National Retail Federation®
The Voice of Retail Worldwide

July 30, 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Republican Leader Boehner:

I write to share the views of the National Retail Federation (NRF) on H.R. 3200, America's Affordable Health Choices Act. NRF strongly opposes this legislation. 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. Our industry is this nation's largest in terms of employment.

NRF strongly favors comprehensive health care reform and universal health coverage, if done correctly. We 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. The key to reform is reducing both short and long-term health care and coverage costs without disrupting existing health coverage. The House bill fails to meet this objective.

It is vitally important that health care reform be targeted correctly, even more so than it be done quickly. Above all else, we believe that health care reform should avoid driving up labor costs: a sure recipe for much higher unemployment in the midst of a recessionary economy. Done wrong, health care reform could well become the biggest anti-stimulus legislation imaginable. We cannot afford bad health care reform.

We strongly support the actions of the Blue Dog Coalition and allies in seeking both short and long-term cost savings. Retailers necessarily operate on a short horizon, needing to meet both present payroll obligations and also build and maintain inventory. We agree that long-term cost savings are vitally important to our financial future but these are not sufficient to meet retailers' present day needs.

We strongly oppose H.R. 3200 and would consider votes in connection with H.R. 3200 for inclusion as Key Retail Votes for our voting guide. We urge Congress to abandon H.R. 3200 and make a fresh start on a better calibrated and more affordable bill. We offer the specific comments below as evidence of our strong concerns.

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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 thin profit margins. We cannot afford any new labor cost, particularly the eight percent of payroll penalty (pro-rated for part-time employees) or the 72.5 percent contribution floor for individual coverage or 65 percent contribution floor for family coverage proposed in the Tri-Committee bill.

We appreciate the tentative Blue Dog Coalition agreement that seeks to shield additional small businesses from the harmful effect of the pay-or-play mandate. However, we are also concerned that this type of a size or payroll limit may tend to discourage natural job growth beyond the cap.

Employer mandates of any kind amount to a direct tax on jobs. We can think of few more dangerous steps to take in the middle of our present recession. Our economy badly needs to add new jobs, not to have the near double-digit unemployment numbers exacerbated. Retailers and retail employees cannot afford to have existing jobs to be priced out of collective reach because of pay-or-play mandated health coverage. We need to maintain and add new jobs, but the House bill will prevent us from doing so.

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 as provided for in the first two committee bills. We do understand that the Blue Dog Coalition agreement in the Energy and Commerce Committee markup would provide for negotiated rates. Better yet would be an open market negotiation without the involvement of the HHS Secretary.

Retailers oppose the public plan option because of its potential for cost shifting (similar to what we already experience today as a consequence of inadequate Medicare and Medicaid payments to providers; our concern is heightened in this case by the direct link of the public option 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 unnecessary addition of a public plan alternative.

ERISA Restrictions, Market Reform 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 the five year window. ERISA protections would be lost if any changes are made to the plan within the five year window. 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.

NRF favors insurance market reform, but the House bill far exceeds what we could support. Rate bands should be wider (the House bill would only allow a 2 to 1 variation in age) and allow additional factors: adjusted community rating rather than pure community rating. We also oppose elimination of lifetime caps on benefits and instead favor more sustainable funding and eligibility for state based high risk pools.

We are also concerned that the bill will expose employers to state-based lawsuits for adverse claim determinations for coverage offered through the exchange, similar to that 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.

Employers cannot afford to spend time and dollars defending against baseless but unlimited medical malpractice suits. Indeed, the lack of any serious inclusion of medical malpractice reform – especially caps on exorbitant damages – is a serious deficit in this more than 1,000 page bill.

Revenue Raisers

We recognize that there likely are no good options to pay for health care reform, a problem exacerbated by the sheer size of a bill spending around $1 trillion dollars over ten years – likely more beyond the ten year window. Some of the options that have been discussed – a surcharge on wealthy individuals, for example – would adversely affect small employers, including retailers organized under Subchapter S. 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. The worst of all options would be enactment of a direct tax on consumer spending, also known as a VAT tax.

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.

Conclusion

We appreciate your attention to our concerns. We seek comprehensive health care reform that will help us continue to voluntarily provide high quality health coverage to our employees in a more affordable and cost effective manner and also improve the quality of health care our employees receive and the health they enjoy. H.R. 3200 would not help us do so in a more affordable manner, thus NRF strongly opposes and would key vote against this bill.

We remain 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 U.S. House of Representatives