

**CHALLENGES FACING AMERICA'S BUSINESSES
UNDER THE PATIENT PROTECTION AND AF-
FORDABLE CARE ACT**

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
FIRST SESSION

—————
JUNE 26, 2013
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Serial No. 113-60



Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

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U.S. GOVERNMENT PRINTING OFFICE

85-450

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
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**CHALLENGES FACING AMERICA'S BUSI-
NESSES UNDER THE PATIENT PROTECTION
AND AFFORDABLE CARE ACT**

WEDNESDAY, JUNE 26, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2123, Rayburn House Office Building, Hon. Tim Murphy (chairman of the subcommittee) presiding.

Present: Representatives Murphy, Burgess, Blackburn, Gingrey, Scalise, Harper, Olson, Gardner, Griffith, Johnson, Long, Ellmers, Barton, Upton (ex officio), DeGette, Schakowsky, Butterfield, Welch, Tonko, Green, and Waxman (ex officio).

Also Present: Representative Sarbanes.

Staff Present: Sean Bonyun, Communications Director; Karen Christian, Chief Counsel, Oversight; Andy Duberstein, Deputy Press Secretary; Julie Goon, Health Policy Advisor; Brad Grantz, Policy Coordinator, O&I; Sydne Harwick, Legislative Clerk; Brittany Havens, Legislative Clerk; Sean Hayes, Counsel, O&I; Andrew Powaleny, Deputy Press Secretary; Brian Cohen, Minority Subcommittee Staff Director, Senior Policy Advisor; Hannah Green, Minority Staff Assistant; Stephen Salsbury, Minority Special Assistant; and Matthew Siegler, Minority Counsel.

**OPENING STATEMENT OF HON. TIM MURPHY, A REPRESENTA-
TIVE IN CONGRESS FROM THE COMMONWEALTH OF PENN-
SYLVANIA**

Mr. MURPHY. Good morning. I convened this hearing of the Subcommittee on Oversight and Investigations entitled "Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act."

Today, we will hear firsthand from business owners about the impact the healthcare law and its costs and requirements are having on their employees and their families, the people they care about deeply.

First, I'm pleased to introduce a constituent from my district, Mr. Jeffrey Kelly. Mr. Kelly is a CEO and owner of Hamill Manufacturing Company, a 62-year-old company based in Penn Township, Pennsylvania. Like many small businesses across the country, Hamill is loyal to its employees, and Mr. Kelly recognizes that pro-

viding benefits to employees is not only the right thing to do, but attracts better employees and helps to drive success for all.

Yet as Mr. Kelly will testify today, since passage of the healthcare law, his companies premiums have risen 46 percent—that's 46 percent. And as Mr. Kelly and other business owners look forward to full implementation of the Affordable Care Act in a few months, their brokers and insurance agents have warned them to brace for the higher fees and taxes associated with the healthcare law.

Questions remain for families, workers and employers because there is a huge gap between what they hoped for and what they got. Good intentions do not guarantee good results.

Today, I'm sure the witnesses will continue to hear the same promises from supporters of the Affordable Care Act. Mr. Kelly, I don't think you'll find much comfort in the fact that even though your premiums keep going up, supporters of the law today will tell you that if you look at the numbers the right way, premiums are going down.

In addition to the rising costs for businesses, the witnesses today will also explain how the law's requirements will directly impact workers. Steve Lozinsky operates a cleaning service that he has grown from 1 employee to over 200. Mr. Lozinsky's business is run on a tight margin. When he bids on contracts, the costs of his service is often the determining factor. With less than 6 months to go until the Affordable Care Act is implemented, Mr. Lozinsky is weighing three options for his company. Option one is to reduce every employee's hours to less than 30 hours per week. Option 2 is to fire 100 employees. And there's a third option: going out of business. Mr. Lozinsky is a real-world example of how the employee mandate is causing havoc for American families.

Members on this committee may have their own opinions on whether the passage of the Affordable Care Act was the right decision, but we cannot disagree on the facts. The costs and the requirements of this law are forcing many businesses across the country to make difficult decisions, decisions that will impact the strength and growth of their companies, the wages of the workers, their ability to hire new staff.

And the witnesses before us today are not outliers. Last week a Gallup poll revealed that 41 percent of small businesses have frozen hiring because of the Affordable Care Act. Meanwhile the same Gallup poll found that 19 percent of small businesses have reduced their number of workers because of the law. And that is remarkable. Nearly one-fifth of the Nation's small businesses have reduced employment because of the Affordable Care Act.

Uncertainty over the impact of this law is building a mere months from full implementation. The nonpartisan Government Accountability Office told this committee last week that implementation of the law is behind schedule. Premiums continue to climb, although this hasn't stopped the law's defenders from claiming otherwise. Competition has failed to materialize as well, and not only are we hearing stories about insurers sitting out exchanges in places like New Hampshire, North Carolina and California, last week we learned that one of the Nation's largest insurers was sim-

ply going to exit California because of the individual insurance market altogether.

Meanwhile stories continue to break about cash-strapped local governments cutting hours of workers because they simply cannot afford the healthcare law.

Again, I want to thank our witnesses before us today, and it takes courage to come here and talk about the nuts and bolts of your businesses. And we all greatly appreciate your taking the time to do so.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF HON. TIM MURPHY

Today, we will hear firsthand from business owners about the impact the health care law and its costs and requirements are having on their employees and their families—the people they care about deeply.

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Questions remain for families, workers, and employers because there's a huge gap between what they hoped for and what they got.

Good intentions don't guarantee good results.

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Members on this committee may have their own opinions on whether passage of the Affordable Care Act was the right decision but we cannot disagree on the facts: the costs and requirements of this law are forcing many businesses across the country to make difficult decisions, decisions that will impact the strength and growth of their companies, the wages of their workers, and their ability to hire new staff. The witnesses before us today are not outliers. Last week a new Gallup poll revealed that 41 percent of small businesses have frozen hiring because of Obamacare. Meanwhile, that same Gallup Poll found that 19 percent of small businesses have reduced their number of workers because of the law. That is remarkable: nearly one fifth of the nation's small businesses have reduced employment because of the Affordable Care Act.

Uncertainty over the impact of this law is building mere months from full implementation. The nonpartisan Government Accountability Office told this committee last week that implementation of the law is behind schedule. Premiums continue to climb—although this hasn't stopped the law's defenders from claiming otherwise. Competition has failed to materialize as well; not only are we hearing stories about insurers sitting out the Exchanges in places like New Hampshire, North Carolina, and California, last week we learned that one of the nation's largest insurers was simply going to exit the California individual insurance market altogether. Mean-

while, stories continue to break about cash-strapped local governments cutting hours of workers because they simply cannot afford the healthcare law.

Again, I want to thank our witnesses before us today. It takes courage to come here and talk about the nuts and bolts of your businesses, and we all greatly appreciate you taking the time to do so.

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Mr. MURPHY. With that, I'm going to turn the remainder of my time over to Dr. Burgess.

Mr. BURGESS. I thank the chairman. And I also want to join with thanking the witnesses for being here, taking time away from your families and out of your productive lives to share your stories with us. It is important that you do so.

So the President promised when he signed the Affordable Care Act that it would add hundreds of thousands of new jobs to the United States economy. But as we get closer and closer, 6 months and 5 days, to full implementation, it becomes apparent that job loss, not job creation is the actual result.

Look, business owners, I know, because I was one before coming to Congress, you tend to be goal-directed. The natural inclination of a business owner is to want to expand and grow. But instead of facilitating this growth, the healthcare law incentivizes businesses to decrease their workforce, and even provides an outlet for employers to drop employees by providing Federal subsidies in the exchange.

The Affordable Care Act not only burdens many workers with lower wages, fewer hours, reduced job growth, but it also increases the possibility of business failure. At a time when the country is finally beginning to find relief from the severe recession and high unemployment, it's not the time to discourage economic growth. Let's remove the hurdles that the President has placed on economic growth and job creation and empower our businesses to propel the United States toward full economic recovery.

I thank the chairman for the recognition. I will yield back the time.

Mr. MURPHY. The gentleman yields back.

I now recognizes the ranking member of the committee Ms. DeGette for her opening prepared statement, 5 minutes.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you very much, Mr. Chairman. I really appreciate your holding this hearing.

As we have been discussing for a long time, ensuring that the Affordable Care Act is properly implemented is a top priority for me and should be for all of us.

I agree with you that there is a great deal of confusion and even fear about what the Affordable Care Act will mean for businesses and their employees. Just like everybody else on this committee, I hear this every week when I go home to Denver from all sizes of businesses.

I hope the hearing can help clear up some of the confusion and bring to light some of the very real benefits this law is already pro-

viding to businesses and their employees. I also hope that it can help key in for us some of the areas that we need to improve and have further hearings on in this oversight subcommittee.

I do just want to mention several key pieces of the Affordable Care Act that are already benefiting small businesses. The Affordable Care Act contains tax credits that can reduce the cost of small businesses' health insurance by 35 percent. Four million businesses are eligible for this tax credit, and nearly 400,000 have already taken advantage of it. Beginning next year, the value of the tax credit will rise to 50 percent of an eligible small business' health insurance costs. I hope we can work together to help educate our small businesses about this important benefit of the health reform law.

On Friday of last week, I met with a group of small businesses at one of our small business incubators in Denver, and I asked these small businesses how many of them really wanted to offer insurance to their employees. All of them raised their hand. Every single one of them raised their hand. And then I said to them, did you know that you will be eligible for a tax credit of up to 50 percent of your costs? And most of them were unaware of that. So I think there's a big education process that we need to undertake to let people know the benefits they can get.

Something else that the Affordable Care Act will help with is it contains medical loss ratio provisions to limit overhead and administrative waste by insurance companies. Now, I heard from the chairman—and I hear from small businesses all the time—that premiums increased dramatically the last couple of years, and that is correct. That is exactly why we passed this bill, and that's why we put the medical loss ratio provisions in the bill, because insurance rates have just been going wild the last number of years.

So the provisions that we put into effect in the bill have already helped with \$1.6 billion in rebates by insurance companies to consumers, and they have also contributed to \$5 billion in premium savings over the past 2 years. But in the next few months, nearly 6 million business owners and employees will get over \$310 million in rebate checks from their insurance companies. And these medical loss ratio provisions are only going to continue to work to bend the curve of the increase in premiums that our small businesses have been seeing.

The Affordable Care Act contains a number of long-overdue, commonsense reforms that are driving down the costs of health care and pushing waste out of the system. And as these reforms are have gone into effect, we have seen a persistent slowdown in the core cost of health care. Medicare cost growth is at historic lows. PricewaterhouseCoopers found that overall healthcare cost growth was at its lowest level in 50 years. So this slowdown, combined with the other provisions of the ACA, will help small businesses begin to afford healthcare coverage.

But we all know the biggest changes are going to come in 2014. Small businesses will have the opportunity to purchase health insurance on the State or Federal marketplaces. They will benefit from increased competition. There will be more of a choice in healthcare plans with quality benefits, and businesses are going to be able to compare them side by side.

Businesses will also no longer be in danger of facing significant cost increases just because one of their employees becomes ill or has an accident.

Of course, there is also a new responsibility for business owners. Many will be required for the first time to provide minimal health insurance for their employees. I can understand why businesses are nervous about this, but while the benefits are great, the burden is not likely to be as high as folks fear. If a business has less than 50 employees, there's no penalty if they do not offer coverage. If there are more than 50 employees, it's likely that the coverage they already have complies with the law. If they don't offer coverage, there's going to be new options to give people coverage.

And so I know there is a lot of healthy skepticism. I hear it from my constituents, too. I look forward to working with you, Mr. Chairman, and the witnesses here today to help implement this bill so that it works for everybody and gives high-quality health insurance for all Americans.

Thank you very much.

Mr. MURPHY. The gentlelady yields back.

I now turn to the chairman of the full committee Mr. Upton for 5 minutes.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

One of my top priorities as chairman of this committee has been rigorous oversight of the Affordable Care Act to learn more about how the law is being implemented and how it is impacting Americans and the Nation's jobs creators.

Last month, the committee released a report based on actual data provided by the Nation's leading insurers that chronicled the looming premium rate shock in store for millions. And just last week the nonpartisan GAO released a report requested by this committee about implementation, and the findings raised additional red flags.

The GAO found that despite having over 3 years to prepare, this administration is woefully unprepared for implementation, and the missed deadlines and delays show potential for further challenges ahead of the October 1st enrollment date.

Today we are here to learn more about how the Affordable Care Act is affecting business owners and their employees. It's our job creators who are on the front lines of implementation. They have a very important story to tell, and I would like to welcome our witnesses and thank them for taking the time to be here for this important discussion.

Like many small businesses across the country, the choices facing the business owners who will testify this morning are not easy ones. Because of the cost of the law and its requirements, these businesses will have to make gut-wrenching decisions whether they can keep the employees that they have, whether they will have to lay off employees or reduce their hours, and whether or not they can continue offering health insurance altogether. These are not hypotheticals issues; these are real questions businesses are facing today.

And we'll hear today for some businesses the costs of the law may force them to close their doors, reduce their hours. Despite the President's promise that the law would lower costs for businesses and families, the testimony of these witnesses reveals that the Affordable Care Act is not, in fact, affordable to a number of them and for many of the small business owners across the country.

Sadly, job creators large and small across the country are facing very difficult, similar decisions. In Michigan, a medical device manufacturer announced that it would lay off 1,000 folks—1,000 employees from across its global workforce because of the Affordable Care Act.

The healthcare law's threat to job creators and job growth is real, and I worry about similar announcements that will be all too common. Our rigorous oversight will continue as we fast approach the law's full implementation.

And I yield the balance of my time to Mrs. Blackburn from Tennessee.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

One of my top priorities as chairman of this committee has been rigorous oversight of the Affordable Care Act to learn more about how the law is being implemented and how it is impacting Americans and the nation's job creators. Last month, the committee released a report, based on actual data provided by the nation's leading insurers, that chronicled the looming premium rate shock in store for millions. And just last week, the nonpartisan Government Accountability Office released a report requested by this committee about implementation, and the findings raised additional red flags. The GAO found that, despite having over three years to prepare, the administration is still woefully unprepared for implementation and the missed deadlines and delays show potential for further challenges ahead of the October 1st enrollment.

Today, we are here to learn more about how the Affordable Care Act is affecting business owners and their employees. It is our job creators who are on the frontlines of implementation—they have a very important story to tell, and I would like to welcome our witnesses and thank them for taking the time to be here for this important discussion. Like many small businesses across the country, the choices facing the business owners who will testify this morning are not easy ones. Because of the costs of the law and its requirements, these businesses will have to make gut wrenching decisions—whether they can keep the employees they have; whether they will have to let employees go or cut their hours; or whether they can continue offering health insurance altogether to their employees. These are not hypothetical issues. These are real questions businesses are facing right now. As we will hear today, for some businesses, the costs of this law may force them to close their doors. Despite the president's promise that this law would “lower costs for businesses and families,” the testimony of these witnesses reveals that the Affordable Care Act is not, in fact, “affordable” for many of the nation's small business owners.

Sadly, job creators large and small across the country are facing similar difficult decisions. In my home state of Michigan, a medical device manufacturer announced it would lay off over 1,000 employees from across its global workforce because of the Affordable Care Act. The health care law's threat to job creators and job growth is real, and I worry similar announcements will soon be all too common. Our rigorous oversight will continue as we fast approach the law's full implementation.

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Mrs. BLACKBURN. I thank the chairman for yielding.

I welcome all of our witnesses, and I especially want to welcome a Tennessean, Mr. Hugh Morrow, who is a constituent of Congressman Fleischmann's, and he is out of the Chattanooga area and has a wonderful location there. He's president of Ruby Falls, and Ruby

Falls is this Nation's largest and deepest waterfall that is open to the public.

So welcome, Mr. Morrow. We look forward to your perspective on how the Affordable Care Act is going to affect you, your business, seasonal, part-time workers, and how that law's definition of a full-time employee affects you.

So welcome to all, and I yield the balance of my time to the gentlelady from North Carolina Mrs. Ellmers.

Mrs. ELLMERS. Thank you, Madam Vice Chairman, and at this time I am introducing my witness, Mr. Lozinsky from North Carolina. It is my honor to do so today.

Mr. Lozinsky and I became friends while discussing many of the issues that he had concerns about—with health care law being implemented, or, as we call it, the Affordable Care Act, Obamacare, the Unaffordable Care Act. And since that time we've had many discussions, and I have actually witnessed the changes that have occurred in his business and the concerns that he has had.

His business was started a number of years ago in 1998 with 1 employee, now having 240 employees. He is a small business owner. He loves his employees, they are family, and he has expressed this to me many times. He is very concerned. Thank you for being here today and the bravery that you're showing coming forward to discuss this issue.

Mr. MURPHY. The gentlelady yields back the balance of her time.

I now turn to Mr. Waxman, the ranking member of the full committee, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman.

My hope is that this can be a productive hearing. We need to educate small businesses about their new benefits and new responsibilities under the law and make sure that we're on the right track to have the State and the Federal marketplaces for small businesses to purchase insurance up and running by October 1.

But I'm concerned that today's hearing will be just another exercise in fear mongering and misinformation, a continuation of the Republican strategy on healthcare reform for more than 3 years now. After all, we've faced 37 times efforts to repeal the law in part or in its entirety on the House floor. And even one of our Republican's witnesses today said, I quote, "little patience," unquote, for this fruitless effort.

Well, Mr. Chairman, I held a series of forums with small businesses in my district. These business owners wanted to know what the law requires, the benefit it offers, and where they can get more information. This is the law after all, and they needed the basic facts about the law, not the propaganda.

It was helpful for them to know that businesses with fewer than 50 employees do not face a penalty if they offer no coverage to their employees. It was helpful for them to know that the Affordable Care Act does not require employers to provide coverage to part-time and seasonal workers. They are gratified to learn that beginning on January 1, 2014, they'll be able to use the marketplaces

to choose from a wide variety of healthcare plans for their employees, and that they'll benefit from new transparency and competition in the marketplaces, that they will not have to worry about their premiums skyrocketing because one of their employees becomes ill or has an accident, and that they may be eligible for tax credits to pay for up to 50 percent of the cost of coverage.

My colleagues who have expressed a great deal of concern about this issue, or employers that may have to close their doors should be reminded, 95 percent of employers in this country with 50 employees or more already have healthcare coverage for those employees. So when we hear about people closing their door, well, we hear that for anything the government hopes to do. Whether it's to protect people in the workplace from hazards or exposure to chemicals that may harm them, or to regulate the businesses in which they act, we hear it all the time, they're going to have to close their doors.

Mr. Chairman, we should be joining together to make sure the Affordable Care Act is implemented effectively, not wasting time on dozens of votes to repeal the law. I noticed that one of our witnesses that the Democrats suggested, Mike Brey, for example, is a business owner who knows that quality health coverage is a valuable way to attract quality employees. He has seen health insurance premiums rise dramatically in the years before reform. He's starting to see new competition amongst insurers, and finally he sees an opportunity to get costs under control.

Members of Congress have an important jobs in the months ahead. Our constituents are coming to us looking for help in understanding their new benefits and new responsibilities. We have an obligation to give them the facts about the law and to help them understand their options in a fair and straightforward way. I hope all members of this committee will join with me in that effort. Our goal should be to educate, not scare or mislead.

Mr. WAXMAN. I want to yield a brief period of time to the gentleman from Maryland Mr. Sarbanes to introduce his witness.

Mr. SARBANES. I thank the gentleman for yielding. I appreciate the committee giving me the opportunity to join the hearing today.

I'm excited to welcome Michael Brey here, who is a constituent of mine from Annapolis, Maryland.

Michael, as you can see, Members of Congress will walk over hot coals to welcome their constituents here to these hearings. It hasn't been that difficult today because the committee has indulged me.

But we are excited to have Michael here. He is the founder and president of Brey Corporation, which he started back in 1992. He acquired Hobby Works, which is a unique toy store offering models, trains, planes, boats, games, in 1993, and since that time he has increased Hobby Works to five locations in Maryland and Virginia. The sales have grown 600 percent to \$5 million in 2012.

Michael may be familiar to some of you because he is someone who is a strong advocate for small businesses. He has worked with Members on both sides of the aisle over time in both the House and Senate on how healthcare issues impact small businesses, and we are very excited to have him here and hear his discussion of why he thinks the Affordable Care Act offers real opportunities for relief to his business.

Thank you, Michael, for being with us.
I yield back.

Mr. MURPHY. The gentleman's time has expired.

So now all of our witnesses have been introduced. I will do it one more time here. Our first witness is Michael Brey. He owns Hobby Works, a company he started in 1992. It has grown to five stores in the Virginia and Maryland area.

Our second witness is Jeff Kelly, CEO and owner of Hamill Manufacturing Company, the family-owned business, precision machining and fabricating company serving many defense industry-related needs.

Our third witness, Steve Lozinsky, vice president of Sparkle and Shine Cleaning, providing construction and entertainment cleaning along with janitorial services.

And last witness is Hugh Morrow, president of Ruby Falls, the Nation's largest and deepest waterfall open to the public. Because of the seasonal nature of his business, Mr. Morrow has both full-time and part-time employees.

I'm now going to swear in the witnesses. You are all aware that the committee is holding an investigative hearing and when doing so has the practice of taking testimony under oath. Do any of you have any objections to testifying under oath?

All the witnesses answered negative.

Now, the chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do any of you desire to be advised by counsel during your testimony today?

And all of the witnesses say no.

So in that case if you would all please rise, raise your right hand, and I'll swear you in.

[Witnesses sworn.]

Mr. MURPHY. You are now under oath and subject to the penalties set forth in Title 18, section 1001 of the United States Code. You may now each give a 5-minute summary of your written statement. We will recognize first Mr. Brey for 5 minutes.

TESTIMONY OF MICHAEL BREY, OWNER, HOBBY WORKS; JEFFREY S. KELLY, CEO, HAMILL MANUFACTURING COMPANY; STEVE LOZINSKY, VICE PRESIDENT, SPARKLE AND SHINE CLEANING SERVICES, INC.; AND HUGH MORROW, PRESIDENT, RUBY FALLS, LLC

TESTIMONY OF MICHAEL BREY

Mr. BREY. Well, thank you, Chairman Murphy, Ranking Member DeGette and members of the committee for having me. As you heard, my name is Mike Brey, owner of Hobby Works, a hobby and toy shop I acquired in 1992, which I've since expanded to five locations in Maryland and Virginia. I also volunteer my time and entrepreneurial expertise to help other small business owners and small business advocacy groups find solutions to problems that we, small business owners, face every day.

One of the fastest-growing problems is the nonstop rising cost of health insurance, and that's what I'm here to talk about today. From the very beginning, I offered health insurance coverage to

keep and retain my good employees, and one of the first questions people ask me when you're hiring is if you provide health coverage. And I have taken some pride in being able to say, yes, and the coverage we're offering you is the same coverage that the president of the company and his family are on.

My business has been successful, and we've been able to grow, but my ability to keep my workers happy and secure by providing health insurance coverage has eroded. Our health plan once cost 100 bucks a person, all of which was covered by the company. Over the years our premium has tripled. My employees have seen their costs increase fivefold as they pay more of the premium for worse coverage. My workers are burdened by high deductibles, and so they put off preventive care for themselves and their children by avoiding the doctor.

Passage of the Affordable Care Act was the first thing in years that gave me some hope that this endless spiral of escalating costs and declining quality of coverage might finally end. I'm looking forward to full implementation of the Affordable Care Act next year when our State exchange opens and more cost-containment provisions go into effect. Perhaps then I will finally start to have the certainty and stability every business owner craves.

There are benefits of the ACA for my small business. Long before anybody ever heard of Obamacare, the high cost of health insurance was one of my top business concerns. Costs skyrocketed for many years while quality of coverage decreased. The status quo was utterly unacceptable. Doing nothing would have wreaked havoc on mine and other small business owners' bottom lines and our ability to create jobs.

An MIT economist, Jonathan Gruber, did an analysis of the consequences of doing nothing. He found that without reform employers would pay trillions, \$2 trillion, in healthcare costs by 2018, costing several hundred thousand jobs, \$800 billion in small business wages, and \$50 billion in profits. Those numbers show why passage of the Affordable Care Act was so important.

There have been objections from small business owners about this law, but I believe that that discontent is largely based on misinformation and myths. One myth I hear all the time is that small businesses will go out of business because they'll be required to provide costly health insurance to their employees. This is simply not true. Ninety-six percent of businesses in this country have fewer than 50 full-time employees, which means they're essentially unaffected. Of the 4 percent who do have more than 50 employees, 96 percent of them already offer insurance. So that leaves less than two-tenths of 1 percent—not 2 percent; two-tenths of 1 percent of small businesses that have more than 50 full-time employees that don't offer insurance that will be impacted. That's a pretty small segment of the community.

I'm one of those employers with fewer than 50 full-time equivalent employees, and starting next year I'll be able to use our State SHOP Exchange to purchase coverage. This is huge. In Maryland we haven't had a lot of choice. This exchange will allow me to pool together my buying power with other small business owners when purchasing insurance. Presumably with a larger—with more competition and a larger pool, the market will become more competi-

tive, and prices will stabilize, maybe, maybe even come down as a result. And I crave this kind of predictability.

Another way the law will help me is to rein in the hidden costs in the system, like shouldering the burden, the huge burden, of uninsured receiving medical care. When everybody is required to have insurance, there won't be the need to pass those costs on to me.

The Affordable Care Act isn't perfect and won't solve all of our business problem overnight, but it is the first meaningful law in decades that meets many small business core needs in regards to rising healthcare costs. In this fragile economy, policies that allow me to spend less on health premiums, and reinvest more of my profits, and create more jobs is what I need the most.

Implementing and strengthening the Affordable Care Act is the only logical path forward to lowering the overall cost of health care, providing more options for coverage for small business owners like myself, and enabling small businesses to resume our traditional role as primary job generators.

I would like to thank the committee for having me and giving me the opportunity to address you today.

Mr. MURPHY. Thank you.

[The prepared statement of Mr. Brey follows:]

**HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON OVERSIGHT ON
SMALL BUSINESSES AND HEALTHCARE**

JUNE 26, 2013

**MICHAEL BREY
Founder & President, Brey Corp. t/a
HOBBY WORKS**

Good morning, Chairman Murphy, Ranking Member DeGette and members of the committee. My name is Mike Brey, I'm the owner of Hobby Works, a hobby and toy store I acquired in 1992, which I've since grown to five locations with stores in Maryland and Virginia. I volunteer my time and entrepreneurial expertise to help other small business owners and small business advocacy groups find solutions to problems we business owners face every day. One of the fastest growing problems is the non-stop rising cost of health insurance. That's what I'd like to talk to you about today.

Almost from the start, I offered health insurance coverage to keep and retain good employees. One of the first questions people ask about when you're hiring is if you provide health insurance. I've always taken great pride in being able to say, "The coverage we're offering is the same coverage the President of the company and his family are on."

While my business has been successful and we've been able to grow, the ability to keep my workers happy and secure by providing health insurance coverage has eroded. Our health plan once cost \$100 per person, most of which was covered by the company. Over the years our premium has tripled. My employees have seen their costs increase five times as they pay more of the premium and face a higher deductible. My workers are burdened by high deductibles and are putting off preventive care for themselves and their children and avoiding the doctor. The passing 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.

I'm looking forward to full implementation of the Affordable Care Act next year when our state exchange opens and additional cost containment provisions go into effect. I may finally start to have the certainty and stability I need when it comes to health insurance premiums and choices of plans.

Benefits of the ACA for my small business

The high cost of health insurance has been one of my top business concerns for the past decade. As I mentioned, costs have continued to skyrocket while quality of coverage has decreased. The status quo was completely unacceptable. Doing nothing would have wreaked havoc on my and other small business owners' bottom lines and our ability to create jobs. Advocacy group Small Business Majority**, commissioned MIT economist Jonathan Gruber to conduct an analysis on the consequences of doing nothing. Gruber's analysis found that, without reform, small employers would pay \$2.4 trillion in healthcare costs by 2018, costing 178,000 jobs, \$834 billion in small business wages and \$52.1 billion in profits.

Those numbers show why passage of the ACA was so important. There have been objections from small business owners about this law, but I believe that that discontent is largely based on misinformation and myths. One myth I hear all the time is that small businesses will go

out of business because they'll be required to provide costly health insurance to their employees. That's just not the case. Lets look at the numbers: 96% of all businesses in this country have fewer than 50 full-time employees, which means they won't be required to offer insurance at all. Of the 4% who do have more than 50 employees, 96% of them already offer insurance. So, that leaves 0.02% of small businesses that have more than 50 full-time employees and don't offer insurance that will be impacted. That's a very small segment of our community.

Going back to the majority of small businesses, I'm one of those employers with fewer than 50 full-time-equivalent employees. Starting next year, I'll be able to use our state small business health insurance exchange to purchase coverage. This is huge. In Maryland, we don't have a lot of choice in insurance providers. In fact, we only have three. The Small Business Health Options (SHOP) exchange will allow business owners like me to pool our buying power when purchasing insurance. With a larger pool of businesses, ideally we will have more insurers offering coverage, and therefore more options to choose from. Presumably, this will make the market more competitive and I expect prices to come down as a result. Simply knowing I'll be able to shop for other plans as insurers change and costs fluctuate makes me feel more secure.

Another way the law will help me personally and rein in costs across the system is that up until now, a huge and largely unknown cost associated with private health insurance has been a hidden cost passed onto the insured when the uninsured receive medical care. When an uninsured individual receives care they can't fully pay for, health providers recoup a portion of unpaid-for care by passing the costs on to the insured with higher rates and premium costs. When everyone is required to have insurance, there won't be the need to pass those costs on.

Many provisions of the ACA are key to making health insurance more accessible and affordable for small businesses like mine. In addition to the exchanges, a multitude of cost containment provisions will go into effect next year that will help lower costs throughout the system. And as a businessman, it's important to me the country balance its books. The ACA helps lower costs while reducing the federal deficit by more than \$200 billion by 2020 and more than \$1 trillion over the 10 years after that.

The ACA isn't perfect and it won't solve all of our health insurance problems overnight. However, it is the first meaningful law in decades that meets many of small businesses' core needs in regards to rising healthcare costs. In this fragile 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.

Conclusion

Implementing and strengthening the Affordable Care Act is the only path forward to lowering the overall cost of healthcare, providing more options for coverage for small business owners like myself and enabling small businesses to resume our traditional role as primary job generators. Thank you for giving me the opportunity to address the committee today.

****I am a member of Small Business Majority's Network Council where I advise them of my ideas and feelings regarding problems and issues facing small businesses like mine; and try to find pragmatic solutions to those problems. Small Business Majority is a national small business advocacy organization that works to find solutions to the biggest problems facing small businesses today.**

Mr. MURPHY. Mr. Kelly, you're recognized for 5 minutes.

TESTIMONY OF JEFFREY S. KELLY

Mr. KELLY. Good morning. Chairman Murphy, members of the committee, thank you for the opportunity to testify today.

My name is Jeff Kelly, CEO and owner of Hamill Manufacturing, a veteran-owned family business based in Penn Township, Pennsylvania. The company was started by my father in a chicken coop in 1952 in our backyard. Our first contract was for parts for the U.S.S. Nautilus, the first nuclear-powered Navy ship. Hamill has produced critical components for every naval reactor built since, and we plan to continue to do so.

Our company is made up of machinists, welders, inspectors, engineers, administrators, among others. There are about 125 of us in the Hamill family, and I cannot stress that point enough that Hamill, just like thousands of other small businesses, our employees are our family. I plan to retire in 4 years, at which point Hamill will be 100 percent ESOP. Currently the employees own 49 percent of the company.

We pay well. Our average salary is about \$50,000, which, combined with our company size, means we are largely on our own and will not benefit from most of the subsidies and tax credits from the Affordable Care Act.

We offer good benefits to help to attract and retain talent. In southwest Pennsylvania companies like ours compete against much larger employees who can offer higher wages and more easily absorb increased healthcare costs. The irony of this: The cost of our generous plans are increasing so rapidly that we can no longer provide regular wage increases, which we need to attract and retain the best talent.

Our healthcare costs for the fiscal year ending March 10—March 31, 2010, were 795,000. Today with the same number of employees, they are 1.2 million. And we have—would have been 1.8 million were it not for changes we made to prevent catastrophic increases difficult for any small business to absorb.

The future should be bright, but current and future healthcare costs cloud it. The Affordable Care Act is proving to be unpredictable and unaffordable. Since the passage of the law in 2010, our healthcare premiums have increased 46 percent. It would have been 20 percent higher if we had not taken some extraordinary means to hold the increase to 20 percent. A nearly 50 percent increase in healthcare costs is virtually impossible for small business to absorb, let alone a two-thirds increase.

To avoid the additional 20 percent, we changed carriers, doubled our deductible from 2,500 per individual and 5,000 per family to 5,000 and 10,000. We also instituted an aggressive wellness program and charged a premium for all employees and spouses who are tobacco users. The higher deductible was misleading since we, as the employer, cover 95 percent of the employees' costs, meaning the company covers 4,500 or 9,000, while the employee pays a 500 individual and 1,000 family deductible. That means the amount the company will pay each year actually depends on how many employees and by how much they exceed their nominal deductible. In the past fiscal year, those additional costs were \$110,000, money we

could have used to hire two employees or increase wages to retain employees.

So we track two numbers, the premiums we pay and the company portion of the plan deductible. Currently the company pays 80 percent of the premium, while the employee pays 20 percent of the balance. In time we will have to ask employees to share more of the expense towards a 60/40 split. The speed with which we move to that position will depend on how steep the future cost curve is. That may in turn cause us to lose valuable employees. Talk about a no-win situation.

In addition to the actual cost involved with having a company-sponsored healthcare plan, one cannot overstate how much management time and resources are spent on administering the plan. One wonders if running or starting a small business is really worth the effort.

I want to be clear: This is not just about how much our company pays for health care. I know many believe the Affordable Care Act will lower costs for small businesses, but the opposite has occurred for us. As implementation nears, insurance companies are pushing down as many increases as they think employers can absorb.

Unlike the Federal Government, we in small business have to budget for future costs today. How can I develop a business strategy for 2014 when I can't estimate future costs?

We will manage next year, but I'm most concerned about when our company becomes 100 percent employee owned. I doubt they will like running a healthcare provider, which is what we're becoming, instead of a manufacturing company that they thought they were getting.

Thank you for the opportunity to testify before you today and bring attention to this serious problem.

Mr. MURPHY. I thank the gentleman.

[The prepared statement of Mr. Kelly follows:]

**Written Testimony
of**

**Mr. Jeff Kelly
CEO & Owner, Hamill Manufacturing Company**

**Before the
U.S. House of Representatives Energy and Commerce
Subcommittee on Oversight and Investigations**

Wednesday, June 26, 2013

Chairman Murphy, members of the Committee, thank you for the opportunity to testify today. My name is Jeff Kelly, CEO and Owner of Hamill Manufacturing, a 62 year old company based in Trafford, Pennsylvania.

Our first contract was for parts for the USS Nautilus, the first nuclear powered naval vessel. Hamill has produced critical components for every naval Nuclear reactor built since, and we hope to do that for the foreseeable future.

I own 51% of the company and my employees own 49% - we set up an ESOP in 2010. The long range plan is to be 100% employee owned when I retire in 4 years. We think we run our business the right way – customer and employee centric!

Our company is made up of machinists, welders, inspectors, technicians, contract administrators, purchasing people, engineers and administrators. There are about 125 of us in the Hamill family – and I cannot stress that point enough – at Hamill, just like at thousands of small businesses across the country, our employees are our family. We pay well; our average salary is about \$50,000, which combined with our company size, means we are largely on our own and will not benefit from most of the subsidies and tax credits under the Affordable Care Act.

We offer good benefits, not just because it is the right thing to do but because it gives us an edge in recruiting and retaining the most talented employees but we can only do so much. In Southwest Pennsylvania, companies like ours compete against much larger employers who can offer higher wages and more easily absorb increased health care costs. At Hamill, we hired a co-op student his senior year of high school and completely paid for his four year apprenticeship program and he became a Journeyman machinist for us. He developed Hodgkin's Lymphoma, underwent a stem-cell transplant, but when he returned, we promoted him to a methods engineer and moved him to a different part of the plant in an environment that met his needs. After 11 years of employment, he left for higher wages at a larger manufacturer.

The irony is, our generous plans combined with increased health care costs are now resulting in us losing employees because we cannot increase wages like before. We try to provide wage increases every 12-18 months but this year we could not because we are paying a lot more for health care. Our total health care costs for the Fiscal Year ending March 31, 2010 were \$795,000. Today, with the same number of employees, they are \$1.2 million and would have been \$1.8 million were it not for changes we had to make to prevent a catastrophic increase difficult for any small business to absorb.

As you'll see, not only is health care becoming unaffordable for Hamill, healthcare is increasingly burdensome for our employees and their families who are facing stagnant wages and higher deductibles, co-pays, and monthly premiums. In the 2000/2001 health care plan year, the employee paid only \$12 a month for a family plan. Today, an employee pays \$222 per month to ensure their family has health insurance -

We tend to keep our people for a long time. Our average age is 47. Our average length of service is 13 years and the median service is 9 years. We take the long view in managing the company. We hire interns and train our machinists in a Pennsylvania approved apprenticeship program. We provide vision and dental coverage at no additional cost to the employee and make sure each person in our shop feels like they are part of our Hamill family.

The future should be bright, but current and future healthcare costs cloud it. The Affordable Healthcare Act is proving to be unpredictable and unaffordable. Since the passage of law in 2010, our health care premiums have risen 46%. They would have been 20% higher if we had not taken some extraordinary means to hold the increase to 46%. A nearly 50% increase in health care costs is virtually impossible for a small business to absorb let alone a two-thirds increase. To avoid the additional 20%, we changed carriers, doubled our deductibles from \$2,500/\$5,000 to \$5,000/\$10,000 (individual/family), instituted an aggressive wellness program and charged a premium for all employees/spouses who are tobacco users.

The higher deductibles are misleading, since we as the employer cover 95% of the employees costs. Meaning, the company covers \$4,500/\$9,000 – difference between the employee share of the deductible (\$500 individual/\$1,000 family) and the real deductible of \$5,000/\$10,000. That means the amount the company will actually pay over a year depends on how many employees and by how much they go over their nominal deductible. In the 2012/2013 plan year, twenty-two of our covered members reached the deductible for an additional cost of \$110,000 to the Hamill Manufacturing – money we could have used to hire two employees or increase wages.

So we track two numbers, the premiums we pay or are likely to pay and the company portion of the plan deductible. Additionally, the company pays about 80% of the premium while the employees pay the 20% balance. But I will tell you what we told our employees. Because so many of our jobs are critical to our operation, we just can't get rid of people if our healthcare costs continue to increase significantly. We will have to ask the employees to share more in the expense. We'll move to a 60/40 employer/employee cost breakdown position from our current 80/20 position. The speed with which we move to that position will depend on how steep the future cost curve is.

Our broker tells us that next year we can expect a premium increase of 10% if we have a "good" year in terms of claims. He says we can expect to be at or above that level of increases for the foreseeable future. It sounds like we will continue to increase at rates well above inflation. Additionally, there a number of new fees associated with the ACA that kick in on January 1, 2014 which will add \$11,500 in this plan year and \$49,000 next year.

Long before the ACA, we placed a strong emphasis on the health of our employees through a wellness program. At Hamill, we have a monthly walking challenge, a Biggest Loser Competition, held a Wellness Fair in 2012, have discounted health and wellness programs offered through our health insurance, and provide monthly healthy living seminars. In addition, we also offer reimbursements for tobacco cessation programs. This is part of our strategy to maintain a healthy, happy, and productive workforce while hopefully slowing the annual rate increases we face.

To stay competitive, Hamill will be forced to find ways reduce the impact of healthcare costs. We will have to ask our employees to share more costs. This really isn't desirable because of the morale and retention issues we would face. Skilled labor – having, finding and developing it - is

the most important factor in any current or future success. Hamill faces a very competitive labor market because of the number of OEM's operating in SW PA. We have already had apprentices and skilled workers poached by some of these larger firms.

In addition to the actual costs involved with having a company sponsored healthcare plan, one cannot overstate how much management time and resources are spent on administering the plan. Throw in hours of time spent on trying to keep costs manageable, dealing with brokers and a limited number of providers, communicating with employees and trying to influence employees to take wellness seriously, you are left wondering if running or starting a small business is really worth the effort.

The attitude that has come to prevail in this country is that businesses should be social welfare agencies especially as regards healthcare. I don't think our employees want that, I know the employer doesn't want that, and I guarantee that when the employees own 100% of Hamill in four years – they will not want that. Hamill is fortunate enough to be of a size where it has a two-person Human Resources Department. Many small companies are not so fortunate. It is distressing to think what nightmares the ACA will impose on the small business trying to do right by its employees.

Manufacturing goods and providing services to our customers is our number one priority. Being a social benefits agency is not within our area of expertise, nor should it be. ACA is adding an impossible level of complexity to the already tough job of running a business, which competes not only in SW PA but globally against low cost countries.

I want to be clear – this is not just about how much our company pays for health care. I know many believe the Affordable Care Act will lower costs for small businesses – but we have yet to see that and quite the opposite. As implementation nears, insurance companies are pushing down as many increases as they think employers can absorb. At the time, some in Washington promised increased competition to lower rates, which may be the case in other parts of the country but not in Southwest Pennsylvania where we really only have two providers.

Further complicating factors, while we are considered a small business by the federal government in almost all other areas, we don't qualify under the arbitrary standards developed by lawmakers under the ACA. Since we have 125 employees, Hamill is above the 100 limit for companies to participate in the Small Business Health Options Plan (SHOP). And even if we did qualify, I live in state which will have a federally facilitated SHOP exchange which means my employees won't have an option to choose a plan to fit their needs and who knows what other delays and surprises regulators have in store.

We just started our Fiscal Year on April 1 and had planned to hire 12 new employees this year including four summer interns – representing a major jump in employment for us as we try and grow the business. However, how am I going to pay for them? Excluding the interns, if I hire eight people at an average salary of \$50,000 a year that is \$400,000 in additional payroll. But that is not the problem. If they have families, that is an additional \$10,545 per employee for health care coverage and that is just the premiums. If two of them hit the deductible limit that is another \$9,500 per employee cost to the company.

So the total cost of a new hire today for just salary and health care is over \$70,000 before I've paid any taxes, retirement contributions and other benefits. While this is part of running a business, spending over \$20,000 per year on health care coverage for an employee making \$50,000 in wages is no way to run a successful business. And just wait until my broker calls and says he's adding another increase due to unintended consequences of the Affordable Care Act.

Several years ago, I served as Chairman of the National Tooling and Machining Association, with nearly 1,500 manufacturing companies located across the country. I remain active there and with other defense industry suppliers and I hear the same stories everywhere. Uncertainty, unpredictable, and unaffordable are just some of the words used by small businesses to describe

unpredictable, and unaffordable are just some of the words used by small businesses to describe the health care law. Employers are starting to receive notices of new "user fees", new coverage requirements, and rate increases.

While the federal government may run its budget differently, at a small business, we have to plan for future years today. How can I develop business strategy for 2014 when I have no way of knowing what health care increases are ahead. We will manage next year, but I am most concerned about when I retire in four years and turn the company over to the employees who will own 100% of the business. I doubt they will like running a health care provider which is what we're on track to become instead of the manufacturing business they thought they were getting.

There is no question that the federal government needed to act and reform our health care system. But a one size fits all approach, with arbitrary standards and impractical requirements is not going to work and certainly is not lowering costs. Our company far exceeds most of the requirements and benefits set out under the ACA but why does it feel like we're being punished for doing the right thing all these years with higher premiums, deductibles, and co-pays?

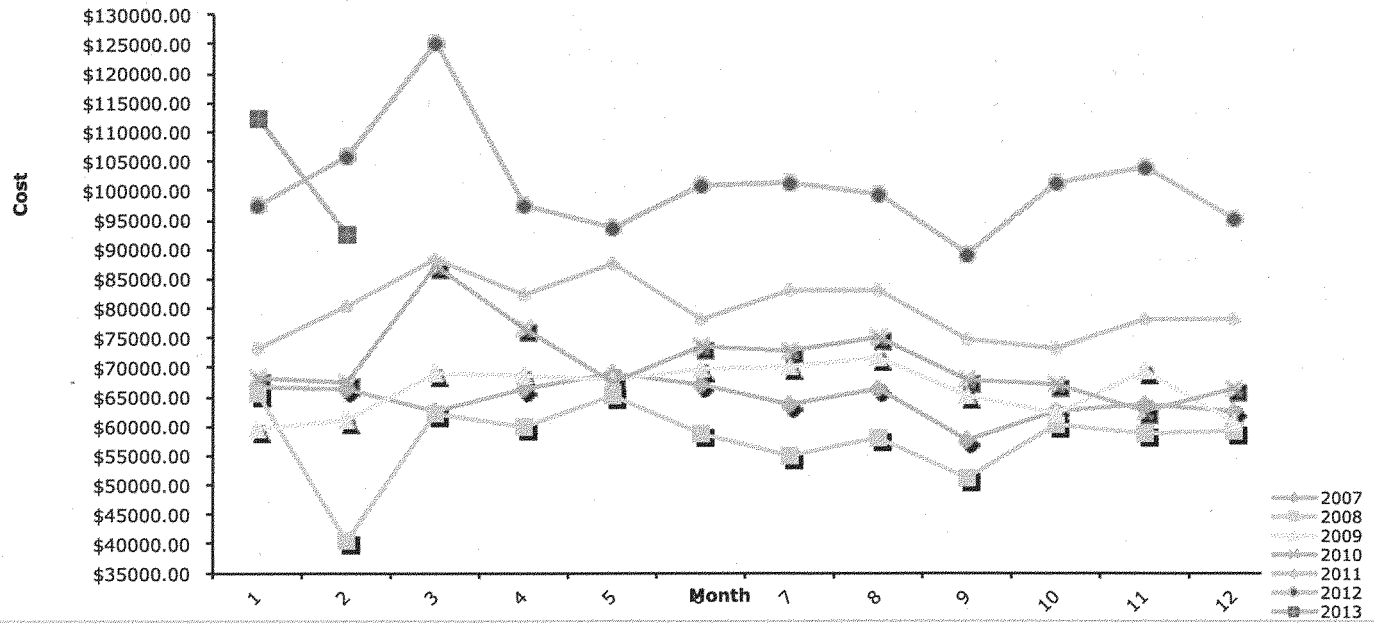
I served my country in the Marine Corps and all of us at Hamill are serving our country today by manufacturing critical products for our nation's defense. That is what we are good at, manufacturing and being the best at what we do in customer service and the way we treat our employees. None of us want to be in the health care business but the Affordable Care Act puts me as the employer in that position when all we want to do is make parts to keep our country safe.

Thank you for the opportunity to testify before you today and bring attention to this important issue. We need sensible solutions to this problem which allows us to compete regionally and globally and strengthen manufacturing in America.

Seven Year History of Hamill's Healthcare Premiums and Actual Costs

Year	Premiums	% Change	Total Cost	%	Comment
4/07 - 3/08	\$ 773719		\$ 774671		
4/08 - 3/09	\$ 597943	-22.72%	\$ 694745	-10.32%	Hamill switched to high deductible plan and paid the difference between employee deductibles and "real" deductible. The real deductible was \$2500/\$5000. The employee deductible was \$200/\$400. By absorbing more risk, Hamill was able to see a reduction in costs from the previous year.
4/09 - 3/10	\$ 659384	10.28%	\$ 795134	14.45%	
4/10 - 3/11	\$ 711736	7.94%	\$ 852053	7.16%	Hamill changed carriers - from HealthAmerica to Highmark.
4/11 - 3/12	\$ 778979	9.45%	\$ 959445	12.60%	Hamill enjoyed the effects of the second year of a cap - 10%, that Hamill was able to negotiate when it switched carriers the previous year.
4/12 - 3/13	\$ 951615	22.16%	\$ 1211250	26.24%	Hamill increased the real deductible to \$5,000/\$10,000. This kept the premium from a requested 42% increase by Highmark to a 22% increase.
4/13 - 3/14 (Projected)	\$ 1042550	9.56%		TBD	Hamill switched carriers back to HealthAmerica. Deductible level remained at \$5,000/\$10,000 and the increase in premium is 10%. Hamill instituted a FSA for employees. The employee deductible is increased to \$500/\$1000. Hamill institutes an aggressive wellness program and a premium for tobacco users.
Notes:					
Difference in premium from 4/10 to 4/13		46.48%			Net premium has increased by 47% in the 3 years since the Unaffordable Health Care Act passed. It could have gone up another 20% if Hamill hadn't substantially increased deductibles and changed carriers.
Difference in yearly cost from 3/10 to 3/13.				42.16%	Total yearly cost has increased 42% in the three years since the healthcare law was passed.

Health Insurance Cost Comparison for Plan Years '07/'08, '08/'09, '09/'10, '10/'11, '11/'12, '12/'13, and '13/'14



Mr. MURPHY. Mr. Lozinsky is recognized now for 5 minutes.

TESTIMONY OF STEVE LOZINSKY

Mr. LOZINSKY. Good morning. Thank you for the opportunity to speak.

My wife Kathy and I run a cleaning company in Apex, North Carolina, with 240 employees. We are very concerned on how this law will affect our employees. With a \$2,000 fine for every employee after 50, we cannot afford the \$380,000 a year that the law will cost us. It looks like our only option will be to cut our employees' hours to less than 30 hours a week, but this will have a devastating effect on our employees' paychecks and their ability to pay their bills.

Most of our employees are minorities, and we also have programs to hire felons that cannot find work anywhere else. So this law that was supposed to help your lower-income workers will end up hurting my lower-income workers.

We try to be fair and follow the law and pay all of our employees over minimum wage, but because of some of our competition pay their employees off the books or as 1099 employees, they already start off with a competitive advantage against us because they don't pay unemployment insurance, compensation, Social Security and Medicaid. So with the implementation of this law, they're not going to follow this law either, so that just gives them another competitive advantage bidding against us.

Ninety percent of our jobs are bid, so it's a very, very small, small margin, and it's a very tight competition. So our competition who don't play fair, this will give them an extra competitive advantage against us.

But I'm not here to criticize the law; I'm here to try to find a solution to our specific problems for our employees and to try to better them—better them. So any suggestions you have will be greatly appreciated. Thank you. Sorry, I'm a little nervous.

Mr. MURPHY. You are doing a great job. Thank you, Mr. Lozinsky.

[The prepared statement of Mr. Lozinsky follows:]

Sparkle & Shine Cleaning Service Inc.
1017 Classic Road Apex, NC 27539
www.sparkle-shinecleaning.com
(919)466-9001 Fax (919)466-9002

Monday, June 17th, 2013

Energy Commerce Commission
House of Representatives
212 S Rayburn House Office Building
Washington, DC 20515

Dear Distinguished Committee Members:

Sparkle & Shine Cleaning Service is a family owned and operated cleaning service started by Kathy Lozinsky in 1998 with (1) employee. We have grown to approximately 240 employees. We have 3 divisions. We do construction cleaning for about 120 customers. We do entertainment cleaning for a majority of large venues in the Raleigh, NC area and NCSU. We also do janitorial service for 20 buildings in Wake County.

Our work force is 85% minorities, including over 50 convicted felons that could not find work anywhere else. We have 2 convicted felons that have worked their way up to Project Managers making over \$50,000.00 per year. One of these employees just celebrated his 10-year anniversary with us. He was in jail and worked in a Work Release Program then started as a laborer and has worked his way up to Project Manager.

I give you this background on our company to show you whom this law will hurt because I cannot afford the \$2,000.00 per employee fee attached to this law. That would be \$380,000.00 per year. 190 employees @ \$2,000.00 each after the first 50 are exempt.

We are looking at 3 options and none of them will be good for our employees.

- 1) Get all employees under 30 hours. Most of our employees work 40 hours or more and the overtime money helps them survive and if they go from 45 hours to 30 hours, most will not survive. One example is, I have a couple with 3 kids that works for us and both husband and wife work around 45 hours a week, so if I have to cut their hours to 30 hours with the overtime they will lose, it will cost them 30% of their income and they will not be able to pay their bills.

- 2) Try to down size to around 100 employees (layoff 140 employees) and hope that we can afford the \$100,000.00 fine, but that is doubtful and
- 3) Close up and lay off 240 people.

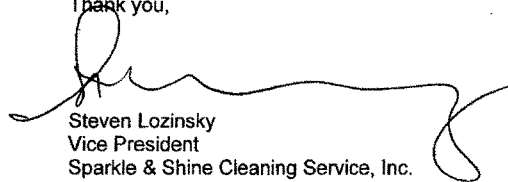
A couple of other issues that have been affected by this law.

- 1) Because of the financial uncertainty of this law, we have not expanded at our prior pace (approximately 10% a year, so there is 25-30 people we did not hire this year.
- 2) Also, we try to give back to our community, giving \$20,000 a year to charities, like the Special Olympics, Durham Rescue Mission and many others. But with the financial uncertainty of this law, we have suspended payments this year.

Some people say 'well, just raise your price and you will be ok'. That is not an option for us as our margins are very small and we only get 1 out of 10 jobs we bid. Also a lot of our competition plays unfairly and pays their employees under the table or as 1099 employees, even though it is illegal. That gives them 15% on us to start because they do not pay Workman's Compensation, Unemployment, Social Security or Medicaid. These same companies will not pay for health care on these employees so it gives them an extra discount compared to us.

So I am respectfully asking this committee to help me help my employees. We have a lot of great people working for us and I would hate to see them lose their job or see their hours cut. So, please, any suggestions you have will be greatly appreciated.

Thank you,



Steven Lozinsky
Vice President
Sparkle & Shine Cleaning Service, Inc.

Mr. MURPHY. Now, Mr. Morrow, you're recognized for 5 minutes. Make sure your mic is on, and pull it close to you.

TESTIMONY OF HUGH MORROW

Mr. MORROW. Good morning, and thank you, Mr. Chairman and members of this committee. I'm here today representing the Ruby Falls and its employees. Ruby Falls is an 84-year-old small business that employs over 100 strong in the height of our season, and it's supported by approximately 40 full-time employees year round.

Ruby Falls is better known as the tallest underground waterfall open to the public. We've been mentioned in such lists as the top seven natural wonders in the U.S.A., and number two waterfall—underground waterfall by World Reviewer travel site on Earth. A simple way to explain what we are, you take a 260-foot elevator ride down into the cavern, walk 2,000 feet into a limestone mountain, and when you arrive at the falls, you're 1,100 feet underground and view a 145-foot waterfall. People have been doing this for over 80 years. During 2013, we will host close to 400,000 people. It truly is a unique experience that has spanned generations.

Since 2008, Ruby Falls has had its challenges, as most small businesses have in the travel and leisure area. Disposable incomes have been down, the cost of travel and energy prices have been up, so, being reliant on the drive-in market, we have struggled.

Fortunately, Ruby Falls has thrived over the 5 years. Our workforce is comprised of full-time and part-time workers that are second to no organization in this country. I could not be prouder to be representing them today.

This group is a homogeneous mix of Ruby Falls career employees, retirees, and those working while transitioning to other jobs, and a mix of students both high school and college age. Our payroll has increased 27 percent over the past 4 years, and this does not include the contract labor, such as technicians, plumbers and electricians that we retain.

Many people ask me how do we keep such a great group? The main reason is that we fit and conform to where they are in their life situation. One of those options is that we offer full-time qualifying employees health insurance that is 100 percent employer paid for the individual coverage. How can an employer manage these costs? We have crafted the plan that works for both us and our employees that focuses on their needs, not the needs of every American.

Now, because we have to combine the full-time employees with part-time employees that choose to work for us part time, our full-time equivalents will exceed 50 employees. Why is this important? Because we are in this category, we will not be able to buy insurance at the benefit levels that work for our business, and we'll have to move to higher levels that are mandated by the Affordable Care Act.

And since 2006, we have seen premium increases that have not exceeded 5 percent, but this past year we saw 21 percent and are projected to see higher than 30 percent increases for 2014. We are working in a very competitive market, as I mentioned earlier. Absorbing these costs and passing them on to our customers is not an option.

We have spent more time analyzing the effects of this law than creating memories for our visitors. For the first time in my career, business growth and creating jobs has become a secondary task.

You know, why invest capital? Significant cost increases we will see because of the increased mandated benefits will reduce our ability to grow going forward. As I mentioned, we have grown our payroll 27 percent, invested over 2 million in capital and expansion, and invested in the Chattanooga and surrounding Tennessee community. Ruby Falls is the first U.S. attraction to be certified by Green Globe, an international achievement, for our environmental stewardship of our business. A huge part of that certification was a reduction of power usage, and we were the first solar-powered cave in the U.S. Yes, solar power is an important part of our ongoing plan.

Throughout these tough economic times, we have operated on less resources, reassigned and eliminated nonproductive positions, reduced inventory, but have still managed to increase customer satisfaction and revenues. The expenses created by the Affordable Care Act are not affordable and will force us to reduce payroll, share in the cost, reduce investments and growth, or a combination of all three. None of these solutions create jobs.

I represent our team by saying the coverage we have we would like to keep, but the coverage we are being mandated to have is unaffordable. More people have healthcare coverage available today because we grew our business. We hope to continue to do that going forward just as we have in the past. And thank you for your time and attention. I look forward to your questions.

[The prepared statement of Mr. Morrow follows:]

Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act

Subcommittee on Oversight and Investigations

Hugh Morrow, President, Ruby Falls LLC.

Good Morning. Thank you Mr. Chairman and members of this committee. My name is Hugh Morrow and I am here today representing Ruby Falls and its employees. Ruby Falls is an 84 year old small business that employs over 100 strong in the height of our season and is supported by approximately 40 core full-time employees year round. Ruby Falls is better known as the tallest underground waterfall open to the public. We have been mentioned on such lists as a top 7 Natural Wonders in the USA and listed as the #2 underground waterfall on earth by World Reviewer travel site. A simple way to explain what we are: you take a 260' elevator ride down into a cavern and walk over 2000' feet into a limestone mountain. When you arrive at the falls you are 1100' underground and view a 145' waterfall. People have been doing this for over 80 years. During 2013, we will host close to 400,000 people. It truly is a unique experience that has spanned generations.

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For the first time in my career, business growth and creating jobs has become a secondary task. You ask yourself why grow? Why create jobs? Why invest

capital?

The significant cost increases we will see because of the increased mandated benefits will reduce our ability to do this going forward.

As I mentioned earlier since 2008, we have grown our payroll by 27%, invested approximately \$2 million in capital and expansion spending and invested in the Chattanooga and surrounding Tennessee community. Ruby Falls was the first US attraction to be certified by Green Globe an international achievement for our environmental stewardship of our business. A huge part of that certification was our reduction in power usage and we were the first solar powered cave in the US. Yes, solar power is an important part of our ongoing plan.

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I represent our team by saying the coverage we have, we would like to keep but the coverage we are being mandated to have is unaffordable. More people today, have healthcare coverage available today because we grew our business.

We hope to continue to do that going forward just as we have in the past.

Thank you for your time and attention to these matters and I hope to answer your questions should you have any for me today.

Mr. MURPHY. I thank the panel.

I was looking at pictures before of the falls. We would love to have a hearing there sometime. It would be nice.

I will go on with questions, and I will recognize myself first for 5 minutes.

Mr. Kelly, you testified today that since passage of the affordable care law, your premiums have continued to climb. Could you elaborate on the amount of your recent premium increases, and do you expect more in the future?

Mr. KELLY. We do. As I said, it was a 46 percent. That's since 2010. There was one big year, which was last year, that was 23—well, actually was 23 percent. The initial premium request that came in from Highmark was 42 percent. We were able to—we had to double our deductible, and we had to basically tell them we were going to leave them if they don't—we ended up with a 23 percent increase. That was last year.

This year we moved to from Highmark to HealthAmerica, and we still had a 15 percent increase, and that was when we doubled our deductibles again.

Mr. MURPHY. Can you give me an idea of what the cash amount of that percentage is?

Mr. KELLY. Well, I can actually—

Mr. MURPHY. If you don't have it handy. I was just wondering with regard to percentage, but I just wonder how much. But that's something that comes out of the employees'—

Mr. KELLY. A couple hundred thousands dollars.

Mr. MURPHY. I was wondering what that was per employee.

How has it impacted your ability to plan for the future? Are you able to hire or expand?

Mr. KELLY. We have to figure out what we're going to do to keep employees. You know, what we're faced with in southwestern Pennsylvania, our competitors are large OEMs; it's not other small businesses. And they typically can offer higher wages and richer healthcare plans. So when I ask my employees to take—pay more of the premium plus have a higher deductible, even though we cover 95 percent of the deductible, it still means less money in their pocket. So I just had a welder walk out the door the other day because under our new healthcare plan, there was a certain procedure that was covered under Highmark, wasn't covered under HealthAmerica. He said his wife needed this procedure. He left and went to the L8 company. And that's happening, and I expect it to happen more regularly.

Mr. MURPHY. So you're saying—your conclusion is that the way health care is going is affecting your ability to recruit or train workers?

Mr. KELLY. Absolutely, Congressman. We're not—we're very, very careful about hiring somebody today. Where we would—I need welders, and I need machinists, but frankly I've got to be very, very careful, because knowing that when you hire somebody, you're going to pay at least 50,000 in wages, another \$20,000 in benefits, you have to be very cognizant of what that's going to mean to your bottom line.

Mr. MURPHY. So supporters of this law have claimed that directly costs have gone down, or with tax credits it's going to lower your

costs and allow you to keep the coverage you currently enjoy. First of all, are you able to take advantage of these tax credits?

Mr. KELLY. No.

Mr. MURPHY. Why is that?

Mr. KELLY. Because we're 125 people. We're too big.

Mr. MURPHY. It cuts off at a much lower number.

Mr. KELLY. This gentleman talked about 96 percent of the small businesses, but the 4 percent of the small businesses that are well over 50 people—small business think if you have less than 750 people, you're a small business. If you're a manufacturer, I think in some of our Federal contracts, if we have less than 500 people, we're a small business. So what's the definition of a small business? Maybe under Affordable Care Act it's 50, but there's a lot of people in that sweet spot.

I was the chairman of the NTMA, the National Tooling and Machining Association, in 2007, and I traveled the country. I talked to colleagues all over the country, and many of them are well over 50 people. And every one of them is going to be affected by higher premiums and higher costs. And I can hear right now from my colleagues across the country they're very careful about hiring people. What we're doing is looking at automation and productivity using machine tools. I'd rather invest in a machine tool than a person right now because I don't have to pay health care for a machine tool.

Mr. MURPHY. So robotic things instead of people.

Mr. KELLY. Yes.

Mr. MURPHY. Mr. Lozinsky, are you able to take advantage of the tax credits that they're being touted here?

Mr. LOZINSKY. No. I mean, even if it pays 50 percent of my healthcare costs at \$450,000 a year, I still couldn't afford half—I still couldn't afford the 50 percent.

Mr. MURPHY. My understanding is the tax credit is only available if you fewer than, what, 25 employees? I think you're beyond that?

Mr. LOZINSKY. Yes, we're at 240.

Mr. MURPHY. Mr. Morrow, you're beyond that level, too, so the tax credits don't apply?

Mr. MORROW. We'll be right at 51 employees.

Mr. MURPHY. I see.

Mr. Kelly, again, so if someone operates a business, with the full implementation of the law coming out, let me ask this: Do you believe it's easy to even understand what the expectations are in terms of what this is going to impact in the future?

Mr. KELLY. I don't believe so. I've talked to my broker at length, and he's a very close personal friend of mine. In fact, he just sent me an email the other day to tell me that there are four fees that are going to go into effect next year starting January 1: the patient-centered outcome research fee, the transitional reinsurance fee, the risk adjustment fee, and the insurer's tax.

Those fees alone next year in the 3 months that are involved, from January to March, are going to cost me \$11,000. In the full year, from April 1, 2014, to 2015, it's going to cost Hamill an additional \$48,000. That's for no more better coverage, no change; those

are just additional fees that are coming down the road because of the ACA.

Mr. MURPHY. Thank you. I see my time has expired.

By the way, thank you for your service in the Marine Corps.

Ms. DeGette is recognized for 5 minutes.

Ms. DEGETTE. Thank you very much.

I just want to ask a quick little series of questions to try to kind of clarify where we need to go to help small business be able to afford insurance.

Mr. Morrow, you offer insurance to all of your full-time employees right now, correct?

Mr. MORROW. Correct.

Ms. DEGETTE. And, Mr. Kelly, you do also, correct?

Mr. KELLY. That is correct.

Ms. DEGETTE. And Mr.—is it Brey?

Mr. BREY. Brey.

Ms. DEGETTE. Brey. And you offer insurance to all of your employees, correct?

Mr. BREY. Correct.

Ms. DEGETTE. And, Mr. Lozinsky, I would assume that you would like to offer insurance if you could afford to do it from a cost perspective; is that right?

Mr. LOZINSKY. If I could afford to do it, of course.

Ms. DEGETTE. And I think, Mr. Morrow, the cost of insurance is not cheap, and it's been going up for some number of years; is that right?

Mr. MORROW. We've not seen substantial increases until this past year.

Ms. DEGETTE. OK. Mr. Kelly, I think you testified that it's been going up quite a bit in the last few years.

Mr. KELLY. Yes, it has.

Ms. DEGETTE. And, Mr. Brey, you, too? Have you seen insurance increases?

Mr. BREY. Oh, yes, for nearly a decade.

Ms. DEGETTE. I'm wondering if you could, Mr. Brey, talk to us about why you think it's important to give health insurance to your employees.

Mr. BREY. Well, when you're one of those guys, young men or whatever, working for somebody else in a low-wage job, like I did a long time ago, you always say to yourself things like, well, you know what? If I ran the company, I would do blank. And so, working in a front-line retail job as I did, if you were offered insurance, it was crap insurance or—

Ms. DEGETTE. And it was unusual that people were offered insurance in jobs like that; not just young men, but young women, too.

Mr. BREY. If you were offered it at all, and that's always bothered me. So it's something I sought to do differently right from the beginning.

Ms. DEGETTE. And you have done it from the beginning. And has it hurt your ability to grow as a company?

Mr. BREY. We've grown 5-, 600 percent over a period of time. We survived through the recession. We added employees.

Ms. DEGETTE. OK. And do you think that the fact that you offer health insurance helps you attract good employees?

Mr. BREY. Yes, absolutely.

Ms. DEGETTE. OK. Mr. Kelly, now, you testified that your health insurance costs have increased about 50 percent in the last 3 years; is that right?

Mr. KELLY. Yes. Actually the costs—the premiums were 46 percent; the costs were 42 percent.

Ms. DEGETTE. It went from 795,000 to 1.2 million, correct?

Mr. KELLY. Correct.

Ms. DEGETTE. And, Mr. Brey, I think you testified the health insurance costs for your company have grown the last number of years, too; is that correct?

Mr. BREY. Yes, that's correct.

Ms. DEGETTE. And do you know if your health insurance has cost about the same as your larger competitors', or has it cost more?

Mr. BREY. For a small group in Maryland, it costs more, because we're not—

Ms. DEGETTE. I think that's true in Colorado and probably every place else.

Mr. BREY. We have from one to three providers at any given point in time.

Ms. DEGETTE. And what about shopping for coverage? Was it easy to compare plans side by side, or did you have to hire brokers? What did you do?

Mr. BREY. I guess in the sense that in Maryland there is so little competition, they all offer identical plans at roughly the same price, it makes it easy to compare pricing, but it doesn't make it easy to find affordable coverage or a variety of coverage.

Ms. DEGETTE. And this has been going on for quite a while; is that right?

Mr. BREY. Yes, that's correct.

Ms. DEGETTE. OK. And, Mr. Kelly, your costs have been going up for quite a while, too; is that right?

Mr. KELLY. Yes, that's correct.

Ms. DEGETTE. So what we're trying to figure out here with the Affordable Care Act, we're trying to figure out how to bend that cost curve, and that's part of what we're—that's part of what we're trying to figure out, but we're also trying to figure out how to make it accessible for folks.

Mr. Lozinsky, that's one reason why I think about employers like you who are employing—you're employing lower-paid workers, but you still want to be able to get them insurance. Are your people eligible for Medicaid?

Mr. LOZINSKY. I'm assuming, yes, a lot of them are.

Ms. DEGETTE. So that would be helpful. You could get those folks enrolled, and you wouldn't have to pay a penalty, did you know that, under the new bill?

Mr. LOZINSKY. No.

Ms. DEGETTE. Part of what I think we need to do is get this word out to employers. There's a lot you can do.

Mr. MORROW, I was thinking about what you said. You said you've got 40 full-time employees, right?

Mr. MORROW. Approximately.

Ms. DEGETTE. So technically you would be under the 50-employee limit under the Affordable Care Act, right?

Mr. MORROW. No.

Ms. DEGETTE. Except for the part-timers that somebody is telling you that they're—are these part-timers year round, or just seasonal part-timers?

Mr. MORROW. These part-timers are year round.

Ms. DEGETTE. OK. So they're going to be put together in a group, and you believe that's going to take you over 50 employees. So I think that's an area we should look at as well, because you want to offer your people insurance if it's appropriate for them, right?

Mr. MORROW. We currently do, yes.

Ms. DEGETTE. Yes. And you just don't want to have to go broke doing it.

Mr. MORROW. Correct.

Ms. DEGETTE. I think that's everybody's goal here.

OK. Thank you very much, Mr. Chairman.

Mr. MURPHY. The gentlelady's time has expired.

Now I turn to the vice chair of the full committee Dr. Burgess for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. Morrow, let me just ask you a question. You do have seasonal employees, correct?

Mr. MORROW. Correct.

Mr. BURGESS. So if I were to go to one of your typical seasonal employees on January 1st of 2014, the year this thing is implemented, and I were to asking them to estimate their earnings for the coming year, would they be able to give me an answer?

Mr. MORROW. Well, most of our seasonal employees are in the summer, so January would not be a good time, but in the summer, yes, they should be able to.

Mr. BURGESS. But here is the point: On January 1st of 2014, they're going to be asked—as they apply for this Affordable Care Act insurance, they're going to be asked what their earnings are for this year coming up. And many people, myself included when I ran a medical practice, would have difficulty coming up with that figure.

So if they're wrong when they estimate that number, and they underestimate their earnings, they will receive a subsidy to buy health care in the exchange if you don't provide the insurance for them. And then they could be required to pay that back if their actual earnings, as reported to the IRS—so that information will be available to the government, so they could be required to pay that money back.

Is your experience that your typical seasonal employee would hold money in an account in case they had to pay it back to the government at the end of the year?

Mr. MORROW. No, sir, they do not do that.

Mr. BURGESS. Yes. I wouldn't think so, because I wouldn't do it either. And we've had other people on other panels, and you deal with that issue of how are you going to estimate your earnings when you're a lawyer in solo practice, when you're a doctor in a group practice; how are you going to estimate your earnings over the coming year when it's entirely contingent upon factors that are

completely beyond your control, such as the economy and other things that may be affected?

Now, I think we're all getting a clear understanding as the law comes toward completion, or at least the 2014 completion, and I have a copy here if anybody wishes to reference it, but it's pretty difficult to know what the road ahead is. And it's difficult for us to be able to advise you of the road ahead. And I daresay, although it's difficult to get answers out of the agency, have any of you contacted the Department of Health and Human Services or the Office of Personnel Management—if your State doesn't do an exchange, the Federal Government is going to do it for you—have any of you contacted them for information about what the next year looks like?

And I daresay they wouldn't be able to tell you, so I don't blame you for not making that contact, but that has historically has been a difficulty.

Now, Mr. Lozinsky and, I think, Mr. Morrow, you both reference the fact that you deal with competitive environments. You deal with the fact that there are other people out there competing for the same space, and the same entertainment dollar in Mr. Morrow's case, and the same cleaning dollar in Mr. Lozinsky's case. Tell me—and both of your businesses have over 50 employees; is that correct? Mr. Lozinsky, are you over 50?

Mr. LOZINSKY. Yes. Oh, yes.

Mr. BURGESS. And, Mr. Morrow, you're over 50?

Mr. MORROW. Yes.

Mr. BURGESS. So what is the fine that people talk about that you might face? Do you have a clear understanding of what that fine is? Say you have an employee you're providing insurance, but they go and say, I want the subsidy in the exchange. I don't want your insurance, Mr. Morrow, I want the subsidy. Do either of—and either of you feel free to answer—do you have an idea of what that fine is and why it's there?

Mr. LOZINSKY. I don't. I just know that if you can't afford to pay for insurance for your employees, the government is going to fine you I think it's \$2,000 the first year and then \$3,000 the second year.

Mr. BURGESS. And I appreciate you may not know the specifics. I daresay people on this panel don't know the specifics. But are you aware, as confusing as this law is, we're not done with you yet? The Senate is working today, this very day, on S. 744, a major immigration overhaul for this country. As a consequence of that law, there will be a group of individuals who are called registered provisional immigrants who will not be—will not have the Affordable Care Act available to them. The President told us this 2 or 3 years ago when he came to Congress. So they will be outside.

So, Mr. Lozinsky, can you imagine a competitor who would staff their rolls with people who are RPIs and therefore outside the requirements of the Affordable Care Act? Can you imagine having to compete with that as a business?

Mr. LOZINSKY. No. That's part of the problem, because most of our competition, like I said, they're either below 50 employees, or they pay their employees off the books, or they make them 1099 employees.

Mr. BURGESS. And yet you offer employment to a group of individuals—we got 22 million unemployed in this country, and you offer employment to some of the hardest people to employ; is that correct?

Mr. LOZINSKY. That is correct.

Mr. BURGESS. How does it make you feel that your government is to going to set up your competition to make your business model essentially extinct?

Mr. LOZINSKY. I mean, I'm very concerned about it.

Mr. BURGESS. Of course you are, and I understand it. I appreciate you all being here. I share your concern, too, sir. Thank you.

Mr. MURPHY. Now I recognize the gentleman from Texas Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

And like a lot of us, these hearings—and I know there's issues with this law, and there's issues with any law that Congress passes. And a lot of us on our side of the aisle have tried to sit down and say, OK, what can we do to make it better for the witnesses that are here today? And that's our issue.

Instead of talking about how bad it is, the law is going to be the law. The Supreme Court upheld it. We passed 33 times last Congress in the House and 1 time this Congress. It's not going to change, so maybe we ought to quit saying how bad it is and say, OK, let's get a list of things to fix it. And we're not seeing that in this House of Representatives. All we're seeing is let's paint it bad.

Well, I have information that says, for example, in California they're going to set up their own State exchange. The premiums are going down, and also they announced that there's going to be at least five different insurance carriers.

In an earlier life I managed a small business with 13 employees. Part of our employees were union bargaining unit. We had the option to go into the union plan, or have a plan that met that for all our employees, including our front office. And my job was to negotiate benefits with those carriers, and like some of you, I couldn't get anyone to negotiate. We couldn't get the top-tier companies particularly. So we would battle every year. And we were seeing the same percentage increases as you have seen in your time, but we're also seeing that some of those percentage increases are going down. And maybe we ought to hear from that. I'd like to hear from Secretary Sebelius and some of the Members who—the information that we've gotten come to that.

So, I'm glad you all are here, but we really need to find out what can we do to fix it, because the law is not going to go away, and we have to deal with it. But in this House of Representatives, we're not dealing with it. All we're doing is saying, the dam is going to break, and we're going to get flooded. Well, wouldn't it be nice to say, OK, let's deal with it and see how we can come up with some better things?

But as we know on October 1st, the State exchanges—or the national exchange. I'm from Texas, and we're not to going to have any State participation in our State exchange, so we will have a national exchange. And I'm looking forward to having at least five plans, whether they're from the Blue Cross, Aetna, you name it, because when I was in business, we couldn't get five companies to

give us a price. In fact, my experience was we signed a 3-year contract, but it was always premium reopened the first year, and so ended up having to negotiate premiums every year on a 3-year plan. And I know that's the experience you all are having, because we didn't go through the—we didn't decide to only cover five of our employees under our bargaining unit and then try and find for the other seven or eight employees we had.

Small business have the right to be nervous about health reform, but a lot of us who voted for that made sure there were things in there to help small business. You know, the 50 employees, that's the same thing for minimum wage. That's not new law. If you're over 50 employees, you have to pay minimum wage. And so now you're going to have to cover your employees with some type of health care. And each of you have particular issues, and I wish Congress would take those issues and say, let's put together legislation to do it.

Instead of, as some of my colleagues said, talk about how bad it is, let's see how we can fix it. When I managed a business, that's what we did. If I lost a customer, I'd say, wait a minute, what did we do wrong that that customer left us? We're not seeing that in this House of Representatives, and that's what's frustrating.

I have a district, though, in Texas that's 44 percent of my constituents who work did not have insurance through their employer; only 32 percent did. It's a very urban area. I have some of the biggest companies in the country; refineries, big chemical plants, service companies for the oil and gas industry. But, again, 44 percent of my constituents who worked didn't have any insurance through their employer. So that's why there was a lot of support for this, because those employers were not providing health care, and they were showing up in our emergency rooms. And those of us who had insurance were continuing to see those premiums increase because somebody was paying that bill for those folks showing up in the emergency rooms.

Mr. Brey, is it fair to say that the health insurance market for your small business has been problematic for quite a while?

Mr. BREY. Yes. You have anywhere from one provider choice to three provider choices.

Mr. GREEN. There was a reason why Congress passed the Affordable Care Act with the health insurance market for individuals in small businesses were dysfunctional.

I also served in the State legislature. We tried to create plans, but the problem is that if you have a high-risk plan, and all you have are people with high risk, nobody can afford it, including employers.

And I went through the experience some of you had. Since I negotiated it, our insurance carrier came in and said, this lady in your plan had a double mastectomy. If you separate her and get an individual plan for her, we can save you money. And I explained to them, I said, I'll be glad to share that with the owners, because that happened to be the owner's wife. And so, and I'm glad that company did not do that. And they wouldn't do it for the owner's wife, and they didn't do it for any of the 12 employees that we had.

But the Affordable Care Act hopefully will solve some of these problems as of January the 1st, and the SHOP marketplaces will

allow more competition, more transparency. That was the other reason. When I would see those premiums increase every year—

Mr. MURPHY. Gentleman's time has expired.

Mr. GREEN [continuing]. I never understood why, why they did.

But, anyway, I appreciate you all being here and explaining your problem. Now, if we would do our jobs and try and fix some of these problems—

Mr. MURPHY. Thank you. Gentleman's time has expired. Appreciate that. Thank you.

I now recognize Mr. Olson for 5 minutes.

Mr. OLSON. I thank the chair. And welcome to our witnesses.

I go home to Texas 22 every weekend, and I get out and go to small businesses to hear how they're impacted by Obamacare. I've been to property management companies, oil, and gas service companies, even block-walked an area of Spanish-language businesses in historic Rosenberg, Texas. In broken English in Rosenberg, these three words which were said over and over and over, sum up Obamacare's impact on every family business in Texas: Bad. Hurts. Stop.

There are many job-killing, growth-stunting parts of Obamacare. My questions will focus on a small part of the law which is hurting the very people the law is supposed help, Americans working minimum-wage and low-skilled jobs. They're being locked into a future of stagnant wages and few opportunities for personal prosperity.

I'm talking about that small section which defines a full-time employee as someone who works 30 hours per week. My staff has done some research. There are over 100 regulations with different definitions of a full-time employee. Obamacare is the first to define it so clearly and so broadly, 30 hours per week.

A new name has emerged in American business: 29ers, people only being employed for 29 hours because of Obamacare. And I will follow up my questions from my colleague from Texas, Mr. Burgess. Mr. Lozinsky. Sparkle and Shine, your testimony says, has 240 employees, 85 percent of which are minority employees or people trying to get a new start from being incarcerated.

Mr. LOZINSKY. Correct.

Mr. OLSON. In light of your testimony, you have three options: going forward with Obamacare, reduce everybody's hours to something below 30, make them 29ers; can fire 140 employees, 60 percent of your company, fire them, lose their jobs; or close up shop. In ancient Greece those choices are hemlock, cyanide, or poison mushrooms.

Can you describe how you came to realize these were your only three options, and have you talked to your employees about what their future is going to look like?

Mr. LOZINSKY. No, we have not talked to our employees yet. We've been trying to research what our opportunities are. We have talked to our management staff already and asked them to get—to start getting a list of the 50 people, because the first 50 are exempt. So all of our project managers are getting their main, key people, a list to us so that we can have our 50 that can still be full-time, and then we'll have to make tough decisions on the other 190, on what kind of hours we can give them. But we have not discussed it with our rank-and-file help yet.

Mr. OLSON. Do you think anyone will say, great, I want to work for 30 hours instead of 40 or more?

Mr. LOZINSKY. No, I don't think so. Like I said in my letter, we have husband and wives that work for us. Like I said, we have a husband and wife that works for us. They have three kids. They work 45 hours a week. So they get paid 40 regular time and 5 overtime. And it's—and it's tough for them to survive on that amount of money. So cutting them back to 29 hours would be devastating for their family and their kids.

Mr. OLSON. Thank you.

This next question to you, Mr. Morrow. You have the largest and deepest waterfall in America, and you must be careful saying that in this committee because we have some Texans here, and bigger is better in Texas. That sounds like a challenge to me in many ways. But your business is seasonal, as came out with your discussion with my colleague Mr. Burgess. And you've got 40 full-time employees now, 100 seasonal employees. If you cross these guys and the one-season ones, do most of your season employees work for at least 40 hours per week, more than 30?

Mr. MORROW. Yes, they will work full time during—mainly between Memorial Day and Labor Day.

Mr. OLSON. And so they will be full-time employees. You'll cross 50. So you have to yield to Obamacare. You have to provide healthcare to these employees, all these new ones, or somehow modify your business; is that correct?

Mr. MORROW. Correct.

Mr. OLSON. Can you talk to me about how the employees suffer because of these changes?

Mr. MORROW. The employees are going to suffer through increased cost. We have paid their premiums 100 percent since I've been with the company 7 years ago, and it's been part of our family of support for them. We are going to have to pass on part of that expense when we see 30, 40 percent increases in our premium. They will have to share in that cost going forward, which will reduce their incomes.

Mr. MURPHY. Gentleman's time has expired.

Mr. OLSON. Thank you. Yield back.

Mr. MURPHY. Now turn to the gentleman from New York, Mr. Tonko for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Our Secretary of HHS Sebelius has been quoted as saying many were priced out, locked out, or dropped out of healthcare insurance coverage in the years ensuing before—the pre-Affordable Care Act days. The question is, did U.S. companies or did you know counterparts that were unable to get insurance written for their companies at all? Any of you, to any of the gentlemen of the panel.

Mr. KELLY. I can say that in southwestern Pennsylvania I've had fellow manufacturing companies tell me that it's increasingly difficult to find somebody that would insure them without some huge premium increase.

If you wouldn't mind, Mr. Congressman, I'd like to make a comment to what Mr. Green said. He said you guys were complaining about the fact that—that you're looking for solutions, you're tired of the—the hits that Obamacare is taking. I'm going to give you a

perspective of a businessman, if I might. I don't know whether I have that leeway, but I would be happy to do that.

You know, in my view, the Affordable Care Act was designed to get 30 million Americans that weren't insured. The one thing it doesn't do and hasn't done at all is to address the real problem. That's cost. In southwestern Pennsylvania you have basically one juggernaut, UPMC, University of Pittsburgh Medical Center. They own 60 percent of the doctors and about 80 percent of the hospitals. There's no competition.

You haven't even addressed cost. One of the great drivers of cost is malpractice insurance. Not one word was written in the Affordable Care Act about tort reform.

Mr. BREY. This is not true. In Maryland in April they—Maryland announced—we had six people announced to participate on the SHOP exchange. I've never had anywhere close to six options.

Mr. KELLY. I know that people tell me all the time that the reason that doctors practice so much defensive medicine is because of malpractice insurance. I know, I talk to doctors all the time about that fact. My cardiologist tells me that. He said that's the real reality.

Mr. BREY. I serve on the board of directors, the finance committee of a \$100 million health insurance—

Mr. JOHNSON. This is not a debate.

Mr. KELLY. So I'm just saying from a perspective of a business person, I believe that if you want to get past the fact that the Affordable Healthcare Act really is about putting more people in—insuring those people, fine, you've made that step, but you haven't done anything to really address the major driver of costs. And if you can get costs under control, then things probably would work better. But they're not going to happen until costs can be driven down. You have to start addressing what are the causes of costs to be so high.

You know, and Congressman Murphy knows this, in southwestern Pennsylvania you basically have an oligopoly of providers. You have one big, big provider, and he basically can charge whatever he wants. There's no competition really. It's a real problem. And it's one problem that, because of so many special interests, you people really won't have the courage to face that problem.

So that's what my—as a business person, I'm going to challenge you folks to come up with a way to really take on some things that are really difficult.

Mr. TONKO. Right.

Mr. Kelly, I think my question to you, all of you as a panel, was the affordability and accessibility of health care pre the Affordable Care Act. I was hoping to glean some information on that.

And in terms of the bending of the cost curve, that is indeed part of the effort here with the Affordable Care Act by making certain we go forward and rewarding the quality of care rather than just the number of tests or procedures performed.

And, Mr. Brey, I would ask if you had something to offer that—to the previous statement made, I would like to hear that now, and then we can move forward.

Mr. BREY. Well, listen, there was—I've seen a lot of cost increases long before I ever heard the term “Affordable Care Act” or

“Obamacare.” I served on the board of directors of a finance committee of a hospital system, and our crushing cost was the burden of the uninsured. And I guess it’s interesting to me that back then everybody—I was the evil conservative businessman because I thought everybody should pay their fair share. It wasn’t fair to me—to me to be paying for those people. And now here I am, I’m testifying for the liberal side. My views haven’t changed.

So, I have seen—I’ve gone for 18 years in small group never having real choice, and now six insurance—five insurance companies have definitely said that they’re going to participate in Maryland SHOP exchange, and there’s one on the fence. So that may be six. So I may be doubling my pool of choices. We’ll see if it actually happens.

Mr. MURPHY. Gentleman’s time has expired.

Mr. TONKO. I’m sorry. I yield back, Mr. Chair.

Mr. MURPHY. Thank you.

Now turn to Mr. Long for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman.

Thank you all for being here today.

Mr. Brey, how are your sales this year, year to date, over last year’s sales? Do you find your business has improved, stayed the same, declined in sales?

Mr. BREY. Our business has declined for the first half of this year.

Mr. LONG. It’s declined?

Mr. BREY. Yes, sir. 2011 and 2012, coming out of the recession, were exceptionally strong years for us. And because we’re in this Maryland-Virginia area, I think that there’s been a little bit of uncertainty that has made the first half of the year less than optimal. But May, May finished very strong, June is going great, and so far the summer looks really good.

Mr. LONG. So your thoughts about the Bush tax cuts expiring. Whenever you said that by letting the Bush tax cuts expire, allowing the tax rates to go back to where they were will help bolster the economy and with it your customer base, the middle class. So that didn’t work out like you thought it would.

Mr. BREY. Say that again.

Mr. LONG. Your comments about letting the Bush tax cuts expire, letting the Bush tax cuts expire on people over 250,000.

Mr. BREY. Well, we did—

Mr. LONG. The vast majority—let me finish. The vast majority of small business owners simply won’t be affected. Allowing the tax rates to go back to where they were will help bolster the economy and with it your customer base, the middle class.

Mr. BREY. But instead what you did is you let payroll taxes go up on people making \$40,000 a year, and in exchange for going from 250,000 to \$400,000 on that tax break. I mean, that’s what happened in January. My guys making 40 grand a year managed—you know, 40- to \$50,000 a year managing one of my stores saw their payroll taxes increase. So what we did is we took the money right out of the pockets.

Mr. LONG. We’re talking apples and oranges. The Bush tax cuts were above 250,000 people is what you were talking about, which

those did go back up on January 1 or January 2, if I remember right. So—

Mr. BREY. I think it was over 400,000, though.

Mr. LONG. But how does letting taxes go up on people above 250-bolster the middle class? I mean, that's money that's paid to the government, to us, Congressmen and Senators and people here in Washington that are—

Mr. BREY. My objection at the time was it appeared—Congress appeared to be making a trade-off, the trade-off being allowing payroll taxes to go up on middle-class workers in exchange for keeping tax rates low on high-income—on high-income earners.

Mr. LONG. Say that again.

Mr. BREY. I said, my perception at the time, which was in January, I think is when you're talking about—my perception at the time was that Congress appeared to be making a trade amongst the Members, letting payroll tax—the payroll tax cuts expire on middle-class workers, and in exchange Democrats would hold down—would—would let tax rates—would—we would make the cut from—go from 250—instead of the cutoff being 250-, would go to 400-. At the time that was the debate that appeared to be taking place, and that's when those comments were made.

Mr. LONG. This was back in October, not January.

Mr. BREY. I'm sorry. I'm sorry. October.

Mr. LONG. OK. But I'm just trying to get—I mean, you're of the opinion that the Affordable Care Act is indeed affordable, and we need to work things out here in Washington. We need to work for the American people. We need to make health care more affordable for everyone, we all agree to that. Health care needs to be reformed, granted.

I sit here representing the Seventh District of Missouri, southwest corner of Missouri, Springfield, Joplin, Branson down in the southwest corner. And there's a company at home that started out with one store back in the '60s, and now they have 53,000 employees. And when they—when the CEO comes to me and says, I'm going to you; I'm going to Roy Blunt, U.S. Senator; I'm going to Claire McCaskill, U.S. Senator, one Republican, one Democrat, to explain to you all how devastating this Obamacare actually is, and I said, OK, I'm here to listen. He said, we provided great health care for our employees for years. They loved it. It was affordable, it was doable. Their estimate—Mr. Kelly, who found his rates going up by 46 percent, I'm sure they'll want to talk to you because the way they calculated it, theirs are going to go up by 120 percent. They've already told all their part-time employees—I don't know how many are part time out of this 53,000—that they will no longer cover their health insurance next year. And they—so 120—I forget what the dollar figure is here, wasn't actually for this panel, but I was just curious when I—trying to hear all the good things you say and all the good things that Mr. Green—looks like he's gone, but that Mr. Green has to say about this—

Mr. BREY. But that is a tragedy, but that was going on, like I said, before I ever heard of the Affordable Care Act.

Mr. LONG. Well, not according to these folks who have 53,000 employees.

But anyway, I appreciate it. I don't have any time, but if I did, I'd yield it back.

Mr. MURPHY. Gentleman's time expired.

Now go to Mr. Butterfield for 5 minutes.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman.

And thank the four of you for your testimony today.

I think I'm going to begin my part by asking each of you a yes or no question. That seems to work very well with Mr. Dingell when he does it. Starting with you, Mr. Brey, do you accept the goal of the Affordable Care Act to make affordable insurance available to every single American? That's a goal of the Affordable Care Act. Do you embrace that goal?

Mr. BREY. I do.

Mr. BUTTERFIELD. Yes.

You, Mr. Kelly.

Mr. KELLY. Yes.

Mr. BUTTERFIELD. Mr. Lozinsky?

Mr. LOZINSKY. Yes.

Mr. BUTTERFIELD. And Mr. Morrow?

Mr. MORROW. Yes.

Mr. BUTTERFIELD. All right. Do you believe that an employee is happier and therefore more productive when they can cover their healthcare costs?

Mr. BREY. Yes, sir.

Mr. KELLY. Yes.

Mr. LOZINSKY. Yes.

Mr. MORROW. Ours at Ruby Falls are.

Mr. BUTTERFIELD. All right.

Finally, do you agree or disagree that a good corporate citizen would look for responsible ways to comply with the law?

Mr. BREY. Yes, sir.

Mr. KELLY. Yes.

Mr. LOZINSKY. Yes, sir.

Mr. MORROW. Yes, sir.

Mr. BUTTERFIELD. Thank you. And that's what I anticipated your testimony would be.

Let me go to you, Mr. Lozinsky. You are—you have a business that is a skip and a jump from my congressional district. I'm over in Durham and surrounding area. And so thank you very much for coming today—

Mr. LOZINSKY. We have—

Mr. BUTTERFIELD [continuing]. And thank you for what you do.

And I particularly took interest in the spirit of your testimony. You said that you came here today looking for solutions, and I like that. And that's the way a good businessman or -woman should conduct themselves. And I also want to thank you for offering jobs to low-income people in the Wake County area. That is commendable.

Mr. LOZINSKY. We have quite a few people that actually live in Durham also. Probably about 25 percent of our employees are from Durham.

Mr. BUTTERFIELD. And you also said that some of your workforce are convicted felons.

Mr. LOZINSKY. Yes.

Mr. BUTTERFIELD. And that's a big deal in my world, because we have so many young men who rehabilitated their lives, they are looking for an opportunity, and you seem to be giving out a better opportunity.

Mr. LOZINSKY. Yes—

Mr. BUTTERFIELD. When this committee wrote the bill some years ago, and I've been on this committee now for some years, as many of my colleagues, a different group was in the leadership of this committee at the time. But when we wrote the bill, we anticipated that poor people would need insurance, and so we created what we call Medicaid expansion, which would cover employees or individuals from zero percent of the Federal poverty level to 133 percent. Many of those are working for you.

Mr. LOZINSKY. Right.

Mr. BUTTERFIELD. And so it seems—Ms. DeGette mentioned this in her question—it seems that some of your employees would qualify for the Medicaid expansion if it existed in North Carolina. The problem is that your legislature and my legislature and your Governor and my Governor have chosen to decline to expand the Medicaid program in our State, and so the option that would normally be available to your low-income workers doesn't exist. And so if you have any influence with our State legislature and Governor, if you would join some of us in trying to convince them to try to rethink this whole thing. We need full participation.

Let me now ask you, are your employees currently covered with insurance?

Mr. LOZINSKY. My employees?

Mr. BUTTERFIELD. Yes. Health insurance.

Mr. LOZINSKY. No, the majority of them are not. Once our employees get to be at the supervisor and the project manager level, yes, then we offer them health care. So we have—we pay insurance on about—I think it's around 22 people right now.

Mr. BUTTERFIELD. But your minimum-wage earners do not have insurance—

Mr. LOZINSKY. Correct.

Mr. BUTTERFIELD [continuing]. Because you simply can't afford it—

Mr. LOZINSKY. I can't afford—

Mr. BUTTERFIELD [continuing]. At this point. Yes.

Mr. LOZINSKY. My margins are very small, and yes.

Mr. BUTTERFIELD. We anticipated that. And we had hoped under this act that those people that you speak of, that you care about and I care about, would be able to go across the street and qualify for the Medicaid expansion, and it's not happening. And that's very disappointing.

Let me use my final minute with you, Mr. Kelly. And you mentioned a minute ago that you clearly understand that this is the law of the land. I would hope that you would find some way in Pennsylvania to try make this thing work. You haven't gotten where you are today in business without being smart, and shrewd, and strategic and visionary in your approach. I wish that you could find some way to find—to make this thing work.

Forty-six percent of your premiums have gone up 46 percent since 2010. I understand the pain. I understand the problem that

that poses to your company. And I would certainly hope that you would find some way to really make this thing work. You say that the average wage—and correct me if I’m wrong—I think you said the average wage was somewhere around \$50,000 for your employees?

Mr. KELLY. Average wages for our employees.

Mr. BUTTERFIELD. Commendable. Wonderful. But that’s for a single individual. And I would hope that that individual’s spouse would also be gainfully employed at some other location in Pennsylvania, and he or she would be making 40- or 50- or \$60,000. That’s a \$100,000 family. And I would hope that that family would be able to find some way, some way to afford health insurance because they need it, you know they need it, I know they need it, and I hope that you could get creative and help your employees get insured.

Thank you for listening. I’ve run out of time. I yield back.

Mr. MURPHY. Thank you. Gentleman’s time has expired.

Now I turn to Ms. Ellmers of North Carolina for 5 minutes.

Mrs. ELLMERS. Thank you, Mr. Chairman.

Mr. Lozinsky, we’ve had numerous conversations on this issue. And I again commend you for coming forward, especially in the spirit that you’re doing so, which is looking for solutions. But as we all know, many times in order to find the solutions, you also have to identify what the problems are, and you have to be willing to make changes that are necessary to do so.

With that, I would like to say I know that you have looked at this issue. I know this is something that’s very important to you because you care very much about your employees, again pointing out that many of these individuals are low income; many of these individuals, 85 percent, are minority; and you employ those who have formerly been in prison; and now you’re giving them—you and Kathy have offered them a second chance.

Some of the discussion here today has focused around the idea that many of your employees, because they are low income, would therefore be able to qualify for Medicaid. Are some of them already on Medicaid, to the best of your knowledge?

Mr. LOZINSKY. To the best of my knowledge, I think, yes, quite a few of them are.

Mrs. ELLMERS. And I guess my question to you is—and looking at this, and the testimony that you’ve submitted, you’ve pointed out that, basically what you’ll have to do is cut back employees to under 30 hours, or what we’re now calling the 29ers, because essentially at 29 hours you’re not obligated.

Mr. LOZINSKY. Correct.

Mrs. ELLMERS. The point being, do your employees want to be cut back?

Mr. LOZINSKY. No, definitely not.

Mrs. ELLMERS. Do your employees want to work more than 40 hours?

Mr. LOZINSKY. Yes. Most of our employees do work—our business is not like 9:00 to 5:00.

Mrs. ELLMERS. Right.

Mr. LOZINSKY. They go do certain amount of jobs during the day. And, believe me, when we have Saturday work, they line up for the

overtime. And the majority of our employees, at least in our construction division, work more than 40. And they are always begging to work Saturday so they can pick up that extra time-and-a-half money.

Mrs. ELLMERS. Absolutely. So the point here is that these are individuals who want to better their lives. These are individuals who want to work, earn an income. You are an employer that wants to offer these jobs. You want to grow as a business; do you not?

Mr. LOZINSKY. Yes, I do. Yes.

Mrs. ELLMERS. In the present situation, facing the implementation of the Affordable Care Act, do you see your business growing?

Mr. LOZINSKY. No. Well, this is the first year since we've started that we haven't grown, and that was pretty much our decision because we don't know what the effects of this law is. We don't want to hire more people and have to lay them off, or hire more people and have to get them over—over 30. So what we've been trying to do is just bid on jobs for our present customers who haven't been—we haven't been trying to expand our customer base this year because last year we were pretty much getting close to 300 employees, and in—because of what the effect this law was going to be on that, we haven't—we haven't tried to grow this year until we—and hopefully we come up with a solution for us, and then we will hopefully continue to grow.

Mrs. ELLMERS. Let me ask a question about the employees that you have which have former prison records that you and Kathy have employed. In the event that you do have to layoff employees, and I'm assuming that some of them would—would be those individuals who are getting a second chance at bettering their lives, how easy is it going to be for them to get a job out there? Especially in this economy?

Mr. LOZINSKY. I don't know what the job market is around us. I'm sure it's not going to be easy. There's been a lot of them that have come to us and said, you know, nobody else would give them a chance. And they really appreciated what we did.

Like I said in my letter, I had one former inmate that's just celebrated his 10-year anniversary with us. He actually worked for 7 months out of a work release program from Raleigh, the central prison. And he works at a work release program. Then he came to work for us, and he started as a laborer. And, like I said, last week he celebrated his 10-year anniversary. He's now moved up to a project manager, and he makes over \$50,000 a year.

Mrs. ELLMERS. That is wonderful.

I have about 30 seconds left, so I would like to ask each and every panel member here, are you aware that the CBO has actually come forward and said that even after implementation in 10 years of the Affordable Care Act, there would still be 30 million people left uninsured? Are you aware of that, yes or no?

Mr. BREY. I'm aware of that.

Mrs. ELLMERS. You are aware.

Mr. KELLY. Yes.

Mrs. ELLMERS. Mr. Kelly.

Mr. KELLY. Yes.

Mr. MORROW. I was not aware of that.

Mrs. ELLMERS. Yes, 30 million will still be left uninsured, and that is, again, by the nonpartisan Congressional Budget Office.

So thank you, gentlemen. I yield back the remainder of my time.

Mr. MURPHY. Gentlelady yields back.

Now turn to Ms. Schakowsky for 5 minutes.

Ms. SCHAKOWSKY. Mr. Kelly, I heard you talking about the bending the cost curve. We have to do something about the cost of health care. The fact of the matter is that the increases that have been overall—I realize averages don't apply to everyone—but are at about a 50-year low right now in healthcare costs over the last year or so. And this has to do with—just heard this today from Secretary Sebelius, but it's also CMS and Pricewaterhouse that would document that. Because you're exactly right, and the Affordable Care Act took steps to address the core problem of rapidly increasing healthcare costs, requires insurance companies to operate more efficiently. It subjects premiums to independent review. Some States actually have the right, their insurance commissioner, to modify rates and bring them down. And it requires that at least 80 percent, every—80 cents on every dollar—go to health care now; can't go to CEO salaries or to marketing costs. And many enrollees in insurance policies have gotten rebates around the country equaling billions of dollars. We're beginning to now reward the quality of care rather than just the number of tests and the procedures performed. That gets at the issue, too, of, we were talking about the doctors that are doing defensive medicine.

So while it's still early to say for certain, there is increasing evidence that the reforms in the ACA are on their way, overall and over time, to drive down costs while improving healthcare quality and health outcomes. And if you've received a 46 percent increase over the last little while, this is not untypical. This is not about the Affordable Care Act, which hasn't gone into effect yet. And this is typical of what has been happening over the years.

You have seen—I mean, sometimes I listen to these arguments, and I think, well, gee, it must have been great in the insurance market before the Affordable Care Act came along. And, of course, we know that that is absolutely not the case.

I don't know if you wanted to comment at all.

Mr. KELLY. Well, I don't know—I must be in a different universe, Congresswoman, because we have not experienced a reduction of any kind. Yes, costs have been going up long before the Affordable Care Act. They seem to have accelerated, unfortunately. Maybe it's because insurance companies are starting to pack—they're taking advantage of the opportunity, the window that's available, to just jack the prices up because they know, after the so-called reforms that are going to go into effect, that maybe the game will be up.

However, for example, I mentioned to Congressman Murphy that there are four fees that go into effect next year because of the Affordable Care Act. That's going to add \$40,000—\$48,000 to my costs without any change in coverage or anything else. That's just \$48,000 in additional fees. Now, I don't know how that's bending the cost curve down. If the Affordable Care Act is going to mandate that fees be levied on insured people, insured—in the companies that provide the insurance, I don't see that. I'm sorry, I don't see that.

So you're going to have to show me where in the law that there are prescriptions that are going to drive costs down. I don't see it. In our market it's just not going to happen. When you have two basic providers of healthcare in southwestern Pennsylvania, UPMC and Highmark, they own all the doctors and the hospitals, there's no incentive for them to cut their costs. I don't see it happening. I'm sorry.

Ms. SCHAKOWSKY. Well, we're all going to have to, as Members of Congress, work with our constituents and with our healthcare providers to make this thing work.

But getting back to sort of the theme that Mr. Green was raising before, what we're finding in this House of Representatives is rather than a willingness to sit down and talk about what are the snags in this legislation, this Affordable Care Act, this Obamacare, and figure out how to do it, it's just a continuous drumbeat of repeal, repeal, stop, get over it. We—as the United States of America, we are capable, as most other industrialized countries are, of constructing a system that is going to work for our people and for our businesses to provide healthcare. We could do this.

Mr. KELLY. Haven't you reaped what you've sown? By that I mean this—

Mr. MURPHY. Gentlelady's time has expired. I need to move on. The gentlelady's time has expired.

Thank you, Mr. Kelly.

Mr. Griffith of Virginia is recognized for 5 minutes.

Mr. GRIFFITH. Thank you very much.

Mr. Kelly, reap what you sew. Tell me what you were going to say.

Mr. KELLY. What I was going to say was if you look at the history of this law—

Ms. SCHAKOWSKY. I really resent that.

Mr. KELLY. Well, I'm sorry you resent that.

But the reality is that the law was passed without any support on the Republican side. So here you are, you force something down the throats of—and it's—I feel this way as a business person—you're forcing this down my throat. I've got no say in the process. You had no say in the process. And now because it's not going very well, because the implementation is difficult, all of a sudden it's—you folks are—are the problem, and I find that really reprehensible that that is said.

I think if you would have—I think if it had been really a spirit of comity and bipartisanship 4 years ago, perhaps what we would have would be something that would be implementable and affordable, but it hasn't turned out that way. I'm sorry.

Ms. DEGETTE. Will the gentleman yield?

Mr. GRIFFITH. I will not at this time. I only have 4 minutes left.

Mr. Kelly, would you agree with me that there's more than just snags in this bill? There's more than just a few snags?

Mr. KELLY. Absolutely. Absolutely.

Mr. GRIFFITH. And I would have to say that among the things that my constituents tell me are snags, and what I've heard testimony here today, is we've got the long-term care insurance part didn't work out, so they abandoned it; the catastrophic coverage that was to be the interim step cost a lot more than was originally

projected to cost; the insurance rates didn't react the way they thought they were going to do, we haven't seen any real savings there; the Secretary is—is having to go out and look for more money to try to get folks to enroll in the programs and to do the things that they want to do; we've got the 29ers that we've referred to several times today, which both—even if we were to change it tomorrow, the Commonwealth of Virginia has a law coming in July 1 that says that they can't have part-time workers that work longer than that because they don't want to have to pick up that cost; the Medicaid, forcing the States to do the Medicaid expansion—forcing the States to do the Medicaid expansion was ruled unconstitutional by the Supreme Court.

You know, you've got problem after problem after problem. And I kind of think this is—is similar to Blacksburg High School in my district. The roof of the gym caved in, and the debate began do we just build a new gym, or what about the rest of the building? And it caved in because of structural defects. And the ultimate decision was they condemned the rest of the building, and they are going to build a new Blacksburg High School.

Sometimes when the construction, the initial part of putting something together, putting a building together, is so poor, you have to just say, OK, let's start over. Let's go back and see what we can do to build something that does work for the American people, that does lower costs, that does expand coverage in the ways that we want to, and doesn't cost people the hours at work or jobs. Would you not agree with that, Mr. Kelly?

Mr. KELLY. Absolutely.

Mr. GRIFFITH. And Mr. Lozinsky?

Mr. LOZINSKY. Sure.

Mr. GRIFFITH. And, Mr. Morrow, as a businessman, if something is structurally flawed, don't you sometimes have to just say, OK, we're going to scrap that, bulldoze it, and start over?

Mr. MORROW. In our business, sometimes we do that, yes.

Mr. GRIFFITH. I mean, I think everybody who's been in business very long has run into that position where they have to do that, or they have to go back and say, that didn't work. And I would submit to you all and to this committee that that's where we are on this particular plan. It was built poorly; it's not going to work as currently designed. I don't know how many patches we could put on it. I don't think we could put enough patches on it to fix it; I think we have to tear down the building and start rebuilding.

And so I would ask you all, have any of you all run into the 29-hour problem in your particular business where you have had to stay to employees, we're only going to give you 29 hours?

Mr. LOZINSKY. Yes.

Mr. GRIFFITH. Mr. Lozinsky, I think you mentioned that earlier.

Mr. LOZINSKY. Yes, I have.

Mr. GRIFFITH. And I will tell you, I'm going to ask you this. I have a business in my district. See if you all have had this problem or if you know folks who do. This business has been in existence more than 30 years. It now has 59 employees. They have three shifts. One of the shifts they just started a few years ago. So the businessman came to me and he said, I just left my folks—this was a couple months ago, now, and I don't know what decision he ulti-

mately made. He says, here are my decisions: I can layoff the third shift, marginally profitable. I, you know, worked for years to get it off the ground, but I can lay off the third shift and get below the 50 employees so I'm in the same position that Mr. Brey—he didn't use Mr. Brey's name, obviously—but I can be in a position where I'm not covered by this bill. I can pay \$40,000 in the fines, or I can pay 60-some thousand dollars and cover everybody. And I've been covering—kind of like you, Mr. Lozinsky. He's got a lot of folks that don't last in the business. He's in a business where some come in and stay for a couple of months, and then they move on, but some stay for a while. And when they stay for a while, they get a supervisory position.

Mr. LOZINSKY. Correct.

Mr. GRIFFITH. And he's been covering all those folks for years. So he said, my choices are for the first time in over 30 years don't grow my business anymore, cut back, and lay folks off, pay a fine, or pay \$40,000 fine or \$60,000 increase. And he doesn't know what he's going to do, and he's wringing his hands over it. Have you all found that to be true as well?

Mr. LOZINSKY. I have, yes.

Mr. KELLY. Yes.

Mr. GRIFFITH. I yield back.

Mr. MURPHY. Gentleman yields back.

Now turn to the gentleman from Louisiana Mr. Scalise for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. Appreciate you having this hearing.

I appreciate all of our panelists for coming and taking time away from your businesses, because I think as you, Mr. Kelly, pointed out at the beginning of this, it seems like the voice of the small-employing business owner was left out of this debate back when this bill came through.

In fact, this committee, it was here in this committee room that we had those hearings for hours and hours and combed through—I remember reading through the bill when it was this high, and it got higher. And there were so many bad provisions that we saw that could devastate small businesses, could devastate families who have good health care that they like.

But there were all those lofty promises, too, you know, the President's promise, if you like what you have, you can keep it. That promise has been broken to so many Americans already when the law hasn't even taken effect yet, just businesses that are looking at this saying there's no way that they can comply, that provide good health care to their employees today. We remember the Speaker at the time, Nancy Pelosi, her famous quote: We have to pass the bill so that you can find out what's in it. Well, now you know what's in it and, as all of have testified, the different impacts it's having.

But when I go home every weekend and talk to small business owners in southeast Louisiana, I'm hearing the same things. You know what, Mr. Lozinsky, what you talk about with your small business, you know, you're competing against people that are also going to be handling this bill differently, and all of a sudden it makes changes to the way you're going to have to do business.

You know, my colleague from Texas, Pete Olson, talked about the 29ers, and we've heard about them from so many of our businesses. There are restaurants in Louisiana that everybody in this room has heard of, famous New Orleans restaurants, that have the same problem, because the law—there's so many perverse incentives in this law that literally force you to contemplate reducing the number of your workers. You're rewarded in Obamacare if you lower the number of workers you have. You're rewarded in Obamacare if you reduce the hours to your employees. That's what you all are facing. What kind of perverse incentive is that where the Federal Government is encouraging you to reduce your workforce? And yet that's what's going on in this law, and we're seeing it all around the country.

And so, when those of us who say you need to rip up the foundation and actually go and fix the problems— Mr. Kelly, you talked about costs, and we ought to be focused on fixing the cost. This bill actually raises the cost of health care. We've seen that from so many different reports and, in fact, States that are grappling with it. In Louisiana, the estimates are over 54 percent increase in healthcare costs due to the impacts of the law.

Since passage of this law in 2010, what have you seen in terms of increases in your healthcare costs?

Mr. KELLY. Well, the cost—premiums are 46 percent. The actual costs, because we pay some of the deductible, is 46 percent.

Mr. SCALISE. Forty-six percent higher?

Mr. KELLY. Higher.

Mr. SCALISE. But, wait, you were promised that they would be lower. How could that be?

Mr. KELLY. Well, I never thought that that was—

Mr. SCALISE. I think a lot of us didn't either. Unfortunately, you're seeing that in the real world. And that takes into account the changes you made, right? You doubled the—you doubled the deductibles, you even changed carriers, and even with those changes you still saw increases; is that right?

Mr. KELLY. Yes. Congressman, the thing that's so frustrating as a business owner is that it's the amount of time now that we spend looking at not the strategic path of where the company is going to go in terms of market share, in terms of who your customers are going to be and what opportunities you're going to have. We're spending an inordinate amount of time on how are we going to manage this leviathan that's out there. This healthcare costs that are already greatly increased and appear to be on a path—there's a hockey stick. And it's not on global warming. The hockey stick in—this is my view, it's a personal opinion, it's on the healthcare costs.

Mr. SCALISE. You don't have to take our word for it, but one of the lead authors of the bill in the Senate, one of the architects of the law in the Senate, Senator Baucus, called it a train wreck coming down. That was his words. He called this a train wreck. And, of course, you all are the ones sitting at the end of the track where it's coming.

I want to ask you, Mr. Lozinsky, because you're considering those kind of options of how many employees do you lay off; is that correct?

Mr. LOZINSKY. Well, I don't know. I think best bet would be the 29 option.

Mr. SCALISE. So you're going to have to lower the number of—

Mr. LOZINSKY. We will lose a lot of employees because they won't be able to survive on 29 hours.

Mr. SCALISE. What a shame.

Mr. LOZINSKY. So it will be very hectic. And the sad part about it is, our best employees are the ones that are—want to work the most and want to work the most hours, and those are the ones that we will lose.

Mr. SCALISE. What a shame.

I'm almost out of time. I want to ask Mr. Morrow one question.

The supporters of the healthcare law promised that the law would lower costs for your business. Is that true for your company?

Mr. MORROW. No. We've seen a lot more increases and heavier increases this past year.

Mr. SCALISE. Thank all of you for your time and your testimony. I yield back the balance of my time.

Mr. MURPHY. Gentleman yields back.

Now recognize the gentleman from Ohio Mr. Johnson for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. And I, too, want to thank our witnesses for being here today.

You know, I think oftentimes the complexities of the law and the discussions that we get into, we tend to overlook the cultural changes that's going to result long term. I came from a background as a kid where I looked for an opportunity to get a job and to go to work, whether it was on the farm, later in restaurants and seasonal-type work. You folks come from industries that provide that opportunity.

Today we have millions of college students that are working their way through school, working hard, going to class in an effort to keep from becoming indebted to the Federal Government with huge student loans.

So, you know, I just want to comment before I begin asking questions that this is going to have far-reaching implications, far beyond just the benign discussion of health care. It's going to have societal and cultural changes as industries like yours have to pare back and pull back, and are unable to grow and hire, and laying off workers. It's not going to be good.

Mr. Morrow, you testified that—that—let me go back. My colleague pointed out just a minute ago one of the big promises of the healthcare law was to—if you like your current health insurance, you can keep it. Do you believe that your employees like and enjoy the healthcare coverage that you've provided to them up until now?

Mr. MORROW. Yes, I do. They helped us architect that plan. For instance, prescription drug coverage was extremely important to them, so we spent more money in that area for them, and we also spent a lot of money on well health care for preventative healthcare. We have health fairs. In fact, we had an employee that we found prostate cancer in its early stages through a simple health fair. Saved his life. He's on Medicare; he doesn't go to the doctors, he said. And I caught this. So, yes, we constructed it with their input for the best coverages possible.

Mr. JOHNSON. Do you think you're going to be able to sustain that? Are you going to be able to provide that same level of health care that was promised to all Americans by the President? Do you think you're going to be able to do that?

Mr. MORROW. I don't think we are, because the costs are going to become prohibitive for us to do it through our family at Ruby Falls as private healthcare coverage.

Mr. JOHNSON. Mr. Lozinsky, Mr. Kelly, either of you have a comment on that? Are you going to be able to provide the same healthcare coverage in the future that you've provided in the past?

Mr. KELLY. Based on where we're headed, I don't know how we can. We really value—I mean, we're becoming an ESOP. My employees already own 49 percent of my company. They're going to own 100 percent. Nobody can value their employees more than somebody who says, I'm going to actually give you the company. They're not paying for that; under the ESOP rules, they are going to have ownership of the company.

My concern for them is when they have to sit down and manage the company and have to decide those really tough questions—by the way, we have a health committee that looks at these increases that we get every year. They decide what they're going to do to keep us competitive. It's not me. And so, honestly, I don't know what they're going to be able to look at in 4 years and say, what are the choices that we have?

Mr. JOHNSON. Sure.

Mr. KELLY. Do they get rid of their fellow employees?

Mr. JOHNSON. Let me move on quickly. We just saw a report a couple weeks ago, the State of Ohio, for example, the Ohio Department of Insurance says we're going to see an 88 percent increase in premiums, a staggering increase for college students. And a lot of that is because we've seen a change in the risk pool composition. The younger are going to be paying higher premiums, who are healthy, to subsidize the more senior folks, who may be unhealthy.

In your situations with your employees, do you think young people are going to pay these higher insurance premiums, or are most of them going to opt for the penalty? Any of you. Mr. Morrow.

Mr. MORROW. I would going to say they're going to opt for the penalty.

Mr. JOHNSON. OK. Mr. Kelly?

Mr. KELLY. I believe that's what they'll do.

Mr. JOHNSON. Mr. Lozinsky.

Mr. LOZINSKY. Yes, I would think so.

Mr. JOHNSON. Mr. Chairman, I've exceeded my time, and I yield back.

Thank you, gentlemen.

Mr. MURPHY. Thank you.

Now recognize the gentleman from Georgia Mr. Gingrey for 5 minutes.

Mr. GINGREY. Mr. Chairman, thank you.

I want to first go to Mr. Lozinsky, because, Mr. Lozinsky, as I heard your testimony and response to some of the other questions, and you mentioned that there are a lot of former felons that you've been good enough to hire in your business in North Carolina, and you were talking with Mr. Butterfield earlier about that, there was

a discussion about the Medicaid program and Medicaid expansion. But just a few minutes ago, you said that if you have to cut to 29 hours a week to avoid the expense of health care, that a lot of these people won't be able to make it; they'll have to find another job—

Mr. LOZINSKY. Correct.

Mr. GINGREY [continuing]. Just to make do. I couldn't help but think, in your unique situation, some of these people that you talked about, you would be forcing them back into the only other skill set that they know so as to support themselves and their families. And wouldn't that be a tragedy, when you've gone to all of the tremendous Good Samaritan work to give them the opportunity to set their lives straight.

Mr. LOZINSKY. Well, I sure hope not. The employees are really good.

Mr. GINGREY. Well, I hope not, too.

But let me go back to that issue of Medicaid, because I think this needs to be clarified for everybody, and they need to understand.

Why do you think in drafting this bill that they wanted to—the Democratic majority wanted to expand Medicaid coverage to 33 percent above the poverty level? We say 133 percent, but the poverty level is 100 percent. They expand it to 33 percent, because quite simply if you had all of those people in that window between 33 percent—between a hundred—zero and 400 percent of the Federal poverty level, you think about the cost of the subsidies that the Federal Government—that this Federal Government would be paying, especially those who were at 33 percent above the Federal poverty level, they would probably be paying something like 75, 80 percent of the premiums.

So to put it on the backs of the States where there's this matching program, this FMAP, granted there's a couple of years where the Federal Government pays for all of it, then there's another year or two where the Federal Government pays for 90 percent of it, but it's a loss leader, just like a used car lot or a grocery store; come on in, get something, and first thing you know, it's not there anymore. And I'll guarantee you in 4 or 5 years—and that's what these Governors are looking at. They know that once that expansion occurs in 4 or 5 years, that FMAP is going to go back to 50–50, 60–40, 55–45. And they're going to have no money for anything but Medicaid; no money for public safety, no money for public schools. An absolute train wreck, as Chairman Baucus said.

So that is a scheme to keep those people out of the exchange where it would be just Federal dollars supplementing their health insurance premium. So just wanted to bring that out.

Real quickly, I'd like to thank all of the witnesses. It's sobering to hear the trouble and uncertainty that your businesses face. I have, unfortunately, heard much of the same from small businesses back in my home State of Georgia, if you can't tell by the accent. I have heard from the overbearing compliance burden that businesses must endure to ensure they are not breaking the law. Instead of investing money in their workforce or expansion, they are forced to hire consultants and law experts. This is no way to create new jobs and incubate small business growth.

I spoke to another constituent, an owner of a welding company, that pays high wages and benefits to its employees, who has de-

cided to hire subcontractors or automated equipment instead of hiring new workers due to the fact that he is just under the 50-employee threshold.

Based on a U.S. Chamber of Commerce poll, 72 percent, 72 percent of small business executives would have a harder time hiring. Mr. Chairman, it's clear the President's healthcare law is placing an undue burden on our small businesses.

And quickly, in these last few seconds, to all of the witnesses, three of you operate businesses where in the future you'll be faced with a choice of providing coverage or paying a penalty. Have any of you looked at the feasibility of this and which is cheaper? Can we start with Mr. Brey and just go right down real quickly?

Mr. BREY. As we expand, I intend to continue attempting to provide coverage. I have not looked into which would be cheaper.

Mr. GINGREY. Mr. Kelly.

Mr. KELLY. Doesn't really apply to me because we're—

Mr. GINGREY. Mr. Lozinsky?

Mr. LOZINSKY. From what I understand as of now, the fine is cheaper. I did read a couple days ago where there might be a—just a basic preventive plan that kind of skirts the law, but will satisfy the law, and that comes in at around \$50 a month per an employee. So that's something that I just found out about a couple days ago that I'll look more into. But I didn't look into it before.

Mr. GINGREY. Mr. Morrow?

Mr. MORROW. It would be cheaper for us to pay the penalty, but it's not part of our culture with our family.

Mr. GINGREY. Well, I understand that.

I'm beyond my time. I'm sorry, Mr. Chairman. I yield back.

Mr. MURPHY. Thank you. I thank the gentleman.

I also thank this panel. It's very helpful to have the information from all of you. We deeply appreciate it. We're trying to get our hands and minds around this issue, and the testimony provided today has been very helpful to us. So thank you so much.

This first panel is dismissed, and while the second panel is taking their seats, I will introduce them all so we can be moving forward here.

So let me describe our second panel here. Our first witness is going to be Mr. Daley. Bill Daley is the legislative and policy director for the Main Street Alliance. The Main Street Alliance is a national network of State and locally-based small business coalitions.

Our second witness is Katie Mahoney. She is the executive director of health policy at the United States Chamber of Commerce. She has more than 13 years of healthcare experience in hospital and health plan operations as well as healthcare policy.

She is responsible for the healthcare regulation portion of the healthcare policy portfolio.

And our third witness is Michelle Neblett. She is the director of labor and workforce policy for the National Restaurant Association. She is responsible for labor and workforce issues, including health care.

Our fourth witness is Neil Trautwein. He is the vice president and employee benefits policy counselor for the National Retail Federation. In this role he serves as NRF's lead advocate and strate-

gist on healthcare policy and legislation, and manages NRF's exclusive health and employee benefits committee.

I thank all the members for being here.

I'm now swearing the witnesses. So, as you're aware, the committee is holding an investigative hearing; when doing so has a practice of taking testimony under oath. Do you have any objection to taking testimony under oath?

All of the witnesses say they have no objections.

The chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do any of you desire to be advised by counsel during your testimony today?

And all of the witnesses decline.

In that case, if you will all please rise and raise your right hand, I'll swear you in.

[Witnesses sworn.]

Mr. MURPHY. All of the witnesses responded that they do.

Well, you are now under oath and subject to the penalties set forth in Title 18, section 1001 of United States Code.

You may now each give a 5-minute summary of your written statement. We'll start with Mr. Daley. You are recognized for 5 minutes.

TESTIMONY OF WILLIAM DALEY, LEGISLATIVE AND POLICY DIRECTOR, MAIN STREET ALLIANCE; KATIE MAHONEY, EXECUTIVE DIRECTOR, HEALTH POLICY, U.S. CHAMBER OF COMMERCE; MICHELLE R. NEBLETT, DIRECTOR OF LABOR AND WORKFORCE POLICY, NATIONAL RESTAURANT ASSOCIATION; AND NEIL TRAUTWEIN, VICE PRESIDENT AND EMPLOYEE BENEFITS POLICY COUNSEL, NATIONAL RETAIL FEDERATION

TESTIMONY OF WILLIAM DALEY

Mr. DALEY. Mr. Chairman, thank you very much for the opportunity, and thank you, Mr. Chairman and Ranking Member DeGette.

I am Bill Daley. I work for the Main Street Alliance. We represent about 12,000 small business owners with organizations in a dozen States and at-large members throughout the country. Our members are very supportive of the passage of the Affordable Care Act because of the market that they've confronted over the last decade at least for small businesses. It's been a disaster. You've already heard testimony about the price that they've had to pay. The biggest challenge we face is affordability, and I must say that at least in some surveys now, we're beginning to see some hope.

The actual filings that are being made under the Affordable Care Act that have been surveyed, there are nine States where there are actual filings of rates, are coming in under CBO estimates. And as you heard others state earlier today, there is evidence that the healthcare cost trend is slowing, so we can be hopeful.

There are reasons for us to be hopeful about the market, too, because it simplifies paperwork. It gets rid of a lot of the problems we've encountered trying to get quality care and benefits. Many of our businesses have not purchased health care because they didn't

think it was worth it, given the exclusions, the rescissions, the pre-exes, and the low benefits that were available. So our members are hopeful that they will benefit from the Affordable Care Act and look forward to its implementation.

On the matter of the question of employer mandates, again, let's make it clear: Under 50 employees, those mandates do not apply, and over 50, some 94 percent of the companies are already qualified. So you're talking about a very narrow sector of the economy when you talk about this issue.

On the matter of the 30 hours, I must also point out that only approximately 1 percent of the entire workforce in the United States falls into the category that's being discussed. So as you look at these problems, please try to keep them in perspective.

I also want to just mention the question of paperwork and simplicity. One of the issues our members raise constantly confronting bureaucracies is that they have the daunting task filling out the forms. They look forward to the simplicity of qualifying for insurance through exchanges and the new simplified online processes. They also have found, and our members have come here to testify, that qualification for the credits under the Affordable Care Act, which many of them are getting, took very little time and was greatly beneficial to them.

And you've all heard a lot of these other issues already today. I just want to mention one other thing, and it's the functionality of the markets at the State level. You heard testimony about Medicaid. In those States where Medicaid is not being implemented, indirect costs will continue to fall back into the market, and risk will continue to fall back into the market, creating affordability difficulties.

In a number of States that are implementing their own exchanges, there are still some questions about competition and how well it will actually function, and we do hope that you will continue to monitor that. But overall we think the act is poised to be a success for small businesses, we look forward to its implementation, and we appreciate the opportunity to come and present our remarks to that effect.

Mr. MURPHY. Thank you, Mr. Daley.

[The prepared statement of Mr. Daley follows:]



Small business owners. Small business values.

Small Businesses and the Implementation of the Affordable Care Act

Statement on Behalf of the Main Street Alliance

By

William Daley

Legislation and Policy Director

United States House of Representatives

Committee on Energy and Commerce

Subcommittee on Oversight and investigations

June 26, 2013

Chairman Murphy, Ranking Member DeGette, and Members of the Subcommittee,

It is an honor to be here this morning to provide information and perspective to you about the implementation of the Affordable Care Act on behalf of small business owners in the Main Street Alliance network. I am William Daley, Legislation and Policy Director for the Main Street Alliance.

Permit me to begin with a few words about the Main Street Alliance. Our growing network of state-based small business coalitions represents over twelve thousand small business owners through affiliates in a dozen states from Maine to Montana, in addition to at-large business owners spread throughout the country. Our priorities and positions at the national level are set by our National Steering Committee, a leadership body of 25 small business leaders drawn from our state affiliates. Our national network operates as a program of the non-profits Alliance for a Just Society and Community Organizations in Action.

Because it is our mission to create opportunities for small business owners to speak for themselves on issues that impact their businesses and their local economies, I am sorry that the short notice for this hearing precluded arranging for one of the business members of our National Steering Committee to appear here today.

My statement will focus on three issues associated with the continued debate about the ACA that are important to our small business owners:

- Premium Costs
- The Impact of the Employer Responsibility Requirement; and
- Paperwork.

Finally, I would like to close with some ideas about implementation at the state level and the importance of Medicaid expansion to the success of the insurance exchanges and the goal of making health care affordable for small businesses.

Premium Costs

Our members are very supportive of the Affordable Care Act and encourage its implementation. The problems that small businesses have had providing insurance for their employees before health care reform have been well documented in study after study. Surveys of our members and other small businesses point to affordability as the major reason for the fact that so many small business owners have been unable to offer health insurance to their employees – and in many cases are unable to get it for themselves and their own families. Our members also have questioned the value of what they found available in the market because benefits were weak and policies were subject to limits and preexisting condition exclusions.

At the same time, small employers were asked to pay an average of 18% more than large employers for comparable coverage. As premiums increased, many small businesses abandoned insurance and coverage fell.¹ The markets became victims of adverse selection that forced premiums even higher.

So when we hear warnings about “sticker shock” under the ACA, we have to suggest that sticker shock is something small businesses have experienced every year for many years, long before the ACA came along. Double digit increases in premiums have been commonplace year after year. Our members look to provisions of the ACA with the hope that this trend will finally abate.

On the 20th of this month Avalere Health Care, a private consulting firm, released a report outlining their findings that health insurance premiums for the new exchanges are actually

coming in below previous CBO estimates.ⁱⁱ Their findings are based on actual rate filings that are now available, not on theories or estimates by the insurance industry.

To be clear, only nine states have actual rate filings, but the early news is better than the term “sticker shock” would imply. Furthermore, these findings are strictly about rate filings and do not take into account the savings that many consumers, including our own members, have received from rebates returned to them thanks to the Medical Loss Ratio limits in the ACA. Nor do these findings factor in either the premium subsidies that will be available to the majority of insurance exchange consumers starting next January or the small business tax credits currently being used by hundreds of thousands of small businesses.

We note that these findings come fast on the heels of studies showing that overall rates of inflation in health care are lessening. Two recent studies published in Health Affairs document that the lowered rate of inflation in health care appears to result from factors that go beyond the deflationary effect of the Great Recession and appear to be structural.ⁱⁱⁱ

So, while our members are very concerned about the cost of health care coverage, there are hopeful signs. Continued progress in controlling costs will depend on the function of the insurance exchange marketplaces that are to open next January.

Market Risk and Coverage Requirements

Markets respond to risk. Earlier, I observed that our health insurance markets were plagued by adverse selection before the passage of the ACA. When the Congress fashioned the ACA, it showed great awareness of this problem. That is why one of the underlying premises of the Act is that pretty much everyone is going to be in the pool. This is the origin of the individual and employer responsibility requirements.

How will these provisions of the ACA affect small employers? It simply must be emphasized that the employer mandate does not apply to a business with under fifty employees. This means that over 95% of businesses in the country will not be affected by this provision of the law. Since we hear a whole lot about this provision, permit me also to observe that among the firms with 50 or more employees, 94% of these firms already provide health insurance to their employees. When we do the math we find that this provision will affect only one quarter of one percent of all firms.

Challenging though the requirement to offer health coverage might be for this tiny number of companies that do not provide insurance already, the fact is we need them in the pool along with everyone else. The broader the pool, the easier it will be for insurance companies to offer everyone a good price.

Furthermore, while our small businesses may not be impacted by the employer mandate, most of their employees will be subject to the individual mandate. Since group prices have always been less than individual market prices, good, strong small group markets will make it more possible for our firms to join with their employees and offer group coverage, to the benefit of everyone.

Therefore, it is pertinent to note some features of the market provisions in the ACA that will help make products more attractive:

- The first thing is that the products will be worth buying -- minimum essential benefits, no lifetime limits, no rescissions if people get sick, no preexisting condition exclusions, and strong medical loss ratio requirements -- will mean that insurance will have more actual value.
- Second, medical underwriting -- the practice of increasing a group's premiums when someone gets sick -- will no longer be possible.

- Third, there are market adjustment provisions in the ACA that will help contain risk for insurers. These include risk adjustment, reinsurance to share high risk cases, and community rating that will help provide greater predictability for insurers.
- Fourth, there is improved competition. Rates will be transparent, easy to compare in an “apples to apples” way, and insurance companies will offer uncompetitive rates at their peril.

Three other factors must also be recommended to you for your consideration:

1. Whatever the potential insurance risk impacts involved in bringing millions of previously uninsured individuals into the market, they surely will be offset by the premium subsidies provided through the insurance exchanges.
2. One of the great benefits of the ACA is the reduction in cost shifting associated with the care for the uninsured that is inevitably translated into higher costs for everyone through greater utilization of emergency rooms.
3. Young employees can be brought into the pool through qualified catastrophic plans, thus reducing cost shifting further and expanding the insurance pools.

We hear that all of this is going to cause a great rush away from insurance coverage by those who now provide coverage. There are credible analyses that substantially undermine this contention.^{iv} In fact, employer coverage in Massachusetts actually increased under that state’s pioneering health care reforms.

This idea that employers would so readily drop their health coverage directly contradicts an important issue that our small business owners have offered to me repeatedly, which is this: the ability to provide health insurance places big companies at a competitive advantage over small ones. It defies reason to suggest that firms that now use good health benefits to attract and retain a quality workforce are going to throw that tool away.

The same principle will apply to issues associated with the 30 hour dividing line between full time and part time employees. While some companies may mess with employee hours to avoid health care costs, most will find this technique administratively costly and offensive to employees who can go elsewhere. This is affirmed by a recent study by the human resources firm Towers Watson that found that over 98% of firms have no plans to change their employee hours because of this law.^v

Just to illustrate this point I note a story in the Dallas Business Journal on the 20th of this month quoting Scott Gordon, CFO of a restaurant company that has 2,800 employees:

“Some restaurant chains plan to cut employees' hours to stay under the 30-hour cap, but Gordon said Front Burner has ruled that out. “That's not the route that we're going to look at,” he said. “We're going to do what's right for the restaurants. We don't think that cutting employees' hours is the right way to handle implementation of this. We value our employees and we value that they want to work for us, and we don't want to give them a reason to go work somewhere else.”^{vi}

Taken all together these provisions of the law not only pose no threat to the economy, they are a benefit.. It is impossible to avoid pointing out in this context that an estimated 1,500,000 new sole-proprietor businesses will be made possible because the ACA will free these entrepreneurs to go build new businesses without fear of losing health care.^{vii} What a wonderful thing for economic freedom in America.

Paperwork

One issue that is often raised as a concern for small business owners is the time and complexity involved in dealing with insurance paperwork. Surveys of our members identify this as a barrier to participation in insurance plans. The improved simplicity of applying for and choosing insurance options under the ACA will be an additional attraction to small businesses.

The on-line application process will be much simplified and the availability of comparative shopping will help small business owners and their employees to find plans that meet their needs more easily.

Enrollment in insurance plans is not the only application process our members will use under the ACA; there also is the matter of qualifying for the ACA's small business tax credits. Admittedly ours are small businesses, but they do not appear to find this process very daunting. Two of our members have come before committees of the House to testify on this. Matt Hisel, co-director of a recycled building materials business in Missoula, Montana testified in November 2011 that it took him less than half an hour to qualify his firm for the credits. Louisa McQueeney, CFO of a fruit packing and shipping business in Lantana, Florida testified in April of this year that it took her about an hour to qualify her firm for over \$7,000 in tax credits.

If we can get access to good insurance and credits through these new systems, the time involved will be well spent.

(I must observe in parentheses here that while there are many voices raised in the Congress about this "burden on small businesses," there are almost no voices being raised about the imposition of the E-Verify bureaucracy on small businesses in the immigration debate.)

Medicaid and Market Costs

Finally, a word about Medicaid expansion and market costs. Given the decision by the Supreme Court that made Medicaid expansions optional at the state level, it is important to observe that there will be negative repercussions on some exchanges in states that fail to move forward with Medicaid expansion. Medicaid is a critical substructure for good markets because it works to remove risk from the exchange pools and to reduce cost shifting. In states where the Medicaid expansion is rejected, we will see the unfortunate consequence of newly eligible consumers with incomes under 100% of poverty without any access to coverage at all. They will

not qualify for subsidies and they will not qualify for Medicaid. Their costs will shift to all of us and there will be an indirect impact on the price of insurance for small businesses. This dynamic, often ignored in the debates in states over Medicaid expansion, should give state lawmakers and Governors a new sense of urgency to move forward with the Medicaid expansion opportunity and reduce cost-shifting instead of increasing it.

Thank you for permitting me to offer these remarks.

ⁱ HealthCare.gov, *Health Insurance Premiums: Past High Costs Will Become the Present and Future Without Health Reform* (Jan. 28, 2011).

ⁱⁱ “Avalere Health analysis of health insurance rate filings publicly available as of June 12, 2013.” See also the analysis by Rick Ungar in the July 1st Edition of *Forbes* entitled “The Dull Knives Come Out As Anti-Obamacare Forces Falsely Attack California Healthcare Exchange Prices.”

ⁱⁱⁱ Alexander J. Ryu1., Teresa B. Gibson, M. Richard McKellar and Michael E. Chernew, “The Slowdown In Health Care Spending In 2009–11 Reflected Factors Other Than The Weak Economy And Thus May Persist,” *Health Affairs*, May 2013 and M. Cutler David, and Nikhil Sahni., *If Slow Rate Of Health Care Spending Growth Persists, Projections May Be Off By \$770 Billion.* *Health Affairs* 32, no. 5.

^{iv} In addition to the CBO analysis, see the analysis by J.P. Morgan as reported by Russ Britt, “Will firms ‘dump’ employees into health-insurance exchanges?” in *Health Exchange*, March 14, 2013.

^v See the report on the Towers Watson survey by Dan Cook: “Major employers won’t skirt PPACA” at *BenefitsPro*, June 14, 2013.

^{vi} Bill Hethcock, “How Front Burner restaurants are navigating health insurance reform,” *Dallas Business Journal*, Jun 20, 2013.

^{vii} Linda J. Blumberg, Sabrina Corlette, and Kevin Lucia, “The Affordable Care Act: Improving Incentives for Entrepreneurship and Self-Employment :Timely Analysis of Immediate Health Policy Issues.” Robert Wood Johnson Foundation, May 2013.

Mr. MURPHY. Ms. Mahoney, you are recognized for 5 minutes.

TESTIMONY OF KATIE MAHONEY

Ms. MAHONEY. Thank you, Mr. Chairman and Ranking Member and other members of the subcommittee, for the opportunity to participate in today's hearing. We appreciate the focus on the challenges facing America's business under the health reform law and believe we must all do what we can to help employers and their employees deal with the challenges of implementation.

I'm Katie Mahoney, executive director of health policy at the U.S. Chamber of Commerce. With our diverse membership we're particularly cognizant of the problems facing small businesses as well as large corporations. While the Chamber opposed the health reform law during the legislative debate, we are moving forward to help our member companies understand and comply with the law. To that end, we continue to work with the regulators to mitigate the burdens and challenges of implementation and with Members of Congress to provide relief to business.

Our vision of reform continues to be one where Americans can access affordable healthcare coverage, receive innovative and high-quality care, and realize better health.

Tomorrow the Chamber will release a report with recommendations to improve access to affordable coverage and drive greater healthcare value. While the report outlines ways to improve the system, today's hearing focuses on the system created by the health reform law, and that is where I will focus my comments.

As the first panel outlined, despite the goal of the employer mandate, the health reform law is eroding the employer-sponsored system and forcing employers to consider significantly changing their workforce not because these changes make sense for their customers or their employees, but because they are necessary to keep their doors open. In many cases, employers are not hiring new employees; they're canceling expansion plans, reducing employee hours, and dropping the affordable healthcare coverage that they had previously provided for their employees.

Beyond the statistics, the real-life conversations we have with businesses are perhaps the most remarkable. What is most shocking during these opportunities is the complete confusion as to what the law will require. While we're eager to explain recent regulatory developments, we find ourselves still outlining the basics of the law, such as what constitutes an applicable large employer and the difference between a full-time equivalent and a full-time employee.

So what are we to do? We're working hard to educate our members, regulators, Members of Congress and the public. First, for our members, we've created a new Web site, Health Reform Law 101, which has a variety of interactive resources including a coverage or penalty chart, an employer mandate penalty calculator, an interactive timeline, and an FAQ page. We are getting great feedback on these resources.

Secondly, we've been working with the regulators, submitting comments and meeting with the administration to highlight problems with the regulations promulgated to implement the law. We filed 62 comments to date to mitigate implementation burdens at every opportunity.

For example, one key point that we're focused on now is encouraging the Treasury to use its discretion to not tax the tax, but to exclude the portion of the premiums collected to pay for the health insurance providers fee from gross income for reporting purposes. This important and feasible regulatory approach would save small businesses unnecessary premium increases of between 45- and \$70 billion over 10 years.

Third, we've been educating Members of the House and Senate and pushing for relief with regard to several critical provisions. First and foremost, our focus is on the employer mandate and how it will hurt employees as well as employers. Unfortunately, and perhaps ironically, because of the mandate not only are employees not receiving healthcare coverage, they're now losing full-time wages. To rectify this we continue to push for changes and believe that restoring the definition of full-time employment to the traditional 40 hours per week is a critical step in the right direction.

Fourth, our efforts to educate the public will be even more important in the coming months as the administration begins its PR campaign. We need to have an honest discussion about what the law does and does not do. Selling the law to the public instead of educating the public about the law is going to lead to further confusion and frustration.

Beyond the employer mandate, the list of problematic provisions is long, and several constantly rank as the most dire for business. The health insurance tax, the essential health benefit package requirements, the limits on out-of-pocket maximums and deductibles will all increase premiums and reduce flexibility, continuing to contribute to the one-size-fits-all vision of health care under the PPACA. It's like forcing all car manufacturers to make only cars with leather seats, DVD players, GPS systems, sunroof, and seat warmers, where many people could only afford a more modest car at a lower price.

In conclusion, regardless of our opinions of the law, it is being implemented. It is critical that everyone, businesses, regulators, Members of Congress and the public, do what we can to mitigate the harm on Americans, our economy and innovation. We must engage in an honest discussion, not a sales pitch, to inform individuals about the law and to take every opportunity to ease burdens, administrative burdens, preserve flexibility, and reduce premium increases.

Finally, we urge business to continue to innovate and work within the confines of the law to develop and offer coverage options that employees value. We urge the regulators to adopt a compliance assistance approach as opposed to strict enforcement. We urge our elected representatives to pass legislation that would restore common business standards for the definition of "full-time employee," and we urge the public to be inquisitive and cautious as they assess the information available to understand the law.

Thank you.

Mr. MURPHY. Thank you, Ms. Mahoney.

[The prepared statement of Ms. Mahoney follows.]



Statement of the U.S. Chamber of Commerce

ON: The Challenges Facing America's Businesses under the Patient Protection and Affordable Care Act

TO: The House Energy and Commerce Committee
Subcommittee on Oversight and Investigation

BY: Katie Mahoney
Executive Director, Health Policy
U.S. Chamber of Commerce

DATE: June 26, 2013

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 business people participate in this process.

Statement on
“The Challenges Facing America’s Businesses
Under the Patient Protection and Affordable Care Act”
Submitted to
THE HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION
By
Katie Mahoney
Executive Director, Health Policy
U.S. Chamber of Commerce
on behalf of the
U.S. CHAMBER OF COMMERCE
June 26, 2013

The U.S. Chamber of Commerce would like to thank Chairman Murphy and Ranking Member DeGette, and other members of the subcommittee for the opportunity to participate in today’s hearing. We appreciate this hearing’s focus on the challenges facing America’s businesses under the health reform law; it has been our focus for quite some time, dating back in fact to the legislative debate that began over 4 years ago. Indeed, it is critical that we understand how the law is affecting companies across the board – large and small – and that we do all we can to help business deal with the challenges.

I am Katie Mahoney, Executive Director of Health Policy at the U.S. Chamber of Commerce. I have more than 13 years of health care experience in hospital and health plan operations, as well as health policy. At the Chamber, I am responsible for developing and advocating the organization’s policy on health and working with members of Congress, the administration, and regulatory agencies to promote the Chamber’s health policy.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses of every size, sector and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

The Chamber opposed the Patient Protection and Affordable Care Act ("PPACA") during the legislative debate because it does very little to control the rise of unnecessary health care spending. Instead, the law imposes benefit mandates, requirements, taxes and penalties that not only will increase the cost of coverage, but will also limit the flexibility that employers and employees alike need to choose coverage options that they can afford. Perhaps ironically, it was four years ago this month that the Chamber testified before both the House Committee on Ways and Means and the Senate Health, Education, Labor and Pensions Committee as to our significant concerns on these very points.^{1,2}

However, as we all know, the law's implementation continues. And as it does, it will be increasingly important to monitor and highlight whenever possible the effect the law is having on businesses and employees, as well as to the extent possible search for opportunities to provide relief. To be sure, the health care system was and continues now more than ever to be in dire need of reform. Our vision of reform continues to be one focused on improving the ability of all

¹ "Health Reform in the 21st Century: Proposals to Reform the Health System," The House Committee on Ways and Means, June 24, 2009.

² "Roundtable Discussion – Health Care Reform Legislative Options," The Senate Health, Education, Labor and Pensions Committee, June 11, 2009.

Americans: to access affordable health care coverage; to receive innovative and high-quality care; and to realize better health.

I would like to take this opportunity to reiterate our view that reform must not end here. While we continue to struggle with the implementation of the PPACA, we must also look to the future and strive to achieve true reform. Tomorrow, the Chamber will be releasing a report with proposals to advance access to affordable coverage and to improve health care value. While this will outline what needs to be done to improve the system, today's hearing focuses on the system created by the PPACA under the auspice of "reform." And that is where I will focus my remarks.

THE FACTS

First, let's consider the facts and statistics of employer-sponsored coverage prior to the enactment of the PPACA:

- Prior to the enactment of the PPACA, more than half of all Americans received health insurance benefits voluntarily provided by their employers.
- The employer-based system voluntarily provided health benefits to over 178 million Americans.
- Overwhelmingly, employees were satisfied with these benefits and want their employers to continue providing it to them.
- Further, employers were spending over \$500 billion on health benefits each year.

Recent analyses indicate that despite the goal of the employer mandate – ostensibly to increase employer-sponsored coverage – the PPACA is eroding the employer-sponsored system. There

are several work-force changes that employers are now being forced to make because of the law. These changes include not hiring new employees, canceling expansion plans, reducing employees' hours, and dropping health care coverage for their employees. In fact, when asked about these choices in a recent Gallup poll:

- 41% of small-business owners say they have held off on hiring new employees;
- 38% have pulled back on plans to grow their business;
- 19% have reduced their number of employees;
- 18% have cut employee hours in response to the health care law; and
- 24% have thought about eliminating healthcare coverage for their employees.³

In the same vein, the Chamber's Small Business Outlook Survey⁴ released in April 2013 found that:

- The requirements of the health care law are now the biggest concern for small businesses, having bumped economic uncertainty from the top spot which it had held for the last two years.
- Of small business respondents, 77% say the health care law will make coverage for their employees more expensive, and 71% say the law makes it harder for them to hire more employees.
- As a result of the employer mandate, 32% of small businesses plan to reduce hiring, and 31% will cut back hours to reduce the number of full-time employees.

³ Gallup, Half of Small Business Think Health Law Bad For Them, May 10, 2013, available at: <http://www.gallup.com/poll/162386/half-small-business-think-health-law-bad.aspx>.

⁴ U.S. Chamber of Commerce, "Q1 U.S. Chamber of Commerce Small Business Outlook Survey," April 2013, available at <http://www.uschambersmallbusinessnation.com/community/q1-2013-small-business-survey>.

To better understand precisely why employers are making these choices, which the Chamber and others forewarned about, there are still more statistics quantifying the underlying cause: the increasing cost of coverage.

- 55% of small-business owners expect the money they pay for healthcare to increase.⁵
- More than half of employers now feel that taxes on insurance companies and drug/medical devices will ultimately increase employer costs.⁶
- According to a survey of 996 individuals conducted in March 2013 by the International Foundation of Employee Benefit Plans, most organizations estimating costs associated with the ACA (88.3%) expect the law will increase their organization's health care costs this year.⁷
- The Diamond/Willis Health Care Reform Survey 2012-2013 (survey of more than 1,200 employers): 61% of survey respondents indicate that the total impact of all health care reform changes has increased costs.⁸

REAL-LIFE EXAMPLES

And these are not just statistics – we are hearing this from our member companies and have been for the past three years. In fact, we have had nine member companies testify on how the law will harm their business. These businesses run the gambit in size and industry ranging from a company with 10 employees to one with 1,000 employees, and include restaurants, service companies, entertainment companies, construction suppliers and remodeling companies.

⁵ Gallup, May 10, 2013.

⁶ Diamond Willis Health Reform Survey, 2012-2013, page 12, available at:

http://www.willis.com/documents/publications/Industries/Healthcare/HealthCareReformSurvey_2012_2013.pdf

⁷ International Foundation of Employee Benefits Plans, 2013 Employer Sponsored Health Care: ACA's Impact, Survey Results, March 2013, [http://op.bna.com/dlrcases.nsf/id/kpin-97vt56/\\$File/2103ACAImpactSurvey.pdf](http://op.bna.com/dlrcases.nsf/id/kpin-97vt56/$File/2103ACAImpactSurvey.pdf)

⁸ Diamond/Willis, The Health Care Reform Survey 2012-2013, February 2013,

http://www.willis.com/documents/publications/Industries/Healthcare/HealthCareReformSurvey_2012_2013.pdf

Individuals representing Chamber member companies that have testified in the House and the Senate since the enactment of the PPACA include:

1. Mary Miller, the owner of a Cincinnati based janitorial company with 320 full-time employees;⁹
2. Arnold Baker, the owner of a New Orleans concrete supply company with 60 employees;¹⁰
3. Dan Withrow, the executive of a Kentucky pallet distribution company with 10 employees;¹¹
4. Brian Vaughn, a Georgia franchisee owner of 4 Burger King restaurants with 182 employees;¹²
5. Phil Kennedy, the owner of an Oklahoma lumber company with 45 employees;¹³
6. Brett Parker, the executive of a bowling alley company with 6 locations in 4 states and 538 employees;¹⁴
7. Bill Feinberg, the owner of a kitchen and bath remodeling company in Fort Lauderdale with 40 employees;¹⁵
8. Scott Womack, a Ohio IHOP franchisee owner of 12 restaurants in Ohio and Indiana and 1,000 employees; and¹⁶

⁹ "Examining the Impact of ObamaCare on Job Creators and the Economy." House Committee on Oversight & Government Reform, July 10, 2012.

¹⁰ "What Would the APA Do?" The House Committee on Judiciary, October 25, 2011.

¹¹ "Health Reform and Health Insurance Premiums: Empowering States to Serve Consumers, Senate Committee on Health, Education, Labor and Pensions, August 2, 2011

¹² "Small Businesses and PPACA: If They Like Their Coverage, Can They Keep it?" House Committee on Small Business, Subcommittee on Healthcare & Technology, June 28, 2011.

¹³ "True Cost of PPACA: Effects on the Budget and Jobs," The House Committee on Energy and Commerce's Subcommittee on Health, March 30, 2011.

¹⁴ "The Pressures of Rising Costs on Employer Provided Health Care," The House Committee on Energy and Workforce Subcommittee on Health, Employment, Labor and Pensions, March 10, 2011.

¹⁵ "Putting Americans Back to Work: The State of The Small Business Economy," The House Committee on Small Business, February 16, 2011.

9. James Wordsworth, the owner of a Virginia restaurant with 200 employees.¹⁷

To be sure – as the hearings’ titles suggest – these business owners know that:

- ObamaCare will have a detrimental impact on job creators and the economy;
- Regulations implementing PPACA are discouraging growth;
- Health reform is increasing health insurance premiums;
- Small businesses can’t keep their coverage, even if they like it;
- The true cost of the PPACA is having a damaging effect the budget and jobs;
- The law is increasing the pressures of rising costs on employer provided health care;
- The health reform law will curtail the ability to put Americans back to work and the small business economy;
- The health care law is negatively impacting jobs, employers, and the economy; and
- The small businesses consensus is that the PPACA is harmful.

And the feedback we have heard certainly doesn’t end there. My colleagues and I, both at the Chamber and in other employer associations, are constantly invited to talk with member companies, industry trade associations, and local and state chambers of commerce about the law. The appetite for accurate information continues to be voracious. What is perhaps most shocking during these speaking opportunities is the complete confusion around the country as to what the law will require of business. While we arrive ready to explain recent regulatory developments such as the affordability safe harbors and options for verifying minimum value, we find ourselves still explaining the basics of the law, such as what constitutes an “applicable large

¹⁶ “Health Care Law’s Impact on Jobs, Employers and the Economy,” The House Committee on Ways and Means, January 26, 2011.

¹⁷ “Common Ground: Finding Consensus on Health Reform, the Small Business Perspective,” The House Committee on Small Business, June 3, 2009.

business” and why in some states an applicable large business would be buying coverage in the small group market. Instead we focus on the bare basics which are still very confusing. As we try to explain, there are basically four scenarios that an employer could face:

- An employer falls under the 50 full-time equivalent employee (“FTE”) threshold and is not an applicable large employer.
 1. The employer is not required to offer coverage and doesn’t.
 2. The employer is not required to offer coverage but does. Unfortunately in order to offer coverage, they have to now purchase a plan that complies with a myriad of benefit requirements that make all coverage options in the small group market more expensive than the modest and affordable coverage options that were available in the past.
- The employer has more than 50 FTEs and has to offer coverage to all full-time employees and their children under 26 years of age.
 3. Employer offers affordable, minimum value coverage.
 4. Employer doesn’t offer affordable, minimum value coverage.

Despite these simple sounding scenarios – the outcome under each scenario is complicated by two subsequent factors: the penalty trigger and the penalty calculation.

Trigger: The penalty for an applicable large employer is triggered when one full-time employee, without access to affordable, minimum value employer-sponsored coverage who is not eligible for Medicaid, obtains a premium tax credit and uses it to purchase coverage on the exchange.

Penalty Calculation: Once the trigger is tripped, the calculation determines the penalty. This is where we see lots of blank stares because there will be situations, where an applicable large employer is required to offer coverage and doesn't but is not penalized and where an applicable large employer is required to offer coverage and does but is penalized. There are two calculations that are used when the trigger is tripped which depend on the employer's decision on offering coverage.

- If an applicable large employer offers coverage (any coverage, not necessarily affordable or minimum value coverage) to all full-time employees and dependents, and the trigger is tripped, the calculation is:
 - \$2,000 x (total number of full-time employees minus the 30 full-time employees).
- If an applicable large employer doesn't offer coverage to all full-time employees and their dependents, and the trigger is tripped, the calculation is the lesser of:
 - \$3,000 x (number of full time employees receiving a premium tax credit) or
 - \$2,000 x (total number of full-time employees minus the 30).

All of this is even more complicated when you consider that the trigger requires an employee below 400% of federal poverty level ("FPL") to not only qualify but also use the premium tax credit to purchase coverage on the exchange. This may become increasingly less probable when the cost of coverage, even with the premium tax credit, is more than employees can afford.

WHAT ARE WE TO DO?

EDUCATE!

Clearly, the importance of this hearing is tremendous and while we will continue to speak with businesses in Washington and around the country about the new requirements that law imposes on employers, we are engaging in other ways too. With a law that has regulations that when

stacked reach 7 feet in height to date, the law itself is not *all* that you need to read to “know what is in it.” In several critical ways, we are striving to educate our members, regulators, legislatures and the public.

EDUCATING CHAMBER MEMBERS

First, for our members, we created a brand new website title “Health Reform Law 101” which has a variety of interactive resources. The website includes:

- “Employer Mandate” – an explanation of what the employer mandate is and how it works – including WHO has to offer coverage, WHAT is required to avoid the penalty, TO WHOM coverage must be offered, OR ELSE what could happen, followed by three example scenarios.¹⁸
- “Coverage or Penalty Chart” - a charted decision tree that outlines the employer mandate.¹⁹
- “Employer Mandate Calculator” - a two-step interactive calculator where businesses can assess their potential penalty under the employer mandate.²⁰
 - Step 1: Helps businesses assess if they are required to offer coverage.
 - A business enters the number of part-time hours worked in a month and the number of full-time employees to figure out how many FTEs they employ.
 - Step 2: Helps a business assess if they may have to pay a penalty.
 - If based on the calculation in Step 1, the business has more than 50 FTEs and is therefore an applicable large employer, the calculator begins a

¹⁸ https://www.uschamber.com/sites/default/files/file_attach/HealthcareEmployeeMandate_OnePager_Revised.pdf

¹⁹ https://www.uschamber.com/sites/default/files/file_attach/HealthcareEmployeeMandate_OnePager_Revised.pdf

²⁰ <http://www.uschamber.com/health-reform/calculator>

second step to help the business assess the potential penalty based on whether they offer coverage to all full-time employees and dependents and the number of full-time employees with household incomes between 100-400% of FPL who are not eligible for Medicaid.

- Clearly, it will be hard for many employers to know precisely how to answer each prompt on the calculator but it provides an educational resource and serves as a tool which businesses can use to run various scenarios and assess potential penalties.
- “Added Cost Table” – a chart that highlights the new taxes and effective dates to educate businesses on revenues raised by various tax provisions in the PPACA.²¹
- “Interactive Timeline” – a responsive tool that outlines when key provisions of the law will take effect and briefly describes each provision.²²
- “FAQ page” offers in depth answers and definitions to help business understand the nuances of the employer mandate.²³
- “Press Room and Video Pages” – provide links to Chamber publications and Chamber videos featuring members and chamber executives discussing health reform.^{24, 25}

These resources have been very well received. We have had 56,000 total views since the website was launched in October 2012. It is also worth noting that we have been working for nearly a decade now to educate our member companies on the benefits of workplace wellness programs and also have some material on this effort as well.

²¹ <http://www.uschamber.com/health-reform/added-costs>

²² <http://www.uschamber.com/health-reform/timeline>

²³ <http://www.uschamber.com/health-reform/frequently-asked-questions>

²⁴ <http://www.uschamber.com/health-reform/press>

²⁵ <http://www.uschamber.com/health-reform/video>

EDUCATING THE REGULATORS

Second, we have been heavily involved in educating the regulators by submitting comments and meeting with the Administration to highlight problems with the regulations promulgated to implement the law. We have filed 62 comments to date in response to regulatory materials ranging from 8 Interim Final Rules, 3 Final Rules, 20 Requests for Comments, 21 Proposed Rules, 1 Information Collection Request, 2 Amendments to the Interim Final Rules, 6 Requests for Information and 1 Frequently Asked Question. It is important to mitigate implementation burdens at every opportunity. For example, one key point that we are focused on now is encouraging the Treasury to use its discretion to not “tax the tax” but exclude the portion of premiums collected to pay for the health insurance providers fee from gross income for reporting purposes.²⁶ This important and feasible modification would save small businesses unnecessary premium increases of between \$45-70 billion over ten years.²⁷

EDUCATING MEMBERS OF THE HOUSE AND SENATE

Third, we have been educating members of the House and Senate about the impact of a number of provisions and are pushing for relief on several critical provisions. First and foremost, for business – our focus is on the employer mandate and how it will hurt employees, as well as employers. Particularly in this economy, employees want jobs and wages; they want to be able to earn a living. Instead, to avoid a penalty that will - for many - bankrupt the business, businesses are reducing their employee’s hours and therefore overall wages. The result, employees are not only not receiving health care coverage, they will now in many cases be losing full-time wages.

²⁶ Skadden, Arps, Slate, Meagher & Flom, “Annual Fee Imposed on Health Insurance Providers under Section 9010 of the Patient Protection and Affordable Care Act: Exclusion from Gross Income of Recoveries of the Fee from Policyholders,” page 1.

²⁷ Quantria Strategies, LLC, Prepared by Mary M. Schmitt and Judy Xanthopoulos, “Effect of the Health Insurer Fee in the Affordable Care Act (ACA) on Health Insurance Premiums” June 3, 2013.

To rectify this, we continue to push for changes to the employer mandate and believe that restoring the definition of full-time employment to what was commonly accepted before PPACA's enactment is a critical step.

EDUCATING THE PUBLIC

Fourth, our efforts to educate the public are likely going to be even more important in the coming months as the Administration begins its PR campaign. Instead of promising free care, we need to have an honest discussion about what the law does and does not do. Yes, an individual will no longer have to pay a copayment when they see a physician for preventive services but that does not mean the service is free. And to say that it is, is simply dishonest. Individuals will still pay for these services when they purchase health insurance to cover these services and in fact – the premiums to pay for the health insurance to cover these services with no copayments is likely to be higher. *Selling* the law to the public instead of *educating* the public about the law is going to lead to further confusion.

Beyond educating the public about the health reform law, we also need to have an honest conversation about the state of our country's entitlement programs. Medicare and Medicaid are on an unsustainable trajectory. Last week the Chamber began a national campaign to educate the public about the future of these programs face if we do nothing. Before we can even begin to talk about a solution, we must all recognize that there is a problem. To retort, as some did, that "the American people really do not want to cut benefits for Social Security, Medicaid and Medicare" is to further deny the problem. If the American people don't want to cut benefits, we need to address this problem proactively and rationally now.

PARTICULARLY PROBLEMATIC PROVISIONS

While the list of problematic provisions is long, there are a number that consistently rank as the most dire for business. These provisions each increase the cost of coverage and limit flexibility, contributing to the one-size fits all vision of health care coverage under PPACA. It is like requiring that all car manufacturers only build and sell cars with leather seats, DVD players, GPS systems, sunroofs, and seat and steering wheel warmers when many people prefer more modest cars at a lower price. I am not sure that people fully realize that the law places specific requirements as to what coverage can be sold in the individual, small group and even to some extent the large group market. There will no longer be plans for sale that cover a more modest list of benefits, and have varying deductibles. Depending on whether we are talking about the individual, small group or large group market, many of the plans that people liked are not or will not be available in 2014.²⁸ And clearly, as car-manufacturers know, the more comprehensive and extensive a product is, the more it will cost. Some of the provisions that are of particular concern to the business community, regardless of whether they purchase coverage in the small group or large group market include:

1. Essential Health Benefits: While all plans in the individual and small group market have to cover the essential health benefits (“EHBs”), plans in the large group market cannot include annual or lifetime dollar limits on any essential health benefits. Broad requirements for EHBs could inhibit the strategies that employers and plans are using to

²⁸ Of course in a superficial way it may be easy to blame the insurance companies for premiums increasing but it is important to acknowledge that these companies are having to comply with new benefit mandates and rating restrictions which will necessitate higher premiums. These new requirements include: no pre-existing condition exclusions, no annual or lifetime dollar limits on essential health benefits, no recessions, when children are covered on their parents’ plans they must be offered coverage until the age of 26, in the small group and individual markets plans must cover the essential health benefits. New rating restrictions prohibit plans from varying premiums: based on health status; beyond the age rating band of 3-1; beyond prescribed geographic rating bands and beyond a 1-1.5 variation for tobacco use.

support high-value care. For example, if EHBs are interpreted to include generous coverage for costly services where less expensive but effective alternative treatments or providers exist, premiums will rise significantly. Even though this provision most directly affects plans in the individual and small group markets and the individuals or businesses that buy them, there is an increasing ripple effect on plans and businesses purchasing coverage in the large group market not only as they struggle with how to control costs when they choose to cover essential health benefits but also as the regulations specify how minimum value is assessed.²⁹

2. Deductible limits: The law limits the size of deductibles that plans in the small group market can impose to \$2000 per individual and \$4000 per family which could severely limit some plans offered in conjunction with health saving accounts.
3. Out-of-pocket limitations: A uniform *cap on out-of-pocket maximums* potentially applies to all plans and will inhibit the ability of many plans with tiered networks to impose higher out-of-pocket costs when an individual receives treatment from a lower-quality provider.
4. Health insurance providers fee: The health insurance tax, as it is commonly referred to, will only be passed onto consumers in the form of higher premiums according to both the Congressional Budget Office and the Joint Tax Committee.
5. Transitional reinsurance fee: The transitional reinsurance fee is a fee imposed on all group health plans to stabilize the individual market for years 2014, 2015 and 2016. Regulations clarified the size of this fee would be \$63 per covered life, which is significantly higher than many businesses anticipated when the law was enacted.

²⁹ The minimum value NPRM issued on May 3, 2013 indicates that several methods are available to determine whether a plan meets the 60% minimum value requirement: the minimum value calculator; if the plan design mirrors the safe harbors in terms of deductibles cost-sharing and out-of-pocket limits; and certification by an actuary.

As a Chamber board member with a 30-year-old small business recently told me –

We have been providing health insurance for our 20 employees and their families at no cost to the employee, but our company-paid insurance premiums have gone up 96% over the past 4 years. I am concerned that the increased cost of the PPACA will require us to start passing on some of the cost to our employees and/or reduce other benefits like dental, vision, and life insurance and pay increases. I am concerned that the increase in essential benefits, the lowering of deductibles and out of pocket expenses, along with the many taxes (especially the Health Insurance Tax) will increase costs to a point that prevents us from continuing to pay the total cost of health insurance for our employees.

Then there are the continuously nagging concerns that persist not because the law dictates changes but because of indications that regulators and states may choose to require certain changes anyway:

1. Regulation of stop-loss: Because the law imposes many more new requirements on fully-insured small group plans, there is speculation that some small employers may choose to self-insure their group plans. There have been reports that the administration plans to potentially regulate stop loss coverage at the federal level by establishing minimum attachment points, prohibiting the sale of stop-loss policies to small businesses, or regulating stop-loss policies in the same way as small-group health insurance.
2. Challenges to ERISA pre-emption: Many states are considering legislation that would impose state fees, taxes, and administrative burdens on self-insured plans that have

historically held ERISA preemption from state mandates. This will only add additional confusion and costs to employer-sponsored coverage and should be prohibited.

CONCLUSION

Despite many promises that health reform would lead to lower premiums, improve access to affordable coverage and allow people to keep the plans that they have if they like them, we are continuing to learn the true ramifications of the law. While many predictions of how the law would work have not been met, we must all move forward – business, the regulators, members of Congress and the public to do what we can to mitigate the harm. Clearly, the law and the implementing regulations are very complicated regardless of whether you supported or opposed the law. What we must do is engage in an honest discussion to educate our country about the law and take every opportunity – regulatory, legislative, and educational – to reduce administrative burdens, preserve flexibility, and reduce premium increases. To that end we urge the regulators to adopt a compliance assistance approach as opposed to strict enforcement. We urge Congress to pass legislation that would restore common business standards for the definition of a full-time employee. We urge the public to be inquisitive and cautious as they assess the information available to understand the law. We urge business to continue to innovate and work within the confines of the laws to develop and offer coverage options that serve their employees.

Mr. MURPHY. Ms. Neblett, you are recognized for 5 minutes.

TESTIMONY OF MICHELLE R. NEBLETT

Ms. NEBLETT. Chairman Murphy, Ranking Member DeGette, members of the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee, thank you for the opportunity to testify before you today regarding the challenges restaurant and food service operators are facing in implementing the 2010 healthcare law.

My name is Michelle Neblett. I'm the director of labor and workforce policy for the National Restaurant Association. We are the leading trade association for the restaurant and food service industry, which is comprised of 980,000 restaurant and food service outlets employing 13.1 million people, who serve 130 million guests daily. Our industry employs about 10 percent of the U.S. workforce, and restaurants are employers of choice for many looking for flexible work schedules. As a result, we employ a high proportion of part-time and seasonal workers. Much of our workforce could also be considered young invincibles, as 43 percent of the employees are under age 26.

The National Restaurant Association is active in helping our operators understand the requirements of the healthcare law. We have conducted numerous Webinars and countless educational sessions in partnership with our State restaurant associations and as part of our annual trade shows. We have detailed, written materials, and through our Health Care Knowledge Center Web site, we are trying to provide a one-stop place where an operator can go to understand the law's requirements.

In my role I have traveled around the country conducting these educational sessions and answering operators' questions as they work through how to comply with the law. What I have learned is that this is one of the most challenging requirements placed on the restaurant and food service industry that any can recall, and it is clear that the law cannot stand as it is today.

While the restaurant association has worked since enactment to constructively shape the regulations, legislative action is needed as there are limits to what can be done through the regulatory process.

With a little more than 3 months until open enrollment begins October 1st in the exchanges, an employee notification about those exchanges by employers must go out as well. The time for restaurant and food service operators to comply is now. The overarching challenge our members face with this law is to first understand its complexity and interwoven requirements.

By far the definition of "full-time employee" under the law possess the greatest challenge for my industry. The statute defines "full time" as an average of 30 hours a week in any given month. This is not based on existing law or traditional business practices. Certainly restaurant and food service operators, like many businesses, have traditionally used a 40-hour workweek.

One of the attractive benefits of working in our industry is the flexibility to adjust one's hours to suit their own needs. However, for the first time, under the law, the Federal Government has drawn a bright line as to who is part-time and who is full-time. As

a result, employers with variable-hour workforces and flexible scheduling must be deliberate about scheduling hours, because there is now a greater financial impact with potential liability for employer penalties if employees who do work full-time hours are not offered coverage. If the definition is not changed to align better with workforce patterns, there is concern that the flexibility so many employees value in our industry will no longer be widely available, and structural changes to our labor markets could occur.

The applicable large employer determination is also too complex and stifles small employers' ability to manage their workforces, plan to expand their businesses, and prepare to offer coverage. The automatic enrollment provision is a concern that could cause financial hardship for some employees and greater confusion as well, without increasing access to coverage.

Finally, these challenges clearly demonstrate a need for broader transition relief without threat of penalty or subsidy recapture for good-faith compliance by both employers and employees. We believe it is appropriate to provide time for employers to make plan and system changes and for employees to understand their options under the law.

In conclusion, thank you again for the opportunity to testify before you today regarding the challenges restaurant and food service operators face as they implement the law. The National Restaurant Association is dedicated to providing restaurant and food service operators with the information they need to face these challenges and to make the best possible decisions they can for their employees and their businesses.

Thank you.

Mr. MURPHY. Thank you.

[The prepared statement of Ms. Neblett follows:]



Statement
On behalf of the
National Restaurant Association

HEARING: CHALLENGES FACING AMERICA'S BUSINESSES UNDER THE PATIENT
PROTECTION AND AFFORDABLE CARE ACT

BEFORE: SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
ENERGY & COMMERCE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

BY: MICHELLE R. NEBLETT
DIRECTOR, LABOR & WORKFORCE POLICY
NATIONAL RESTAURANT ASSOCIATION

DATE: JUNE 26, 2013

**Statement for the hearing
"Challenges Facing America's Businesses Under the Patient Protection and
Affordable Care Act"**

Before the

**Subcommittee on Oversight & Investigations,
Energy & Commerce Committee,
U.S. House of Representatives**

By

**Michelle R. Neblett
Director, Labor & Workforce Policy**

**On behalf of the
National Restaurant Association**

June 26, 2013

Chairman Murphy, Ranking Member DeGette, and members of the Subcommittee on Oversight & Investigations of the House Energy & Commerce Committee, thank you for this opportunity to testify before you today regarding the challenges restaurant and foodservice operators are facing in implementing the 2010 health care law.

My name is Michelle Neblett and I am the Director of Labor & Workforce Policy at the National Restaurant Association. The National Restaurant Association is the leading trade association for the restaurant and foodservice industry. Its mission is to help its members establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 980,000 restaurant and foodservice outlets employing 13.1 million people who serve 130 million guests daily. Restaurants are job creators. Despite being an industry of predominately small businesses, the restaurant industry is the nation's second-largest private-sector employer, employing about ten percent of the U.S. workforce.¹

In my role with the Association I am responsible for health care policy, but also to help educate the industry about the law and the implementing regulations. Since the law's enactment, I have traveled throughout the country to explain employers' responsibilities under the law and help our members understand the impact it will have on their employees and businesses.

¹ 2013 *Restaurant Industry Forecast*.

What I have learned is that this is one of the most challenging requirements placed on the restaurant and food service industry and it is clear that the law cannot stand as it is today. While the National Restaurant Association has worked since enactment to constructively shape the regulations, legislative action is needed as there are limits to what can be done through the regulatory process. With a little more than three months until open enrollment begins October 1st on the exchanges, and employee notification about the exchanges by employers, the time for restaurant and foodservice operators to get ready to comply is here.

The overarching challenge our members face in complying with the law is to first understand the complicated and interwoven requirements of the law. By far, the definition of full-time employee under the law poses the greatest challenge as it does not reflect current workforce practices and could have a detrimental impact on a restaurant operator's ability to continue to offer flexible schedules for some employees. The applicable large employer determination is too complex and stifles smaller employers' ability to manage their workforces, plan to expand their businesses and prepare to offer health care coverage. The automatic enrollment provision could cause financial hardship and greater confusion about the law for some employees, without increasing their access to coverage. Finally, transition relief without threat of penalty or subsidy recapture is needed for good faith compliance by employers and employees to provide time for employers to make plan and systems changes, and employees to understand their options.

COMPLYING WITH THE HEALTH CARE LAW IS CHALLENGING FOR RESTAURANT AND FOODSERVICE OPERATORS GIVEN THE UNIQUE CHARACTERISTICS OF THE INDUSTRY

Since the law was enacted in 2010, we have been taking steps to educate the restaurant and foodservice industry about the requirements of the law and the details of the Federal agencies' guidance and regulations. We have conducted numerous webinars, educational sessions in partnership with our state restaurant associations and during our annual trade show this past May, as well as detailed written materials. Through our Health Care Knowledge Center website, we are trying to provide a one-stop place an operator can go to understand the law's requirements. All these efforts are done to help operators breakdown the complex law as it is not easy to understand how the implementing rules from the three departments interconnect and relate to one another.

The unique characteristics of our workforce create compliance challenges for restaurant and foodservice operators within this law. As a result, many of the determinations employers must make to figure out how the law impacts them – for example the applicable large employer calculation – are much more complicated for restaurants than for other businesses who have more stable workforces with less turnover.

Restaurants are employers of choice for many looking for flexible work schedules and the ability to pick up extra shifts as available. As a result, we employ a high proportion of part-time and seasonal employees. We are also an industry of small businesses with more than seven out of ten eating and drinking establishments being single-unit operators. Much of our workforce could be considered "young invincibles," as 43 percent of employees are under age 26

in the industry.² In addition, the business model of the restaurant industry produces relatively low profit margins of only four to six percent before taxes, with labor costs being one of the most significant line items for a restaurant.³

Business owners crave certainty and one of the most difficult things to predict about the impact of this law are the choices employees will make. Will they accept restaurant operators' offers of minimum essential coverage more than they do today? Will exchange coverage be less expensive than what our operators can afford to offer under the law? Will our young workforce choose to pay the individual mandate tax penalty instead of accepting the employer's offer of coverage in 2014, 2015 and beyond? Future take-up rate of coverage is very hard to predict given many new factors, but could mean a significant increase in the costs restaurant and foodservice operators must take on when offering coverage.

All of these factors combine to complicate what a restaurant and foodservice operator must consider when implementing the necessary changes in their business to comply with the law. Below we walk through some of the challenges of the law in the order restaurant and foodservice operators would as they figure out how the law impacts their employees and their business.

APPLICABLE LARGE EMPLOYER DETERMINATION

The statute lays out a very specific calculation that must be used by employers to determine if they are an applicable large employer and hence subject to the Shared Responsibility for Employers and Employer Reporting provisions. Because of the structure of many restaurant companies, determining who the employer is may not be as easy as it would seem.

Aggregation rules in the law require employers to apply the long standing Common Control Clause⁴ in the Internal Revenue Code (Tax Code) to determine if they are considered one or multiple employers for the purposes of the health care law. While these rules have been part of the Tax Code for many years, this is the first time many restaurateurs, especially smaller operators, have had to understand how these complicated regulations apply to their businesses. The Treasury Department has not issued, nor to our knowledge, plans to issue, guidance to help smaller operators understand how these rules apply to them. Restaurant and food service operators must hire a tax advisor to determine how the complicated rules and regulations associated with this section of the Tax Code apply to their particular situation. It is common that business partners of one restaurant company own multiple restaurant companies with other partners. These restaurateurs consider each operation to be separate small businesses, but because there is common ownership, under the rules many are discovering that all the businesses can be considered as one employer for purposes of the health care law.

² Bureau of Labor Statistics, U.S. Department of Labor.

³ *2013 Restaurant Industry Forecast*.

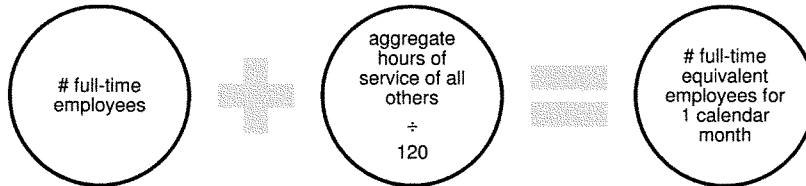
⁴ Internal Revenue Code, §414 (b),(c),(m),(o).

Once a restaurant or foodservice operator determines what entities are considered one employer, they must determine their applicable large employer status annually. For larger employers, it is clear that they have more than 50 full-time equivalent employees employed on business days in a calendar year. However, given we are an industry of small businesses and that restaurants are labor intensive and require many employees to operate successfully, many small businesses will have to complete this calculation annually to determine their responsibilities under the law.

As you might imagine, operators on the bubble of 50 full-time equivalent employees are trying to understand what they must do to complete this complicated calculation each year. Generally, an employer must consider the hours of service of each of their employees in all 12 calendar months each year. However, the Treasury Department has allowed for transition relief in 2013 for businesses to use as short as 6 months to do this calculation. The Treasury Department recognized the fact that small businesses, who may not currently offer health coverage, will need time to determine their status and then negotiate a plan with an insurance carrier. However, there remain questions about the process in later years when January through December must be considered for status beginning the following January 1st. Will small employers just reaching the applicable large employer threshold find that they determine they are large on December 31, 2014, for example, and must offer coverage a day later on January 1, 2015? Rules are needed to clarify when such employers must offer coverage in future years.

The applicable large employer determination is complicated. Employers must determine all employees' hours of service each calendar month, calculate the number of FTEs per month, and finally average each month over a full calendar year to determine the employer's status for the following year. The calculation is as follows:

1. An employer must first look at the number of *full-time employees* employed each calendar month, defined as 30 hours a week on average or 130 hours of service per calendar month.
2. The employer must then consider the hours of service *for all other employees*, including part-time and seasonal, counting no more than 120 hours of service per person. The hours of service for all others are aggregated for that calendar month and divided by 120.
3. This second step is added to the number of full-time employees *for a total full-time equivalent employee* calculation for one calendar month.



4. An employer must complete the same calculation for the remaining 11 calendar months and average the number over 12 calendar months to determine their status for the following calendar year.

This annual determination is administratively burdensome and costly, especially for those employers just above or below the 50 FTE threshold who must most closely monitor their status – most likely smaller businesses. Many restaurant operators rely on third-party vendors to develop technology or solutions to help them comply with these types of requirements but vendors are backlogged and solutions are not easily accessible at this time.

OFFERING COVERAGE TO FULL-TIME EMPLOYEES

The health care law requires employers subject to the Shared Responsibility for Employers provision to offer a certain level of coverage to their full-time employees and their dependents, or face potential penalties. The statute arbitrarily defines full-time as an average of 30 hours a week in any given month. This 30-hour threshold is not based on existing laws or traditional business practices. In fact, the Fair Labor Standards Act does not even define full-time employment. It simply requires employers to pay overtime when nonexempt employees work more than a 40-hour workweek. As a result, 40 hours a week is generally considered full-time in many U.S. industries. Certainly in the restaurant and foodservice industry, operators have traditionally used a 40-hour definition of full-time. Adopting such a definition in this law would also provide employers the flexibility to comply with the law in a way that best fits their workforce and business models.

Compliance based on a 30-hour a week definition is further complicated by the fact that sometimes it is difficult to know who the full-time employees are in a restaurant or foodservice setting. For restaurant and foodservice operators who are applicable large employers, it is not easy to predict which hourly staff might work 30 hours a week on average and which will not. During the peak seasons, hourly employees can be scheduled for more hours as customer traffic increases, but then reduced as business slows. One of the attractive benefits of our industry is the flexibility to change your hours to suit your own personal needs. However, for the first time under this law, the federal government has drawn a bright line as to who is full-time and who is part-time. As a result, employers with variable workforces and flexible scheduling must be deliberate about scheduling hours because there is now a greater financial impact with potential liability for employer penalties if employees who work full-time hours are not offered coverage. If the definition is not changed to align better with workforce patterns, there is concern that the flexibility so many employees value will no longer be as widely available in the industry and structural changes to our labor market will occur.

The industry appreciates that the Treasury Department has recognized that it may be difficult for applicable large employers to determine employee's status as full-time or part-time on a monthly basis, causing churn between employer coverage and the exchange or other programs. Such coverage instability is not in the employee's best interest and so the restaurant and foodservice industry is pleased that the Lookback Measurement Method is an option that applicable large employers may use.

While the Lookback Measurement Method's implementing rules are complex it could be helpful for both employers and employees. Employers will be better able to predict costs and accurately offer coverage to employees they are required to do so. Employees whose hours fluctuate (variable hour and seasonal employees) have the peace of mind of knowing that if their hours do decrease from one month to the next, coverage will not be cut short before the end of their stability period.

CHALLENGES FOR APPLICABLE LARGE EMPLOYERS OFFERING COVERAGE TO THEIR FULL-TIME EMPLOYEES AND THEIR DEPENDENTS

Once an applicable large employer has determined to whom coverage must be offered, he must make sure that the coverage is of 60 percent minimum value and considered affordable to the employee, or he may face potential employer penalties.

Minimum value is generally understood to be a 60 percent actuarial test; a measure of the richness of the plan's offered benefits. This is a critical test for employers especially as it relates to what an employer's group health plan covers and hence what the premium cost will be in 2014. As I mentioned before, business owners like certainty, and that means the ability to plan for their future costs. Employers are eager to know what their premium costs will be under the new law. Minimum value is key to determining that information.

On February 25, 2013 the Health and Human Services Department did include the Minimum Value Calculator, one of the acceptable methods to determine a plan's value, in its Final Rule, Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation. Minimum value can now be determined using this calculator or other options, but still it is difficult to anticipate premium costs so far in advance. Data is not usually available until a few months before the employer's plan year begins. This gives operators a short timeframe within which to budget and make business decisions in advance of the new plan year.

Employers must also ensure at least one of their plans is affordable to their full-time employees or face potential penalties. A full-time employee's contribution toward the cost of the premium for single-only coverage cannot be more than 9.5 percent of their household income, or else the coverage is considered unaffordable. Employers do not know household income, nor do they want to know this information for privacy reasons. However, employers needed a way to be able to estimate before a plan is offered if it will be affordable to employees. What employers do know are the wages they pay their employees. Almost always, employees' wages will be a stricter test than household income. Employers are willing to accept a stricter test in the form of wages so that they know they are complying with the law and are provided protection from penalty under a safe harbor. The Treasury Department will allow employers to use one of three Affordability Safe Harbors based on Form W-2 wages, Rate of Pay or Federal Poverty Line. We believe that the option of utilizing these methods will be helpful to employers as they determine at what level to set contribution rates and their ability to continue to offer coverage to their employees.

The law speaks to affordability for employees but is silent regarding whether the coverage required to comply with the Shared Responsibility for Employers section of the law is affordable to employers. As restaurant and foodservice operators implement this law, considering all of the interlocking provisions, some will be faced with difficult business decisions between offering coverage which they cannot afford with a finite dollar for benefits, and paying a penalty – an option they do not want to take, but is equally unaffordable to them as well. We encourage policymakers to address the cost of coverage so that the employer-sponsored system of health care coverage will be maintained.

AUTOMATIC ENROLLMENT REQUIREMENT

Applicable large employers who employ 200 or more full-time employees are also subject to the Automatic Enrollment provision of the law. This duplicative mandate requires these employers to enroll new and current full-time employees in their lowest cost plan if the employees have not opted-out of the coverage. This provision also interacts with the prohibition on waiting periods longer than days and effectively means that on the 91st day, employers must enroll a new full-time hire in their lowest cost plan if they do not tell their employer that they do not want to be enrolled. Employee premium contributions will begin to be collected and the industry is concerned that it could cause financial hardship and greater confusion about the law, especially amongst our young employees. Since 43 percent of restaurant employees are under age 26 and more likely to be moving from job to job or eligible for enrollment in parents' plans, many are likely to inadvertently miss opt-out deadlines and will be automatically enrolled in their employer's health plan causing significant, unexpected financial hardship.

Automatically enrolling an employee and then shortly thereafter removing them from the plan when the employee opts-out only increases costs unnecessarily without increasing our employee's access to coverage as the law intended. Since the health care law's employer shared responsibility provision already subjects large employers to potential penalties if they fail to offer affordable health care coverage to full-time employees and their dependents, the auto-enrollment mandate is redundant. It adds a layer of bureaucracy and burdens businesses without increasing employees' access to coverage.

Some compare automatically enrolling employees in health benefit plans to automatically enrolling them in a 401(k) plan, but this isn't a good parallel. The financial contribution associated with health benefits can be much larger, for example: 9.5 percent of household income toward the cost of the premium for employees of large employers versus an average 3 percent automatic 401(k) contribution.⁵ The financial burden on employees of automatic enrollment in health benefit plans would be much greater than that of 401(k) plans. Additionally, 401(k) rules allow employees to access their contributions when they opt-out of automatic enrollment; however health benefit premium contributions cannot be retrieved.

⁵ "Disparities in Automatic Enrollment Availability," Bureau of Labor Statistics, August 2010.

Restaurateurs will educate their employees about how this provision impacts them, but if an employee misses the 90-day opt-out deadline, a premium contribution is a significant amount of money, which can be a financial burden. Since the same full-time employees must be offered coverage by the same employers subject to the Automatic Enrollment provision and the Shared Responsibility for Employer provisions, we believe the automatic provision is unnecessary and should be eliminated.

Congressmen Richard Hudson and Robert Pittenger have introduced H.R. 1254, the Auto Enroll Repeal Act. Enactment of this measure would eliminate this requirement that could hurt both employees and employers.

NONDISCRIMINATION RULES NOW WILL APPLY TO FULLY-INSURED PLANS

The health care law applies the nondiscrimination rule that self-funded plans cannot offer benefits in favor of their highly-compensated individuals now to fully-insured plans. This rule is not in effect as the Treasury Department has put implementation on hold until further guidance has been issued in this complex area. Under the law, these rules apply to all insured plans, regardless of where they are offered by an applicable large employer or a small business. The restaurant and foodservice industry is watching this rule closely as it could impact what future plan offerings and compliance with the law.

Current group health plan participation rules often forces operators to carve out the group of employees who will participate in the plan. In our members' experience, these are almost always a group that would be considered in the top 25 percent based on compensation.

However, management carve-outs are not just for upper level executives who may receive richer benefit plans than the rest of the employees. In the restaurant and foodservice industry, management-only plans are sometimes the only option that operators have to provide health care coverage to those employees who want to buy it and pass participation requirements at the same time. As a result, these plans are quite common in the industry.

The rules the Treasury Department writes to apply non-discrimination testing to fully-insured plans could have an impact on our industry. Regardless of how they are written, restaurant and foodservice operators will need sufficient transition time to apply these rules as it could create upheaval for plans and employers alike.

APPLICABLE LARGE EMPLOYER REPORTING REQUIREMENTS

A key area of implementation that employers have received no guidance on are the employer reporting requirements: the required information reporting under Tax Code §6055 and §6056 from the Internal Revenue Service and the Treasury Department. These employer reporting requirements are a key link in the chain of the law's implementation. They represent a what could be a significant employer administrative burden.

Of particular concern is the flow of information and the timing of reporting employers must make to multiple levels and layers of government. Streamlining employer reporting will help ease employer administrative burden and simplify the process. The information provided by employers under Internal Revenue Code §6055 and §6056 is critical in this process and can be used by the Treasury Department to verify if an individual had an offer of affordable minimum essential coverage of minimum value from an applicable large employer. The information provided by employers must be compared by the Internal Revenue Service to verify eligibility determinations made by the Exchanges for premium tax credits or cost-sharing reductions. The information can also be used to determine employer penalty liability. The restaurant and foodservice industry, along with other employer groups, have advocated for a single, annual reporting process by employers to the Treasury Department each January 31st that would provide prospective general plan information and wage information for the affordability safe harbors, as well as retrospective reporting as required by Tax Code §6056 on individual full-time employees and their dependents.

We are anxious for guidance to be issued as employers cannot just flip a switch and produce the detailed information reports required by the statute. It will take time for employers to set up systems, or contract with vendors, to track and maintain the data needed to comply with the law. I recently spent time with our industry group of chief financial officers and tax directors and spoke with them about the detailed information they will have to track and report on all full-time employees and dependents. The reporting will include not only the employees who remain with the restaurant for the entire year, but even our seasonal staff and others who may only stay for a couple of months. Health plan benefit information as well as individualized payroll-sourced information may be required to be merged to produce the report needed under the law. Regardless, it is sure to be a large amount of data, and hard to know based just on the statute, how programmers or our vendors should set up internal systems now to be able to accurately track this information. Compliance with these requirements, once we see the final rule, will take time to plan, budget, and execute, even within the most sophisticated systems.

TRANSITION RELIEF

Until the January 2, 2013 *Federal Register* publication of the Treasury Department's Proposed Rule regarding the Shared Responsibility for Employers provision, employers did not have any firm rules on which they could plan and make business decisions. Up until this time, proposals and guidance had been issued with numerous opportunities for public comment, but nothing had the weight of regulation. This proposed rule, while not finalized, does provide employers assurances that the rules proposed can be relied upon until further rules are issued. Within this proposed rule, the Treasury Department provided targeted transition relief. While appreciated, we believe that further transition relief is critical.

The timeframe for compliance is short and getting shorter, and safe harbor protections for good-faith compliance by employers in the law's early phases is necessary. Employers are still missing essential pieces of guidance and regulation necessary to construct their systems, make plan design changes and communicate with their employees. Under the threat of tax penalties for not getting this exactly right the first time, some employers may opt-out of offering coverage

to their employees and choose to pay the penalties instead. This is not what the restaurant and foodservice industry wants, but it may be a result of employers having to make difficult decisions under very uncertain conditions. The process should not discourage employers and employees from participating in the new system and so a good-faith compliance standard is appropriate. As with implementation of any law this size, it will take some time for the hiccups in the processes to be worked out and employers and employees should be allowed adequate time to come into compliance and understand all their options.

CONCLUSION

Since enactment of the law, the National Restaurant Association has worked to constructively shape the implementing regulations of the health care law. Nevertheless, there are limits to what can be achieved through the regulatory process alone. Ultimately, the law cannot stand as it is today given the challenges restaurant and foodservice operators face in implementing it.

Broader transition relief is needed for employers and employees attempting to comply with the law in good-faith as time is short to make the significant changes required by the law and understand options. Key definitions in the law must be changed: The law should more accurately reflect the general business practice of 40 hours a week as full-time employment. The applicable large employer determination must be more workable. The duplicative automatic enrollment provision should be eliminated as it could unnecessarily confuse and financially harm employees.

The National Restaurant Association looks forward to working with this subcommittee and all of Congress on these and other important issues to improve health care for our employees. We continue our active participation in the regulatory process to ensure the implementing rules consider our industry workforce's unique characteristics.

Thank you again for this opportunity to testify today regarding the challenges restaurant and foodservice operators face as they implement the law. Uncertainty and fear of the unknown is prevalent but the National Restaurant Association is working to provide our industry clear, accurate information to understand the requirements of the law and regulations.

Mr. MURPHY. Mr. Trautwein, you are recognized for 5 minutes.

TESTIMONY OF E. NEIL TRAUTWEIN

Mr. TRAUTWEIN. Thank you, Chairman Murphy, Ranking Member DeGette and honored members of the committee. I appreciate the opportunity to appear before you today to discuss the challenges of ACA implementation and how we in the business community, particularly retailers, are reacting to those challenges.

My name is Neil Trautwein, and I'm a vice president with the National Retail Federation. NRF is the voice of the retail industry worldwide, everybody from the very largest to the very smallest, and everybody in between. Our membership also includes chain restaurants and online retailers.

We figure our members support everybody from stores to supply chain, one in four jobs in the American economy today. So it's particularly important that the transition moves smoothly.

We continue to have concerns about the ACA, but we're also working very hard to help educate our members on what's coming, when, where and how. We've worked hard and productively with the administration to help address and smooth wherever possible particular provisions in ACA implementation. Yet we still remain worried by fast-approaching deadlines for implementation. Our Nation can't afford to have the ACA stumble out of the gates as it makes its debut.

We've been closely engaged in the regulatory process ever since the ACA was signed into law, probably after the—before the ink dried on it. We've met numerous times with the regulators, and we've submitted numerous written comments.

For retails, our part-time and variable-hour employees are a particular challenge for us. Some may become full-time and move on to long-term careers in retail. Others value the great flexibility that part-time work provides. Many of the most useful regulatory approaches that have been developed to deal with these problems, such as the look-back/stability period, in turn breed additional complexity and are a challenge to implement.

One very significant challenge is the 30-hour rule for full-time coverage. As my colleagues have said, most of us have long assumed that 40 hours, consistent with Federal overtime rules, is a normal full-time workweek. A 30-hour definition forces retail employers to manage to a new standard. The requirement to provide an equal period of stable coverage to the look-back adds to the stakes, complexity and anxiety employers have over this provision, who will be forced to fine-tune our workforce and adjust the balance between full-time and part-time in order to meet the new realities.

This is time, effort and money spent on compliance rather than on retail or chain restaurant sales.

For variable-hour employees who don't reach that standard, as my colleagues have said, it means less money in their pockets.

We strongly support the efforts that have been commented on to redefine full-time work at 40 hours as is traditional. We respectfully ask that this and other steps to address the shortcomings of the ACA be addressed before it becomes fully effective. Later on

may be too late to really make a difference in the amount of change coming.

We respectfully don't agree with those who either argue full implementation or full repeal are the only options. We think we need to move ahead on specific changes. We have responsibilities in the here and now, and our members have responsibilities to their employees, their stores, shareholders and communities. We'll bend every effort we can to mitigate the impact of the ACA on the retail and chain restaurant industries.

We also urge Congress to consider an outright delay in the provisions in order to allow businesses to spool up and create the systems they will need to manage these requirements. Alternatively, Congress could consider a soft rollout and more compliance-oriented in order to help them move through this.

Again, I greatly appreciate the opportunity to appear before you today. We urge you to be wary of the pace of ACA implementation. This could have the effect of freezing employers and forcing them away from providing coverage. At a minimum it's going to pressure our ability to continue to provide coverage. We hope to work with you to mitigate those harmful effects.

Thank you.

Mr. MURPHY. Thank you.

[The prepared statement of Mr. Trautwein follows:]



National Retail Federation Testimony

Hearing on

Challenges Facing America's Businesses Under the
Patient Protection and Affordable Care Act

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

United States House of Representatives

June 26, 2013

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Chairman Murphy, Ranking Member DeGette and honored members of the Committee, good morning. I thank you for the opportunity to appear before you today and to share our views regarding the Patient Protection and Affordable Care Act (also known as the ACA) and the challenges facing American businesses as they prepare to implement changes pursuant to the ACA. My name is Neil Trautwein and I am a vice president and the Employee Benefits Policy Counsel with the National Retail Federation (NRF).

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's *This is Retail* campaign highlights the industry's opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation. www.nrf.com

NRF continues to have concerns about the ACA, though we have worked hard to help educate our members on their future obligations and opportunities. We have also worked hard with the Administration to smooth implementation wherever possible. We still remain greatly worried by the fast-approaching deadlines for key issues affecting coverage in every market, especially in light of the torrent of regulations released to date from the Administration. Our nation – particularly employers – cannot afford for the ACA to stumble out of the starting gate. We fear that as time diminishes between now and January 2014, a cascade of additional last minute regulations will create added confusion and thus could encourage more employers to back out of coverage.

NRF and ACA Implementation

NRF has been closely engaged in the regulatory process ever since the ACA was signed into law. We have met numerous times with regulators and have submitted written comments on key concerns. We have assisted in submitting joint coalition comments as well. We have not been litigants against the ACA and also did not submit amicus comments in the ACA case before the Supreme Court.

We credit the regulatory agencies¹ for working hard and cooperatively to implement the complex ACA, a difficult task by any measure. The Administration early on focused on our industries because of the variable nature of retail and chain restaurant employment. Many retail and restaurant employees do not fit neatly into full and part-time categories and compliance with the unprecedented levels of change under the ACA will be particularly challenging. Our members are not enjoying the challenge of compliance.

Part-time and variable hour employees are a particular challenge. This segment of the retail and chain restaurant workforce tends to be more mobile and may work for multiple establishments. Some may become full-time and move on to long-term careers in retail; others value the greater flexibility of part-time work. Some of our most productive employees are part-time and would not have it any other way.

¹ Departments of Health and Human Services, Labor and Treasury.

Retail and restaurant jobs are not just found behind cash registers; our industries present a wide array of career opportunities. Rewarding professional careers can be found in retail in such areas as design, loss prevention, real estate and human resources, among many others. Retail and chain restaurant human resources officials are quite understandably busy with ACA implementation these days, but they are far from alone in their focus. In the past two weeks, I have also spoken to different member groups of chief financial officers and corporate general counsel. The myriad challenges of ACA implementation are foremost in their minds.

Many of the regulatory approaches developed in response to the challenges of the retail and chain restaurant workforce – such as the “look-back/stability period” – have in turn bred additional complexity. One truly significant challenge is ACA’s definition of “full-time” for coverage eligibility at 30 hours per week on average.

Most of us have long assumed full-time mark to be 40 hours, consistent with federal overtime rules. A 30-hour definition forces retail employers to manage to a new standard: whether or not an employee is above or below the 30-hour level on average during the look-back period. The requirement to provide a consequently newly eligible employee stable coverage for a period of time equal to the look-back period, regardless of the employee’s present eligibility, adds to the stakes and retailer concerns.

Retail and chain restaurants will be forced to fine tune the balance between full and part-time, focusing on employee status on a real-time basis. This is time, effort and money spent on compliance rather than retail or chain restaurant sales. For variable hour employees who do not meet the new full-time standard, this will mean less income in their pockets and consequently less likelihood of obtaining coverage on their own.

NRF strongly supports efforts to redefine full-time coverage eligibility at 40 hours per week, hopefully with flexibility for employers to define a lower standard, if they so desire. We respectfully urge that this and other steps to help soften the impact on employers be taken before the ACA is fully implemented. Later may be too late.

We have little patience for those who argue that either full implementation of the ACA or full repeal of the law are the only alternative options. This is not an academic or political question to us. We have responsibilities here and now to our employees, stores, shareholders and communities. We will bend every effort to help mitigate the adverse impact of the ACA on the retail and chain restaurant industries. Our members would not long remain our members were we to do otherwise.

Affordable Care Act and Employers

Change is coming to employer-sponsored health plans at a torrential pace. NRF has worked hard to help our members understand what their options and future responsibilities will be through various webinars, presentations and web-based materials. I spend a good bit of time speaking to diverse retail and other employer audiences as well.

The learning curve among retailers and chain restaurants is steep and still growing: in effect, compliance is a higher degree of difficulty for our members because of our unique workforce. Key regulatory questions are as of yet unanswered, even at this very late date.

We continue to urge Congress and the Administration to consider an outright delay of up to one year in implementation of the employer requirements to help facilitate a smoother transition and less disruption of existing coverage. Alternatively, you might consider a soft roll out with emphasis on compliance assistance rather than regulatory adherence and penalty enforcement. Any relief – particularly relief that supports employer-based coverage – will be welcome.

NRF, Allied Coalitions and the Affordable Care Act

NRF has actively encouraged the fair and effective implementation of the ACA (as it is current law) despite our continued opposition to the law itself. We see no inconsistency between the two positions; we owe it to our members to help make the law as workable as possible. We stand ready to assist any effort to improve upon implementation of the ACA.

We are engaged in a number of allied coalition efforts on ACA implementation. For example, NRF chairs the Essential Health Benefits Coalition² (EHBC) and participates in the leadership of the Coalition for Choice and Competition³ (CCC) and Employers for Flexibility in Health Care (EFHC). The number of coalitions addressing aspects of ACA implementation has grown so much as to require a degree of coordination between them. NRF established and chairs the Employers' Health Care Clearinghouse, which meets on a monthly basis to do just that.

These coalitions are deeply substantive and deal with specific ACA implementation concerns. They also have served a useful role in developing and coordinating views and comments among allied employer interests.

Conclusion

Again, NRF greatly appreciates the opportunity to appear before you today. Given the complexity of requirements under the ACA, we urge this Committee and Congress to consider delaying full implementation. We urge you to be on guard against the pace of ACA implementation and the consequent potential to drive employers away from providing coverage.

Retailers and other employers can and should be powerful advocates for positive change. But, in most cases, health care and health benefits are not our stock in trade or business. It is in our best interest to keep our employees healthy and at work, but not at any cost. The ACA will – at a minimum – pressure our ability to continue to provide coverage and help drive positive change.

We hope to work with you to help mitigate these effects. NRF stands ready to help the Administration and Congress make the ACA more workable, so long as it remains the law of this land.

² www.ehbcoalition.org

³ www.choiceandcompetitioncoalition.org

Mr. MURPHY. I thank all the panelists. I'll start off by asking questions for 5 minutes.

Just for the record, Mr. Daley, I appreciate your testimony. You made reference to an article that actually a number of Members have been talking about, and that is something from Health Affairs, I think May of this year, which was doing some analysis of healthcare costs and them declining and flattening out. I call attention to a couple of the articles.

Kaiser Family Foundation did a study, and it said that that some of the leveling off of health care costs actually began in 2002. The New England Journal of Medicine article from last summer said that the leveling off has been going on since 2005. And the Health Affairs article made references to a couple of parts. One is the job loss and economy. That's a fraction of the leveling off; am I correct? That's a fraction, but not the whole explanation for leveling off of healthcare costs and some declines?

Mr. DALEY. Actually—I'm uncertain I can be heard, but actually the article pointed to the recession as a considerable contributor to leveling off. However, not only that article, but another, both found that there were structural changes in the healthcare system itself long term, and that would, in fact, reduce the growth of costs.

Mr. MURPHY. Yes. I just want to go on the record as saying those—what they refer to in that—articles in Health Affairs was the out-of-pocket costs for employees have gone up, and then it says it has shifted from the employers to the employees. And that's been a significant part of the impact as well, as well as I think the article also referenced a reduction of rate of new technology.

I just wanted to make sure we had that fact on the record for Members to note that these articles are not referencing the Affordable Care Act as making this more affordable. They're saying the structural things you said. No, we don't have big technologies introduced, the economy has been down, and employers are basically shifting costs to employees. Some employees are seeking the health care less.

But let me go on to a couple other things for Ms. Mahoney, Ms. Neblett and Mr. Trautwein. What do you hear from business owners about the burden of complying with the healthcare law in terms of the time requirements and their costs of just compliance?

Ms. Mahoney, what do you hear there?

Ms. MAHONEY. I think some are savvy, and they say, wow, I'm really overwhelmed with what all I'm going to have to do to comply. I'm talking to my broker, I'm looking at what the reporting limits are going to be, it's a lot. Others are, I think, just really shell-shocked.

I mean, it's really remarkable when we travel the country, I know my colleagues do as well, to speak with small businesses that really have no understanding of the kind of basic function of the law and what all it will require, and sort of their brilliant ideas about how to circumvent it, whether it's letting their spouse or their child take a bigger portion of ownership. And we all appreciate that there are laws of common control and aggregation that are going to be very confusing to kind of navigate with regard to those possible solutions.

So I think it depends on what segment of the employer community you're talking about, what segment of the country, not only just size, but industry.

Mr. MURPHY. Let me move on.

Ms. Neblett, what are you hearing?

Ms. NEBLETT. Yes. I think our operators are small businesses, midsized businesses, large businesses, and so we have a range of operators that we're talking to. And some have H.R. departments, and have the benefit of benefit consultants and attorneys and others to help them.

We're talking to a lot of those smaller operators, those right on the bubble of 50 FTEs, when we go out and speak a lot, those just over that threshold, and the complexity is, one, to get over and then dive into the details, because the details really do matter in this.

Mr. MURPHY. Mr. Trautwein, I only have a minute left.

Mr. TRAUTWEIN. I share the same experience. I've been very surprised by the—by how much of an all-hands effort it is for larger companies, everybody from H.R., who you would expect, but also finance, legal, information technology and on down the line. But when you go down that chain, it gets to be a lot more frustration, and these are the same people we're trying to help educate.

Mr. MURPHY. Let me ask this: My assumption is you're going around the country trying to explain the healthcare bill, and none of you are undermining the healthcare bill and saying, here is how you get away from it; am I correct?

All the panelists say yes.

So you're out actually teaching the people how to comply with the bill; is that correct?

Ms. NEBLETT. That's correct.

Ms. MAHONEY. Yes.

Mr. MURPHY. Now, given that, do they have enough information on how to comply, and is it working? Quickly.

Ms. MAHONEY. No. And I think my biggest concern is that the effort to educate will turn more into a campaign style of selling. I know this is a very controversial issue, but—or law, but to sell, for example, preventive services as free care, I think, is—

Mr. MURPHY. So it's an issue that it just has to do with how this is sold or how this is pitched, or fundamental in the law itself there are flaws that are difficult for them to comply with? Real quick.

Mr. TRAUTWEIN. I think the Achilles heel of the law is its complexity, and we heard differences on applicable size and number of hours on the first panel. It's a tough law to understand.

Mr. MURPHY. Thank you.

Ms. NEBLETT. I think it's complex, but there are also some very specific challenges, especially from my industry and industries like mine, that it makes it particularly difficult.

Mr. MURPHY. We appreciate getting the details from you then.

I yield now to Ms. DeGette for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman.

I want to start out by thanking the three people over here, Ms. Mahoney, Ms. Neblett and Mr. Trautwein, because even though all three of your organizations oppose this legislation, you are all

working assiduously to try to implement it in an appropriate way for your members, and I really appreciate that.

The other thing I would wish is that my colleagues on the other side of the aisle, I've been saying this for a long time, let's put bygones be bygones. This bill is here now. We've had 37 votes to repeal it, and it's not going away. So what I think we should do, and I know the chairman agrees with me on this, I think we should be really working on ways to make it work better for small businesses and for everybody, because the ultimate goal is to give high-quality health insurance to all Americans.

And we heard this last panel of small business people. Some of them I know don't agree with me. They all said they want to offer insurance to their employees, and I would think that would be true of all of your members, that they all want to be able to do that.

Mr. Daley, is that correct? Yes or no.

Mr. DALEY. Ours, absolutely.

Ms. DEGETTE. Ms. Mahoney?

Ms. MAHONEY. Yes.

Ms. DEGETTE. Ms. Neblett?

Ms. NEBLETT. Yes.

Ms. DEGETTE. And Mr. Trautwein?

Mr. TRAUTWEIN. Yes.

Ms. DEGETTE. And all of you are bringing suggestions to the table that I think we need to look at, because I don't—we're still trying to revise Medicare, and it was passed in 1964. So definitely we should be working on that. And like your 40-hour suggestion that you're making and other suggestions, I think we should sit down and talk about that instead of sitting here and quoting things that were said when the bill was passed on both sides of the aisle.

And, Ms. Mahoney, you're nodding your head, so I assume you would agree with that.

Ms. MAHONEY. I would agree. I think one point I would make is the need for flexibility.

Ms. DEGETTE. Yes. And this kind of goes to the other point you made, which I like, which is—and this goes on both sides of the coin, too—is we should be educating people, not trying to sell this. And that's true. You know, we shouldn't be having commercials saying, this is great for everybody, and it's free. And we shouldn't be having commercials saying, this is terrible, and don't do it. And I agree with that.

And the other thing I agree with that all four of you said is as I go in my district and around Colorado, there is a lot of confusion about what the Affordable Care Act is. So I welcome your—I got the names of your Web sites, and I welcome your participation and your partnership in trying to explain to people, small businesses in particular, what this does. And there is so much misinformation out there.

I do want to ask a couple of questions.

Mr. Daley, I think I already asked this, but your sense would be that small businesses really do want to offer their employees insurance; is that correct?

Mr. DALEY. I think that's a surveyed and universal almost, they want to.

Ms. DEGETTE. They want to, but yet over the last number of years, small businesses have been really the hardest hit by great increases in insurance prices and also less ability to get affordable plans for their employees; is that right?

Mr. DALEY. Absolutely. The markets have been adversely selected, there is tremendous cost, and it's very difficult—

Ms. DEGETTE. And part of what happened for small employers, this was in your testimony, they had to pay 18 percent more than large insurers for complete coverage; is that right?

Mr. DALEY. That is correct.

Ms. DEGETTE. And a lot of those plans, people were thrown out if they had preexisting conditions, or if they hit the caps, or issues like that; isn't that correct?

Mr. DALEY. That's why many of them don't buy, because the quality of the insurance isn't very good.

Ms. DEGETTE. You know, I had mentioned before I did this this little town hall meeting with some small businesses in Denver last Friday, and there was a small company, and the woman said, my husband and I own this company, and we have a child with severe handicaps. She said, it doesn't pay for my employees to go into my insurance plan because it would cost so much for them.

I'm sure that happens a lot with small business; is that right?

Mr. DALEY. We just had a personnel person had a stroke, and everybody's premium went up \$1,000.

Ms. DEGETTE. Everybody's premium went up.

Now, one last thing, and I hope all of you know this, several people mentioned we don't want a one-size-fits-all, and I agree with that. But under the Affordable Care Act, just within the exchanges we have several different levels of plans, and we also have catastrophic plans for younger workers that would help with Ms. Neblett's employees. So, in fact, we have a variety of options, it's not that everybody has to have one plan; is that right?

Mr. DALEY. That's correct.

Ms. DEGETTE. But what we do is we make it so there's a minimum level of coverage so if somebody gets sick, they actually have insurance that they can use; is that right?

Mr. DALEY. I think you need to be clear that there are standards pegged to employer responsibility, that there are certain levels of offering that need to be made. There are different offerings in the exchanges that are available.

Ms. DEGETTE. Thank you very much. And thanks again to all of you for coming. I look forward to working with you as we sort this all out.

Mr. MURPHY. I now recognize the gentleman from Texas Mr. Olson 5 minutes.

Mr. OLSON. I thank the chair.

And welcome to the second panel. A special thanks to you, Ms. Mahoney, for the help the local Chambers have done back home in Texas 22. They've given me access to your member organizations, and I go there and listen to them. I appreciate that. And I get the challenges they're facing in Texas 22.

And many of these businesses are restaurants. So I need to thank you, Ms. Neblett, for all the hard work you've done at the National Restaurant Association.

As you know, Texans love to eat out. And when I want to get a pulse on an issue, I go get some barbecue, some Tex-Mex, go to a burger joint, a steakhouse, Chinese food place, Indian food place and get a full belly and a full mind. So thank you, thank you, thank you.

My questions will focus on Obamacare's prosperity-threatening definition of 30 hours of work as a full-time workweek.

Almost a year ago, I toured a steakhouse in Pearland, Texas. It was heartbreaking. Owners painfully telling their employees in the future they'd be limited to 30 hours—less than 30 hours, 29 hours, the 29ers, per week. Many of these kids—and they were kids working part time, full time, 40 hours a week and going to school. They were single moms raising a son or a daughter, who did not have the flexibility to find another job. They need to have the job they had for 40 or more hours.

And my questions are for all four of you; first with you, Ms. Neblett. Since this train wreck is coming, it sounds like you really have no information to advise your membership. If you do have information, please tell me what you're advising. If not, what do we need to give you so your members can make informed decisions about the future?

Ms. NEBLETT. Thank you.

We help explain and lay out the law's requirements for our members, explain the regulations. And, as Neil mentioned, the look-back/stability period is very helpful, although still complex to implement for those variable-hour and seasonal employees when a large employer is offering coverage.

But I think we need a one-stop place for information about the law. I think that would be very helpful from the Federal Government's perspective. And I think we really need to take a close look at this definition, because it is having potential impacts on the employees in terms of hours and wages.

Mr. OLSON. Mr. Trautwein?

Mr. TRAUTWEIN. We're engaging in similar efforts talking about different options. If you look at the law, there's a neon sign saying that it's cheaper to pay a penalty than to provide coverage if you're in that applicable large-employer size. But there are other options, and the last panel talked about some of the newer things, and strategies of satisfying the A penalty, but not the B penalty, and all this is contrary and foreign to the process of running a retail or chain restaurant store. And that's part of the problem and part of the frustration in the employer community.

Mr. OLSON. Mr. Daley.

Mr. DALEY. I need to point out that the Towers Watson, which is a huge H.R. firm across the river in Virginia, did a survey of employers about the 30 hours and found that almost none of them plan to change the way they treat their employees. There are reasons for that. It's difficult administratively to mess around with more employees in order to bring your workforce down under that 30-hour lid. It offends your employees if you make them 29 rather than when they were 35. And again, keep in mind, as I said in my testimony, the category that this affects is around 1 percent of the entire U.S. workforce.

Mr. OLSON. Yes, sir. One further comment. I have a little bit of time here. Some of my colleagues on the other side of the aisle have been saying we're just after this because it's politics. It's not politics. This 30-hour provision needs to be fixed. It's a big problem in your businesses, and we're trying to fix it, and that's why we're having this hearing.

And one other thing we talked about, Mr. Trautwein. You brought up talking about so-called large businesses. Every business I've talked to back home has more than 50 employees, every single one that provides health care now likes that, they get better employees, they keep them longer, and they want to give them health care. But they have to compete, and one of the competitors drops out and goes in the exchanges, they will do it. Everyone has told me that. So they won't be able to keep their health care. That was a false promise.

I yield back. Thank you.

Mr. MURPHY. Thank you.

Mr. Long is recognized for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman, and thank you to the panel taking your time to be here today. I know our first panel ran over a little longer than what we all anticipated, but thank you all for being patient and being here.

And as we have heard here today, the impact of this legislation known as the Affordable Care Act will have a major and often harmful impact on businesses small and large across our Nation.

One particular company based out of my district, which is a Fortune 500 company—this is a Fortune 500 company that started with one little store, one dream in a guy's mind that he could start a business back in the 1960s. So he opened his first store. Fortune 500 company. Now they employ 56,000 employees in retail stores across the United States.

And they have a desire to continue offering affordable healthcare plans like they've been offering for all these years to their employees, to their workforce. Unfortunately, after making the calculations, the total impact of the law on its benefit package, the company estimates that full implementation of the Affordable Care Act will ultimately increase their annual net cost 120 percent, or \$100 million. And what the CEO has told me from his lips to my ears is that it's going to be worse coverage, not as good a coverage as what they have now, and it's going to cost 120 percent more.

In order to address these dramatic new costs, the company has already announced to its part-time employees they will no longer be offered the coverage that they currently receive. Additionally, they're exploring ways to reduce their number of full-time employees by moving them to part-time work, the 29ers as we call them today.

Mr. Trautwein, I have a question for you that I would like to direct you. Are your member businesses similar to this company experiencing the same difficult decisions?

Mr. TRAUTWEIN. The short answer is they vary greatly in terms of their approach, but it's at least part of the decisionmaking process and the balance, and fine tuning that balance between full time and part time. And, again, they would much rather be making

sales or doing other business-related activities, and they don't want to be thinking about these things.

Mr. LONG. Do you find it pretty widespread across the country—

Mr. TRAUTWEIN. I think it is.

Mr. LONG [continuing]. With the companies?

And I just want to say for the record—is the ranking member gone?

Mr. MURPHY. She is here in absentia.

Mr. LONG. OK. I was hoping we had at least one person on the other side to hear this, but there's this constant—and my friend Jan Schakowsky often says she hears this constant drumbeat from our side of the aisle about repeal and replace Obamacare.

There are good things about Obamacare. When I ran the first time for Congress, it had just passed. It was all out there in the media. Everyone knew health care needed to be tackled, needed to be handled, needed to be changed. And there are good things about Obamacare. I'm willing to admit that. There's the allowing kids to stay on their parents' plan until they're 26, preexisting conditions. Insurance providers used to be risk takers, and over the years they kind of became risk averters. So there are good things, and I'm willing to admit that.

I would hope that the other side of the aisle, when we're trying to work through these things to help companies, help individuals to get good, affordable health care and keep the insurance that they have, would come across and admit there are some bad things about the Affordable Care Act so we can all get together, instead of we get in these meeting after meeting, hearing after hearing where they sing the praises that everything is coming up roses on Obamacare. And it's simply not true.

Now, not everything is disastrous about Obamacare. That's not true either. There are some good parts of it. But I would wish that we could work together, and I wish I had someone to talk to on the other side of the aisle, but apparently they have other things to do, bigger fish to fry, I guess I could say.

But anyway that is just kind of my statement going forward trying to resolve these problems, because there are good and bad things about it, and we need to come to that realization instead of just coming in on one side saying everything's coming up roses, and the other side saying that everything's going to heck in a handbasket.

So, again, I just want to thank you all for being here today, and I yield back.

Mr. MURPHY. The gentleman yields back.

I now go to Mr. Griffith from Virginia for 5 minutes.

Mr. GRIFFITH. Thank you all very much for being here today. And I saw most of you were here listening to the testimony of the previous panel, and I do appreciate that.

Ms. Neblett, one of the concerns that I have and have had with Obamacare is that a number of the restaurants in my area, particularly the fast-food restaurants, indicated when I was first elected—and I was elected the same time Mr. Long was, 2 years and a piece ago now—they indicated that if there weren't some relief from this act, that their marginal stores would have to close down.

And I have noticed over the course of the last 2-and-a-piece years that some of these restaurants have, in fact, closed down in my district.

Now, the economy not being good, and the fact that apparently our position in this country in my district, which is a coal district, which is adverse to coal, at least according to the President, that has not helped matters any. But have you all seen a trend where some of the more marginal stores are closing down because they don't want to have to deal with Obamacare in the first place?

Ms. NEBLETT. I think it's very hard to pinpoint exactly why, as you said, the economy has been slow, and businesses that are on the margin have—will always tend to go out of business. But there's no doubt that this is a complex law. It does add a lot of time in terms of trying to figure out what you need to do, and costs in terms of either the penalties or offering coverage is a big factor, and these are all things that operators are trying to figure out and deal with.

Mr. GRIFFITH. And here is—one of the concerns that I have is that I believe this bill is all built with pieces interconnecting. And so one of the difficulties I think we have in trying to work out some interesting compromises—and we've talked about the 29ers, and a lot of folks are saying, well, let's just move it back up to where it was at 40 hours a week. The problem is I believe that—and I wasn't here when it was passed, but I believe that the reason that they lowered it down to the 29 was they felt they'd get more people actually buying in. They had the Medicaid expansion component. Then they had the component of we're going to lower that, you have to cover folks down if they're working the 30 hours, because they needed to pick up those employees between 30 and 40 hours to make the numbers work on how many people were going to be pulled in the system, how many people were going to be insured, and, of course, the bigger the pool, the less expensive the insurance.

So my fear is we raised that number up to 40, we solved that problem, but then we've made the overall cost of Obamacare greater because we have not—we don't have that group invested in doing—that 29-to-30 group invested in being a part of the program.

So I have some real concerns there, and I'm wondering if any of your members and, Ms. Mahoney and Ms. Neblett particularly, if any of your members have expressed those concerns as well.

Ms. MAHONEY. Our members haven't expressed that concern. I think for them their focus is on how their businesses are run—

Mr. GRIFFITH. They're drowning, and they're looking for anything they can grab onto.

Ms. MAHONEY. Well, how their businesses have run historically, how they can continue to keep their businesses going in a way that's best for their employees, and this is a big wrench in that piece. I don't think they're aware of kind of the economic matrix that may have gone on to the funding of it and who gets in and who gets out. I think they're just working—

Mr. GRIFFITH. And I think that's where it's a problem for us to come in and try to tweak it here or tweak it there, and everybody keeps saying, well, why don't you all just try to fix it? I believe that the way it was constructed is such that if you pull out any major

piece, the whole house of cards collapses. And it may have already happened with the fact that there's not the forced Medicaid expansion, which was a part of the program to make sure that everybody, you know, was going to be brought into the system one way or the other.

And so I have some real concerns with trying to do piecemeal fixes when you pull a piece here, and it unravels something else over here. And I think if we try to fix it, we're going to spend years trying to repair what I believe is a structurally flawed from the very beginning concept that will not work. And I do appreciate that you all are just looking for solutions because you have lots of businesses that are in trouble and that are going to have to lay off people.

And I would make this one last point. I've got about 30 seconds left. While the people who were only working 29 hours may only be 1 percent of the workforce now, I suspect that it's going to be a lot larger come this time next year, because when you have the entire Commonwealth of Virginia saying we're not—the State of Virginia says we're not going to have part-time workers at any more than 29 hours, when you look at the counties in my district that are looking at the same kind of policy, when you look at the grocery stores and the fast-food places and the other businesses across the country that are looking at sending people down to 29 because of the huge cost savings if they only work 29 hours, I think you're going to see that that's a lot more than 1 percent, Mr. Daley.

And I yield back.

Mr. LONG. Will the gentleman yield just a second?

Mr. GRIFFITH. Well, I'm out of time. I don't have a second to yield, but by unanimous consent I'd be happy to—

Ms. DEGETTE. No. I object.

Mr. MURPHY. We're out of time at this point.

Ms. DEGETTE. Oh, if you want to apologize that's OK. That's fine.

Mr. MURPHY. Do you want to say something, Mr. Long?

Mr. LONG. Pardon?

Mr. MURPHY. Did you have a quick comment to make, Mr. Long?

Mr. LONG. Yes, if I could.

When I prepared my line of questioning, the ranking member was in the room, and I'm sure if you watch the video, you will see I turned around to speak to her, and she was not there. And might I offer her my apology if my comments came off as being smart alec or whatever. They did not intend to be. I did not intend to turn and see until I turned around, and I was surprised you weren't there.

And I really think that we need to work together as Republicans and Democrats. And like I said in my comments, and I understand you were with your art student, which I'm going to meet mine after a while, which is a great program, and I apologize to you. I don't know if you'll accept it or not, but it's a harsh call—

Ms. DEGETTE. I'm always happy to accept an apology. I appreciate it. And what I'm trying to do here is the same thing you're trying to do, which is to solve a problem. And we can't do it if we're going to, A, demagogue this issue, or, B, attacking each other.

Mr. LONG. Right. And that was my whole point not for it to end like it did when I was trying to be helpful, and I apologize.

Ms. DEGETTE. And I'm happy that you recognize that, and I accept your apology.

Mr. MURPHY. Thank you. I appreciate you all for tuning into Dr. Murphy's group therapy session. Stay tuned tomorrow for more good comments on how we can work together.

Ms. DEGETTE. Mr. Chairman, I just have one final comment, which is very brief and aside from the fact that we do hope we can work together on all of these issues.

Ms. Neblett said that small businesses need one resource to go to to figure out answers to the questions and to bust some of these myths. I would suggest that you put on your Web site healthcare.gov. That is the central Web site that the HHS has put up. And then we'll continue to work with you on trying to get this message out better all around the country.

Thank you, Mr. Chairman.

Mr. MURPHY. Thank you.

I thank all the panelists here today. I thank the Members. And I ask unanimous consent that the written opening statements of other Members be introduced in the record. So without objection, the documents will be entered in the record.

And, again, I want to thank all of the panelists from both panels here and all the Members who participated in today's hearing. I remind Members they have 10 business days to submit questions for the record, and I ask that all the witnesses also agree to respond promptly to any of the questions.

And with that, I adjourn this hearing. Thank you.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
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Minority (202) 225-3641

July 12, 2013

Mr. Michael Brey
Owner
Hobby Works
354 Domer Avenue
Laurel, MD 20707

Dear Mr. Brey:

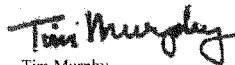
Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, June 26, 2013, to testify at the hearing entitled "Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act."

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment

Attachment – Additional Questions for the Record**The Honorable Time Murphy**

- 1. How many employees do you have?**
 - a. Hobby Works has 50 employees.

- 2. What kind of insurance do you currently offer? Will that insurance be available for your employees in 2014?**
 - a. We currently offer three plans through CareFirst:
 - i. BLUE CHOICE \$30/40, \$1,000 IP Copay RX: \$100 Ded. \$15/25/50
 - ii. CAREFIRST BLUE CHOICE HSA \$1,200 Ded., \$20/\$30 Copay, \$250 IP Copay RX: Combined Ded. with Medical \$0/25/45
 - iii. CAREFIRST HMO HSA CORE \$2,700 Ded. \$30 Copay \$1,000 IP Copay 100% RX: Combined Ded. with Medical 75%"

- 3. What percentage of that insurance do you cover the cost for? Do you cover the whole family?**
 - a. We offer a flat \$ contribution for Single and Family, so the percentage varies slightly. As costs have risen our contribution percentage has declined (from nearly 100%) over time. Currently the contribution is about 36%.
 - b. I am not sure I understand exactly what you mean by the "Do you cover the whole family?" question. We do offer Spouse, Child, and Family coverages. Family plans have a higher \$ contribution from the company to help offset the significantly higher plan cost.

- 4. What is the average salary/wage of your employees?**
 - a. Managers average \$44,019/yr in base salary, **not including** the company's contribution to health insurance.
 - b. Hourly rates vary from \$7.25/hr to \$14.00/hr. The weighted average for hourly Associates is \$9.18/hr, **not including** the company's contribution to health insurance.

- 5. You wrote in your testimony that 96 percent of businesses have fewer than 50 employees, and of those over 96 percent already offer insurance. What is the source of this data?**
 - a. There are several sources for this data, I used data available from the White House, the SBA and Kaiser Foundation. Here are some links to on-line sources for that information:
 - i. http://www.whitehouse.gov/files/documents/health_reform_for_small_businesses.pdf
 - ii. http://archive.sba.gov/advo/research/us88_07.pdf

- 6. Do you have plans to expand above 50 employees?**
 - a. Yes. We plan to open two additional locations in the next 18 months, which would put us well over 50 employees.

- 7. How many of your employees currently purchase the insurance you offer?
How many do not purchase it?**
 - a. Ten (10) eligible Associates purchase the insurance we offer, two (2) do not.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
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Minority (202) 225-3641

July 12, 2013

Mr. Jeff Kelly
CEO
Hamill Manufacturing Company
500 Pleasant Valley Road
Trafford, PA 15085

Dear Mr. Kelly:

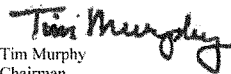
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Attachment

Mr. Jeff Kelly
CEO
Hamill Manufacturing Company

**Response to Questions for the Record from June 26, 2013 Hearing
“Challenges Facing America’s Businesses Under the Patient Protection and
Affordable Care Act.”**

1. What changes do you believe would be the most helpful so your business can continue to hire workers and expand?

On the question of what recommendations I would have to reign in the cost of healthcare and health insurance:

1. Defund Obamacare. The uncertainty that has been created in the marketplace about what the law will truly cost is driving up premiums to astronomical levels in some areas of the country.
2. Make a serious attempt to reduce the amount of defensive medicine that is being practiced by enacting tort reform that would put caps on malpractice cases. For trial lawyers, our health care system has become a goldmine.
3. Allow companies and associations to shop for insurance coverage across state lines. We need more competition in the market.
4. Break up the health provider oligopolies that are forming. For example in SWPa, UPMC owns most of the hospitals and doctors' practices which has greatly reduced competition.
5. Challenge the non-profit status of many big health care providers. Again using UPMC as an example, look at the money they spend on marketing, executive compensation among other non-essential expenditures. I'm guessing that 10-15% of healthcare costs could be wrung out of their expenditures in those two areas alone.
6. If Obamacare is not defunded, then insure that Congress (including the staff) and all federal employees have to participate in whatever programs the law mandates. This alone would cause the law to be abrogated very quickly.

2. You testified that since 2010 your health care premiums have risen 46 percent—have you had any discussions with your insurance broker or agent about why this is the case?

On the matter of our 46% increase in costs and 42% increase in premiums, this was the insurance company's explanation:

1. In 2012 our claims exceeded the premiums paid.

My counter argument is that was not the case in other years we were insured by the carrier. When we had a "good" year in terms of claims, we never saw a reduction in the premium offered.

2. The insurer looked at emerging claims and made a subjective judgment about what the premium level should be.

Those claims may never have reached the level of expense expected when they were actually paid. For example we had a dependent of an employee go through a stem cell transplant to fight cancer (she subsequently died). The bill was actually paid by Medicare. I believe the insurance company counted that as an expected claim when formulating the premiums to be charged to Hamill in the subsequent year.

3. The insurance company explained that there was a large inflation factor placed on the expected claims for the following year

I expect that based on the health care cost curves that is pretty standard practice.

FRED UPTON, MICHIGAN
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Minority (202) 225-3641

July 12, 2013

Mr. Hugh Morrow, Jr.
President
Ruby Falls, LLC
1720 South Scenic Highway
Chattanooga, TN 37409

Dear Mr. Morrow:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, June 26, 2013, to testify at the hearing entitled "Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment

Response to Questions for the Record**Hugh Morrow, Jr., President, Ruby Falls, LLC****To: The Honorable Tim Murphy**

- 1. Can you describe how Ruby Falls' seasonal employee needs are being impacted by the health care law? How are you planning to handle this?**

It is my understanding the seasonal employees are not included in the law due to their short tenure. We will not include them in our insurable group. However, during every busy season we identify people that we would like to continue their employment. These could be students, teachers or others that have a space in their schedule and may stay on for an additional period. The way the ACA is written we would have to now limit their hours to 29 and/or not bring them on at all. Our employment practices are based on flexibility during our 12-hour day/7-day per week/364-day schedule. We are closed Christmas Day.

- 2. A huge issue in the debate of the health care law is the definition of "full time" employees as those working over 30 hours per week. What do you think of this definition and how has it impacted Ruby Falls and its planning for the future.**

As with the law, Ruby Falls has used 30 hours as our standard of full time worker. However, by mandating this we lose our flexibility in supporting our employee. As stated many of our employees that rely on us for healthcare coverage may only be able to work 30 hours. We need these talented and trained people. Because of the mandated 30 hours rule we will have to create a category of 29-hour employees and limit their hours. This will create an expense and administrative nightmare. Secondly, we will have to require, for instance, a retiree not necessarily over the age of 65 who wants to work four 8-hour shifts per week will either have to move to 29 hours or work 40 hours to lessen our need for shorter hour workers. Also, all of these hours go towards our full time equivalent calculations which as of now takes us to 51 employees. We are looking to cut hours to hopefully reduce us to 49 FTE's.

- 3. Do you believe that other owners and operators of tourist attractions or seasonal businesses**

Yes, the general feedback is the administration of this law is burdensome. Most of the cave owners and operators are smaller than us and fall under the 50 FTE limit.

- 4. What steps will you take to address your rising health care costs?**

As mentioned in my testimony three ways, reducing payroll or eliminating jobs, sharing of the cost by allowing the employee to cover part of their premium which at this point they do not or by having them purchase their insurance through the exchanges, or finally

by reallocating funds to cover the increased cost by lowering our investment in expansion and the surrounding community.

Over the past few years we have invested in new attractions on campus to remain fresh and competitive in the market place. Our attendance has continued to grow and has almost reached back to the pre-2008 levels. We could not be more excited about our business prospects and would like to continue to invest in new fixtures, environmental technology, and people.

Price increases are not an option. We just completed a study by the University of Tennessee Tourism Department that shows we are at the top threshold for pricing in our business category. Simply raising price is not the answer and would severely damage our business and customer base.

We also invest heavily in philanthropic endeavors throughout the city and surrounding area. Education, scholarships, youth functions, land trusts, churches, and other civic-minded charities rely on these funds. The cost of healthcare premiums rising will curtail our ability to continue at the levels of the past.

5. You mentioned that you employ a number of high school and college age individuals ---do you find that these individuals purchase healthcare.

No, most are seasonal workers or part-time and do not request health insurance. The feedback that I get is they do not see a need or are covered under their parent's policy.

6. You testified the "We have spent more time analyzing the effects of this law than creating memories for our visitors." Can you elaborate on this? What administrative burdens have you encountered?

We run a simple business. We facilitate 400,000 people to walk into a mountain and see a beautiful waterfall 1,100 feet underground. We do this with a smile, courteous information, clean grounds, well-maintained facilities and attention to detail. This morning I met a couple from Lake Mary, FL that lived near a friend of mine and we talked about their neighborhood. I hope I made their stay here personable and special. This afternoon I am replying to your questions with no customer contact. We should be training and encouraging our employees not chasing them out the door at 29 hours. We are a friendly and fun place.

Secondly, we must keep our facility updated to receive guests. We need state-of-the-art point of sale equipment, computers, mechanical systems, and safety systems. Our focus by our management staff on the mandates of this law takes our eye off this ball.

Finally, Ruby Falls was founded during the Great Depression. We have survived for 84 years including a World War, 911, and multiple recessions. Our people will adjust to this law and we will not shut our doors any more than the sky fell during the "sequester". However, we will employ less people, we will have less capital for acquisitions and expansion, and will not be able to reach our full potential for our customer. We feel

through offering healthcare benefits, matching IRA and other benefits to our employees that make a career here, we were doing things the right way. Now we find that through mandated rules and benefit levels these benefits will not be affordable for us in the future.

FRED UPTON, MICHIGAN
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Minority (202) 225-3641

July 12, 2013

Ms. Katie Mahoney
Executive Director
Health Policy
U.S. Chamber of Commerce
1615 H Street, N.W.
Washington, D.C. 20062

Dear Ms. Mahoney:

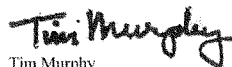
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Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment

Response to Questions for the Record from Katie Mahoney, Executive Director, Health Policy
U.S. Chamber of Commerce

July 25, 2013

Questions from The Honorable Michael C. Burgess:

1. Do employers have an incentive to stop employing U.S. citizens and instead employ (sic) Registered Provisional Immigrants to avoid paying a penalty?

Employers fill jobs by finding candidates who meet the requirements to perform in an open job for the business. In consulting with the U.S. Chamber of Commerce's Immigration Policy experts, I understand that the employment eligibility confirmation process only is permitted after hiring (once the employer has offered and an employee has accepted a position). We know of no lawful means, except after hiring, for an employer to confirm as an employment practice whether job applicants hold a particular immigration status. Therefore, not only is it impermissible for an employer to ask for job applicants' immigration status prior to already selecting a candidate to fill a job, it is counter-intuitive to normal business operations to select workers based on an immigration status instead of skill set.

The question also presumes a fair amount of certainty regarding how the "free rider" (employer mandate) penalties will work once implemented. However, until the IRS issues future guidance or regulations as to both the information reporting requirements and the associated penalties (the so called "free rider" penalties), it is difficult to assess how business practices may change based on the intersection between the implementation of these health care law requirements and possible immigration reform provisions.

Significantly, the phrasing of this question ignores the fact that economic analysis shows that the undocumented, working in lesser-skilled jobs, complement instead of compete with native-born workers. Economists looking at today's labor force find disproportionately higher numbers of foreign born workers who are the least educated (no high school degree) and most educated (doctorate) and find that most-native born workers are not directly competing with immigrants for jobs.¹ Even when native-born workers and immigrants work in the same occupation or industry or the exact same business, researchers find these differences lead to task specialization.² Thus, immigrants and native-born workers complement each other far more often than they compete.³

2. How would the increased hiring of RPIs in place of U.S. citizens affect the U.S. job market?

Again in consulting with our immigration policy experts here, the U.S. Chamber of Commerce does not believe there will be hiring of RPIs to replace U.S. citizens.

Moreover, if Congress ultimately passes legislation providing an earned lawful status for workers who are currently undocumented, it is expected that, in addition to increases in federal income taxes paid, there will be a general expansion of employment for native-born workers. A

¹ Pia Orrenius and Madeline Zavodny, *From Brawn To Brain: How Immigration Works for America*, 2010 Annual Report (Dallas, TX: Federal Reserve Bank of Dallas, 2010).

² Giovanni Peri, "The Effects of Immigrants on U.S. Employment and Productivity," FRBSF Economic Letter 2010-26 (San Francisco, CA: Federal Reserve Bank of San Francisco, August 30, 2010).

³ Michael Greenstone and Adam Looney, *Ten Economic Facts About Immigration* (Washington, D.C.: The Hamilton Project, Brookings Institution, September 2010).

recent study by an economic forecasting firm, Regional Economic Modeling Inc., examined the impact of the U.S. job market if those individuals living here illegally were to gain legal status and concluded there would be a net gain in overall jobs and an increase in gross domestic product over both the short and long-term.⁴

⁴Frederick R. Treyz, Ph.D., Corey Stottlemyer, and Rod Motamedi, "Key Components of Immigration Reform: An Analysis of the Economic Effects of Creating a Pathway to Legal Status, Expanding High-Skilled Visas, & Reforming Lesser-Skilled Visas," (Washington, D.C.: REMI, July 17, 2013).

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CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
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July 12, 2013

Ms. Michelle Neblett
Director
Labor and Workforce Policy
National Restaurant Association
2055 L Street, N.W., Suite 700
Washington, D.C. 20036

Dear Ms. Neblett:

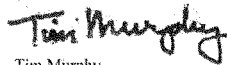
Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, June 26, 2013, to testify at the hearing entitled "Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Friday, July 26, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at brittany.havens@mail.house.gov and mailed to Brittany Havens, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment



July 24, 2013

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy & Commerce
U.S. House of Representatives
2125 Rayburn House office Building
Washington, DC 20515-6115

**Re: Responses to: Questions for the Record from Chairman Tim Murphy,
Subcommittee on Oversight and Investigations (July 12, 2013)**

Dear Chairman Murphy,

Thank you for the opportunity to testify, on behalf of the National Restaurant Association, before the Subcommittee on Oversight and Investigations on June 26, 2013, at the hearing entitled "Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act."

I am writing in response to your July 12, 2013 letter with a request for me to answer questions for the record submitted by Members of the Subcommittee. Below, please find my responses.

The Honorable Tim Murphy:

Q. 1: Why is the current definition of a full time employee (30 hours), incorrect? What number of hours would your organization prefer?

Internal Revenue Code Section 4980H, as added by Section 1513(d)(4) of the Patient Protection and Affordable Care Act (PPACA) (PL 111-148), defines a full-time employee "with respect to any given month, an employee who is employed on average at least 30 hours of service per week." This definition is problematic for the restaurant and foodservice operators as 30-hours a week does not reflect traditional business practices in the industry that consider 40-hours a week to be full-time employment.

The Fair Labor Standards Act does not define full- or part-time employment but does require employers to pay overtime when nonexempt employees work more than a 40-hour workweek. As a result, restaurant and foodservice operators have structured their businesses around this definition. Given these facts, many other industries have also followed this approach. **For these**

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The Honorable Tim Murphy
July 24, 2013

and the additional reasons stated below, we would prefer the definition of full time employee in PPACA to follow the conventional 40-hour per week approach.

Also, it is common for restaurant and foodservice operators to categorize team members as salaried and hourly employees and not use full- or part-time definitions. Salaried employees are generally those in management positions. Hourly employees generally hold a number of other positions within a restaurant's operations and for many; their hours of service can vary week to week depending on a number of factors.

As a result, it is difficult to predict which hourly employees will be considered full-time or part-time each month, and hence who must be offered coverage so to avoid an employer penalty. It is the reason the industry supports the Treasury Department's "Lookback Measurement Method" to determine if variable hour and seasonal employees are full-time.

Beyond the complication of figuring out who is full- or part-time, the law's definition of 30-hours – drastically different than what was generally used before this law – has the potential to impact our workforce and businesses beyond health care. One reason so many employees are drawn to restaurant jobs is the flexibility to change your hours to suit your own personal needs.

However, the law's definition of full-time employee at 30-hours a week may limit restaurant operators' ability to continue to offer their hourly employees these flexible schedules. The reason being, that employers with variable workforces and flexible scheduling must be deliberate about scheduling hours because there is now a greater financial impact of potential employer penalties for not offering coverage to full-time employees.

If the definition of full-time employee is not changed to 40-hours a week, which aligns better with our workforce patterns, the flexibility that so many employees value from employment in our industry may no longer be as widely available, and structural changes to labor markets could occur. Such changes could have workforce implications beyond the employer-sponsored health benefits the law addresses.

The Honorable Tim Murphy:

Q. 2: Your testimony discusses at length the problematic nature of automatic enrollment – can you describe why this will be such a problem for your industry?

The Automatic Enrollment provision of the law is problematic for restaurant and foodservice operators and their employees for two reasons. First, it could cause confusion and potential financial harm for some employees, and second, it will increase restaurant and foodservice operators' compliance burden without increasing employees' access to coverage.

Automatic enrollment interacts with the requirement that waiting periods cannot be longer than 90 days. This means that certain employers must enroll new full-time employees in their lowest-cost plan unless the employee opts-out before their 91st day.

The Honorable Tim Murphy
July 24, 2013

In the restaurant and foodservice industry, health care benefits are generally administered through a central Human Resources department, not by the general manager of each restaurant location. Enrollment options and plan materials are mailed to the employee's residence. If the mail is not opened in time and employees understand they must opt-out if they do not wish to enroll in coverage, employee premium contributions, possibly in the form of payroll deductions, may begin to be collected on the 91st day.

Restaurant and foodservice operators will educate their employees about how this provision impacts them, but if an employee misses the 90-day opt-out deadline, a premium contribution is a significant amount of money – up to 9.5 percent of wages – that would be an unexpected financial burden. Unlike 401(k) automatic enrollment contributions that average 3 percent and can be retrieved by the employee, health care benefit premium contributions would constitute a larger percentage of an employee's wages and cannot be retrieved.

The automatic enrollment provision also places additional burdens on certain employers without any additional benefit to the employee. This redundant requirement duplicates the offer of coverage these same employers must make under the Employer Shared Responsibility provision or face penalties.

Said another way, the full-time employees an employer is required to automatically enroll are the same employees to whom the employer must offer coverage under the employer mandate. The only difference is that automatic enrollment is not an opt-in benefit, it is an opt-out based on the law.

Similar to our concerns about how cost of coverage could increase if variable hour employees churned between employer coverage and exchange coverage, we are concerned about how the cost of coverage could be impacted for all employees if new hires do not opt-out in time, are enrolled and then ask to be taken off the plan the next month.

Much like the expanded 1099 reporting requirement that was repealed, this requirement adds a layer of bureaucracy and burdens restaurants as the enrollment and cancellation process must be done manually since benefit administration is not done electronically. Employee access to a computer in their restaurant location for benefits purposes is not common in the industry.

For both these reasons, the Automatic Enrollment provision is problematic and potentially harmful to employees and employers. It is duplicative; burdening restaurant and foodservice operators without increasing employees' access to coverage.

The Honorable Tim Murphy:

Q. 3: Why is the definition of a "large employer" so difficult for your industry? What would you recommend be done to make this definition more workable?

To determine the law's impact on a restaurant, business owners must first determine if they are one or multiple employers – usually done by an CPA or tax attorney – and then calculate whether they are considered small or large businesses under the law. The statute prescribes a

The Honorable Tim Murphy
July 24, 2013

very specific and unique calculation that is complex and forces even small businesses with just fewer than 50 full-time equivalent employees to track employees' hours of service by calendar month.

Once the employer has been established, employees' hours of service must be tracked on a calendar month basis. The employer then uses the calculation monthly to determine the number of full-time equivalent employees and then average each monthly calculation over all 12 calendar months to determine if they are considered large or small. This process must be completed annually.

Operators on the cusp of 50 full-time equivalent employees are struggling to understand how to complete this complicated calculation each year. It is especially difficult because our systems (scheduling, payroll, etc.) are not set up to do this unique tracking on a calendar month basis and calculation annually. Many operators rely on third-party vendors to help them comply with such a requirement and options have been slow to come to market. This delays an operator's ability to understand the impact of the law on their business and employees and make decisions about offering coverage.

Our members tell us that this calculation needs to be simplified to reduce the burden of figuring out whether you are a small or large employer under the law. While we have not determined the best way to address the complexity of the applicable large employer determination, there are several options.

First, the tracking and aggregation of part-time employees' hours of service is the greatest challenge for operators. Removing the equivalents from the calculation would eliminate this challenge.

Second, the threshold could be raised from 50 full-time equivalent employees to a higher point where more employers have the resources to track and complete the calculations, and fewer small businesses would be impacted.

Third, the calculation itself could be changed so that it uses another, simpler way to count employees or hours of service that would align with methods commonly used in payroll systems or other employer systems.

Finally, we believe that at the very least an administrative period is needed between when a small employer determines they are large, and when their coverage must be effective. Will a small employer who determines on December 31, 2016 that they are now a large employer and have to find a plan and offer coverage that is effective the next day on January 1, 2017, or face employer penalties? Currently, that is how the law is written and if not addressed could create further confusion for small businesses after the first year of implementation of the law.

Congress should remove the unnecessary burden created for small businesses by the complex, annual calculation used to determine if an employer is an applicable large employer under the law.

The Honorable Tim Murphy
July 24, 2013

Thank you again for the opportunity to testify before the Subcommittee and to respond to the above questions for the record. The National Restaurant Association looks forward to working with you and all your colleagues in Congress to address the challenges our members face as they implement this law.

Sincerely,

A handwritten signature in black ink that reads "Michelle Reinke Neblett". The signature is written in a cursive style with a large initial "M".

Michelle Reinke Neblett
Director
Labor & Workforce Policy

Cc: The Honorable Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
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July 12, 2013

Mr. Neil Trautwein
Vice President, Employee Benefits Policy Counsel
Government Relations
Nation Retail Federation
325 7th Street, N.W., Suite 1100
Washington, D.C. 20004

Dear Mr. Trautwein:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, June 26, 2013, to testify at the hearing entitled "Challenges Facing America's Businesses Under the Patient Protection and Affordable Care Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment

Additional Questions for the Record – The Honorable Tim Murphy

Answers from: E. Neil Trautwein, Vice President, Employee Benefits Policy Counsel, National Retail Federation. July 22, 2013

1. You wrote in your testimony that “our members are not enjoying the challenge of compliance.” What have you heard from your membership about the administrative burdens of the health care law?
 - a. The Affordable Care Act (ACA) poses myriad special challenges to retailers and chain restaurants, particularly because of the large numbers of part-time or variable-hour employees we employ. Determining eligibility for coverage, managing the volatility of our workforce (e.g. turnover and variable hours), managing the 30-hour definition of full-time, reporting workforce information to different exchanges on a state by state basis – all of these are leading concerns for our members. We have spent a lot of time working to educate our members on their responsibilities under the ACA.

2. You mentioned in your testimony that “key regulatory questions are as of yet unanswered, even at this very late date”—what regulatory guidance or certainty on the law would your organization like to hear from the administration?
 - a. A number of regulations are still pending, most prominently the regulations to spell out the reporting specifications to the exchanges. Other areas have been addressed but incompletely (e.g., comparing tip income for affordability determinations).

3. Have you heard any examples of employers reducing their number of employees? If so, please explain.
 - a. Not beyond some well publicized examples – our members have been reticent about this information becoming public. They would much rather the public think about retail or chain restaurant brands than employment practices.

4. Have you heard of any retailers reducing employee hours? If so, please explain.
 - a. Please see my previous answer.

5. Have you heard of any retailers halting plans to expand or hire more staff because of the health care law? If so, please explain.
 - a. I have heard this anecdotally – that certain franchised operations have been reluctant to open new franchised locations – but not on a company-wide basis. I have also not heard of specific hires to implement the ACA, but know that it has become more than a human resources challenge for affected companies. Finance, legal and information technology staff are commonly cited as participating in ACA compliance efforts.