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April 19, 2013

The Honorable Seth D. Harris
 Acting-Secretary
 U.S. Department of Labor
 200 Constitution Avenue, NW
 Washington, D.C. 20210

Dear Acting-Secretary Harris:

On March 19, 2013 we requested documents and communications relating to the U.S. Department of Labor's (DOL) economic analysis of the new tax penalties created under Sections 1513 and 10106 of the *Patient Protection and Affordable Care Act* (PPACA) to better understand the potential impact on hiring and job creation.¹ The impetus for our letter was employer comments included in the Federal Reserve's Summary of Commentary on Current Economic Conditions (also referred to as the "Beige Book") for February 2013.² As the Federal Reserve noted: "Employers in several [Federal Reserve] Districts cited the unknown effects of [PPACA] as reasons for planned layoffs and reluctance to hire more staff."³ On April 17, 2013 the Federal Reserve released its March 2013 Beige Book, which reiterated employer concerns about PPACA.⁴

Sections 1513 and 10106 of PPACA created 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 30 hours or more per week) obtains a premium credit through a health insurance exchange. As a result, PPACA has the potential to dramatically curtail hiring and lead to arbitrary limits on the amount of hours employees are scheduled for work.

Concerns about PPACA and its affect on the economy have grown as the 2014 implementation date draws closer. On April 4, 2013, the U.S. Chamber of Commerce released its Small Business Survey for

¹ Letter from the Honorable John Kline, Chairman, House Committee on Education and the Workforce, and the Honorable David P. Roe, Chairman, Subcommittee on Health, Employment, Labor, and Pensions, to the Honorable Seth D. Harris, Acting-Secretary, U.S. Department of Labor ("March 2013 letter")(Mar. 19, 2013) <http://edworkforce.house.gov/UploadedFiles/03-19-13 - Letter to DOL re PPACA Job Impact.pdf>. Public Law 111-148, as amended by Section 1003 of the *Health Care and Education of 2010* (Public Law 111-152).

² Federal Reserve System, *Summary of Commentary on Current Economic Conditions by Federal Reserve District: February 2013*, at ix. (Mar. 6, 2013) Available at: http://www.federalreserve.gov/monetarypolicy/beigebook/files/Beigebook_20130306.pdf.

³ *Id.*

⁴ Federal Reserve System, *Summary of Commentary on Current Economic Conditions by Federal Reserve District: March 2013*. (Apr. 17, 2013) Available at: http://www.federalreserve.gov/monetarypolicy/beigebook/files/Beigebook_20130417.pdf

The Honorable Seth D. Harris

April 19, 2013

Page 2

the First Quarter of 2013. This survey notes the “requirements of [PPACA] are now the biggest concern for small businesses, having bumped economic uncertainty from the top spot which it has held for the last two years.”⁵ Specifically, 71 percent of small business owners say PPACA makes it harder to hire more employees.⁶ In addition, 32 percent of small business owners plan to reduce hiring as a result of the employer mandate and 31 percent will cut back hours to reduce the number of full-time employees.⁷

As we noted in our March 19 letter, Section 1513(c) of PPACA directs the Secretary of Labor to conduct a study to determine whether employees’ wages are reduced due to tax penalties under Sections 1513 and 10106.⁸ The administration must have a complete understanding of the implications of the Sections 1513 and 10106 tax penalties on employment *prior* to finalizing its PPACA regulations for 2014. Accordingly, we requested you contact our staff to set up a briefing and provide a copy of the completed study no later than April 2, 2013.⁹ Further, we requested that if the study would not be completed by April 2, 2013, you provide a draft of the study, all source data used to create the study, and a timeline under which DOL plans to complete and disseminate the study to Congress.¹⁰ To date, DOL has failed to provide any of the requested materials and has made no effort to set up a briefing on this matter.

We are extremely troubled by DOL’s lack of response. The comments and concerns summarized in the Federal Reserve’s February and March 2013 Beige Books and the Chamber of Commerce’s Small Business Survey echo what we hear from small business owners in our home districts. It is critical we have a better understanding of PPACA’s effect on hiring. We request you contact our staff immediately to schedule a briefing and provide the materials requested in our March 19, 2013 letter.

If you have additional questions or comments, please contact Todd Spangler or Joe Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



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

Enclosures

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

⁵ U.S. Chamber of Commerce, “Q1 Small Business Outlook Survey,” Apr. 4, 2013, available at <http://www.uschamberssmallbusinessnation.com/community/q1-2013-small-business-survey>.

⁶ *Id.*

⁷ *Id.*

⁸ Public Law 111-152, Section 1513(c), at 235. Available at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>.

⁹ See March 2013 letter, *Supra* 1.

¹⁰ *Id.*

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be date-stamped sequentially and produced sequentially.
18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.