

July 12, 2017



The Honorable Thomas E. Price, M.D.  
Secretary of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Mr. Secretary:

On behalf of the National Restaurant Association, I am writing in response to your Request For Information (RFI) on reducing regulatory burdens imposed by the Patient Protection and Affordable Care Act (ACA) [RIN 0938-ZB39]. Thank you for this opportunity to share the view points from restaurant operators and employees.

As you know, restaurants employ nearly 10 percent of the nation's workforce, or approximately 14.7 million Americans. With one million locations across the country, the \$798.7 billion in sales from the restaurant industry makes up four percent of the US GDP. Restaurant jobs provide opportunities for promotion. Nine of ten salaried restaurant employees started in hourly positions. The typical hourly restaurant employee who starts out at an entry-level wage receives a pay raise after six months. Restaurants are a training ground for the American workforce. One-in-three Americans got their first job in the restaurant industry and one-half of all Americans have worked in the restaurant industry at some point in their lives.

The National Restaurant Association (Association) is the leading voice for American restaurateurs on commonsense reforms to the current health care laws. The effect of the ACA employer mandate on restaurants resulted in a restructuring of the full-time workforce, reduced the availability of a flexible work schedule for restaurant employees, and redirected hundreds of productive work hours into administrative hours spent managing and tracking health insurance benefits without any clear benefit to the employees for whom the benefit was intended. Statutory definitions often discourage smaller restaurants from expanding and hiring additional employees due to their concerns for triggering new administrative cost and IRS penalties.

In response to the RFI, the following examples illustrate areas where improvements to existing regulations or guidance within Department of Health and Human Services' (hereinafter HHS or the Department) authority could provide much needed relief to the individual and small group health insurance markets:

#### **1. Empower patients and reduce regulatory burden.**

**Recommendation: Modernize employer communications process related to appealing eligibility for Advanced Premium Tax Credits to create a streamlined process for electronic receipt and submission of notices and an error correction process. Support legislation to streamline reporting process and make commonsense changes.**

Section 1411(f) of the Affordable Care Act requires the Secretary to establish a federal process for hearing and making decisions with respect to appeals of determinations made under section 1411(e). This process is important because it allows employers who have offered coverage to employees to communicate that offer to HHS, when an employee has been deemed eligible for an advanced premium tax credit (APTC). Under current law and current legislative proposals, employees with an eligible offer of coverage from an employer are not eligible for an APTC. An erroneous eligibility determination can trigger costly claw backs from the Internal Revenue Service that can be difficult for lower-income workers to absorb. A functioning system would protect employees and federal tax dollars.

Unfortunately, the current process established by HHS for the communications between employers and the Marketplace is paper-based, requires manual handwritten comments and does not include a function to correct information errors contained in the Exchange databases, such as correct employer addresses and contact information. Another concern relates to states that established alternative appeal systems that are administratively burdensome and create antagonistic relationships with employers. Creating numerous non-uniform appeals processes adds to administrative expenses and discourages employers from engaging in the voluntary appeals process.

The Association encourages the Department to adopt an electronic process that allows for error correction and creates a streamlined standardized process for appealing the issuance of erroneous advanceable refundable tax credits when an individual has a disqualifying offer of employer sponsored insurance that could cause IRS claw backs for the employee.

We also encourage the Administration to support bipartisan legislation to streamline the burdensome ACA employer reporting requirements. In the last Congress, the Association supported bipartisan legislation (The Commonsense Reporting Act, S. 1996/ H.R. 2712) to streamline the reporting requirements and to protect employee privacy. The legislation would make practical changes like allowing employees who have requested electronic communication to receive forms electronically without additional delay, reducing redundant information requests and decreasing the risk of erroneous Marketplace eligibility decisions.

The legislation would amend section 1311(c)(6)(B), allowing employers to voluntarily file reports during the Marketplace enrollment process, rather than at the end of the tax year as is currently required. This new prospective reporting system would help provide clarity about who is eligible for premium tax credits and help ensure individuals are not hit with a large and unexpected tax bill at the end of the year. As we continue to work with the Congressional sponsors to reintroduce the legislation, we welcome your insights on how we can ease the data collection burden on employers, streamline the process and protect employees' private data.

**2. Increasing the number of younger and healthier consumers eligible to purchase plans and encouraging uninsured individuals to buy coverage will help stabilize the individual and small group health insurance market.**

**Recommendation: Use available regulatory flexibility and support legislative efforts to change the definition of full-time employee and seasonal worker to increase the potential for additional earnings and additional insurance options.**

It is important that everyone finds the best health insurance home for themselves, whether that is participating in a public program, signing up for the individual marketplace, or joining an employer sponsored health insurance plan. All individuals should have high quality options and be able to determine where their best health insurance home should be. The definition of full-time employee in the ACA has limited the options of part-time workers who would like to earn more hours, but maintain access to other sources of sometimes lower-cost or preferable coverage. Eliminating the employer mandate and increasing the number of hours that defines full-time and seasonal employment could help these employees.

Individuals may qualify under many different health insurance homes and qualifying for one does not mean you should be locked out of other options. Sometimes your best option is in an employer-sponsored health insurance plan and sometimes it is not. Why lock these younger healthier individuals into their employer sponsored health insurance with the 30-hour rule or seasonal worker definition? We hope the Administration will work with the Association to lift the constraints on younger and healthier individuals by increasing the 30-hour workweek to 40 hours and increasing the definition of a seasonal employee to one working six months or less.

Before the ACA, employees' hours could fluctuate between 20 to 40 hours. If an employee needed more hours to pay for school books, a child's school uniforms, holiday gifts, or another unplanned financial need, the option was available to get more hours or switch shifts. The health care law and its definition of a full-time employee has taken away this flexibility from restaurant employees and makes it harder for some employees to grow their incomes.

Today, if you are hired as a part-time employee, the flexibility to drift between being a full-time and part-time employee based on your decision to work has been walled off due to the ACA requirements. Regardless of the employee's need for health insurance, an employer must start following the ACA reporting requirements as soon as one is considered a full-time employee. Meaning, an employer must begin the necessary IRS tracking and reporting requirements on not just the employee, but also their dependents and their spouses. The ACA's definitions of a full-time employee and seasonable employee, as well as the subsequent reporting requirements are causing employees to lose out on flexibility and on extra income regardless of their need for health insurance.

While permanent solutions to the 30 Hour rule and seasonal worker definitions may require legislative change, we ask that Department of Health and Human Services use their authority to find flexibility in the Marketplace to allow these individuals to qualify for more affordable coverage and to work with us to encourage Congress to make these beneficial changes.

### 3. Enhancing the affordability of coverage for small businesses.

**Recommendation: Working with employers to streamline administrative burdens will help reduce health care costs and make coverage more affordable for all Americans.**

Since the enactment of the ACA, employment-based health insurance is becoming a shrinking proportion of restaurant employee health insurance coverage. According to data from the U.S. Census Bureau's American Community Survey (ACS), a record 76 percent of restaurant employees had health insurance coverage in 2015. These numbers are up from 59 percent of restaurant employees in 2010. However, this growth was driven primarily by sources other than employment-based plans, even though the ACA required more restaurant businesses to offer health insurance coverage. In fact, only 59 percent of restaurant employees with health insurance got their coverage through an employment-based plan in 2015 – down sharply from 67 percent in 2010.

Additionally, health insurance costs rose much faster than restaurant sales in recent years. Between 2006 and 2016, the average annual employer contributions to health insurance premiums for family coverage jumped 51 percent, according to the Kaiser/HRET Survey of Employer-Sponsored Health Benefits. During the same ten-year period, average sales per restaurant rose just 33 percent. Compliance issues, such as those mentioned above that restructure employee hours and the complicated ACA reporting structures have increased the cost of employer-provided health insurance without adding value to the benefits or growing the business. Addressing these issues would help lower administrative costs and expand access so more employers could offer health insurance to more employees.

Costly compliance issues, a shrinking risk pool, and higher healthcare costs have made the current structure of the ACA untenable for restaurant operators. We look forward to working with you to build a system that works for all employees. Please feel free to contact me directly with your concerns or have your staff contact Robin Goracke, Director of Healthcare Policy, National Restaurant Association, at (202) 331-5933.

Sincerely,

A handwritten signature in blue ink that reads "Dawn Sweeney".

Dawn Sweeney  
President and CEO  
National Restaurant Association

cc: Cicely Simpson, Executive Vice President, Policy & Government Affairs  
National Restaurant Association