Congress of the United States
Washington, DC 20515

September 23, 2013

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Daniel Werfel
Commissioner (Acting), Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Dear Secretary Lew and Acting Commissioner Werfel:

We write to request details on the U.S. Treasury Department's methodology used in assessing the economic impact of the tax imposed upon health insurance providers as required by the President's health care law. The Administration, in the proposed rule, noted that this rule was not a "significant" rulemaking action with an adverse impact upon the economy of $100 million or more, which would require it to specifically analyze the economic impact of this tax. However, recent data on the amount collected by the tax as well as the pass-through costs resulting from this tax appear to show that this assessment may not have been based on all available data.

The President's health care law imposes a number of new taxes on American businesses and individuals. Among these taxes is an annual fee levied on health insurance providers, calculated through a statutory formula that is based upon the net premium amounts collected by each insurer for a calendar year. The law predetermines a fixed amount of revenue that must be collected by this tax each year, regardless of trends in premiums or insurer business. Based on the law, the health insurance tax will collect more than $101 billion by 2022—an amount that far exceeds the $100 million threshold outlined in Executive Order 12866

Further, in assessing the economic impact of this tax, the collection figure alone does not convey the whole story. As the Congressional Budget Office has pointed out, this tax "would be largely passed through to consumers in the form of higher premiums for private coverage." In addition, unlike most business expenses, this tax is non-deductible for insurers, which will further incentivize insurers to increase beneficiary premiums to offset the additional tax burden. This further increase in premiums will hit small businesses and individuals hardest. The National Federation of Independent Business estimates that at least 146,000 jobs will be lost and families will pay an additional $5,140 in premiums by 2022 as a result of this pass-through tax. Thanks to the way the premium tax is structured in the law, these premium increases will generate increased tax penalties, which will repeat the vicious cycle of tax increases and pass-through costs.

Finally, the health insurance tax will have a negative economic impact on states as well. Since Medicaid managed care plans are not exempt from this tax, plan sponsors will also likely pass along the increased costs imposed by this tax to the states, once again resulting in higher premiums for state Medicaid plans. As a result, the fiscal strain on many states will be further exacerbated by the downstream cost of this new tax. Other services will be sacrificed to account for these costs, which will create further economic uncertainty.

To better understand how the Administration determined that the proposed rule is not economically significant, please respond to the following questions and document requests:

- What methodology did the Administration employ in assessing the total cost of this tax?
- As part of its calculations, did the Administration account for the pass-through costs of the tax to families and small businesses in the form of higher insurance premiums and to states through higher Medicaid costs? If not, why not?
- Did the Administration calculate the economic impact of the pass-through costs imposed as a result of this tax, including lost wages, reduced health benefits and employment opportunities? If not, why not?
- Did the Administration take into account the non-deductibility of the health insurance tax in estimating the economic impact of this proposed rule? If not, why not?
- Please provide any memos, e-mails, or other documentation developed by your department or the Office of Management and Budget related to the development of this analysis.

Your reply is requested by no later than the close of business on Friday, October 18. Thank you for your response.

Sincerely,

Michael B. Enzi
United States Senate

Erik Paulsen
United States Congress

Lamar Alexander
United States Senate

Orrin G. Hatch
United States Senate

Pat Roberts
United States Senate

John Thune
United States Senate

Johnny Isakson
United States Senate

Tim Scott
United States Senate

Pat Tiberi
United States Congress

Charles W. Boustany, Jr.
United States Congress

Lynn Jenkins
United States Congress

Todd Young
United States Congress

Tim Griffin
United States Congress

Mark Kirk
United States Senate

John Barrasso
United States Senate

David G. Reichert
United States Congress

Aaron Schock
United States Congress

Diane Black
United States Congress

Mike Kelly
United States Congress