



September 18, 2009

Sen. Max Baucus
Chairman
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20500

Sen. Charles Grassley
Ranking Minority Member
Senate Finance Committee
219 Dirksen Senate Office Building
Washington, DC 20500

Dear Chairman Baucus and Ranking Member Grassley:

On behalf of the National Small Business Association (NSBA), I would like to comment and provide some small business perspective to Senator Baucus' *America's Healthy Future Act of 2009*.

NSBA is the nation's oldest small-business advocacy group representing employers in every state. As a strict non-partisan organization, we represent over 150,000 employers in all sectors and industries of the U.S. economy from retail to trade to technology—our members are as diverse as the economy which they fuel. We pride ourselves in being a constructive voice in the public policy arena, and we look forward to continuing that tradition to achieve comprehensive health care reform this year for our nation's 29.6 million businesses.

First, NSBA would like to offer our thanks to the Senate Finance Committee members who have worked tirelessly over the last few months in an effort to develop bipartisan health care reform legislation. While these efforts seem to have hit a snag in recent days, we hope that the bipartisan tone will return and carry over into the fall and throughout the legislative process. Health care reform is absolutely critical for small business; however, not just any reform. It is critical that what is signed into law has the bipartisan buy-in necessary to ensure the reform will stand the test of time and not simply alter the status quo for the sake of a political win or loss. The public and political will for health care reform has come a long way and must not be lost on partisan lines in the 11th hour.

Moreover, the importance of entrepreneurship to our nation's economy can not be lost amidst the deliberations of health care reform. Small businesses employ over half of US workers and represent 99.7 percent of all employer firms, and have a significant stake in health care reform. NSBA members have consistently ranked health care as a leading concern and legislative priority for small business. It is critical to have small business representation identified in legislative language to ensure that the coverage and financing components meld with the realities that small businesses face running their businesses on a daily basis.

In addition, policymakers have honed in on the economic imperative for immediate health care reform success; however, the premise of reforming the health care system as a catalyst to

economic recovery and long-term economic stability largely relies on the implications that the health care reforms will have on small business. Since 1989, small business has created 93.5 percent of all net new jobs, totaling 21.9 million new jobs in the past 19 years—or 4,000 jobs per day. The Small Business Administrations Office of Advocacy recently noted that small businesses account for half of non-farm, private real GDP and half of all private sector employment. Furthermore, small businesses have historically been responsible for creating jobs and leading our country out of recessions.

Any reforms must give significant consideration to their impact on small businesses. Approximately half of new employer firms survive only five years. In 2008, an estimated 627,200 new employer firms began operations and 595,600 firms closed. Coupling the volatile nature of starting and running a small business with the soaring cost of health insurance creates a delicate balance for comprehensive health care reform from a small business perspective. If these economic and health care goals are to converge in a meaningful way, there must be careful consideration given to the impact to our nation's small businesses.

NSBA has been engaged in health care policy for decades, and in 2003 published *Small Business Health Care Reform—A Long-Term Solution for All*. This proposal for broad reform of the health care system seeks to achieve universal coverage, focus on individual responsibility and empowerment, the creation of the right market-based incentives, and a relentless focus on improving quality while driving out unnecessary, wasteful, and harmful care. We believe that the Chairman's proposal, in comparison with the Senate Health, Education, Labor and Pensions Committee proposal and the House TriCommittee proposal, has come the farthest to reaching the goals of small business health care needs outlined in NSBA's proposal.

NSBA supports the efforts made in achieving near-term health care cost relief for small businesses, their employees, and their dependents outlined in the Chairman's mark-up document on America's Healthy Future Act of 2009. The proposal takes a more comprehensive approach to reform the delivery system and pursue other cost containment initiatives vis-à-vis the other proposals. NSBA supports mandated guarantee issue whereby insurance companies couldn't deny coverage based on health status and would eliminate of the use of pre-existing conditions. In addition, NSBA has been a long-time proponent of an individual mandate coupled with the appropriate level of government support for those who can not afford the mandated insurance.

However, while NSBA is supportive of the majority of the Chairman's mark-up document, there is still work to be done. In general, we look forward to seeing greater clarification in the pending legislative text that will protect small businesses from any additional burdens or liabilities. In addition, NSBA is pleased the Committee has moved away from the politically charged public health insurance option that had seemed bound to cause legislative gridlock.

The following seven items cover the general concerns NSBA has identified with the Chairman's mark-up document, and should serve as insight and guidance for amending the document to reflect the needs of our nation's small businesses.

Employer Responsibility

NSBA is pleased that the Committee avoided a strict employer mandate. Although less onerous than a strict employer mandate, the free-rider provision raises questions about how it is administered, how small-business owners are protected, and what safeguards exist in the law that prevent this newly established revenue stream from being targeted down the road to cover rising costs.

Moreover, NSBA is concerned with the 50 employee cliff, which stands to jeopardize future job growth. Inadvertent incentives exist under this scenario for employers to avoid growing and hiring additional employees past the 50 employee threshold in order to avoid exposure to the free-rider requirements. A solution would be to exempt the first 50 employees from the free-rider requirement for any size employer. For example, a non-offering employer with 100 employees would have a free-rider penalty cap at \$20,000. Under this amendment, employers would not be discouraged from growing beyond the 50 employee threshold.

Small Business Representation

A study by the Kaiser Family Foundation found that 43 percent of the nation's uninsured work for small businesses that don't provide health insurance. Since a goal of comprehensive health care reform consist of universal coverage, including the enrollment of the uninsured working for small businesses, NSBA strongly encourages legislative language that specifically identifies small business representation on any panels that have jurisdiction over policy and regulatory development impacting small businesses. National and state-based small business membership associations serve as direct conduits to small business owners, their employees, and their dependents. These associations can be consulted on a national and state level to ascertain the impact of various policies on small business.

In particular, NSBA is pleased that the Chairman's mark-up document contains language that requires small business consultation in the development of national health care plans. In addition, though there is a lack of clarity absent legislative language, NSBA can deduce that Small Business Health Option Program (SHOP) exchanges will follow the small business representation model outlined in the SHOP Act of 2009 (S. 979). In any case, NSBA feels it is imperative to specifically include legislative language giving small business stakeholders a voice at the table.

In addition to small business representation, NSBA strongly believes legislative language requiring an actuarial cost-benefit analysis is necessary to gather the essential information to ascertain the impact these reforms are having on small business.

Excise Tax on High-Cost Insurance

NSBA's has two primary reservations with the excise tax on high cost insurance plans. First, it seems unavoidable that the tax will be passed down to small businesses in the form of higher premiums. Furthermore, with respect to the 5:1 age rating rule, a small business with older employees and a truly basic benefit package could be disproportionately taxed by insurers simply based on the group's age and not the "richness" of their benefits package. It also follows that a small business with younger workers and a much more valuable benefits

package could avoid paying an excise tax. In this scenario, goals to increase consumerism and reduce over-insurance would be undermined.

The second concern with the excise tax is what appears to be an administrative quagmire for small business owners. Small businesses with multiple vendors would face extraordinary administrative burdens in order to comply with the proposed mechanism for assigning tax responsibilities. While the tax on insurers is intended to be invisible to consumers, albeit there are no safeguards to prevent the aforementioned phenomenon, it will certainly not be invisible to employers. Additional thought must be given to this provision's impact to small businesses.

In lieu of this approach, NSBA has supported limits on the value of employer-provided health coverage that is excludible from gross income based on a minimum benefit package. This approach would encourage greater consumer behavior, decrease utilization of the system, and lead to a decrease in the aggregate cost of health care. Insurance now frequently covers (on a tax-free basis) non-medically necessary services, which would otherwise be highly responsive to market forces.

Rating Rules

While some trade-offs are inevitable in reforming the health care system, we encourage you to be mindful of the unintended consequences some may have for small businesses. Small businesses have fought for reform under the context that the current system disproportionately harms small businesses and the self-employed. NSBA is worried that the potential interplay among the health insurance exchange, health insurance rating rules, and the structure of the high-cost insurance excise tax could continue some of the inequity and unfairness problems faced by small businesses under the current system.

Part of the goal of universal coverage achieved through an individual mandate and insurance market reforms is to lower and stabilize health insurance premiums, particularly for the volatile small-group, micro-group, and non-group markets. Unfortunately, the combination of a 5:1 age rating ratio, health insurance excise tax based on a high dollar amount, and a sliding health insurance exchange membership up to 100 employees could negatively impact small businesses.

With respect to our concerns expressed in comments to the excise tax on high-cost insurance, a potential solution to the aforementioned scenario would be to narrow the age rating ratio. However, tightening the age ratio could have a negative impact on the small-group, micro-group and non-group markets in an exchange that allows employers with up to 100 employees (or more) to participate. The option for employers to self-insure becomes more feasible the more employees a business employs. An age rating ratio that is more narrow may give incentives for larger businesses with younger employees to leave the exchange in order to self-insure. This logic follows that larger businesses with older and sicker employees would naturally choose not to self-insure and go into the exchange. This phenomenon would leave the exchange with a higher baseline of cost; consequently, small employers would be left with higher health insurance costs. Clearly there is a delicate balance the Committee must be mindful to strike in order to provide equity and fairness to small businesses, their employees, and their dependents.

Self-employment tax

NSBA believes Congress has a tremendous opportunity to address a great inequity under the tax code impacting the self-employed. Currently, all workers at a large C corporation can exclude employer provided health insurance from their taxable income; however, small-business owners are excluded from those tax savings. The current tax code excludes self-employed individuals from deducting the cost of their health insurance for self-employment tax purposes. This inequity in the tax code means that the self-employed pay a 15.3 percent additional tax on their health insurance premiums that no one else has to pay.

As the law stands now, self-employed individuals still pay for their health insurance with money that has been subject to the self-employment tax. All employed individuals pay the FICA tax on their income, of which 6.2 percent is allotted for Social Security and 1.45 percent goes to Medicare. Employers are required to match employee contributions with a 7.65 percent contribution of their own.

Self-employed individuals are required to pay both sides of this tax resulting in a total 15.3 percent tax on income, commonly referred to as the “self-employment tax.” Contrary to rules for C Corporations, a provision of the Internal Revenue Code requires self-employed individuals to pay the additional 15.3 percent self-employment tax on the cost of their health insurance premiums. No other worker is required to pay FICA taxes on any portion of their employer-sponsored health benefits. With health insurance costs already sky-high, our members find it unbelievable that the federal government would slap an extra tax on those who have the hardest time securing coverage in the first place.

The issue of full deductibility for the self-employed goes far beyond the simple inequity of the matter, there is a very real economic impact as well. A report released by the SBA’s Office of Advocacy titled, *Health Insurance Deductibility and Entrepreneurial Survival*, shows that, “the health insurance deduction for the self-employed has decreased the likelihood of entrepreneurial exit by 10.8 percent for single filers and 64.9 percent for married filers.” While these numbers are staggering at first glance; if you think about the issue from a personal point of view, the impact of deductibility in entrepreneurial growth seems like common sense. When a family’s principle earner makes the decision to leave the predictable and structured world of a large employer and strike out on their own, availability of health insurance is a major issue. It stands to reason that the positive results from income tax deductibility for health insurance discovered by the SBA Office of Advocacy report would grow if Congress allowed the self-employed full deductibility.

Fortunately, *Equity for Our Nation's Self-Employed Act (S. 725/H.R. 1470)* would address this inequity and allow our nation’s roughly 21.3 million self-employed business owners to fully deduct the cost of their health insurance. NSBA wholeheartedly believes allowing self-employed business owners to fully deduct the cost of health insurance is an important part of the health care reform that will bring immediate relief and equity. Thus, we encourage you to amend the Chairman’s mark-up document to include a provision incorporating language from S. 725.

Corporate Information Reporting

NSBA also has significant concerns with the proposed corporate information reporting provision. Under current law, service recipients are only required to send 1099 forms to non-corporation service providers. For each non-corporation service provider, the service recipient is required to issue two 1099 forms—one to the IRS and one to the service provider. Sen. Baucus' proposal would expand the Form 1099 filing system by requiring businesses that pay more than \$600 annually to corporate providers of property and services to file an information report with each provider and with the IRS.

If enacted, every small-business owner will face increased paperwork and administrative burden for each additional 1099 Form prepared. Increased costs are incurred for mailing additional forms and for hiring outside assistance to ensure that businesses are correctly complying with the law. Furthermore, if a business previously has not been required to utilize the Form 1099 filing system, greater difficulty with compliance is likely to ensue. While the proposal seeks to capture non-compliant corporations, it clearly places the burden on the wrong taxpayer—the compliant small-business.

NSBA Supports Reforms to Medical Liability

President Barack Obama acknowledged in his September 9 joint address to Congress that high health care costs can partly be attributed to the practice of defensive medicine that is encouraged by the failure to reform the medical malpractice system. While President Obama's pilot project proposal and the inclusion of a "sense of the senate" provision in the Chairman's mark-up document are a step in the right direction, rising health care costs require immediate and substantive action to address medical malpractice reform. NSBA supports common-sense reforms that provide system savings that can be passed along to consumers through the inclusion of detailed legislative language that provides for medical malpractice reform.

NSBA appreciates the opportunity to provide a small business perspective to the Chairman's mark-up document on America's Healthy Future Act of 2009. We hope to continue to work with you and your staff on these issues as they are considered and negotiated in the coming days and weeks. Please do not hesitate to contact me or my staff to provide additional information or insight into the health care challenges faced by our nation's small businesses.

Sincerely,



Todd O. McCracken
President

Cc:

All Members of the Senate Finance Committee