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December 3, 2013

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

Dear Secretary Sebelius:

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 Over the past several months, there have been reports the administration is considering various deals to placate union leaders' concerns regarding PPACA, including allowing millions of individuals in Taft-Hartley plans to receive preferential treatment not available to other Americans who have employer-provided health insurance.

On October 30, 2013, the U.S. Department of Health and Human Services (HHS) released final regulations entitled: "*Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014.*"² These regulations contained a provision signaling the administration may exempt some Taft-Hartley plans from the transitional reinsurance fee for the years 2015 and 2016.³ This fee, totaling \$25 billion from 2014-2016, is to be paid by insurers and employers to provide reinsurance payments to health insurance issuers who cover high-risk individuals in the individual market. According to the final rule, the administration "intend[s] to propose in future rulemaking to exempt certain self-insured, self-administered plans" from reinsurance fee requirements.⁴ Most self-insured employers do not self-administer their plans. However, it is our understanding many self-insured Taft-Hartley plans are self-administered. The administration appears to be attempting to shield unions from the

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

² Regulatory Information Numbers 0938-AR74 and 0938-AR82, 78 Fed. Reg. 65045 (Oct. 30, 2013), *available at*: <https://federalregister.gov/a/2013-25326>.

³ *Id.*

⁴ *Id.*

ramifications of PPACA, thus providing unions a windfall not available to most employers who provide health insurance to their workers.⁵

We understand the desire of union leaders to prevent PPACA from hurting their members as it has already harmed millions of Americans. 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 citing numerous problems with the law and demanding significant changes.⁶ Terence O'Sullivan, president of the Laborers' International Union of North America, stated that if the law cannot be fixed, it should be repealed.⁷ However, trying to sustain a fatally flawed law through administrative action that bypasses Congress merely exacerbates the difficult challenges being imposed on workers, job creators, and families.

To ensure the administration is applying PPACA consistent with law, please provide the following no later than **December 17, 2013**:

1. All legal analyses, documents, and communications relating to the drafting of the now-final rule "*Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014*" as it relates to providing transitional reinsurance fee exemptions.
2. All legal analyses prepared by HHS or provided to HHS concerning the treatment of Taft-Hartley plans under PPACA.
3. All documents and communications relating to allowing individuals eligible for Taft-Hartley plans to receive premium tax credits, transitional reinsurance fee exemptions, or other special treatment.
4. All documents and communications between HHS 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, transitional reinsurance fee exemptions, or other special treatment.
5. A list of all individuals, organizations, unions, White House, and administration staff from whom you or your staff received communications regarding allowing individuals eligible for Taft-Hartley plans to be eligible for premium tax credits, transitional reinsurance fee exemptions, or other special treatment.

⁵ *Id.*

⁶ Steven Greenhouse and Jonathan Martin, N.Y. Times, Unions' Misgivings on Health Law Burst Into View (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.

⁷ *Id.*

The Honorable Kathleen Sebelius

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6. A list of all individuals, organizations, unions, White House, and administration staff with whom you and/or your staff have met regarding allowing individuals eligible for Taft-Hartley plans to be eligible for premium tax credits, transitional reinsurance fee exemptions, 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 Joe 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

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

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.