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Small Business Impacts from the Repeal of Individual Mandate Penalties under the ACA

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ABSTRACT

This conceptual paper explores possible impacts to small businesses following the repeal of individual mandate penalties under the Affordable Care Act (ACA)[1] via the 2017 passage into law of the Tax Cuts and Jobs Act (TCJA). During the past several years, many analysts have focused on somewhat larger firms in suggesting that the ACA did not affect businesses until they met employee number thresholds that were indicated under the ACA. However, another lens for analyses would counter such an argument; the majority of small businesses are very small – including those identified by U.S. Census reporting as "nonemployer" firms. Given that persons running these very small businesses are subject to the individual mandate, it follows that this mandate was important. Another dismissive claim is based upon the notion that the total revenues from all of these small businesses pale in comparison to those from much larger firms. Yet, macro trends are suggesting that growth in freelancing, home-based, self-employment, "gig" economy, and other activities – regardless of some ill-defined definitions of these – is trending upward, while at the same time obtaining health care and benefits at large is universally reported as being difficult by those who identify with all such groups.

Keywords: small business, entrepreneurship, economy, Affordable Care Act (ACA), Tax Cuts and Jobs Act (TCJA), individual mandate

INTRODUCTION

The Patient Protection and Affordable Care Act,[2] as amended by the Health Care and Education Reconciliation Act,[3] was responsible for the "greatest single expansion of health care access and coverage in American history" (Neiburger, 2011). However, the implementation of the law has been plagued with a pleathora of serious problems from the very beginning. On October 1, 2013, HealthCare.gov, a website that was created under the ACA to facilitate the delivery of various health insurance options was among the first, high-visibility examples of ineptitude on the part of government and contractors, in that the site's unveiling effectively crashed on the launch pad (Chumley, 2013; Radnofsky, Weaver, & Needleman, 2013; Tanner, 2013). At the same time, the White House Press Secretary released the speech that then President Obama delivered in the Rose Garden, wherein he promoted the ease and convenience of using this site: "Just visit HealthCare.gov, and there you can compare insurance plans, side by side, the same way you'd shop for a plane ticket on Kayak or a TV on Amazon" (Obama, 2013).

The Small Business Health Options Program (SHOP) exchange, is a part of the HealthCare.gov website. The intent of the SHOP exchange is to serve small businesses that need to obtain health insurance for their employees. Like its parent site, the SHOP exchange also suffered from numerous issues as it was subsequently implemented (by this time at least developers and government policies were wary, based on lessons learned from the HealthCare.gov launch) (Demko, 2014; Janofsky & Radnofsky, 2014). Beyond the HealthCare.gov site, a pleathora of other issues and delays created an environment of uncertainty for small and large businesses (Clark, 2014; Neddleman & Colvin, 2014; Radnofsky & Francis, 2014). For instance, in July, 2014, the Galen Institute published a report entitled, *42 Changes to ObamaCare…So Far*, in which its findings stated: "42 significant changes already have been

[1] Patient Protection and Affordable Care Act, otherwise known by the abbreviation ACA, or popularly, Obamacare.
[2] Patient Protection and Affordable Care Act, Public Law 111 - 148 (H.R. 3590) C.F.R. (2010).
[3] Health Care and Education Reconciliation Act, Public Law 111 - 152 (H.R. 4872) C.F.R. (2010).

made to ObamaCare: at least 24 that President Obama has made unilaterally, 16 that Congress has passed and the president has signed, and 2 by the Supreme Court" (Hartsfield & Turner, 2014).

The last item in the aforementioned Galen Institute report, i.e., item number 42, referred to the Supreme Court decision in which it ruled on two matters of constitutionality. One was the individual mandate to buy health insurance (or suffer penalties, also known as a shared responsibility payment), and the other was an expansion of Medicaid in states as prescribed under the law (Musumeci, 2012; "National Federation of Independent Business v. Sebelius, Slip Opinion, No. 11–393," 2012). "The individual mandate requires all Americans under 65 to have health insurance or pay an annual penalty" (Perez, 2018b).

The decision in both instances was to rule that both were constitutional. Notably, the individual mandate was treated by the Supreme Court as a "tax," as compared to a "penalty" – language used in the text of the ACA. This nuance is important because the latter could be regarded as coersive (i.e., an undue and unconstitutional requirement to purchase health insurance, or else); whereas it is within Congress's authority impose taxes; the vote was 5 to 4 in favor of the ACA. Fast-forward several years, and it can be observed: "health is still a major issue worldwide" (Arshad, Radić, & Radić, 2018). Criticisms as well as legislative proposals to revise, repeal, or replace the ACA have often focused on the individual mandate (legally a tax, or not, it is regarded as an unfair penalty by many); rolling back the Medicaid expansion; and eliminating federal subsidies (that make-up for insurer's losses) (Perez, 2018a).

In December of 2017, the Tax Cuts and Jobs Act[4] (TCJA) was passed into law. Part of the law included a repeal of the *penalties* associated with the individual mandate – but not the individual mandate itself, and importantly, not the equivilent fee for employers, known as an "employer mandate" (Cannon, 2012; Cassidy, 2014; Clark, 2014). The relevance of the individual mandate as it relates to this present conceptual paper is that it does apply to many small business (in fact, a majority). While there may be overlap and differences in terminology, an example would be owners that operate firms with no employees; such firms are labled as "nonemployers" ("U.S. Census Bureau nonemployer statistics," 2013). Others impacted may be labled differently, such as freelancers, those who identify as being self-employed, participants in a "gig" economy ("Frequently asked questions about data on contingent and alternative employment arrangements," 2018; Manyika et al., 2016), operators of part-time, home-based businesses, and the like. Regardless of these and any similar group/label, reports of the difficulty in obtaining benefits generally, and health insurance coverage in particular are held in common ("Freelancing in America 2017," 2017; L. F. Katz & Krueger, 2016; King, 2018a; McFeely & Pendell, 2018).

LITERATURE REVIEW

The ACA/Obamacare has been the topic of vigorous discussion in the popular press, as well as having received notable coverage in the scholarly literature that is associated with some disciplines. Yet, despite the enormity of the topic itself, its critical impacts in the practitioner world, and the amount of attention as a whole that has been generated, one discipline has a noticeably empty chair, i.e., the scholarly literature that is associated with small business and entrepreneurship. For purposes of further supporting the stated assessment that the

[4] Tax Cuts and Jobs Act, Public Law No: 115-97 (H.R. 1) C.F.R. (2017).

entrepreneurship-related scholarly literature is lacking, Version 5.9a of the list entitled, "*Core publications in entrepreneurship and related fields: A guide to getting published,*" compiled and maintained by Katz (2018), has been regarded as authoritative for purposes of this literature review.

This present paper has been developed utilizing a local computer database comprised of 191 items. The software in use supports not only the typical citation information that one needs in order to leave a breadcrumb trail for future researchers, it also allows for attachments (e.g., Excel, PDF, Word, image files, and ZIP compressed files). In a qualitative researcher's frame of reference, such attachments would be identified as artifacts; another database comprised of core resources pertaining to qualitative research is also used here. Under a qualitative research paradigm, artifacts comprise sources of data that may in-turn be analyzed (Creswell, 1994; Hodder, 1994; Strauss & Corbin, 1994). The researcher's role is to identify patterns and themes in such data as well as interpret meaning. Triangulation (Caporaso, 1995; Maxwell, 1992), where multiple of data indicate similar or the same patterns, helps ensure the legitimacy of researchers' conclusions and increase confidence as it pertains to findings. Data may also be dismissed for having a lack of veracity or disconnectedness from a phenomenon under study (Caporaso, 1995). Theoretical frameworks are developed using a constructivist approach (Barry, 1996; Schwandt, 1994)

For this present paper, a general search strategy has been to focus on that which has occurred after the 2017 passage of the TCJA (December 2017). However, other local databases have been developed for prior, ACA and small business- entrepreneurship-related research efforts. One of these is identified under a naming convention of the researcher(s) as an "Obamacare Master," comprised of 385 artifacts as of February 2017, and an additional local database, "Healthcare Distribution and Innovation," comprised of 404 artifacts as of March 2018; both have contributed to the totality of available artifacts and informed this present research. All of these local databases discussed above have been developed using multiple search strategies over approximately a five-year period of time.

Library (research database collections) such as those from Ebsco, ABI/INFORM Complete, and ProQuest have been extensively consulted, using methods to expand or narrow results as appropriate in searches. For instance, when a search using a resource such as *Entrepreneurial Studies Source* may yield few results, in contrast, turning to another source such as *ProQuest Health Management*, may prove to be more productive. In some instances, a business and/or entrepreneurship-oriented database, such as, *Academic Search Complete*, or *Business Source Complete*, may yield what appears to be numerous "hits" from a search, yet upon further examination it could be determined from the items themselves that there is little to no connection to the scholarly discipline/literature of entrepreneurship. Sources such as the *Journal of Health & Human Services Administration,* and the *Journal of Gastrointestinal Surgery,* for example, may (and often have) yielded useful artifacts, but at the same time, when entrepreneurship-related journals yield few or none, this suggests a need for a transfer of knowledge from other disciplines to better inform the scholarly literature of small business and entrepreneurship. Between entrepreneurship theory and concerns in the practitioner world, entrepreneurship may have connections with virtually any body of knowledge. As such, if literature from other disciplines is robust, it may provide insights. As examples, among others that have been queried, databases associated with public policy, legal research, health care administration, tax, and accounting resources have proven useful.

Beyond searching library databases, artifacts have been collected from numerous other sources. As examples, government documents, including the complete texts of the laws cited herein, and artifacts associated with implementation such as rules and procedures from the department of Health and Human Services, serve as key resources. The IRS is a resource for much documentation, such as forms and accompanying instructions, although, according to a Internal Revenue Service website landing page (presently – at the time that this manuscript is being prepared), the IRS is still working on implementing the Tax Cuts and Jobs Act ("Internal Revenue Service: Tax reform," 2018). Congressional testimony from hearings is typically captured in multiple formats (e.g., transcripts, video), studies from health organizations (e.g., Kaiser Foundation), and other research organizations such as the NFIB Research Foundation, have also been added to the aforementioned local databases. Finally, when scholarly research (e.g., in journals) may still be slow in catching-up to reality "on the ground," sources with more immediacy such as the business and popular press, blogs, and others can be useful, even if they merely point to a need to dig further for more authoritative data (notwithstanding the fact that items cited in a popular press venue, might be authoritative).

DISCUSSION

It has been approximately eight years since the passage of the Affordable Care Act (as amended by the Health Care and Education Reconciliation Act), both in 2010. Changes in the Tax Cuts and Jobs Act were sweeping in several ways, including the potential impact on very small businesses in regard to the discontinuation of penalties that are associated with the individual mandate. Yet, some aspects of the ACA that impacted small businesses meeting Full-Time-Equivelent (FTE) threshholds were left untouched by the TCJA. The ACA constitute's the government's solution to systemic health care problems in the U.S., including access, affordability, and quality. Some have predicted that ending the penalties for a failure to comply with the individual mandate may unravel markets as those who will no longer suffer a financial consequence for dropping a policy, do so. The discussion that follows primarily addresses themes that are associated with small business impacts, but as the entrepreneurial ecosystem is very-much connected with economies and a larger social universe, constructs do overlap.

THE SMALL BUSINESS LANDSCAPE

For persons under the age of 65, employers provide health insurance benefits ("NCHS fact sheet, July 2018"). Thus, within the U.S., as health care delivery sustems are configured, employers play a significant role in providing access to health care (Buchmueller & Monheit, 2009). However, in surveying the small business landscape, it becomes immediately apparent that there are multiple standards for discerning business size, depending on what agency, entity, survey, or other form of measurement and instrumentatlity might be applied.

"Small Business," as per the SBA

According to the U.S. Small Business Administration's (SBA) Office of Advocacy, there were 29.6 million small businesses in 2014 (most recent published data as of 2017, citation given below). By virtue of its definition of what might comprise a small business, i.e., one with fewer than 500 employees, 99.9 percent of all firms in the U.S. fall under this threshhold.

Approximately eight out of ten (23.8 million) small businesses, are identified as firms that do not have any employees (these are labled nonemployers). The other twenty percent (5.8 million), do have paid employees. Over a period of time that is beginning to approach two decades, the number of nonemployer small businesses has grown. There were approximately 15.4 million nonemployers in 1997, whereas in 2014, this number increased to 23.8 million ("Frequently asked questions about small business," 2017).

Further, over the previous decade, the SBA reports that 60.1 percent of firms that have no employees are home-based (thus, one can calculate these instances expressed in numbers: there are approximately 14.3 million, nonemployer, home-based businesses); the relative percentage has remained consistent over this period of time. Even if a business does primarily operate from an individual's home, it might engage in activities from anywhere. "The majority of nonemployer establishments are sole proprietorships (86.4%)" (*Ibid.*). Motley Fool author David Kline (2018), quoting an Intuit survey, stated "projections show that the number of U.S. small businesses will grow from 30 million in 2016 to over 42 million in 2026"; the original survey to which he was referring is further cited in a presentation available on Slideshare.net ("Future of small business report," 2016).

Independent Contractors

"Independent work has never found a comfortable fit within government labor statistics, and official data collection on this segment of the workforce is insufficient and outdated" (Manyika et al., 2016). A report by McKinsey Global Institute (MGI) suggested three key features in defining independent work, summarized here as: 1) autonomy; 2) pay for performance, i.e., "by task, assignment, or sales"; and 3) short-term relationships (Manyika et al., 2016). Importantly, however, this report does exclude self-employed individuals, who in-turn, have other employees (i.e., "many," additional employees; *Ibid*, p. 2); a further stated limitation in McKinsey's research was indicated in a footnote as follows: "Our sample was, on average, slightly more educated than the general population. We also acknowledge that our online survey may not reflect the full extent of workers in the informal economy who are offline, have language barriers, are paid off the books, or do not have official immigration status, since these populations are difficult to survey" (p. 5).

Dourado and Koopman (2015) analyzed IRS 1099-MISC form data, as they considered this to be a more reliable source than other sources (such as surveys using self-reported data from respondents who may not be absolutely clear in understanding their own status as employees or independent contactors). Figure 1 (see Appendix, below) depicts growth in the number of these 1099-MISC form filings between the years 1994 to 2014; 75,416,010 in 1994, to 91,102,778 in 2014. Not all years were represented by growth, yet their findings concluded: "The shift toward more contract work is a real and dramatic change in the labor market." "Independent contractors (including independent consultants and freelance workers) remained the largest of the four alternative work arrangements. In May 2017, there were 10.6 million independent contractors, representing 6.9 percent of total employment" ("Contingent and alternative employment arrangements news release," 2018).

Freelancers

The independent research firm Edelman Intelligence was commissioned by Upwork and Freelancers Union to study the U.S. freelance workforce; this study is now in its fourth annual iteration. A survey of 6,000 U.S. adults who have done paid work in the past 12 months was administered online. Findings suggest that 54 percent respondents (comprised of both freelancers and non-freelancers) lack confidence that the kind of work they do currently will still be around in the next twenty years ("Freelancing in America, 2017"). "Freelancers and non-freelancers share most of the same list of top concerns, which includes access to affordable healthcare, debt and ability to save" (*Ibid.*).

Contingent Workers and the "Gig" Economy

According to a Frequently Asked Questions section on the Bureau of Labor Statistics (BLS) web site, it does not have its own definition of the "gig economy" or "gig workers." Its stated reason is that researchers may use different terms (and those individuals who may be identified as contingent workers and those in alternative employment arrangements may overlap). BLS further states that "one of the strengths of the Contingent Worker Supplement (CWS) is that it measures many different types of work, allowing researchers to study the workforce using their own definitions" ("Frequently asked questions about data on contingent and alternative employment arrangements," 2018).

In their working paper entitled, *The rise and nature of alternative work arrangements in the United States, 1995-2015*, Katz and Krueger (2016) reported on their research that was intended to study trends in alternative work arrangements. Their methods were based upon a version of the Contingent Worker Survey and associated with the RAND American Life Panel ("RAND American Life Panel (ALP)," 2018). According to their findings, alternative work arrangements have risen significantly between 2005 to 2015: "The percentage of workers engaged in alternative work arrangements – defined as temporary help agency workers, on-call workers, contract workers, and independent contractors or freelancers – rose from 10.7 percent in February 2005 to 15.8 percent in late 2015."

According to a report published by the Federal Reserve, in 2017, three out of ten adults were participants in the "gig economy" (Larrimore, Durante, Kreiss, Park, & Sahm, 2018). According to a recent Gallop report entitled, *The Gig Economy and Alternative Work Arrangements*, "36% of U.S. workers participate in the gig economy through either their primary or secondary jobs" (McFeely & Pendell, 2018). Note: It is not the intent of this present paper to try to reconcile any differences in definitions, methodologies, or results from various research sources; rather, the overarching points are that: 1) many individuals may be engaging in various alternative work arrangements; 2) these arrangements or engaging in them may overlap; and 3) the incidence in which this is occurring is rising. Further, it is likely that attaining health insurance for many participants is an "individual" undertaking.

WHY VERY SMALL BUSINESSES MATTER

The Global Entrepreneurship Monitor (GEM) survey is in its 18th year, effective with the release of its 2016/2017 report (Herrington & Kew, 2017). Two observations from this report suggest: 1) As entrepreneurs start to build their businesses, they may employ others or they may intend to in the future. Whether entrepreneurs anticipate adding employees — that is, to the

extent to which they are job creators — is of great interest to policy makers and a range of other stakeholders (p. 26); and 2) an entrepreneurship ecosystem represents the combination of conditions that shape the context in which entrepreneurial activities take place (p. 31). According to the SBA, in the period between 1993 (first quarter) and 2016 (third quarter), 61.8% of net new jobs could be attributed to small businesses ("Frequently asked questions about small business," 2017). "Flexible work arrangements offered by sharing-economy platforms provide an alternative for those excluded from traditional employment relationships" (Dourado & Koopman, 2015).

It should also be noted that unemployment (including hopelessness in regards to the prospect of finding a job, experienced by many during the recession) is certainly a less attractive situation to be in than an alternative work arrangement or otherwise, some form of self-employment. Further, such a bifurcated choice as this does not adequately represent that flexibility in lifestyle, work hours, and increased choices in scheduling could be (and are) regarded as a positive by some (Manyika et al., 2016).

BROADER IMPACTS OF THE TCJA (SOCIETY AT LARGE)

The Affordable Care Act substantially changed the finacing, delivery, and structure of health care in America (Hatch, Upton, & Burr, 2015). It follows, therefore, that a significant alteration of the ACA, which, as per the Supreme Court is indeed a tax law (Musumeci, 2012; "National Federation of Independent Business v. Sebelius, Slip Opinion, No. 11–393," 2012), via the enactment of the TCJA, may also have a substantial impact. "The TCJA is the largest tax reform legislation enacted in 30 years, and it will have a significant impact on revenues, uncompensated care, fundraising, executive compensation, employee benefits, and the UBI taxes not-for-profit entities pay" (Bell, 2018). According to a recent Federal Reserve study entitled, [a] *Report on the economic well-being of U.S. households in 2017*:

> Health insurance is one way to help families handle the financial burden of large, unexpected medical expenses. In 2017, 91 percent of adults had health insurance. This includes nearly three-fifths of adults who have health insurance through an employer or labor union and just under one-fourth who have insurance through Medicare. Four percent of people purchased health insurance through one of the health insurance exchanges. (Larrimore et al., 2018)

As depicted in the chart shown in Figure 2 (with rounding), according to U.S. Census Bureau data in 2017, individuals who were covered by any type of health insurance plan comprised 91.2 percent (294,613,000), while uninsured individuals comprised 8.8 percent (28,543,000). The relative proportion of private health insurance coverage is reported to be at approximately two-thirds (67.2 percent), and government health coverage comprised the other 37.7 percent. However, these reported percentages are confounded by the fact that some individuals carry more that one kind of coverage during a given year. Additional coverage may supplement a primary insurance policy, and data reflect that some may switch coverage types during a given calendar year; as such percentages do not add-up to 100 percent (Berchick, Hood, & Barnett, 2018).

As indicated above, employer-based insurance policies, i.e., private sources of coverage as compared to government coverage, is the most prevalent: 56.0 percent, plus direct-purchase

coverage, at 16.0 percent (these do not add-up to 67.2 percent for reasons already explained). The same Census Bureau reporting of government-based coverage included Medicaid (19.3 percent), Medicare (at 17.2 percent) and military coverage (at 4.8 percent); again, for the same reasons of multiple policies or changes during the year, these three types of reported government health coverage plans do not add-up to the 37.7 percent cited above, either (*Ibid.*). "Uninsured children and nonelderly adults are substantially less likely than their insured counterparts to have a usual source of health care or a recent health care visit" ("NCHS fact sheet, July 2018," 2018).

"While Congress failed in its efforts to repeal and replace the Affordable Care Act in 2017, repeal of the individual mandate is likely to have a significant impact on health care going forward. If the young and healthy stay away from purchasing health care due to the elimination of the penalty for doing so, the not-so-young and not-so-healthy are likely to have to pay more for health care and, according to projections, increasing numbers would once again be priced out of the market for health insurance" (Jones & Luscombe, 2018). Meanwhile, still speaking in broader terms, simplifying the tax code for many, will reduce the time and headaches associated with filing as well as resulting in an economic savings (York & Muresianu, 2018).

BROADER IMPACTS OF THE TCJA (INSURANCE MARKETS)

The impact of repealing the individual mandate [penalty] to purchase health insurance is still a topic of debate (Winfield, 2018). Some suggest that the impact might not be so great. For instance, as reported in a *Forbes* article, in which Kevin Counihan (who was named in 2014 as the first CEO of Healthcare.gov, and is now a Senior Vice President at Centene – a health insurer, was quoted as stating that the individual mandate wasn't "powerful" (Japsen, 2018). The article further suggested his view that the individual mandate had numerous hardship exemptions: "There were so many opportunities for people to appeal….Whether it was for affordability, for college education, for religious purposes and others" (*Ibid.*).

However, findings published by Kaiser Family Foundation predict the likelihood that those who are relatively healthy will be the ones who leave the individual insurance marketplace (effectively, from an insurer's perspective such a marketplace comprises a risk pool). The result would be a larger increase in 2019 premiums than would otherwise have been expected, if such a risk pool/marketplace had remained in place (Kamal, Cox, Long, Semanskee, & Levitt, 2018). "By widening insurance risk pools to include a mix of young and old, healthy and sick, premiums go down in the overall market (and people don't simply sign up for insurance when they're sick only to ditch it when they don't need coverage anymore)" (Mukherjee, 2017).

Insurance companies are highly regulated. For instance, beyond state-level regulation, the Medical Loss Ration (MLR) rule under the ACA means that 80 percent of health insurance premium dollars are to be directly connected with claims costs, and the remaining 20 percent may be allocated administrative costs ("The 80/20 rule: How insurers spend your health insurance premiums," 2013). Such rules, however, do not equate to a cost control mechanism. If claims costs rise, then insurance rates will correspondingly rise (after insurers make their case to support increases, typically before state insurance industry regulators). It does seem most likely that "all of the above" may apply as the best answer:

> The effects of the repeal of the individual mandate of the Affordable Care Act are predicted to be both positive and negative: Taxpayers who opt not to pay for health care will no longer incur a penalty on their taxes, but many experts believe

> that those who do want health insurance and do not receive it from an employer could face higher costs if they have to acquire insurance on state exchanges. (Bringe, 2018)

Further, "coverage is not the same thing as care….coverage often blocks care, as with narrow networks, and inevitably drives up the cost" (Orient, 2017). With the repeal of only a portion of the individual mandate, even though ignoring the law will not result in paying a penalty, "people are still technically required to buy health care coverage" ("ACA remains in effect, but with a weakened foundation," 2018). A concern therefore arises, for those who consider themselves to be law-abiding citizens, that they "technically" can be considered law-breakers.

Other Peripheral Impacts, or not, to Insurance Markets (and Insureds)

"Those with stable insurance may be tempted to think the fallout over the individual mandate and any other future changes to the ACA may not apply to them" (Heaton, 2018). But, there may be other impacts that are less visible to the average layperson/insured. One of these is possible increases in insurance policies beyond those that are labeled health insurance. For instance, a significant proportion of settlements in many automobile insurance claims is often attributable to medical expense reimbursement. "While the typical property damage bill in an auto accident is about $3,700, an average injury bill is closer to $16,000, with most of the money used to pay doctors and other health care providers" (*Ibid.*). This being the case, it is not much of a leap to foresee that any other type of policy, which, in whole or in part, is designed to reimburse medical claims, is subject to adjustment (the most likely consequences will be increases).

Insurers may now be in a position to reconfigure policies as they have previously done to create and manage risk pools. For instance, "in insurance markets that do not price on the basis of health status, healthy consumers seek to segregate themselves from sicker people, and insurers respond by offering ever skimpier coverage to the healthy and ever higher premiums to the sick" (Glied & Jackson, 2017). Finally, there are also, effectively, some non-impacts of the Tax Cuts and Jobs Act. For example, despite changes that affect the ACA and insurance markets, "many states, such as California, are likely to keep the ACA mandates intact, regardless of whether they are repealed on the national level" (Miller, 2017b).

BROADER IMPACTS OF THE TCJA ("LARGER" SMALL BUSINESSES)

The National Federation of Independent Businesses (NFIB) publishes a *Small Business Problems & Priorities* report every four years. According to its most recently published findings: "Rising health insurance costs have been owners' No. 1 problem since 1986" (Wade, 2016). In other NFIB resarch findings, it concluded that "The ACA fundamentally changes the relationship between small employers and their offer (or not) of health insurance as an employee benefit" (Dennis, 2013). An enforcement cornerstone of the Affordable Care Act is its employer shared responsibility provisions (a.k.a., employer mandate – with substantial penalties); these can be found under Section 4980H of the tax code ("Shared responsibility for employers regarding health coverage," 2014). "The employer mandate, the penalties that enforce it, and the reporting requirements that accompany it remain in place" (Jost, 2017). As such, applicable

large employers must continue to file Form 1095-C, which is meant to document employers' offers of health care coverage. "This provision also continues to subject employers to potential employer-shared responsibility payment penalties for failures to offer affordable qualifying coverage" (Bell, 2018). According to the Internal Revenue Service, "under these [4980H] provisions, certain employers (called applicable large employers or ALEs) must either offer health coverage that is 'affordable' and that provides 'minimum value' to their full-time employees" ("Questions and answers on employer shared responsibility provisions under the Affordable Care Act," 2018); importantly, ALEs also must offer health coverage to the dependents of full-time employees as well (*Ibid*.).

The previously cited IRS Q&A web page (which, when saved using a "Print" button, is 32 pages in length), also defines an ALE as an employer that has reached "at least a certain threshold number of employees (generally 50 full-time employees including full-time equivalent employees, which means a combination of part-time employees that count as one or more full-time employees)," and further provides a formula and an example calculation. These "rules require employers to include in their calculations the hours worked by part-time employees; for every 130 hours worked per month, they must add one 'full-time equivalent' to their workforce" (Harrison, 2014). In other words, "multiple part-time workers can equate to several FTEs" (Moran, 2014). And, like most things pertaining to the IRS, it's "complicated" (Coombs, 2013; Lowry & Gravelle, 2014; Moran, 2014; Wilson, 2016).

"The ACA's employer coverage requirements, fees, and obligations to track and report all employee hours to the IRS, along with other administrative requirements" (Miller, 2017b). Indeed, as reported in a Society for Human Resources Management (SHRM) article, the IRS has instituted a process for its sending of penalty notification letters, how employers must respond, a (very short) timeline for doing so, and an appeals process that is expected by some to be "a mess" (Miller, 2017a). Others have pointed out the significant compliance burden for all employers under the ACA, but this may be particularly more of an issue for those businesses that are small, using the law's 50 FTE definition, as compared to the far broader "fewer than 500 employees" definition used by the SBA ("Frequently asked questions about small business," 2017).

BROADER IMPACTS OF THE TCJA (VERY SMALL BUSINESSES)

As observed by the founder of the PlanningShop, author, speaker, entrepreneur and *USA Today* columnist Rhonda Abrams, who is also the author of 19 business planning and entrepreneurship books (Abrams, 2018): "Here's the dirty little secret of health insurance: Insurance companies don't like covering small businesses, and they hate insuring the self-employed. Why? Individuals and small groups are just too big a risk" (Abrams, 2017). In a Congressional Research Service report entitled, *The Affordable Care Act and Small Business: Economic Issues* (Lowry & Gravelle, 2014), authors presented analysis to the effect that most small business, because they did not meet the 50 FTE employee threshold, were not impacted by the ACA. Similar analysis has been presented by others analyzing the impacts of the ACA by virtue of characterizing that it would not affect the vast majority of businesses; although data has changed, the same logic, that hardly any businesses would be/are impacted, is illustrated in the following quote: "As of 2010, there were roughly 5.7 million small employers, defined as those with fewer than 500 workers. Some 97% of them have fewer than 50 employees. That means

Obamacare's employer mandate applies only to 3% of America's small businesses. That's about 200,000 companies" (Pagliery, 2013).

Conversely, because of the individual mandate, one could have then argued that the vast majority of all business were in fact affected by the ACA, since those who were associated with both nonemployer firms as well as firms with less than 50 FTE employees were still subject to that individual mandate and its penalties (even though they were excluded from the employer mandate). Further, "it is important to note that these [very small] firms can be conceptually viewed as the seeds we have sown in terms of our culture at large and its potential economic future" (Lahm Jr, 2014, p. 141).

Notwithstanding the above, as shown in Table 1 (Appendix), based on 2015 Census data ("2015 SUSB annual data tables by establishment industry," 2018), in 2015, there were 5.6667 million businesses with 0 to 49 employees (note that FTEs are not necessarily captured in these data sets). It does appear from insurers' advance rate filings as aggregated and reported by Kaiser Family Foundation that 2019 premiums will increase (Kamal et al., 2018). Other sources have already concluded that "the repeal of the individual mandate [penalty] will make health insurance more expensive and harder to get for those outside of traditional corporate insurance plans – meaning freelancers and the self-employed" (King, 2018b). It is extremely important to reiterate that small businesses have long reported that health insurance is the number one issue thay face. If indeed the individual markets are shaken-up with the repeal of the penalty component of the individual mandate, then one might guess that the people who leave either feel that they cannot afford the health care coverage, even in the absense of a penalty that is not currently being applied. It has long been established in research such as that which is regularly conducted by the Federal Researve and other entities that people will also skip or postpone health care if they are financially squeezed: " Over one-fourth of adults skipped necessary medical care in 2017 due to being unable to afford the cost" (Larrimore et al., 2018).

One potentially beneficial outcome from the TCJA is its inclusion of a Qualified Business Income (QBI) deduction (Bringe, 2018; "Internal Revenue Service: Tax reform," 2018; "Tax Cuts and Jobs Act," 2017). Many very small firms operate pass-through businesses. The QBI deduction provides an exemption of 20% of the income from a qualifying business (Bringe, 2018); these include LLCs and S-corporations, which do not pay corporate taxes. "Instead, income earned from the business 'passes through' to the owner, who then pays individual taxes on the earnings" (Cain, 2018). Nevertheless, there is concern that the benefits of this deduction will be offset (or lost altogether) by increased costs and challenges in obtaining health care coverage (King, 2018b).

CONCLUSION

"We're spending a fifth of our GDP on health care and every other rich country is at half that. And so the system we have is already way too costly. The other interesting phenomenon is that cost in US health care has never really been proven or shown in any way to be correlated to quality of outcomes" (Thompson, 2018). Some sources of reporting have declared that following the Tax Cuts and Jobs Act (TCJA), the individual mandate is finished, while others have more accurately noted that only the IRS penalties were rescinded. This nuance is important, because much of the ACA, including its definitions, reporting obligations, and thresholds (burdens) remain in place.

As indicated in an Excel file named "Table 16 National Health Expenditures, Amounts and Average Annual Growth From Previous Year Shown, by Type of Sponsor" ("National health expenditure data: 2017-2026 projections," 2018) by the year 2026 U.S. healthcare spending is expected to reach $5,696 trillion. In comparing this amount with the $3,489 trillion estimate for 2017, one finds that in the ten year period from 2017 to 2026 (as illustrated in Figure 3), if these estimates prevail, the total burden on the U.S. economy attributable to health care expenses will not quite double, but the trajectory is definitely headed in that direction. Nevertheless, the cost of health care continues to heavily impact small businesses as an important component of the U.S. economy; hence, ultimately everyone is impacted.

Before (and after) the repeal of penalties associated with the individual mandate, many have argued that such a move would undermine – perhaps even destroy – individual insurance markets, and this may very well be correct. Yet, at the same time, many markets in various geographic areas, even before the repeal of the penalty, had been showing signs of severe stress, including narrow/shrinking networks (Appleby, 2015; Orient, 2017), higher premiums and deductibles, few to no alternatives, and other seemingly intractable issues. In other words, as compared to what had been sold (Obama, 2016) to the American public, these markets were hardly delivering on the promise of the Affordable Care Act's namesake.

While some exceptions to the above premise of unfullfilled promises apply, such as cases wherein subsidies defrayed insurance costs for those who were eligible, or persons who were previously deemed ininsurable are able to obtain coverage (it is fully acknowledged that these are very serious matters), the ACA has otherwise failed to deliver on many other fronts. Small business and the citizenry at large continues in its struggle to address a complex problem: how to affordably obtain health care. Such a problem involves far more than merely tinkering with health insurance policy configurations, or a unilateral government takeover of health care.

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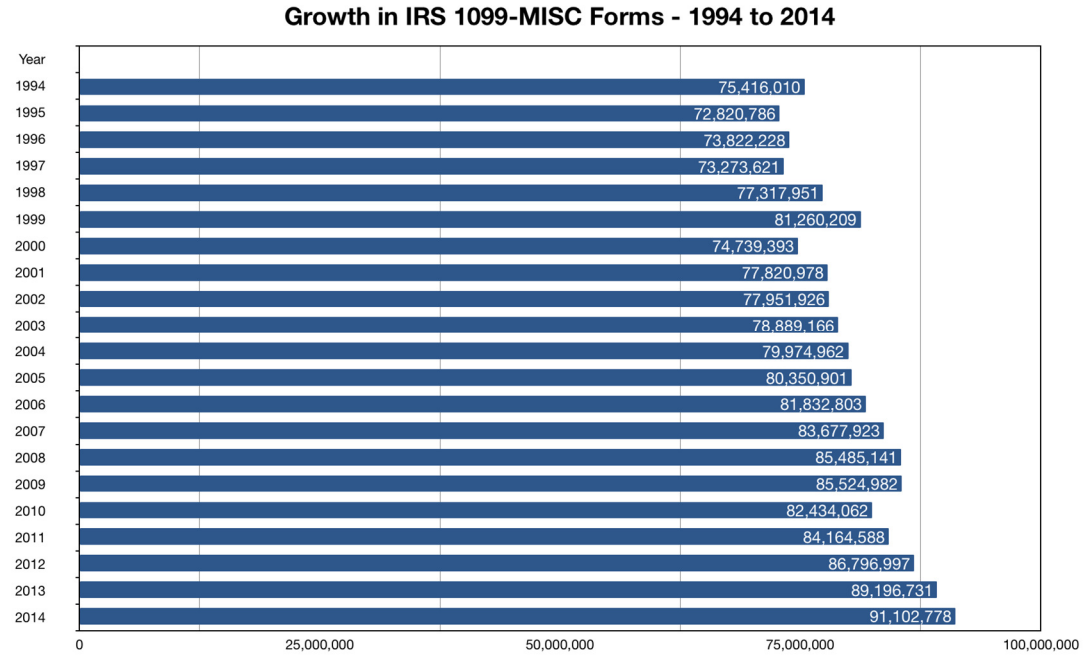
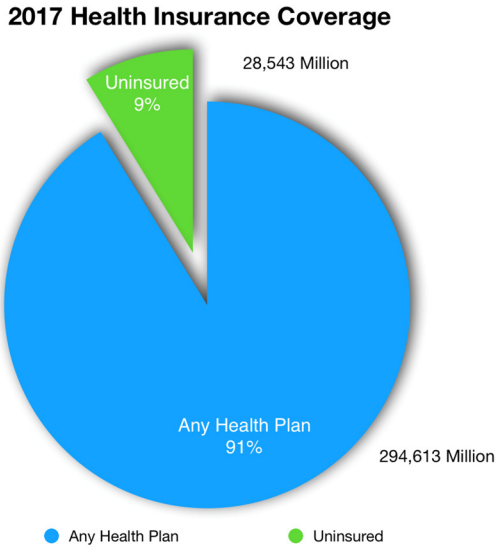
APPENDIX

Figure 1



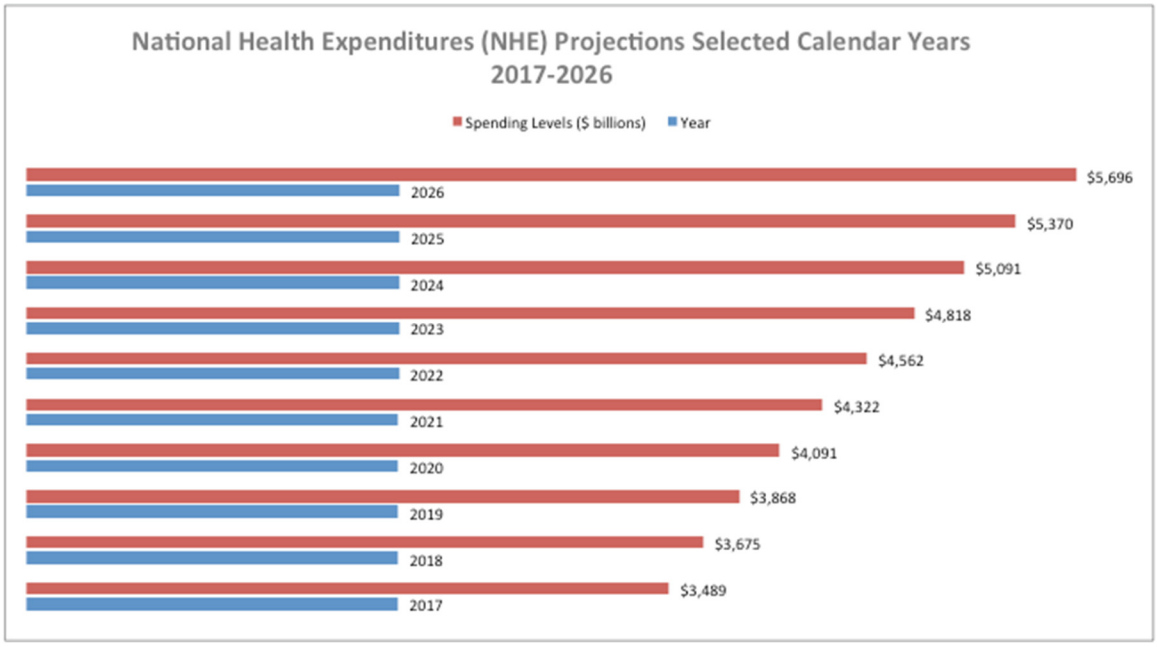
Recreated from data in Dourado, E., & Koopman, C. (2015). "Evaluating the growth of the 1099 workforce." [Data excerpted from TABLE 1. TAX FORMS ISSUED BY THE IRS, 1994–2014, page 6 of electronic document]. Retrieved September 15, 2018, from https://www.mercatus.org/publication/evaluating-growth-1099-workforce

Figure 2



Recreated from data in Berchick, E. R., Hood, E., & Barnett, J. C. (2018, September 12). "Health Insurance Coverage in the United States: 2017." Report number P60-264." [Data excerpted from Table 1., Coverage Numbers and Rates by Type of Health Insurance: 2013, 2016, and 2017, page 4 of electronic document; percentages in chart presented are rounded; Excel source data downloadable separately]. Retrieved September 16, 2018, from https://www.census.gov/content/census/en/library/publications/2018/demo/p60-264.html

Figure 3



Source: Derived from an Excel file named "Table 16 National Health Expenditures, Amounts and Average Annual Growth From Previous Year Shown, by Type of Sponsor." Retrieved September 18, 2018, from https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html

Table 1

Table 1:
2015 Small Enterprise Employment Sizes

ENTERPRISE EMPLOYMENT SIZE	NUMBER OF FIRMS	NUMBER OF ESTABLISHMENTS	EMPLOYMENT
0-4	3,643,737	3,649,989	5,877,075
5-9	1,004,555	1,016,287	6,614,340
10-14	405,249	421,062	4,741,381
15-19	212,141	227,632	3,556,483
20-24	131,650	147,778	2,870,388
25-29	89,133	103,299	2,390,359
30-34	63,762	77,881	2,030,715
35-39	48,255	61,671	1,778,569
40-49	68,273	93,000	3,009,692
TOTAL	**5,666,755**	**5,798,599**	**32,869,002**

Source: Derived from U.S. Census Bureau Number of Firms, Number of Establishments, Employment, and Annual Payroll by Small Enterprise Employment Sizes for the United States, NAICS Sectors: 2015. Retrieved September 21, 2018, from https://www.census.gov/data/tables/2015/econ/susb/2015-susb-annual.html