NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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HEARING BEFORE THE

SENATE SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE

ENTITLED

"REFORM DONE RIGHT: SENSIBLE HEALTH CARE SOLUTIONS FOR AMERICA'S SMALL BUSINESSES"

STATEMENT OF

THE NATIONAL ASSOCIATION OF REALTORS®

OCTOBER 20, 2009

On behalf of the NATIONAL ASSOCIATION OF REALTORS® (NAR), I want to share the perspectives of NAR's 1.1 million members and the roughly 1400 state, territorial and local associations of Realtors® ® on the implications of the health insurance reforms being proposed for the nation's self-employed and small employers. Realtors® have avidly followed the debate in the Senate Finance Committee, Senate Health, Education, Labor and Pension (HELP) Committee, as well as the three House committees of jurisdiction. NAR appreciates Congress' commitment to reforming the dysfunctional individual and small group insurance markets, as well as the interest that the members of this committee have demonstrated to representing the interests of the self-employed and small employers.

As NAR's First Vice President Ron Phipps shared with you at this Committee's July Small Business Health Care Roundtable, finding affordable and accessible health care coverage is one of the biggest problems facing NAR's members today. NAR's members are individual real estate agents, brokers and realty firm broker/owners. The overwhelming majority of real estate agents are not employees of the realty offices with which they are affiliated. Rather, they are independent contractors[1], a separate legal business entity from the real estate office, and struggle to find affordable coverage in the individual market. Realty firms, like other small businesses, also face difficulties as they search for affordable coverage for their salaried administrative staff. As a result, our most recent survey work indicates that 28% of our individual members are uninsured and only 39% of realty firms are able to offer coverage to their salaried staffs.

While our organization has not yet taken an official position on any of the bills moving through the Senate or the House, we have shared our thoughts and concerns with the bills as they were developed and debated by each of the committees of jurisdiction. NAR believes that many of the reform elements included in these bills will have a positive impact on our members' ability to find the affordable coverage they now lack. In fact, many of the elements included in both Senate bills are components of S. 979, the Small Business Health Options Plan Act of 2009 (SHOP), introduced by the Ranking Member of this Committee, Senator Olympia Snowe (R-ME) along with Senators Richard Durbin (D-IL), and Blanche Lincoln (D- AR), and cosponsored by Small Business Committee member Senator Joseph Lieberman (I-CT). NAR supports the SHOP bill, having been privileged to have been a part of the discussions that helped to frame the legislation.

Despite the many positive reforms proposed, a number of developments in the ongoing reform debate remain a concern to our self-employed members and the Association itself. It is against this background that we provide the following comments.

[1] Internal Revenue Code Section 3508 provides criteria that, if satisfied, assure the agent's treatment as an independent contractor.

Treatment of the Self-Employed. Given the self-employed status of our members and the unique challenges facing entrepreneurs, it is of paramount concern to NAR that the unique needs of the self-employed are taken into account in a final health reform bill. Self-employed individuals with no employees- the independent contractor, the freelancer, the consultant, etc. - are an incredibly diverse group with different individual circumstances. For this reason, NAR believes it is important that any reform measure give these small business persons the flexibility to decide whether they are best served by participating in health insurance markets as either an individual or as a small business "group of one".

NAR is pleased that the Senate HELP bill allows the self-employed individual to choose whether to be "deemed" an individual or a small business for purposes of the tax credit. We are similarly pleased that the Senate Finance bill allows our members to choose whether to participate in that bill's individual exchange or in the small group market exchange, which is open to firms with 1-100 employees. The Finance bill, however, does not allow a self-employed individual to participate in the small business tax credit program even if they meet the credit's income criteria. The House measures give the self-employed individual no choice, deem such a small business person an individual and deny them the choice of determining what role is in their own best interests.

While we believe that self-employed workers, in general, likely would benefit more from the individual tax credit, we cannot say that all would be better off with the individual credit. We believe that all small businesses should have access to the small business credit and be allowed to choose the approach that works best for his/her unique circumstance. Therefore, we ask that any final bill sent to the President give the self-employed individual the option to choose how they participate, as well as access to the tax credit available to others in their chosen category.

Rating Rules. NAR is pleased to see that the proposed market reforms in all three bills include (1) uniform federal rating rules for the individual and very small employer markets, (2) guaranteed issue and guaranteed renewal rules, and (3) a prohibition on health status and pre-existing conditions as underwriting criteria. While the use of age as a rating criterion is one that may negatively impact our membership, we are supportive of its use as an appropriate rating factor, just as we support the use of geography.[2]

We greatly appreciate the rating changes championed by Senators Kerry and Snowe in the final Senate Finance bill. Changes to the bill's age rating criteria and the addition of provisions phasing in small group reforms in a timelier manner than had first been contemplated were welcomed ones. The age rating changes

[2] NAR's 2009 Member Survey, the median age of the Association's 1.2 million Realtors® is 54 years.

will result in lower premiums for our members. Implementing reforms and coverage mandates in a coordinated and timely manner will mean that larger realty firm employers will not be required to find coverage in a marketplace little different from today's or face penalties.

An Exchange. Realtors® and other self-employed workers know how difficult it is to find an objective and comprehensive source of information on health insurance products and make an informed choice. Therefore, we welcome the creation of an Exchange. We feel strongly that any eventual Exchange(s) must include not only information on the array of policies available in a given marketplace, but also provide assistance to help participants identify the subset of policies that best fit their needs and budgets.

- **State Exchanges.** NAR has long held that administrative overhead and inefficiencies have been a major contributor to the high cost of health insurance premiums in the individual and small group markets. NAR is concerned that multiple Exchanges will increase administrative costs and create confusion for consumers. For these reasons, we ask that that the number of Exchanges be limited to one national Exchange or a limited number of regional Exchanges, rather than a system of 51 state Exchanges. Unfortunately, this approach is not one that the bills have embraced. [3]

Pooling. NAR believes that a primary goal of health reform must be to create larger risk pools. As a result, we are troubled that each reform bill continues to rely primarily on a state-based risk pooling model. It is unclear what new efficiencies can be achieved by these "new" state pools that the existing fragmented state insurance pools have been unable to achieve. Even more problematic is the approach taken in the Finance Committee's bill that allows states to choose whether or not they merge their individual and small group markets. We believe the merger of these markets is essential to bringing down costs for individuals and small businesses.

We urge Congress to question whether continuing to rely on a state pooling model or leaving the decision to merge individual and small group markets to the states will result in greater competition or affordability in these two underserved market segments. As independent contractors, our members know only too well how small, expensive and dysfunctional the individual markets are. Without further incentives to create insurance pools that stretch beyond the small, finite number of consumers who are forced to seek coverage in each state's individual market, our fear is Realtors® and others in the individual market will find the promised benefits of reform illusory.

[3] We were pleased that a Lincoln amendment to strike language in the Finance bill that would have allowed for multiple exchanges within a state was accepted by the Chairman.

Fragmentation of Small Business Insurance Markets. As an organization of self-employed individuals and small employers, NAR has not supported proposals that would divide the small group insurance market into a very small employer group (firms with 10 or fewer employees) with access to Exchanges and an array of alternative "small group" markets defined by the states for firms with more than 10 employees. NAR's members are concerned that this segmentation will further fragment small group insurance pools, create an uneven playing field for the self-employed and smaller employers vis-à-vis the rest of the small business community, allow some participants to "game" the system, as well as limit the administrative efficiencies achievable within an Exchange.

Therefore, we have concerns with the House bills which limit the Exchange to very small firms, especially in the initial years of implementation.[4] We find the Senate Finance's approach more appropriate. We are especially grateful to Senators Snowe and Lincoln for their leadership in offering a successful amendment that allows firms with 100 or fewer employees access to the Exchange. We would strongly urge that any final bill provide a single, common federal definition for what constitutes the small group market and those with access to the Exchange(s).

Benefit Options. NAR policy supports benefit designs that provide a range of medical services that include both primary and preventive care options needed to maintain health and wellbeing. We have long held that no single policy or list of mandates can satisfy the competing tensions between (a) assuring all desired (or desirable) coverage and (b) creating affordable products. For this reason, we are pleased to see that the bills all adopt an actuarial-equivalent approach to defining qualified coverage.

We do have concerns with the proposed procedures for determining what constitutes qualified coverage. We believe that care must be taken to ensure that the standards established are crafted so that products are affordable and designed to meet the needs of a population that varies in its need for covered services. Without an affordable option, the best reform plan will fail to meet consumers' needs.

Given the presence of individual and employer mandates, it is critical that decisions as to what constitutes credible coverage be made with input from those who will be required to purchase the product, i.e. self-employed individuals, as well as small and large employers. For this reason, we believe that representatives of

[4] While the House Energy and Commerce Committee did approve an amendment offered by Rep. Titus (D-NV) to increase the size of firms eligible to participate in the Exchange, the amendment phased in the increase over a three year period and capped eligible firm size at 50 or fewer employees.

each of these constituencies should be included in the groups that would provide advice or determine what constitutes reasonable qualified coverage and financial hardship.

In addition, we ask consideration be given to expanding the definition of what constitutes credible coverage to include plans with lower actuarial values – at least in the initial years of implementation – to ensure that a range of affordable options are available to individuals and firms who have been unable to afford coverage in the past. Even the most carefully crafted market reforms can take time to have their desired impact of increasing competition and reducing costs. Consumers and small businesses should not be penalized for failing to obtain more extensive credible coverage until reforms have had their anticipated impact on insurance markets.

National Insurance Products. We applaud the Senate Finance Committee for allowing insurers to offer a uniform national insurance product across state lines subject to certain requirements. This provision provides one of the best means of increasing efficiencies, reducing administrative overhead and reducing premiums, especially in the individual markets. We hope to see this provision included in any final measure sent to the President.

Individual Mandate. The self-employed are a significant portion of the uninsured today and policies that mandate individual coverage will fall on the self-employed in disproportionate numbers and often with unintended consequences. Among our members who are uninsured, cost is cited as the overwhelming reason for being uninsured. Given their experiences, it's not unexpected that neither our members nor other registered voters support the proposed individual mandate.[5]

Should an individual mandate be a part of any reform proposal, it is imperative that (1) an array of affordable private plan options be available within the Exchange, (2) the self-employed be eligible for significant subsidies (individual tax credit and small business tax credit) to improve affordability on an ongoing basis, and (3) a means to opt out of the requirement be provided for financial hardship. For these reasons, we are pleased with the many changes made to the Finance bill to address affordability, including phasing-in individual mandate penalties, reducing exclusion thresholds, and improving the tax credit provisions. We urge the Senate and the House to include these Finance provisions in any final measure.

Employer Mandate. NAR opposes the proposed employer mandates in the HELP and House bills, as well as the employer responsibility provisions included in the Finance bill. Since small employers compete with

[5] March 2009 polling, conducted by the bipartisan polling team of Hart Research and Public Opinion Surveys indicated that only 27% of Realtors® and 33% of registered voters who strongly favor health reform support an individual mandate.

larger firms for talent, failing to offer a health insurance benefit is not a decision they make willingly. It is simply a function of the economic realities many face. An employer mandate that fails to recognize that reality and/or imposes large penalties on small employers will have a detrimental impact on a component of the economy responsible for significant portions of job growth. [6]

Small Employer Credit. We are disappointed with provisions in the Senate bills that make the small business credit available for only a limited number of years. While improvements in premium costs may result from proposed reforms, such savings may take years to achieve. Likewise, a fledgling firm may take much longer to achieve the level of profitability necessary to be able to afford the cost of employee health insurance premiums. NAR strongly believes that many small businesses will continue to need the help that the small business credit will provide beyond the limited timeframe currently proposed. We urge Congress to reconsider these provisions.

Nonprofit Employers and the Small Employer Credit. NAR strongly holds that *all* small employers should have access to any affordability credits created to assist small employers. Neither the role nor the employment expenses of being an employer correlates with or depends upon an organization's form of organization or its taxable status. While the health legislation was being formulated, we had no reason to expect that there would be any distinctions among employers based on their status as for-profit or tax-exempt entities. Moreover, we can see no basis for making such a distinction.

NAR was surprised when the House and the Senate Finance bills excluded small non-profit employers from accessing the affordability credits. This outcome is particularly alarming because non-profit and tax-exempt entities often have limited budgets. These organizations are often dependent on contributions or dues to sustain their operations. They do not have margins or predictable income streams that allow them much flexibility in meeting their expenses. When a tax-exempt entity offers health insurance, its costs are no different from the costs of a taxable organization of similar size or composition.

During markup of the Senate Finance bill, Chairman Baucus did accept a modified Lincoln amendment that made tax credits (or their economic equivalent) available to some, but not all, tax-exempt organizations. Senator Lincoln's original amendment would have extended the benefit of the credit to *all* tax-exempt entities. For revenue reasons, her amendment was scaled back so that it provides access to affordability credits *only* to organizations set up as charities under IRC Section 501(c)(3). As a result, a very large number

[6] NAR's opposition is a reflection of the low level of support expressed by Realtors® polled on an employer mandate - only 11% of NAR's members who strongly support health reform indicate that they also support an employer mandate. We would note that only one in three registered voters strongly supportive of health reform indicated support for an individual mandate. Source: Hart Research/Public Opinion Strategies National Poll, March 2009

of small non-profits that provide jobs to millions (and services to millions, as well) will have no mechanism that will assist them in sustaining the costs of new requirements that they offer health insurance. Among the groups that will be excluded if this inequity is not addressed are the nation's credit unions, civic leagues, teachers' retirement fund organizations, trade and professional groups, some veterans groups, social welfare groups, and farmers' cooperatives.

While NAR *does* provide health insurance to its employees, many of our affiliated local real estate boards, and even some state associations, that are part of the extended Realtor® family are not able to offer health insurance. These smaller organizations are unable to provide insurance to their employees for exactly the same reasons that many small employers are currently unable to offer insurance: it costs too much. Accordingly, we believe that some mechanism should be offered to *all* small, tax-exempt entities that will allow them to be in the same economic position as taxable entities of similar size.

Treatment of Puerto Rico and the Territories. In response to questions from NAR's members in Puerto Rico and the territories asking if they would benefit from the various reform bills' insurance market reforms, we have reviewed bill language and made inquiries of House and Senate staff. Our review did not find any language that indicated that U.S. citizens residing in these areas would benefit from the private insurance market reforms proposed. Likewise, our inquiries to congressional staffs indicated that the only provisions applicable were Medicare and Medicaid-related. If our analysis is correct, we ask that steps be taken to make sure that all U.S. citizens are able to benefit from needed reforms.

Public Plan Option. Many Realtors® are concerned with proposals that would create a new public government health coverage option. In general, Realtors® believe (1) the market functions best when there is a level playing field between all providers of a given service and (2) that it is extremely difficult, if not impossible, for private firms to compete with the federal government. Consequently, if the potential for crowding out of privately-provided insurance choices exists as some have indicated, a public option remains a major concern to a majority of Realtors® as evidenced by multiple polls we have conducted. [7]

Perhaps more importantly, NAR is also greatly concerned that the contentious debate over a public plan option has the potential to derail much needed underwriting, rating and administrative reforms. The results of a recent bipartisan national poll of registered voters conducted by Hart Research and Public Opinion Strategies indicate that the level of public support for a public option is much lower than has been reported.

[7] Among Realtors® who strongly support major health reform, only 25% supported the creation of a public plan. Among registered voters who strongly support health reform, only 35% of those surveyed indicated support for a public plan option.

In our March 2009 poll, among registered voters who strongly support health reform, only 35% of those surveyed indicated support for a public plan option. Given this questionable level of support and the real potential that a public option could become the "third rail" of this reform debate, it is our hope that any reforms enacted build upon the private insurance system and allow consensus rating, underwriting, and administrative reforms to move forward.

In closing, the NATIONAL ASSOCIATION OF REALTORS® looks forward to timely enactment of meaningful health care reform that will address the needs of the nation's growing self-employed workforce. We thank you for your time and attention to our members' perspective.