



June 26, 2009

Chairman Charlie Rangel
Ways and Means
1102 LHOB
US House of Representatives
Washington, DC 20515

Chairman Henry Waxman
Energy and Commerce
2125 RHOB
US House of Representatives
Washington, DC 20515

Chairman George Miller
Education and Labor
2181 RHOB
US House of Representatives
Washington, DC 20515

Dear Chairman Rangel, Chairman Waxman, and Chairman Miller:

On behalf of the National Small Business Association (NSBA), I am pleased to present comments in response to your June 19, 2009 joint release of a comprehensive health care reform discussion draft.

NSBA is the nation's oldest small-business advocacy group representing employers in every state. As an organization, we represent 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. More than one in two people in the U.S. private workforce—70 million—work for or run a small business, according to data from the U.S. Small Business Administration Office of Advocacy and U.S. Census Bureau. Small business comprises 99.7 of all U.S. private employers, or 26.8 million businesses, and creates more than half of U.S. gross domestic product.

NSBA appreciates the opportunity to comment on the health care reform discussion draft introduced by the Chairmen of the House Committee on Ways and Means, House Committee on Energy and Commerce, and the House Committee on Education and Labor (hereafter referred to as the Tri-Committee proposal). However, NSBA urges the Chairman of the Tri-Committee proposal to fully consider the repercussions of provisions included in the draft discussion. While the House of Representatives proceeds with hearings this week with the expectation of marking up legislation in early July, NSBA urges each Committee to embrace a more pragmatic approach to reforming our nation's complex health care system than what has been pursued over the past week. The discussion draft that likely took months to assemble deserves more than a few days to examine to ascertain its impact on small businesses. With respect to the current economic recession and recent trends in rising health care costs, small businesses clearly need help. However, the high stakes of health care reform require and deserve a deliberative process to ensure sensible policies are formulated that does not result into hasty laws and that don't create unintended consequences.

The fundamental barrier for small business is simply the cost of health care. The cost of health insurance premiums has increased by 119 percent since 2001, far-outpacing inflation, which was increased 29 percent during that period. According to a recent NSBA survey, 97 percent of small businesses were subject to increased premiums since 2005. The impact from the rising costs resulted in 57.9 percent of employer respondents freezing employee compensation, 38.6 percent holding off on new hires, and 12.1 percent laying off an employee. In addition, survey results indicate that 51.6 percent of employer respondents are considering increasing employee's contributions, while 11.1 percent are considering dropping coverage.

As expected, NSBA members consistently rank health care reform number one or number two on the list of priorities for small-business owners, and the issue continues to be among the top challenges facing the future growth and survival of their businesses. Sixty-nine percent of small businesses surveyed in 2008 said they want to offer health insurance, however only 38 percent were able to do so—down from 67 percent in 1995. The ability to offer health insurance is creating a significant competitive disadvantage for small firms, as 99 percent of large businesses offered health insurance in 2008.

NSBA has been engaged in the challenges facing small businesses for decades, and in 2003 published *Small Business Health Care Reform—A Long-Term Solution for All*. This broad reform proposal 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.

From our initial understanding of the Tri-Committee proposal, there are a number of laudable goals and encouraging policy reforms that reflect the principles in NSBA’s proposal. We have chosen to organize and focus our comments into four categories, including cost-containment; shared-responsibility; insurance market reforms; and public health insurance option. Our comments as a non-profit association address the general principles that we apply to promoting health reform outlined in *Small Business Health Care Reform: A Long-Term Solution for All*, and speak to the specific provisions discussed in your draft.

Cost-containment

While small businesses need immediate relief from soaring health care costs, NSBA supports a comprehensive approach to bend the health care cost curve. Peter Orszag, Director of the Office of Management and Budget (OMB), recently testified before the House Budget Committee that “health care costs could be reduced by a stunning 30 percent—or about \$700 billion a year—without harming quality if we moved as a nation toward the proven and successful practices adopted by lower-cost areas and hospitals.” These savings alone could provide each uninsured U.S. citizen with approximately \$15,000 towards health insurance—more than what is needed with respect to currently yearly premiums. Health care reform should look to create savings in the current system first to provide immediate relief of burdensome health care costs.

NSBA applauds the Tri-Committee’s attention and efforts to reduce and contain cost in the health care system. Through the promotion of health information technology and comparative effectiveness; moving from volume-based payment to value-based payment systems; reducing readmissions to hospitals; focusing on chronic disease management; investing in prevention and wellness; and, the elimination of fraud and abuse, small businesses can begin to realize true health care cost reduction and containment.

NSBA hears one simple message from small businesses on unanimous cost-containment proposals from the House and Senate: tackle the ‘low-hanging fruit’ quickly and pursue cost-containment policies expeditiously.

‘Shared-Responsibility’

NSBA supports the notion of ‘shared responsibility’ between individuals, employers and the federal government for all Americans to have health insurance; however, NSBA opposes the inclusion of a pay-or-play mandate on employers. NSBA concurs with the Tri-Committee’s

proposal for all individuals to have a personal responsibility requirement to obtain health insurance coverage.

'Pay or Play' Mandate

NSBA looks forward to working with the Committees to find appropriate and reasonable streams of revenue to finance comprehensive health care reform. However, NSBA opposes any mandates on small business employers to provide health insurance to their employees. The notion of a 'pay or play' scheme on employers is riddled with complex financial challenges and repercussions that could have a devastating impact on the ability of small businesses to be productive and create jobs.

Although mandating a 'pay or play' provision may not impact larger businesses that can already afford to offer health care to their employees, small business would be forced to make extremely difficult decisions to absorb the financial blow during the current economy. In addition, proposals that provide cookie cutter categories to justify pay or play participation simply fail to recognize the diversity and unique goals of every small business. Establishing mandates on small businesses based on gross sales, number of employees, percentage of payroll, or other methods could prove detrimental to some businesses.

In addition, employer mandates can result in perverse incentives. Employers have to operate their businesses based on their bottom line. If small businesses are forced to pay unreasonable costs or fines in one area, then those funds will have to be offset or reduced in other areas, including cutting employee benefits; freezing or reducing employee salaries; foregoing or omitting plans to expand or reinvest; not hiring new employees; or, simply laying off employees.

Requiring employers to provide and contribute to health insurance coverage (72.5% of the premium for single coverage and 65% of the premium for family coverage for the lowest cost plan that covers essential health benefits) to their workers or pay a new tax equal to 8% of payroll seems excessive with respect to other compromise proposals, such as the Bipartisan Policy Center's proposal, "Crossing Our Lines." Furthermore, a definition of small business, full-time employees, and part-time employees should be further vetted with small business stakeholders before final language is produced.

In lieu of mandating a pay-or-play scheme on employers to finance broad health care reform, the Tri-Committee proposal should consider other sources of revenue.

Exclusion for Employer-Provided Health Coverage

NSBA supports limits on the value of employer-provided health coverage that is excludible from gross income based on a minimum benefit package as an appropriate health care reform financing mechanism. There currently is an open-ended tax exclusion for employer-provided health coverage for both the employer and employee. This tax status has made health insurance preferable to other forms of compensation, leading many Americans to be "over-insured." This over-insurance leads to a lack of consumer behavior, increased utilization of the system, and significant increases 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.

The health insurance tax exclusion also creates equity concerns for small employers and their employees. Since larger firms experience less volatile rate increases, and have greater bargaining

power than a small firm, their health insurance packages are typically richer than what a small business can afford. Therefore, a large firm can build very rich benefit packages which are tax exempt for the business and are considered a piece of the employees' compensation package. This gives large employers a significant competitive edge over small businesses with regards to both their tax treatment as well as their ability to recruit employees.

For these reasons, the individual tax exclusion for health insurance coverage should be limited to the value of a basic benefits package. But this exclusion (deduction) should also be extended to individuals purchasing insurance on their own. Moreover, the tax treatment of both health insurance premiums and actual health care expenses should be the same. These changes would bring equity to small employers and their employees, eliminate the federal subsidy for over-insurance, induce much greater consumer behavior, and reduce overall health care expenses.

Insurance Market Reforms

NSBA quickly learned that small business challenges in health care cannot be solved in isolation from the rest of the system. Since small businesses purchase insurance as part of the overall small group (2 to 50 employees), the decisions of others directly affect what a small business must pay and the terms on which insurance is available to them.

The reality of the non-group, micro-group (2 to 10 employees), and overall small group is individuals may choose to move between markets to find the best rate. In fact, millions of relatively healthy Americans choose not to purchase insurance (at least until they get older or sicker) due to the cost. The absence of these individuals from the insurance pool means that premiums are higher for the rest of the pool than they would be otherwise.

NSBA is interested in eliminating the variances that currently exist between the non-group, micro-group, and overall small group markets. Universal participation of all individuals in some form of health care coverage would address the variability of each market. This reform would provide for a different characterization of the non-group, micro-group, and overall small group markets by encompasses those who utilize the health care system as well as those who are healthy. In fact, implementing an individual responsibility requirement in conjunction with federal rating rules across markets would effectively make these separate markets irrelevant for individuals shopping for the most affordable health insurance policy.

Thus, NSBA supports the Tri-Committees proposal establishing federal rating rules, guaranteed issue and renewal rules for all coverage, elimination of the use of pre-existing condition and health status, across all markets for a federally-defined basic benefit package. Insurance companies should be required to operate within narrow rate-bands based on modified community rating only limited to allowable actuarially-sound rating characteristics.

Benefit Options

NSBA supports a simple, truly basic health benefit package to ensure both affordability and choice are inherent in the overall system. From an initial understanding, it appears that the essential standards guaranteeing access to affordable coverage, essential benefits, and other consumer protection outlined in the Tri-Committee proposal would achieve this goal; however, we urge the Committees to ensure that what is ultimately offered as a basic plan is truly a basic plan.

The required basic package should include only evidence-based, scientifically sound benefits that would be determined on a federal level. The process for defining the basic package must be nonpolitical and incorporate an appropriate array of stakeholder involvement including state insurance commissioners, state legislative representatives (governors or legislators), insurers, actuaries, small and large businesses, consumer groups, providers, and those insured. This group shall be responsible for not only defining the initial package offering, but also for evaluating, on an ongoing basis, a broad cost-benefit analysis of benefits offered, as well as evaluating such analysis of any proposed additional benefits.

NSBA urges that the Tri-Committee proposal specifically identify small business representation in the development of an appropriate benefit package.

Low-Income Tax Credits

NSBA supports the availability of low-income tax credits for low-income taxpayers. However, NSBA opposes preferential arrangements where these subsidies should be delivered only through a health insurance exchange. Low-income individuals should have the choice to purchase coverage through any market of their choice.

Small Business Tax Credits

NSBA is generally supportive of the Committee's proposal to provide a tax credit to certain small employers for the purchase of employer provided health insurance. Tax credits should be considered as an incentive to provide coverage, but not as a tool to lessen the impact of a potential employer mandate—something that NSBA is opposed to. In addition, NSBA is skeptical of the long-term sustainability of tax credits since their value can diminish with rising health care costs and inflation.

Health Insurance Exchange

NSBA's health care reform proposal supports a common set of insurance rules and other reforms to achieve quality and transparency across all markets, and the need for subsidies to be tied directly to eligible individuals. The concept of a health insurance exchange as a component to broad health care reform is proposed to address these issues. Overall, NSBA supports efforts to achieve greater transparency and access through reforms to standardized health insurance policy information and provide a more consumer friendly market. However, NSBA is unconvinced of the need for such a mechanism if the aforementioned reforms are implemented. If a health insurance exchange is implemented, it should be carried out at the state level and all market rules and financial subsidies should be consistent between the exchange and the rest of the health insurance market.

Public Health Insurance Option

NSBA is engaged in continual dialogue with small business owners on the proposal to establish a public health insurance option to compete in the private health insurance market. In general, the concept of including a provision that would ensure honesty and trust in the private insurance market is commendable. In addition, NSBA believes that competition is good, and should be directed to lower cost for consumers. However, NSBA urges the Committee to address these goals within every aspect of the current health care system, and not simply through the creation of a new public health insurance option. Furthermore, NSBA is concerned that a public health insurance option could do more to undermine than enhance needed market reforms.

With respect to the growing inefficiencies and instability of the Medicare and Medicaid programs, small businesses are concerned with the potential impact a new public health insurance plan would have on the private health care system in the future. We urge the House to fully consider alternatives to a public plan that would achieve the same results we all share in the health insurance market: choice, competition, and stability of affordable, high-quality coverage throughout the United States. We believe there are multiple opportunities to achieve these goals while avoiding partisan dialogue that could impede successful health care reform.

Other Provisions

NSBA Supports Equity for Our Nation's Self-Employed Act

In addition to the Committee's proposed options, 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.

NSBA supports the SIMPLE Cafeteria Plan Act of 2009

Another option to address tax code inequities to provide small businesses with more choices for quality, affordable health insurance is the *SIMPLE Cafeteria Plan Act of 2009 (S. 988)*, legislation to update the tax code to allow small business employees to purchase employer-provided health insurance with pre-tax dollars.

The SIMPLE Cafeteria Plan Act of 2009 would create a Simple Cafeteria Plan for small businesses that would be modeled after the Savings Incentive Match Plan for Employees (SIMPLE) pension plan enacted in 1996. Under current law, employers must demonstrate that a certain percentage of their employees actually participate in the plan in order to qualify for tax-free treatment. However, because most small businesses cannot satisfy these rules simply because of their size, they are prevented from creating regular cafeteria plans, and their employees are oftentimes unable to purchase health insurance and other employee benefits from the employer. The bipartisan measure will update the tax code to allow more entrepreneurs to offer their employees quality, affordable health care coverage. In addition, the bill would strengthen current law for all cafeteria plans by expanding dependent flexible spending accounts (DCFSA) and including coverage for long-term care benefits.

Conclusion

We thank you for the opportunity to comment on the Tri-Committee discussion draft for comprehensive health care reform, and we welcome the challenge of actively working with each Committee to produce a sensible solution to our nation's small business health care challenges. Please contact me with any questions.

Sincerely,



Todd O. McCracken
President

Cc:

The Honorable Dave Camp, Ranking Member, House Committee on Ways and Means
The Honorable Joe Barton, Ranking Member, House Committee on Energy and Commerce
The Honorable John Kline, Ranking Member, House Committee on Education and Labor
The Honorable Nydia Velazquez, Chairwoman, House Committee on Small Business
The Honorable Sam Graves, Ranking Member, House Committee on Small Business