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March 7, 2014

Mr. Mark Langer
Clerk, United States Court of Appeals
for the D.C. Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Halbig v. Sebelius*, No. 14-5018 (D.C. Cir.)
(oral argument scheduled for March 25, 2014)

Dear Mr. Langer:

We respectfully respond to plaintiffs' letter of February 28, 2014. That letter underscores the lengths to which plaintiffs would go in their campaign to deny people the tax credits that Congress authorized to help them pay for health insurance.

The HHS bulletin on which plaintiffs rely is of relevance to state-run Exchanges in which technical problems with websites have prevented people from enrolling in health coverage through an Exchange. The bulletin makes clear that people who are entitled to tax credits need not lose them simply because of such technical errors. Congress manifestly did not intend to penalize people for Exchange errors. *See, e.g.*, 42 U.S.C. § 18031(c)(6)(C) (cross-referencing 42 U.S.C. § 1395w-101 *et seq.*); 42 U.S.C. § 1395w-101(b)(3)(B) (addressing errors in enrollment and cross-referencing 42 U.S.C. § 1395p(h) ("Waiver of enrollment period requirements where individual's rights were prejudiced by administrative error or inaction"). Contrary to plaintiffs' assertion, the HHS bulletin does not change the requirement of Section 36B that individuals enroll in coverage through an Exchange in order to be eligible for the premium tax credit.

The bulletin merely clarifies that, in very limited circumstances, such enrollment may be considered retroactive to when it would have taken effect but for the sole fault of the Exchange. Retroactive enrollment is not unusual in health insurance.¹

Sincerely,

s/ Alisa B. Klein

Alisa B. Klein
Counsel for the Appellees

¹ To cite just one example, individuals eligible for COBRA have 60 days following employment separation to elect coverage, and if they elect, coverage is retroactive back to the date of employment separation.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2014, I electronically filed the foregoing letter with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.

s/ Alisa B. Klein

ALISA B. KLEIN