March 26, 2015

The Honorable Sylvia Matthews Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

Dear Secretary Matthews Burwell,

The National Federation of Independent Business (NFIB) is writing to you concerning the scheduled expansion of the small group health insurance market from businesses with 1-50 employees to businesses with 51-100 employees beginning January 1, 2016. NFIB is concerned that because the expansion was not included in any regulations, thorough regulatory flexibility analysis and premium analysis were not conducted. Small businesses are also concerned that the expansion may ultimately be costly and harmful for both currently eligible small group health insurance market businesses and newly eligible small group health insurance market businesses.

NFIB is the nation’s leading small-business advocacy association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB’s mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 350,000 independent-business owners who are located throughout the United States.

Prior to passage of the Patient Protection and Affordable Care Act (ACA), state health insurance commissioners primarily regulated the small group health insurance markets, and established business size eligibility thresholds. According to the Kaiser Family Foundation, every state limited eligibility for the small group market to businesses with 50 or fewer employees.

The ACA shifted major regulatory responsibilities for the small group health insurance market from state health insurance commissioners to the Centers for Medicare & Medicaid Services (CMS) and the Department of Health and Human Service (HHS). Section 1304 of the ACA expanded the definition of the small group health insurance market from businesses with 50 or fewer employees to businesses with 100 or fewer employees beginning in 2014, but allowed states the option to maintain their previous eligibility definition through 2015. Every state chose to exercise this eligibility limitation.

Regulatory Omission and Regulatory Flexibility Analysis Requirement
In the Proposed Rule regarding Notice of Benefit and Payment Parameters for 2016 (Proposed Rule), there was no mention of the small group market expansion in 2016. NFIB requested that CMS and HHS should conduct a thorough premium analysis of the mandatory small group market definition expansion to forecast the impact on premiums for currently eligible businesses (50 or fewer employees) and premiums for newly eligible businesses (51 to 100 employees). Had CMS and HHS included the small group health insurance market definition expansion in the regulation, a more thorough regulatory flexibility analysis would have been necessary as the definition change will impact a significant number of small entities.
Impact on Current Small Group Market Businesses (1-50 Employees)
Small businesses are acutely aware that the small group health insurance market includes increased health insurance requirements that lead to higher health insurance costs. Health insurance products in the small group health insurance market are subject to modified community rating, must cover the Essential Health Benefits (EHB) package, and must comply with other health insurance requirements. These added requirements are built into health insurance products and the increased cost is passed along to small businesses in the form of higher premiums. According to the NFIB Research Foundation’s survey titled "Small Business’s Introduction to the ACA, Part II," 62 percent of small businesses experienced premium increases last year, just as many plans came into compliance with the ACA’s small group health insurance market requirements, while only 8 percent of small businesses experienced premium decreases.

Some proponents of the ACA believe expanding the small group health insurance market may decrease premiums or increase Small Business Health Options Program (SHOP) exchange marketplace viability. While there is little research and analysis available on the impact of the scheduled small group health insurance market expansion, the American Academy of Actuaries (AAA) recently wrote, “Although it is possible that premiums for groups sized 1-50 would decline if groups sized 51-100 are lower cost on average than smaller groups and they opt to continue to fully insure, factors exerting upward pressure on premiums are more likely to dominate. The premium impact on groups sized 1-50 will depend not only on the average costs of the groups sized 51-100 relative to those of groups sized 1-50, but also the distribution by group size within the 1-100 market. There are more than twice as many covered employees in the 1-50 group size category than in the 51-100 category, which would somewhat moderate the premium impact.” The costs of expansion are likely to outweigh any benefits.

Impact on Newly Eligible Small Group Market Businesses (51-100 Employees)
Newly eligible small group market businesses may see severe market disruption if the small group health insurance market definition is expanded. Not only will these newly eligible businesses experience the increased costs and health insurance requirements listed above, they must also deal with full implementation of the employer mandate beginning in 2016. These midsized businesses will feel particularly squeezed as they feel the full impact of the ACA.

It makes little sense to dump more small businesses and more employees and their families into an unaffordable and highly regulated small group health insurance market without fully understanding the impact of expansion. CMS and HHS should not proceed with implementing expansion of the small group health insurance market until further analysis is conducted. Both currently eligible small group health insurance market businesses and newly insured small group health insurance market businesses should be aware of the impact expansion will have on their health insurance premiums.

Should CMS and HHS require additional information, please contact NFIB’s director of federal public policy, Kevin Kuhlman, at 202-314-2091.

Sincerely,

Amanda Austin
Vice President
Public Policy

Cc: Andy Slavitt, Acting Administrator, Centers for Medicare and Medicaid Services