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MEMORANDUM

To: Reporters and Editors
Fr: Jill Gerber for Sen. Grassley, 202/224-6522
Re: Administrative burden, costs to IRS of health care reform
Da: Thursday, Nov. 5, 2009

Sen. Chuck Grassley, ranking member of the Committee on Finance, continues to press the Administration and congressional Democrats to account for the administrative burden and expense to the Internal Revenue Service (IRS) of significant new agency responsibilities under health care reform. Today he released a brief response from the Administration to his earlier inquiry and made the following comment.

“The Administration’s apparent lack of interest in acknowledging the challenges and costs of administering all of these changes is intellectually dishonest. This is all part of health care reform, and the Administration ought to be transparent about it. It’s safe to say a lot of people already have enough trouble dealing with the IRS when problems come up. A recent TIGTA report also shows that the agency is having trouble administering the existing health care tax credit. So it’s hard to see how the agency could take on the huge responsibility it would be given under pending health care legislation without some real glitches, or worse. The White House and congressional Democrats need to take all of this into account and not set the IRS up for failure.”

The IRS response is attached. The details of his initial request follow here.

For Immediate Release
Thursday, Oct. 1, 2009

Grassley Urges Accounting of Government Growth to Administer New Health Plan

WASHINGTON – Sen. Chuck Grassley, ranking member of the Committee on Finance, is urging Congress to understand the significant cost of increasing the size of the government to administer the new health reform system under consideration. Grassley made his point during committee consideration of health reform care legislation. He wrote to key government agencies seeking cost estimates.

“The sponsors of this effort don’t have any idea of how many more federal employees, especially IRS employees, will be needed to enforce these provisions,” Grassley said. “Taxpayers pay for administrative costs, along with everything else. Before we expand the federal government, at taxpayer expense, we need to know exactly what we’re doing.”

Following are:

- (1) Senator Grassley’s statement submitted to the Finance Committee’s record today
- (2) Senator Grassley’s letter to the Treasury Secretary and commissioner of the Internal Revenue Service
- (3) an excerpt from a Lewin Group report estimating a 25 percent increase in the IRS’ administrative budget to administer the new health care provisions

Full Statement Regarding Costs of IRS Administration

Mr. Chairman, I’d like to take a few minutes to talk about something we haven’t spent much time on either here or in the group of six. And that is how the majority of this bill will be administered and the cost to administer to it. When the President did his Sunday morning talk show blitz the weekend before last, he stated that he did not intend to grow the government. Yet, I don’t think we have any idea of how many more federal employees, particularly IRS employees, will be needed to enforce the provisions. The costs to implement this bill are not included in CBO’s or JCT’s estimates.

The reason I raise this now is that many of the amendments we are about to consider would amend the Internal Revenue Code and therefore affect the IRS. The Chairman’s Mark already contains modifications to over a dozen existing tax laws. More importantly, the Mark would task the IRS with administering several new and very controversial provisions including the individual mandate, employer free-rider penalty, the premium subsidy for low income individuals, the small business tax credits, working with exchanges to verify income information and figuring how to calculate and collect five new excise taxes.

Senator Roberts said that some people joke that CMS stands for “It’s a Mess”. Well, the same could be said of the IRS. As those of us on this Committee know all too well, the tax gap is a serious issue. The hundreds of billions of dollars that IRS isn’t collecting suggest that the IRS isn’t effective at executing its primary mission – the enforcement of the revenue laws. The IRS is just now starting to increase its enforcement efforts which had declined significantly after the restructuring a decade ago. But, just like many other federal agencies, it is facing a human resources crisis – more than 50% of its workforce is expected to retire in the near future. So it doesn’t have people it needs to do its first job, never mind a whole new one.

Mr. Chairman, in response to a question I asked last week about IRS administration of the employer free-rider penalty, you implied that the IRS may be best positioned for these tasks because it has the data. It was the same argument that was put forth last year when it was determined that IRS would be responsible for issuing stimulus checks to individuals – even for those folks who otherwise had no reporting requirement.

Similarly, under the Mark, the IRS is being tasked with implementing provisions for which it actually must go out and collect new data – data that is unrelated to a taxpayer's tax liability.

The IRS would have to determine whether everyone has insurance and assess an excise tax on those who do not.

The IRS would have to determine whether employers are providing affordable coverage and assess an excise tax on those that do not.

The IRS would have to work with the new exchanges to verify whether an individual is eligible for a subsidy but we still don't know who the IRS will be sharing information with. It could be a state agency or a private entity with which a state contracts.

The IRS would have to develop new processes and procedures for insurance companies and employers to challenge and appeal the calculations of the high-cost premiums tax and the employer free rider excise tax. Both of these taxes are calculated by a third party other than the IRS or the taxpayer.

The IRS would have to develop a method for calculating the new excise taxes on medical devices and pharmaceuticals, the basis for which is unprecedented.

In light of these issues, I think it is fair to consider a couple of questions. Assuming that an individual mandate is constitutional, do we really want the IRS checking up on whether everyone has health insurance? Do we really want to facilitate the dissemination of tax information to third parties such as employers or an insurance exchange? Shouldn't we be providing more resources to the Department of Health and Human Services to ensure that it can receive and process the necessary data to implement the bill instead of the IRS?

The IRS's responsibilities for the stimulus bill are nothing compared to what it is being asked to do to implement the largest social program since Medicare. And with stimulus, we saw significant declines in both IRS customer service and enforcement.

Mr. Chairman, I'd like to ask whether you or your staff have received from the Administration, estimates of the cost to implement this bill, particularly to HHS and the IRS? If not, do you know when we can expect to receive such estimates? Since these costs should be considered as part of the overall cost of this bill, I believe receiving this information is just as important as getting JCT and CBO scores before voting on this bill.

September 30, 2009

The Honorable Timothy F. Geithner
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Geithner and Commissioner Shulman:

As you are aware, the Senate Finance Committee will soon be voting on the *America's Healthy Future Act of 2009* ("Act"). I am cognizant of the historic nature of such sweeping legislation that intends to improve access and affordability of health care. However, I am very concerned about another historic aspect of this bill – the unprecedented role of the Internal Revenue Service ("IRS") in implementing a social program that has nothing to do with the IRS' primary mission of collecting taxes. I am writing to get an estimate of the costs to the Department of the Treasury ("Treasury") and IRS associated with this extraordinary expansion of duties.

While Chairman Baucus and the CBO maintain that the provisions of this bill are deficit neutral, I know there will be immense implementation and enforcement costs associated with a bill of this magnitude. Yet, the proposed legislation does not acknowledge these costs.

In the preliminary analysis released by the CBO, Director Douglas Elmendorf offers various caveats as to why the analysis does not constitute a comprehensive cost estimate for the proposal. He specifically writes that "this analysis reflects an assumption that sufficient reporting and enforcement provisions will be included to implement the specified policies in an effective manner. More generally, as CBO's and JCT's understanding of the specifications improves, that could also affect our future estimates." He also states that CBO "has not taken into account all of the proposal's effects on spending for other federal programs or estimated federal government's administrative costs for oversight and implementation that would be subject to future appropriations." I read this to mean that there are certain understood costs that come part-in-parcel with enacted legislation that, although not completely clear right now, will be necessary to fund in order to fully implement this bill.

The following is a preliminary list of the provisions that the IRS will be responsible for administering and enforcing. For each of these provisions, please provide an estimate of those costs for administering and enforcing each of these provisions. Please separately state personnel costs for education and enforcement and indicate the number of revenue agents, revenue officers, customer service representatives, lawyers and management personnel needed. Please also state the costs for changing or creating new forms including systems changes for processing, customer service and enforcement. To the extent possible, indicate the forms that would need to be changed and obtain from

the Office of Management and Budget an estimate of additional taxpayer burden. In addition, please provide answers to the questions raised for each provision where applicable.

- 1) Refundable credit and cost-sharing subsidy for individuals and families purchasing health insurance through the newly created state exchanges
 - a. It is well documented that the Earned Income Tax Credit is rife with fraud and abuse. How would the IRS prevent the same problems from arising with this credit?
 - b. While eligibility for this new “premium credit” is based on modified adjusted gross income, individuals and families qualifying for this credit are unlikely to have taxable income. Would this require Treasury to maintain accounts for people who otherwise would have no contact with the IRS? Does Treasury currently do this for any other government programs? If yes, please list.
 - c. It appears that each of the exchanges would calculate the amount of the credit for each individual participating in that exchange and would then report such amount to Treasury so that Treasury can remit the payment directly to the insurance company. How is this different or similar to the Health Coverage Tax Credit payment remittance? What processes and procedures exist, or will be created, to ensure the accuracy of the amounts calculated by the exchanges and to recover incorrect payments to the insurance companies?
 - d. The IRS is expected to provide tax information to each of the different state exchanges, possibly numbering 50, so that each exchange can verify eligibility requirements. For those who do not file tax returns, how would the IRS verify income? What is the estimated cost to the exchanges to comply with privacy and safeguards requirements?
 - e. Individuals are ineligible for the premium credit if the individual has access to an affordable health insurance plan through the individual’s employer. Thus, in order to verify an individual’s eligibility for the premium credit, it would appear that the IRS must somehow track affordability of insurance plans offered by every employer to every employee. Aside from the IRS auditing unrelated employers as part of the audit of an individual eligible for the premium credit, how would the IRS enforce this provision?
- 2) Small business tax credit
 - a. Does the IRS currently capture information on the number of full time equivalent employees per employer? If not, how would the IRS enforce eligibility requirements for this tax credit? Does the new definition of “qualified small employer” conflict with any existing IRS rules or regulations regarding small businesses?
- 3) Requirement that all U.S. citizens and legal residents have health insurance, with reporting of such fact on income tax returns

- 4) Penalty on individuals for not having health insurance
 - a. Does the IRS conduct enforcement for any other social programs that are under the jurisdiction of other federal agencies?
 - b. For those who are not required to file tax returns, how would IRS verify that they have health insurance?

- 5) Penalty on employer for not providing affordable coverage
 - a. In order to accurately calculate and pay this penalty, it would seem that an employer who does not provide health insurance would need to ask each employee whether that employee has purchased insurance through an exchange and whether such employee was eligible for the premium credit from Treasury. What privacy and safeguards requirements would apply to employers who must collect this tax information?

- 6) Excise tax on insurers that provide high cost insurance
- 7) Penalty for Under Reporting Liability for Tax to Insurers
 - a. Do any other taxes exist today where someone other than the taxpayer or the IRS is calculating and assessing taxes owed by the taxpayer?

- 8) Employer health insurance reporting to employees

- 9) Conforming definition of medical expenses

- 10) Increase in penalty for improper distributions from HSAs

- 11) Limitations on contributions to FSAs

- 12) Corporate information reporting

- 13) Requirements for charitable hospitals

- 14) Excise tax on pharmaceutical companies
- 15) Excise tax on medical device companies
- 16) Excise tax on health insurance providers
- 17) Excise tax on insurance plans to fund Patient-Outcomes Research Trust Fund
 - a. Does the Business Master File currently distinguish entities by these four categories? If yes, please provide the number of entities that will be subject to each of these taxes.
 - b. All but the new trust fund tax are effective for 2010 but based on 2009 sales and revenue for each of these sectors. Does IRS currently capture the information needed to assess these taxes? If yes, please indicate whether IRS data indicate that the aggregate fees per sector would meet, exceed, or fall short of the amounts indicated in the Act.
 - c. Are any other independent, tax-exempt organizations funded with trust fund taxes?

As you are aware, I, along with many of my colleagues on the Finance Committee, have been, and continue to be, concerned about the IRS's ability to close the tax gap. The IRS has to overcome many challenges just to provide the services that taxpayers expect and to enhance enforcement efforts to ensure that every dollar that is owed is collected. I believe that IRS should conquer these challenges before taking on new roles like being the enforcer of health insurance mandates.

Before the Finance Committee votes on this legislation, I believe the Committee must be made aware of the challenges and costs of implementing the *America's Healthy Future Act of 2009* or any of the other health reform bills that lay the burden of implementation upon the IRS. As a result, I ask that you provide the information requested in writing as soon as possible.

If you have any questions regarding this request for information, please do not hesitate to contact my staff.

Sincerely,

Chuck Grassley
Ranking Member

The Lewin Group estimates a 25 percent administrative budget increase at the IRS:

We assume that the administrative budget for the Internal Revenue Service (IRS), currently about \$9.0 billion, is increased by 25 percent to process to administer and audit the premium and subsidy computation components of the program. This would be an additional \$2.2 billion in the IRS administrative budget.

<http://www.lewin.com/content/publications/HealthyAmericansActAnalysis.pdf>