National Retail Federation®
The Voice of Retail Worldwide

July 9, 2009

The Honorable Charles Rangel	The Honorable Dave Camp
Chairman	Ranking Member
Ways and Means Committee	Ways and Means Committee
U.S. House of Representatives	U.S. House of Representatives
1102 Longworth House Office Building	1139E Longworth House Office Building
Washington, DC 20515	Washington, DC 20515

Dear Chairman Rangel and Ranking Member Camp:

I write to share the views of the National Retail Federation (NRF) on the Committee's proposed legislation, known as the "Tri-Committee Bill," on a number of key issues, including the proposed employer "pay-or-play" mandate and the possibility of a value added tax (VAT) to help pay for health care reform.

By way of background, the National Retail Federation represents an industry with more than 1.6 million U.S. retail establishments, more than 24 million employees – about one in five American workers – and 2008 sales of $4.6 trillion.

NRF has been a strong proponent of health care reform and announced our platform for reform – NRF's Vision for Health Care Reform – in January 2008. We have worked hard with lawmakers and stakeholders of every political persuasion to try to help develop comprehensive health care reform we could support.

Though there are some positive elements to this bill, our concerns greatly outweigh the positive elements, in our view. We cannot support the underlying bill. Still, we offer the following specific comments for your consideration in a continued effort to dramatically improve the bill.

Employer "Pay-or-Play" Mandate

NRF cannot support an employer mandate of any type, whether pay-or-play, set penalty or "free-rider" in nature. We are a labor heavy industry that operates on a thin profit margin. We cannot afford any new labor cost, particularly the eight percent of payroll penalty or the 72.5 percent contribution floor for individual coverage or 65 percent contribution floor for family coverage proposed in the Tri-Committee bill.

Employer mandates of any kind amount to a tax on jobs. We can think of few more dangerous steps to take in the middle of our present recession. We need to add new jobs, not exacerbate the near double-digit unemployment numbers. We cannot

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afford to have new and existing jobs priced out of our collective reach because of mandated health coverage.

Public Plan Option

NRF cannot support a new publicly-sponsored insurance plan or co-op to compete with private insurance plans within the national or optional state-based exchanges. We are particularly concerned that the public plan would reimburse at Medicare rates for its first three years.

Retailers oppose the public plan option because of its potential for cost shifting (similar to what we experience today through Medicare and Medicaid; our concern is heightened in this case by the direct link to Medicare rates) and for its potential to crowd out private insurance plan alternatives. We strongly support market reform for the individual and small group insurance markets and believe that insurance reform and new national exchange or state-based exchanges should be given an opportunity to succeed without the addition of a public plan alternative.

ERISA Restrictions and Employer Liability Concerns

NRF cannot support the limited five-year grandfathering of existing group health plans under ERISA because of its potential to greatly increase employer coverage costs at the end of five years. Flexibility under ERISA remains crucial to the majority of employer-sponsored coverage. A one-size-fits-all benefits package cannot compare to an employer's ability to tailor coverage to workforce needs. Some interpretations of the language of the Tri-Committee bill suggest that the five year window will disappear immediately once a plan elects to provide coverage under the bill. We urge the Committee to clarify this language.

We are also concerned that the Tri-Committee Bill will expose employers to state-based lawsuits for adverse claim determinations, similar to those proposed during the old Patients' Bill of Rights debate. More specifically, we are concerned that the ERISA remedies section is not saved by the applicable construction clauses, thus opening the door to state-based lawsuits against multiple parties, including employers as group health plan sponsors.

Value Added Tax and Other Revenue Raisers

In the current economy, enactment of a direct tax on consumer spending would be devastating. Consumer spending represents more than two-thirds of GDP but has plummeted dramatically over the past two years. The current recession will not end until the consumer regains his footing. Placing an additional tax on consumer spending would further depress spending, and lengthen and deepen the current recession.

A VAT would also greatly hurt the states. Forty-five states rely on sales taxes as a major source of revenue. The enactment of a federal consumption tax would greatly crowd out the ability of the states to raise their own sales taxes at a time when they are desperately in need of revenue. Finally, a VAT is a highly regressive tax, hitting lower and middle income taxpayers much harder than wealthier individuals.

We recognize that there likely are no good options to pay for health care reform. Some of the options that have been discussed – a surcharge on wealthy individuals, for example – would adversely affect small employers, including retailers. Others – such as the proposed tax on sugar-based drinks and alcohol – are also highly regressive and are of dubious worth from a health promotion standpoint. These would also adversely affect retailers and restaurants in our membership.

Conclusion

In all of these issues and in reform, generally, our objectives remain the same: we wish to continue to voluntarily provide high quality health coverage to our employees. We seek health care reform that will assist us to do so in a more affordable and cost effective manner and also improve the quality of health care our employees receive and the health they enjoy.

NRF remains ready to work with you and other lawmakers toward building bipartisan comprehensive health care reform. For more information on any of the health reform issues raised in this letter, please have your staff contact NRF Vice President and Employee Benefits Policy Counsel Neil Trautwein at (202) 626-8170. If you have questions on the tax issues outlined in this letter, please have your staff contact NRF Vice President and Tax Counsel Rachelle Bernstein at (202) 626-8168.

Sincerely,

Steve Pfister
Senior Vice President
Government Relations

cc: Members of the Ways and Means Committee