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## United States Senate

October 21, 2013

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The Honorable Daniel I. Werfel  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, D.C. 20224

Dear Acting Commissioner Werfel,

I write to inform you that a company, Beneco Inc., is claiming to offer a product that has been approved by the Internal Revenue Service. Federal statutes and regulations prohibit false advertising of products via claims of endorsement by the federal government, and I wish to confirm that these claims of an IRS endorsement are accurate.

The company in question, Beneco Inc., alleges on its website that

Beneco is the nationwide leader in providing solutions for contractors throughout the United States who perform projects that are subject to municipal, city, and state prevailing wage laws and the federal Davis-Bacon Act's and Service Contract Act's regulations and requirements. The Beneco *bona fide* plans are Department of Labor and Internal Revenue Service approved and continue to save clients millions of dollars in labor burden costs. This, in turn, positions our clients to expand the ability to competitively bid, win public works projects, increase bottom line profits, and attract and retain skilled employees.<sup>1</sup>

Beneco appears to use these “plans” to offer training sessions for non-union companies on how to avoid the requirements of the Davis-Bacon Act, specifically the requirement to pay local prevailing wages on federally funded contracts. I have written to the Department of Labor regarding whether these training sessions run are teaching companies how to evade or dodge the Davis-Bacon Act of 1931, which requires that workers on federal construction projects receive the local “prevailing wages” for their positions. A copy of that letter is attached to this one.

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<sup>1</sup> <http://www.benecoinc.com/>. An Internet Archive cache of this website shows that it contained the same text on August 8, 2013. That cache is available at <http://web.archive.org/web/20130808145659/http://www.beneco.com/>.

I am concerned that this claim that the IRS has endorsed Beneco's products may be incorrect. According to federal regulation 5 C.F.R. 2635.702(c), "an employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service, or enterprise," except in furtherance of statutory authority or "as a result of documentation of compliance with agency requirements or standards as a result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission." To my knowledge, there is no statutory authority that would allow the IRS to endorse Beneco's plans, and I also am not familiar with any rubric that would allow the IRS to endorse Beneco's plans "as a result of recognition for accomplishment in support of the agency's mission."

As such, I am concerned that Beneco's claim that its plans are formally endorsed by the IRS may be inaccurate. Under federal statute 18 U.S.C. § 709, whoever "falsely advertises or otherwise represents by any device whatsoever that his business, product, or service has been in any way endorsed, authorized, or approved by the National Credit Union Administration, the Government of the United States, or any agency thereof" is subject to a fine under the U.S. criminal code and "imprisonment for not more than one year, or both." If Beneco's plans has not actually been endorsed by the IRS, I believe the claim of IRS endorsement on its website may run afoul of 18 U.S.C. §709.

I formally request that you inform me, in writing by October 29, 2013, whether any products or services provided or owned by Beneco Inc. have been endorsed by the IRS. In order to better understand the universe of IRS endorsements of products, I additionally request that you answer the following questions.

- 1) Has the IRS ever formally communicated with Beneco about the possibility of the IRS endorsing a Beneco product or service? If so, please provide details about that correspondence.
- 2) Is Beneco itself directly involved in any federal contracts with the IRS?
- 3) How many products and services has the IRS actually endorsed over the last five years? Please provide a comprehensive list of all such products and services.

Thank you in advance for your assistance on this critical issue. Please feel free to contact Justin Slaughter on my staff with any questions by calling 202-224-2742.

Sincerely,

  
Edward J. Markey