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COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

MAJORITY (202) 225–2927
FACSIMILE (202) 225–2525
MINORITY (202) 225–3641

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March 6, 2009

The Honorable Henry Waxman
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman:

Since we last corresponded with you on the matter of the Consumer Product Safety Improvement Act, the Consumer Product Safety Commission (CPSC) has postponed enforcement of some provisions related to the law's lead standard as it was to apply to toys, apparel and a universe of other goods meant for kids. Largely unnoticed, however, is the fact that the legal requirement to meet the standard remains in full force.

That leaves everyone from city libraries to home businesses on the hook, since the only way to know that even Nancy Drew and the Hardy Boys meet the standard is to test them. So until February of next year, America's safety policy is this: "We won't ask; don't you sell."

We had written you on January 21 to request a hearing, and we await your response. It seems to Republicans that it is as important to start fixing this problem now as it was then, when the weight of a gargantuan unforeseen consequence promised to crush the work of artisans, booksellers and others for whom pricy testing of inherently blameless items meant going broke.

An example is Janet Littlecrow, who runs the Littlecrow Trading Post in Red Rock, Oklahoma, (580-723-9244, www.littlecrowtradingpost.com) and sells the Native American clothing that she and her seamstresses sew. Here is part of what she told us:

> "Our income for February dropped to nearly ZERO, when sales in January were over $2000, even in this bad economy. That's not a lot of money in your world, but it's economic survival in rural Oklahoma. Like many skilled & educated workers today, prolonged unemployment after 9/11 forced us from our middle-class existence into poverty. We moved to a poor tribal community under the looming threat of homelessness, & started our business to avoid

> bankruptcy. We serve as an example of hard work & determination to our community, proof that an education can help anyone start a business with almost nothing. But this law is pushing us beyond our capability to pay bills, let alone growing our business. Our contract labor employees depend on our business income for much of their income. One partially-disabled seamstress who sews children's clothes for us has finished over half of her service hours for a Habitat for Humanity house, but needs our income to qualify. I've invested 18 months into developing patterns & production standards for children's outfits, and planned to put some unemployed seamstresses to work part-time. Now that investment in developing our children's lines may be worthless, and it's doubtful that I can expand operations to employ more people. We may not even survive the loss of children's business in a prolonged economic downturn, which will force us into bankruptcy and out of business."

Similarly, we've heard from Brent Taylor, owner of TreeHouse Toys & Books in Lansing, Michigan, (517-367-7703; www.treehousetoysandbooks.com) who wrote this:

> "What seems to be a lack of action (or possibly even acknowledgement) on the part of many who have the voice to impact this legislation leads me to wonder if we've spent too much time talking about the adverse effects on our businesses, and not enough time talking about the impact on our lives. Please understand that for many of us, losing our business means more than bankruptcy and financial hardship. It also means losing the health insurance that covers our families, the prospect of burning through our savings and our already shrunken 401K's to survive a period of unemployment, potentially trying to sell our homes in a market that does not bode well for sellers...and the list goes on and on. This is not just about putting people out of business (which is easy to ignore because it has become so common) but rather it's about disrupting lives and doing enormous harm to hardworking Americans and their families. We are not looking for a bailout, but only a voice of reason to hear our concerns and repeal this law before literally hundreds of thousands of lives are thrown into chaos and hardship...."

Also pleading for help was Heather Flottmann, who runs "liliputians" on Staten Island, New York, (917-796-3472; http://www.liliputians-nyc.com):

> "As it stands currently," she said, "the CPSIA requires that by August of 2009 all items will need to be unit tested by a certified government lab. The cost quotes given to test in the manner laid out in the law will range from $500-$1500 per style depending on the number of substrates with the lowest price I could find being $75 a substrate. The attached image of one of my hand appliqué 100% cotton shirts would cost me exactly $1425. to test (I obtained quotes solely from US-based labs such as Lab Cor, Intertek, ETC and STR) just to show that same documentation as the XRF scanning as well as the documentation provided by my vendors showing that the components have already also been tested and meet lead guidelines. The redundancy of the testing is unnecessary as allowing component testing and XRF will ensure safe products. Without that allowance my company will go out of business. NOT because of the economy, but solely because of CPSIA. Small micro manufacturers such as myself have no way of absorbing the price. There is no economic recovery from it."

There are many more such reports in the news: A shop owner in Portland, Oregon., who told a reporter that "I'd never called a congressman's office in my life, and I'm bawling to these 20-year-old (congressional aides) in Washington;" a Nebraska City, Nebraska, librarian who quarantined 1,000 children's books behind orange plastic sheeting. The list goes on and on.

Congressional offices have heard directly from hundreds or even thousands of people who sent us distress-filled communications asking for help because Congress didn't get the toy safety bill right.

Mr. Chairman, not a lot has changed since we contacted you to make the case for a hearing. We still need to learn how to achieve what we'd all intended to achieve in the first place -- protecting kids -- and how to do it without fueling the recession that is claiming thousands of their parents' jobs. The commission has only suspended the axe over the heads of people like Ms. Flottman, Ms. Littlecrow and Mr. Taylor, not removed the threat of it falling on their necks. That is because the intentional, built-in rigidity of our law won't let the CPSC do much more now than wait until time runs out and the blade falls.

Nothing about this should be partisan. It should be an issue that the Republicans and the Democrats on our committee confront together, especially as it entails repairing a legislative job that was botched in the Capitol. We continue to believe that a necessary first step involves convening a hearing in which the committee can examine the facts and start to coalesce around a solution. Doing so should be an Energy and Commerce Committee priority.

Mr. Chairman, we are asking you to please find a way that our committee can spend a morning listening for the first time to honest people who don't belong to influential organizations and who can't afford to hire lobbyists, experts or spokespeople, and whose very real concerns were not noticed until it was almost too late.

Sincerely,

Joe Barton
Ranking Member
Committee on Energy and Commerce

George Radanovich
Ranking Member
Subcommittee on Commerce, Trade,
and Consumer Protection

cc: The Honorable Bobby L. Rush
Chairman
Subcommittee on Commerce, Trade, and Consumer Protection