



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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October 22, 2009

The Honorable Jon Kyl  
United States Senate  
730 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Kyl:

As you work to merge the Senate Finance and Senate Health, Education, Labor and Pension health reform bills, I urge you to carefully consider the implications of the final Senate bill for the nation's self-employed and small employers. The 1.1 million members of the NATIONAL ASSOCIATION OF REALTORS® (NAR) and more than 1400 local REALTOR® associations have avidly followed the health care debate. As self-employed, independent contractors<sup>1</sup> who are forced to purchase their insurance in today's dysfunctional individual insurance markets, Realtors® personally understand the great need for reform. With more than 28% of our membership currently uninsured and 61% of member owned realty firms unable to offer coverage to their salaried staffs, Realtors® have a large stake in seeing reform done right.

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 as they were developed and debated by each committee. 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 particular, NAR strongly supports the Exchange concept, the merger of the individual and small group markets, the proposed underwriting and rating reforms and tax credits included in the Senate bills.<sup>2</sup>

Despite the many positive reforms proposed, a number of developments in the ongoing reform debate remain a concern to our members and the Association itself. They include:

**Self-Employed Individuals' Participation.** NAR asks that any final bill sent to the President give the self-employed individual – independent contractors, freelance workers, etc. - the option to choose how they participate in the exchange if the individual and small group markets are not merged, as well as access to the tax credit available to others in their chosen category.

**Exchange.** We urge you to create a single national exchange in order to maximize administrative efficiencies and avoid consumer confusion. Multiple exchanges will create unnecessary administrative costs that most states can ill afford.

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<sup>1</sup> Internal Revenue Code Section 3508 provides criteria that, if satisfied, assure the agent's treatment as an independent contractor.

<sup>2</sup> Many of these reforms are components of S. 979, the Small Business Health Options Plan Act of 2009 (SHOP), introduced by along with Senators Richard Durbin (D-IL), Olympia Snowe (R-ME) and Blanche Lincoln (D- AR). NAR supports the SHOP bill, having been privileged to have been a part of the discussions that helped to frame the legislation.



**Pooling.** NAR is troubled that both Senate bills continue 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. If a state-based approach is adopted, we urge you to set a deadline for states to merge their individual and small group markets after an appropriate transition period.

**Fragmentation of Small Business Insurance Markets.** NAR urges you to not further fragment small group insurance markets into a very small employer group with access to exchanges and a group of larger small firms left to fend for coverage in dysfunctional state “small group” markets. At a minimum, the exchange should be open to firms with 100 or fewer employees<sup>3</sup> in the initial years of operation.

**Benefit Plan Choices.** NAR urges you to expand the definition of what constitutes a qualified health benefit plan (QHBP) to include plans with lower actuarial values than are currently proposed – at least in the initial years of implementation – to ensure that a range of affordable options are available.

**Essential Benefits Design.** Independent entrepreneurs and small employers must be represented in any entity charged with determining what constitutes affordable essential benefits package and/or financial hardship.

**National Insurance Products.** NAR strongly supports the Senate Finance Committee’s decision to allow insurers to offer a uniform national insurance product across state lines subject to certain requirements. 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 the individual mandate will fall most heavily on them. Changes made to address affordability in the Senate Finance bill - phased-in individual mandate penalties, reduced income thresholds for exceptions, and improved tax credit provisions – should be included and further refined in a final Senate bill. Without proper attention to affordability and hardship issues, NAR’s members will have a hard time accepting a bill that includes an individual mandate.<sup>4</sup>

**Employer Mandate/Responsibility.** NAR opposes the proposed employer mandate in the HELP bill, as well as the employer responsibility provisions included in the Finance bill. 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.<sup>5</sup>

**Coordination of Reforms and Mandates.** The implementation date for any employer mandate or responsibilities must be closely coordinated with the timelines for small group market reforms. Penalizing employers before reforms have been implemented will impose financial burdens of firms that have already found it impossible to afford coverage for its workforce.

**Employer Mandate/Responsibility Exception.** An employer hardship waiver for small and mid-sized firms that can document insufficient revenues to cover the cost of providing qualified health

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<sup>3</sup> A firm with one hundred employees is the largest firm that any state defines as being eligible for small group participation.

<sup>4</sup> Only 1 in 4 Realtors® support an individual mandate. Source: Hart Research/Public Opinion Strategies Realtor® Poll, April, 2009; Public Opinion Strategies Realtor® Poll, August, 2009

<sup>5</sup> Only 2 in 5 Realtors® support an employer mandate. Source: Hart Research/Public Opinion Strategies Realtor® Poll, April, 2009; Public Opinion Strategies Realtor® Poll, August, 2009

benefit plan is essential if an employer mandate or responsibility requirement is included in a final bill.

**Small Employer Credit.** The small employer tax credits must be available to employers for more than two or three years. Reductions in cost may take years to achieve given the timeline for states to implement small group reforms. Likewise, profitability can also take much longer to achieve in some industries and market conditions.

**Nonprofit Employers and the Small Employer Credit.** Any final bill must provide all nonprofit employers with access to affordability credits available to for-profit or charitable small employers. The cost of providing coverage to an employee doesn't depend upon an entity's taxable status or its IRS Code 501(c) classification.<sup>6</sup>

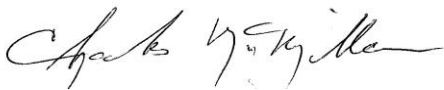
**Tax Equity for Self-Employed Workers.** We strongly urge you to rectify the current inequitable tax treatment that penalizes the self-employed by including S. 725, the Equity for Our Nation's Self-Employed Act (Bingaman, D-NM; Hatch, R-UT), in the Senate health reform bill. Currently, when an employer pays any portion of an employee's health insurance premiums, neither the employer nor the employee pay any payroll tax on that payment. The self-employed person does not receive this same treatment. S. 727 corrects this inequity and puts the self-employed on equal footing when computing their Self-Employment Contribution taxes.

**Treatment of Puerto Rico and the Territories.** Our analysis indicates that U.S. citizens residing in Puerto Rico and the territories would not benefit from the private insurance market reforms proposed in each of the Senate bills. 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.** As evidenced by multiple polls we have conducted, many Realtors® are concerned with proposals that would create a new public option.<sup>7</sup> We urge you not to jeopardize the market reforms that Realtors® have long sought, in pursuit of an untested approach for creating competition.

In closing, the NATIONAL ASSOCIATION OF REALTORS® looks forward to the timely enactment of meaningful health care reform. NAR believes many of the changes we have suggested here must be considered in a final Senate bill in order for that reform to truly address the needs of the nation's growing self-employed workforce. We thank you for your time and attention to our members' perspective.

Sincerely,



Charles McMillan, CIPS, GRI  
2009 President, National Association of REALTORS®

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<sup>6</sup> As currently drafted, the Senate Finance bill would leave a large portion of non-profits ineligible for employer tax credits at the same time they would be subject to employer responsibility requirements.

<sup>7</sup> Only 2 in 5 Realtors® indicate support for a public option. Source: Hart Research/Public Opinion Strategies Realtor® Poll, April, 2009; Public Opinion Strategies Realtor® Poll, August, 2009