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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

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[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.

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[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.*

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