

United States Senate
WASHINGTON, DC 20510

February 7, 2013

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Obama:

We write to express our grave concerns with recent comments made by the Department of Treasury suggesting that individuals and families who receive health insurance through an employer are, in fact, eligible for advance premium tax credits (APTC) provided for under Section 36B of the Internal Revenue Code. The Patient Protection and Affordable Care Act (PPACA) is not ambiguous, in fact it is explicit, on this point. Any consideration of expanding access to subsidies therefore is not subject to regulation, but a change in the law.

An article published last week by the Wall Street Journal entitled "*Some Unions Grow Wary of Health Law They Backed*" highlighted the concerns of labor unions with the rising cost of health insurance coverage as a result of the new mandates under PPACA.¹ The article notes that the annual limit waivers provided to union plans will soon expire and as such the cost of health plans will dramatically increase. Other mandates related to caps on medical benefits and requirements to keep adults under the age of 26 on their parent's health insurance are also highlighted as additional cost concerns for these plans.

The article further suggests that the cost of such plans will make unionized workers less competitive. As a result, their representatives are engaging the Administration to find a solution. A spokesperson from the International Union of Operating Engineers commented that while they believed PPACA would reduce health insurance costs, "[r]ight now, it is costing us more." The International Union of Operating Engineers Local 150 of Countryside, Illinois expressed concern that the increasing cost of health insurance will result in employers terminating health insurance plans. A statement from the Teamsters called the rising cost of coverage "not acceptable."

Finally, the article states that top officers of labor organizations, such as the International Brotherhood of Teamsters, "plan to keep pressing the Obama Administration to expand the federal subsidies to these jointly run plans, warning that unionized employers may otherwise drop coverage." Unite Here Health similarly commented that they expected the Administration to devise a solution. In response, a spokesperson from the Department of Treasury stated that, "[t]hese matters are the subject of pending regulations." We respectfully, but strongly, disagree.

The statement made by Treasury simply ignores the letter of the law. Most concerning, however, is the Administration's quick and favorable response to the rising cost of health insurance for union plans and their members while non-union affiliated Americans and small businesses nationwide face the exact same problem, potentially to a far worse degree. The National Health Expenditures report of spending in 2011 written by the Office of the Actuary at the Centers for Medicare and Medicaid Services (CMS) shows that

out-of-pocket spending by consumers increased 2.8 percent in 2011, up from 1.8 percent in 2010 and 0.2 percent in 2009.ⁱⁱ This growth was attributed to higher cost sharing requirements through employer sponsored insurance, consumers switching to lower costs plans with higher deductibles and copayments, and a continued loss of health insurance coverage.

These significant rising costs are the direct result of new PPACA benefit mandates that will go into effect January 1, 2014. Numerous reports highlight the rate shock that consumers will experience as a result of these mandates. A study by Oliver Wyman estimates that healthier individuals will see an increase in the cost of their insurance by over 40 percent.ⁱⁱⁱ

On the question of whether APTC is available to individuals covered under employer sponsored insurance, the answer is a simple and clear no.

Under Section 1401 of PPACA, which amends the Internal Revenue Code to add Section 36B, the law specifically states that to receive a tax credit:

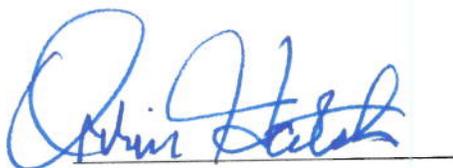
1. individuals must be enrolled in coverage through a health insurance exchange (Section 36B(c)(2)(A)(i));
2. the premium must be paid by the taxpayer (Section 36B(c)(2)(A)(ii));
3. individuals must not be eligible for minimum essential coverage, other than plans offered in the individual market (Section 36B(c)(2)(B)(i)); and
4. individuals must not be enrolled in an eligible employer sponsored plan (Section 36B(c)(2)(C)(iii)).

We have attached a memorandum written by the Congressional Research Service (CRS) that confirms the eligibility criteria under the law listed above and states that an “offer of employer-sponsored coverage to an employee will generally make that employee ineligible to receive a premium subsidy under Section 36B” of the Internal Revenue Code. The memorandum reinforces our assertion that the Administration has no legal authority to expand access to health insurance subsidies under the law. Regrettably, this is not the first time we have seen the Treasury Department expand access to taxpayer subsidies without the express authority to do so.^{iv}

Concerns about rising premiums are driven by policies in PPACA. Rather than considering a diversion of subsidies not remotely contemplated in the statute, perhaps the concerns being raised by union plans should be cause to revisit the taxes, fees and other policies that drive premium increases.

We appreciate your prompt attention to our concerns and look forward to hearing what steps the Administration will be taking to ensure that these provisions are being implemented in accordance with the law, as enacted.

Sincerely,



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~~John~~

Ray Winton

John Coury

Sally Clouder

Fred Cochran

Tom Allen

App. Fisher

Ma R. (FL)

Mike J.

Ray Hunt

7-8

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Debbie Stabenow

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Ed Markey

John Kennedy

Chuck Grassley

Lamar Alexander

James Inhofe

ⁱ Adamy, Janet and Trottman, Melanie. *Some Unions Growth Ware of Health Law They Backed*. Wall Street Journal. January 30, 2013. <http://online.wsj.com/article/SB10001424127887323854904578260313912570432.html>

ⁱⁱ Hartman, Micha, et al. *National Health Spending In 2011: Overall Growth Remains Low, But Some Payers and Services Show Signs of Acceleration*. Health Affairs. January 2013. <http://content.healthaffairs.org/content/32/1/87.full.pdf+html>

ⁱⁱⁱ Giesa, Kurt and Carlson, Chris. *Age Band Compression Under Health Care Reform*. Contringencies. January 2013. <http://www.contingenciesonline.com/contingenciesonline/20130102#pg33>

^{iv} Letter to President Obama from Ranking Member Orrin G. Hatch on Premium Credits Offered in Federally-facilitated Exchange. December 1, 2011. <http://www.finance.senate.gov/newsroom/ranking/release/?id=6c2ea7e8-2a57-451c-8e02-f066e8ff92f7>