| <u>Regulation</u> | <u>Cost</u> | <u>Paperwork Burden</u> |
| Proposed Menu Labeling | \$757.1 Million | 622,000 Hours |
| Final Shared Savings Program | \$451 Million | N/A |
| Proposed Vending Machine Labeling | \$423.1 Million | 842,000 Hours |
| Final Physician Fee Schedule | \$172.9 Million | 365,197 Hours |
| Proposed Covered Outpatient Drugs | \$81.4 Million | 391,212 Hours |
| Final Billing for Skilled Nursing Facilities | \$29.93 Million | 913,884 Hours |
| Final Payment Policies | \$11.58 Million | 196,509 Hours |
| Final Patient Notification Requirements | \$2.55 Million | 138,032 Hours |
| Final Outpatient Prospective Payment | N/A | 1,010,876 Hours |
| Final Inpatient Prospective Payment | N/A | 6,838,293 Hours |
| Final Hospital Payment System | N/A | N/A[1] |

Aggregate Small Business Impact: \$1.9 Billion and 11.3 Million Hours

The listed costs of \$1.9 billion and 11.3 million hours are as reported by the agencies, taking everything listed in the Federal Register at face value. However, the reality for millions of affected firms is a regulatory tax of 3 to 5 percent, a burden the administration admits. These burdens will appear nowhere on CBO's fiscal tables, but they will undoubtedly affect health insurance coverage, consumer products, and the amount of time Americans spend completing federal paperwork.

CONCLUSION

Last year, AAF [predicted](#): “If past is prologue, the 2014 report on ACA burdens will catalogue higher costs, more paperwork, and additional layers of red tape on the U.S. healthcare system.” The results are in: \$4.5 billion in higher costs and 48 million more paperwork hours. Without significant reforms, expect similar results in 2015.

[1] According to the rule, “These requirements are exempt from the PRA [Paperwork Reduction Act] in accordance with the provisions of the Affordable Care Act.” *75 Fed. Reg.* 72238.