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December 18, 2012

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Hilda L. Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Geithner, Secretary Solis, and Secretary Sebelius:

We write to request information concerning the administration's implementation of the *Patient Protection and Affordable Care Act* (PPACA).¹ Specifically, we request clarification concerning how an employer determines the average number of hours worked per week under PPACA.

Sections 1513 and 10106 of PPACA create new tax penalties, beginning in 2014, for employers with at least 50 full-time equivalent employees if one or more of their full-time employees (defined as those working more than 30 hours) obtains a premium credit through a health insurance exchange. However, the question of how employers determine whether their employees have worked an average of 30 hours per week, thereby putting the employer at risk of paying the tax penalties, remains.

¹ Public Law 111-148, as amended by Section 1003 of the *Health Care and Education Reconciliation Act of 2010* (Public Law 111-152).

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In guidance issued by the Internal Revenue Service,² a “look-back” period of up to 12 months is considered when determining whether an employee has worked an average of 30 hours per week. Given that the new tax penalties begin in 2014 and employers are able to use a “look-back” period of up to 12 months, the guidance seems to suggest employers should begin keeping track of their employees’ hours for the purpose of the new tax penalties as early as January 1, 2013. As employers make hiring decisions and determine their employees’ schedules for the first pay periods of 2013, it is critical they have maximum certainty and clarity concerning their obligations under the health care law.

We are concerned the new requirement for employers to offer government-approved insurance or face new tax penalties will be detrimental to job creation and potentially limit the amount of hours employees are allowed to work. To better understand the timing of the look-back period suggested in IRS Notice 2012-58 and its consequences for the nation’s workforce, please provide the Committee on Education and the Workforce with the following by December 31, 2012:

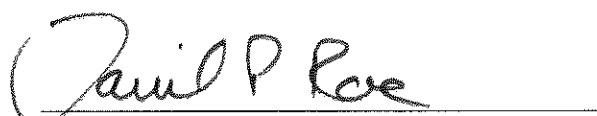
- 1) Confirmation that employers need to track employees’ hours as early as January 1, 2013 with respect to the new taxes in Sections 1513 and 10106 of PPACA;
- 2) The administration’s internal analysis of the how this new tax will affect employment – specifically for part-time workers and average hours worked; and
- 3) The administration’s internal analysis of how employment will be affected by starting the “look-back” in 2013.

If you are unable to provide the requested information by the date specified, please inform the committee in writing why you cannot meet the deadline, and the date by which you will provide the requested information. If you have additional questions or comments, please contact Todd Spangler and Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



DAVID P. ROE
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions

CC: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

² Internal Revenue Service, I.R.S. Notice 2012-58, *Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§4980H)* (August 31, 2012), available at: <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>.