

September 17, 2009

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

**RE: "Free Rider" Alternative – Compliance Questions**

Dear Chairman Baucus and Ranking Member Grassley:

Thank you for the effort that you have put into drafting the *America's Healthy Future Act*. We share your sentiment that a properly crafted health reform bill should curb our nation's ever-escalating health costs, shift our delivery system toward wellness, and increase access to care for the uninsured. Retailers also appreciate that employers play a vital role in rising to the challenge of continuing to offer health care benefits to our millions of employees. While RILA agrees that the "free rider" alternative is preferable to a pay-or-play mandate, we nonetheless write to express concern over the language included in the Chairman's Mark, and to respectfully offer revisions meant to enhance compliance.

By way of background, the Retail Industry Leaders Association (RILA) is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Because of the *Employee Retirement and Income Security Act* (ERISA), all RILA member companies are able to offer health benefits to their employees and hope to continue doing so after passage of health reform legislation this year. Further, as an industry that employs millions of entry-level workers who may otherwise qualify for federal subsidies to buy plans in a new health insurance exchange, I hope that you will take the following comments under serious consideration:

- **Vesting for New Employees.** In a high turnover industry like retail, vesting periods are vital to reduce the significant administrative costs that employers incur to process and enroll a new employee into the company's health benefit plan. Vesting periods for full-time employees vary widely by company, but employees who work six months or more are statistically more likely to remain employed with the company for at least a year. Inserting vesting period language into *America's Healthy Future Act* will also reduce the administratively burdensome and costly revolving door effect that many exchange-based

plans are equally likely to experience as millions of full-time, seasonal workers leave their exchange-based plans each year to take up temporary jobs in our stores, only to then turn around and re-enroll in the exchange a mere 90-180 days later.

In retail, many companies temporarily increase their full-time workforces by as much as 30% to accommodate seasonal hires (i.e., winter holiday shopping, springtime gardening, etc.), most of whom come to work in our stores for employee discounts and supplemental income, not for health benefits. Without affording an industry like ours the benefit of a vesting period, the tens of millions of dollars each of our companies would have to spend in compliance with this mandate would force many of them to make difficult choices about whether to continue offering health care coverage to the millions of Americans who receive it now through a large retail employer.

For most retailers, a vesting period is satisfied in one of two ways: 1) the employee works a certain number of hours to qualify, or 2) the employee remains employed at the company for a certain number of days. An hours-in-service requirement is one that is familiar to employers in other benefit laws such as the *Family and Medical Leave Act*, which requires that employers of 50 or more individuals offer the benefit to employees who have completed 1,250 hours of service (approximately 30 hours/week for one year). By the same token, employees who work 180 days or more are more likely to remain with their employers for the long term and can then qualify for benefits.

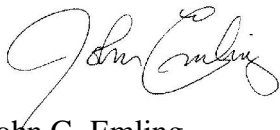
- **Definition of “Full-Time Employee”.** Currently, the Chairman’s Mark defines full-time employment as those working 30 hours or more each week. RILA respectfully submits that in lieu of a strict 30-hour per week threshold, the Committee instead defer to the *Fair Labor Standards Act* (FLSA) for defining full-time employment. Our member companies have readily complied with the FLSA for over 50 years and it has become the standard to which most other employee benefit laws refer. Not only does the FLSA provide employers with the necessary flexibility to determine the number of hours per week which should be considered full-time employment for their unique workforces (in the retail industry, it is common for full-time to be defined as between 30 – 35 hours per week), it also provides a ready-made standard for determining the benefits that must be offered to employees who work varying numbers of hours each week, a common occurrence in retail stores.
- **Provide Authority for Actuarial Equivalence.** RILA understands that the Committee wishes to ensure that employers are subsidizing an acceptable level of benefit for their employees and inserted the requirement that plans meet an actuarial value of 65%. We respectfully ask the committee to strike the requirement from the Mark. Employers, just like medical providers, should be held to a standard level of care, not a standard monetary value of care. We would support the inclusion of a requirement for first dollar coverage for preventative care services in lieu of a 65% actuarial equivalent value.

In addition, we understand the need for an affordability threshold and believe that the 13% level you have set is the most acceptable level. Increasing the threshold by even one percentage point would make plans far too expensive for some employers to be able to continue offering benefits in the future if health benefit costs continue to escalate at the rates our nation has witnessed in recent years.

RILA recognizes the significant challenges in crafting legislation of this magnitude. We are generally supportive of the provisions you have put in place to help balance the needs of employers and employees alike who will ultimately comply with this new free rider mandate. For example, the firewall preventing employees who are offered a qualifying employer health plan from receiving tax subsidies to participate in a new exchange is critical to protecting our companies' risk pools and continuing to offer competitive benefit packages. We also appreciate that the Committee expressly stated that the plan affordability standard would be based upon the least expensive plan offered by the employer. Provisions such as these will greatly assist with future compliance.

Thank you for taking time to review these comments. Should you have additional questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Emling". The signature is fluid and cursive, with a large initial "J" and a distinct "E".

John G. Emling  
Senior Vice President, Government Affairs

c.c: Members of the Senate Finance Committee