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September 18, 2013

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

The Honorable Sylvia Mathews Burwell
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Secretary Perez and Director Burwell:

We respectfully request clarification regarding the Obama administration's regulatory efforts related to Taft-Hartley health insurance plans (Taft-Hartley plans) and the *Patient Protection and Affordable Care Act* (PPACA).¹ Although we appreciate the confirmation provided by the Department of the Treasury that an individual cannot benefit from employer-provided health coverage and a premium tax credit, we remain concerned the administration is considering regulations to allow millions of individuals in Taft-Hartley plans to receive preferential treatment not available to other Americans who have employer-provided health insurance, contradicting the intent of the law.²

As recently confirmed by Treasury, the statutory language of PPACA is clear: individuals enrolled in a Taft-Hartley plan are not eligible for taxpayer subsidies. Individuals who are eligible for "minimum essential coverage," including employer-sponsored plans,³ are not eligible for premium tax credits.⁴ The statute unmistakably limits individuals eligible for premium tax credits to those who are not offered health insurance coverage through an employer.

¹ Pub. L. No. 111-148 (2010) [hereinafter PPACA].

² Letter from the Honorable Alastair M. Fitzpayne, Assistant Secretary for Legislative Affairs, Department of Treasury, to the Honorable David Camp, Chairman, House Committee on Ways and Means (September 13, 2013) (on file with the committee).

³ PPACA § 1501(b); 26 U.S.C. 5000(A)(f).

⁴ PPACA § 1401(a); 26 U.S.C. 36B (c)(2).

To that end, on August 26, 2013, Treasury issued a final rule addressing compliance with the individual mandate.⁵ The Treasury rule stated, “[t]he final regulations are revised to provide that a plan offered by an employer to an employee includes a plan offered to an employee on behalf of an employer.”⁶ In short, an employee who receives health insurance coverage through a Taft-Hartley plan is considered to have employer coverage.

While it appears the administration has closed the door on this particular solution, there are also reports the administration is considering other deals to appease the concerns of union leaders. According to recent press reports, the Office of Management and Budget’s regulatory review website posted that on August 24, 2013, it received a proposed rule from the Department of Labor entitled “Health Insurance Premium Assistance Trust Supporting the Purchase of Certain Individual Health Insurance Policies Exclusion from Definition of Employee Welfare Benefit Plan” (RIN 1210-AB57).⁷ This proposed rule was promptly removed from OMB’s website. Repeated attempts by Education and the Workforce Committee staff to obtain this proposed rule were rebuffed by DOL.

We appreciate the desire of union leaders to prevent the health care law from hurting their members. While union leaders were the earliest and strongest supporters of PPACA, they now recognize the devastating consequences of the law. At a convention in Los Angeles, members of the AFL-CIO adopted a strongly worded resolution that cites numerous problems with the law and demands significant changes.⁸ Terence O’Sullivan, president of the Laborers’ International Union of North America, stated that if the law cannot be fixed, it should be repealed.⁹ However, trying to sustain a fatally flawed law through executive fiat merely exacerbates the difficult challenges being imposed on workers, job creators, and families.

To provide greater transparency and accountability regarding the administration’s work in this area and ensure the administration is applying PPACA consistent with law, please provide the following no later than **October 2, 2013**:

1. All legal analyses prepared by your agency or provided to your agency concerning whether individuals eligible for Taft-Hartley plans could also be eligible for premium tax credits or other special treatment.

⁵ Shared Responsibility Payment for Not Maintaining Minimum Essential Coverage, 78 Fed. Reg. 169 (Aug. 30, 2013), available at www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21132.pdf

⁶ *Id.*

⁷ Rachana Dixit, Sources: Administration Working On Rules To Address Unions’ ACA Concerns, InsideHealthPolicy, Aug. 27, 2013, available at <http://insidehealthpolicy.com/201308272445151/Health-Daily-News/Daily-News/sources-administration-working-on-rules-to-address-unions-aca-concerns/menu-id-212.html>

⁸ Steven Greenhouse & Jonathan Martin, Unions’ Misgivings on Health Law Burst Into View, New York Times, Sept. 11, 2013, available at http://www.nytimes.com/2013/09/12/business/unions-misgivings-on-health-law-burst-into-view.html?ref=todayspaper&_r=0

⁹ *Id.*

2. All documents and communications produced within your agency relating to the eligibility of individuals eligible for Taft-Hartley plans to receive premium tax credits or other special treatment.
3. All documents and communications between your agency and another federal agency, including, but not limited to, executive offices within the White House, relating to the eligibility of individuals eligible for Taft-Hartley plans to receive premium tax credits or other special treatment.
4. All documents and communications related to a proposed rule entitled "Health Insurance Premium Assistance Trust Supporting the Purchase of Certain Individual Health Insurance Policies Exclusion from Definition of Employee Welfare Benefit Plan," (RIN 1210-AB57) which was briefly posted on the OMB website as having been transmitted by DOL, before it was removed. Is it your intention to replace this proposed rule? Will you re-propose any variation of this rule? If so, how and when do you intend to re-propose this rule?
5. A list of all individuals, organizations, unions, and White House and administration staff from whom you or your staff received communication regarding allowing individuals eligible for Taft-Hartley plans to be eligible for premium tax credits or other special treatment.
6. A list of all individuals, organizations, unions, and White House and administration staff with whom you or your staff have met regarding allowing individuals eligible for Taft-Hartley plans to be eligible for premium tax credits or other special treatment.

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 Molly Conway or Joseph Wheeler of the committee staff at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



PHIL ROE
Chairman
Subcommittee on Health, Employment, Labor,
and Pensions

Enclosure