

# Congress of the United States

Washington, DC 20515

May 4, 2020

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Secretary Mnuchin,

We appreciate the Treasury Department's (Treasury) and Internal Revenue Service's (IRS) ongoing efforts to provide prompt guidance to implement the Coronavirus Aid, Relief, and Economic Security (CARES) Act. However, we have concerns with respect to recent guidance on the employee retention credit (retention credit).<sup>1</sup> Specifically, we disagree with the determination that employers who continue providing qualified health benefits to their employees do not qualify for the retention credit unless they continue paying other qualifying wages. As expressed previously to Treasury and the IRS, this interpretation runs directly counter to congressional intent.

As of this writing, more than one million Americans have contracted COVID-19, and more than 60,000 have perished. It is absolutely critical that American families have access to health care during this crisis. Allowing employees to retain their employer-provided health insurance, even while furloughed, is an important component in ensuring millions of Americans access to affordable health care.

The retention credit provides a fully refundable payroll tax credit equal to 50 percent of qualifying wages paid to an eligible employee. In drafting the provision, qualified wages were explicitly expanded to incorporate certain qualified health benefits, with the intent to provide an incentive for employers to continue providing health benefits to their employees, even if the employer was otherwise unable to continue paying regular wages because of the coronavirus pandemic. The economic contraction caused by the pandemic has resulted in over 30 million unemployment claims, making incentives that retain the connection to employment and employee benefits critical. After the passage of the CARES Act, we reiterated this intent in subsequent communications with Treasury.

We are, therefore, disappointed with the recent determination that an employer that is no longer paying regular wages but continues to provide full health benefits would not be able to treat any portion of those health benefits as qualifying wages eligible for the retention credit.<sup>2</sup> We urge you to reconsider this determination in light of congressional intent and the importance of providing access to affordable health care during the ongoing health crisis.

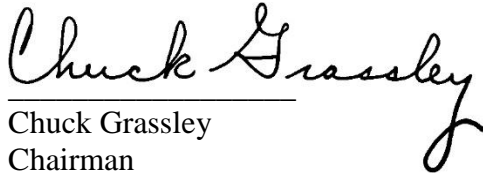
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<sup>1</sup> CARES Act, Pub. Law No. 116-136, § 2301


<sup>2</sup> See: IRS Employee Retention Credit Frequently Asked Questions, 'Determining the Amount of Allocable Qualified Health Plan Expenses,' Question 64, Example 2, and Question 65. <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-amount-of-allocable-qualified-health-plan-expenses-faqs>

We look forward to your prompt response and appreciate your attention to this important matter.

Sincerely,



Chuck Grassley  
Chuck Grassley  
Chairman  
Committee on Finance  
United States Senate



Richard E. Neal  
Richard E. Neal  
Chairman  
Committee on Ways and Means  
United States House of Representatives



Ron Wyden  
Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate