



# Leadership Conference on Civil Rights

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Wade J. Henderson

September 8, 2009

Senator Max Baucus  
U.S. Senate  
511 Hart Senate Office Building  
Washington, DC 20510-2602

Dear Senator Baucus:

We are writing to express our grave concerns about the so-called "free rider proposal" included in the new healthcare reform framework that you are now circulating. The proposal would discourage employers from hiring workers from lower-income families, including single parents and workers with disabilities, and would consequently have a discriminatory effect on the hiring of racial and ethnic minorities.

Under the proposal, employers that do not provide health coverage would pay a charge based solely on how many of their employees receive federal subsidies to help them buy insurance in the new health insurance exchanges. Because those subsidies would go to workers from lower-income families, employers would find it more expensive to hire such workers than to hire workers from higher-income families. And because racial and ethnic minorities are twice as likely to have lower family incomes than non-minorities, the proposal would have inevitable and substantial discriminatory effects.

*We urge you to remove the "free rider" proposal that imposes a greater burden on employers for hiring workers from lower-income families than hiring workers from higher-income families to do the same job, because such proposals would inevitably result in the discriminatory effects described above.*

Let's say, for instance, that health legislation provides federal subsidies for those up to 300% of the poverty line – or up to \$66,150 for a family of four. An employer that does not provide health insurance would pay a charge for each employee who receives a federal subsidy because the income of the employee's family falls below that level — but would pay nothing for other employees. That charge would distort hiring decisions, creating a powerful financial incentive for employment discrimination against those more likely to need subsidies to be able to afford complying with the new federal mandate that they purchase health coverage.

In fact, an employer could save substantial sums by tilting hiring toward people who have a spouse with a good income (or have health coverage through a family member), teenagers whose parents make a decent living, or people without children. If an employer was hiring for a job that paid \$40,000 and could choose between a fully qualified single mother of two and a married woman whose husband also made \$40,000, the employer would save the cost of the charge by passing over the single mother – leaving her jobless and her and her children uninsured.

While some in Congress may consider including an antidiscrimination provision in the health



legislation to alleviate the problem, no such provision could effectively do so. No one can reasonably expect that such a large economic incentive *against* hiring the very people most in need of insurance won't cause businesses to take action to avoid paying for insurance – especially since the provision only applies to businesses that have *already* demonstrated their desire not to pay for insurance by not providing it to their employees on their own.

And once the discrimination occurs, we cannot expect a prospective employee to have any knowledge that he or she was discriminated against. Even in the rare instances where one did know, he or she would find it extremely difficult to prove in court that an employer passed over one applicant and hired another because of the health charge. Even successful claims would likely take years to adjudicate, costing more in time and money to prosecute than the low-income victims of this discrimination could afford to pursue.

At its most destructive, and possibly most routine, the effect would play out long before an individual had any reasonable chance to claim employment discrimination. The financing provision would give an employer an incentive to target recruiting in ways that avoided lower-income applicants. For example, by not recruiting at community colleges, historically black colleges and universities, and minority-serving institutions – all of which have student bodies whose families skew toward lower-income levels than other colleges – employers could evade the charge without being subject to an individual discriminatory hiring claim. Those institutions also all have a significantly higher percentage of racial and ethnic minority students than other colleges, magnifying the racially discriminatory impact of this proposal.

Lower-income Americans, particularly those in racial or ethnic minorities, are already disadvantaged in labor markets. They face more serious obstacles to finding employment than Americans from higher-income families and already experience much higher unemployment rates. Congress should not add to their employment burdens by giving employers that do not offer health insurance a substantial incentive to save money by avoiding hiring them.

The United States Senate should not, indeed must not, inflict so deep a wound on lower-income Americans. Instead, it can achieve the same overall level of savings by spreading the health charge over the entire workforce of firms that do not offer coverage, while collecting a substantially smaller amount per employee. That would make employers who don't offer coverage more likely to encourage their employees to sign up for insurance through the exchange, since the employers would already be paying the charge and having access to preventive care would reduce employee time lost to sick days.

Thank you for considering our views. If you have any questions or would like to discuss this issue further, please contact Nancy Zirkin, LCCR Executive Vice President, at (202) 263- 2880 [Zirkin@civilrights.org](mailto:Zirkin@civilrights.org) or David Goldberg, LCCR Senior Counsel, at (202) 466-0087 or [Goldberg@civilrights.org](mailto:Goldberg@civilrights.org).

Sincerely,

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