

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<https://oversight.house.gov>

March 10, 2022

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

The Honorable Merrick B. Garland
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Secretary Yellen and Attorney General Garland:

On February 25, 2022, four companies involved in fueling the opioid epidemic agreed to pay approximately \$26 billion to settle thousands of lawsuits brought by state and local governments across the country.¹ We are writing to share findings from our Committee's examination of efforts by these companies to claim tax benefits for settlement expenses related to the companies' role in this epidemic.

The Committee's investigation shows that four companies that contributed to an opioid crisis that has killed half a million Americans and continues to claim tens of thousands of lives every year may now be attempting to put taxpayers on the hook for billions of dollars in settlement costs. This would be an outrageous tax benefit to line the pockets of bad corporate actors. We request that you determine whether these tax maneuvers comply with the law, and we urge you to do everything in your power to ensure transparency and accountability for the companies and executives that fueled our country's deadly opioid crisis.

On March 4, 2021, the House Committee on Oversight and Reform wrote to Cardinal Health, McKesson Corporation, AmerisourceBergen, and Johnson & Johnson seeking information about the companies' reported plans to use a tax provision in the Coronavirus Aid, Relief, and Economic Security (CARES) Act to increase tax deductions for settlement costs related to their role in fueling the U.S. opioid crisis.² The Committee also inquired about whether the companies have taken steps to hold executives accountable for their actions contributing to the opioid crisis and any plans to make documents produced during opioid litigation available to the public.

¹ *Companies Finalize \$26 Billion Deal with States and Cities to End Opioid Lawsuits*, New York Times (Feb. 25, 2022) (online at www.nytimes.com/2022/02/25/health/opioids-settlement-distributors-johnson.html).

² House Committee on Oversight and Reform, *Press Release: Senior Oversight Committee Members Probe Four Companies on Tax Deductions for Opioid Settlements* (Mar. 5, 2021) (online at <https://oversight.house.gov/news/press-releases/senior-oversight-committee-members-probe-four-companies-on-tax-deductions-for>).

Thousands of states, localities, and Tribes have filed lawsuits alleging these companies flooded our communities with prescription opioids, engaged in false and deceptive marketing, and failed to enact anti-diversion measures required by law, including the duty to detect and report suspicious orders.³ After years of negotiations, the companies have reportedly reached a settlement agreement that would require them to pay a combined \$26 billion to the impacted communities over 18 years, beginning in April 2022.⁴

All of these companies have previously stated their intentions to claim tax deductions for their opioid settlement costs.⁵ According to reports and estimates in their financial statements, McKesson Corporation plans to claim a \$1.4 billion tax benefit, AmerisourceBergen plans to claim \$1.1 billion, and Johnson & Johnson plans to claim \$1.1 billion.⁶ Cardinal Health has filed for a \$974 million tax refund.⁷ It is possible that the companies will claim even greater deductions now that the settlement is finalized.⁸

The Committee is concerned that these deductions may place an improper burden on taxpayers for settlement costs. In 2017, the tax code was amended to deny deductions for any

³ *Johnson & Johnson, Three Other Companies Close In on \$26 Billion Deal on Opioid Litigation*, Washington Post (Nov. 5, 2020) (online at www.washingtonpost.com/health/opioid-settlement-drug-distributors/2020/11/05/6a8da214-1fc7-11eb-b532-05c751cd5dc2_story.html).

⁴ *Companies Finalize \$26 Billion Deal with States and Cities to End Opioid Lawsuits*, New York Times (Feb. 25, 2022) (online at www.nytimes.com/2022/02/25/health/opioids-settlement-distributors-johnson.html).

⁵ Cardinal Health Inc., *Form 10-Q for the Quarterly Period Ended December 31, 2020* (Feb. 5, 2021) (online at <http://d18rn0p25nwr6d.cloudfront.net/CIK-0000721371/1e832342-4ba9-463c-b708-4f574a5fbf1d.pdf>); McKesson Corporation, *Form 10-Q for the Quarterly Period Ended December 31, 2020* (Feb. 2, 2021) (online at www.sec.gov/ix?doc=/Archives/edgar/data/0000927653/000092765321000013/mck-20201231.htm); AmerisourceBergen Corporation, *Form 10-K for the Fiscal Year Ended September 30, 2020* (Nov. 19, 2020) (online at www.sec.gov/ix?doc=/Archives/edgar/data/1140859/000114085920000050/abc-20200930.htm); Johnson & Johnson, *Form 10-Q for the Quarterly Period Ended September 27, 2020* (Oct. 23, 2020) (online at www.sec.gov/ix?doc=/Archives/edgar/data/200406/000020040620000056/jnj-20200927.htm); House Committee on Oversight and Reform, *Press Release: Senior Oversight Committee Members Probe Four Companies on Tax Deductions for Opioid Settlements* (Mar. 5, 2021) (online at <https://oversight.house.gov/news/press-releases/senior-oversight-committee-members-probe-four-companies-on-tax-deductions-for>).

⁶ *Drug Companies Seek Billion-Dollar Tax Deductions from Opioid Settlements*, Washington Post (Feb. 12, 2021) (online at <https://washingtonpost.com/business/2021/02/12/opioid-settlement-tax-refund/>); McKesson Corporation, *Form 10-Q for the Quarterly Period Ended December 31, 2020* (Feb. 2, 2021) (online at www.sec.gov/ix?doc=/Archives/edgar/data/0000927653/000092765321000013/mck-20201231.htm); AmerisourceBergen Corporation, *Form 10-K for the Fiscal Year Ended September 30, 2020* (Nov. 19, 2020) (online at www.sec.gov/ix?doc=/Archives/edgar/data/1140859/000114085920000050/abc-20200930.htm); Johnson & Johnson, *Form 10-Q for the Quarterly Period Ended September 27, 2020* (Oct. 23, 2020) (online at www.sec.gov/ix?doc=/Archives/edgar/data/200406/000020040620000056/jnj-20200927.htm).

⁷ *Drug Companies Seek Billion-Dollar Tax Deductions from Opioid Settlements*, Washington Post (Feb. 12, 2021) (online at <https://washingtonpost.com/business/2021/02/12/opioid-settlement-tax-refund/>); Cardinal Health Inc., *Form 10-K for the Fiscal Year Ended June 30, 2021* (Aug. 16, 2021) (online at www.cardinalhealth.com/content/dam/corp/web/documents/Report/cardinal-health-annual-report-and-shareholder-letter-FY21.pdf).

⁸ *Drug Companies Seek Billion-Dollar Tax Deductions from Opioid Settlement*, Washington Post (Feb. 12, 2021) (online at www.washingtonpost.com/business/2021/02/12/opioid-settlement-tax-refund/?arc404=true).

settlements paid to a government for the violation of any law.⁹ This amendment was passed to codify that “taxpayers should not be able to deduct as normal business expenses settlement payments that are intended to punish bad behavior.”¹⁰ In denying these deductions, Congress sought to “help deter taxpayers from violating the standards Congress has enacted to protect the American public, and ensure that wrongdoers fully pay their penalties.”¹¹

Although deductions are permitted in narrow circumstances for amounts paid as restitution, remediation, or to come into compliance with a law, deductions for amounts paid to a government or government entity are prohibited “in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.”¹²

The lawsuits brought by thousands of states, localities, and Tribes claim that these companies failed to effectively monitor quantities of prescription drug shipments, as they are required to do by law, while the opioid crisis exploded. They allege that Johnson & Johnson engaged in years of false and deceptive marketing regarding the danger of their products, including the risk of addiction, and that distributors failed to monitor, identify, and report to the U.S. Drug Enforcement Agency suspicious orders that could be diverted into the illegal drug market.¹³ If the \$26 billion settlement at issue is related to violations of federal, state, or local law, then these companies should not be allowed to shift the financial burden of the damage they have caused to American taxpayers.

In our March 4, 2021, letter, the Committee also requested information about reports that the companies planned to use a CARES Act provision that allows companies to carry back net operating losses that were generated in 2018, 2019, and 2020 for up to five years to improve liquidity for suffering businesses and provide “emergency relief to workers, families, small businesses, and distressed industries” stemming from the coronavirus crisis.¹⁴

⁹ Pub. L. No. 115-97 (2017).

¹⁰ Senate Committee on the Budget, *Reconciliation Recommendations Pursuant to H. Con. Res. 71*, 115th Cong. (2017) (S. Rept. 115-20).

¹¹ *Id.*

¹² Pub. L. No. 115-97 (2017).

¹³ *Big 3 U.S. Drug Distributors, Johnson & Johnson Reach Landmark \$26 Billion Opioid Settlement*, CNBC (July 21, 2021) (online at www.cnn.com/2021/07/21/drug-distributors-jj-reach-landmark-26-billion-opioid-settlement.html); *The Thousands of Lawsuits Against Opioid Companies, Explained*, Vox (Oct. 17, 2019) (online at www.vox.com/policy-and-politics/2017/6/7/15724054/opioid-epidemic-lawsuits-purdue-oxycotin).

¹⁴ House Committee on Oversight and Reform, *Press Release: Senior Oversight Committee Members Probe Four Companies on Tax Deductions for Opioid Settlements* (Mar. 5, 2021) (online at <https://oversight.house.gov/news/press-releases/senior-oversight-committee-members-probe-four-companies-on-tax-deductions-for/>); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, § 2303 (2020); House Committee on Ways and Means, *CARES Act: Tax* (Mar. 25, 2020) (online at <https://gop-waysandmeans.house.gov/the-senate-cares-bill-tax/>); House Committee on Ways and Means, *Ways and Means Democrats' Priorities in the Coronavirus Aid, Relief, and Economic Security (CARES) Act* (Mar. 26, 2020) (online at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/WM%20CARES%20provisions_0.pdf)

In response to the Committee’s requests, McKesson Corporation, AmerisourceBergen, and Johnson & Johnson confirmed they had no plans to claim CARES Act emergency tax relief in relation to their opioid settlement costs.¹⁵ However, because settlement payments are not scheduled to begin until April 2022, these three companies do not qualify for the CARES Act’s loss carryback provision in any event, which applies only to losses incurred in 2018, 2019, and 2020.

By contrast, Cardinal Health, a company with \$3.7 billion in available cash as of December 2020, stated in March 2021 that it still intended to take advantage of the CARES Act tax provision—and subsequent filings indicate it has done so. Cardinal Health confirmed that, by taking advantage of an accounting strategy, it was claiming a 2020 loss for settlement costs—even though settlement payments are not scheduled to start until April 2022.¹⁶

Specifically, Cardinal Health is using its wholly-owned insurer, EPIC Insurance Company, to claim “loss contingencies” for *anticipated* payments in connection with the settlement, despite the fact that no settlements were finalized in 2020. In addition, the company actually increased the size of its tax benefit by \$424 million by seeking to carry back losses to previous years when the tax rate was higher. Cardinal Health’s strategy is highly questionable.

¹⁵ Letter from Jessica L. Mayer, Chief Legal and Compliance Officer, Cardinal Health, Inc., to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cardinal%20Health%20Letter.pdf>); Letter from Pete Slone, Senior Vice President of Public Affairs, McKesson Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/McKesson%20Letter.pdf>); Letter from Rita E. Norton, Senior Vice President of Government and Public Policy, AmerisourceBergen Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AmerisourceBergen%20Letter.pdf>); Letter from O’Melveny & Myers LLP, on behalf of Johnson & Johnson, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/J%26J%20Letter.pdf>).

¹⁶ Letter from Jessica L. Mayer, Chief Legal and Compliance Officer, Cardinal Health, Inc., to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cardinal%20Health%20Letter.pdf>); Cardinal Health Inc., *Form 10-Q for the Quarterly Period Ended December 31, 2020* (Feb. 5, 2021) (online at <http://d18m0p25nwr6d.cloudfront.net/CIK-0000721371/1e832342-4ba9-463c-b708-4f574a5fbf1d.pdf>); Cardinal Health Inc., *Form 10-K for the Fiscal Year Ended June 30, 2021* (Aug. 16, 2021) (online at www.cardinalhealth.com/content/dam/corp/web/documents/Report/cardinal-health-annual-report-and-shareholder-letter-FY21.pdf) (“The net operating loss was carried back and applied to adjust our taxable income for fiscal 2015, 2016, 2017, and 2018 as permitted under the CARES Act enacted by the United States Congress in March 2020. . . . We have filed for a U.S. federal income tax refund of \$974 million as a result of the net operating loss carryback under the CARES Act, which we expect to receive within 12 months, and accordingly have recorded a current asset on our consolidated balance sheet at June 30, 2021.”).

As the company itself admitted in a regulatory filing, the Internal Revenue Service could challenge the company's tax and accounting strategy.¹⁷

The Committee's March 2021 letters also asked the companies whether they held any executives accountable for the egregious conduct they are now seeking to settle. In response, none of the companies identified meaningful discipline taken against their executives. In letters and briefings with Committee staff, McKesson Corporation and Johnson & Johnson were unable to identify any specific disciplinary actions or terminations for employee misconduct related to the opioid crisis.¹⁸ AmerisourceBergen denied the need for any disciplinary action at all, stating that the company "has not disciplined or terminated any individual(s) for the types of conduct set forth in the Committee's letter, nor has it had reason to do so."¹⁹ Although Cardinal Health identified two individuals that were moved out of opioid-related work to other roles within the company, the company was unable to identify other discipline imposed, or even whether those moves constituted discipline.²⁰

The Committee asked all four companies about their plans to publicly disclose the relevant internal documents that underlie the proposed settlement, a requirement in other similar

¹⁷ Cardinal Health Inc., *Form 10-K for the Fiscal Year Ended June 30, 2021* (Aug. 16, 2021) (online at www.cardinalhealth.com/content/dam/corp/web/documents/Report/cardinal-health-annual-report-and-shareholder-letter-FY21.pdf).

¹⁸ Letter from Jessica L. Mayer, Chief Legal and Compliance Officer, Cardinal Health, Inc., to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cardinal%20Health%20Letter.pdf>); Letter from Pete Slone, Senior Vice President of Public Affairs, McKesson Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/McKesson%20Letter.pdf>); Letter from Rita E. Norton, Senior Vice President of Government and Public Policy, AmerisourceBergen Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AmerisourceBergen%20Letter.pdf>); Letter from O'Melveny & Myers LLP, on behalf of Johnson & Johnson, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/J%26J%20Letter.pdf>).

¹⁹ Letter from Rita E. Norton, Senior Vice President of Government and Public Policy, AmerisourceBergen Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AmerisourceBergen%20Letter.pdf>).

²⁰ Letter from Jessica L. Mayer, Chief Legal and Compliance Officer, Cardinal Health, Inc., to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cardinal%20Health%20Letter.pdf>).

settlements.²¹ Each company stated that they would not commit to release documents or other information unless required under the terms of the settlement.²²

More than 500,000 people in the United States have died from the opioid epidemic since 1999—and tens of thousands more die every year.²³ Companies like Cardinal Health, McKesson Corporation, AmerisourceBergen, and Johnson & Johnson have exacerbated a public health crisis that has devastated families and communities across the country. They owe their victims real accountability, transparency, and restitution. The Committee remains deeply concerned that these companies will be allowed to claim billions in tax benefits resulting from great harm to the American people.

In April 2018, the Department of Justice indicated it was “developing internal policy” on the denial of deductibility for settlement payments made in relation to violations of law.²⁴ This policy should carefully consider the terms of any settlement agreement to ensure that those who violate the law cannot burden taxpayers with deductions for settlement costs in connection with those violations. Moreover, the Department of the Treasury should reexamine the regulations

²¹ House Committee on Oversight and Reform, *Press Release: Senior Oversight Committee Members Probe Four Companies on Tax Deductions for Opioid Settlements* (Mar. 5, 2021) (online at <https://oversight.house.gov/news/press-releases/senior-oversight-committee-members-probe-four-companies-on-tax-deductions-for>); see also, e.g., *McKinsey Settles for Nearly \$600 Million Over Role in Opioid Crisis*, New York Times (Feb. 3, 2021) (online at www.nytimes.com/2021/02/03/business/mckinsey-opioids-settlement.html) (noting that the company agreed to post relevant documents in a public repository); Department of Justice, *Press Release: Plea Agreement with Purdue Pharma L.P.* (Oct. 20, 2020) (online at www.justice.gov/opa/press-release/file/1329576/download); Mallinckrodt Pharmaceuticals, *Form 10-K for the Fiscal Year Ended December 27, 2019* (Feb. 25, 2020) (online at <https://mallinckrodt.gcs-web.com/static-files/1252745e-320c-4090-b92f-b3cc14b6bc3f>) (describing the obligation to disclose publicly certain documents as a condition of settlement).

²² Letter from Jessica L. Mayer, Chief Legal and Compliance Officer, Cardinal Health, Inc., to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Cardinal%20Health%20Letter.pdf>); Letter from Pete Slone, Senior Vice President of Public Affairs, McKesson Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/McKesson%20Letter.pdf>); Letter from Rita E. Norton, Senior Vice President of Government and Public Policy, AmerisourceBergen Corporation, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/AmerisourceBergen%20Letter.pdf>); Letter from O’Melveny & Myers LLP, on behalf of Johnson & Johnson, to Chairwoman Carolyn B. Maloney, Vice Chair Jimmy Gomez, and Rep. Mark DeSaulnier, House Committee on Oversight and Reform (Mar. 18, 2021) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/J%26J%20Letter.pdf>).

²³ Centers for Disease Control and Prevention, *Opioid Data Analysis and Resources* (online at www.cdc.gov/opioids/data/analysis-resources.html) (accessed Mar. 3, 2022); Centers for Disease Control and Prevention, *Press Release: Drug Overdose Deaths in the U.S. Top 100,000 Annually* (Nov. 17, 2021) (online at www.cdc.gov/nchs/pressroom/nchs_press_releases/2021/20211117.htm) (“The new data documents that estimated overdose deaths from opioids increased to 75,673 in the 12-month period ending in April 2021, up from 56,064 the year before.”).

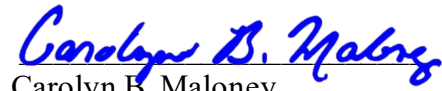
²⁴ Department of Justice Manual § 1-18.300 (online at www.justice.gov/jm/1-18000-general-civil-settlement-principles) (accessed Jan. 24, 2022).

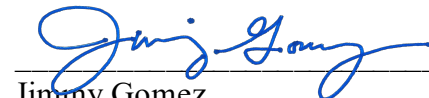
governing deductions for the payment of fines and penalties to ensure that companies are not able to deduct the costs of settlement payments that are in substance fines or penalties.

The Committee requests that your Departments examine any deduction McKesson Corporation, AmerisourceBergen, Johnson & Johnson, or Cardinal Health may claim based on their settlement expenses and whether Cardinal is improperly taking advantage of the CARES Act loss carryback provision. The Committee further requests that you brief Committee staff regarding your findings. The Committee also requests that your Departments do everything in their power to ensure transparency and accountability for the role these companies, including their officers, executives, or employees, played in fueling the country's opioid crisis.²⁵

Thank you for your attention to this important matter.

Sincerely,


Carolyn B. Maloney
Chairwoman


Jimmy Gomez
Vice Chair


Mark DeSaulnier
Member of Congress

cc: The Honorable James Comer, Ranking Member

²⁵ *U.S. Prosecutors Open Criminal Probe of Opioid Makers, Distributors*, Reuters (Nov. 26, 2019) (online at www.reuters.com/article/us-usa-opioids-probe/u-s-prosecutors-open-criminal-probe-of-opioid-makers-distributors-idUSKBN1Y029M).