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Vice President

Human Resources Policy

October 20, 2011

**SUBMITTED ELECTRONICALLY
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The Honorable Timothy Geithner
Secretary of the Treasury
U.S. Department of the Treasury
Washington, DC 20224

The Honorable Hilda Solis
Secretary of Labor
U.S. Department of Labor
Washington, DC 20210

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

RE: Notice of Proposed Rulemaking: Summary of Benefits and Coverage and the Uniform Glossary

Dear Secretaries Geithner, Solis and Sebelius:

On behalf of the National Association of Manufacturers (NAM), thank you for the opportunity to submit the following comments on the Notice of Proposed Rulemaking: Summary of Benefits and Coverage and the Uniform Glossary, published in the Federal Register on August 22, 2011.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of the manufacturing economy by advocating policies that are conducive to U.S. economic growth. Our manufacturing economy and our ability to create jobs are significantly impacted by changes to health care infrastructure. Manufacturers consistently look to provide value in their health plans and appreciate attempts to provide savings through improved efficiencies and competition. We welcome this opportunity to comment on the Summary of Benefits and Coverage and the Uniform Glossary.

Over 90 percent of the NAM's members are small and medium-sized manufacturers, and many of those strive each day to develop, create, manufacture, ship and manage products with streamlined workforces. Resources are limited and additional burdens are significant. Therefore, we are sensitive to regulatory changes that can easily become overwhelming for employers.

- 1) For example, the Affordable Care Act required agencies to develop standards for the Summary of Benefits no later than March 23, 2011, with a deadline for health insurers and health plans to begin issuing the required summaries on March 23, 2012. Although the agencies did not meet the deadline, the proposed rule forces insurers to meet theirs without a final rule in place. Employers and insurers need a final rule in order to implement. This, combined with numerous other regulations and fluid dates, creates an atmosphere of uncertainty that is not conducive to economic recovery and job creation.
- 2) An often repeated promise during the debate over the Affordable Care Act was that employees would be able to keep the health care they have. Although there are significant provisions in the Act that are not supportive of this goal, we believe the rulemaking process provides an opportunity ensure that the employer- based system is not undermined. With respect to the proposed rule, the NAM believes a safe harbor for insured and self-funded plans, including expatriate plans, in the large group market is necessary. Large employers have honed, customized and detailed open enrollment materials to accurately reflect their employees' health plan choices and properly communicate with their employees. The current system of benefits communications provides employees with detailed and specific information about each aspect of the plans available to them and allows employees to determine which options are beneficial to their needs. The final regulations should build on these efforts and leverage them as much as possible. Broad general forms with details that may or may not be of interest to significant numbers of employees will cause confusion and undoubtedly create additional questions from employees who are accustomed to receiving a more specific analysis. Imposing a standardized form for each of their benefit designs would be expensive and is unnecessary given the tools currently available.
- 3) In addition to over-generalized information, the proposed rule may also have the opposite effect of overwhelming an employee with paper and information, which could make benefit choices more confusing. The proposed regulation currently requires a separate Summary of Benefits and Coverage to be provided for each coverage tier. For a group health plan that has multiple benefit options, premiums and cost sharing by tier, creating separate summaries of benefits for each offered plan at enrollment would generate a significant and overwhelming number of documents for the employees to review, generating unnecessary confusion and added costs for health insurance issuers and sponsors of group health plans. Again, this increases the burden on human resources departments to produce, package and distribute documents as well as answer questions that were previously clearer in existing communications.
- 4) The proposed regulations require the Summary of Benefits and Coverage to include the premium for the plan, however, this is not a statutory requirement under the Affordable Care Act. This is a very onerous task and likely to provide misleading information to individuals considering enrollment in a group health plan. For example, more information is often required, such eligible participants, for the issuer to estimate the premium.
- 5) The proposed rule seems to state that Summary of Benefits and Coverage documents must be issued to not only the employee, but the spouse and any dependents. ERISA defines a beneficiary to mean "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit there under." It is important to clarify that dependents of the plan are not entitled beneficiaries and thus are

not specifically eligible for benefits or the need to receive what are clearly redundant documents.

- 6) Adding to the costs and regulatory burden of the Summary of Benefits, the cost of producing these documents are the coverage examples. Coverage examples would require additional paperwork specific to each employee. The NAM believes it would be appropriate for the agencies to consider an online alternative as opposed to additional paperwork.
- 7) The existing regulations relating to grandfathered plans state that notices regarding OB/GYNs, PCP choice and annual limit waivers be included in all materials explaining benefits, however, there is no mention of that in the Summary of Benefits documents. This should be clarified.
- 8) Expatriate plans should be exempt from this requirement. Employers with globally mobile workforces typically sponsor a single international plan to cover their expatriate employees. For this group, comparing plans is unnecessary, especially in the context of existing explanations of benefits. In addition, the Summary of Benefits document will likely not be applicable, and therefore will be more confusing to the employees given the nuances of international plans not contemplated in the forms.

The NAM appreciates the opportunity to submit these comments and hopes our concerns are considered. Ninety-seven percent of NAM members provide health insurance to their employees. Manufacturers are proud to provide the best manageable health care to their employees and are concerned that the Summary of Benefits proposed regulation and its overly burdensome requirements will increase costs and damage the robust employer-based system.

If we can be of further assistance on this matter, please do not hesitate to contact us.

A handwritten signature in black ink, reading "Joe Trauger". The signature is fluid and cursive, with a large initial "J" and "T".

Joe Trauger
Vice President, Human Resources Policy