



April 6, 2010

The Honorable Henry Waxman
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigation
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Michael C. Burgess
Ranking Member
Subcommittee on Oversight and Investigation
2322A Rayburn House Office Building
Washington, D.C. 20515

RE: Change to the Tax Treatment of Medicare Part D Subsidy

Dear Chairmen and Ranking Members:

The Patient Protection and Affordable Care Act (PPACA) and its companion Health Care and Education Affordability Reconciliation Act passed by Congress and signed by President Obama addressed a number of issues in connection with the nation's health care system. We are hopeful that some of the bills' provisions will slow the increases in health care costs, as the trend of cost increases is unsustainable for employers, employees, and the general public. The law's tax treatment of the Medicare Part D Subsidy found in Section 9012 of the PPACA, however, has introduced a significant change in the economic consequences for companies that offer prescription drug coverage to their retired employees.

As an organization that specializes in accounting policy and financial reporting, Financial Executives International (FEI) writes to confirm that the accounting consequences associated with the elimination of the tax deduction are in fact real and immediate, and demonstrate sound accounting policy in accordance with current laws and regulations. FEI is perplexed by the adverse commentary on companies' issuance of 8-Ks and public statements disclosing the financial consequences of the change in law. Senior financial executives are required to base their financial statements upon standards promulgated by standards setters and regulators to ensure transparency and to make all stakeholders informed about material changes to their company's financial position.

FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Treasurers, Controllers, Tax Directors, and other senior financial executives from over 8,000 major companies. FEI represents both the providers and users of financial information. This document represents my views, and not necessarily the views of FEI as a whole or its members individually.

The elimination of the tax deductibility of retiree prescription drug benefits to the extent of the Medicare Part D Subsidy is impacting companies that had made the decision to maintain primary responsibility for providing prescription drug coverage to their retired employees after the passage of the Medicare Modernization Act of 2003 (MMA). This legislation introduced a prescription drug benefit and included a *clearly delineated policy* that provided companies maintaining prescription drug coverage for their retirees a 28 percent tax free subsidy. Keeping the subsidy low was a priority of Congress; therefore, in order to encourage more employers to take advantage of the subsidy, the legislation allowed the employer

a full deduction for the benefits paid (Section 139A of the Internal Revenue Code (IRC)). In return, many employers that could have allowed their retirees to depend solely on Medicare for prescription drug coverage continued to pay the lion's share of the cost associated with providing the drug coverage. This was an arrangement that the 108th Congress concluded would save the government money.

The PPACA changes Section 139A of the IRC and denies an employer's deduction to the extent of the federal subsidy received. Because the change impacts the deferred tax asset recorded by companies for future post-retirement benefit liabilities, companies are required by Statement of Financial Accounting Standards No. 109 (now Accounting Standards Topic 740) to adjust deferred tax assets and reduce net income from continuing operations in the period in which PPACA was enacted to reflect the change for all future years. As FEI said would occur in a December 2009 letter to Senate leadership, some companies have already publically reported a charge to their bottom line that ranges from \$10 million to \$100 million and a smaller group of companies are facing an even larger impact – some up to \$1 billion.

Since 1931, FEI has worked to advance the success of senior financial executives through integrity and ethical leadership. Our members work to provide to third parties information about their companies that remains free of bias and inconsistencies. Therefore, a number of FEI members have expressed dismay at the way policymakers and commentators have dismissed and even criticized the required application of Generally Accepted Accounting Principles (GAAP) to financial statements that properly disclose the real impact of this particular provision.

We appreciate the Energy and Commerce Committee's focus on this issue and would welcome the opportunity to discuss any and all related matters. If you or your staff have any questions please contact Matthew M. Miller, Senior Director of Government Affairs at 202.626.7804 or via email at mmiller@financialexecutives.org or Lorraine Malonza, Senior Manager of Technical Accounting at 973.765.1047 or lmalonza@financialexeuctives.org.

Sincerely,



Marie N. Hollein
President and CEO
Financial Executives International

cc: The Honorable Nancy Pelosi
The Honorable John A. Boehner
The Honorable Harry Reid
The Honorable Mitch McConnell
The Honorable Timothy F. Geithner
The Honorable Gary Locke