United States Senate
WASHINGTON, DC 20510

June 15, 2012

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

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

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

Dear Secretaries Geithner, Solis, and Sebelius:

We write concerning the Request for Information (RFI) Regarding Stop Loss Insurance (CMS-9967-NC) issued jointly by the Departments of the Treasury, Labor (DOL), and Health and Human Services (HHS) and published in the Federal Register on May 1, 2012. The RFI seeks data relating to the nature and practice of stop loss insurance, commonly purchased as a backstop for self-insured plans, and especially critical for small businesses that may have enormous fluctuations in costs due to individual plan beneficiaries. The questions and background in this RFI suggest that the Administration may be considering actions to limit stop loss coverage for small and medium plans, which would be outside the limits of the Administration's existing authority.

Placing limits on stop loss coverage could force businesses to switch from more flexible self-insured plans, into more regulated plans subject to the multitude of new mandates included in the Patient Protection and Affordable Care Act (PPACA). This could ultimately result in businesses dropping health insurance for employees as costs become prohibitively expensive. As ardent advocates for free enterprise and maximum flexibility for small businesses, we are concerned by federal government actions that may threaten the ability of small businesses to conduct their affairs, provide for their employees, grow, and create jobs.

Many small to medium sized businesses have found self-insurance to be a useful solution for the health insurance needs of their employees, because it provides them a large degree of flexibility in designing a plan and managing costs. Some businesses decide to limit the possible risks associated with self-insurance by purchasing stop loss insurance. Because stop loss insurance acts as a backstop to cover extremely high unexpected costs associated with an individual in a health plan, or to help a business cover higher than expected aggregate plan costs, this kind of insurance is critical for operating a predictable, affordable self-insured health plan. Any possible disruption of these services is of paramount concern to lawmakers, employers, and tens of millions of plan participants.

We are concerned by some of the policy issues raised in the RFI and their potential impact on small businesses' ability to continue to be effectively self-insured. Accordingly, we would like to know more about the considerations and rationale related to this RFI. Please respond separately to each of the following questions and requests:

1) Please explain the statutory authority you are asserting in pursuing a potential change in federal rules relating to stop loss insurance for self-insured plans. Given all of the regulatory uncertainty created by the new health care law that is plaguing employers and health plans, why did the Administration deem it necessary to pursue this RFI pertaining to a subject over which Congress did not grant the executive agencies legislative or regulatory authority?

2) Please provide all communications with any department, agency, or Administration official regarding efforts to directly or indirectly reduce the number of individuals enrolled in self-insured plans.

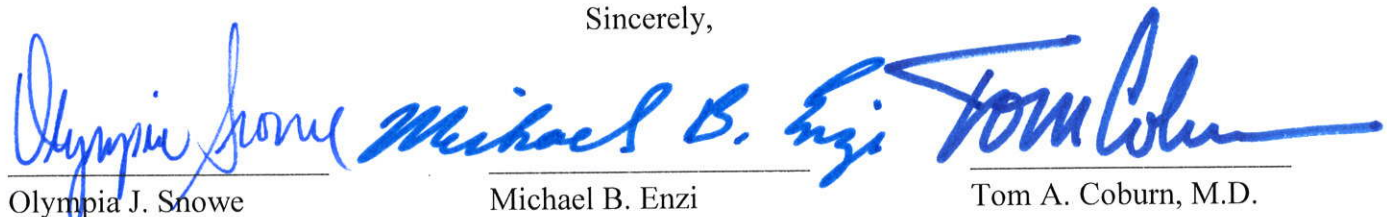
3) How would setting a minimum attachment point, which employers must pay before individual or aggregate stop loss kicks in, affect small businesses' access to self-insured plans?

4) If fewer individuals are covered by self-insured plans as a result of changes in stop loss insurance, how would this effect the distribution of the new health insurance premium tax, created in Title IX, Section 9010 of PPACA?

5) Please provide all emails, studies, reports, and analyses the Administration has conducted or commissioned pertaining to the development of this RFI and/or the topics contained in the RFI.

We remain committed to ensuring all employers maintain maximum flexibility in choosing benefit structures that best meet the needs of employers and their employees. As the RFI stipulates that comments are due within 60 days of publication in the Federal Register, we ask that your responses be received with at least two weeks remaining *before the comment period closes*. If you have any questions, you may contact James Gelfand on the Small Business and Entrepreneurship Committee at (202) 224-7884, Chuck Clapton with the Health, Education, Labor, and Pensions Committee at (202) 224-6770, or Josh Trent with Senator Coburn at (202) 224-5754.

Sincerely,



Olympia J. Snowe
Ranking Member
Committee on Small Business and Entrepreneurship

Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions

Tom A. Coburn, M.D.
Ranking Member
Committee on Homeland Security and Governmental Affairs, Permanent Sub-committee on Investigations