April 26, 2012

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton and Chairman Stearns:

We write to express our concern about a number of misleading, inaccurate, and contradictory statements in the report you released on the effects of the Patient Protection and Affordable Care Act on members of the President's Council on Jobs and Competitiveness. The report fails to meet the standard of unbiased, fact-based investigation expected from the Committee.

The report is based on a document request you sent to members of the President's Council on Jobs and Competitiveness in October 2011. In these letters, you appeared to have pre-judged the facts, stating that "[n]o policy pursued by this Administration has had a more unsettling effect on the business community than the Patient Protection and Affordable Care Act."[1] The rest of your investigation appears to be an effort to justify this pre-judged conclusion.

Since April 2010, the economy has gained over three million jobs; over 500,000 of these jobs have been in the health care sector. The health care reform bill has helped 2.5 million young adults gain coverage; provided tax credits to help reduce health insurance costs for

[1] Letter from Chairman Fred Upton and Chairman Cliff Stearns to Members of the President's Council on Jobs and Competitiveness (Oct. 7, 2011).

hundreds of thousands of small businesses; protected tens of millions of privately insured individuals from the worst abuses of the insurance industry; reduced drug costs for 3.6 million seniors; and provided billions of dollars in benefits to help reduce early retiree health costs for thousands of small and large businesses. When the law is fully implemented, it will help over 30 million Americans who would otherwise be uninsured obtain high quality, affordable health insurance. Your conclusions ignore these and many other benefits of the health care reform law.

There are many ways in which the report you released today is flawed: it selectively uses information and documents to portray the health care reform law as being costly and burdensome while ignoring documents that disprove this conclusion; it bases findings upon factually incorrect information and documents that say the opposite of what the report concludes; and it ignores the many benefits of the Affordable Care Act. These flaws have resulted in a fundamentally misleading report.

In October 2011, we wrote to you "to object to your decision to investigate companies because their leaders are participating in the President's Council on Jobs and Competitiveness." We wrote that "[y]our decision raises an exceptionally serious issue: are the Committee's powers being used to intimidate companies that cooperate with President Obama?"[2] The biased and partisan approach that you have taken in today's report heightens our concerns about how the Committee is using its investigative powers.

**Selective Use of Information and Documents**

In preparing this report, your staff appears to ignore many documents that did not comport with the conclusion that you had reached even before opening the investigation. For example, the report states that "PPACA is raising costs." But this conclusion is not consistent with many of the documents received by the Committee.

Several companies that responded to the Committee indicated that cost increases would be nonexistent or described ways in which the law would help them save money. For example, a document provided by Intel dated just after the passage of health reform and entitled, "Headlines for Intel," states that "reactions to the bill, as we know, have been passionate, both pro and con. Despite the mixed reviews, the headlines for Intel are positive. . . *Minimal impact on Intel's employee benefits coverage.*"[3]

Other companies provided similar responses. DuPont wrote the Committee that "[w]e have not performed a calculation of the financial impact of PPACA on our medical plan cost, but

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[2] Letter from Reps. Waxman and DeGette to Chairman Fred Upton and Chairman Cliff Stearns (Oct. 20, 2011).

[3] Email from Intel Staff to Intel Staff, (Apr. 9, 2010)

do not believe it to be material at this time."[4] Kodak wrote that "we did not find that health reform would have a significant impact on Kodak's plan costs or design at this time."[5] ImpreMedia wrote that "the Act's effect on ImpreMedia at this time is likely not significant."[6] BNSF Railway wrote that "PPACA will have limited impact on our 40,000 employees."[7]

Your report cites concerns of increasing costs for seniors. But it does not include documents in possession of the Committee describing the ways that seniors will benefit from the Affordable Care Act. For example, DuPont wrote:

> Because we have a Medicare Part D plan, our retirees' brand name prescription drugs purchased in the 'donut hole' … portion of the benefit qualify to receive a 50% reimbursement from the drug manufacturers. These reimbursements were an outcome of the Act and our plan/retirees have benefitted from it.[8]

The responses of companies that indicated that health reform will have no or minimal impact on costs are consistent with publicly available information from the insurance companies themselves. In February 2012, Aetna told its investors that the provisions of the Affordable Care Act that are now in effect (such as new free preventive care requirements and the removal of annual and lifetime limits) are responsible for a cost increase of only 0.3%.[9]

These responses contradict your conclusions; it is unfortunate that you chose not to release or cite this information.

**Use of Factually Incorrect and Out-of-Context Information**

The report also bases important conclusions on documents and materials provided to the Committee that are incorrect. For example, the report concludes that health care reform will have "negative impact on seniors' coverage." This finding is based in part on documents from

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[4] Letter from Pamela J. Murray, DuPont, to Chairman Fred Upton and Congressman Cliff Stearns (Oct. 24, 2011)
[5] Letter from Stacey Stern Albert, Kodak, to Chairman Upton and Chairman Stearns, (Oct. 28, 2011).
[6] Letter from William Graham, ImpreMedia, to Chairman Fred Upton and Chairman Cliff Stearns (Nov. 7, 2011)
[7] Letter from Matthew K. Rose, BNSF Railway, to Chairman Fred Upton, Chairman Cliff Stearns, Ranking Member Henry A. Waxman, and Ranking Member Diana DeGette (Oct. 27, 2011).
[8] Letter from Pamela J. Murray, DuPont, to Chairman Fred Upton and Chairman Cliff Stearns (Oct. 24, 2011)
[9] Aetna, *Q4 2011 Aetna Inc Earnings Conference Call – Final* (Feb. 1, 2012)

American Express and Xerox that predict "significant premium increases … [or] benefit cuts and market withdrawals" by Medicare Advantage plans in 2011."[10] But these company predictions were incorrect: in fact Medicare Advantage premiums have declined in both 2011 and 2012, resulting in a total premium reduction of 16% since passage of the Affordable Care Act, while enrollment in the Medicare Advantage program has increased by 17% over the same time period.[11]

In other cases, the report appears to reach a conclusion that is at odds with the information contained in the cited document. For example, the report notes that "one Council member *has already lost one of its health care plans*" (emphasis in original), attributing this to the health care reform law. But the document cited to assert this fact cites a different reason entirely for the insurance company dropping coverage. In the email, which is sent from the insurance broker for Kleiner, Perkins, Caulfield, and Byers to an employee of the same firm, the broker describes the reasons why an insurer, Guardian, is withdrawing from the market: "Guardian said it was because only 2% of their business is medical and they found they just can't compete with the larger carriers in the medical arena."[12]

At times, the report is contradictory. For example, it makes the simultaneous claims that companies will face increased costs under health care reform and that companies will cut costs by sending their employees to the health insurance exchanges for coverage.

Addressing the issue of whether employers will drop coverage, the report takes important documents out of context. For example, the report cites a Boeing presentation to employers to warn that it is "probable that many employers will decide to discontinue offering health plans." [13] But the report highlights only part of the quote rather than Boeing's full assertion that the company will not end coverage:

> At Boeing, the health of our employees is a core value, and the company believes that offering high quality plans creates an important competitive advantage in attracting and retaining our skilled workforce.[14]

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[10] American Express Co., *Health Care Reform Overview: Wave One* (Aug. 2010).
[11] HHS, *Medicare Advantage Premiums Down 7 Percent on Average; Enrollment Up 10 Percent* (Feb. 1, 2012).
[12] Email from Yiva Smith, Vice President, DH Insurance Services, Inc, to Gloria Hui, Kleiner, Perkins, Caulfield, and Byers (Jan. 26, 2011).
[13] Boeing Co., *A Health Partnership: Questions and Answers on Health Care at Boeing for Employees* (Sep. 21, 2010).
[14] Boeing Co., *A Health Partnership: Questions and Answers on Health Care at Boeing for Employees* (Sep. 21, 2010).

The report makes a similar distortion of comments in a Mercer study prepared for Comcast, highlighting a quote that "some companies will terminate their plans and exit" while failing to include to include a second quote on the same slide that "[m]ost companies will retain and optimize their current programs."[15]

**An Unrepresentative Sample**

In our October 20, 2011 letter, we wrote that "[t]hese companies do not have unique expertise regarding the impact of the health reform legislation, and they do not represent a cross-section of the organizations and individuals that will be affected by its provisions."[16] As it turns out, nearly one-third of the 23 companies the Committee contacted did not provide any responsive documents to the Committee's request. This makes your initially unrepresentative sample even less reliable.

As one target of your investigation pointed out, a meaningful study of the impact of the Affordable Care Act should "canvas a broad array of industries," "determine the methodologies. . . . for measuring hiring, economic growth and costs," chose a proper measuring period since "sampling data at this point . . . may yield incomplete results," "include statistical analysis that would take into account other variables," "compare historical rates of change," and "be performed by designated persons with recognized expertise in statistical sampling methods."[17]

We do not believe your report meets any of these wise and prudent criteria for a meaningful study of the impact of the Affordable Care Act on employer costs.

Sincerely,

Henry A. Waxman
Ranking Member

Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations

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[15] Mercer Consulting, *Health Care Benefits Strategy: Planning for the Future*, at 8 (July 2011).
[16] Letter from Reps. Waxman and DeGette to Chairman Fred Upton and Chairman Cliff Stearns (Oct. 20, 2011).
[17] Letter from Mark Gallogly to Chairman Fred Upton and Chairman Cliff Stearns (Oct. 28, 2011)