

March 29, 2010

The Honorable Peter Orszag  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Mr. Orszag

It is our understanding that the Department of Labor has submitted a proposed regulation to the Office of Management and Budget for a 90-day review that would redefine the phrase “welfare benefit plan” under the Employee Retirement Income Security Act of 1974 (ERISA). We are concerned that this proposal, as applied, may be incompatible if not irreconcilable with provisions in the Patient Protection and Affordable Care Act (PPACA), and may make it difficult if not impossible for employers to comply with either PPACA or the regulation. We request that this proposed regulation be withdrawn in order to assess its compatibility with the intent of the recently enacted comprehensive health care reform.

We are all organizations that represent employers and employer associations. The companies we represent voluntarily provide health, retirement and other valuable benefits under the ERISA framework. During the year-long debate over health care reform, we encouraged Congress and the Administration to build on current strengths by working to develop and advocate strategies for controlling costs and improving access while preserving ERISA.

Over 170 million Americans receive health care benefits from their employer under the ERISA framework. The nationally uniform federal standard provided by ERISA is a critical feature of our employment-based health care system. By preserving the ability to offer and maintain equal benefit plans across state and municipal lines, ERISA enables employers to cover beneficiaries in more than one state or locality, regardless of the physical location of employees and retirees. The recently-enacted Patient Protection and Affordable Care Act reflects the view of Congress and stakeholders that ERISA preemption must be maintained, protecting employer-sponsored plans from conflicting state or local requirements and allowing employers to offer uniform benefits to their employees.

Given the recent enactment of PPACA which preserves ERISA preemption, we have significant concerns with the regulation currently before OMB. As we understand it, the proposed redefinition of a “welfare benefit plan” could obligate employers, whose plans are currently governed by nationally uniform rules under ERISA, to comply with myriad state or local rules. If adopted, this change would undermine the clear intent of Congress and the President that health care reform maintain the uniform framework provided by ERISA.

To accurately consider the compatibility of this definition of “welfare benefit plan” with the complex health care reform recently enacted, we ask that the proposed regulation be withdrawn.

Sincerely

American Benefits Council  
Business Roundtable  
Corporate Health Care Coalition  
The ERISA Industry Committee  
HR Policy Association

National Association of Wholesaler-Distributors  
National Association of Manufacturers  
National Business Group on Health  
National Coalition on Benefits  
National Restaurant Association  
National Retail Federation  
Retail Industry Leaders Association  
U.S. Chamber of Commerce