



The  
ERISA  
Industry  
Committee

November 18, 2009

The Honorable Timothy Geithner  
Secretary  
U.S. Department of Treasury  
1500 Pennsylvania Avenue N.W.  
Washington, DC 20220

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue S.W., Room 639G  
Washington, DC 20201

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Dear Secretary Geithner:  
Secretary Sebelius:  
Secretary Solis:

Attached is a letter submitted yesterday by the ERISA Industry Committee (“ERIC”) through the federal eRulemaking Portal concerning a request for comments on the interim final rules implementing sections 101 through 103 of the Genetic Information Nondiscrimination Act of 2008 (“GINA”). The request was published by the Departments of Labor, Health and Human Services, and the Treasury (collectively, the “Departments”) in the *Federal Register* on October 7, 2009.

The interim final regulations place a number of new and unforeseen restrictions on health risk assessments that request family medical history, and on employees’ participation in disease management programs. As ERIC explains in its comments, these restrictions are not consistent with the statute, and they will severely impair the effectiveness of workplace wellness programs.

In addition to our substantive concerns, the effective date of the regulation will also have a profoundly negative—and we believe unintended—impact on company wellness programs. The regulation was released more than four months after the statutory deadline for publication; by this time, companies had already completed the drafting, preparation, printing, and possibly dissemination of their open enrollment materials for 2010.

GINA, as enacted, was intended to prevent discrimination on the basis of genetic information. We support the goals of GINA and the intent of much of the regulation under Title I. We cannot, however, support a regulation that would severely weaken the value of wellness programs both for ourselves and our employees.

ERIC appreciates the opportunity to provide these comments on the interim final regulations. If the Departments have any questions concerning our comments, or if we can be of further assistance, please let us know.

Sincerely,

Mark J. Ugoretz  
President

cc: Phyllis Borzi, Assistant Secretary, Employee Benefits Security Administration,  
U.S. Department of Labor (via e-mail)  
  
Robert Kocher, MD, Special Assistant to the President, National Economic  
Council, The White House (via fax to (202) 456-4796)  
  
Ezekiel Emanuel, MD, Special Advisor for Health Policy, Office of the Director,  
Office of Management and Budget (via fax to (202) 395-3174)