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October 15, 2023

The Honorable Michael Burgess, M.D.
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Drew Ferguson IV, D.M.D
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Lloyd Smucker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Earl L. "Buddy" Carter
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Blake D. Moore
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Rudy Yakym III
U.S. House of Representatives
Washington, D.C. 20515

Dear Representatives Burgess, Ferguson, Smucker, Carter, Moore, and Yakym:

On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, we write to submit comments to the the House Budget Committee Health Care Task Force request for information on the cause of skyrocketing healthcare costs. We thank you for the opportunity to comment on the key drivers of healthcare spending and solutions to improve affordability for small business owners and employees.

For nearly 40 years, NFIB members have identified the rising cost of health insurance as their number one concern.¹ Furthermore, 98% of small business owners have expressed concern that they will not be able to provide healthcare benefits within the next 5-10 years due to rapidly rising costs.² Despite these pleas for help, federal lawmakers have failed to meaningfully address the underlying causes of this crisis, which can potentially affect millions of Americans and their families.

The failure of Congress to reform the current system has unfairly and unnecessarily forced small business owners to make difficult decisions in response to the unaffordable costs of providing health insurance. This has resulted in the percentage of small businesses offering health insurance dropping dramatically in the last decade. Offer rates for less than 50 employees from 2010 to 2022

¹ Holly Wade & Andrew Heritage, *Small Business Problems and Priorities*, NFIB Research Center, 2020, <https://assets.nfib.com/nfibcom/NFIB-Problems-and-Priorities-2020.pdf>.

² Holly Wade & Madeleine Oldstone, *Small Business Health Insurance Survey*, NFIB Research Center, March 2023, <https://strgnfibcom.blob.core.windows.net/nfibcom/Health-Insurance-Survey-2023.pdf>.

went from 39% to 32%.³ Meanwhile, the businesses providing health insurance coverage have no choice but to pass the rising costs along to their customers: Nearly half of small employers (46%) report having to raise their prices just to keep up with rising health insurance costs. To make matters worse, half of small employers (49%) now earn less due to health insurance premium increases over the last five years.⁴ In fact, since 2014, some counties nationwide have witnessed small business premiums balloon by up to 130%.⁵

The fiscal health of small businesses directly impacts the broader U.S. economy, with small firms representing nearly half of U.S. private sector employment.⁶ Failure to address the unaffordability crisis can directly impact employment and consumer spending. Furthermore, current government policies that increase costs and limit choices continue to prevent small businesses from offering health insurance benefits. Thus, employees may be forced to apply for public assistance programs, typically leading to increased government expenditures and deficits.

Meanwhile, small businesses continue to face economic headwinds, including pervasive inflation and workforce shortages. It is critical that they can compete with larger firms, including in their ability to attract and retain talent. Thus, it should not be surprising that 63% of all small employers believe offering health insurance to recruit and retain employees is a very or moderately important factor in their business.⁷ High health insurance costs make it impossible for small employers to remain competitive. Due to increased benefit mandates, a lack of competition in the small group market, and a lack of bargaining power, small employers often pay more than their large employers to provide similar coverage. U.S. employers expect health benefit costs per employee to rise 5.4% on average next benefit year, while smaller employers report an even higher renewal rate of 7.5%.⁸

This is why policymakers must focus on the health of small businesses by reducing healthcare cost pressures. As you examine ways to promote affordability, NFIB urges the following principles and policies to be considered:

Empower small business owners and their employees with greater choice and control.

1. Expand access to tax incentives and tax-preferred accounts.

Health Reimbursement Arrangements (HRAs) allow employers to make tax-advantaged, defined contributions for employees to purchase their health insurance or pay for medical expenses. This important policy is an immediate solution to many of the core problems that small businesses face

³ Percent of private-sector establishments that offer health insurance by firm size and selected characteristics: United States, 2022, Medical Expenditure Panel Survey (MEPS), Agency for Healthcare Research and Quality, https://meps.ahrq.gov/data_stats/summ_tables/insr/national/series_1/2022/ic22_ia_g.pdf?gl=1*1fzennf*_ga*MTYxNjgwOTIzMy4xNjk2ODg3ODYx*_ga_45NDDTD15Cj*MTY5Njg4NzIxNy4xLjAuMTY5Njg4NzIxNy42MC4wLjA_

⁴ Holly Wade & Madeleine Oldstone, *Small Business Health Insurance Survey*, NFIB Research Center, March 2023, <https://strgnfibcom.blob.core.windows.net/nfibcom/Health-Insurance-Survey-2023.pdf>.

⁵ *Instructions for Form 8941, Credit for Small Employer Health Insurance Premiums*, pages 10-30, Internal Revenue Service, 2022, <https://www.irs.gov/pub/irs-pdf/i8941.pdf>.

⁶ *2022 Small Business Profile: United States*, U.S. Small Business Administration Office of Advocacy, August 31, 2022, <https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-US.pdf>.

⁷ Holly Wade & Madeleine Oldstone, *Small Business Health Insurance Survey*, NFIB Research Center, March 2023, <https://strgnfibcom.blob.core.windows.net/nfibcom/Health-Insurance-Survey-2023.pdf>.

⁸ Beth Umland, Sunit Patel & Tracy Watts, *Health benefit cost expected to rise 5.4% in 2024*, September 7, 2023, <https://www.mercer.com/en-us/insights/us-health-news/health-benefit-cost-expected-to-rise-54-in-2024-mercere-survey/?source=email>

in offering and managing complex and costly group health plans.⁹ Unlike a traditional group health insurance product, with an HRA, costs are generally predictable to employers, administration is relatively simple, and decisions about coverage and insurance carriers are put in the hands of the employee. Employers are quickly adopting this arrangement as an alternative to costly traditional group health plans.¹⁰ Similarly, a health savings account (HSA) is a powerful financial tool that can help reduce healthcare costs while empowering employees with more control over their medical spending decisions.¹¹

Recommendation: Lawmakers should enact legislation like H.R. 3799, The CHOICE Arrangement Act, which codifies Individual Coverage Health Reimbursement Arrangements (ICHRA). Further, lawmakers should expand access to tax-free HSAs by de-coupling them from high deductible plans and allowing the funds to be used to pay for Direct Primary Care arrangements, which have been proven to lower costs, increase access, and improve health outcomes.

2. Rewrite the Small Business Healthcare Tax Credit to make it usable and workable.

The supposed cornerstone of help for small businesses to offer coverage in the Affordable Care Act (ACA) was the Small Business Healthcare Tax Credit. Proponents of the ACA claimed the credit would assist millions of small businesses to provide affordable coverage to their employees. CBO estimated that the credit would peak at \$6 billion in utilization. Unfortunately, the promises of this benefit never came to fruition. Despite the affordability crisis worsening after ACA passage, data on the credit from the IRS shows that utilization peaked at around \$555 million in its early implementation before steadily declining to just \$30 million in the last year data is currently available from the Treasury.¹² That is because the credit is not available to most small firms.¹³

Recommendation: Congress should reform and enhance the small business healthcare tax credit, allowing more small firms to qualify, making it more user-friendly, and ensuring self-employed individuals can access it.

3. Re-evaluate and right-size current mandates that drive up the cost of health insurance.

The ACA implemented a complicated employer mandate system, known as the Employer Shared Responsibility Provision, requiring all small businesses with 50 or more full-time employees and dependents (including “full-time equivalent” employees (FTEs)¹⁴) to offer health insurance to 95% or more of its full-time workforce or face significant fines.

⁹ In 2020, the Trump Administration greatly expanded on QSEHRAs by issuing the Individual Coverage Health Reimbursement Arrangement (ICHRAs) rule. Under ICHRA, employers of all sizes may offer HRAs at unlimited contribution amounts and comply with the ACA Employer Mandate as long as the offer is deemed sufficient to purchase affordable coverage.

¹⁰ The number of employees in the United States offered insurance through an Individual Coverage Health Reimbursement Arrangement (ICHRAs) tripled between 2022 and 2023; those offered a Qualified Small Employer HRA (QSEHRA) at organizations with fewer than 50 employees doubled during the same period. *Growth Trends for ICHRAs and QSEHRAs, 2022 to 2023, Volume 2*, HRA Council, June 2023, https://www.hracouncil.org/resources/Documents/2023_HRAC_DataProject_Final_Revised_v2.pdf.

¹¹ Haviland, Amelia M., et al., *Do ‘Consumer-Directed’ Health Plans Bend the Cost Curve over Time?*, National Bureau of Economic Research, March 23, 2015, www.nber.org/papers/w21031.

¹² *Small Business Health Care Tax Credits Filed in Tax Years 2010–2016*, Internal Revenue Service, <https://www.irs.gov/pub/irs-soi/17acasmallbusiness.xls>.

¹³ *The tax credit can only be used on SHOP exchanges for ACA plans. Many states do not support SHOP exchanges. It is only available to businesses with less than 25 employees and average wages less than \$50,000, leaving out many small businesses, including the millions of self-employed.*

¹⁴ *An employer determines its FTEs by a complicated formula. It must combine the number of service hours of all non-full-time employees (less than 30 hours) for the month but not include more than 120 hours per employee. Then, it must divide that total by 120. Internal Revenue Service, determining if an Employer is an Applicable Large Employer, <https://www.irs.gov/affordable-care-act/employers/determining-if-an-employer-is-an-applicable-large-employer>.*

The employer mandate presents serious challenges for small businesses. It is a one-size-fits-all approach with severe market distortive consequences and fails to account for industry revenue differences. This mandate holds back small business growth as businesses face massive changes in their operations if they get close to the 50-FTE threshold. Eliminating the mandate or raising the FTE threshold would remove an arbitrary barrier to growth. Furthermore, the mandate has proven ineffective, as only one percent of the originally projected revenue has been collected from this mandate.¹⁵

Recommendation: Congress should reform the employer mandate and, at minimum, adjust the threshold to 100 or more full-time employees to provide small firms with more room for growth, define full-time work under the mandate as 40 hours per week, and remove unnecessary, burdensome paperwork requirements.

Increase flexibility and coverage options.

1. Allow small businesses to band together to purchase health insurance.

Association Health Plans (AHPs) are one option for small businesses to offer more affordable insurance to employees. AHPs level the playing field between large employers and small businesses subject to more regulation and benefit mandates in the small group market. By pooling their resources and leveraging the purchasing power of larger groups, small businesses can reduce premiums and increase their bargaining power, resulting in health insurance at a more affordable price with better networks.

Recommendation: Congress should enact legislation such as provisions included in H.R. 3799, the CHOICE Arrangement Act, to protect and expand small businesses' ability to participate in AHPs. Lawmakers should improve existing regulations to allow for industry-based and non-industry-based small businesses to establish an AHP, including self-employed individuals. Additionally, lawmakers should push back against regulations that restrict or limit the use of AHPs.

2. Encourage telehealth services.

Telehealth can increase access and flexibility while significantly lowering costs. Telehealth can decrease costs associated with in-person visits, reduce time off work, and increase access for remote employees and constituencies in rural areas. Employer-sponsored telehealth costs 23% less than in-person care.¹⁶ Combined, the benefits of telehealth offer direct cost savings, efficiency, greater access, and preventative measures that can reduce expenses for employers.

Recommendation: Maintain employers' ability to offer telehealth coverage to individuals with qualifying high-deductible health plans on a pre-deductible basis. Congress can also promote telehealth coverage by incentivizing employers to include telehealth services in their benefits packages through tax incentives.

3. Protect small businesses' access to stop-loss insurance.

In many instances, self-insurance can offer employers more flexibility in designing coverage, leading to more affordable coverage. Stop-loss insurance enables self-insured employers to mitigate risks, protecting employers and employees from catastrophic losses. An increasing number of group

¹⁵ *Economic Report Card for the Affordable Care Act's Employer Mandate*, Council of Economic Advisers, June 11, 2021, <https://trumpwhitehouse.archives.gov/articles/economic-report-card-affordable-care-acts-employer-mandate/>

¹⁶ Krisda H. Chaiyachati,, Christopher K. Snider, *Economics of a Health System's Direct-to-Consumer Telemedicine for Its Employees*, The American Journal of Managed Care, June 2023, <https://www.ajmc.com/view/economics-of-a-health-system-s-direct-to-consumer-telemedicine-for-its-employees>.

health plan sponsors are utilizing level-funded arrangements. Thirty-eight percent of small firms reported offering health benefits through a level-funded plan in 2022.¹⁷ Level-funded plans provide small employers with potential cost savings, predictability, and customization. As small businesses' average premiums in the small group market continue to increase alarmingly, self-funding can be an attractive option for small employers looking for an alternative.

Recommendation: Protect and expand small businesses' access to stop-loss insurance.

Promote greater access to quality, affordable healthcare through innovation, transparency, and competition.

1. Promote price transparency and price certainty.

Small businesses support price transparency. In a recent NFIB member ballot, more than three-quarters (77%) of small business owners support requiring insurers to provide price information for healthcare services. And small businesses can benefit greatly from greater price transparency. When healthcare providers and insurers are required to disclose the costs of their services and treatments, small businesses can make more informed decisions about which plans and providers to choose. This enables them to negotiate better rates with their insurers and avoid overpaying for healthcare services. According to a study by the RAND Corporation, improving hospital price transparency could decrease hospital spending by as much as \$26.6 billion a year.¹⁸

Recommendation: Codify and strengthen the hospital and insurer price transparency rules. Furthermore, promote transparency in the Pharmacy Benefit Manager market and empower employers with information regarding their prescription drug benefits to make informed decisions that best fit the needs of their employees.

2. Discourage hospital consolidation.

Small business owners would benefit from moving the commercial market toward site-neutral payment policies, which studies find would reduce health expenditures and result in lower premiums and cost-sharing.¹⁹ Lawmakers should discourage off-campus hospital outpatient departments (HOPDs) from billing add-on hospital fees, leading to lower out-of-pocket costs and disincentivizing consolidation in the hospital market.

Recommendation: Require doctors' offices owned by a healthcare system to use a separate and unique National Provider Identifier (NPI) number and bill correctly so payors can differentiate between services delivered in a hospital and non-hospital setting and apply the appropriate reimbursement rates.

3. Reduce prescription drug prices through innovation.

Prescription drug costs continue to represent an increasing share of the total healthcare costs for small employers. By encouraging innovation, lawmakers can facilitate the development of more cost-effective treatments and medications and stimulate competition, which can apply downward pressure on high prices.

Recommendations: Promote competition through robust generic and biosimilar competition, crack down on manufacturer patent abuses, and consider policies such as importing prescription drugs from

¹⁷ 2022 Employer Benefits Survey, Kaser Family Foundation, October 22, 2022, <https://www.kff.org/report-section/ehbs-2022-summary-of-findings/>

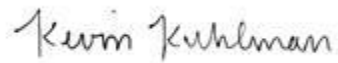
¹⁸ Liu, Jodi L., Zachary M. Levinson, Nabeel Qureshi, and Christopher M. Whaley, *Impact of Policy Options for Reducing Hospital Prices Paid by Private Health Plans*, RAND Corporation, 2021, https://www.rand.org/pubs/research_reports/RRA805-1.html.

¹⁹ *Moving to Site-Neutrality in Commercial Insurance*. Committee for a Responsible Federal Budget, 2018, <https://www.crfb.org/papers/moving-site-neutrality-commercial-insurance>.

*countries sold at a lower price point. Lawmakers must also reform The FDA's Interchangeability Standard, which limits biosimilar substitution.*²⁰

We greatly appreciate your consideration of these vital policy issues and look forward to working with you to protect and defend the small business community and promote healthcare affordability.

Sincerely,



Kevin Kuhlman
Vice President, Federal Government Relations
NFIB

²⁰ The FDA prohibits pharmacists from dispensing most biosimilars when a patient arrives with a prescription for a biologic. Under the BPCIA, a pharmacist can only substitute a biologic for a biosimilar if the FDA designates the biosimilar to be "interchangeable." To be considered interchangeable, the BCPIA requires biosimilar makers to prove that patients would not face increased "risk in terms of safety or diminished efficacy" if they alternated between the original biologic and the biosimilar drug during their treatment plan. In 2020, European researchers reviewed 178 studies measuring the safety and efficacy of European patients that switched between biosimilars and biologics. Their study found zero evidence that "switching from a reference biological to a biosimilar is related to any major efficacy, safety, or immunogenicity issues.