July 2013

July saw the odd spectacle of Republican lawmakers criticizing the Obama administration for not doing enough to implement the health care reform law. The 2010 Patient Protection and Affordable Care Act requires employers with at least 50 employees to offer health benefits or pay a penalty starting next year. The Treasury Department announced on July 2 that it would not enforce the rule until 2015. GOP members of Congress argued that the administration does not have the authority to choose not to implement the law and held several hearings to examine the issue. Executive Branch officials, however, insisted that such delays of complex rules are routine.

Issues and Events

Health Insurance Employer Mandate Delayed for One Year

The health insurance employer mandate has been pushed back a year, the Obama administration announced on July 2.

One of the major components of the 2010 Patient Protection and Affordable Care Act is a requirement that employers with at least 50 full-time employees offer health insurance coverage meeting certain requirements for benefits and affordability starting January 1, 2014, or pay a penalty.

Administration officials said they are delaying enforcement of the rule until January 1, 2015, to ease the logistical challenges that the mandate creates for businesses.

"We believe we need to give employers more time to comply with the new rules," Valerie Jarrett, a senior advisor to President Obama, wrote on the White House blog. "Since employer responsibility payments can only be assessed based on this new reporting [by businesses], payments won't be collected for 2014. This allows employers the time to test the new reporting systems and make any necessary adaptations to their health benefits while staying the course toward making health coverage more affordable and accessible for their workers.

Republican lawmakers, none of whom voted for the legislation, have challenged the administration's authority to delay implementation without congressional action.

"What the president was saying, in effect, was that if he doesn't want to implement the law he's signed, he doesn't have to," Senate Minority Leader Mitch McConnell, R-Ky., said on the Senate floor. "Now, I agree it's a terrible law. ... But the fact is, for now at least, it is the law. And it's the president's constitutional duty to enforce the law. Yet, instead of fulfilling this basic duty of his office, the president seems to believe he gets to decide who is subject to the law ... and who gets a pass."

Treasury Department officials, though, asserted that the delay is "an exercise of the Treasury Department's longstanding administrative authority to grant transition relief when implementing new legislation. Administrative authority is granted by section 7805(a) of the Internal Revenue Code."

"This authority has been used to postpone the application of new legislation on a number of prior occasions across Administrations," Mark Mazur, Treasury's assistant secretary for tax policy, wrote in a July 9 letter to House Energy and Commerce Committee Chairman Fred Upton, R-Mich.

Mazur wrote in response to a July 3 letter from Upton and GOP colleagues to Treasury Secretary Jacob Lew that requested information and documents related to the decision to delay implementation. Upton sent an identical letter to Health and Human Services Secretary Kathleen Sebelius.

On July 17, the House voted 264-161 to codify the employer mandate delay (H.R. 2667) and 251-174 to hold off on the individual mandate (H.R. 2668), which, starting next year, will require nearly all Americans to have health insurance or pay a penalty and which the White House has shown no interest in postponing. (H.R. 2668 also contains language delaying the employer mandate.) The employer mandate delay was supported by 35 Democrats, the individual mandate delay by 22 Democrats. One Republican, Rep. Morgan Griffith of Virginia, voted against both bills.

"Simply put, ObamaCare is unworkable," said Rep. Phil Roe, R-Tenn., who chairs the House Education and the Workforce Committee's Subcommittee on Health, Employment, Labor and Pensions. "I was extremely disappointed to see the administration give protection to businesses by delaying the employer mandate while still requiring individuals to purchase health insurance. If the president believes employers deserve protection and flexibility from his health law, why doesn't he share the same concern for all Americans? The legislation passed in the House today will further protect the American people from the harm being done by Obamacare and will make certain there is no favoritism of businesses over individuals – both of whom are facing harmful outcomes because of the law."

The White House said that the bill to delay the employer mandate is "unnecessary" and that Americans will benefit, not suffer from, the individual mandate and its supporting provisions. A White House spokesman noted that subsidies will be available to individuals based on income and that the law "provides built-in flexibility to ensure that those who cannot afford coverage are not punished. In fact, next year, millions of Americans will get the help they need to purchase quality health insurance that they currently cannot afford."

The votes were the 38th and 39th held by House Republicans that targeted the health care reform law, either in part or in whole. The Senate is highly unlikely to vote on the bills.

President Obama held an event on July 18 at which he tried to rally support for the law by highlighting the rebate checks being sent to consumers as a result of the act's medical loss ratio provisions and drawing attention to other aspects of a law that, according to surveys, is still widely misunderstood.

He dismissed the House Republican votes on the mandates as "the same old song and dance" and lamented that "we're refighting these old battles."

"Sometimes, I just try to figure out why," Obama said. "Maybe [Republicans] think it's good politics. But part of our job here is not to always think about politics. Part of our job here is to sometimes think about getting work done on behalf of the American people."

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) concluded that the employer mandate delay will result in about 500,000 fewer people having insurance in 2014 than otherwise would have and the federal government receiving $12 billion less in revenue.

About 1 million fewer people are expected to have employer-based coverage next year than was projected in May, according to CBO and JCT, but of that number, about half are expected to get coverage through the new state-level insurance exchanges that are to be launched on January 1, 2014, or through government programs.

Of the $12 billion in reduced revenue, about $10 billion will result from the absence of penalty payments by employers who do not offer health coverage in 2014.

The Congressional Research Service (CRS), which analyzed the issue at the request of Rep. Roe, concluded that, while a legal challenge could possibly lead to a court granting an injunction against the delay, "there may be major obstacles to reaching a judicial determination of the IRS's authority in this case, due to the lack of an identifiable plaintiff with legal standing to challenge the delay in federal court, and restrictions on judicial review under the Administrative Procedure Act."

CRS added, though, that, "Although it may be difficult to obtain judicial review of delayed enforcement of the employer mandate, this should not be taken to mean that the Executive has unfettered ability to delay implementation of any provision of the Affordable Care Act."

Roe, upon receiving the report, suggested that, "Even if the administration could successfully argue the legality of exempting businesses from the employer mandate, this same logic could also be used by a future administration to undo Obamacare by executive order."

While small businesses are exempt from the requirement and nearly all employers with 200 or more workers already provide insurance coverage, critics say the employer mandate will be overly burdensome for companies that are just over the threshold and may lead to job cuts as firms seek to keep their payrolls under 50 employees.

The law's definition of a full-time employee as one who works at least 30 hours is especially unpopular. Sens. Susan Collins, R-Maine, and Joe Donnelly, D-Ind., who in April proposed the "Forty Hours is Full Time Act of 2013" (S. 701) to change the standard, wrote to Obama on June 19 to ask that his administration "work with the employer community to provide ample transition flexibility beyond January 1, 2014, free from the threat of penalty, in order for them to fully comply with the proposed requirements."

The business community has also advocated for changes to the mandate. The U.S. Chamber of Commerce in March urged regulators not to enforce the mandate during 2014, and it released a report in June on suggested health care law changes that stated, "Returning to the widely accepted definition of a full-time employee as one who works an average of 40 hours per week would remove a penalty that is forcing employers to reduce hours, thereby limiting wages."

In addition to writing several letters to the president and Cabinet officials, House Republicans have held several hearings to examine the employer mandate delay, including one on July 30 in which two subcommittees of the Education and the Workforce Committee heard from three critics of the administration and one defender.

"Now, employers are more confused than ever about what their responsibilities and liabilities are during this period of 'transition relief' from the reporting requirements," Grace-Marie Turner, president of the Galen Institute, said. "Regulations explaining the details of this announcement are not expected until later this summer, adding further to the uncertainty in their attempts to comply with the law."

Jamie Richardson, vice president of government, shareholder and community relations for the fast food chain White Castle, spoke on behalf of the National Restaurant Association and said that the law is having a negative impact on business and "cannot stand as it is today."

“In the five years prior to the health care law, we were opening an average of eight new White Castle restaurants each year,” Richardson said. “In 2013, we plan to open just two new locations. While other factors have slowed our growth, it is the mounting uncertainty surrounding the health care law that brought us to a standstill.”

Douglas Holtz-Eakin of American Action Forum said the law will result in slower job growth, more reliance on part-time employees and, perhaps counter-intuitively, a move by employers away from health benefits – because of higher insurance premiums and the availability of subsidized coverage – and toward more monetary compensation.

“The employer mandate is a key failing of the law, as it will not actually compel employers to add coverage, and it depends on a complicated reporting and information system that the administration was unable to implement in the three years since the law passed,” Holtz-Eakin said. “While firms are waiting to understand how this law will impact their business, they are making decisions now to limit their future financial liabilities, and thus hiring less than they would in the absence of the law.”

The one supporter of the reform law who testified at the hearing, Families USA Executive Director Ron Pollack, said of the employer mandate postponement that, “The consternation that this delay has caused from some quarters is much ado about very little.”

“The administration has concluded that employers would simply not be able to implement the requirements of the law at this time,” Pollack said. “Businesses have responded favorably to the delay. Historically, both Democratic and Republican administrations have sometimes delayed implementing legislation due to time constraints, which appears to be the case here. I do not expect this small delay to have a significant impact on the ongoing successful implementation of the Affordable Care Act for several reasons, the principal reason being that the vast majority of employers that would be affected by the mandate already provide health coverage to their workers.”

GOP Senator Proposes New Model for Public Pensions

A senior Republican senator on July 9 proposed legislation that would use annuities to overhaul public pensions.

The “Secure Annuities for Employee (SAFE) Retirement Act of 2013” (S. 1270) from Sen. Orrin Hatch of Utah, the ranking Republican on the Senate Finance Committee, would create a “new pension structure for state and local governments [that] will solve the pension underfunding problem prospectively while delivering retirement income security, in the form of a deferred, fixed income life annuity, to public employees,” according to a summary of the proposal released by Hatch.

Under the proposal, governments could provide pension benefits by investing in annuity contracts offered by life insurance companies, thus shifting investment risk from taxpayers to insurers. States and localities would not be required to participate.

The summary stated that, under the new structure:

- Employees would receive secure monthly income at retirement for life.
- Employer pension costs would be stable, predictable and affordable.
- Pension plan underfunding would not be possible.
- The life insurance industry would invest the assets, pay the retirement benefits and bear the risks.
- Retirement benefits would be protected by a state life insurance guaranty association.

"A new public pension design is needed: one that provides cost certainty for state and local taxpayers, retirement income security for state and local employees, and does not include an explicit or implicit government guarantee," Hatch said on the Senate floor. "The concept of the SAFE Retirement Plan is simple. Take advantage of the lifetime income that fixed annuities can provide while mitigating the volatile effect of interest rates on pension levels by purchasing an annuity contract for each worker every year during their career so that a worker builds a solid pension year-by-year during their entire working life."

Hatch noted that he "could have merely recommended that state and local governments move to a 401(k)-style plan, but I settled instead on a policy of trying to achieve retirement income security as well."

The proposal has not been well received in the public pension community.

"Senator Hatch would like to hand public pension systems over to life insurance companies, with those life insurance companies providing individual public employees with lifetime annuities," Hank Kim, executive director and counsel of the National Conference of Public Employee Retirement Systems said. "Contracting out a non-profit enterprise to a for-profit insurance company makes absolutely no sense. Public pension plans are already in the business of providing their retirees with annuities. We self-annuitize at a cost of 50 to 76 basis points, certainly a lower cost than a for-profit insurance company could offer."

The legislation also contains some proposed changes to private sector pensions, including certain simplification reforms, longevity reforms and ERISA modifications, as well as new features, such as a "starter 401(k)," which would "not involve the administrative burden or expense of a traditional 401(k) plan," and an additional automatic enrollment safe harbor.

Hatch released a report in January 2012 that raised the specter of imminent insolvency of state and local pension funds and stated that, "it is becoming increasingly apparent that defined benefit pension plans will never be financially sound enough over the long term for use by state and local governments." It concluded that "a new pension design for public plans" is needed, but it did not state what that plan should be.

The report cited projections by Republicans on the Joint Economic Committee that 11 states will exhaust their pension plan assets by 2020, but the American Academy of Actuaries warned in a July 2012 letter to Hatch that the GOP paper "uses questionable assumptions and simplistic methods to make this assertion." As a result, the academy concluded, the paper "should not be used as the basis for assessing the potential threat that state and local government-sponsored pension plans might pose to their sponsors."

CFPB Director Nominee Confirmed

After a two-year stalemate, President Obama's nominee to lead the Consumer Financial Protection Bureau (CFPB) has been confirmed by the Senate.

Richard Cordray, who has served as CFPB director for the past 18 months as a result of a recess appointment, won confirmation to a five-year term on July 16 by a 66-34 vote. Twelve Republicans voted in favor of the nomination, as did all Democrats.

"Today's action brings added certainty to the industries we oversee and reinforces our responsibility to stand on the side of consumers and see that they're treated fairly in the financial marketplace," Cordray said following the vote.

The vote followed a bipartisan agreement regarding the use of filibusters to block votes on presidential nominees.

Obama said that the CFPB has "made real strides, even despite the fact that the agency was hampered by the confirmation process."

"And I would argue that part of the reason we were able to finally get Rich confirmed today is because he's shown through his leadership, because of the very hard work that everybody at the CFPB has already done, that this is making a difference in the lives of the American people, a positive difference," Obama said. "It's hard to argue with success."

Notwithstanding Cordray's confirmation, several Republicans indicated that they will continue to seek changes in the CFPB.

"There is no board directing this agency, there is no board to whom the director of the agency responds," Senate Banking, Housing and Urban Affairs Committee Ranking Republican Mike Crapo of Idaho said on the Senate floor. "One single individual has been given the authority in this statute, without oversight by Congress of his or her budget, to single-handedly issue rules and regulations. ... Those who are trying to portray Republican demands as being another attempt to water down consumer protection need to realize that consumer protection divested from safety and soundness does not make for a better financial system or greater benefit to consumers."

The CFPB was created by the 2010 Dodd Frank Act to oversee mortgages, credit cards and other consumer financial products. Republican lawmakers have opposed it from the start and blocked Cordray's July 2011 nomination in protest, refusing to allow a vote unless the bureau's structure were changed so that it would be led by a five-person commission instead of a director and would get its funding through the congressional appropriations process, rather than from the Federal Reserve.

Obama circumvented Republican opposition by naming Cordray to the director position through a recess appointment in January 2012. Obama nominated Cordray again in January 2013, but Senate Minority Leader Mitch McConnell, R-Ky., and 42 Senate GOP colleagues wrote to the president on February 1 to say that they would continue "to oppose consideration of any nominee, regardless of party affiliation, to be the CFPB director until key structural changes are made to ensure accountability and transparency at the Consumer Financial Protection Bureau."

Cordray's status had been questioned since a January 25, 2013, federal court ruling that Obama's recess appointments of three people to the National Labor Relations Board (NLRB) – which were made on the same day as the Cordray appointment – were unconstitutional. The administration has appealed the ruling to the U.S. Supreme Court, which has agreed to hear the case during its next session. While a Supreme Court ruling against the recess appointments presumably would not affect Cordray's ability to serve as director since he has now been confirmed by the Senate, such a decision could have an impact on the legality of CFPB actions taken during Cordray's pre-confirmation vote tenure.

Cordray's recess appointment was also being challenged in a lawsuit filed by State National Bank of Big Spring, Texas, the Competitive Enterprise Institute, the 60 Plus Association and 11 states. That suit also takes broader aim at Dodd-Frank, arguing against the constitutionality of the CFPB and the Financial Stability Oversight Council, another Dodd-Frank creation.

SEC Investor Advisory Committee Recommends Consideration of 'Universal' Ballot

The Securities and Exchange Commission's Investor Advisory Committee has recommended that the SEC "explore" rule changes that would allow for the use of a "universal" proxy ballot.

Shareholders who attend shareholder meetings are able to vote from among all nominees, whether put on the ballot by management or a "dissident" group. Shareholders who do not attend the meetings, however, are typically able to vote for nominees that appear on either management's ballot or a dissident's ballot; they cannot "split the ticket" and choose from both ballots.

The use of universal ballots – "shareholder voting cards on which shareholders can choose to vote for one or more director candidates regardless of who nominated any individual candidate" – for all shareholders would be problematic because of the SEC's "bona fide nominee" rule, which "provides that no proxy shall confer authority upon the solicitor to vote for any person who is not a bona fide nominee."

"A bona fide nominee is one who consents to being named in a particular proxy statement and agrees to serve if elected," the committee explained in its recommendation. "It is important to note that the consent required is the consent to be named in a particular proxy statement, and not a general consent to be nominated for election or to serve as a director. Directors nominated by an incumbent board have only very rarely consented to being named as nominees in a proxy statement issued by a shareholder in opposition to management."

A revision that was made to the regulation in 1992 and is known as the "short slate rule" allows shareholders to vote for a minority number of dissident nominees in combination with management nominees, but this can only be exercised by attendees at shareholder meetings.

The committee recommended that the SEC consider "relaxing" the bona fide nominee rule "to provide proxy contestants with the option (but not the obligation) to use Universal Ballots in connection with short slate director nominations (in other words, where the candidates nominated by shareholders would, if elected, constitute a minority of the board of directors)."

The Investor Advisory Committee is chaired by CalPERS Chief Investment Officer Joseph Dear.

Bill Prohibiting Mandatory Auditor Rotation Passes House

The House of Representatives on July 8 passed a bipartisan bill that would prevent mandatory rotation of external corporate auditors.

By a 321-62 vote, the House passed the "Audit Integrity and Job Protection Act" (H.R. 1564), which would prohibit the Public Company Accounting Oversight Board (PCAOB) from requiring that the audits of a particular issuer be conducted by specific auditors, or that such audits be conducted by different auditors on a rotating basis.

"Boards of directors, management and shareholders of companies should ultimately make the decision about which accounting firms should audit a company's financial statements, not bureaucrats in Washington, D.C.," House Financial Services Committee Chairman Jeb Hensarling, R-Texas, said.

The Financial Services Committee approved the bill on June 19 by a 52-0 vote.

CalPERS had advocated against the bill, stating in a letter to members of the California congressional delegation that it "would unnecessarily restrict" the ability of the PCAOB to require rotation "in the event they determine rotation is appropriate."

"Ultimately, we believe that audit committees are in the best position to select the auditor," CalPERS Senior Portfolio Manager, Investments, and Director of Global Governance Anne Simpson wrote in the letter. "However, we are strong supporters of the PCAOB and have faith in their thoughtful approach to the regulation of the audit profession. If they ultimately conclude that mandatory rotation is appropriate, we will support this judgment. ... Accordingly, because HR 1564 would eliminate the PCAOB's discretion in this area, we cannot support the measure and we urge you to oppose the bill."

Of the 62 votes against the bill, 21 were cast by California Democrats. No House Republicans opposed the legislation.

The bill awaits action by the Senate.

Rule Requiring Disclosure of Energy Company Payments to Foreign Governments Struck Down

A federal judge in early July struck down a Securities and Exchange Commission (SEC) rule aimed at requiring energy companies to disclose payments to foreign governments.

The SEC adopted a rule in August 2012 that requires companies to report when they make payments to foreign governments in order to develop oil and gas fields. The measure was included in the 2010 Dodd-Frank Act to increase the transparency of money flowing to regimes that may be more likely to pocket it than use it for the good of their nation.

The American Petroleum Institute, the U.S. Chamber of Commerce, the National Foreign Trade Council and the Independent Petroleum Association of America challenged the rule in court, objecting to the SEC's implementation of a regulation they said would put them at a competitive disadvantage and violate their First Amendment rights by "compelling U.S. companies to engage in costly speech on controversial matters in order to influence political affairs in other nations."

U.S. District Judge John Bates threw out the rule on July 2, asserting that the SEC incorrectly interpreted Dodd-Frank as requiring public disclosure of the information and that the agency was wrong not to allow for exemptions when countries, such as Angola, Cameroon, China and Qatar, prohibit such disclosures.

While acknowledging that broadly allowing for exemptions "could eviscerate [the rule] by allowing any country to avoid disclosure by enacting a disclosure-barring law," Bates stated that "dismissing that horrible does not suffice to support a decision costing many billions of dollars and (in the Commission's own analysis) burdening competition." At least, he added, "a fuller analysis was warranted."

"The Commission undertook no such specific analysis, however, instead focusing heavily on the statute's apparent purpose – a purpose it conceived more broadly than the statutory text, which emphasizes practicability," Bates wrote. "Averse to sacrificing any of the [rule's] aims no matter the cost, the Commission abdicated its statutory responsibility to investors. The Commission's exemption analysis hence was arbitrary and capricious and independently invalidates the Rule."

CalPERS in February 2011 wrote to the SEC to support the rule, which was then under consideration by the agency, stating that it "is especially vital for companies operating in countries where governance is weak resulting in corruption, bribery and conflict that could negatively impact the sustainability of a company's operations and our ability to more effectively make investment decisions."

RELATED NATIONAL AND INDUSTRY NEWS

GASB Proposal Would Address New Pension Rules Transition Issue

The Governmental Accounting Standards Board (GASB) has released a proposal for addressing a transitional issue that may arise as states and localities adjust to new pension accounting rules.

The proposal would "eliminate a potential source of understatement of restated beginning net position and expense" during the first year under the new rules.

"To correct this potential understatement, the proposed Statement would require a state or local government, when transitioning to the new pension standards, to recognize a beginning deferred outflow of resources for its pension contributions made during the time between the measurement date of the beginning net pension liability and the beginning of the initial fiscal year of implementation," GASB stated. "This amount would be recognized regardless of whether it is practical to determine the beginning amounts of all other deferred outflows of resources and deferred inflows of resources related to pensions."

The proposal is related to the implementation of GASB Statement No. 68, "Accounting and Financial Reporting for Pensions," which was released in June 2012. The agency also released GASB Statement No. 67, "Financial Reporting for Pension Plans," in June 2012. Less than two weeks ago, GASB released an implementation guide for No. 67. An implementation guide for No. 68 is expected to be available in early 2014.

The new guidelines will, for the first time, require governments that provide defined benefit pensions to employees to report pension promises as liabilities. The rules allow funds that are financially healthy to continue to use a discount rate that reflects "the long-term expected rate of return on plan investments" in calculating the "net pension liability." Critics of public pensions have advocated requiring funds to use a "risk-free" rate of return – as would be expected from U.S. Treasury bonds – for the discount rate, which would be about half of the 8 percent return that is now commonly projected.

Funds may continue with the current discount rate method, however, only "as long as the plan net position is projected under specific conditions to be sufficient to pay pensions of current employees and retirees and the pension plan assets are expected to be invested using a strategy to achieve that return." Pensions in poorer fiscal condition must use a discount rate that is more like the riskless rate that critics support, specifically, "a yield or index rate on tax-exempt 20-year, AA-or-higher rated municipal bonds."

CALIFORNIA CONGRESSIONAL DELEGATION NEWS

House Panel Advances SGR Reform Bill

A congressional panel on July 31 unanimously approved bipartisan legislation that would replace Medicare's sustainable growth rate formula.

The SGR, which was intended by Congress to automatically set Medicare's physician payment rates, annually threatens to slash the federal government's payments to doctors for services provided to Medicare patients. This year, were it not for a provision included in the "fiscal cliff" deal that passed in January, payments would have been cut by 26.5 percent. The cuts are blocked for only a year, though, and the SGR calls for the rates to be reduced by 25 percent in January 2014. Congress has overridden the SGR calculations every year since 2003 in order to avoid payment cuts that, it has been feared, would drive doctors out of the Medicare program.

The House Energy and Commerce Committee voted 51-0 in favor of the "Medicare Patient Access and Quality Improvement Act of 2013" (H.R. 2810), which would replace the SGR with "an improved fee for service system in which providers report quality measures that will lead to better care in a more efficient manner." It would provide for annual payment increases of 0.5 percent for five years as Medicare and providers transition to a quality incentive program.

"The time of temporary patches and kicking the can down the road is over," Health Subcommittee Chairman Joe Pitts, R-Penn., said. "For more than two years, this committee has worked to develop a reform policy to repeal the SGR, and the discussion draft before us today … is the first meaningful product to do so since SGR was created in the Balanced Budget Act of 1997."

Rep. Lois Capps, D-Calif., called the bill "an important first step," but added that "there are some important improvements that can and should be made." Democrats are looking for greater payment rewards for primary care physicians, and Capps would also like to allow certified non-physicians to participate in certain coordinated care models, *CQ* reported.

"We want to move our payment system to one that rewards quality and efficiency and improves patient outcomes," said Rep. Henry Waxman of California, the committee's ranking Democrat and one of the plan's authors said in July. "We want to build on the reform efforts underway. This is a first step and an important one. It undoubtedly can and will be improved as we move through the legislative process, but I believe we already have a stronger product because of our joint effort. This is a process that has to start; we can't accept the current system any longer. We have bipartisan agreement on that, and I believe that commitment to working together will serve us well."

SGR reform has broad support among both Republicans and Democrats in the House and Senate, but lawmakers may have a difficult time reaching a consensus on how to pay for a replacement, which is projected to cost $139 billion over the first 10 years. The Energy and Commerce legislation does not yet include a plan for covering those costs. Rep. Michael Burgess, R-Texas, the bill sponsor, said lawmakers "did not let pay-fors lead the discussion. We knew that was the pathway to failure."