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June 6, 2013

The Honorable Jacob J. Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

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

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

Dear Secretary Lew, Secretary Sebelius, and Acting-Secretary Harris:

We write to seek clarification of the Obama administration's regulatory and enforcement efforts related to stop loss insurance. Specifically, we are concerned the administration may be considering regulating stop loss insurance. Such regulations could limit an employer's ability to self-insure, making this important option both administratively burdensome and more expensive.

Many employers choose to offer health benefits to their employees through self-insured health plans. Employers that self-insure assume the financial risk for paying claims on behalf of their employees, and often purchase stop loss insurance to protect themselves against unexpectedly high claims costs.

On May 1, 2012, the Departments of Treasury, Labor, and Health and Human Services jointly published in the *Federal Register* a Request for Information (RFI) regarding "the use of stop

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loss insurance by group health plans and their plan sponsors, with a focus on the prevalence and consequences of stop loss insurance at low attachment points.”¹ In this RFI, the agencies noted a lack of data concerning the use of stop loss insurance among self-insured employers’ group health plans, as well as a lack of information on plans with fewer than 100 participants.² We understand many of the employer comments you received in response to the RFI raised concerns about the federal regulation of stop loss insurance.³

Contradictory reports have emerged regarding the administration’s plans to potentially regulate stop loss insurance at the federal level, heightening employers’ fears. During the Employee Benefits Research Institute’s December 2012 policy forum, the Labor Department’s Employee Benefits Security Administration Assistant Secretary Phyllis Borzi denied new regulations were underway, stating, “we are not secretly writing [a] stop loss regulation that we’re going to put in some underground pipeline to [the Office of Management and Budget] and spring it on the community. None of that is happening.”⁴ However, *New York Times* health care correspondent Robert Pear recently wrote, “The Obama administration is investigating the use of stop loss insurance by employers with healthier employees, and officials said they were considering regulations to discourage small and midsize employers from using such arrangements to circumvent [the *Patient Protection and Affordable Care Act*].”⁵

We write to request assurances from your agencies that no regulations concerning stop loss insurance will be considered or proposed for the duration of the Obama administration. Please provide these assurances in writing no later than June 20, 2013. In addition, we respectfully request you contact our staff to set up a briefing concerning your agencies’ use of information provided in response to the May 2012 RFI no later than June 20, 2013.

¹ “Request for Information Regarding Stop Loss Insurance.” *Federal Register* 77, at 25788-25790 (May 1, 2012). Available at: www.gpo.gov/fdsys/pkg/FR-2012-05-01/pdf/2012-10441.pdf.

² *Id.*

³ The Honorable Phyllis C. Borzi, Assistant Secretary, U.S. Department of Labor, Employee Benefits Security Administration, Speech, at the Employee Benefits Research Institute-Education and Research Fund: Policy Forum #71 (Dec. 13, 2012). Available at: <http://media1.ifebp.org/Mediasiteex/Play/345ae5b34ba8424a9b5752feb540d1151d?catalog=aa115719-6622-4483-8025-4006ffe115a4>.

⁴ *Id.*

⁵ Robert Pear, *Employers With Healthy Workers Could Opt Out of Insurance Market, Raising Others’ Costs*, *New York Times*, Feb. 18, 2013, at A9. Available at: http://www.nytimes.com/2013/02/18/us/allure-of-self-insurance-draws-concern-over-costs.html?pagewanted=2&_r=0&adxnmlx=1362063879-a4SVoBccNuODUPUP1X24lg

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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



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

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