

December 1, 2023

Jason Sandoval
Internal Revenue Service
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C., 20220

Matthew Meidell
Employee Benefits Security Administration
Department of Labor
200 Constitution Avenue, NW
Washington, D.C., 20210

Kei Helm
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C., 20201

Re: Notice of Proposed Rulemaking, Coverage of Over-the-Counter Preventive Services. EBSA-2023-0013 (RIN:0938-ZB81, 121Q-ZA31) (10/04/2023)

Dear Jason Sandoval, Matthew Meidell, and Kei Helm:

As a leading representative and advocate on behalf of America's 33 million small businesses, Small Business Majority writes to provide comments on the Request for Information (RFI) regarding the coverage of over-the-counter (OTC) preventive services for reproductive healthcare specifically as it relates to contraceptives access and availability. Access to quality and affordable reproductive healthcare, including preventive services, is critical for ensuring full participation in entrepreneurship and business ownership. Our comments reflect our recommendations, guidance, and suggestions for the questions outlined in this RFI and include justifications for increased access to preventive services to ensure that women and families can retain full control over family planning and reproductive care to promote women's entrepreneurship and participation in the workforce.

Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. From our nine offices across the country, we engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth.

Through our work we know that access to reproductive healthcare, including the full panoply of family planning resources, underpins entrepreneurs' economic success.

Specifically, the freedom to choose when and whether to have children is a critical component of financial security for small business owners, their employees and their families—especially for women of color, low-income individuals and those in rural communities. These economic impacts also directly affect employees of women-owned businesses. In fact, small businesses owned by women entrepreneurs employed 10.1 million Americans in 2019, with women who identified as part of a minority group leading the recent increase in the number of women-owned employer firms.¹

¹ U.S. Small Business Administration, 'A Year of Historic Achievements for Women-owned Businesses,' December 23, 2021, <https://www.sba.gov/blog/year-historic-achievements-women-owned-businesses>.

Our previous research has found strong correlation between entrepreneurial success and access to birth control and reproductive healthcare for women business owners, particularly women business owners of color. Our 2017 poll found that Black and Latina women business owners felt strongly that access to birth control had allowed them to advance their career (71% of Black women and 69% of Latinas agreed).² Our 2018 poll found that women entrepreneurs, especially women entrepreneurs of color, cited the ability to access reproductive healthcare as a crucial factor in their business success.³ This poll also found that the majority of Black women and Latina entrepreneurs (65% and 64% respectively) felt their ability to access birth control and to decide if and when to have children had impacted their success as a business owner.

Most recently, our 2023 poll found that women entrepreneurs believe that access to reproductive healthcare is vital to their economic well-being and to the entire small business community, and they strongly support improved access to several forms of reproductive healthcare, including abortion and birth control.⁴ Additionally, the poll found that the freedom to decide if and when to have children is extremely important for women, with overwhelming bipartisan support (92% total support).

It's not surprising then that women business owners are concerned about restrictions on reproductive healthcare and birth control, with more than half sharing they are very concerned (78% concerned/59% very concerned).⁵ This is an issue that cuts across race and ethnicity and political party identification and can create ripple effects on local economies.

Below, we respond to specific topics in the RFI to share more detailed information about how access to OTC contraceptives is important to the small business community.

Under current standards and requirements, do certain populations face additional or disproportionately burdensome challenges to accessing OTC preventive products? Do the current standards that require coverage of only prescribed OTC preventive products without cost sharing pose a substantial burden (for example, excess demand for appointments) on health care providers working in, or disproportionately serving, underserved communities? If plans and issuers were required to cover OTC preventive products without cost sharing and without requiring a prescription by a health care provider, how would such a requirement improve access for these populations?

Certain populations indeed face additional or disproportionately burdensome challenges in accessing OTC preventive products, and the current standards that require coverage only for prescribed OTC preventive products can pose significant burdens. These are some of the ways that easing requirements could improve access:

Barriers to access for certain populations:

- Prescription requirements create access barriers: When OTC medicines require a prescription, it creates substantial barriers to access, particularly for low-income women, women of color, and those in medically underserved and rural areas due to a low concentration of services in proximity to the individuals seeking care.

² Small Business Majority, 'Women Small Business Owners Say Access to Birth Control is Important to their Success, Support Continued Coverage,' October 13, 2017, <https://smallbusinessmajority.org/our-research/healthcare/women-small-business-owners-say-access-birth-control-important-their-success-support-continued-coverage>.

³ Small Business Majority, 'Scientific Opinion Poll: Women Entrepreneurs of Color Say Access to Birth Control is Important to their Success,' March 1, 2018, <https://smallbusinessmajority.org/press-release/scientific-opinion-poll-women-entrepreneurs-color-say-access-birth-control-important-their-success>.

⁴ Small Business Majority, 'Women Entrepreneurs See Access to Reproductive Health as Essential to their Economic Security,' June 14, 2023, <https://smallbusinessmajority.org/our-research/women-entrepreneurs-say-reproductive-health-essential-to-economic-security>.

⁵ Ibid.

- Impact of long travel to clinics: In many parts of the U.S., especially in rural areas, accessing a clinic for a prescription can involve long travel distances, posing a prohibitive burden for many business owners and their employees seeking contraception.

Burden on healthcare providers in underserved communities:

- Demand for appointments: The requirement for a prescription for OTC preventive products can lead to excess demand for medical appointments, placing a strain on healthcare providers, especially those serving underserved communities.
- Proximity to healthcare providers: In rural and tribal communities, individuals sometimes spend hours traveling one way to access basic preventative care and other services that improve health outcomes, this takes away from the limited time business owners have to oversee their day-to-day operations and manage business decisions. Protecting access for OTC products would minimize the amount of unnecessary time that owners and employees spend away from their business, most of which is unpaid.
- Health worker shortages: Many healthcare centers, particularly federally qualified ones, face health worker shortages. These centers are essential for offering family planning services and counseling but may not provide every contraceptive method or have staff trained in all aspects of birth control and patient counseling.

Potential impact of eliminating prescription requirement:

- Improving access in contraceptive deserts: Removing prescription requirements for OTC preventive products could significantly improve access to contraception in areas with minimal family planning resources, known as "contraceptive deserts." This is particularly relevant for populations without established patient-provider relationships or those facing logistical challenges, like lack of transportation or childcare. Additionally, very few small business owners are able to afford to offer paid family and medical leave. Therefore, when business owners and their employees need to take time away for health needs, it is often unpaid. This creates additional roadblocks for both employers and employees in the small business community when seeking access to reproductive care.
- Easing access in restrictive states: In some states, pharmacists can refuse to dispense contraceptives based on religious or moral objections. According to Section 1557 of the Affordable Care Act, pharmacies that stock and routinely sell contraceptives are unable to refuse to fill a prescription for contraceptives on the basis of race, ethnicity, origin, sex, age, or disability. Unfortunately, while federal guidance may differ, there has been an increase in reports of pharmacies refusing to fill prescriptions for care. Eliminating the prescription requirement would increase access to contraception in these areas and help business owners and their employees get back to work. OTC alternatives will enable these individuals an opportunity to purchase the medications they need without risking prescription refusal at their local pharmacy.
- Reducing unintended pregnancies: Access to OTC contraceptives without a prescription could help reduce unintended pregnancies, ensuring business owners and employees alike have access to the family planning services they need to further their careers.

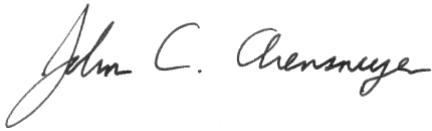
The current standards requiring coverage of only prescribed OTC preventive products impose substantial burdens on both consumers and healthcare providers, particularly in underserved communities.

Removing the prescription requirement and allowing for coverage of OTC preventive products without cost sharing could significantly improve access for these populations, especially small business owners and their employees, helping to address systemic inequities in healthcare access and outcomes.

In closing, we thank the agencies for their work to support America's entrepreneurs who bring quality jobs to their communities by providing access to affordable preventive services to support reproductive care. We ask you to ensure that these services are available and accessible for underserved communities,

women entrepreneurs, and the small business workforce to provide alternative care options in reproductive care. Doing so will ensure a strong and robust workforce free from barriers to contraceptives. Should you have any questions or would like to discuss our feedback further, please contact our Government Affairs Director, Alexis D'Amato at adamato@smallbusinessmajority.org or (202) 967-0995.

Sincerely,

A handwritten signature in black ink that reads "John C. Arensmeyer". The signature is written in a cursive style with a large, sweeping initial "J".

John Arensmeyer
Founder & CEO
Small Business Majority