United States Senate
WASHINGTON, DC 20510

November 13, 2013

Ms. Sylvia Mathews Burwell
Director
Office of Management and Budget
301 G Street, SW
Washington, DC 20024

Re: Final Rule No. CMS-9964-F3

Dear Director Burwell:

On September 18, 2013, 21 Senators wrote to you to ask that you "not authorize the release of any regulations that will create a special carve out which benefits union workers" over other Americans. We are disappointed to learn that the regulation published by the Centers for Medicare and Medicaid Services (CMS) on October 30, 2013, states that the agency intends to propose further rulemaking which would aim to exempt Taft-Hartley union health plans from the reinsurance fee mandated by the *Patient Protection and Affordable Care Act (PPACA).*

The $25 billion reinsurance fee was established under PPACA Section 1341 as a way for health insurers to mitigate the risk of either signing up too few people in their new exchange-based insurance plans, or of not enrolling enough young and healthy people to offset the expense of the less healthy (and more costly) enrollees. The fee is undeniably expensive for unions, employers, charities and faith-based organizations whose health plans are not available in the new health insurance exchanges and will not see any of those dollars returned to them. For the year 2014, the fee is $63 per covered life—a multi-million dollar levy for larger organizations.

While Taft-Hartley plans play an important role in providing 26 million hard working Americans with health benefits, non-profit and for-profit organizations play an equally important role in insuring 157 million equally deserving individuals and their families with employer-sponsored coverage. The regulation makes no justification as to why union members should be exempted from this fee while other similarly situated organizations (and, ultimately, their beneficiaries) must continue to pay it. We ask that you not authorize the release of any regulation which would allow for such unfair treatment and to include this letter in the public record of any future rulemaking.

It has been widely reported that labor unions recently sought an exemption from the reinsurance fee through Congress but were rightly rebuffed. To think that the Obama Administration would consider such an action that benefits one group over another can only be characterized as cronyism at its worst. Self-insured health insurance plans—whether or not they also self-administer—are all facing the same dilemma of being forced to subsidize insurance companies participating in the new exchange. The regulatory process is meant to implement the law as

written, not as the Administration wishes it were. If the law will unfairly hurt certain groups, it should be repealed or amended through Congress.

Sincerely,

Lamar Alexander

Orrin Hatch

John Thune

Pat Roberts

John Barrasso

Mike Enzi

Tom Coburn

c.c.: Howard Shelanski, Administrator, Office of Information and Regulatory Affairs
Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services