



**COMMENTS ON SMALL BUSINESS IMPEDIMENTS AND REGULATORY RECOMMENDATIONS UNDER
ERISA AND CURRENT HEALTH CARE LAW AND POLICY**

TO BE CONSIDERED UNDER

EXECUTIVE ORDER 13771 REDUCING REGULATION AND CONTROLLING REGULATORY COSTS

AND

EXECUTIVE ORDER 13777 ENFORCING THE REGULATORY REFORM AGENDA

SUBMITTED TO U. S. SMALL BUSINESS ADMINISTRATION

IN ADVANCE OF SBA HEARING (OCTOBER 16, 2017)

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FROM

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Introduction

Thank you for accepting these comments offered in advance of the SBA Hearing on October 16, 2017. It is my hope that these comments will augment the comments offered at that hearing by the many other small businesses in Virginia, West Virginia and North Carolina attending this public meeting. **The goal of these comments is to make the topic of health care affordability and maximizing options a critical policy objective for both small businesses and for health care policy under existing law.**

I submit these comments entirely on my own company's behalf and do not purport to represent the views on health care or business issues by any of my clients. These views are solely to offer insight to the travails of beginning a business.

Approximately 18 months ago I began a small business (LLC under Virginia law). The purpose was to offer consulting services to many businesses on government regulations after working before these agencies for almost 30 years. I prepared a business plan. I met with a financial planner, an accountant, and met with ten other small business owner/operators who had similar clientele before I decided to undertake this mission. I knew it would be difficult and that success was far from guaranteed despite creating a business plan, having savings, and meeting with advisors. I even formed an informal "kitchen cabinet" of retired employees of small and large consulting firms to learn from their successes and failures. I also attended SBA's SCORE programs. I met with other businesses to share other costs or negotiate as a group for subscriptions etc. **The biggest dilemma that I had was in purchasing affordable health care.** *Health care costs are my single largest monthly cost. The cost affects cash flow. Soon this monthly cost will exceed my monthly personal home mortgage coupled with my personal property taxes.*

Cost Benefit Analysis for SBA and HHS and what the savings might mean:

U. S. health care policy lacks sensible incentives for small business. Congress and the regulatory agencies (and tax policy) have incentivized solutions for the impoverished, the elderly, and those making <\$43,000 a year by offering opportunities to join health care exchanges. I don't fault Congress for addressing those other categories of people in need. But to ignore the small business community is a serious mistake. According to U. S. Department of Labor small businesses represent 28.5 million businesses. Approximately 18,000 businesses have fewer than 500 employees. Approximately 22 million are self-employed. According to SBA's statistics, these new small businesses added 1.4 million new jobs in the last reported year and 30% of those had fewer than 50 employees. Sixty percent of all new jobs between 2009 and 2013 were created by small businesses.

If the Administration could address the health care issues that my letter identifies, the Administration could offer tremendous solutions to approximately 60% of the startup businesses in America and many of the approximately 28.5 million small businesses.

In prior Executive Orders the President has called for 2:1 and other techniques to reduce costs and instructed agencies to identify ways to reduce regulatory costs. Addressing the health care problems for small businesses would increase profits of small businesses, reduce some of the peaks and valleys that hurt cash flow and perhaps allow small businesses to expand in hiring other employees or contractors or increase other capital expenditures that could help the economy.

Addressing this might save my own company and others almost \$10,000 a year (see page 5 for details). This is far more important to my business than what I have seen in the proposed tax reform summary.

After almost two years I can clearly offer these observations:

1) Congress failed to recognize that for many small business “startups” what is most difficult is to budget for health care because the increasing costs are unpredictable. In many states, like Virginia, private carriers offer only three health care plans for solo operators (two choices for PPOs and two choices for HMOs). When I purchased health care (going through a broker) the cost differential was negligible: ranging between \$900 and \$1056 for a PPO (choice of two providers) and \$850 for a HMO with a \$2,000 deductible. (This policy covers prescription drugs) Three choices do not make a robust market. Robust markets keep options open and keeps costs down.

- 1) **In last than twelve months my health care insurance increased by 12%** and it appears that it will increase again in the next six to eight months;
- 2) With nominal advance notice, my long-term care provider decided to get out of the business—leaving me with scant long-term care choices (This also is a problem for the broader consuming public not just for small businesses);
- 3) Affordable disability insurance is not that easy to find for individual solo operators;
- 4) While I respect that Congress sought to address many problems with our health care system under Presidents Bush (43) and Obama, Congress did not contemplate the difficulties that small businesses would have in getting and retaining excellent health care at predictable costs;
- 5) Although many fine national business organizations offer health insurance to their small business members when one calls their provider or broker, it soon becomes apparent that no pre-existing conditions are allowed. I find it ironic that several of these organizations have lobbied Congress against denial of coverage with pre-existing conditions but their own products disallow “pre-existing conditions as common as seasonal allergies;
- 6) One of my “kitchen cabinet” advisors (who is actually a competitor) is an LLC in Washington, D. C. and, like me has no employees. She, like me occasionally, hires contract employees for the day to assist during high volume work schedules. **My competitor pays almost exactly half for the same health and dental insurance policy /deductible that I have and yet we live only 7 miles apart.** The difference appears to be that she is in Washington, D. C. and the DC government has all small businesses (<50 employees) in the D. C. Healthcare Exchange Program. Although I am not certain that I wish to be in the D. C. Healthcare Exchange Program but I do observe that in its first two years it has offered more insurance provider options than I had going through a broker in Virginia.
- 7) **This monthly difference means that my competitor is able to hire two contract employees for 1 day each for ¾ of the cost of a more technical, higher compensated contractor. This makes her company more competitive based upon her ability to buy health care at half the price. She can pocket the difference as a profit, purchase equipment or hire contractors to expand her services.** This experience cannot be unique. Imagine the cost differential for small companies with ten or forty employees where the cost differential is half for one company only 7 miles away. **Imagine that savings of \$800 each month that she has over my costs times millions of people across the country that make up the small business owners.**

Recommendations:

The Trump Administration should explore all available options to do the following under existing law and Executive Order authority. If these options are not available, the President should work with the relevant Congressional committees to draft sensible legislation, even if piecemeal, to address these concerns. I recommend that health care legislation be considered under regular orders in the House and Senate ensuring that hearings are held with ample opportunity to review the bill and obtain CBO scoring as well as analysis by many parties. I even hope that legislation would be reviewed by organizations that do not share my views. Robust legislative and regulatory review and public comment is healthy in a democratic government.

- ✓ Allow small businesses to buy on exchanges that cross state lines or reflect the NAICS/SIC code for that category across 50 states. This should encourage new businesses to buy good health care policies for all employees. This should apply to all businesses but perhaps small businesses should have their own category.
- ✓ For first year small businesses, allow the owner and all full-time employees to buy on the health care subsidy program (which is currently capped at \$43,000 and open season is only in November). Open season should be available for new startup businesses at any time within six months of the establishment of incorporation or LLC. It is not fair to only offer open season in the 11th month of a calendar year. Allowing new startups to participate in the subsidized health care in the first year is a great way to incentivize new businesses. A reasonable cap should exist for owners—perhaps limiting net income at \$70,000 in the first year.

Current ACA limits are <\$43,000 and if a person's salary is higher than \$43,000 the person must repay the IRS with a penalty. Why not remove that penalty for the first 12 months—moving the person to the conventional health care system buying privately if after 12 months a new business finds owners and salaried employees making >\$70,000. Alternatively, the EO or HHS could adjust the \$43,000 a year by median income for that zip code. Obviously if the average household income is \$90,000 a year a \$43,000 cap might not seem terribly high. For example, in Washington, D. C. area a \$43,000 cap really means most people cannot afford to have a small business and get subsidized health insurance even if for only in the first startup year. To be clear, I am not suggesting that all small businesses get subsidized health care. I am suggesting this for “first year” or perhaps first two years as an encouragement for people to take a chance in starting a new business. Perhaps similar IRS rules should be assigned to make sure the business is a true business and not a sham business of someone who claims to have a business just to obtain a subsidized health care policy. Perhaps the health insurance provider should require an EIN or documentation of income that can be verified by the IRS. Or verification that quarterly taxes are being submitted.

- ✓ Remove the provision in the current tax subsidy under ACA that counts a prior salary when they begin their new business. Ex. If a person starts a new company his/her salary from a prior employer is used toward the \$43,000 cap. The prior salary is irrelevant to the new business' income. Few people making \$20,000 a year are able to start a new business so this \$43,000 cap essentially prevents new businesses from taking advantage of the subsidized health care—even for only a year.
- ✓ Where allowable under law, provide incentives to health care providers to give “first year discounts” to small startup companies for health, dental and disability insurance.

- ✓ Agency action/EO should encourage insurance companies to allow consumers to pick the date of monthly payment at the beginning of the sign up and able to be changed during a two-week window at the end of the calendar year for the upcoming year. Many small businesses work on contracts that receive payments from clients on unusual dates. Allowing small businesses to pick the 1st, 16th or 29th of the month (but not make frequent changes) is great for smaller businesses to address cash flow. I don't encourage this to allow customers to change this date often.
- ✓ Simply allowing my company to be eligible for the same efficiencies in the group purchasers or exchanges would save my company at least \$800 a month or almost \$10,000 a year. If I had that \$10,000 I could expand my business faster. Unlike my competitor, I also cannot predict my health care costs. Although her DC Exchange policy did increase in 2017, it did not go up 12%.

Lastly, I appreciate the many services offered by the SCORE program at SBA. I have availed myself of your program. I would encourage a webinar offered on buying health care, disability and other forms of insurance to small businesses in different classifications (LLC, S class etc.).

Thank you for considering these suggestions. I look forward to attending the Oct event.