



## AMERICAN BENEFITS COUNCIL

February 27, 2012

The Honorable Timothy Geithner  
Secretary  
U.S. Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

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

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Dear Secretary Geithner, Sebelius and Solis:

I am writing on behalf of the American Benefits Council (“Council”) to request an immediate communication that the applicability date in the final rule related to the Summary of Benefits and Coverage (“SBC”) provisions under section 2715 of the Affordable Care Act (“ACA”) will be delayed by twelve months (“delayed applicability date”). Alternatively, we request that informal guidance be issued immediately establishing a transition rule for the upcoming 2013 plan year under which employers who sponsor health plans will be considered in compliance with the final rule if they provide summary information on the health plan options they provide to employees, but could continue to do so in a different format and manner than would be required under the final rule until the date of the delayed applicability date.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

The Council provided extensive comments in our October 21, 2011, letter regarding the August 22, 2011, Notice of Proposed Rulemaking (“NPRM”) on the proposed SBC requirements. In our earlier comments, we stated that “we support the intent of (these provisions) to provide assistance to help individuals make better informed decisions.

We believe that disclosure and the communications regarding health benefits are an important component of benefit plan administration and design.” However, we took strong objection to a proposed applicability date of March 23, 2012, included in the NPRM for these requirements. We requested that plan sponsors be given adequate time and appropriate flexibility to implement the new SBC requirements, particularly for the first plan year when these new notices will be required to be provided to all current plan participants and those who are newly eligible to participate in an employer’s health plan. Specifically, we strongly urged that these requirements not be applicable for group health plans until plan years beginning on or after January 1, 2014, or no sooner than eighteen months following the issuance of a final rule.

We appreciated that the Departments subsequently issued informal guidance on November 17, 2011, stating that the SBC requirements would not be effective until the issuance of final rules. Importantly, that guidance also stated that the final rule would provide “sufficient time” to comply with these requirements. Regrettably, the final rule fails to provide sufficient time for implementation and also fails to recognize that many employers are still in the early stages of making decisions for the benefits they will provide for 2013.

The final SBC rule issued on February 14, 2012, is now nearly one year behind schedule compared with the timeframe established in section 2715 of the ACA, which called for the issuance of rules on these provisions one year after the date of enactment (i.e., by March 23, 2011) with an effective date twelve months later (i.e., by March 23, 2012). We appreciate that developing final rules was a complex process in which the agencies considered numerous comments from interested stakeholders and adopted many of the recommendations. But it should not fall upon those who must comply with regulations to do so on a shorter timeframe simply because the agencies took longer than prescribed to promulgate the rules.

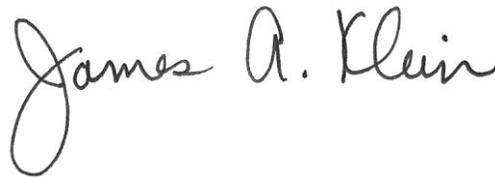
The implementation period for these requirements is unnecessarily abrupt, disruptive and burdensome and should either be delayed by twelve months to minimize these adverse consequences or provide a simple transition rule. Under a transition rule approach, employers should be permitted to continue to communicate with their employees about the health plan options they will make available for plan year 2013 through the unique materials and communications tools that they have long used for this purpose.

As we stated in our October 21, 2011, comments on the NPRM, the Council’s members have been leaders and innovators in providing employees with tools and materials to allow for meaningful choice and informed decision making about health coverage. Further, as a practical matter, the Departments should recognize that in nearly all instances, any group health coverage option offered by an employer will be a far more favorable choice for an employee than coverage that can be purchased in the individual market. This is not only because of the economies of scale and natural risk pooling achieved by group purchasing, but also because large employers are demanding and sophisticated purchasers of health coverage on behalf of their employees and typically contribute a significant portion of the premium for any coverage option elected by their employees.

Either a later effective date or simple transition rule is urgently needed with respect to these SBC requirements. This is, in part, because the final rule issued on February 14, 2012, is but a first step towards providing meaningful guidance and further guidance and instructions will still be needed before it can be operationalized. In the very short period of time since the issuance of the final rules, numerous and very material questions have arisen – and are likely to continue to arise – concerning the interpretation of the final rule. In addition, many large employers have not yet reached closure on decisions about the benefit packages they will offer starting in 2013 or changes they will make to the health plans they intend to continue to provide. These are often complex and difficult decisions that may not be resolved for several more months. Clearly, while these decisions could be made sooner in future years, it would be very disruptive to do so immediately simply to accommodate the excessively short implementation timeline for a new required notice pursuant to these final rules.

We continue to value the opportunities to share our views with your agencies on the many important and complex issues related to the implementation of the ACA. We also know and appreciate that the departments rightly view large employers as essential stakeholders in the continued implementation of the law. We ask, therefore, that a truly adequate implementation period be provided for meeting the requirements in the final SBC rule. This can be achieved either by delaying the applicability date in the final rule by twelve months or by providing a transition rule for 2013, which would allow employers to continue to provide meaningful information to employees to help them understand their health plan choices. Whichever approach is selected, we strongly urge that you issue further guidance communicating the change as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "James A. Klein". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

James A. Klein  
President

CC: Phyllis Borzi, Assistant Secretary of Labor, Employee Benefit Security Administration

J. Mark Iwry, Senior Advisor to the Secretary of the Treasury and Deputy Assistant Secretary for Retirement and Health Policy

Steven Larsen, Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight, U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services