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THE SMALL BUSINESS STRUGGLE UNDER OBAMACARE

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

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THE SMALL BUSINESS STRUGGLE UNDER OBAMACARE

WEDNESDAY, MAY 18, 2016

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 2:05 p.m., in Room SR–428A, Russell Senate Office Building, Hon. David Vitter, Chairman of the Committee, presiding.

Present: Senators Vitter, Risch, Scott, Fischer, Gardner, Ernst, Ayotte, Shaheen, Cantwell and Cardin.

OPENING STATEMENT OF HON. DAVID VITTER, CHAIRMAN, AND A U.S. SENATOR FROM LOUISIANA

Chairman VITTER. Good afternoon, everybody, and thanks for joining us today in the Senate's Small Business Committee hearing to discuss the impact of the Affordable Care Act on America's small businesses and employees.

I would like to thank the Ranking Member, Senator Shaheen, and the other members of the Committee, who should be on their way, for participating today.

Since its enactment in 2010, the Patient Protection and Affordable Care Act has forced so many small businesses to change fundamentally the way they provide employer-sponsored health insurance coverage for their employees. Currently, 60 percent of small employers do not offer health insurance to their employees, and much of that is due to the high cost of providing health insurance that must be purchased on the small group market.

Clearly, in my opinion, the Affordable Care Act has failed its namesake intention. From rising premiums and increased health care cost, to reduced access to doctors and hospitals, ObamaCare just is not working for so many Americans.

Now lest you think that is a partisan statement, let me go specifically to demonstrated facts. Fact number one, premiums and deductibles have risen every year since the ACA passed in 2010. Premiums have gone up 24 percent, deductibles have gone up 67 percent. Wages, on the other hand, have only increased 10 percent.

Fact number two, ObamaCare has increased premiums for the average American family. Now we all recall when the President said he would sign a universal health care bill by the end of his first term that would cover every American and cut the costs of a typical family's premium by $2,500 a year. That just has not happened.

Between 2009 and 2015, the average family premiums for employer coverage have increased to $4,170. This year is just a continuation of that trend, with average premiums for benchmarked Silver plans on the Federal exchange rising by 7.5 percent this year, far surpassing inflation. For Bronze plans, premiums have increased an average of 12.7 percent this year and the fear is that next year they will go up even more.

Fact number three, over 4 million people had their plans canceled because those plans did not meet the new ObamaCare requirements. And of course, that is despite the President's promise 37 times over that if you like your health care plan, you can keep it.

Fact number four, visits to emergency rooms have increased by 75 percent, which becomes enormously expensive for hospitals and taxpayers. And this utterly contradicts one of ObamaCare's biggest selling points, that once everyone got health insurance coverage, emergency room care would go down significantly.

Fact number five, with all of this, there are still 33 million people who are uninsured.

When it comes to ObamaCare and small businesses, there were a number of provisions meant to encourage employer-sponsored health insurance coverage, particularly among small businesses. Unfortunately that, too, did not play out as promised by President Obama and his administration.

Today I want to focus on three ObamaCare provisions that most directly relate to small businesses. Number one, an employer penalty for not offering health insurance known as the employer mandate. Number two, a tax credit to increase the affordability of health care for the smallest firms. And number three, small business health insurance exchanges designed to increase plan options and lower plan costs.

The employer mandate punishes small employers who do not offer adequate or affordable coverage if at least one of their employees enters an individual health insurance exchange and receives a premium credit. These related penalties were scheduled to take effect in 2014 but, because of the political implications, the administration delayed implementation for businesses with 100 or more full-time employees until 2015 and, for businesses with 50 to 100 until 2016.

Last year, small employers who offered to pay their employee's medical expenses directly through a health reimbursement arrangement were told by the IRS they could not do that anymore and, if they did, they would be penalized $100 per day per employee, up to $36,500 a year.

It is worth noting that a $36,500 penalty is 18 times greater than the $2,000 penalty on a large employer that does not provide insurance at all.

That logic does not make sense to me. Small businesses account for over 99 percent of employer firms in the U.S. and we should be focused on helping them grow and create more jobs instead of penalizing them.

Another ObamaCare failure is the Small Business Tax Credit. The ACA provides a Small Business Tax Credit to for-profit and non-profit organizations with fewer than 25 full-time employees,

phasing out as firm size increases. The problem is that most small businesses are not signing up. The administration estimated that 4 million small businesses would be eligible and sign up for the tax credit, but only 181,000 claimed the credit in 2014, according to the GAO. A big gulf, obviously, between 4 million and 181,000.

Small businesses are also avoiding the Small Business Health Options Program and the SHOP exchanges, which were specifically designed to help small business utilize the risk pool mechanism of the newly established health insurance exchanges.

Despite the Small Business Tax Credit and the SHOP exchanges, businesses simply cannot afford to provide health insurance for their employees in many cases. Not only do small businesses pay approximately 18 percent more, on average, for health insurance per employee, than large companies, they also receive fewer comprehensive benefits.

Part of the small business struggle is having limited options in health plans. Big insurance companies are bailing out of the health insurance exchanges, leaving individuals—especially folks in rural areas—with only one or two choices in health plans. So choices are shrinking as we speak, not expanding. This consolidation of health care providers is forcing out the small independent physicians who are essential to a competitive health care market.

Then there are the taxes that have been imposed, like the health insurance tax and the Cadillac tax.

When you put all of these problem areas together, it is quite clear to me that ObamaCare is failing American small businesses.

I am hopeful that today's discussion will shed some light on how folks are managing their businesses in the real world, despite all of these impediments.

With that, I will turn to our Ranking Member, Senator Shaheen.

OPENING STATEMENT OF HON. JEANNE SHAHEEN, RANKING MEMBER, AND A U.S. SENATOR FROM NEW HAMPSHIRE

Senator SHAHEEN. Thank you, Mr. Chairman. The purpose of today's hearing is to examine the impact of the Affordable Care Act on small businesses.

I am sure it will come as no surprise to anyone here in the room that I have a very different view of how the Affordable Care Act is working than Chairman Vitter.

I believe that the Affordable Care Act is working. Millions of Americans, including tens of thousands of people in New Hampshire, now have access to affordable health care coverage.

Just yesterday, the National Health Interview Survey released estimates that showed that 9.1 percent of Americans are currently uninsured, and that is the lowest uninsured level on record. The survey also shows consistent declines in uninsured rates since the Affordable Care Act took effect.

Since the law was passed in 2010, the country has had over 74 straight months of job growth with more than 14.6 million jobs created, and the unemployment rate has been cut in half. In my home State of New Hampshire, our unemployment rate is 2.6 percent.

Now I know that we would all agree that we must continue to create and promote policies that incentivize better health care at lower costs. The Affordable Care Act has taken some important

steps forward to develop, test, and implement innovative health care delivery system reforms. And this is essential to controlling health care costs, which is important to individuals and small business owners.

Because of the ACA, Americans now have health insurance options and can no longer be discriminated against because they have pre-existing conditions. This gives so many people the opportunity to leave a job they may otherwise have stayed in just because of the health benefits. So now they can pursue their dreams in other areas.

It also allows some who are self-employed to get insurance for the first time. Take, for example, Steve, who is a self-employed real estate broker from Londonderry, New Hampshire. Steve is 61 years old and he had a bypass 12 years ago. Because of his medical history, prior to the ACA he was unable to purchase health insurance. Once the ACA was enacted, he purchased a Silver plan and two months later he had another quadruple bypass. This year, Steve pays about $80 a month for coverage, after a tax credit is taken into account. So the Affordable Care Act saved Steve from financial ruin and it has allowed him to continue to work.

I do appreciate, though, that despite the gains made under the Affordable Care Act, there is still more work to be done. I also have heard from small businesses who are concerned by provisions in the ACA. They tell me about the impact of higher insurance premiums, the reporting requirements that can be a burden to some small businesses, and the effect the employer mandate has on hiring practices.

I believe there are changes that need to be made to the law to make it work better, especially for small businesses. For example, I am pleased to support Senator Coons' legislation—a member of this Committee—that would expand and simplify the ACA's Small Business Tax Credit, making it available to more employers for a longer period of time.

I am also a cosponsor of Senator Warner's Commonsense Reporting Act, which makes important changes to streamline the ACA's reporting requirements, making it less burdensome for employers.

And last fall, Senator Tim Scott, another member of this Committee, and I joined together to pass the first stand-alone bipartisan Affordable Care Act change. The PACE Act will help small businesses by protecting them from premium increases in the small group market that could have otherwise occurred without that legislation.

So it is my hope that we can continue to come together to work in a bipartisan way to improve the Affordable Care Act, particularly for small businesses in New Hampshire and across the country.

I look forward to today's discussion. I look forward to hearing from our first witness, Mr. Frank, and from our other witnesses who will come later.

Thank you.

Chairman VITTER. Thank you.

Now we will go to our first panel, an Administration witness, Dr. Richard Frank. He is the Assistant Secretary for Planning and Evaluation with the U.S. Department of Health and Human Serv-

ices. As such, he advises the Secretary on the development of health, disability, human services data and science policy and provides advice and analysis on economic policy.

From 2009 to 2011, Dr. Frank served as the Deputy Assistant Secretary for Planning and Evaluation, directing the Office of Disability, Aging, and Long-Term Care Policy.

Dr. Frank has a BA in Economics from Bard College and a Ph.D. in Economics from Boston University, and is on leave from his position at the Harvard Medical School.

Welcome, Dr. Frank. You have five minutes and are certainly welcome to submit anything additional for the record.

STATEMENT OF HON. RICHARD G. FRANK, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC

Mr. FRANK. Thank you, Chairman Vitter, Ranking Member Shaheen, and other members of the Committee. Thank you for the opportunity to discuss the progress that has been made in reforming our health care system through implementation of the Affordable Care Act and, most significant to today's discussion, small businesses and their employees.

In the time I have with you today, I will touch on the accomplishments of the ACA and the specific impacts it has had on small firms. I will also touch on some of the economic issues that have been raised in connection to the ACA.

In the past, although many small businesses have wanted to offer health benefits to their employees, they have faced many challenges. Historically, small businesses have been charged more for the same benefits than large employers.

The ACA has equipped us with a number of tools for addressing health insurance coverage in small businesses. These include coverage expansion, small employer tax credits, the creation of Small Business Health Options Program, or SHOP, exemptions from the employer mandate. And we judge our success by the impact of this whole package of policies.

In 2013, prior to the implementation of the ACA's coverage expansion, more than 44 million Americans were uninsured. In 2012, it was estimated that 61 percent of uninsured workers were employed by firms with 100 or fewer employees. Since then, we have made historic progress in reducing the size of the uninsured population.

In the years since the ACA passed, we estimate that 20 million Americans that were previously uninsured have gained health insurance coverage. These coverage gains are particularly notable for employees of small businesses. Data from the Current Population Survey highlight the overall gains in coverage among workers employed by firms with under 100 employees. Overall, there have been reductions in the number of uninsured employees and owners of small businesses across all categories of small businesses.

For firms with 10 or fewer employees, for example, the percent of workers with no health insurance fell by 6.8 percentage points between 2013 and 2014, from 32.1 percent to 25.3 percent.

These gains have been realized while keeping spending growth in check. Current enrollee spending growth for the private sector,

in private insurance, remains low. A similar pattern is apparent when one examines the Bureau of Labor Statistics Employment Cost Index. That measure measures changes in the cost of compensating workers. The ECI data through April of 2016 shows 12 month growth in employee benefit costs are at 3.3 percent, a continuation of historically low rates of cost growth in health benefits.

When the ACA was enacted, there were predictions made by some that the ACA would cause shifts from full-time to part-time work and reduce total employment. Several studies have been conducted examining the impacts of the ACA on labor markets. The evidence consistently shows that there were no significant negative effects on either total employment or the mix of full-time and part-time employment attributable to the ACA.

Some recent data from the National Federation of Independent Businesses, NFIB, shows an increase to 53 percent in the percentage of small businesses that are hiring or trying to hire.

The Affordable Care Act created the Small Business Health Options Program, or SHOP, to make it easier for small employers to obtain health coverage for employees. The SHOP allows eligible small employers to easily compare and select plans that meet the needs of their employees. In 2015, some 85,000 Americans were covered by SHOP and had about 10,700 small employers participating.

Now we continue to work on improving the consumer experience through better technology, expanded choices for employers and their employees, and existing research suggests that these improvements can be expected to attract more participants in SHOP in the future.

The ACA also offers a Small Business Health Care Tax Credit for eligible employers with fewer than 25 full-time equivalent employees to assist with up to 50 percent of their premium contributions. Data from 2014 shows that $541 million in tax credits due to this provision were claimed.

The ACA has used a range of policy tools to expand health insurance coverage. Connecting workers to coverage regardless of where they work helps improve productivity of the American labor force and the evidence clearly shows that small businesses are sharing in these benefits.

Thank you for your attention and I am pleased to take questions.

[The prepared statement of Mr. Frank follows:]

Statement of Richard Frank, Ph.D.
Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services
"Impact of the ACA on Small Businesses"
U.S. Senate Committee on Small Business and Entrepreneurship
May 18, 2016

Chairman Vitter, Ranking Member Shaheen, and members of the Committee, thank you for the opportunity to discuss the progress that has been made in reforming our health care system through implementation of the Affordable Care Act (ACA). The ACA is producing benefits to our citizens, health care providers, local economies and--most significant to today's discussion—small businesses and their employees. In the time I have with you today I will touch on the accomplishments of the ACA and the specific impacts on small firms and their employees and some of the economic issues that have been raised about the ACA.

In the past, although many small employers wanted to offer health benefits to their employees, they faced many challenges. Historically, small businesses were charged more for the same benefits compared to large employers.[1] Small businesses employing women or workers with chronic or high-cost illnesses, or with pre-existing conditions, faced higher insurance rates in most states. Because small firms have fewer employees to spread risk across than do larger firms, premiums varied dramatically from year to year due to changes in workers' health status.

The ACA has helped small businesses and their employees in a number of ways. These include coverage expansions, small employer tax credits, and the creation of the Small Business Health Options Program (SHOP). We judge success on the impact of these policies.

What has the ACA accomplished?

Today, consumers enjoy better access to affordable health insurance, stronger consumer protections in the case of illness or changes in employment, and a competitive Marketplace that allows them to choose from and enroll in insurance coverage that is right for them. In the years since the passage of the Affordable Care Act, we have seen more choices for consumers,[2] dramatic progress in reducing the number of uninsured Americans and historically low rates of increase in health care spending—accomplishments that directly benefit small businesses and their employees

Insurance Coverage

Let me begin by recalling that in 2013, prior to the implementation of the ACA's coverage expansions, more than 44 million Americans were uninsured.[3] In 2012, it was estimated that about 61% of uninsured workers were employed by firms with 100 or fewer employees.[4] Since then, we have made historic progress in reducing the size of the uninsured population. In the years since the ACA passed, the nation's uninsured rate has fallen below 10 percent for the first time ever since data collection began over five decades ago.[5],[6] We estimate that 20 million Americans that were previously uninsured have gained health insurance coverage.[7] This includes over six million young adults ages 19 to 25 who have gained health insurance coverage because of the Affordable Care Act.[8] The expansion of Medicaid has resulted in 15 million people enrolling in Medicaid or CHIP coverage since the beginning of the Affordable Care Act's first open enrollment period.[9] Furthermore, during the third open enrollment that concluded at the end of January, 12.7 million Americans selected health plans for 2016 through the Marketplaces, and another 400,000 signed up for coverage

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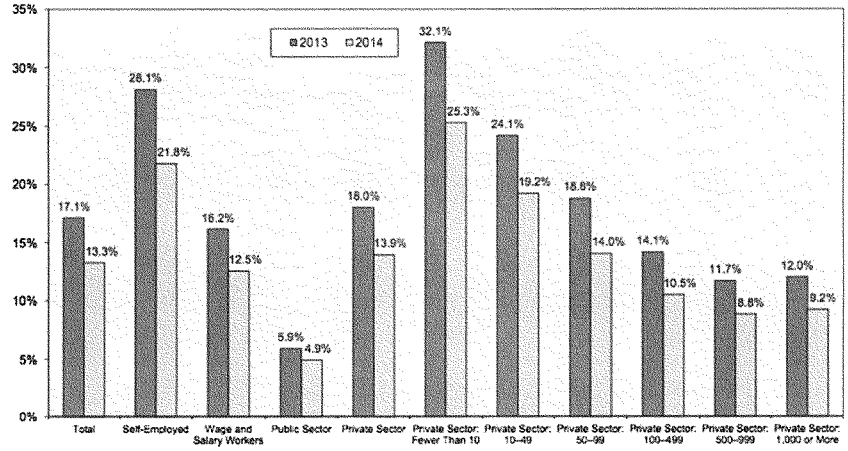
[1] Gabel J, McDevitt R, Gandolfo L, Pickreign J, Hawkins S, Fahlman C. Generosity and adjusted premiums in job-based insurance: Hawaii is up, Wyoming is down. Health Affairs 2006;25:832-43.
[2] www.hhs.gov/about/news/2015/07/30/competition-and-choice-in-the-health-insurance-marketplace-lowered-premiums-in-2015.html
[3] Health Insurance Coverage: Early Release of Estimates From the National Health Interview Survey, 2013.
[4] Fronstien, Paul. "Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2013 Current Population Survey." Employee Benefits Research Institute. September 2013.
[5] http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201602.pdf; http://www.cdc.gov/nchs/data/nhis/earlyrelease/insur201605.pdf
[6] http://www.cdc.gov/nchs/data/nhsr/nhsr017.pdf
[7] https://aspe.hhs.gov/pdf-report/health-insurance-coverage-and-affordable-care-act-2010-2016
[8] https://aspe.hhs.gov/pdf-report/health-insurance-coverage-and-affordable-care-act-2010-2016
[9] https://www.medicaid.gov/medicaid-chip-program-information/program-information/medicaid-and-chip-enrollment-data/medicaid-and-chip-application-eligibility-determination-and-enrollment-data.html

through New York and Minnesota's Basic Health Programs, state based programs supported by the Affordable Care Act that provide health insurance coverage to low income individuals.[10]

These coverage gains are particularly notable for employees of small businesses. Data from the Current Population Survey highlight the overall gains in coverage among workers employed by small firms (with 100 or fewer employees). Figure 1 shows changes in the percentage of workers employed by smaller firms that did not have insurance coverage before and after the ACA's coverage expansion began. For firms with 10 or fewer employees the percent of workers with no health insurance fell by 6.8 percentage points from 32.1% to 25.3%. The declines in the percent uninsured were also substantial for employees of firms with 10 to 49 employees (4.9 percentage points) and those with 50 to 99 employees (4.8 percentage points). Employees in small businesses are more likely to be covered now than before the ACA's coverage expansions took in 2014.[11] These gains have been realized through significant increases in coverage by Medicaid (see Appendix) and individual market private insurance.[12]

Figure 1

Workers Ages 18–64 Without Health Insurance Coverage, by Firm Size, 2013–2014



Source: Employee Benefit Research Institute estimates from the Current Population Survey, March 2014–2015 Supplements.

[10] https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-02-04.html
[11] Fronstein, Paul. "Sources of Health Insurance Coverage: A Look at Changes Between 2013 and 2014 from the March 2014 and 2015 Current Population Survey." Employee Benefit Research Institute. October 2015.
[12] Fronstein, Paul. "Sources of Health Insurance Coverage: A Look at Changes Between 2013 and 2014 from the March 2014 and 2015 Current Population Survey." Employee Benefit Research Institute. October 2015.

The data I just cited highlight the increased number of people that now have health insurance in the United States. The provisions of the ACA also improve the quality of health insurance coverage. The ACA created new consumer protections such as those that eliminate pre-existing conditions as a reason for coverage denials and prohibit lifetime dollar limits on essential health benefits. The ACA also prohibits rescissions of insurance just because someone gets sick. Recommended preventive services, including wellness visits and certain cancer screenings are now covered without cost sharing. In conjunction with the Mental Health Parity and Addiction Equity Act of 2008, the ACA has also ushered in an era of increased access to mental health and substance use disorder benefits—benefits that must meet parity requirements with regard to medical-surgical benefits. These are key provisions that are being enlisted to address the opioids epidemic and the alarming growth in suicides.

Better coverage options for small businesses

The Affordable Care Act created the Small Business Health Options Program (SHOP) to make it easier for small businesses to obtain health coverage for their employees. Just as in the individual Marketplaces, the SHOP allows eligible small employers to easily compare and select plans that meet the needs of their employees. In most states, SHOP is open to qualified employers with 50 or fewer full-time equivalent employees, and in the few states that have chosen to expand the definition of small employer the program is open to businesses with 100 or fewer full-time equivalent employees.[34] In 2015, some 85,000 Americans were covered through SHOP, with about 10,700 small employers participating.[35] It is important to remember that, unlike the individual Marketplace, eligible employers may begin participating in the SHOP at any time, and are not limited to a single open enrollment period.

The ACA also offers a Small Business Health Care Tax Credit to otherwise eligible employers with fewer than 25 full-time equivalent employees to assist with up to 50 percent of their premium contributions. Data from 2014 indicate that small employers claimed $541 million in tax credits due to this provision.[36]

The Affordable Care Act's coverage provisions have also encouraged entrepreneurship.[38] Individuals no longer have to remain in jobs just to keep their health insurance and now have the flexibility to purchase health insurance outside of the employer-sponsored insurance market. Americans can pursue their professional passions and start their own small businesses with the knowledge that coverage will be available. This is good news for the 22 million self-employed small business owners in this country.

Rate review and medical loss ratio

Other provisions of the ACA have helped save money for small businesses. Thanks to rate review in the small group market, a total of 8.7 million consumers saved $2.0 billion in premiums from 2012 to 2015 and 7.7 million consumers received a total of $465 million in medical loss ratio (MLR) rebates for 2012 to 2014.[13] These add up to real savings for small businesses and their employees.

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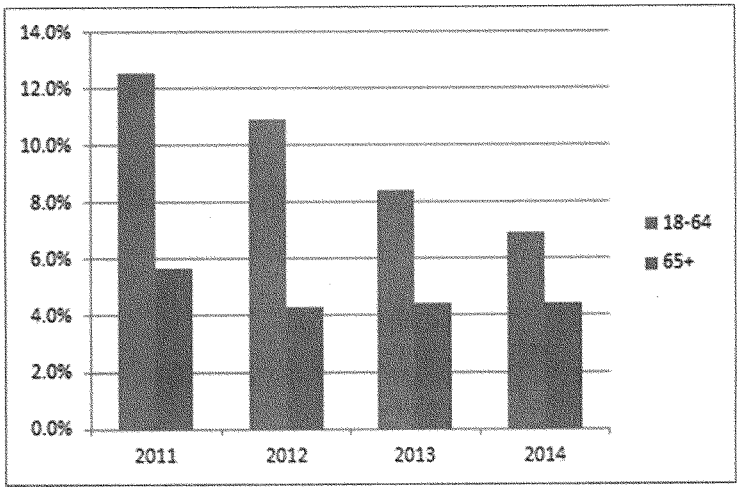
[34] https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/state-rating.html
[35] https://blog.cms.gov/2015/07/02/update-on-shop-marketplaces-for-small-businesses/
[36] GAO "Small Employer Tax Credit." March 2016.
[38] The Affordable Care Act: Improving Incentives for Entrepreneurship and Self-Employment. May 2013. Linda J. Blumberg, Sabrina Corlette, and Kevin Lucia
[13] ASPE, "Rate Review Annual Report September 2013", accessed at
https://aspe.hhs.gov/sites/default/files/pdf/178361/ratereview_rpt.pdf
ASPE, "Rate Review Annual Report September 2014", accessed at
https://aspe.hhs.gov/sites/default/files/pdf/77041/rpt_RateReview.pdf
CMS, "Rate Review Annual Report December 2015", accessed at
https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Rate-Review-Annual-Report_508.pdf
CMS, "2012 Total Rebates", "2013 Total Rebates", "2014 Total Rebates" accessed at
https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html

Access to Care

Because of the ACA, individuals across the life span have improved access to care. Medicaid expansion is associated with an increase of individuals reporting a usual source of care.[14] Low-income adults who gained coverage report that it enabled them to access needed primary and preventive care, while also helping to address their specific health problems.[15], [16] Further, the percentage of individuals experiencing problems with access to prescription drugs declined between 2011 and 2014. Approximately 13% of individuals ages 18-64 reported skipping medication doses, taking less medicine, or delaying filling prescriptions because of cost in 2011 compared to 7% in 2014. For individuals ages 65 and older, about 6% reported problems with access to prescription drugs in 2011 compared to about 4% in 2014. (See Figure 2)[17]

Figure 2: Percentage of Individuals Skipping Prescription Drug Doses, Taking Less Medicine or Delaying Filling Prescriptions in past 12 months Because of Cost



Source: ASPE analysis of National Health Interview Survey (NHIS) 2011 -2014

Health care spending growth

Health care spending continues to grow slowly by historical standards. According to the Kaiser Family Foundation's Employer Health Benefits Survey, the average premium for employer-based family coverage rose by just 4.2 percent in 2015, and the last four years account for four of the five lowest growth rates recorded since the survey began in 1999.[18]

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[14] Benjamin Sommers Munira Gunja, Kenneth Finegold and Thomas Musco, "Changes in Self-reported Insurance Coverage, Access to Care, and Health Under the Affordable Care Act," JAMA 2015;314(4):366-374. doi:10.1001/jama.2015.8421

[15] Megan J Hoopes, Heather Angier, Rachel Gold, Steffani R Bailey, Nathalie Huguet, Miguel Marino, and Jennifer E DeVoe, "Utilization of Community Health Centers in Medicaid Expansion and Non-expansion States, 2013-2014," Journal of Ambulatory Care Management, January 2016.

[16] Laura R. Wherry and Sarah Miller, "Early Coverage, Access, Utilization, and Health Effects Associated with the Affordable Care Act Medicaid Expansions," Annals of Internal Medicine 2016 doi: 10.7326/M15-2234.

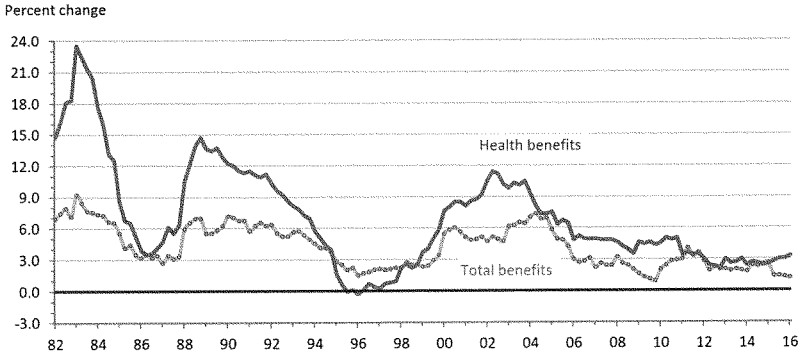
[17] Estimates are from National Health Interview Survey (NHIS) 2011 -2014.

[18] https://www.whitehouse.gov/blog/2015/09/22/new-data-show-slow-health-care-cost-growth-continuing

Recent data indicate that slow growth in employers' health benefits costs is continuing. The most up-to-date data on businesses' costs for health insurance come from the Bureau of Labor Statistics' Employment Cost Index (ECI), which measures the hourly costs of compensating workers. ECI data through the first quarter of 2016 shows 12 month growth in employee health benefit costs of 3.3 percent, extending the recent stretch of unusually low growth in employers' health benefit costs.

Figure 3

Employment Cost Index, private industry, 12-month percent change in employer costs per hour worked, total benefits and health benefits



Source: Bureau of Labor Statistics

Economic Benefits

The Affordable Care Act has also brought a number of economic benefits to the states. In Kentucky, the estimated economic contribution of their Medicaid expansion is projected to be $30.1 billion from 2014 to 2021. Additionally, Kentucky can expect a net positive impact on their state budget of $919.1 million and job growth of 12,000 jobs in state fiscal year 2014 and 40,000 jobs from state fiscal year 2014 to 2021.[19] States have also gained savings from reductions in expenditures on behavioral health programs, which include mental health and substance abuse services.[20] Many other states have commissioned independent studies to estimate the state-specific impacts of expanding Medicaid on their economy. The findings almost universally show job growth and positive economic impacts over time.[21]

Since implementation of the ACA, states have experienced decreases in hospital uncompensated care costs related to previously uninsured residents gaining health coverage. Decreases in uncompensated care costs, while present in all states, have been substantially greater in states that have expanded Medicaid. Early data from hospital associations in expansion states have shown up to a 46.5 percent decrease in admissions by uninsured patients and up to a 59.7

[19] Deloitte Development LLC. (2015). Medicaid Expansion Report: 2014. Commonwealth of Kentucky. Retrieved from: http://governor.ky.gov/healthierky/Documents/medicaid/Kentucky_Medicaid_Expansion_One-Year_Study_FINAL.pdf

[20] Dorn, S, et al. (March 2015). Kaiser Family Foundation and Urban Institute (March 2015). The Effects of the Medicaid Expansion on State Budgets: An Early Look in Select States. Kaiser Family Foundation. Accessed at: http://kff.org/medicaid/issue-brief/the-effects-of-the-medicaid-expansion-on-state-budgets-an-early-look-in-select-states/

[21] https://aspe.hhs.gov/pdf-report/economic-impact-medicaid-expansion

percent decrease in hospital uncompensated care costs since ACA implementation.[23] In 2014, hospital uncompensated care costs were reduced by an estimated $7.4 billion, representing a 21 percent reduction in uncompensated care spending. Medicaid expansion states accounted for $5 billion, or 68 percent, of that reduction.

Value

New incentives to pay doctors and hospitals for improving outcomes are increasing the quality of the health care. Potentially avoidable hospital readmissions within 30 days of discharge account for more than $17 billion in estimated Medicare expenditures annually. To address this problem, the Affordable Care Act created the Hospital Readmissions Reduction Program, which adjusts payments for hospitals with higher than expected 30-day readmission rates for targeted clinical conditions such as heart attacks, heart failure, and pneumonia. A new study by HHS shows that readmissions fell sharply following enactment of the Affordable Care Act. The study found that readmission rates fell more sharply for conditions that were targeted by the Hospital Readmissions Reduction Program, including heart attack, heart failure, and pneumonia, than for other conditions requiring hospitalizations, such as surgeries and diabetes. Researchers estimate that approximately 565,000 readmissions were prevented across all conditions, compared to the readmission rate in the year prior to the passage of the Affordable Care Act.[24]

The Affordable Care Act has helped improve hospital-patient safety, leading to a 17 percent decline in hospital-acquired conditions from 2010 to 2014. That decline translates to 2.1 million fewer hospital-acquired conditions, approximately 87,000 fewer patient deaths in hospitals, and $20 billion in health care cost savings.[25] Gains were particularly strong in 2013 when 800,000 fewer patients experienced harms, 35,000 fewer patients died, and $8 billion in unnecessary costs were saved compared with 2010.[26]

The ACA and small businesses

When the ACA was enacted there were predictions made by some that the ACA would result in shifts from full time to part time work and reductions in total employment. Several studies have been conducted examining the impacts of the ACA on labor markets. These include effects of Medicaid expansion, the employer responsibility requirement, and the overall effects of the ACA.[27], [28], [29] Research has concluded that the ACA has had no negative effect on total employment or the mix of part-time versus full time employment.[30], [31] Overall trends have also been positive for small businesses under the ACA.

Recent data from the National Federal of Independent Businesses (NFIB) shows an increase to 53% in the percentage of small businesses that are hiring or trying to hire.[33] Data from the Gallup-Wells Fargo survey shows an increasingly positive view of the financial circumstances of small business owners. Figure 5 shows large gains in the Gallup-Wells Fargo small business index. Likewise there is continued growth in the share of small businesses reporting revenue gains

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[23] The Impact of Medicaid Expansion on Uncompensated Care Costs: Early Results and Policy Implications for States. http://www.rwjf.org/en/library/research/2015/06/the-impact-of-medicaid-expansion-on-uncompensated-care-costs.html

[24] "Readmissions, Observation, and the Hospital Readmissions Reduction Program," Rachael B. Zuckerman, M.P.H., Steven H. Sheingold, Ph.D., E. John Orav, Ph.D., Joel Ruhter, M.P.P., M.H.S.A., and Arnold M. Epstein, M.D., February 24, 2016, at NEJM.org. DOI: 10.1056/NEJMsa1513024

[25] http://www.ahrq.gov/news/newsroom/press-releases/2015/saving-lives.html

[26] AHRQ Analysis: Hospital-Acquired Conditions Reduced by 17 Percent From 2010 to 2013. November 2015. Agency for Healthcare Research and Quality, Rockville, MD. http://www.ahrq.gov/news/hac.html

[27] Gooptu et al. "Medicaid Expansion Did Not Result In Significant Employment Changes Or Job Reductions In 2014." Health Affairs. January 2016. http://content.healthaffairs.org/content/35/1/111.abstract

[28] Bowen, Garrett and Robert Keastner. "Recent Evidence on the ACA and Employment: Has the ACA Been a Job Killer?" Urban Institute. August 2015. http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000327-Recent-Evidence-on-the-ACA-and-Employment-Has-the-ACA-been-a-Job-Killer.pdf

[29] Burtless, Gary. "Employment Impacts of the Affordable Care Act." Brookings Institution. March 20, 2015. http://www.brookings.edu/blogs/health360/posts/2015/03/20-aca-five-years-employment-impact-burtless

[30] Moriya et al. "Little Change Seen In Part-Time Employment As A Result Of The Affordable Care Act." Health Affairs. January 2016. http://content.healthaffairs.org/content/35/1/119.abstract?=right

[31] Mathur et al. "Has the Affordable Care Act Increased Part-Time Employment?" Applied Economics Letters. August 2015.

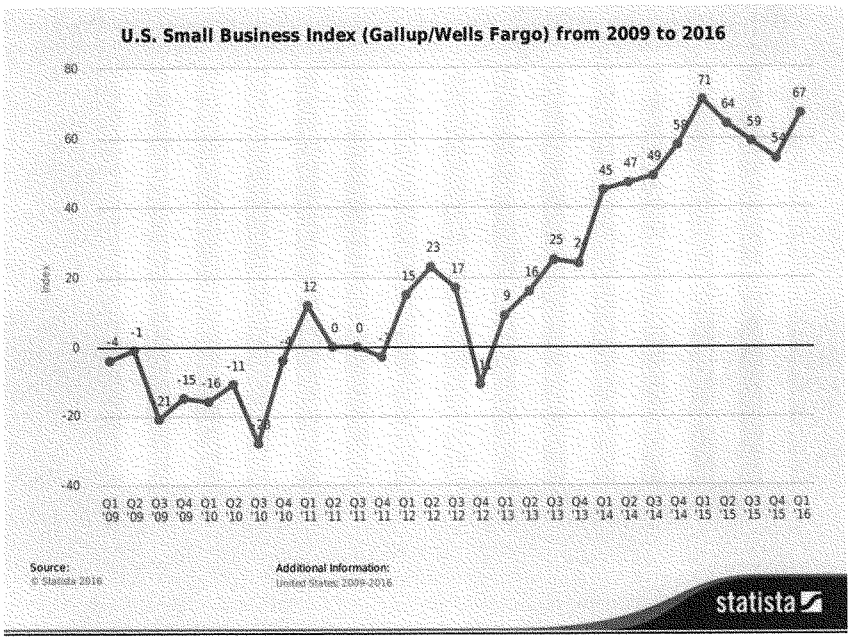
[33] NFIB Small Business, Economic Trends April 2016

over the prior year. This pattern is shown on Figure 6 that presents data from a U.S. Bancorp survey that is conducted annually.

Some also hypothesized that Medicaid expansion and the financial support available in the Marketplaces would adversely affect employers' incentives to offer health insurance and subsequent worker take-up. However, neither of these rates have declined under the ACA. Both offer and take-up have remained essentially consistent in recent years.[37]

Overall the ACA has significantly improved coverage of people that work for small businesses. It created new markets for insurance and expanded demand for medical care and health services. This confers important benefits on the 600,000 small businesses that operate in the health sector.[39] Despite a variety of concerns and uncertainties, small businesses have emerged from the recession.

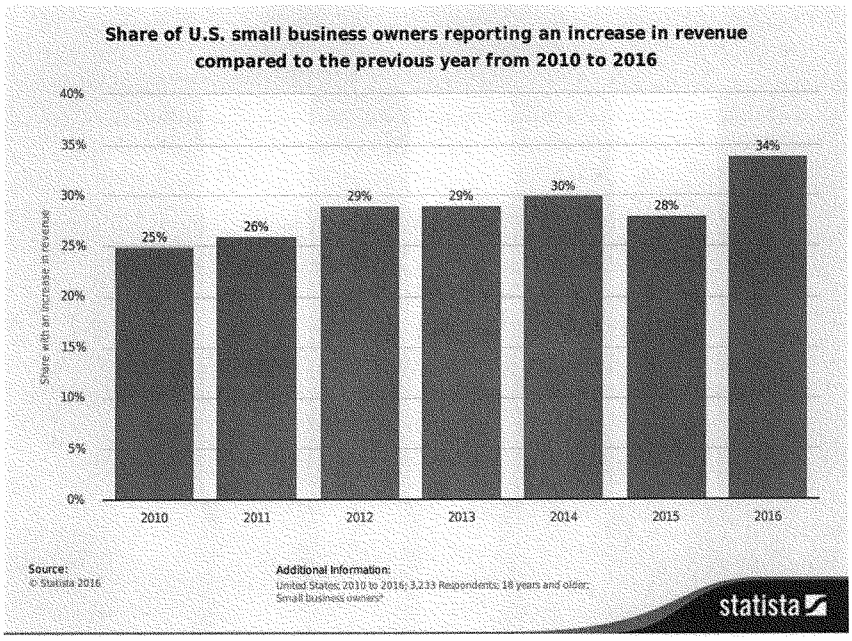
Figure 4



[37] An Early Look At Changes In Employer-Sponsored Insurance Under The Affordable Care Act, F. Blavin, et. al., Health Affairs 34, NO. 1 (2015): 170–177, 2014

[39] U.S. Bureau of the Census, Statistics of U.S. Businesses, 2015

Figure 5

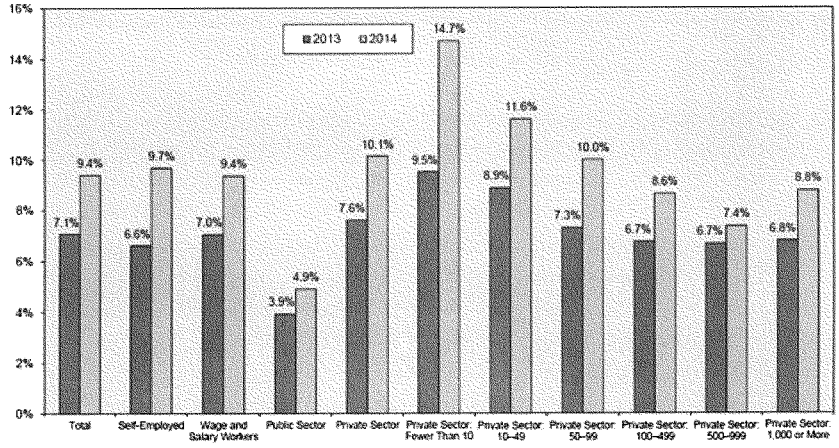


Concluding remarks

The Affordable Care Act has helped improve access to coverage and high quality health care for millions of Americans, including small business owners and their employees. The ACA expanded health insurance coverage to millions of Americans who were formerly uninsured and it has improved coverage for millions more who already had health insurance. Connecting workers to coverage, regardless of where they work, helps to improve productivity of the American workforce. The ACA's focus on quality has helped to reduce hospital acquired infections and readmissions, increasing the value of health care spending. Medicaid expansion has infused new dollars into communities, covered vulnerable people, and reduced the burden of uncompensated hospital care on everyone in our communities. This helps local economies. These important milestones have occurred while keeping the rate of growth in health spending unusually low. Thank you for the opportunity to address the important ways the ACA is helping small businesses and their employees. I welcome your questions.

Appendix

Figure 73
Medicaid Coverage, Workers Ages 18–64, by Firm Size, 2013–2014



Source: Employee Benefit Research Institute estimates from the Current Population Survey, March 2014–2015 Supplements.

Chairman VITTER. Okay. Thank you.

You heard my critique of the actual experience of so many Americans with ObamaCare since it was passed in 2010. You said these provisions, like the tax credit provision for instance, have to be judged by the success and impact of these policies. Let us go to that because I think that is a good example, certainly not the only one.

Again, if we can put up the relevant slide, the Small Business Tax Credit slide.

The administration talked about 4 million small businesses being eligible to take advantage of that. The actual experience is 181,000, a trivial percentage of the 4 million. What happened? And what is being done to change that?

Mr. FRANK. I can tell you that we are doing a number of things that we believe, and research supports, will allow this market to grow. First of all, it is important to note that this is an entirely new market and we are working in uncharted territory. We are building a new market from the start.

In so doing, what we are working on is improving the consumer experience by making choice clear and having technology very supportive of consumers making choices and businesses being able to negotiate the options out there.

Second, what we are trying to do is we are working with partners such as brokers and agents. Recently, we have completed training about 31,000 of these folks to help consumers and employers find their way through the thicket of options. And then finally, we are continuing to conduct webinars and reaching out into the community in a variety of ways to increase awareness of this program, which actually at this point in time is still very low.

Chairman VITTER. So all of those things, I mean, we are at 181,000. The stated promise was 4 million. All of those things, where are they going to get us over the next year, say from 181,000 toward 4 million?

Mr. FRANK. I cannot tell you. I can tell you that we have been talking to a number of states, and states like California are projecting pretty rapid growth over the next two years in their SHOP program by taking——

Chairman VITTER. First of all, I am talking about the Small Business Tax Credit specifically. So do you have any estimate or guesstimate about where we will go in the next year, from 181,000 toward the promise of 4 million?

Mr. FRANK. Well, on the Small Business Tax Credit, that is really sort of a Treasury jurisdiction, so I do not really have the data that they have to sort of look at where the projections are on that one.

Chairman VITTER. Okay. Can you submit for the record, by talking to your colleagues at Treasury, where they expect to get over the next year?

Mr. FRANK. We can follow up with you on that.

Chairman VITTER. Probably the most fundamental fact that has not played out was a promise that the President made 37 times over: If you like your health plan, you can keep it.

Has that promise been kept?

Mr. FRANK. The vast majority of people who have liked their health plan have been able to keep it.

Chairman VITTER. The promise was to everybody—if you like your health plan you can keep it—37 times over. Has that promise, that commitment, been kept?

Mr. FRANK. As I said, we have worked very hard to make sure that Americans are covered and the vast majority of people have been able to keep their health plan and, in fact, many new people—in fact, 20 million new people—have health plans that they are now keeping.

Chairman VITTER. Well, the promise was not to the vast majority. The promise was to everybody, right?

Mr. FRANK. Well, there are 20 million people who now have coverage and have the option of keeping their health plans that did not have it before.

Chairman VITTER. Well, the promise was not about new coverage. The promise was if you like your existing plan, you can keep it. Four million folks, at least, have been forced off their health plan. That promise has been broken. What is being done to correct that?

Mr. FRANK. We continue to work with all parties to do things that will increase access, improve affordability, improve quality of our health care system and our health insurance system.

Chairman VITTER. Is that going to mean that those folks can go back to their old plans that they were on and wanted to keep?

Mr. FRANK. Was that the question?

Chairman VITTER. The folks that were involuntarily thrown off their former plans that they wanted to keep, is the work that you are describing going to mean that they will be able to go back?

Mr. FRANK. We are working to try to get everybody affordable, high quality health insurance. That is what I——

Chairman VITTER. Okay. That was not my question. So, can you answer my question?

Mr. FRANK. That is my answer.

Chairman VITTER. Okay, that was not my question.

Has competition in this important sector of the economy increased since ObamaCare passed?

Mr. FRANK. Yes. Actually, it has increased dramatically. For the first time in years there are new entrants into the small individual health insurance market. The provisions, for example, we are putting into SHOP now allow people to choose across issuers, within a middle level, which allows people to really comparison shop in a way that they have not previously been able to.

We have dramatically increased the transparency of insurance offerings so that people can look at the cost-sharing and look at the premiums and make easy comparisons between them, including whether a plan includes their doctor or not. That improves competition.

Chairman VITTER. So overall, as an economist, you believe that overall competition has increased significantly?

Mr. FRANK. I think competition in the individual health insurance market has improved since the initiation of the Affordable Care Act.

Chairman VITTER. Should that not stabilize and lower prices instead of increase prices?

Mr. FRANK. This is a start-up, and you have to remember that prior to the creation of the Affordable Care Act, the individual market was seeing double digit price increases continuously, which was part of the slide that was not shown, that they were growing very rapidly in the period prior to 2010. And what you have seen is, in fact, that level of growth has actually stabilized and has come down a bit since the initiation of the Affordable Care Act.

Chairman VITTER. So are you happy with what prices are doing? And what do you expect in the near future?

Mr. FRANK. We have work to do. We are not done, and I think that is true on the small business side; it is true in the individual market. And we are continuing to work within our authorities to improve matters. But we are also anxious to work with members of Congress to make changes that would improve affordability, improve quality, and continue to grow access to care.

Chairman VITTER. Okay. Well, I have a lot more concerns and questions, but let me turn to Senator Shaheen. I am already over time.

Senator SHAHEEN. Thank you, Dr. Frank, for your testimony.

One of the things that you pointed out is that there are some jurisdictional issues around the Affordable Care Act. So maybe it would be helpful if you could just clarify for me, and for the Committee, what the role is of Health and Human Services in terms of the Affordable Care Act and how you work with some of the other agencies. You mentioned Treasury, obviously the Department of Labor is also involved.

And then, if you would, talk about how you are working with small businesses to address some of the concerns that you hear from small businesses.

Mr. FRANK. Thank you very much for the question.

The Department of Health and Human Services has a variety of authorities. They relate, in part, to the exchanges. They relate partly to insurance coverage. They relate very broadly to what you termed delivery system reform.

Now we work very closely with the Small Business Administration, the Department of Labor. Many of the insurance regulations associated with the Affordable Care Act are so-called tri-department regulations which involve Treasury, HHS and Labor. In fact, yesterday I was down in Atlanta with my Labor colleagues working on some mental health issues and coverage policy there. That is just sort of an example of sort of the way we do things regularly.

In terms of the small business side of things, the Small Business Administration has been just fantastic partners to us. They have done a tremendous amount of outreach to try to increase awareness in the small business community, to try to bring back ideas to us from their contacts. RCMS has worked very closely with them to do webinars, to do visits around the country. And we continue to work with our partners, including the Small Business Administration, to train and support brokers and agents in helping small businesses find their way into things like SHOP.

Senator SHAHEEN. Thank you.

Obviously, rising health care costs are a concern that everyone has, and I mentioned delivery system reforms in my opening statement, as you pointed out. New Hampshire is proud to have Dart-

mouth-Hitchcock Hospital and they are part of a nationwide collaborative that is looking at delivery system reforms and what that can do to lower health care costs.

Can you talk about how HHS is working on trying to address some of those rising costs of health care and what you are seeing in terms of the delivery system reform efforts?

Mr. FRANK. Yes. Well, first of all, I do think it is important to reemphasize that we are still in a period of historical low rates of growth in spending. And that shows up in savings to individual consumers and to employees of small business. And we have seen some of the most dramatic effects——

[Audio system failure.]

Mr. FRANK. In terms of delivery system growth reform, some of the key elements are the way we pay providers. And we have been making a dramatic pivot from the traditional fee-for-service pay for volume [inaudible.]

Is this better?

Senator SHAHEEN. I think so. Try it again.

Mr. FRANK. Usually they put a microphone on me to dampen my voice.

[Laughter.]

What we have done is made this pivot from fee-for-service pay for volume system to one where we are really trying to pay for value. Our Secretary set a goal of moving the Medicare program to a 30 percent pay for volume away from fee-for-service by the end of 2016. We have already hit that goal.

Senator SHAHEEN. I am sorry, can you say that again?

Mr. FRANK. So our Secretary, Secretary Burwell, when she came in set a goal of getting 30 percent of Medicare no longer just paying for volume, and moving toward value, including quality through risk-based payments and the like. We hit that goal at the beginning of this year, even though the goal was for the end of this year.

So we are moving very aggressively to really changing the incentives, so that all health care providers really are focused on doing what is right and getting patients healthy, as opposed to generating a lot of volume.

Senator SHAHEEN. Thank you. My time is up.

Chairman VITTER. Senator Ayotte.

Senator AYOTTE. Thank you very much.

I wanted to ask Secretary Frank about, in particular, one of the tools. I actually happened to have a meeting on Monday with a number of small businesses in New Hampshire about this topic. And one of the concerns that was raised in the meeting by the small business owners was the restriction on the use of Health Care Relief Acts. In other words, the Health Care Relief Fund, I should say, reimbursement arrangements where you have small businesses that have previously been funding their employees' Health Savings Accounts. In fact, this one business was doing it in supplement even to existing health care—they had health care coverage for their employees and they provide 100 percent to their employees. And they had a health savings account to allow their employees to help cover any gaps in their coverage. So this is an employer who has gone—who is doing a lot, really right, by their employees.

And yet, they raised the issue with me that they are very concerned that now there is a regulation, currently a Treasury regulation, essentially fining them $100 a day if they do that as an employer. It seems to me, especially for our small businesses, this is an important tool.

And I also think about our sole proprietors, too. I have heard a lot from them, you know, that this Health Savings Accounts can be a very important tool. And also, if you are an employer who wants to help their employees—like this employer—a health reimbursement account.

I am actually cosponsoring legislation to be able to address that, but can you talk about this? Do you agree it is an important tool that we should allow small businesses to have access to help their employees?

Mr. FRANK. Well, the HRAs are addressing—first of all, you are correct that they are mostly sort of subject to the regulations and the purview of the Treasury Department.

Senator AYOTTE. Right. But we are talking about small businesses, affordable health care. Do you think that that regulation makes sense? Do you think that these types of accounts are an important tool that consumers should have access to, including small businesses?

Mr. FRANK. So a couple things to note. First of all, HRAs are not insurance. They are sort of these other types of accounts and they do not meet the definition of insurance. So one issue is that I think people conflate the two.

Senator AYOTTE. I am not conflating. I am just being clear. I have an employer that provides 100 percent coverage. They have insured their employees. And they use the HRA as a supplement to fill in any gaps in insurance.

Mr. FRANK. As I said, this is mostly the purview of the Treasury Department, but what I do know about is there are provisions that if you have insurance and you want to do additional funds through an HRA, that is permissible.

I think that what gets conflated in many quarters is sort of where the line between HRAs and insurances are drawn.

Senator AYOTTE. Okay, but do you think that—right now, you would be fined $100 a day from Treasury. So do you think that is a good idea?

Mr. FRANK. Yes, I do not know the details. I do not understand the details of that.

Senator AYOTTE. Also, do you think that Health Savings Accounts are good tools for people who—like, let us say you are below the mandate level and you are an individual, and that is something that is an important tool that you want to utilize. What is your view on those?

Mr. FRANK. Health Savings Accounts, for individuals?

Senator AYOTTE. Yes.

Mr. FRANK. I do not——

Senator AYOTTE. What does Health and Human Service think—I mean, the Affordable Care Act reduced the ability of what you could use, in terms of over-the-counter medications and some of these tools that we have had for Health Savings Accounts. So I just wanted to know what is the administration's view on that? Because

I think it is an important tool that many have come to me and say we want expanded access to these tools.

Mr. FRANK. So, as I said, the details to that are really the Treasury thing. I can tell you that HHS is focused on really trying to get as many people covered as we possibly can and that is sort of our number one priority here.

And really, the HSAs and the HRAs are really under the purview of the Treasury Department. I am not that familiar with the details of those regulations.

Senator AYOTTE. I just think as we look at the big picture, these are tools that we need to look at and we cannot have one side of the Federal Government doing this and the other side of the Federal Government interfering with other really important tools that people use that, for some individuals, are very helpful in covering their health care costs.

Mr. FRANK. Okay.

Senator AYOTTE. Thank you.

Chairman VITTER. Let me follow up with some questions that Senator Ayotte brought up.

I realize you are in HHS, you are not in Treasury. But this penalty is a big deal and it is a big part of the system and it is a big impact on health care. And it is there to penalize small business who want to do it one way versus the SHOP exchange, which is what you are directly involved in.

So quite frankly, it just does not cut it to say you are not in Treasury. This is a big deal and it is $100 a day penalty per employee, up to $36,500 a year, small businesses who are trying to pay their employees' medical expenses through a Health Reimbursement Arrangement.

Do you think that draconian penalty is good policy? Because that is a key policy that the administration is promoting.

Mr. FRANK. So Senator Vitter, I appreciate your question and really, the issue for me is I am not familiar with all of the details. I do know——

Chairman VITTER. This is not exactly, you know, a comma on page 672. This is a big deal, including for small businesses, which was the whole purpose for this discussion.

Mr. FRANK. I understand. I just am not familiar with all of the details of that regulation. But what I think is important is that we are interested, if there are problems, if there are things that need to be changed, and they meet the test of improving access, affordability and quality, we are happy to work with Congress on that.

Chairman VITTER. Does that include lifting this penalty?

Mr. FRANK. Look, we do have a variety of tools that we can work on. We are willing to——

Chairman VITTER. Does that include lifting this penalty?

Mr. FRANK. I think that we are willing to talk about moves that will improve quality, access and affordability. I just do not know—I have not been able to look into the consequences of changing the policy you are talking about. It is for that reason that I need to refer to the Treasury for the details.

Chairman VITTER. Thank you.

Senator Ernst.

Senator SHAHEEN. You mean Senator Cantwell.

Chairman VITTER. Oh, I am sorry.

Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Frank, good to see you here.

One of the issues, obviously, for small businesses, among many people who are looking for affordable insurance these days, is the ability to get leverage in the marketplace. One of the provisions of the Affordable Care Act was the Basic Health Plan. I do not know if you are familiar with it, but it is my understanding that a couple of states have implemented that.

Do you see that as a way for smaller employers/employees to leverage themselves in the marketplace, bundled up with others to get more affordable rates?

Mr. FRANK. Yes, I think so far we have seen these in New York and Minnesota and we have about 400,000 people now signed up in those and they seem to be doing well. They are set up in a way that is fiscally very solid because they are budget neutral. And again, it is a way of addressing some of the problems that have historically plagued small businesses, which is having difficulty to spread risk.

Other tools that we are using, such as the SHOP, are sort of aimed at the same kind of fix.

Senator CANTWELL. Well, you say spreading risk. I look at it and say small businesses know that if you are an employee at a small company versus a larger employer, you do not have the same leverage in the marketplace. But what we have seen about Basic Health Plans, at least when we had them, was that by bundling up a large percentage of people together, 30,000 or 40,000 people, that you can gain a lot of leverage in the marketplace.

And I think that is what these individual employees or small entrepreneurs want to see, is their ability to get the same kind of leverage as somebody that works for a larger company.

Mr. FRANK. Absolutely. In a sense, there are two things that are accomplished at once. You grow the risk pool, you spread the risk, and you bring a greater ability to move market share and therefore bargain better in the marketplace.

Senator CANTWELL. Well, I hope that—I know that it was a challenge getting these rules out until just 2015, so it is possible that other people could take this up and use it as a solution in the coming years. Is that correct?

Mr. FRANK. I think so, yes.

Senator CANTWELL. Thank you.

Chairman VITTER. Okay, Senator Risch is next, and then Senator Ernst.

Senator RISCH. I just have a comment, not a question.

I have to tell you, Mr. Frank, I am astonished, sitting here and listening to you tell us that you do not know the details of these Treasury regulations that are so important to what you do, that are related to what you do, that dovetail to what you do, and you cannot answer simple questions that Senator Ayotte or the Chairman has asked you about this.

This is an embarrassment. I mean, here you are in the middle of this mess and you are supposedly administrating certain parts

of it, and you cannot tell us the details—as you call them—of the other parts of it that are so important?

Can you imagine if you are a small businessman somewhere in America who does not want to have anything to do with this and who has to deal with this? And here you are, a bureaucrat that deals with this every day. And you do not get it, you do not understand it, you do not know about it. This is astonishing to me, that you would come here before this Committee and give those kinds of answers.

I will tell you, I am taken aback by this and it is impossible for me to understand how whoever it is that is running this can allow those of you who are further down, trying to administrate it, not knowing what this is all about.

Mr. Chairman, this is—to me, this is just absolutely astonishing.

Thank you.

Chairman VITTER. I agree, Senator. This is not a detail of this legislation. It is a huge component with huge impact on small business.

Senator Ernst.

Senator ERNST. Thank you, Mr. Chairman, and thank you for coming today. I hope that we are able to get a number of answers today.

I understand that earlier you were talking about the myth that exists with small businesses that maybe are not able to hire additional employees. And I would push back on that, because that is not a myth in Iowa, because I hear it from small businesses all the time.

One of those is a small business in Okoboji and the owner had told me that they have had to halt plans to expand their business, which was a thriving business. And then the ACA came into play and because of the rules and the Affordable Care Act's employer mandate, they decided not to expand and they have stopped filling open positions. And what they did in that transition period is they allowed people to retire and they simply did not backfill jobs.

So that is not healthy for small businesses. When they have an opportunity to expand and fill a gap that exists in our marketplace, they should be able to do that without feeling the heavy weight of the Federal Government.

I have heard those stories over and over again. Chuck Grassley and I both do a 99 county tour across Iowa. What we hear over and over again is about the detriment of the ACA, whether it is the individual mandate or the employer mandate. And so it is not a myth and we have got to stop saying it is a myth because I see it and it is impacting people's lives.

Is your agency doing anything to address these challenges that those employers have and the negative impact that the law is having on job creation, specifically on job creation?

Mr. FRANK. Well, first of all, I do not think I referred to that as myth. We are always concerned about doing things that will expand coverage for as many as we can and to promote the interest of small business. That is why, in a sense, we have exemptions from the employer mandate wherein 96 percent of businesses are exempt from it. It is only—there is 2 percent of businesses that are

between 50 and 100 that are subject to it that fall under the definition——

Senator ERNST. So timeout, just a second, 96 percent of all businesses have exemptions?

Mr. FRANK. Yes.

Senator ERNST. Then why did we need the ACA?

Mr. FRANK. From the business mandate. There are other provisions that are enforced.

The impact on the small businesses has been actually strikingly positive. There have been very large decreases in the uninsured rate among small businesses and particularly among sole proprietorships. They have seen some of the largest decreases in the uninsured rate.

And that, to us, is an incredibly important success here.

Senator ERNST. Okay. And you will count that as a success, but I would like to push back from the other side to say—and yes, I would agree that perhaps we do have more people that have insurance, but they have extremely high deductibles. And I spoke to a podiatrist yesterday that explained most of the folks, especially young people, that are coming in and that maybe have foot or ankle problems, they will come in and get their initial evaluation to solve whatever issue they are having with their feet. And because they have such a high deductible, they will choose not to get a surgery. He said they will limp around the rest of their lives on a bad foot, having bad feet problems, because they do not ever meet that deductible. They are young and healthy otherwise. Maybe they have hurt their foot, but they are never going to meet the point where they can actually engage in that surgery. They simply cannot afford to do so.

So I would say yes, you know, they have got insurance. But what good does it do when they have got such high premiums? It is a real issue with folks in Iowa.

And I have got about 30 seconds, so if you could answer that charge.

Mr. FRANK. Sure. I think the important thing to recall is deductibles have been increasing economy-wide for some time. In the Affordable Care Act, there are a lot of provisions that try to insulate people from that. For example, all the preventive visits are now free, and so they do not count toward the deductible.

People have choices among plans in most places, 90 percent of people have choices of multiple plans where some deductibles are higher and some are lower. And if they are low-income, they have got cost-sharing reductions which insulate them further from the deductible.

So I think that the statistics can be pretty misleading if you do not sort of look at all of the nuances.

But I would like to go back to your point on the employment. We have looked very hard because we are concerned about employment. We worked closely with our colleagues at the Department of Labor, who are really the main agency focused on this. And we have been monitoring very closely changes in employment, changes in full-time/part-time work among businesses of different size. And overall, the trend is up.

I presented quite a bit of data on that in my written testimony so I would be happy to share further details with you.

Senator ERNST. Certainly. And I would like to make a point, too, Mr. Chair, about those types of services that are included, the preventive measures. One thing I have also heard from physicians is that those that are not paying for those services, they will call the doctor's office, they will make an appointment, but they simply do not show up. And so the doctors do block off time and then they are not able to recoup anything for blocking off that time when they could be using that time for a patient that really does want to be seen by a doctor and treated.

So I know there are many issues out there and we really do need to navigate through this and make sure that not only are people receiving the health care that they need, but it is done in a responsible manner and I do not think this law was done in a responsible manner.

But I do thank you for your time.

Thank you, Mr. Chair.

Chairman VITTER. Thank you, Senator, and thank you, Dr. Frank.

Now we are going to move on to our second panel. I will be introducing them as they come to the witness table.

Tom Kunkel is President of Full House Marketing, Inc. He started his own marketing company in 2007 and has over 30 years of marketing, graphics, and business development experience assembling his company that offers print, promotion, sign and web solutions to local and regional businesses. Mr. Kunkel has a degree from Towson University in marketing and mass communications and had studied publications design at the University of Baltimore.

Mike Brey is the owner of Hobby Works. That opened in 1992 and has expanded to five locations throughout Maryland and Virginia. He had previously been a manager for larger retailers such as Sam Goody, Tandy and Macy's. Hobby Works is a new breed of retail store that brings a different shopping experience to the consumer, combining the unique product mix of a specialty shop along with the neatness of a chain store. It employees 48 employees in five locations.

Kevin Kuhlman is with the National Federation of Independent Business. He is a Director of Legislative Affairs there and he has also focused his advocacy efforts on health care issues with members of Congress. Prior to his tenure at NFIB, Kevin handled health care, labor, education and small business issues for Congressman Peter Roskam from the western suburbs of Chicago. He started his career on Capitol Hill, working in support and research staff for the Ways and Means Committee, serving under Chairman Bill Thomas, Ranking Member Jim McCrery, and current Chairman Dave Camp. He holds a Bachelor of Arts degree from the University of Illinois at Urbana-Champaign.

With that, we welcome all of you. You will each have five minutes. You can submit anything else you would like in writing for the record.

We will start with Mr. Kunkel.

STATEMENT OF TOM KUNKEL, PRESIDENT, FULL HOUSE MARKETING, INC., EDGEWOOD, MD

Mr. KUNKEL. Thank you, Chairman Vitter, Ranking Member Shaheen, and members of the Senate Small Business and Entrepreneurship Committee.

Thank you for this opportunity for me to testify today before you and share my experience on how the Affordable Care Act has impacted my business and my employees.

As you mentioned, my name is Tom Kunkel. I am President of Full House Marketing and Print. We are actually neighbors. I have a location based in Edgewood, Maryland, which is up in Harford County, Maryland.

Growing up in a family owned business and then working through various corporate positions, I was excited to return to my hometown to fulfill my dream of owning my own small business. In 2013, I took the plunge and left a full-time job to take a part-time business that I was running to full-time. I formed my company, Full House Marketing and Printing, as mentioned. We are a full service marketing company. Over three years, we have acquired and merged seven different companies in all areas of marketing and printing into one company.

We provide the majority of our services in-house. We do outsource some. We are able to provide cost effective marketing and print solutions to local small- and medium-sized businesses.

So I am not here only as a small business owner but also, you know, a lot of small businesses are my customers, so I obviously want a thriving customer base.

In 2015, we also opened several other locations. We currently have four locations in three counties in Maryland, with 25 full-time and six part-time employees.

I have a variety of employees, from retail positions working at minimum wage to employees in the delivery and production at $12 to $18 an hour, and then sales and technical employees up to the $50,000 range, so a pretty diverse set.

Prior to the Affordable Care Act, as a small business, growing up in a small business, it was difficult to compete for employees with large companies with large benefit offerings. Things like pre-existing conditions and few insurance options for individuals, many qualified workers chose large businesses over working locally because of their benefit programs.

From a small business perspective, the ACA actually could have been a huge relief and benefit for us. We had hoped we would be able to offer employees affordable health insurance without pre-existing condition exclusions. They could choose a variety of plans they wanted, not what our plan just offered. And I was optimistic the ACA would help my 21 employees to obtain health insurance.

I had several employees, one with diabetes and one with high blood pressure, that actually—because they were considered pre-existing conditions—could not get insurance.

I was reimbursing my employees for their premiums because this offered me, as a small business, a way to compete with larger companies who provided employer-sponsored health insurance plans. I also had a Health Reimbursement Plan, still do, that we set up. And we also offer supplementary insurance programs.

I felt that I could better retain or compete to get better employees because I had an affordable option for my employees. And essentially, I offered the ACA as part of my benefits program and my reimbursement as part of my benefit package.

However, in a meeting with my accountant in June of 2015, just several weeks prior to the IRS Notice 2013–54, I learned of that notice that prohibits employers from assisting with employees' individual market health insurance. I was just stunned. I could no longer help my employees with their health care benefits, and there were also very steep penalties.

So mid-year, essentially July 1st, I had to pull my employees together and tell them I could no longer reimburse them for their health care and that they were essentially on their own again. I had several employees who could not afford their premiums without my contribution.

Since we were mid-year in their plans, they were forced to cancel insurance, reenroll—some of them reenrolled in lower cost plans with higher deductibles. Then they had to start over with those deductibles for the year.

One of my employees, who happens to have cancer, was not able to get his prescription refilled for over three weeks because of the new plan, having to meet new deductibles. His prescription is about $10,000 a month, so it is obviously very, very difficult for him.

I do not believe this is what was intended by the regulation, but it is the reality of what happened.

So now I had three options as a small business. I could simply offer nothing at all, just tell them that we offer no plans. My second option was to artificially inflate wages to cover the cost for the employees. But to do that I would be required to essentially inflate it by 35 percent, so that their net pay would equal my previous contribution. In addition, this option would have required me to pay additional expenses that are employer-sponsored, including Worker's Comp, matching FICA, Social Security, State and Federal unemployment. That equals about $3.50 an hour in our case, or about $1,735 per employee per year in additional costs for me, as an employer.

This also meant that any contribution would be subject to individual income taxes and payroll taxes, which is the reason for having to gross it up. And actually, the contribution cannot be designated for health insurance, according to the IRS.

For most workers, this inflated pay would have also caused them to qualify for less of a subsidy through the Health Exchange since they would have shown more gross income. I have several examples of specific people and it would have essentially reduced their subsidy by about $100 a month, which essentially would have come out of their pocket.

My third option was to offer a group health plan. So, I did go out, I researched a number of group options, spoke with a number of different brokers, and I settled on a Maryland-based plan that did not require a guaranteed participation—which was a challenge with a lot of plans—and had very affordable rates.

I also did look at the SHOP program, but I was actually told by two different brokers that it was too cumbersome and that the tax

credit would expire soon, so it was not worth actually taking that as an option.

So I did offer the plan and, because of the expense of the rates compared to individual plans in the exchange, none of my employees elected to enroll in it. I do have several examples which I can show later, but essentially it was several hundred dollars a month more for someone to go on our group plan than it was to go through exchange programs.

In a situation where my employees cannot afford insurance and I am prohibited from helping, I look like the bad guy. I tried to help them out and now I feel—or they feel—like I am taking something away from them. I also expended a lot of time and resources in exploring options and I am certainly not a health insurance expert but none of them happened to work out for my business.

Most recently, I lost a long-time employee who left to go to a competitor who was able to offer him full-time benefits and insurance. He cited his loss of that insurance contribution as a major reason for his leaving. I also have another employee that most recently left that I believe that was also part of her decision.

IRS Notice 2013–54 has essentially taken us back to the situation before the ACA, where a small business cannot afford to offer health benefits to its employees. It has essentially negated the ACA, from my perspective, for any of the benefits.

In today's political and economic climate, as a small business it is difficult to operate in the global economy. I feel the burden of many new initiatives as they affect my company's ability to operate profitably and to hire and retain employees. Many of these initiatives often have unforeseen consequences and cause small businesses expenses and burdens that can lead to actually less hiring, more expenses, and sometimes lead to businesses closing their doors altogether.

IRS Notice 2013–54 is one such initiative. But the——

Chairman VITTER. Mr. Kunkel, I do not want to cut you off, but I want to get everyone in and have time for questions and discussion, so if you want to wrap up and we will go to Mr. Brey.

Mr. KUNKEL. Essentially, the Senate can help. The Small Business Health Care Relief Act is one way in which it can help in protecting small businesses from catastrophic IRS penalties and restoring a business' ability to help their employees afford individual affordable health care.

[The prepared statement of Mr. Kunkel follows:]

Testimony of Tom Kunkel, *President and CEO, Full House Marketing & Print*

Senate Small Business and Entrepreneurship Committee

The Small Business Struggle Under Obamacare

May 18, 2016

Chairman Vitter, Ranking Member Shaheen, and members of the Senate Small Business and Entrepreneurship Committee, thank you for the opportunity to testify before you today and share my experience with how the Affordable Care Act (ACA) has impacted my business and employees. My name is Tom Kunkel, I am the President and Owner of Full House Marketing & Print, located in Edgewood, Maryland.

Growing up in a family owned business and then working my way through corporate positions, I was excited to return to my hometown to fulfill my dream of owning my own small business. In 2013 I took the plunge and left a full-time job to take a part-time business to full time. I formed Full House Marketing & Print, a locally owned marketing company, and over 3 years have acquired and merged seven companies in all areas of marketing and printing into one company. With the majority of our services performed in-house, we are able to provide cost effective marketing and print solutions to local small- and medium-sized businesses and organizations. In 2015, we also opened 2 retail sports and promotion stores. We operate out of 4 locations in 3 counties of Maryland, employ 21 full-time and 6-10 part-time employees. Last year we grossed $2.5 million in sales. I have employees in retail positions making minimum wage, employees in delivery and production positions making $12-18 an hour, and sales and technical employees making close to $50,000 per year. We have a diverse set of employees.

Prior to the Affordable Care Act, as a small business it was difficult to compete for employees with the large companies with large benefits offerings. With pre-existing condition exclusions and few insurance options for individuals, many qualified workers chose large companies over working locally.

From a small business perspective, the ACA could have been a huge relief and benefit. I hoped my employees could get affordable health insurance without pre-existing condition exclusions, and they could choose the plan that best served them. I was optimistic that the ACA would help my 25 employees to obtain health insurance (many of whom could not previously get insurance due to pre-existing conditions). I was reimbursing employees for their premiums, because this offered me as a small business a way to compete with larger companies who provided employer-sponsored health insurance plans. I had even set up a Health Reimbursement Arrangement (HRA) to help employees afford health care deductibles and also offer supplementary insurance programs. I could better retain, or compete for better workers because I had an affordable option for my employees and prospective employees.

In a meeting with my accountant June 2015, I was made aware of IRS Notice 2013-54, which prohibits businesses from assisting with employees' individual market health insurance. I was stunned. I could no longer help my employees with health care expenses. Mid-year, I had to tell my employees I could no longer reimburse them for health care and that they were essentially on their own. I had several employees who could not afford their premiums without my contribution. Since they were mid-year in their plans, they were forced to cancel insurance, reenroll in a lower cost plans, and then start over with a new deductible for the year. It was very difficult. One of my employees has cancer, and was not able to get his prescription refilled for over 3 weeks because of the new plan. He also had to pay his deductible all over again. It was a heartbreaking situation. I do not believe this is what lawmakers intended when they created the law.

I had three options…

Offer nothing at all ….artificially inflate wages to cover costs for employees…..or offer a group plan.

1. Since I had already been offering a benefit, I felt I needed to do something.
2. To artificially raise employees pay required me to offer employees a 35% pay raise so that their net pay would equal my previous contribution. In addition, this option also required me

to pay additional expenses including workers comp, and matching FICA and Social Security contributions, equal to about $3.50 per hour. This also meant that any contributions will be subject to individual income taxes and payroll taxes. And, the contribution cannot be designated for health insurance, according to the IRS. For most workers this inflated pay now also caused them to qualify for less of a subsidy through the health exchange, since they now showed making more gross income.

3. My third option was to offer a group health plan. I went out and researched a number of group plan options and settled on a Maryland-based plan that did not require a guaranteed participation and the most affordable rates. It was the best plan I could offer. After months of research, I offered it to my employees. The plan was so expensive, compared to the individual plans that no employees elected to enroll in it.

I am in a situation where my employees cannot afford insurance, and I am prohibited from helping. I look like the bad guy. I tried to help them out, and now they feel like I am taking something away from them. I expended time and resources exploring options, but none of them worked for our business and our employees. Most recently I lost a long-time employee who left to go to a larger competitor that was able to offer him full benefits and insurance. He cited his loss of insurance contributions as a major reason for him leaving.

IRS Notice 2013-54 has essentially taken us back to the situation before the Affordable Care Act where a small business can not afford to offer health benefits to its employees.

In today's political and economic landscape, as a small business it difficult to operate in a global economy. I feel the burden of many new initiatives as they affect my company's ability to operate profitably and to hire and retain employees. Many of these initiatives often have unforeseen consequences and cause small businesses additional expenses and burdens that can lead to less hiring, more expenses, and sometimes lead to businesses closing their doors. IRS Notice 2013-54 is one such initiative.

But the Senate can help. S. 1697, the *Small Business Healthcare Relief Act*, would protect small businesses from the catastrophic IRS penalties and restore my business's ability to help our employees afford individual market health insurance. I want to thank Senator Heitkamp, along with Senator Grassley, for introducing this bill, and I urge the Senate to consider it. The bill would help small businesses offer an innovative health benefit, and more importantly, help employees better afford premiums and healthcare services.

Thank you for the opportunity to testify, and I look forward to answering any questions.

Chairman VITTER. Thank you very much. And now we will hear from Mr. Brey.

STATEMENT OF MIKE BREY, PRESIDENT, HOBBY WORKS, LAUREL, MD

Mr. BREY. Thanks for having me, Chairman Vitter and Ranking Member Shaheen.

My name is Mike Brey. I am President of Hobby Works. We are a hobby and toy store with four locations in the D.C. Metro area, Maryland and Virginia. We have just under 50 employees, a little over 30 full-time equivalents. Thanks for allowing me to share my comments with you.

I started my business in 1992. I have been in retail my entire life. So almost from the beginning I offered health coverage, not only to help attract and retain good employees but because, as a former retail employee myself, I had found it difficult to get good affordable insurance.

My business has been successful, moderately successful, and we have been able to expand on multiple occasions. But over the years it became more and more difficult to continue offering health insurance to my employees.

Prior to the passage of the Affordable Care Act, our insurance rates were going through the roof. We were seeing annual premium increases of 15 to 20 percent, sometimes even higher. As a result, we were forced to ask employees to pay more of their premiums and face higher deductibles in order to continue offering coverage.

To put things in a little bit of perspective, from 2009 to 2010 we experienced increases of 18 to 21 percent. Prior to 2009, we experienced similarly large increases, usually double digits, beginning in the early 2000s.

Once the Affordable Care Act provisions started going into effect, our rates started improving and for a little bit of time even stabilized. During the 2014 to 2015 enrollment period, our rates went up 9.7 percent and the most recent enrollment period our rates increased about 5 percent.

Other small business owners also struggled with rising health care costs. Research shows that many small business owners struggled to offer health insurance to their employees due to costs. Small Business Majority's scientific opinion polling found that the majority of small business owners provided insurance to at least some of their employees. But of those who did not, 70 percent said it was because they could not afford it.

What is more, small businesses paid 18 percent more, on average, for health coverage than large companies and we received fewer comprehensive benefits.

So to me, inaction was inexcusable. The passage of the Affordable Care Act was really the first thing that ever gave me hope that the spiral of escalating costs and depreciating quality of insurance coverage might finally end.

Many provisions of the health care law have been key to making health insurance more accessible and affordable for small businesses like mine. In addition to the marketplaces, a multitude of cost containment provisions have gone in effect that I feel like—at

least in the short term here—are helping to lower costs and provide more stability throughout the system.

A survey conducted by Towers Watson and the National Business Group on Health found that in 2013 employers experienced the lowest increase in health care costs in 15 years. Some argue that the health care law is requiring many small firms to drop their coverage. Analysis conducted by the Kaiser Foundation found that the percentage of adults under 65 with employer-based insurance has held firm for the last five years after steadily declining in the early 2000s.

Thanks to the health care law's cost containment provisions, premiums are starting to stabilize and I believe that I am finally starting to have some predictability and stability when it comes to health insurance premiums and my choice of plans.

What is more, in Maryland we actually have more options now when it comes to insurance carriers and health plans. Where before we only had a couple of carriers to choose from, we can now choose between a variety of insurers that offer many different health plans. The last cycle in Maryland, it was 110 options for my business to choose from.

Meanwhile, some claim that the health care law is a job killer and that small businesses are being forced to make their full-time employees to cut their hours. We have not felt that same impact. For my part, I do not make expansion decisions based on tax law. I do make expansion decisions based on consumer confidence and how we expect sales to increase over time. As a retailer, we are still recovering from the effects of the recession but I, frankly, have never thought of expanding or shrinking based on the health care law.

Some say that the health care laws are forcing small businesses to hire more outside help in order to comply with the law's requirements. As a small business owner, I can tell you that the vast majority of owners, including myself, already rely on the expertise of accountants and lawyers and brokers. I had a broker before the health care law. I have a broker now.

I have been concerned about health care coverage costs and how they impact my business and my employees since long before anybody heard of the Affordable Care Act. And while the ACA is not perfect and it will not solve our health insurance problems overnight, it is the first meaningful law in decades that attempts to meet many small businesses' core needs in regards to rising health care costs. In this economy, policies that allow us to spend less on health premiums so we can keep more of our profits to reinvest in our companies and create jobs is what we need most.

I will close by saying that strengthening and improving the Affordable Care Act is the only path forward, I think, to lowering the overall cost of health care and providing more options for coverage for small business owners like myself.

Thank you for your time.

[The prepared statement of Mr. Brey follows:]

STATEMENT FOR THE RECORD

BEFORE THE SENATE COMMITTEE ON

SMALL BUSINESS & ENTREPRENEURSHIP

ON

THE AFFORDABLE CARE ACT'S IMPACT ON SMALL BUSINESSES

May 18, 2016

MIKE BREY

OWNER – HOBBY WORKS

Good morning Chairman Vitter and members of the Committee.

My name is Mike Brey; I'm the owner of Hobby Works, a hobby and toy store with four locations in the D.C. metro area, Maryland and Virginia, with nearly 50 (more than 30 fulltime equivalent) employees. Thank you for allowing me to share my comments with you on the healthcare law's impact on small businesses like mine.

I started my business in 1992. Almost from the beginning, I offered health coverage—not just to help attract and retain good employees, but because as a former retail employee myself, I had found it difficult to get good, affordable insurance. My business has been successful and we've been able to expand to multiple locations. But over the years, it became more and more difficult to continue offering health insurance to my employees. Prior to the passage of the healthcare law, our insurance rates were going through the roof. We saw annual premium increases of 15-20%, and sometimes even higher. As a result, we were forced to ask employees to pay more of their premiums and face higher deductibles in order to continue offering coverage.

To put things in perspective, from 2009-2010, we experienced increases of 18-21%; prior to 2009, we experienced similarly large increases, usually double digits beginning in the early 2000s. Once the Affordable Care Act's provisions started going into effect, our rates started improving and even stabilized. From 2010-2011, we experienced increases of 7-8%—a huge impovement over the previous year. And during the next open enrollment period, our rates stayed the same.

While we did experience increases during 2012-2014, our rates have gotten much better since the ACA has been implemented in full. During the 2014-2015 enrollment period, our rates went up 9.74% (the first year our rates were age-banded). During the most recent enrollment period, our rates increased by 5%.

Other small business owners also struggled with rising healthcare costs. Research shows that many small business owners struggled to offer health insurance to their employees due to cost. Small Business Majority's scientific opinion polling found the majority of small business owners provided insurance to at least some of their employees, but of those who didn't, 70% said it's because they couldn't afford it. What's more, small businesses paid 18% more on average for health coverage than large companies andreceived fewer comprehensive benefits.

Inaction was unacceptable. The passage of the Affordable Care Act was the first thing in years that gave me hope that this spiral of escalating costs and depreciating quality of

coverage might finally end. Many provisions of the healthcare law have been key to making health insurance more accessible and affordable for small businesses like mine. In addition to the marketplaces, a multitude of cost containment provisions have gone into effect that are helping to lower costs and provide more stability throughout the system.

A survey conducted by Towers Watson and the National Business Group on Health found that in 2013, employers experienced the lowest increase in healthcare costs in 15 years. And while some argue that the healthcare law is requiring many small firms to drop their health coverage, analysis conducted by the Kaiser Family Foundation found that the percentage of adults under 65 with employer-based insurance held firm for the last five years after steadily declining since 1999.

Thanks to the healthcare law's cost containment provisions, our premiums are starting to stabilize. I believe I am finally starting to have the certainty and stability I need when it comes to health insurance premiums and choices of plans.

What's more, we now have more options when it comes to insurance carriers and health plans. Where we had only a few carriers to choose from in the past, we can now choose between a variety of insurers that each offer many health plans, amounting to more than 110 options for my business to choose from.

Meanwhile, some claim that the healthcare law is a job killer and that small businesses are being forced to make their full-time employees cut their hours. This has not impacted my business at all. We don't make expansion decisions based on tax law; we do this based on consumer confidence and how we expect sales to increase over time. As a retailer, we are still recovering from the effects of the recession, but we have never thought of expanding or shrinking based on the healthcare law's requirements.

Some say that the healthcare law is forcing small businesses to hire more outside help in order to comply with the law's requirements. As a small business owner, I can tell you the vast majority of owners already rely on the expertise of accountants, lawyers and brokers. Small Business Majority's research shows 75% of small business owners already work with an insurance broker to purchase insurance policies for their businesses.

I've been concerned about health coverage costs and how they impact my business and my employees since long before the Affordable Care Act was introduced. And while the ACA isn't perfect and it won't solve all of our health insurance problems overnight, it is the first meaningful law in decades that meets many of small businesses' core needs in regards to rising healthcare costs. In this economy, policies that allow us to spend less on health premiums so we can keep more of our profits to reinvest in our companies and create jobs are what we need the most.

Strengthening the Affordable Care Act, instead of chipping away at it, is the only path forward to lowering the overall cost of healthcare and providing more options for coverage for small business owners like myself.

Thank you for the opportunity to comment on this important issue.

Sincerely,

Mike Brey, Owner

Hobby Works

Chairman VITTER. Okay. Thank you, very much, Mr. Brey.

Now we will welcome Mr. Kuhlman.

STATEMENT OF KEVIN KUHLMAN, DIRECTOR OF LEGISLATIVE AFFAIRS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, DC

Mr. KUHLMAN. Thank you, Chairman Vitter, Ranking Member Shaheen, Senator Ernst and other members of the Senate Small Business and Entrepreneurship Committee for hosting this hearing today on this important matter.

My name is Kevin Kuhlman. I am a Director of Legislative Affairs at the National Federation of Independent Business. NFIB is the Nation's leading small business advocacy association.

The ACA is and was the most significant overhaul of health insurance markets and the tax code in more than 20 years. NFIB's research and story collection demonstrate that the costs to small businesses outweigh the benefits. The ACA has led to higher premiums, increased compliance burdens, and decreased benefit flexibility.

Congress does deserve credit for addressing some of these concerns. Senator Shaheen referenced the PACE Act. But NFIB urges further relief for small business owners and employees.

The Small Business Health Insurance Tax Credit and SHOP Exchange were intended to incentivize small businesses to offer group health insurance to employees. But these provisions failed to deliver premium savings to a significant number of small businesses due to fundamental limitations and implementation problems.

The ACA added insurance requirements and taxes to help insurance plans that were passed along in the form of higher premiums. Congress thankfully suspended the health insurance tax for the year 2017, saving an additional 3 percent in increased premiums, but the tax restarts in 2018 and escalates significantly in future years.

ACA implementation requires additional compliance and paperwork burdens for small businesses, even when Federal agencies have not fulfilled their responsibilities.

The biggest current compliance headache is the employer mandate, which was fully phased in this year. Businesses with 50 or more employees must offer affordable and adequate health insurance to employees or pay penalties. Business must track the offers and cost of coverage for each employee monthly, provide current and former employees with transmittal forms, and provide the IRS with an additional form.

The IRS estimation of four hours and 12 minutes to conduct research, complete paperwork, and file forms is grossly understated. In reality, compliance requires much more time.

The SBA Office of Advocacy wrote that the employer mandate would have a significant economic impact on a substantial number of small businesses, triggering the Regulatory Flexibility analysis. Unfortunately, Treasury disagreed and did not conduct a small business economic analysis. The lack of recognition from Treasury is frustrating for small business owners.

The individual exchanges were supposed to notify employers when they are at risk of a penalty because an employee receives

an advance premium tax credit on the exchange. But not a single business has received a communication from the IRS yet.

Small businesses do not commonly employ human resource professionals, so compliance responsibilities fall on the business owner, like these gentlemen. Some of these functions can be outsourced, yes, but those services are costly.

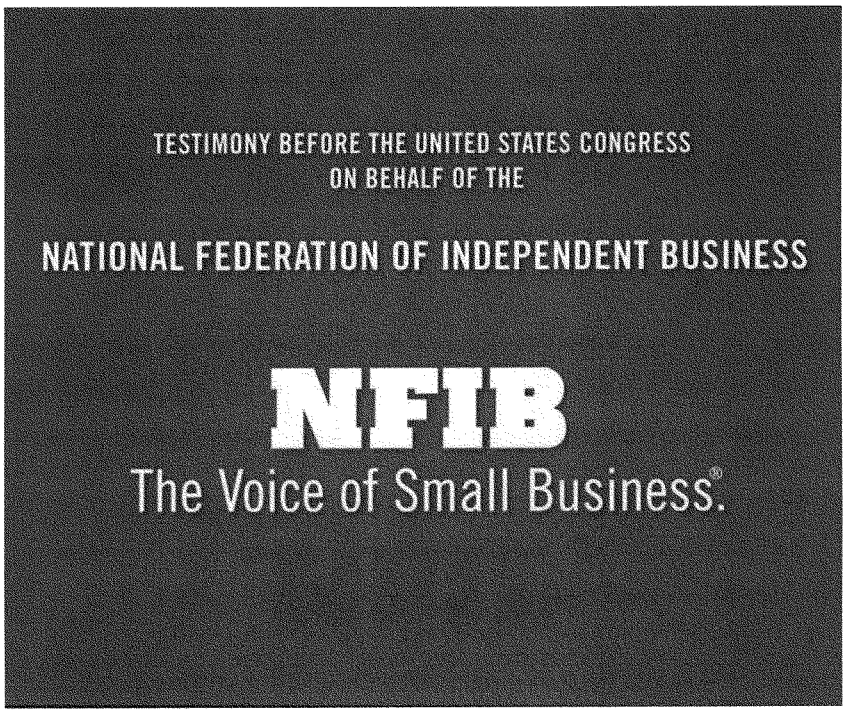
Many small businesses are unable to afford the high cost of group health insurance. Instead, they directly paid for or reimbursed employees individual market health insurance plans and qualified medical expenses. This arrangement worked for both employers and employees.

Now to be clear, this prohibition actually started with HHS. I would be happy to go into further details on that during questions. But in 2013, the IRS published sub-regulatory guidance that prohibited employers from assisting employees with individual plans. Enforcement began July 1, 2015, after an initial delay, and continuing the practice risked that $100 per employee per day penalty that was mentioned earlier. Penalties of this magnitude would be disastrous for small businesses, forcing many to close their doors. Certainly, lawmakers who drafted the ACA did not intend to punish small businesses in this manner.

Fortunately, bipartisan, bicameral legislation exists that would right this wrong for small businesses. The Small Business Healthcare Relief Act, S. 1697, would allow the flexible practice to continue. NFIB urges Congress to consider this bill and relieve small businesses from the threat of significant harm.

Thank you again for allowing me to share NFIB concerns before the Committee today. I look forward to answering any questions and working with you to help provide further relief.

[The prepared statement of Mr. Kuhlman follows:]



Testimony of

Mr. Kevin Kuhlman
Director of Legislative Affairs

before the

Senate Small Business and Entrepreneurship Committee

on the subject of

The Small Business Struggle Under Obamacare

on the date of

May 18, 2016

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Thank you Chairman Vitter, Ranking Member Shaheen, and members of the Senate Small Business & Entrepreneurship Committee for the invitation to testify before you today concerning how the Patient Protection and Affordable Care Act (ACA) has impacted small business owners and employees. My name is Kevin Kuhlman, I am a Director of Legislative Affairs at the National Federation of Independent Business (NFIB). NFIB is the nation's leading small business advocacy association.

The ACA is the most significant federal overhaul of the individual and small group health insurance markets ever[1] and the most significant change to the federal tax code in more than 20 years.[2] As a result, the law impacts small businesses in multiple ways. Adding confusion, there are even multiple statutory definitions of small business in the ACA (table below).

ACA Provision	Small Business Size Definition	Notes
Employer Responsibilities Regarding Health Insurance Coverage		
Employer Mandate (§1513)	50 employees	100 emp. in 2015, 50 emp. in 2016
Auto-Enrollment (§1511)	200 employees	Repealed by Congress
Employer Reporting Requirements		
W-2 Reporting Requirements (§9002)	250 employees	Delayed for firms <250 W-2s until further regulations
Employer Mandate Reporting Requirements (§1514)	50 employees and self-insured employers	50 employees for 2015 tax year
Cadillac Tax (§9010)	All offering employers	Delayed by Congress until 2020
Insurance Markets		
Small Group Market (§1304(b)) & SHOP Exchange (§1311(b)(1)(B))	50 or 100 employees	Congress delegated decision to states
Full Small Business Tax Credit (§1421)	10 employees	
Partial Small Business Tax Credit (§1421)	25 employees	
Employee Paperwork Requirements		
Notice of Coverage Options (§1512)	All employers	DOL not enforcing penalties at this time
Summary of Benefits and Coverage (§2715)	All offering employers	

NFIB has closely tracked the impact of the ACA on small businesses by collecting member stories and by conducting four scientific research surveys.[3] The ACA did contain certain provisions intended to help small businesses, but those provisions were either too limited to be effective or were not prioritized during the implementation process. Ultimately, the costs to small businesses outweighed the benefits, and

[1] Mach and Fernandez, *Private Health Insurance Market Reforms in the Patient Protection and Affordable Care Act*, Congressional Research Service, February 10, 2016, https://www.fas.org/sgp/crs/misc/R42069.pdf.
[2] *Affordable Care Act: Planning Efforts for the Tax Provisions of the Patient Protection and Affordable Care Act Appear Adequate; However, the Resource Estimation Process Needs Improvement*, Treasury Inspector General for Tax Administration, June 14, 2012, https://www.treasury.gov/tigta/auditreports/2012reports/201243064fr.pdf.
[3] *Small Business's Introduction to the ACA*, NFIB Research Foundation, http://www.nfib.com/surveys/aca-2015/ and *PPACA: One Year Later, Small Business Owners Expect Costs to Rise*, NFIB Research Foundation, http://www.nfib.com/surveys/healthcare-year1/.

ACA has led to higher premiums, increased compliance burdens, and decreased flexibility. Congress deserves credit for addressing some small business concerns, but NFIB urges Congress to provide further relief for small business owners and employees.

Small Business Assistance Provisions

Certain provisions within the ACA were intended to help small businesses offer health insurance to employees. A temporary, targeted small business health insurance tax credit was intended to incentivize more small businesses with fewer than 25 employees to offer group health insurance.[4] The IRS mailed four million postcards to small businesses advertising the credit,[5] and CBO originally estimated $2 billion in tax credits annually beginning in 2010. In practice, the results were underwhelming. In 2014, 181,000 employers claimed the credit totaling $541 million in premium relief.[6] The credit has too many limitations to be effective, including a size limitation, an average salary limitation, an additive structure limitation (adding average wages and number of employees together), an average state small group market cap limitation, a temporary duration, and a limited market availability. It failed to induce new employers to begin offering insurance, but instead serves as a temporary windfall for small businesses already offering benefits. The credit windfall expires for those businesses this year, meaning they will see significant premium increases.

The small business health insurance tax credit is now available exclusively through the Small Business Health Options Program (SHOP) exchange marketplace. The SHOP exchange marketplace was intended to provide more offering arrangements to small businesses with fewer than 50 employees, and require insurance companies to compete for small business customers.[7] Due to the technical glitches of the individual exchange marketplace (healthcare.gov), online functionality of the SHOP exchange marketplace was delayed for over a year. Innovative offering arrangements did not come to fruition, either. Employee choice may never be fully implemented,[8] and defined contribution plans were prohibited during the regulatory process.[9] Only 10,700 small businesses and 85,000 employees were enrolled in SHOP exchange marketplaces, as of July, 2015.[10] SHOP exchange marketplaces have failed to make a significant impact because the offerings are virtually no different than the outside small group marketplace for employers. Together, these provisions did not provide cost relief to a substantial number of small businesses.

Higher Costs

Forty-one percent of small business owners purchase health insurance in the individual market and 33 percent purchase insurance through their business.[11] The ACA added insurance requirements and taxes to individual and small group market health insurance plans. These new costs are passed along to small business owners and employees in the form of higher health insurance premiums. Temporary reprieve was given through grandfathered and grandmothered plan extensions, but few grandfathered plans exist anymore and grandmothered plans will expire this year or next year. The biggest premium increases for

[4] § 1421, Credit for Employee Health Insurance Expenses, ACA, P.L. 111-148.
[5] IRS, April 19, 2010, https://www.irs.gov/pub/irs-pdf/n1397.pdf.
[6] *Small Employer Health Tax Credit, Limited Use Continues due to Multiple Reasons*, Government Accountability Office, http://www.gao.gov/assets/680/675969.pdf.
[7] § 1311, Affordable Choices for Health Benefit Plans, ACA, P.L. 111-148.
[8] SHOP exchange enrollees can select multiple plans from within an actuarial metallic level and within an insurance company's plan offerings, but not from multiple actuarial metallic levels or any insurance company.
[9] Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, Final Rule, Public Inspection, HHS, https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-06125.pdf.
[10] Counihan, Update on SHOP Marketplaces for Small Businesses, The CMS Blog, July 2, 2015, https://blog.cms.gov/2015/07/02/update-on-shop-marketplaces-for-small-businesses/.
[11] *Small Business's Introduction to the ACA*, NFIB Research Foundation, http://www.nfib.com/assets/nfib-aca-study-2015.pdf.

small businesses occur when plans must first come into full compliance with the ACA. Insurance requirements such as community rating and a federal essential health benefits package drive up plan costs.

New taxes and fees on fully-insured health insurance products also drive up costs. Congress thankfully suspended the health insurance tax for 2017, saving small businesses and employees from an additional 1-3 percent in increased premiums,[12] but the tax restarts in 2018 and escalates in future years.

Insurance companies just filed initial premium requests for 2017, and early reports indicate they are requesting significant increases for individual market plans and moderate increases for small business plans. Small business owners must nervously wait as filings are reviewed and approved later this year.

Increased Compliance Burdens

Inevitably, any major legislative overhaul is complex and much of implementation is delegated to the agencies. ACA implementation by the Departments of Health and Human Services (HHS), Labor (DOL), and Treasury has increased compliance and paperwork burdens for small businesses.

All businesses, regardless of size, were required to provide employees with a Notice of Coverage Options document describing the health insurance exchange marketplaces.[13] All offering employers must additionally provide employees with an annual Summary of Benefits and Coverage document describing the employer-sponsored insurance the company offers.[14]

The biggest current compliance headache is the employer mandate. Businesses with 50 or more employees – considered large by the ACA but small by the Small Business Administration (SBA) – must offer affordable and adequate health insurance coverage to employees, or pay penalties. It seems intuitive, and the provision reads only 4 pages in the statute.[15] But the proposed regulation spans 144 pages,[16] and the final regulation is 227 pages long with 50 definitions, many of which are new.[17]

This requirement, which was fully phased-in this year, has a significant compliance aspect. The compliance provision in the statute was 3 pages long,[18] the proposed regulation was 72 pages long,[19] the final regulation was 84 pages long,[20] and the IRS form instructions are 17 pages long.[21] Businesses must track the offers and cost of coverage to each employee monthly, provide current and former employees with a transmittal form, and provide the IRS with another form. Smaller, self-insured businesses must also comply using this method.[22]

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[12] *Drivers of 2017 Health Insurance Premium Changes*, Issue Brief, American Academy of Actuaries, May 9, 2016, http://www.actuary.org/files/publications/IB.Drivers5.15.pdf.
[13] § 1512, Employer Requirement to Inform Employees of Coverage Options, ACA, P.L. 111-148.
[14] § 2715, Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions, ACA, P.L. 111-148.
[15] § 1513, Shared Responsibility for Employers, ACA, P.L. 111-148.
[16] Shared Responsibility for Employers Regarding Health Coverage, Notice of Proposed Rulemaking, Public Inspection, Department of Treasury, https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-31269.pdf.
[17] Shared Responsibility for Employers Regarding Health Coverage, Final Regulations, Public Inspection, Department of Treasury, https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-03082.pdf.
[18] § 1514, Reporting of Employer Health Insurance Coverage, ACA, P.L. 111-148.
[19] Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Insurance, Notice of Proposed Rulemaking, Public Inspection, Department of Treasury, https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-21791.pdf.
[20] Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Insurance, Final Regulations, Public Inspection, Department of Treasury, https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-05050.pdf.
[21] Instructions for Forms 1094-C and 1095-C, IRS, 2015, https://www.irs.gov/pub/irs-prior/i109495c--2015.pdf.
[22] Information Reporting of Minimum Essential Coverage, Final Regulations, Public Inspection, Department of Treasury, https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-05051.pdf.

I only list all those figures in order to demonstrate that the IRS estimation of 4 hours and 12 minutes to conduct research, complete paperwork, and file forms is grossly understated. In reality, it takes much more time to comply.

Treasury also disagreed with NFIB and the SBA Office of Advocacy[23] that the employer mandate requirement and compliance would have a significant economic impact on a substantial number of small businesses, triggering a regulatory impact analysis. That is frustrating for small business owners.

The federal government has not met their responsibilities on this issue, either. The individual exchange marketplaces were required to notify employers when an employee receives an advanced premium tax credit (APTC).[24] Because the healthcare.gov backend functions are still not functional, not a single business has received a communication from CMS informing them that their employees accepted APTCs on the individual exchange marketplace,[25] subjecting them to potential fines. Businesses also do not know what the notification and appeals process will look like from IRS. That is perplexing to small business owners.

If you think that is burdensome, compliance with the Cadillac tax will make employer mandate compliance appear simple. According to Notices issued by Treasury,[26] employers will be responsible for calculating the tax, reporting the tax obligation to insurance companies and the IRS, and paying the tax obligation to the insurance companies who then remit the tax to the IRS. Thankfully, Congress delayed the Cadillac tax for two years, but NFIB encourages legislators to further rollback the tax or, at a minimum, to work toward providing compliance relief from it.

Small businesses do not commonly employ human resource professionals, so compliance responsibilities fall on the business owner. Some of these functions can be outsourced to third party administrators, benefits advisors, or payroll companies, but those services are costly.

Decreased Flexibility

IRS regulations limited flexible arrangements that were a common market practice for employers and employees. Many small businesses are unable to afford the high cost of group health insurance. Instead, to assist employees with healthcare costs, small businesses directly paid for or reimbursed employees' individual market health insurance plans and qualified medical expenses. This arrangement worked for both employers and employees. NFIB estimates 16 percent of businesses reimbursed employees for insurance they purchase on their own in 2015.[27]

In 2013, the Internal Revenue Service (IRS) published sub-regulatory guidance that prohibited employers from further assisting employees with these employer payment plans, stating the arrangements violate the ACA's group health plan requirements.[28] One year later, in a frequently-asked-questions (FAQ) document, IRS attached a $100 per employee per day penalty[29] for continuing the practice.[30] Enforcement began July 1, 2015, so this tax season will be the first time both employers and employees are filing returns at the same time, inviting increased audits and fine exposure. Penalties of this magnitude would be catastrophic for small businesses, forcing many to close their doors. And these

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[23] Wilkins, Letter to IRS re: Shared Responsibility for Employers Regarding Health Coverage (REG-138006-12), Small Business Administration Office of Advocacy, February 11, 2013, https://www.sba.gov/sites/default/files/files/IRS_Employer_Mandate_Letter_2_11_2013.pdf.
[24] § 1411, Procedures for Determining Eligibility for Exchange Participation, Premium Tax Credits and Reduced Cost-Sharing, and Individual Responsibility Exemptions, ACA, P.L. 111-148.
[25] Some state exchange marketplaces have notified employers that their employees received APTCs.
[26] Notice 2015-16, IRS, https://www.irs.gov/pub/irs-drop/n-15-16.pdf and Notice 2015-52, IRS, https://www.irs.gov/pub/irs-drop/n-15-52.pdf.
[27] *Small Business's Introduction to the ACA*, NFIB Research Foundation, http://www.nfib.com/assets/nfib-aca-study-2015.pdf.
[28] Notice 2013-54, IRS, https://www.irs.gov/pub/irs-drop/n-13-54.pdf.
[29] IRC Section 4980D penalty.
[30] Employer Health Care Arrangements, Frequently Asked Questions, IRS, https://www.irs.gov/Affordable-Care-Act/Employer-Health-Care-Arrangements.

businesses are trying to help their employees. Certainly, lawmakers who drafted the ACA did not intend to punish small businesses in this manner.

Fortunately, bipartisan, bicameral legislation exists to right this wrong for small businesses. NFIB thanks Senator Heitkamp for introducing *the Small Business Healthcare Relief Act* (S. 1697), along with Senator Grassley, which would provide relief from the penalties and allow the flexible practice to continue. Just yesterday, the sponsors of the House of Representatives version of the bill testified in support of the proposal. NFIB encourages Congress to consider the bill, and protect small businesses from significant harm.

Conclusion

Small business owner optimism remains near historic lows.[31] The political climate continued to be the second most frequently cited reason for why owners think the current period is a bad time to expand. Congress can pass certain bills that would provide substantial relief for small business owners, restoring some much needed confidence in the small business economy.

Thank you again for allowing me to share NFIB concerns before the committee today. I look forward to answering any questions and working with you to help provide further relief for small businesses.

[31] *Small Business Economic Trends*, NFIB Research Foundation, April 2016, http://www.nfib.com/surveys/small-business-economic-trends/.

Chairman VITTER. Great. Thanks to all of you for your testimony. Now we will get into some discussion.

Mr. Kunkel, obviously your testimony focused on health reimbursement arrangements. If that draconian penalty against what you did previously were removed, what would you do in your small business? What would be the impact for employees?

Mr. KUNKEL. Well, it would allow me to offer what I was offering for a period of time, before the regulation took effect. It would allow me to provide a set amount, a set reimbursement to my employees essentially as a health plan for them. And then it would allow them to go into the open market and purchase whatever plan best suited them.

Because when we actually looked at even our own plan, our own group plan, I am limited to three different plans that I can choose and it is very, very difficult to have three plans meet all of my employee's needs. So it would allow them to go and get whatever plan they needed, whatever best fit them, and then I am contributing to them and doing my part in helping them have affordable health care.

Chairman VITTER. So again, if that major penalty were lifted, would you, in fact, go back to that sort of arrangement?

Mr. KUNKEL. Absolutely.

Chairman VITTER. And in your opinion, how would your employee's health care situation compare under that arrangement versus now?

Mr. KUNKEL. It would very definitely improve. One is that it would allow some that are maybe paying right now out-of-pocket because they wanted to keep health care. Now, if I am giving them, for example, $300 a month they can use that to pay for their entire plan. Or some people will probably get a better plan and use the $300 to supplement and pay the rest out of their pocket. But it certainly would give them better opportunity to have health care. And again, from a competitive standpoint now, I am able to say I offer a health care plan or health care option that helps me retain employees and get additional employees.

Chairman VITTER. Okay. Mr. Brey, I got the impression from your testimony, and maybe I missed something, that you never participated in that sort of HRA arrangement. Is that accurate or not?

Mr. BREY. No, we did not. We always tried to offer full health insurance plans and, at various times, covered different amounts toward people's premiums. So at one point, when we first start offering, we paid 100 percent of coverage. Now we are down to somewhere in the 40 or 50 percent range.

Chairman VITTER. And understanding that you never directly participated in that HRA, do you have an opinion about the $36,500 penalty against it?

Mr. BREY. You know, I am opposed to anything that prevents myself and my employees from having access to health care coverage.

Chairman VITTER. Okay. Excuse me, one minute.

[Pause.]

Mr. Kuhlman, what are your members' concerns about premiums, what they are doing 2017 and beyond? And what do you

think that is going to do in terms of small businesses offering any health care?

Mr. KUHLMAN. The high cost of health insurance has been our member's number one concern every time we have asked them since 1986. So it continues to be that problem.

I think the initial requests for 2017, especially in the individual market, where about 41 percent of small business owners themselves purchase their coverage, is very concerning. I think the requests on the small group side, the small business side, traditional employer insurance, are a little bit more moderated but they are still increasing.

So it is definitely a concern. The number one reason business owners do not offer health insurance is cost. And if you continue to offer—if costs continue to increase, you are going to see a decrease in offer rates. What I mean by that is in 2010 there were 39 percent of businesses with fewer than 50 employees that offered health insurance. In 2014, there was a 7 percent drop and only 32 percent of businesses with fewer than 50 employees offer health insurance. Those are HHS figures.

Chairman VITTER. Okay. Previously, Senator Ernst brought up disincentives to job growth. And the most obvious one is the 50 employee line. Talking to your members, which you do both informally and, I assume, you take surveys as well, is there a meaningful disincentive for them to cross that 50 employee line because of the employer mandate?

Mr. KUHLMAN. I probably heard the most concerns with people who were near or at that threshold. They breathed a little bit of a sigh of relief when there was the upward adjustment for the year 2015 to businesses with 100 employees and then it was fully phased in this year, in 2016. So there was a little bit of relief there, but anyone needs to be very concerned about moving below that threshold because you can set yourself up for ERISA lawsuits even after that.

So it is certainly a disincentive to grow, and dropping could bring you new legal liability.

Chairman VITTER. Okay. Thank you.

Senator Shaheen.

Senator SHAHEEN. Thank you all very much for your testimony and for being here today.

Mr. Brey, one of the challenges, I think, is to—as you pointed out and Mr. Kunkel pointed out—is getting small businesses to offer insurance and cost is the top concern that they have. What more can we do to try and encourage small businesses to help cover their employees?

Mr. BREY. You know, that is a big question. I think a lot of small businesses, cost is obviously the number one issue. And sort of the struggle to know what is coming the next year. Especially in the years before the Affordable Care Act, it was very frustrating for me to be providing coverage knowing that I basically had just advanced the cause by one more year and that next summer we might be having a similar conversation with our broker, how can we lower the average age of our group, what kinds of things—one year I think it was a 33 percent increase because not only did costs

go up a lot that year, but we also, as a group, crossed an age band, which is how it used to work in Maryland before then.

So that was really the most frustrating thing, the high cost and the unpredictability of future costs.

Senator SHAHEEN. And Mr. Kuhlman, I appreciate the concerns that NFIB has that you have heard from small businesses, and that there is probably a disagreement among members of this Committee about what we should be doing around health care. I would bet that most of the members on this side of the room would say we should repeal the law and most of the members on this side of the room should say we should not.

So let us assume that we are not going to repeal the law, because I do not think we are. I do think there are changes that we should be looking at that we can make that would improve it, make it work better, address many of the concerns that small businesses have.

So can you talk about those changes that you would like to see? Assuming the law stays in place, what would you like to see done to improve it so that it works better for small businesses?

Mr. KUHLMAN. Thank you, Senator.

Again, I want to thank you for helping lead the effort on the PACE Act. Had that not been passed, we would have seen some——

Senator SHAHEEN. Right

Mr. KUHLMAN [continuing]. Tumult in the market this upcoming year.

I think what Tom identified and what I identified in my testimony would be number one on the priority, the Small Business Healthcare Relief Act. It has 14 bipartisan cosponsors in the Senate, over 90 bipartisan cosponsors in the House. I think it was just one of these unintended consequences, a game of regulation telephone almost, where IRS says HHS says this and HHS says IRS says that.

Senator SHAHEEN. So this is primarily the HRA issue?

Mr. KUHLMAN. Yes, ma'am.

Senator SHAHEEN. Are there other things in there that you think are important?

Mr. KUHLMAN. I think Congress did some help with the end-of-the-year legislation when they provided some relief from some of the taxes. I think the Cadillac tax is going to be not only a problem as we get closer to that threshold and above it but, just reading from the two initial IRS notices, the compliance responsibilities on the Cadillac tax for small businesses is going to be far worse than the compliance responsibilities for the employer mandate.

Further relief from the health insurance tax, I think, would be another good place to—or a good effort to pass because any of those excise taxes are just passed along in the form of higher premiums.

Senator SHAHEEN. One of the things that we have heard a fair amount about as the Affordable Care Act was being worked on were efforts by admittedly larger companies like Safeway to try and look at their employees and incentivize personal activities that made them healthier; to try to encourage exercise and reduce smoking and some of the challenges to health care costs.

Are there things like that that small businesses have looked at, that you are aware of, that have made an impact on the cost of health care?

Mr. KUHLMAN. I think those might come downstream in the future but I just do not think the luxury is there yet. Usually those are efforts by the human resources department to say hey, we are going to put a big effort into a wellness program. In this case, it would probably have to be the bosses here who would have to say hey, we are all going to wear Fitbits and walk 20,000 steps today. So I would defer to them.

Mr. BREY. We are in retail, we walk all the time.

Senator SHAHEEN. We have been trying to get people in Congress to do that, as you know.

Do either of you have—have you all looked at that option and have you thought about trying to encourage healthier behavior among your employees?

Mr. KUNKEL. That is—again, that is not a luxury, typically, within a smaller business. I mean, I am the HR department, I am the IT department, I am the accounting department. So certainly we encourage our employees to be healthy and do certain things, but, you know, I am typically worried about getting orders out the door and answering the phone. That is the reality of a small business.

Mr. BREY. I mean, we are in retail, so you know, people are on their feet, walking around all day anyway.

But sort of the bigger answer to the question is that is why I have been trying to provide health insurance since a year or two after I started the company, especially in retail at the time. It was very difficult to get any kind of health insurance, even if you were a low level manager.

Mr. KUNKEL. I think the challenge in that is that the concern I saw was a lot of employees that—especially younger, who thought they were invincible—that would not get health insurance because they could not afford it, because they were not providing it or were not providing an option. So they were not getting their regular checkups and dental and all of that.

So I think us being able to afford it, in my case the reimbursement was a way that I could provide that to them. That was certainly preventative care from their standpoint. Otherwise, they were waiting until they had to go to the hospital before they sought health care.

Senator SHAHEEN. Well, thank you all very much.

Chairman VITTER. Senator Cardin is on the way so as we wait for him, I think he will be here momentarily, just a comment following up on Senator Shaheen's really good point.

I think when you talk to those companies like Safeway who have done a lot of that, one big thing they will tell you is the way to have an impact is not through feel good encouragement but through provisions that have a bottom line impact to the employee's bottom line, to their wallet, to their take-home pay, to what they keep and enjoy.

Now obviously, we do not want to do anything that penalizes genetics but outside of that, I think the way to have that sort of healthy behavior impact is to make it pay for the individual to go

to this class, to lose weight, to not smoke or to penalize things in the opposite direction.

Is Senator Cardin still on the way?

The CLERK. Yes, Senator.

Chairman VITTER. Well, would anybody like to break into song, tell a good joke?

Mr. KUNKEL. I have been involved—I am also on another advisory board for Maryland Health Benefits Exchange. I know there is a lot of talk about the SHOP program. So I certainly see any kind of modifications in that—I mean, I was told by—I do not know a lot about it, quite honestly, but I was told by two different brokers not to—it was very cumbersome. You had to apply with—essentially if you had three different insurance companies, you had to fill out the paperwork for each of those three.

So I was discouraged going into that. So I certainly see that as a viable option moving forward, as long as it was made a little less cumbersome for small business owners.

Mr. KUHLMAN. Regarding the SHOP, I think there was a great opportunity, and NFIB was long supporters of the concept of the SHOP. I think either through the regulatory process and the implementation process things kind of got lost in translation. I think if it would have acted more like a vehicle where you could do these HRAs or a defined contribution that allows employees to pick a plan that fits theirs and their family's needs, and the employer plays a supporting role, but is not doing everything, that might have been—and it is a technology tool that would help do that. I think that would be an opportunity there.

The last thing is I would just discourage participation requirements, minimum contributions requirements, because these things serve as barriers of entry. And they can exist, sometimes in just the State ones, but the Federal one has a participation requirement barrier, as well.

Mr. BREY. Just as a Maryland small businessman, to add on to this a little bit, let us not forget that as a small group in Maryland we basically had no choices prior to the Affordable Care Act coming along. Maryland already mandated in their small group a lot of—like Maryland did not have pre-existings. They already mandated small group coverage. So if you wanted to sell small group coverage in Maryland, you had to abide by certain rules.

And so as a result, we basically had two choices, plus Kaiser. Kaiser did not work for us because we span three states. So when the Affordable Care Act came along, frankly, I understand that it is easiest and most fun to beat up on it. But let us be honest, the coverage we had to choose from went from almost nothing to dozens and dozens of plans, maybe too many, almost.

But I would certainly rather have to fight through too many plans than be stuck with this is the plan that you can get for small groups this year.

Senator SHAHEEN. Mr. Brey, let me just say that in New Hampshire we had some of those same problems. And in fact, when the ACA started in New Hampshire, we only had one insurer in our marketplace. We have now grown to five insurers and 11 plan options, I think, have grown. I cannot remember how many now.

But it has been—it has had that same impact, and hopefully that will continue and we can make the kinds of changes that you all are encouraging in a way that makes it even more robust and available for people who need it.

Chairman VITTER. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman. I know that you, I believe, have already discussed the PACE Act a little bit earlier and the importance for keeping the threshold of small businesses defined at 50. We are very thankful for the passing of our bill.

Senator SHAHEEN. I gave us credit.

Senator SCOTT. Oh, did you? Good job. Thank you very much. Teamwork works, even in the United States Senate. It is a great thing.

Mr. Kuhlman, ObamaCare imposed a new tax on—we call it the HIT tax—which has been delayed for a year. But this is a massive tax. Over the next couple of years, by 2018, it should cost about $14.3 billion. And while we have that one year moratorium on the HIT, the question really is how will that impact small businesses in 2018 and beyond? This will be passed on in higher premiums, without any question.

As a small business owner myself for about 14 years, it is hard to wrestle with the reality that small businesses can pay higher taxes, they can deal with higher amounts of red tape, or they can hire more employees. It is almost impossible to do all three.

Mr. KUHLMAN. Yes, sir. Yes, Senator, it is passed along dollar for dollar, so it is—in real numbers, it is $350 to $500 per employee, on the individual market per family member. It is problematic. And that is just when it does come back in 2018 at about $14.3 billion. Ten years down the road it is going to be nearly double that, and that is just another added cost there.

So we recommend—NFIB recommends any further relief that can come from that. We are very thankful for the one year moratorium and hope that it can be revisited soon.

Senator SCOTT. Thank you.

Chairman VITTER. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman. I appreciate it.

I want to thank all of our witnesses. I particularly want to acknowledge with pride two Maryland people that are on our panel. Mr. Kunkel, welcome. Mr. Brey, welcome.

I want to—I am a strong supporter of the Affordable Care Act. I make no pretense otherwise. However, I think it can be improved. I think we can make it better for small businesses. That is why I think this hearing is particularly important on how we can improve our health care system to help particularly small companies. That is why this hearing, to me, is very, very appropriate.

I have been in Congress long enough to remember the hearings in which we had small businesses present on health care before the passage of The Affordable Care Act. I served on the Ways and Means Committee in the House of Representatives and I recall very vividly the hearings that we had.

The number one issue, by far, that was brought up when we had small businesses before us was the availability of affordable quality health insurance.

And there were several reasons for it. One, there was a huge escalation of costs of health care. And in fact, if we used the pre-2010 Health Index, if that cost curve had not been reduced, the average family health premiums today would be $2,600 higher. So we have been able to bend the cost curve.

Now did the Affordable Care Act do that? I think it contributed to that. But clearly, the cost curve is not what it was pre-2010.

Secondly, there was a huge differential between small companies that did not have a risk pool similar to larger companies that caused, in my State I think we set up a small market reform in my State to try to deal with it. But it was about an 18 percent differential generally, between small companies and large companies, for identical policies. That is not totally eliminated but we have dealt with that under the Affordable Care Act.

And then lastly, everyone who had insurance was paying for those who did not have insurance because of cost-shifting. We know that not just hospitals, which is pretty direct, the cost-shifting to those who pay their bills, but all health care providers there is a cost shift because of people who do not pay their bills. In Maryland, the uninsured rates have dropped from 13 percent down to about 7.5 percent.

So we have seen those three trends.

So Mr. Brey, if I could just start with you. Has there been a noticeable effect on smaller companies as a result of these dynamics occurring within the last five years in the health market?

Mr. BREY. Well, since the full implementation of the Affordable Care Act, we have seen premium increases in the single digits compared to mostly double digits before. I think I said in my testimony 9.7 percent in the 2013–2014 and then 5 percent—I am sorry, 5 percent in the current year and 9.7 percent before then.

Rates prior to that were increasing anywhere from 13 percent to 25 percent. That is each year. Not 24 percent over a period of time since the passage of the Affordable Care Act, which people point to quite a bit now. I am talking about those were increases each and every year.

Senator CARDIN. And of course, every employer and every plan dealt with that differently. Some changed the benefits, reduced the benefits. Some added to the costs for the beneficiaries, copayments, deductibles, et cetera. And some increased the premium contributions by employees. And of course, employers put more money in, in some cases. It was a combination of all of that.

So it is difficult at times, when you see premium increases, to compare apples to apples because the Affordable Care Act, of course, requires a certain benefit structure.

Mr. BREY. Correct. In fact, we did every single one of those things, depending on the year. When I first started, we paid 100 percent of people's coverage. And as I explained earlier, by the time we got to the end, we are about 50 percent covering the cost of their premiums. We had also switched to plans that had higher deductibles, et cetera. So we had done all of those things, trying to keep costs under control for us because the number one thing I wanted to do is continue to provide coverage for our employees.

Senator CARDIN. Of course, the other thing we saw is, of course, some companies just terminated their policies because the pre-

miums were unpredictable and they just could not do it. So they had to terminate their policies. We also saw that in the marketplace.

I am not saying it has been solved. I am saying this is where we were before the passage of the Affordable Care Act. And sometimes we forget where we were before we had a more level playing field for small companies.

And the one practice that I always remember small companies telling me, they would hold their breath every year to see whether someone had a major illness. Because if they had a major illness, one person, one family, it could very well affect the ability to continue a health insurance plan because of the costs going up reflecting that particular individual's experience.

Mr. BREY. You also did not want your employees to get old because they worked on the average age of the whole group.

Senator CARDIN. Yes. I just think that it is useful for Congress to reflect on that because if you look at it in absolutes today—and obviously, there are dynamics occurring in health coverage that we have to deal with. But if we did not have the number of people insured, if we did not have a level playing field, if we did not have broader pools available for smaller companies, the circumstances would be far more difficult to us to find affordable coverage for employees of small companies.

Thank you, Mr. Chairman.

Chairman VITTER. Thank you.

One last point, there has been some criticism of the Small Business Exchange. I just want to say for the record, I think that is a fabulous deal if you are a member of Congress. If you are a small business, I am not sure. But that is a different topic and a different hearing.

And so with that, we will thank all of our witnesses. Thank you for being here today. Thanks for what you do for the economy.

We are adjourned.

[Whereupon, at 3:44 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Senate Committee on Small Business and Entrepreneurship
Legislative Hearing
"The Small Business Struggle Under Obamacare"
May 18, 2016, 2:00 PM EDT

OPENING STATEMENT
Chairman Vitter

- Good afternoon, and thank you for joining us for today's Senate Small Business Committee hearing to discuss the impact of the Affordable Care Act on America's small businesses and employees.

- I would like to thank Senator Jeanne Shaheen, our ranking member, and the other members of the committee, for their participation today.

- Since its enactment in 2010, the Patient Protection and Affordable Care Act has forced small businesses to change the way they provide employer-sponsored health insurance coverage for their employees.

- Currently, 60 percent of small employers do not offer health insurance to their employees, and much of that is due to the high cost of providing health insurance that must be purchased on the small group market.

- Clearly, the Affordable Care Act has failed its namesake intention.

- From rising premiums and increased health care costs to reduced access to doctors and hospitals, Obamacare just isn't working for Americans.

- That isn't a partisan statement. The facts clearly demonstrate Obamacare's failures.

- ***(Slide 1)*** Fact number one, premiums and deductibles have risen every year since the ACA passed in 2010. Premiums have gone up 24 percent and deductibles have gone up 67 percent. Wages, on the other hand, have only increased 10%.

- ***(Slides 2A and 2B)*** Fact number two, Obamacare has increased premiums for the average American family.

- We all recall when the President said he would sign a universal health care bill by the end of his first term that would cover every American and cut the cost of a typical family's premium by $2,500 a year.

- He was wrong, and between 2009 and 2015, the average family premiums for employer coverage have increased to $4,170.

- This year is just a continuation of that trend, with average premiums for benchmark silver plans on the federal exchange rising by 7.5 percent this year, far surpassing inflation. For bronze plans, premiums increased an average of 12.7 percent this year from 2015, and the fear is that next year they will go up even more.

- ***(Slide 3)*** Fact number three, over four million people had their plans cancelled because those plans didn't meet the new Obamacare requirements.

- This is despite the President's promise – 37 times over – that "if you like your health care plan, you can keep it."

- ***(Slides 4A and 4B)*** Fact number four, visits to emergency rooms have increased by 75 percent, which becomes enormously expensive for hospitals and taxpayers.

- This utterly contradicts one of Obamacare's biggest selling points that once everyone got health insurance coverage, they'd stop going to the Emergency Room.

- ***Slide 5)*** Fact number four—and with all this, there are still 33 million people who are uninsured.

- I could go on, but I'm sure we all have other obligations later today. My point is that Obamacare has failed its promises to the American people, and as a result, taxpayers bear the burden.

- When it comes to Obamacare and small businesses, there were a number of provisions meant to encourage employer-sponsored health insurance coverage, particularly among small businesses. Unfortunately, it didn't play out quite like the Obama Administration had expected.

- Today, I want to focus on three Obamacare provisions that most directly relate to small businesses:

    - (1) An employer penalty for not offering health insurance (known as the "employer mandate"),
    - (2) A tax credit to increase the affordability of health care for the smallest firms, and
    - (3) Small business health insurance exchanges designed to increase plan options and lower plan costs.

- The employer mandate punishes large employers who do not offer adequate or affordable coverage if at least one of their employees enters an individual health insurance exchange and receives a premium credit.

- These related penalties were scheduled to take effect in 2014, but considering the political implications, the Administration delayed implementation for businesses with 100 or more full time employees until 2015 and for businesses with 50 or more full time employees until 2016.

- Last year, small employers who offered to pay their employee's medical expenses directly through a health reimbursement arrangement were told by the IRS they couldn't do that anymore, and if they did, they'd be penalized $100 per day per employee, up to $36,500 per year.

- That $36,500 penalty is 18 times greater than the $2,000 penalty on a large employer that doesn't provide any insurance at all for their employees.

- That logic doesn't make sense to me. Small businesses account for over 99% of employer firms in the United States, and we should be focused on helping them grow and create more jobs – instead of penalizing them out of business.

- ***(Slide 6)*** Another Obamacare failure is the Small Business Tax Credit. The ACA provides a small business tax credit to for-profit and nonprofit organizations with fewer than 25 full-time employees (FTEs), phasing out as firm size increases. The problem is that most small businesses aren't signing up.

- The Administration originally estimated 4 million small businesses would be eligible for the tax credit, but only 181,000 businesses were able to claim the credit in 2014, according to the Government Accountability Office.

- **Small businesses are also avoiding the Small Business Health Insurance Options Program and the SHOP exchanges, which were** specifically designed to help small businesses utilize the risk-pooling mechanism of the newly established health insurance exchanges.

- Despite the Small Business Tax Credit and the SHOP exchanges, small businesses simply cannot afford to provide health insurance for their employees.

- Not only do small businesses pay approximately 18% more on average for health coverage than large companies, but they also receive fewer comprehensive benefits.

- Part of the small business struggle is having limited options in health plans.

- Big insurance companies are bailing out of the health insurance exchanges leaving individuals, especially people in rural areas, with only one or two choices in health plans.

- This consolidation of health care providers is forcing out the small, independent physicians who are essential to a competitive health care market.

- Then there are the taxes that have been imposed, like the Health Insurance Tax and the Cadillac Tax.

- When you put all these problem areas together, it's quite clear that Obamacare is failing American small businesses.

- I'm hopeful that today's discussion will shed some light on how folks are managing their businesses in the real world despite all of Obamacare's impediments.

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- I want to welcome and introduce our four witnesses today. I will introduce the witness for our first panel, followed by the three witnesses on our second panel, in the order they will testify.

    - Dr. Richard Frank is the Assistant Secretary for Planning and Evaluation with the U.S. Department of Health and Human Services. As the ASPE (Ass-pie), Dr. Frank advises the Secretary on development of health, disability, human services, data, and science policy and provides advice and analysis on economic policy. From 2009 to 2011 he served as the Deputy Assistant Secretary for Planning and Evaluation directing the office of Disability, Aging and Long-Term Care Policy. Dr. Frank has a B.A. in Economics from Bard College and a Ph.D. in Economics from Boston University, and is actually on leave from his position at the Harvard Medical School.

    - Tom Kunkel is a small business owner who is president of Full House Marketing in Edgewood, Maryland, which he started back in 2007. He has over 30 years of marketing, graphics and business development experience, assembling his company that offers print, promotions, sign and web solutions to local and regional businesses. Mr. Kunkel has a

degree from Towson University in marketing and mass communications and had studied publications design at the University of Baltimore.

- Mike Brey is a small business owner who is president of Hobby Works, based in Laurel, Maryland. His company opened in 1992 and has expanded to five locations throughout Maryland and Virginia. He had previously been a manager for larger retailers such as Sam Goody, Tandy and Macy's.

- Kevin Kuhlman is the Director of Legislative Affairs for the National Federation of Independent Business. Prior to his tenure at NFIB, Kevin handled healthcare, labor, education, and small business issues for Congressman Peter Roskam and served on Capitol Hill working as support and research staff for the Committee on Ways and Means. He holds a Bachelor of Arts degree from the University of Illinois at Urbana-Champaign.

- Welcome to all of you. We look forward to hearing your testimony.

- Let's begin with our First Panel and Dr. Frank…

- (Dr. Frank's Testimony)

- (Begin Questions to Dr. Frank—See your Questions to Dr. Frank)

- (Member Questions)

- Thank you, Dr. Frank, for being with us here today, and for your testimony.

- (Transition to Second Panel)
- We will now move to our Second Panel of witnesses.
- (Mr. Kunkel, Mr. Brey, Mr. Kulhman)
- (Testimony)
- (Begin Questions—Your Question to Mr. Kuhlman, NFIB)
- (Member Questions)
- This concludes our hearing today. Thank you, again, to our witnesses, for your testimony, which helps inform us on the impact the health care law is having on small business throughout the country.
- Have a good afternoon.

Opening Statement by Senator Jeanne Shaheen
"The Small Business Struggle Under Obamacare"
United States Senate Small Business Committee
May 18, 2016

Thank you, Chairman Vitter.

The purpose of today's hearing is to examine the impact of the Affordable Care Act on small businesses.

Let me be clear that the Affordable Care Act is working. Millions of Americans- including tens of thousands of people in New Hampshire- now have access to affordable health care coverage.

Just yesterday, the National Health Interview Survey released estimates that showed that 9.1 percent of Americans are uninsured—the lowest uninsured level on record. The survey also shows consistent declines in the uninsured rate since the ACA took effect. This is great progress.

Since the law was passed in 2010, the country has had over 74 straight months of job growth with more than 14.6 million jobs created and the unemployment rate has been cut in half.

I know that we all agree that we must continue to create and promote policies that incentivize better health care at lower costs. The Affordable Care Act has taken important steps forward to develop, test and implement innovative health care delivery system reforms. This is essential to controlling health care costs, which is important to individuals and small business owners.

And, because of the ACA, Americans now have health insurance options and can no longer be discriminated against because they have a pre-existing condition. This gives so many people the opportunity to leave a job they may otherwise stay in just because of the health benefits and pursue their dreams. It also allows some self-employed to get insurance for the first time.

Take, for example, Steve, a self-employed real estate broker from Londonderry. Steve is 61 years old, and had a bypass 12 years ago. Because of his medical history, prior to the ACA he was unable to purchase health insurance. Once the ACA was enacted he purchased a silver plan, and two months later, he had a quadruple bypass. This year Steve pays about $80 per month for coverage after a tax credit is taken into account. This insurance saved Steve from financial ruin and has allowed him to continue to work.

However, despite the gains made under the ACA, there is still more work to be done. I have heard from small businesses that are concerned by provisions in the ACA. They tell me about the impact of higher insurance premiums, the reporting requirements that can be a burden to some small businesses and the effect the employer mandate has on hiring practices.

I believe that there are changes that need to be made to the law to make it work better, especially for small businesses.

For example, I am pleased to support Senator Coons' legislation that would expand and simplify the ACA's small business tax credit, making it available to more employers for a longer period of time.

And Senator Warner's Commonsense Reporting Act, of which I am also a cosponsor, makes important changes to streamline the ACA's reporting requirement, making it less burdensome for employers.

Last fall, Senator Scott and I joined together to pass the first stand-alone bi-partisan ACA fix. The PACE Act will help small businesses by protecting them from premium increases in the small group market that could have otherwise occurred.

It is my hope that we can continue to come together in a bipartisan way to fix the Affordable Care Act, particularly for small businesses in New Hampshire and across the country.

I look forward to today's discussion and thank all witnesses for their time.

Senate Committee on Small Business and Entrepreneurship Hearing
May 18, 2016
Follow-Up Questions for the Record

Questions for Mr. Tom Kunkel

Questions from:

Senator Enzi

In 2015, the average premium for employer sponsored coverage increased at more than twice the rate than wages. Health costs are often the single largest household expense for families and employers consistently rank managing health costs as their top concern.

QUESTION 1:

What (if any) specific concerns do you have about allowing employers to provide a defined contribution to their employees so that they can find the product that best meet their needs?

I see no concerns (other than the current regulation prohibiting it). If we could pay employees a set amount (tax free – as a straight reimbursement) to use towards health care plans of their choice, that would be the simplest way for a business to administer it. Some legal questions would be:

- Do we establish a set fee for the entire company or can it be adjusted based on employees. Age, length of service, or job title?
- Do hourly employees accrue or get a set amount?
- Do salary employees get more than hourly?
- Do employees who have care plans elsewhere also get a reimbursement?
- Do we issue any year end paperwork to verify payment to employees.
- Do we require employees to show proof that they are spending the reimbursement on insurance expenses.
- One option is that we pay the insurance company directly to assure that the reimbursement is being used for that purpose. The only challenge with this is if an employer in financial trouble stops paying the insurance premium without the employee knowing it.

Would any of the above be determined individually by the employer or established by the government? My one concern is establishing a company policy that is somehow violating some sort of discrimination or employment practices rules or law.

QUESTION 2:

If defined contributions and defined benefits were treated the same way under the tax code, would it provide employees at small businesses more flexibility in their choice of insurance coverage?

- Absolutely. One of the biggest hassles is managing a company insurance plan. Even though I have many issues with the ObamaCare program, it was actually great (for a while) to be able to get out of providing a plan for my employees and letting them find a plan on their own.
- One of the challenges with employer based plans is that most carriers require us to narrow our plans to 3 plans. Unfortunately the 3 plans I chose may not work well for all of my employees.
- Another problem is that I am often limited to particular carriers based on the complexity of managing multiple programs.
- I may end up choosing a carrier based on geographic coverage or rate, instead of the carrier that best serves my employees' individual needs. Some of the cheaper carriers are not accepted by all doctors, so if I chose a cheaper carrier, some of my employees doctors may not accept it… in the end costing my employees more money in out of network fees or deductibles.

QUESTION 3:

Is there something in the tax code or federal law that treats defined contributions differently than defined benefit plans?

- This would be a question for my accountant. Ideally for an employer, we would generate a report at the end of the year (similar to a 1099) that would show the amount we have contributed for an employee in that year. The tax implications of that reimbursement would then be the employees based on their individual situation.

Senate Committee on Small Business and Entrepreneurship Hearing
May 18, 2016
Follow-Up Questions for the Record

Questions for Mr. Kevin Kuhlman

Questions from:

Senator Enzi

Question 1:

What (if any) specific concerns do you have about allowing employers to provide a defined contribution to their employees so that they can find the product that best meet their needs?

Answer 1:

According to NFIB Research Foundation, 63 percent of businesses experienced premium increases between 2014-2015. Additionally, NFIB members have ranked rising health insurance costs as the number one problem for small businesses for thirty years. According to the Department of Health and Human Services' (HHS's) Medical Expenditure Panel Survey (MEPS), only 32 percent of small businesses with fewer than 50 employees were able to offer group coverage in 2014. Small businesses need additional tools to assist employees with healthcare costs. Defined contribution is a tool that helps lower the barrier to entry for small businesses that were unable to offer coverage originally. As you alluded to in your question, defined contribution is also a tool that allows employers to help employees afford health insurance, but allows employees to choose a policy that best fits their individual needs and their families' needs.

Certain stakeholders with heavy investment in group coverage may have concerns that small businesses will drop group coverage. I do not foresee this scenario as coming to fruition because labor market conditions will only get stronger as small businesses slowly recover from the great recession. Small employers are not required to offer group coverage, but many still do so. Defined contribution would help the two-thirds of businesses that are unable to offer group coverage.

Question 2:

If defined contributions and defined benefits were treated the same way under the tax code, would it provide employees at small businesses more flexibility in their choice of insurance coverage?

Answer 2:

Yes. Employees would truly have full choice of insurance providers and specific plans within those insurance providers. Employees could choose the plans that suit them.

Many small businesses are only able to offer one plan (because insurance companies will only offer them one plan). Currently, limited choice exists in the SHOP Exchanges (horizontal choice – picking a plan within one metallic tier), but employers must offer expensive group coverage. True employee choice can only be delivered through a defined contribution arrangement. Exchanges, public or private, could aggregate premiums and handle administrative duties. Employees who work multiple jobs could receive contributions from multiple employers. This scenario is not hypothetical; it was happening through a company called LyfeBank in Washington State. So much small business benefit innovation can help it if legislators and regulators remove barriers.

Question 3:

Is there something in the tax code or federal law that treats defined contributions differently than defined benefit plans?

Answer 3:

Yes, an intersection of portions of the Internal Revenue Code, ERISA, and the Public Health Service Act prevent defined contributions from occurring. In Fall 2013, the IRS issued IRS Notice 2013-54 (and later issued Notice 2015-17) that prohibited "employer payment plans," citing a violation of the Affordable Care Act's group health plan requirements, specifically annual caps on benefits and free preventive coverage. That interpretation is short-sighted because these arrangements are not group coverage, they are a tool to purchase individual market coverage. The excise tax penalty for doing so falls under IRC Section 4980D. Because it violates group health plan requirements, it touches PHS Section 2708, as well.

The attached Joint Committee on Taxation description of HR 5447, the Small Business Healthcare Relief Act, does a pretty good job of describing the legal barriers to defined contribution. Additional information can be found at the IRS website: https://www.irs.gov/affordable-care-act/employer-health-care-arrangements.

DESCRIPTION OF H.R. 5447, THE "SMALL BUSINESS HEALTH CARE RELIEF ACT"

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on June 15, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

June 14, 2016
JCX-47-16

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5447, the "Small Business Health Care Relief Act," on June 15, 2016. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5447, the Small Business Health Care Relief Act* (JCX-47-16), June 14, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

A. Exception from Group Health Plan Requirements for Qualified Small Employer Health Reimbursement Arrangements

Present Law

Exclusion for employer-provided health benefits

An employee may exclude from gross income amounts provided through an arrangement under which (1) an employer pays or reimburses premiums for health insurance for the employee and family members purchased in the individual insurance market (referred to as an employer payment plan) or (2) an employer reimburses the employee for medical expenses generally of the employee and family members (referred to as a health reimbursement arrangement or HRA).[2] In order for employer payments or reimbursements under these arrangements to be excluded from gross income, premiums and other expenses must be substantiated and an employee must be entitled to receive payments from the employer only if he or she incurs qualifying expenses.[3]

The exclusion applies also to amounts paid or reimbursed from funds withheld from an employee's salary under a cafeteria plan (salary reduction amounts).[4]

The value of employer-provided health benefits for a year is generally required to be reported by the employer on an employee's Form W-2, Wage and Tax Statement, for the year.[5]

Group health plan requirements

The Code, the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHSA) impose various requirements with respect to employer-sponsored health plans, referred to for this purpose as group health plans.[6] Under the Code, an

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[2] Secs. 105(b) and 106; Rev. Rul. 61-146, 1961-2 C.B. 25; Notice 2002-45, 2002-2 C.B. 93, and Rev. Rul. 2002-41, 2002-2 C.B. 75. Under section 105(h), a self-insured medical reimbursement plan must meet certain nondiscrimination requirements in order for the benefits provided to a highly compensated individual to be excluded from income. For this purpose, the following groups of employees may be excluded: employees who have not completed three years of service with the employer, employees under age 25, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits was the subject of good faith bargaining, and nonresident aliens with no earned income from sources within the United States. Employer payments and reimbursements for health insurance and medical expenses are also excluded from wages for employment tax purposes. Secs. 3121(a)(2), 3231(e)(1), 3306(b)(2), 3401(a)(20), Rev. Rul. 56-632, 1956-2 C.B. 101.

[3] Treas. Reg. sec. 1.105-2.

[4] Sec. 125. An HRA cannot include salary reduction amounts.

[5] Sec. 6051(a)(14).

[6] Secs. 4980B (relating to continuation coverage or "COBRA" requirements) and 5000 (relating to Medicare secondary payor requirements) and Chapter 100 (secs. 9801-9834, relating to various additional requirements, such as prohibitions on preexisting condition exclusions and discrimination based on health status); Title I, Parts 6 and 7, of ERISA; Title XVII of PHSA.

employer is generally subject to an excise tax of $100 a day per employee if it sponsors a group health plan that fails to meet any of these requirements.[7] In some cases, the excise tax does not apply if the failure is due to reasonable cause and not to willful neglect and the failure is corrected within a certain period. In addition, in some cases in which failure is due to reasonable cause and not to willful neglect, some or all of the excise tax may be waived to the extent payment of the tax would be excessive relative to the failure involved.

IRS guidance holds that employer payment plans generally fail to meet certain group health plan requirements.[8] In addition, an HRA fails to meet those requirements unless the HRA is provided in conjunction with (or "integrated" with) employer-sponsored coverage that meets the requirements. An HRA that is integrated with such employer-sponsored coverage is often referred to as an "integrated" HRA, and an HRA that is not integrated with such employer-sponsored coverage is often referred to as a "stand-alone" HRA. Thus, an employer may be subject to an excise tax if it provides an employer payment plan or a stand-alone HRA.

Other health rules under the Code

Individuals are generally required to have health coverage, referred to as minimum essential coverage.[9] Unless an exception applies, an individual who fails to have minimum essential coverage may be subject to a tax penalty. Minimum essential coverage includes employer-sponsored coverage under a group health plan, other than certain types of limited coverage, such as coverage only for vision or dental medical services. Minimum essential coverage also includes coverage purchased in the individual insurance market, other than certain types of limited coverage, such as coverage only for vision or dental medical services.

An advanceable, refundable income tax credit (premium assistance credit) is available to certain individuals who purchase health insurance coverage in the individual market though an American Health Benefit Exchange (Exchange coverage).[10] However, an individual is generally not eligible for the credit if his or her employer offers affordable minimum essential coverage under a group health plan.[11] For this purpose, coverage is affordable if the employee's share of the premium for self-only coverage under the group health plan is not more than 9.5 percent[12] of

[7] Secs. 4980B(a) and (b), 4980D(a) and (b), 5000(a). Sec. 4980B(d)(1) provides an exception for plans of employers with fewer than 20 employees. Sec. 4980D(d)(1) provides an exception for a plan of an employer with no more than 50 employees if coverage is provided solely through insurance.

[8] Notice 2015-17, 2015-14 I.R.B. 845, and Notice 2013-54, 2013-2 C.B. 287. Notice 2015-17 provides relief from the excise tax under section 4980D for periods before July 1, 2015, for certain small employers.

[9] Sec. 5000A.

[10] Sec. 36B.

[11] The coverage offered under the group health plan must also cover at least 60 percent of the total costs of benefits covered under the plan, referred to as "minimum value."

[12] For years after 2014, this percentage is increased as needed to reflect cost-of-living increases. The percentage for 2016 is 9.66.

the employee's household income. An individual who applies for advance premium assistance with respect to Exchange coverage for a year must provide the Exchange with certain information, including information relating to employer-provided minimum essential coverage.[13]

If an applicable large employer fails to offer employees minimum essential coverage, or offers minimum essential coverage that is not affordable (under the standard described above), and any employee receives a premium assistance credit, the employer may be subject to a tax penalty.[14] For this purpose, applicable large employer generally means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.[15]

Effective 2020, an excise tax (the high-cost coverage excise tax, commonly also referred to as the "Cadillac" tax) applies if the aggregate cost of employer-provided coverage provided to an employee under an employer's group health plans exceeds a specified amount.[16] The aggregate cost of coverage for this purpose generally includes the cost of all types of coverage provided by the employer's group health plans, other than certain types of limited coverage, such as coverage only for vision or dental medical services.

Description of Proposal

Qualified small employer health reimbursement arrangement

Under the proposal, a "qualified small employer health reimbursement arrangement" (referred to herein as a QSEHRA) is generally not a group health plan under the Code, ERISA or PHSA and thus is not subject to the group health plan requirements.[17] A QSEHRA is defined as an arrangement that (1) is provided on the same terms to all eligible employees of an eligible employer; (2) is funded solely by the eligible employer and no salary reduction contributions may be made under the arrangement; (3) provides, after an employee provides proof of minimum essential coverage, for the payment or reimbursement of medical expenses of the employee and

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[13] Sec. 1411(b) of the Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 110-148. This information is subject to verification during the Exchange process under section 1411(c) and (d) of PPACA.

[14] Sec. 4980H.

[15] In determining whether an employer is an applicable large employer (that is, whether the employer has at least 50 full-time employees), besides the number of full-time employees, the employer must include the number of its full time equivalent employees for a month, determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. In addition, in determining applicable large employer status, members of the same controlled group, group under common control, and affiliated service group under section 414(b), (c), (m) and (o) are treated as a single employer.

[16] Sec. 4980I.

[17] A QSEHRA continues to be treated as a group health plan as defined under PHSA, for purposes of applying that definition to the privacy requirements applicable to medical information under the Health Insurance Portability and Accountability Act of 1996 (referred to as HIPAA), Part C of Title XI of the Social Security Act.

family members;[18] and (4) the amount of payments and reimbursements under the arrangement for a year cannot exceed specified dollar limits.[19] In the case of an individual not covered by the arrangement for all 12 months of a year, the dollar amounts are prorated to reflect the number of months of coverage.

The maximum dollar amount of payments or reimbursements that may be made under a QSEHRA with respect to an eligible employee for a year is the employee's "permitted benefit." An arrangement does not fail to be provided on the same terms to all eligible employees merely because employees' permitted benefits vary with the price of a health insurance policy in the individual insurance market based on the ages of the employee and family members or the number of family members covered by the arrangement, provided that the variation is determined by reference to the same insurance policy for all eligible employees.

Under the proposal, "eligible employee" means any employee of an eligible employer, except that the terms of the QSEHRA may exclude employees who have not completed 90 days of service with the employer, employees under age 25, part-time or seasonal employees, employees covered by a collective bargaining agreement if health benefits were the subject of good faith bargaining, and nonresident aliens with no earned income from sources within the United States.[20] "Eligible employer" means an employer that (1) is not an applicable large employer as defined for purposes of the requirement that an applicable large employer offer its employees minimum essential coverage (that is, generally, an employer with fewer than 50 full-time employees during the preceding year), and (2) does not offer a group health plan to any of its employees.

Income tax treatment of QSEHRA benefits

Coverage and payments or reimbursements under a QSHERA are generally excluded from gross income.

Because a QSEHRA is not a group health plan, coverage under a QSEHRA is not minimum essential coverage and does not satisfy the requirement that an individual have minimum essential coverage. Under the proposal, if an employee's medical care expenses are paid or reimbursed under a QSEHRA and the employee does not have minimum essential

[18] The proposal specifies that the Secretary of the Treasury or his designee may issue substantiation requirements as necessary to carry out the proposal.

[19] For 2016, the dollar limits are $5,130 ($10,260 in the case of expenses of an employee and family members). For years after 2016, the dollar limits are increased as needed to reflect cost-of-living increases.

[20] These groups are based on the groups that can be excluded in applying the nondiscrimination requirements under section 105(h) to a self-insured plan with 90 days of service substituted for three years of service.

coverage for the month in which the medical care was provided, the amount of the payment or reimbursement for those expenses is includible in the employee's income.[21]

Coordination with other Code rules

Under the proposal, an eligible employee under a QSEHRA is not eligible for the premium assistance credit for a month if the QSEHRA constitutes affordable coverage for the month. For this purpose, a QSEHRA constitutes affordable coverage for a month if the excess of (1) the employee's premium for self-only coverage under the second lowest cost silver plan offered in the Exchange, over (2) 1/12 of the employee's permitted benefit under the QSEHRA, does not exceed 1/12 of 9.5 percent[22] of the employee's household income for the year. In the case of an eligible employee under a QSEHRA who is eligible for a premium assistance credit for a year (that is, the QSEHRA does not constitute affordable coverage), the credit amount is reduced (but not below zero) by the employee's permitted benefit.

Under the proposal, a QSEHRA continues to be treated as a group health plan for purposes of the excise tax on high-cost coverage. For that purpose, an employee's permitted benefit is treated as the cost of coverage under the QSEHRA.

Notice and reporting requirements

The proposal includes several requirements relating to notices and reporting.

Not later than 90 days before the beginning of a year in which an employer will fund a QSEHRA (or, if later, the date on which an employee becomes eligible for the QSEHRA), the employer must provide eligible employees with a written notice containing the amount of the employee's permitted benefit and certain other information. An employer that fails to provide the notice may be subject to a tax penalty of $50 per employee, subject to a maximum of $2,500 for the year.

In addition, the employer must report an employee's permitted benefit for a year on the employee's Form W-2 for the year. An eligible employee who applies for advance premium assistance with respect to Exchange coverage for a year must provide the Exchange with the amount of his or her permitted benefit for the year.

Effective Date

The proposal generally applies to years beginning after the earlier of (1) the date that is 90 days after the date of enactment of the proposal, or (2) December 31, 2016 (plan years

[21] The proposal does not change the treatment of such payments or reimbursements for employment tax purposes. Thus, they continue to be excluded from wages for employment tax purposes.

[22] For years after 2014, this percentage is increased as needed to reflect cost-of-living increases. The percentage for 2016 is 9.66.

beginning after the earlier of those two dates in the case of the ERISA and PHSA changes).[23] The aspects of the proposal relating to the premium assistance credit apply to taxable years beginning after the earlier of those two dates. The requirement that an employer report an employee's permitted benefit on the employee's Form W-2 applies to calendar years beginning after December 31, 2016. The requirement that an eligible employee applying for advance premium assistance provide the Exchange with the amount of his or her permitted benefit applies to applications for enrollment made after the earlier of the two dates described above.[24]

[23] The proposal extends the excise tax relief under Notice 2015-17 to plan years beginning on or before the earlier of the two dates.

[24] Verification of this information in the Exchange process applies with respect to months beginning after October 2016.

B. Estimated Revenue Effect of the Proposal [1] [2]

Fiscal Years [Millions of Dollars]												
2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2016-21**	**2016-26**
-110	-135	-120	-127	-24	6	25	49	100	136	199	-510	---

NOTE: Details do not add to totals due to rounding.

[1] Estimate includes the following outlay effects:

2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
26	27	30	32	34	36	38	40	40	42	44	185	389

[2] Estimate includes the following off-budget effects:

2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016-21	2016-26
-25	-33	-27	-29	6	16	24	32	49	61	83	-92	157