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March 24, 2015

Dr. Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Dear Dr. Shelanski,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we urge you to preserve civil rights protections for employees in employer-sponsored wellness programs. The Leadership Conference has strongly supported the Affordable Care Act (ACA) and actively participated in ACA regulatory proceedings advocating measures to ensure that all people have affordable non-discriminatory access to health care. We believe that the Administration must strongly support civil rights protections for employees in employer-sponsored wellness programs, including protections under the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), Title VII, and other civil rights laws.

The Leadership Conference believes, workplace wellness programs, when properly designed, have the potential to help employees become healthier and to bring down health care costs for consumers, employers, and the nation. However, these programs also carry serious potential to discriminate in ways long-prohibited by the civil rights laws. For example, the ADA prohibits employers from subjecting employees to medical inquiries or exams that are neither job-related nor justified by business necessity unless these are *voluntary* and part of a wellness program. GINA prohibits employers from making inquiries into employees' or family members' medical histories without "prior, knowing, *voluntary*, and written consent."

The business community has made no secret of its strong opposition to the EEOC's recent enforcement actions challenging blatantly discriminatory versions of employer-sponsored wellness programs. However, the civil rights community expects the EEOC to stand strongly behind vigorous enforcement of the civil rights laws in its regulatory and litigation activities, and would expect the White House to support regulations that maintain strong civil rights protections for employees in wellness programs.

These protections are particularly important for workers with less visible disabilities such as hypertension, diabetes, cancer, epilepsy, and mental illness, among other conditions. Moreover, given that certain protected groups disproportionately experience these or other conditions based on age, sex, race, and ethnicity, **the entire civil rights community has a stake in strongly protective policies on employer-sponsored wellness programs.**

When employers impose penalties or deny rewards -- in the form of significantly higher insurance premiums, deductibles, and co-pays -- workers suffer. Employees are required to answer inquiries about sensitive information, such as medical or genetic information, in



order to avoid losing out on discounts. Those who don't provide those answers pay significantly more for their and their families' health insurance than coworkers who do answer those inquiries. These employees are being coerced, in violation of the EEOC's prior guidance on these issues. The tri-agency ACA regulations on wellness programs *explicitly state* that compliance with the ACA wellness regulations is not determinative of compliance with any other provision of State or Federal law, including but not limited to the ADA, Title VII, GINA, and several other employment laws.¹ There is nothing in the ACA or its regulations that calls for the EEOC to undermine the clear, statutory provisions of these civil rights laws.

This year is the 50th anniversary of the EEOC and the 25th anniversary of the ADA. It would be a travesty if the EEOC were to observe those anniversaries by proposing to nullify key protections of the ADA, or to in any way weaken the other civil rights laws it is charged with enforcing. These laws are not in conflict or irreconcilable. The Leadership Conference urges the Administration to support the issuance of proposed regulations that give full force and effect to the civil rights laws.

If you have any questions, please contact either of us or Legal Director Lisa Bornstein at (202) 466-3311. Thank you.

Sincerely,

Wade Henderson
President & CEO

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Executive Vice President

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¹ See Incentives for Nondiscriminatory Wellness Programs in Group Health Plans; Final Rule, 78 Fed. Reg. 33158, 33168 (June 3, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-03/pdf/2013-12916.pdf>