The
ERISA
Industry
Committee

National
Business
Group on
Health

November 10, 2009

Hon. Kathleen Sebelius
Secretary, Department of
Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Hon. Nancy-Ann DeParle
Director
White House Office of Health Reform
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: **Health Care Reform and ERISA Preemption**

Dear Secretary Sebelius and Director DeParle:

We are writing on behalf of The ERISA Industry Committee and the National Business Group on Health, which represent many of the nation's largest employers, to call your attention to the vital importance of ensuring a legal and regulatory environment that allows nationwide uniformity for employer-provided health care benefits.

Recently, the Supreme Court asked the Solicitor General to provide her views on a petition that seeks review of a decision in the *Golden Gate Restaurant Association* case, which held that ERISA does not preempt San Francisco's employer-spending mandate for employee health care. This case highlights the crucial role that the national uniformity provisions of ERISA have played for 35 years to encourage employer-provided benefits by preventing the proliferation of varied local mandates, standards, and enforcement regimes and thus allowing uniformity and efficiency in benefit plan design and administration.

While many issues arise in the health care reform discussion, no one wants to discourage the continuation of widespread employer-provided health care, which currently provides coverage to some 180 million Americans. In light of the *Golden Gate* case, as well as for other reasons, we urge the Administration to take the necessary steps to ensure that neither judicial decisions nor any health care reform legislation undermine national uniformity and federal preemption.

Federal preemption is vital to employers and workers alike. A central purpose of ERISA is to provide a uniform regulatory regime for employee benefit plans. By ensuring that substantive requirements and regulatory oversight are governed exclusively by federal law (whether regulations or judicial decisions), ERISA allows employers to provide uniform benefits and plan administration for workforces in various jurisdictions. Absent assurance that benefit plans can be provided effectively and efficiently—to which uniformity is essential—employers would be motivated against providing them. Congress, through ERISA and in other ways, expressly sought to prevent that result.

A patchwork quilt of local regulation affecting benefit plans would be harmful to both employers and workers—especially to employees of businesses with worksites in various cities, counties, or states. Federal preemption allows employers to design uniform benefit plans for such multi-jurisdiction workforces and administer those plans on a uniform basis, without the burden of identifying and conforming to local regulations affecting those activities. Workers likewise benefit, both because preemption avoids burdens on plans that might otherwise translate into reduced (or eliminated) benefits and because employees can be offered nationally uniform benefit packages that will not be disrupted if they transfer to a worksite in another jurisdiction.

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Without federal preemption, employer-provided health care benefits could be gravely threatened. The Administration should work to ensure that neither erroneous judicial decisions nor the legal regime that may emerge from health care reform legislation will be allowed to have this effect.

Uniform federal enforcement is as important as uniform federal standards. The *Golden Gate* case highlights another important point: varied local enforcement and compliance regimes are as problematic as varied substantive mandates. Even an employer that spends more to provide health benefits to its workers than any jurisdiction requires nonetheless would face the burden of satisfying different recordkeeping, reporting, compliance, and enforcement regimes in each jurisdiction in which it does business. Likewise, if the Department of Labor's authority to enforce ERISA's requirements and protections for employee benefit plans were shifted from, or shared with, numerous local jurisdictions, employers would be deprived of the assurance of nationwide uniformity in interpretation and practice.

Federal preemption should be preserved in *all* employee-benefit contexts—legislative as well as judicial—and as to matters of enforcement as well as substance. Employers' ability to provide health benefits could be undermined as much by a balkanized landscape of enforcement as by varied substantive mandates.

In conclusion, The ERISA Industry Committee and the National Business Group on Health urge the Administration, through the Solicitor General, to support Supreme Court review of the erroneous lower court decision in the *Golden Gate* case.[*] We further urge the Administration to work with Congress to ensure that health care reform legislation supports and does not undermine ERISA preemption by authorizing state and local regulation of employer-provided health plan benefits.

Sincerely yours,

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Enclosure: Letter to Solicitor General Kagan
RE: No. 08-1515, *Golden Gate Restaurant Assn v. San Francisco*

cc: Hon. Elena Kagan (Solicitor General)
Hon. Hilda Solis (Secretary of Labor)
Hon. Phyllis Borzi (Asst. Secretary of Labor)

[*] A copy of the letter from our legal counsel to the Solicitor General, urging her support for Supreme Court review of the *Golden Gate* case, is enclosed.