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December 3, 2013

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

Dear Secretary Perez:

We remain concerned about 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 The U.S. Department of Labor's (DOL) failure to provide an adequate response to the committee's oversight request of September 18, 2013, is unacceptable, and recent regulations issued by the U.S. Department of Health and Human Services (HHS) are troubling. We again request information regarding the administration's plans to allow millions of individuals in Taft-Hartley plans to receive preferential treatment not available to other Americans.

On September 18, 2013, we wrote you requesting information about the administration's plans to provide special treatment to individuals in Taft-Hartley plans.² DOL's response of November 15, 2013, was wholly insufficient, provided none of the requested oversight materials, and lacked meaningful responses to the committee's questions.³ Further, DOL's response provided merely a vague reference to questions raised by the committee regarding the public posting and subsequent removal of information on the Office of Management and Budget (OMB) website transmitted by DOL's Employee Benefits Security Administration entitled, "Health Insurance Premium Assistance Trust Supporting the Purchase of Certain Individual Health Insurance

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

² Letter from the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce, and the Hon. Phil Roe, Chairman, Subcomm. on Health, Employment Labor, and Pensions, to the Hon. Thomas E. Perez, Secretary, U.S. Dep't of Labor (Sept. 18, 2013) *available at*: <http://edworkforce.house.gov/news/DocumentSingle.aspx?DocumentID=350057>.

³ Letter from the Hon. Brian V. Kennedy, Assistant Sec'y for the Office of Congressional and Intergovernmental Affairs, U.S. Dep't of Labor, to the Hon. John Kline, Chairman, H. Comm. on Education and the Workforce, and the Hon. Phil Roe, Chairman, Subcomm. on Health, Employment Labor, and Pensions (Nov. 15, 2013) (on file with author).

Policies Exclusion from Definition of Employee Welfare Benefit Plan.”⁴ DOL’s dismissive response that this material was posted “in error” raises more questions than answers.⁵

Not only did DOL fail to respond to our request in a meaningful and timely manner, on October 30, 2013, HHS released final regulations containing a provision signaling the administration may exempt some Taft-Hartley plans from the transitional reinsurance fee for the years 2015 and 2016.⁶ 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, indicating the administration is attempting to shield unions from the ramifications of PPACA, thus providing unions a windfall not available to most employers who provide health insurance to their workers.⁷

We understand the desire of union leaders to prevent PPACA from hurting their members as it has already harmed millions of Americans. Instead of delays, carve outs, and exemptions for special interests, the president should work to provide all Americans permanent relief from the law. In order to understand the implementation of PPACA, it is critical the Committee on Education and the Workforce be provided with complete, meaningful responses to our oversight inquiries no later than **December 17, 2013**:

1. All legal analyses prepared by DOL or provided to DOL concerning whether individuals eligible for Taft-Hartley plans could also be eligible for premium tax credits or other special treatment not available to all Americans (special treatment).
2. All documents and communications produced within DOL 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 DOL 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 the posting of “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) on OMB’s website as transmitted by DOL.

⁴ *Id.*

⁵ *Id.*

⁶ Regulatory Information Numbers 0938-AR74 and 0938-AR82, 78 Fed. Reg. 65045 (Oct. 30, 2013) *available at* <https://federalregister.gov/a/2013-25326>.

⁷ *Id.*

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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 or other special treatment.
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 or other special treatment.

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 Sylvia Mathews Burwell, Director, Office of Management and Budget

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