



National Retail Federation Testimony

Hearing on

Challenges Facing America's Businesses Under the
Patient Protection and Affordable Care Act

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

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Chairman Murphy, Ranking Member DeGette and honored members of the Committee, good morning. I thank you for the opportunity to appear before you today and to share our views regarding the Patient Protection and Affordable Care Act (also known as the ACA) and the challenges facing American businesses as they prepare to implement changes pursuant to the ACA. My name is Neil Trautwein and I am a vice president and the Employee Benefits Policy Counsel with the National Retail Federation (NRF).

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's *This is Retail* campaign highlights the industry's opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation. www.nrf.com

NRF continues to have concerns about the ACA, though we have worked hard to help educate our members on their future obligations and opportunities. We have also worked hard with the Administration to smooth implementation wherever possible. We still remain greatly worried by the fast-approaching deadlines for key issues affecting coverage in every market, especially in light of the torrent of regulations released to date from the Administration. Our nation – particularly employers – cannot afford for the ACA to stumble out of the starting gate. We fear that as time diminishes between now and January 2014, a cascade of additional last minute regulations will create added confusion and thus could encourage more employers to back out of coverage.

NRF and ACA Implementation

NRF has been closely engaged in the regulatory process ever since the ACA was signed into law. We have met numerous times with regulators and have submitted written comments on key concerns. We have assisted in submitting joint coalition comments as well. We have not been litigants against the ACA and also did not submit amicus comments in the ACA case before the Supreme Court.

We credit the regulatory agencies¹ for working hard and cooperatively to implement the complex ACA, a difficult task by any measure. The Administration early on focused on our industries because of the variable nature of retail and chain restaurant employment. Many retail and restaurant employees do not fit neatly into full and part-time categories and compliance with the unprecedented levels of change under the ACA will be particularly challenging. Our members are not enjoying the challenge of compliance.

Part-time and variable hour employees are a particular challenge. This segment of the retail and chain restaurant workforce tends to be more mobile and may work for multiple establishments. Some may become full-time and move on to long-term careers in retail; others value the greater flexibility of part-time work. Some of our most productive employees are part-time and would not have it any other way.

¹ Departments of Health and Human Services, Labor and Treasury.

Retail and restaurant jobs are not just found behind cash registers; our industries present a wide array of career opportunities. Rewarding professional careers can be found in retail in such areas as design, loss prevention, real estate and human resources, among many others. Retail and chain restaurant human resources officials are quite understandably busy with ACA implementation these days, but they are far from alone in their focus. In the past two weeks, I have also spoken to different member groups of chief financial officers and corporate general counsel. The myriad challenges of ACA implementation are foremost in their minds.

Many of the regulatory approaches developed in response to the challenges of the retail and chain restaurant workforce – such as the “look-back/stability period” – have in turn bred additional complexity. One truly significant challenge is ACA’s definition of “full-time” for coverage eligibility at 30 hours per week on average.

Most of us have long assumed full-time mark to be 40 hours, consistent with federal overtime rules. A 30-hour definition forces retail employers to manage to a new standard: whether or not an employee is above or below the 30-hour level on average during the look-back period. The requirement to provide a consequently newly eligible employee stable coverage for a period of time equal to the look-back period, regardless of the employee’s present eligibility, adds to the stakes and retailer concerns.

Retail and chain restaurants will be forced to fine tune the balance between full and part-time, focusing on employee status on a real-time basis. This is time, effort and money spent on compliance rather than retail or chain restaurant sales. For variable hour employees who do not meet the new full-time standard, this will mean less income in their pockets and consequently less likelihood of obtaining coverage on their own.

NRF strongly supports efforts to redefine full-time coverage eligibility at 40 hours per week, hopefully with flexibility for employers to define a lower standard, if they so desire. We respectfully urge that this and other steps to help soften the impact on employers be taken before the ACA is fully implemented. Later may be too late.

We have little patience for those who argue that either full implementation of the ACA or full repeal of the law are the only alternative options. This is not an academic or political question to us. We have responsibilities here and now to our employees, stores, shareholders and communities. We will bend every effort to help mitigate the adverse impact of the ACA on the retail and chain restaurant industries. Our members would not long remain our members were we to do otherwise.

Affordable Care Act and Employers

Change is coming to employer-sponsored health plans at a torrential pace. NRF has worked hard to help our members understand what their options and future responsibilities will be through various webinars, presentations and web-based materials. I spend a good bit of time speaking to diverse retail and other employer audiences as well.

The learning curve among retailers and chain restaurants is steep and still growing: in effect, compliance is a higher degree of difficulty for our members because of our unique workforce. Key regulatory questions are as of yet unanswered, even at this very late date.

We continue to urge Congress and the Administration to consider an outright delay of up to one year in implementation of the employer requirements to help facilitate a smoother transition and less disruption of existing coverage. Alternatively, you might consider a soft roll out with emphasis on compliance assistance rather than regulatory adherence and penalty enforcement. Any relief – particularly relief that supports employer-based coverage – will be welcome.

NRF, Allied Coalitions and the Affordable Care Act

NRF has actively encouraged the fair and effective implementation of the ACA (as it is current law) despite our continued opposition to the law itself. We see no inconsistency between the two positions; we owe it to our members to help make the law as workable as possible. We stand ready to assist any effort to improve upon implementation of the ACA.

We are engaged in a number of allied coalition efforts on ACA implementation. For example, NRF chairs the Essential Health Benefits Coalition² (EHBC) and participates in the leadership of the Coalition for Choice and Competition³ (CCC) and Employers for Flexibility in Health Care (EFHC). The number of coalitions addressing aspects of ACA implementation has grown so much as to require a degree of coordination between them. NRF established and chairs the Employers' Health Care Clearinghouse, which meets on a monthly basis to do just that.

These coalitions are deeply substantive and deal with specific ACA implementation concerns. They also have served a useful role in developing and coordinating views and comments among allied employer interests.

Conclusion

Again, NRF greatly appreciates the opportunity to appear before you today. Given the complexity of requirements under the ACA, we urge this Committee and Congress to consider delaying full implementation. We urge you to be on guard against the pace of ACA implementation and the consequent potential to drive employers away from providing coverage.

Retailers and other employers can and should be powerful advocates for positive change. But, in most cases, health care and health benefits are not our stock in trade or business. It is in our best interest to keep our employees healthy and at work, but not at any cost. The ACA will – at a minimum – pressure our ability to continue to provide coverage and help drive positive change.

We hope to work with you to help mitigate these effects. NRF stands ready to help the Administration and Congress make the ACA more workable, so long as it remains the law of this land.

² www.ehbcoalition.org

³ www.choiceandcompetitioncoalition.org