Health Care Reform

**Background**

- With major parts of the 2010 health care law set to take effect Jan. 1, 2014, restaurant operators are trying to prepare. Yet operators are finding the law, and the rules to implement it, extremely complex. Compliance presents tough challenges and steep costs.

- The health care law has a particularly profound effect on the restaurant industry. The industry’s unique characteristics — labor-intensive, low profits per employee, significant numbers of part-time employees, and a young and mobile workforce — pose extreme challenges that make it difficult for restaurant employers to implement the law as written.

- Although policymakers regularly enjoy dining in restaurants, very few truly understand what it takes to run one. Restaurateurs have a unique opportunity to carry the message to Congress about the challenges they face.

**MAKING THE CASE**

- Reinforce the bottom-line message: Reasonable changes must be made to the law before the employer requirements go into effect Jan. 1, 2014.

- Tell your story. Explain to members of Congress and their staff the difficulties you face in trying to understand the law; the complexity of the requirements for both small and large businesses; and why the requirements are so hard to implement in an industry with a high-turnover, variable-hour and seasonal workforce.

- Report back to the NRA about what your lawmakers say. This will help us follow up and work with the people who are willing to get something done.

**MESSAGE TO CONGRESS**

Restaurants face numerous challenges in trying to comply with the health care law.

**THE ASK**

- Explain how complex the health care law is and why it is so challenging for restaurant operators to figure out how to comply. Among the most significant challenges:
  - Knowing who a restaurant’s full-time employees are (i.e., the people to whom a large employer must offer coverage in order to avoid penalties) is not as easy as some think. Many employees’ hours are unpredictable from week to week. The law defines full-time employment at 30 hours a week, which is not a typical business practice.
  - The calculation to determine if you are a large or small business is unnecessarily complicated, and burdensome for small businesses who must closely track their status from year to year.
  - The automatic-enrollment requirement can cause financial hardship for employees and will be duplicative for employers who already are required to offer coverage to the same employees or face penalties.
  - Large employers’ plans must meet minimum value and affordability standards to avoid penalties — but employers are still unsure what a plan that meets these standards looks like, and what premiums will be in 2014. This means business decisions are hard to make.
  - Even employers who want to offer coverage may not be able to do so if too many employees choose to pay the individual-mandate tax penalty instead of participating in an employer’s plan.
  - The rules for large-employer reporting requirements haven’t been written yet, but without streamlining, the reporting rules are likely to be complex and impose high compliance burdens and costs on many restaurant operators.
  - Employers and employees need transition relief as they make good-faith efforts to try to comply with the law in 2014.

- Ask lawmakers whether they are willing to work with the National Restaurant Association to make changes to the law.

- Ask lawmakers what reforms they could support.
Issues to Raise with Lawmakers

Many of the health care law’s requirements present a challenge. What challenges are you facing? Share this kind of information with your lawmakers:

- **Figuring out who is a large employer.** Many restaurant operators who thought of themselves as small businesses are learning the health care law defines them as large. The law requires employers to aggregate employees in businesses that meet IRS “common control” standards, raising confusion and questions. The annual calculation is unnecessarily complicated and sweeps millions of small businesses into its reach. The calculation requires employers to aggregate all part-time employees’ hours and the number of full-time employees each month and then average that over a year. Few vendors have tracking systems and solutions to help restaurants run those numbers. That leaves many employers to figure it out on their own, which is a heavy burden for smaller businesses.

- **Knowing which employees should receive coverage offers.** Once an employer determines it’s a large business, it needs to figure out who its full-time employees are so the employer knows to whom to offer coverage. Or, if an employer decides not to offer coverage, it must understand its potential tax liability. Figuring out who are your full-time employees isn’t necessarily easy in the restaurant industry. Certainly some employees average 30 or more hours a week in any given month. But it’s not always easy to predict hours of service for others; restaurants often set weekly schedules based on expected guest traffic, which can vary for multiple reasons. The health care law sets a new “bright line” standard for full-time employment at 30 or more hours of service a week over a month. This is not in accord with the 40-hour full-time workweek that’s been a longstanding business practice for many employers.

- **Auto-enrollment mandate.** No rules yet exist on how to implement this mandate, but the health care law requires employers with at least 200 full-time employees to automatically enroll employees in a company’s lowest-cost health plan if they don’t sign up for a plan or opt out of automatic enrollment. The mandate could cause financial hardship for employees who don’t opt out by the law’s deadlines. The requirement also is redundant, expensive and confusing for employers and employees. The National Restaurant Association supports H.R. 1254 by Reps. Richard Hudson (R-N.C.) and Robert Pittenger (R-N.C.) to eliminate the auto-enrollment mandate.

- **Knowing what coverage to offer.** To avoid penalties, employers need to offer full-time employees health care coverage that’s of “minimum value” and “affordable.” Employers can’t just assume their coverage will meet the standards. Figuring out — and documenting — affordability and minimum value can get complicated. For example, the affordability test is based on ensuring that an employee doesn’t have to pay more than 9.5 percent of their household income toward their premiums. The IRS allows a few alternative calculations, based on W-2 wages, the employee’s rate of pay or the federal poverty level. Full guidance on how to determine if a plan meets the minimum value standard is not yet available, and no one yet knows what such a plan will cost in 2014.

- **Availability of employer group health plans.** Many restaurants will be considered large employers under the law and need to offer coverage or face penalties. However, it’s up to each full-time employee whether to accept a coverage offer. If too many eligible employees refuse a coverage offer, an employer might not have enough participation to purchase a group health plan. (Some reasons employees might decline: They have alternative coverage through a parent or choose to pay the individual-mandate tax penalty rather than pay for work-based coverage.) If a large employer can’t purchase a plan due to low participation rates, the employer could be forced to pay the penalty even if it wanted to offer coverage. This could be especially difficult for businesses just above the 50-FTE threshold.

- **Large-employer reporting requirements.** The rules haven’t been written but restaurateurs know the law’s new reporting requirements will be complicated, burdensome, duplicative, and likely confusing for employers and employees. The statute requires specific data points that must be reported on an employee-by-employee basis (including information on an employee’s dependents). The restaurant industry is concerned that tracking data, merging payroll and benefits information, and reporting it in to the IRS and employees will be very burdensome if the reporting requirements aren’t streamlined.

- **Time spent trying to comply.** How many hours have you spent trying to figure out how the law affects you and getting the information you need to make business decisions about how you’ll comply?

- **Employers need transition relief.** No law of this magnitude has ever been implemented perfectly from the start. But because implementation is moving forward, employers need time to figure out their compliance options and then set up the necessary systems to implement the law. Regulators should consider an employer’s good-faith compliance in the first year when enforcing the law. Restaurant operators need time to implement the vast changes the law requires — without the threat of heavy penalties. No one wants employers to drop coverage simply because penalties seem more certain than figuring out how to offer coverage at an affordable rate to employees.
Background

• Congress is considering comprehensive immigration reform. A bipartisan Senate working group announced a comprehensive plan in late March, clearing the way for possible Judiciary Committee action this spring and full Senate action as soon as May. A bipartisan group is also making progress in the House, with possible action in the fall.

• This year presents the best opportunity for immigration reform in nearly 10 years. The National Restaurant Association supports action in 2013.

• Reform plans generally include four components: a pathway to legalization for many immigrants who entered the U.S. illegally, tighter border security, employer enforcement, and a system for handling a flow of legal immigration when employers can’t fill jobs domestically.

• As part of legal immigration reform, Congress is looking at ways to enhance the flow of guest workers. The National Restaurant Association discourages the inclusion of any guest-worker program that is not robust and workable for all skill levels.

At all levels, no industry reflects the diversity of this nation the way that the restaurant industry does.

MESSAGE TO CONGRESS

Move forward with immigration reform.

THE ASK

Pass sensible, meaningful immigration reform.

MAKING THE CASE

• It’s time to act. Congress has well-vetted, achievable immigration proposals on the table. Lawmakers should act on these proposals now for humanitarian and economic reasons and as a springboard to spur further action.

• Legalizing a significant portion of the undocumented workforce must be an integral part of any legislative package. The United States’ enforcement-only approach has persisted too long. The current system often targets otherwise law-abiding members of society who contribute to the U.S. economy and local communities.

• We need an uncomplicated federal employment verification system. A reliable system would help employers manage the hiring process in a timely, efficient and respectful manner, and give employers certainty about their legal obligations. Congress should override the patchwork of state and local immigration regulations that subject employers to unfair liability and an untenable regulatory structure. The National Restaurant Association supports the Legal Workforce Act, an E-Verify bill championed by Rep. Lamar Smith (R-Texas) in the last Congress.

• The United States must be more welcoming. Everyone agrees that the United States must do more to prevent illegal border crossings. At the same time, we need to encourage legitimate travel and tourism. Immigration reform represents an opportunity to strengthen U.S. economic competitiveness. The JOLT (Jobs Originated through Launching Travel) Act, among other bills, would improve U.S. visa policies, increase international tourism to the United States, and boost U.S. jobs.

• At all levels, from owners to chefs to managers to employees, no industry reflects the diversity of this nation the way that the restaurant industry does. Immigration reform must happen for our economy to thrive, and meaningful reform should be passed this year.
ISSUES

Tax Issues

Background

• Congress is considering tax-code changes that could affect restaurants.

• Comprehensive tax reform has entered a more serious stage, with broad reform frameworks giving way to more specific proposals. Congress is setting the stage this year for likely action in 2014.

• A number of tax provisions important to the restaurant industry will expire at the end of the year. These “tax extenders” are typically reauthorized for a year or so at a time, frequently leaving businesses in the dark about whether they can rely on these provisions as they make business decisions.

TOP RESTAURANT INDUSTRY TAX ISSUES

**ISSUE: Tax reform**

**THE ASK:** Recognize the restaurant industry’s diversity as part of tax reform.

• Many restaurants are organized as sole proprietorships, where owners pay taxes at individual rates, or as corporations and partnerships, where investors and owners pay individual taxes on income that flows through to them. Congress must take the industry’s diversity into account as it reforms the federal tax code. For example, restaurants could be disproportionately harmed by proposals that would impose corporate taxes on large flow-through entities.

• There are legitimate public policy reasons behind such tax provisions as 15-year restaurant depreciation, the Work Opportunity Tax Credit, and the Section 45(B) FICA tax tip credit, an employer-based solution to help capture under-reported tip income. A 15-year tax depreciation schedule improves cash flow. This helps restaurant operators reinvest in their businesses and hire more employees.

• Tax certainty encourages investment. About 30 percent of restaurant operators recently reported putting expansion/improvements on hold because they were uncertain about the tax treatment of this spending.

**ISSUE: Depreciation**

**THE ASK:** Support a permanent 15-year depreciation schedule for restaurants, retail and leasehold improvements, and new construction as part of tax reform. The 15-year schedule is much more in line with marketplace realities than the 39½-year schedule. A 15-year tax depreciation reflects economic realities. Restaurants typically renovate every six to eight years to accommodate heavy daily wear and tear.

**MESSAGE TO CONGRESS**

Revisions to the tax code must take the restaurant industry’s diversity into account.

**THE ASK**

• As part of tax reform, support a simpler tax code with lower individual and corporate rates.

• Business tax reform requires action on both corporate and individual tax codes to address the needs of all businesses.

• Make permanent: (a) the 15-year tax depreciation schedule for restaurant improvements/new construction; (b) the Work Opportunity Tax Credit; and (c) the enhanced deduction for charitable donations of food inventory. They expire at the end of 2013.

• Expand the current 50 percent business meal deduction to 80 percent or 100 percent.

• Retain the Section 45(B) FICA tax tip credit, an employer-based solution to help capture under-reported tip income.
ISSUE: WOTC
THE ASK: Make the Work Opportunity Tax Credit permanent.
• The WOTC encourages employers to recruit, hire and retain people who might otherwise have a hard time finding jobs. It gives employers a federal income tax credit of up to 40 percent against the first $6,000 they pay in wages to employees in certain groups.
• The WOTC has helped more than 6 million people find jobs since 2006 as they transitioned from welfare to work. The WOTC helps people become productive employees and end their dependence on public assistance.
• The WOTC’s costs are more than offset by savings in public assistance and higher payroll and other tax revenue as people move from public assistance into jobs, according to a 2011 study.

ISSUE: Business meal deduction
THE ASK: Expand the current 50 percent business meal deduction to 80 percent or 100 percent as part of tax reform.
• Business meals are a 100 percent legitimate business deduction. Full deductibility would bring the business meal deduction in line with other “ordinary and necessary” business expenses, a basic principle in the federal tax code. An 80 percent deduction would restore the level in place in 1986.
• People do business at restaurants every day. Millions of self-employed individuals, small business owners and others use America’s restaurants as their conference and meeting rooms. Increasing the deduction for business-meal spending provides equitable treatment to these businesspeople.

ISSUE: Charitable donations of food
THE ASK: Make permanent the enhanced deduction for charitable contributions of food inventory.
• The enhanced tax deduction encourages companies to donate their surplus food to charity by recognizing the extra storage and transportation costs associated with food donation.
• Seventy-three percent of restaurants donated food last year, according to NRA research. The enhanced deduction helps charities meet critical demands to serve vulnerable families at risk for hunger.

ISSUE: Tax credit for employer FICA taxes paid on tips
THE ASK: Retain the 45(B) FICA tax tip credit.
• The 45(B) credit, named for its place in the tax code, is a reimbursement for food-and-beverage employers’ portion of FICA taxes on reported tip income above the minimum wage.
• The reimbursement is, in effect, an intermediary fee for encouraging tip reporting and helping the IRS collect employment and income taxes owed by employees on their tips.
• The 45(B) credit does double duty by encouraging accurate reporting of tips for both FICA tax and income tax purposes, and helping to ensure accurate Social Security benefits for tipped workers.
Minimum Wage

Background

• The Harkin (D-Iowa) /Miller (D-Calif.) “Fair Minimum Wage Act of 2013” (S. 460 / H.R. 1010) proposes a nearly 40 percent increase in the federal minimum wage, increasing the wage to $10.10 from $7.25 over three years and indexing future increases to the CPI.

• S. 460 / H.R. 1010 would increase the minimum cash wage for tipped employees to $7.07 (70 percent of the proposed $10.10 minimum wage) and index future increases to the CPI.

• The minimum cash wage for tipped employees under federal law is currently $2.13 an hour. Every restaurant employee who receives tips is guaranteed at least the applicable minimum wage. If an employee’s tips plus their cash wages don’t add up to at least the minimum wage, employers are responsible for making up the difference by paying any additional cash wages needed to bring the employee up to the required minimum.

• The maximum federal “tip credit” is currently $5.12, the difference between the $7.25 federal minimum wage and the $2.13 cash wage. The minimum cash wage for tipped employees used to be set at 50 percent of the federal minimum. In 1996 Congress de-linked the cash wage from the base minimum wage, keeping the cash wage at $2.13, recognizing that tipped employees’ earnings often bring them far above the minimum wage.*

• Consistent with federal tax laws, Social Security benefit calculations and other laws that define tips as wages, federal wage law allows employers to credit a portion of tips toward wages.

• Opponents of indexing say the minimum wage has lost ground since 1968. But 1968 is a convenient outlier year, not the standard; it helps proponents argue for a $10.10 wage because of the high inflation of the 1970s and early 1980s. Congress has had several opportunities to index the wage since, and has not. Had Congress indexed the minimum wage after 2009 (the date of the last increase in the federal minimum wage), today’s rate would be only $7.41.

*National Restaurant Association research shows that on a national level, the median hourly earnings of servers range from $16 for entry-level servers to $22 for more experienced servers. This includes median tip earnings of $12 to $17 an hour, plus a median employer-paid wage of $4 to $5 an hour, depending on employees’ experience.

MESSAGE TO CONGRESS

Congress should not make it more difficult for employers to create jobs.

THE ASK

Oppose Harkin/Miller “Fair Minimum Wage Act of 2013” (S. 460 / H.R. 1010)

MAKING THE CASE

• The restaurant industry often is the first working opportunity for a young person, and the minimum wage is typically a starting wage. Eighty percent of those earning the starting wage in the restaurant industry are part-time employees; 70 percent are under the age of 25; and 46 percent are teenagers. The average household income of restaurant employees that earn the federal minimum wage is $62,507.

• Dramatic increases in wage costs for labor-intensive industries raise operating costs at a time when restaurateurs are facing high food costs and preparing to absorb significant increases in health care costs, making it especially difficult for small business owners still struggling to emerge from a tepid economic recovery.

• Wage hikes can force price increases and fewer jobs. After the 2007 increase, National Restaurant Association research revealed that 58 percent of restaurant operators increased menu prices, 41 percent reduced the number of hours their employees worked, 26 percent postponed plans for new hiring, and 24 percent reduced the number of employees in their restaurants.

• Congress needs to make it easier, not harder, for businesses to grow and hire new employees. The national unemployment rate remains near 8 percent — but could be even higher since millions of Americans have dropped out of the workforce. Nationally, teen unemployment exceeds 24 percent, with higher rates in some urban and rural areas.

• The cost of living varies widely across the country. New York City and San Francisco aren’t the norm; the cost of living is far different in places such as Houston or Memphis, or smaller rural counties. Many states and cities have increased their rates above the federal level, but very few approach the $10.10 level in the Miller/Harkin bill.

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ISSUES

Swipe Fees

Background
• Since Oct. 1, 2011, when Congress’s Durbin Amendment took effect, millions of U.S. merchants and their customers have benefited from fairer, more transparent and lower debit-card swipe fees.
• The Durbin Amendment was a significant step forward. However, some problems remain, particularly that many businesses with lower-ticket transactions have seen swipe fees rise. The National Restaurant Association and other merchants filed a lawsuit that seeks to force the Federal Reserve to adjust its regulations to correct this problem.

Message to Congress
• Debit-fee reforms were a critical first step. Now Congress needs to consider reforms to bring more competition and transparency to the broken market for credit-card swipe fees, which is neither transparent nor competitive.
• Data security and fraud are emerging policy concerns, especially as new forms of payment gain traction. Mobile payments present an exciting opportunity to make the marketplace more efficient. We need to ensure that the deeply flawed swipe-fee system doesn’t become a framework for new forms of payment.

Food Costs

Background
• Food costs remain a top business challenge for restaurants, according to National Restaurant Association research. Food costs account for about a third of the restaurant dollar, and wholesale food costs have jumped nearly 30 percent in the last six years. Prices for many commodities are projected to remain elevated in 2013.

Message to Congress
• The nation’s Renewable Fuel Standard is one factor driving up food costs. Specifically, the standard’s corn-ethanol mandate requires certain amounts of biofuels (including corn-based ethanol) to be blended into transportation fuel over the next decade. In part because of the RFS, last year more than 40 percent of U.S. corn crops were devoted to fuel production rather than food or feed, driving up food costs across the board.
• The restaurant industry strongly supports the Renewable Fuel Standard Reform Act, introduced April 10 by Reps. Bob Goodlatte (R-Va.), Rep. Jim Costa (D-Calif.), Rep. Steve Womack (R-Ark.), and Peter Welch (D-Vt.). Among other changes, the measure scales back the total volume of the U.S. fuel supply that must come from biofuels, and prohibits corn-based ethanol from being used to meet the Renewable Fuel Standard.
• The NRA also supports changes in U.S. farm policy to keep dairy prices stable, including removing certain supply-management provisions in the farm bill that contribute to fluctuating dairy prices.

THE ASK
Thank Congress for passing the Durbin Amendment. Ask lawmakers to oppose any effort to repeal it. Explain how debit-fee reforms have benefited your business and customers. Ask Congress to help fix flawed Federal Reserve rules that let Visa and MasterCard increase debit swipe fees for lower-ticket transactions. Urge lawmakers to reform the broken market for credit-card swipe fees.

Cosponsor the Renewable Fuel Standard Reform Act by Reps. Goodlatte, Costa, Womack and Welch. Support energy and agricultural policies that bring down food costs.
Regulatory Reform: NLRB

Background
• More than 200 recent National Labor Relations Board decisions are open to legal challenges now that a federal appeals court has ruled President Obama’s three January 2012 “recess” appointments to the NLRB unconstitutional.
• Many lawmakers want to put further NLRB actions on temporary hold as legal questions are answered.

Message to Congress
• Employers need a properly functioning National Labor Relations Board. Clear policies and rulings are critical for employers dealing with labor-management relations issues. The fact that hundreds of NLRB rulings have been thrown into question requires a time-out for both employers and employees until greater legal clarity is available.
• H.R. 1120 would provide more certainty for employers as legal questions get answered. The Preventing Greater Uncertainty in Labor-Management Relations Act was scheduled for a House vote in mid-April. It would temporarily prohibit the NLRB from implementing, administering, or enforcing any NLRB decisions finalized on or after Jan. 4, 2012. It also would prevent the NLRB from taking any action that requires a three-member quorum until

Regulatory Reform: ADA Advance Notice

Background
• Bills in the last Congress would have given businesses the right to receive up to 120 days’ advance notice of potential Americans with Disabilities Act violations and a chance to fix problems before ADA lawsuits could be filed.

Message to Congress
• Many ADA-related complaints involve issues of minor noncompliance. These issues could be easily resolved without court action if businesses had a reasonable amount of advance notice and time to fix alleged problems.
• ADA lawsuits cost businesses thousands of dollars in time and money. Business owners will frequently settle complaints just to avoid protracted litigation. These resources would be better spent correcting alleged ADA violations and increasing access than responding to lawsuits.
• The ADA was designed to ensure better access for Americans with disabilities. The goal was not to encourage “drive-by” lawsuits by unscrupulous plaintiffs’ attorneys against small businesses.

THE ASK

Support efforts such as H.R. 1120, to give employers more certainty about NLRB decisions as legal questions are resolved.

the Senate officially confirms a quorum of Board members, the Supreme Court rules on the constitutionality of President Obama’s appointments, or Congress adjourns for 2013.

THE ASK

Reintroduce legislation that would provide businesses with advance notice of potential ADA lawsuits.
Menu Labeling

Background

• The Food and Drug Administration is writing final regulations to implement a new national menu-labeling standard for how calorie and other nutrition information is presented on menus and at the point of sale. The new standard — part of the 2010 health care law — will preempt state and local menu-labeling rules, limit restaurant liability, and provide guests with consistent nutrition information. The menu-labeling standard will apply to chains with 20 or more locations operating under the same brand name.

• Some lawmakers are backing efforts to exempt grocery stores, convenience store and other entities selling restaurant-type foods from the law.

Message to Congress

• Entities that sell restaurant-type foods should not be exempt from the law. H.R. 1249 would exempt chain grocery and convenience stores from the federal menu-labeling law, giving a pass to entities that have chosen to compete directly with restaurants in selling freshly prepared food and beverages. Some 54,000 grocery and 59,000 convenience stores together sell about $15 billion in foodservice products each year. These segments of the foodservice industry should follow the same menu-labeling requirements as restaurants; the law should be the same no matter where guests buy their food.

• Restaurateurs who make good-faith efforts to comply with the law should be protected. Establishments acting in good faith to comply with the law should not be penalized for inadvertent human error or reasonable variations in serving sizes and ingredients. The law’s “reasonable basis” provision is aimed at giving restaurants protection under the law if they have a reasonable basis for the nutrition data they provide.

• Restaurateurs need flexibility and options. Establishments that serve restaurant food are far from monolithic. Giving operators additional flexibility and options in how they present nutrition information will allow operators to provide consumers with information that is easier to understand.

THE ASK

Support flexibility and good-faith compliance standards for restaurants as menu-labeling regulations are implemented. Oppose/do not cosponsor H.R. 1249 and other bills that would exempt grocery and convenience stories from the new law.