

Congress of the United States

Washington, DC 20510

June 28, 2022

The Honorable Janet L. Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen:

Thank you for your steadfast commitment to ensuring that all Americans have access to quality, accessible health care. We are encouraged by recent steps to fix the “family glitch,” which denies access to health insurance subsidies to employees and their families when employees are offered affordable, individual employer-based coverage that is not affordable for their family.¹ As advocates for working people in our districts, we write to urge you to take further action to ensure non-teacher staff in schools—such as custodians, school bus drivers, security guards, school nurses, cafeteria workers, and others—have access to quality health coverage. Considering the dire shortages of non-teacher staff in public schools, it is more important than ever to ensure these jobs have good benefits, such as health care, to attract and retain quality workers.

In 2010, when Congress passed the *Patient Protection and Affordable Care Act* (ACA), the law required that large employers provide affordable health coverage to employees working an average of 30 hours per week or face penalties.² Existing Treasury regulations interpreting the ACA provide that educational institutions must use the *school year calendar* as the basis for any determination as to whether an employee works an average of 30 or more hours per week (i.e., is a “full time employee” of the educational organization).³ However, an employee who works for a private company that has contracted with the school district to provide the same services (such as transportation services, cafeteria services, security services and janitorial services) is subject to a calculation that utilizes a 12-month calendar instead of the 9-month educational institution calendar.

Because of this loophole, these contractor companies are not required to provide employer-sponsored health benefits to their employees, despite these employees working full-time schedules during the school year and qualifying for employer-sponsored coverage if they worked directly for the educational organization they serve. For example, an employee at an educational organization working 1,365 hours over a 9-month period would be considered to average 35 hours (1,365 hours/39 weeks) of work per week and would be guaranteed employer-sponsored health coverage, but that same employee working for a private contractor would only be considered to have averaged 26.25 hours per week (1,365 hours/52 weeks) and would not be guaranteed that coverage.

¹ Timothy S. Jost, Commonwealth Fund, *A Fix for the Family Glitch*, (Apr. 12, 2022), <https://www.commonwealthfund.org/blog/2022/fix-family-glitch>.

² 26 U.S.C. § 4908H.

³ Treas. Reg. §§ 54.4980H-3(c)(4)(ii), -3(d)(6)(ii).

To prevent private contractors from abrogating their responsibilities as employers under the ACA, we urge the Department of the Treasury to issue proposed regulations specifying that an employee of a private contractor hired by an educational organization has the same right to health coverage as an individual hired directly by the educational organization. The Department of Treasury stated an intention to establish such regulations in 2015,⁴ but has not yet taken any further action.

School bus drivers, cafeteria workers, custodians, and other non-teacher school staff are vital to creating safe environments for, transporting, and feeding more than 25 million children every day. But according to a recent report, the number of individuals employed as school bus drivers and school custodians fell by 14.7% and 6%, respectively, since the fall of 2019; had K-12 employment kept pace simply with the growing school-age population, there would be 658,000 more local public education workers today.⁵ The same report indicates that a main factor that could be contributing to early retirements among non-teacher staff is fear of falling ill, since many bus drivers and custodians are older.

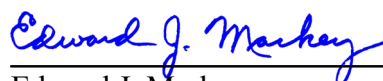
Ensuring that all full-time non-teacher staff in public schools have access to health care is not only necessary to ensure fairness for these essential workers, it will also help combat the staffing issues plaguing our schools and negatively affecting our children. We urge you to follow through on the agency's 2015 commitment to fix this loophole.

We appreciate your consideration.

Sincerely,



Donald Norcross
Member of Congress



Edward J. Markey
United States Senator



Mark Pocan
Member of Congress



Barbara Lee
Member of Congress



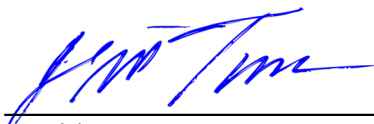
Madeleine Dean
Member of Congress

⁴ Internal Revenue Service Notice 15-87 (2015), <https://www.irs.gov/pub/irs-drop/n-15-87.pdf>.

⁵ David Cooper and Sebastian Martinez Hickey, Economic Policy Institute, *Raising pay in public K-12 schools is critical to solving staffing shortages* (Feb. 3, 2022), <https://www.epi.org/publication/solving-k-12-staffing-shortages/>.



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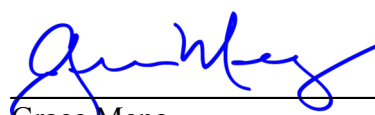
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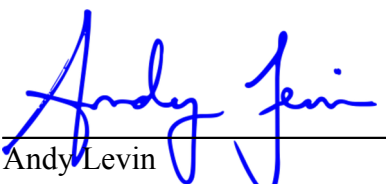
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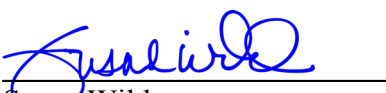
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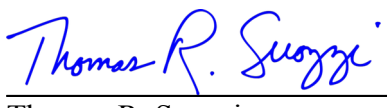
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United States Senator



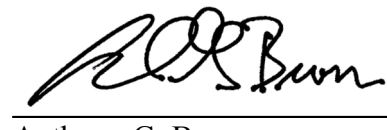
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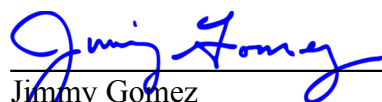
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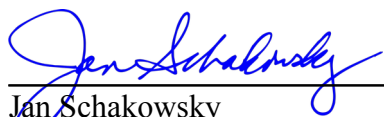
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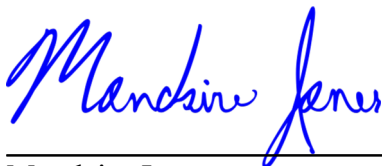
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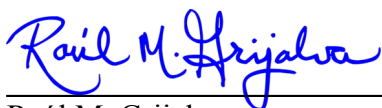
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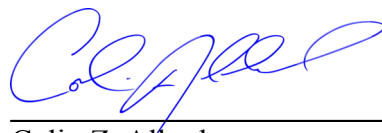
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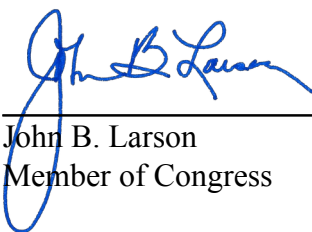
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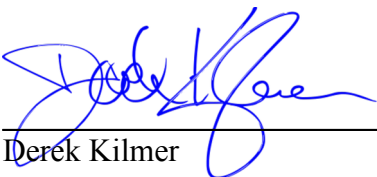
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Sean Casten
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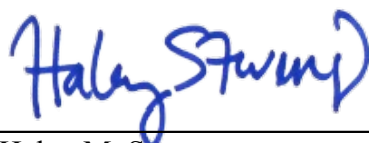
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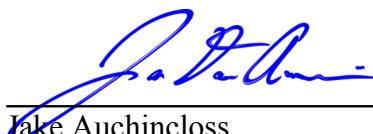
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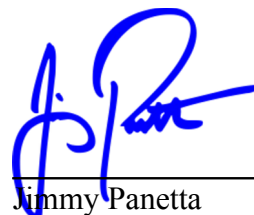
Andy Kim
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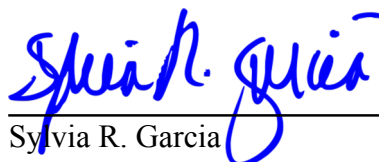
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