Congress of the United States
Washington, DC 20515

January 29, 2013

The Honorable Neal Wolin
Acting Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Steve Miller
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Acting Secretary Wolin and Acting Commissioner Miller:

Over the past six months, the Committee on Ways and Means and the Committee on Oversight and Government Reform have sought information related to the Treasury Department and Internal Revenue Service proposed rule[1] and final rule[2] regarding the health insurance premium tax credits contained in the Patient Protection and Affordable Care Act.[3] The Committees have also sought regulatory and legal analysis pertaining to the rule. In a series of letters on August 20, 2012,[4] October 18, 2012,[5] and December 13, 2012,[6] the Committees requested:

1. All legal analysis, internal or external, conducted by the IRS which authorizes IRS to grant premium-assistance tax credits in federal Exchanges; and
2. All documents and communications between IRS employees and employees of the White House Executive Office of the President or any other federal agency or department referring or relating to the [IRS rule].

In September, during a Ways and Means Subcommittee on Oversight hearing, then-Deputy Commissioner Steve Miller agreed to provide all documents "relating to the determination that the insurance premium subsidies apply to… federally created exchanges."[7]

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[1] Department of the Treasury, Internal Revenue Service, *Health Insurance Premium Tax Credit*, 76 FEDERAL REGISTER 50935 (August 17, 2011) *available at:* http://www.gpo.gov/fdsys/pkg/FR-2011-08-17/pdf/2011-20728.pdf.

[2] Department of the Treasury, Internal Revenue Service, *Health Insurance Premium Tax Credit*, 77 FEDERAL REGISTER 30378 (May 23, 2012) *available at*: http://www.gpo.gov/fdsys/pkg/FR-2012-05-23/pdf/2012-12421.pdf.

[3] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152 § 1401, 124 Stat. 119, 213.

[4] Letter from Rep. Darrell Issa, Rep. Trey Gowdy, and Rep. Scott DesJarlais to Douglas Shulman, Commissioner of the IRS (August 20, 2012).

[5] Letter from Rep. Darrell Issa, Rep. Trey Gowdy, and Rep. Scott DesJarlais to Timothy Geithner, Secretary of the Treasury and Douglas Shulman, Commissioner of the IRS (October 18, 2012).

[6] Letter from Rep. Dave Camp, Rep. Darrell Issa, and Rep. Charles Boustany to Timothy Geithner, Secretary of the Treasury (December 13, 2012).

[7] Testimony of Steven T. Miller, House Committee on Ways and Means Subcommittee on Oversight Hearing on Implementation of Tax Law Changes in the Affordable Care Act, September 11, 2012.

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More than seven weeks after the initial request, on October 12, 2012, Treasury responded to the letter and provided some documents. However, Treasury's production failed to include a single document or communication generated before the publication of the proposed rule on August 17, 2011, or any other substantive, non-public communication or document related to the rule or the issue of whether the tax credits would be authorized in federal exchanges. After a follow-up letter on October 18, 2012, from the Committee on Oversight and Government failed to produce additional cooperation from Treasury, Treasury officials met with staff from both Committees on November 2, 2012, to discuss the rule's development and to discuss Treasury's response to the Committees' requests.

Treasury officials offered to make certain internal memos available for *in camera* review. As an accommodation to Treasury, the Committees' agreed to Treasury's request to redact non-responsive material since Treasury officials communicated that would be the quickest way for the Committees to begin a review of the material. However, several portions of these documents were heavily redacted, including sections titled "Significant Issues and Considerations." The Department has even refused to allow Committee staff to review the entire memos without redactions in another *in camera* review in order to verify Treasury's assertions that the redacted sections of the memorandums are immaterial to Committee oversight interests. Regardless, since the redacted material undoubtedly relates to Treasury's regulatory analysis and constitutes documents and communications relating to the IRS rule, it must be turned over to the Committees.

Our staffs have attempted to work with Treasury in a cooperative manner regarding our request and they have tried repeatedly to accommodate Treasury's concerns about producing the documents, but Treasury refuses to be forthcoming with the Committees. We write today to ask that you produce the unredacted versions of all the documents reviewed thus far by our staffs within one week. Failure to comply with this request by February 5, 2013, will force the Committees to consider the use of compulsory process. We also write for an update on the status of the Committees' request for "all documents and communications between IRS employees and employees of the White House, Executive Office of the President or any other federal agency or department referring or relating to the proposed IRS rule or the final IRS rule" since we initially requested this information on August 20, 2012.

Additionally, because evidence reviewed by the Committees references key decision makers in the Treasury Department's regulatory process, we ask that you make available the following Department officials for transcribed interviews: Cameron Arterton, Lisa Zarlenga, Rebecca Ewins, and Emily McMahon. Please contact Chris Armstrong of Ways and Means staff at (202) 225-5522 or Brian Blase of Oversight and Government Reform staff at (202) 225-5074 by February 4, 2013, to schedule these transcribed interviews.

When producing documents, please deliver production sets to the Committee on Ways and Means in Room 1102 of the Longworth House Office Building and to the Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format.

Please contact Chris Armstrong at (202) 225-5522 or Brian Blase at (202) 225-5074 if you have any questions about this request.

Sincerely,

DAVE CAMP
Chairman
Committee on Ways and Means

DARRELL ISSA
Chairman
Committee on Oversight
and Government Reform

cc: The Honorable Sander Levin, Ranking Minority Member, Committee on Ways and Means

The Honorable Elijah Cummings, Ranking Minority Member, Committee on Oversight and Government Reform