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August 13, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Re: RIN0991-AB68, OCIO-991-IFC

Internal Revenue Service
Department of Treasury
Re: RIN 1545-BJ51

Office of Health Plan Standards and Compliance Assistance
Department of Labor
Re: RIN 1210-AB42

Submitted electronically via regulations.gov

RE: OCIO-991-IFC, Interim Final Rules for Group Health Plans and Insurance Coverage relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

To Whom It May Concern:

On behalf of Independent Sector, we appreciate the opportunity to submit these comments regarding our concerns and suggestions for improvement to the Interim Final Rules for Group Health Plans and Insurance Coverage relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act.

Independent Sector is the preeminent national organization that brings together all segments of the nonprofit and philanthropic community -- nonprofits, foundations, and corporate giving programs of all sizes and missions from across the country. We serve as the premier meeting ground for leaders of America's charitable and philanthropic sector to advance our vision of a just and inclusive society of active citizens, effective institutions, and vibrant communities. Our nonpartisan coalition enjoys a broad constituency of 540 organizations that collectively represent tens of thousands of charitable groups in every state across the nation.

Nonprofit organizations and foundations in the United States employ an estimated 12.9 million individuals. A great number of these organizations and a vast majority of our own members have worked diligently to ensure that their employees have access to health care insurance. The vast majority of nonprofits are very small with fewer than 25 employees, and they currently do not have the bargaining power to negotiate the lower insurance premium rates available to larger employers. Many of these organizations will benefit from the expanded options that will be available beginning in 2014 through the Exchange, and a number of smaller organizations may also benefit from the small-employer tax credit that will help tax-exempt organizations with less than 25 full-time equivalent employees offset the costs of providing insurance. However, the small-employer credit begins to gradually phase-out at the 10 employee threshold, limiting the full benefit only to the smallest organizations.

Nonprofits and foundations are particularly sensitive to changes in the economy as many nonprofits rely on donations and pledges to meet their annual budgets. During economic downturns, charitable giving tends to decline at the same time the demand for services from charitable organizations increases.¹ As health benefit costs have continued to increase and budgets are decreasing, nonprofit organizations can be faced with the undesirable choice of continuing to provide health coverage to the employees who are essential to fulfilling their missions, or eliminating jobs and making other cuts in their services. In order to find the balance that will allow them to sustain the workforce needed to achieve their charitable purposes, nonprofits need to have flexibility to adjust cost-sharing and coverage to control costs. We are particularly concerned about the ability of small and mid-sized nonprofits to retain their grandfathered plan status. Prices in the small group insurance market are already high and small employers lack bargaining power to control premium increases,

Under the interim final regulations, grandfathered health plans are prohibited from significantly reducing benefits, raising co-insurance charges, copayments, or deductibles, or lowering employer contributions. Nonprofits that cannot comply with the restrictions required to remain grandfathered or pay the higher cost associated with non-grandfathered plans are concerned they will be forced to drop employee health benefits before alternative coverage is available in 2014. We are very concerned that the restrictive and inflexible nature of the interim final regulations will limit the ability of nonprofits to make necessary cost-saving changes and retain their grandfathered plan status. To prevent the unnecessary loss of coverage, we encourage the Departments to adopt more flexible standards in the final rule.

Specifically, we would encourage the Departments to adopt a waiver for small and mid-sized nonprofit employers (up to 100 employees) that would permit them to retain their grandfathered plan status until 2014. This waiver would allow small nonprofits to continue to make necessary plan changes in order to preserve existing health coverage until 2014 when the Exchanges go into effect.

Second, we encourage the Department to permit plan sponsors with insured coverage to change insurers without losing their grandfathered plan status. The regulations currently permit self-funded plans to change their third party administrator without losing grandfathered status. It is only fair to permit insured plans to change their insurer. Locking employers into one insurer would prevent them from shopping for better rates and coverage or expose them to the cost increases associated with the loss of grandfathered plan status.

Thank you for allowing us to express our views on this important issue. We stand ready to be a resource to you and would welcome the opportunity to discuss this matter further.

Respectfully submitted,



Diana Aviv
President and CEO

¹ **Briefing on the Economy and Charitable Giving, The Center on Philanthropy at Indiana University, December 2008.**