NATIONAL RESTAURANT ASSOCIATION

Health Care

BACKGROUND

- **The Affordable Care Act** will have a particularly profound effect on restaurants because of the unique nature of the restaurant industry. Restaurants are highly labor-intensive, with low profits per employee, significant numbers of part-time employees, and a young and mobile workforce.
- **Deadlines are looming.** Starting Jan. 1, 2015, hundreds of thousands of employers will face potential penalties for failing to offer health plans to full-time employees. Also on that date, millions of employers will have to start tracking data on their employees and health-care coverage offers, in preparation for filing ACA-required reports with the IRS and employees in early 2016.

STATUS

- **Rules issued:** Final regulations are in place to explain most employer requirements under the ACA, including the law's employer mandate and information-reporting requirements. The rules, issued by Treasury/IRS in February and March, are extremely complex. The reporting rule in particular imposes huge burdens on employers. Draft forms and instructions for the employer reporting requirements won't be finalized until after Nov. 3, and employers are still waiting for the IRS to issue technical specifications.

5 Changes Congress Should Make to the ACA

The National Restaurant Association has worked with federal agencies to provide some flexibility for employers in Affordable Care Act regulations, but only Congress can make some changes to the law. These start with five key areas: addressing the 30-hour full-time definition, employer reporting, the auto-enrollment mandate, the small-business definition, and the definition of seasonal employment.

1. 30-hour workweek

The issue: The ACA defines full-time employment as 30 hours of service a week, and requires employers to use this threshold to (1) determine if they're covered by the ACA's employer mandate (which will eventually apply to all employers with 50 or more "full-time-equivalent" employees), and (2) determine which employees are considered full-time and must be offered health care benefits in order for large employers to avoid penalties.

The problem: Defining full-time as 30 hours of service a week does not reflect employers' workforce needs or employees' desire for flexible hours. Aligning the ACA's definition of full-time-employee status with current employment practices would help avoid any unnecessary disruptions to employees' wages and hours, and provide significant relief to employers.

The ACA is fundamentally reshaping labor markets. Increasing the ACA's 30-hour per week definition for full-time status would: make it easier for employers to provide more hours to all employees, thereby increasing their take-home pay; help employers offer more generous health coverage to full-time employees without making premiums prohibitive; and help ensure that lower-income employees have access to more affordable coverage options.

What we support: It is critically important to address the ACA's problematic definition of full-time as 30 hours of service a week, and bring the definition more in line with employment practices. The House passed the bipartisan, NRA-supported "Save American Workers Act" by a vote of 248-179 in April, and then included it in a House-passed jobs bill in September. The NRA supports several bills in the Senate to do the same, including S. 1188, the 40 Hours is Full-Time Act, by Sens. Susan Collins (R-Maine) and Donnelly (D-Ind.), and S. 2205, the Small Business Fairness in Health Care Act, by Sen. Mike Enzi (R-Wyo.).

2. Employer reporting

The issue: The ACA sets massive new reporting requirements for many employers. These requirements apply to all large employers, including each entity within a "common control" group that meets the large-employer definition under the ACA. Employers must file their first reports with the IRS and employees in early 2016, based on data tracked in 2015.

The problem: The IRS's final rule on employer reporting is burdensome and offers no viable simplified options for businesses like restaurants. Still without final forms, instructions and technical specifications to build the tracking systems needed for reporting, employers remain concerned they won't be ready to track on Jan. 1, 2015.

What we support: The NRA is asking Congress to:

- **Simplify reporting requirements.** The NRA supports a voluntary prospective reporting system to simplify the reporting process for employers and provide more accurate employer-coverage information to the health insurance marketplaces. This will increase accuracy as the government determines who's eligible for advanced premium tax credits, and avoid large "subsidy recapture" payments from employees on their tax returns.
- **Protect dependents' privacy.** The rules require employers and insurers to collect dependents' tax ID or Social Security numbers. Employers and insurers can use name/date-of-birth reporting only after they make three attempts to collect dependents' tax IDs or SSNs. But health insurance marketplaces can use name/DOB data for their reporting, so the IRS should allow the same for reporting on dependents.
- **Ease delivery burden.** In this day and age, electronic delivery of tax statements to employees should be an opt-out process for employees. Employers with dispersed workforces already rely on electronic delivery for many other employee documents. The IRS's complicated opt-out rules should be eased.
- **Support S. 2176, Sen. Mark Warner's (D-Va.) "Common-sense Reporting Act," and H.R. 5557, Rep. Diane Black's (R-Tenn.) "Streamlining Verification for Americans Act," with similar employer provisions.** The bills are a first step in addressing issues related to employer reporting under the ACA and would help lift the load on restaurants.

3. Eliminate auto-enrollment

The issue: The ACA 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. Rules have not yet been issued to explain how to implement the mandate.

The problem: The mandate could cause financial hardship for employees who don't opt out by the law's deadlines. The requirement is redundant and unnecessary. It's expensive and confusing for employers and employees.

What we support: The National Restaurant Association supports H.R. 1254 and S. 2546, the Auto Enroll Repeal Act, by Rep. Richard Hudson (R-N.C.) and Sen. Johnny Isakson (R-Ga.).

4. Small business definition

The issue: The ACA defines large employers as businesses with 50 or more "full-time-equivalent" (FTE) employees. The definition, and the calculation employers must perform each year to determine if they're large or small, place undue burdens on industries with large variable-hour workforces, such as restaurants.

The problem: Many restaurateurs who thought of their restaurants as small are finding out the ACA regards them as large. Employers must aggregate employees in businesses that meet IRS "common control" standards, and run an unnecessarily complicated annual calculation to see how many FTE employees they employ, based on the 30-hour definition of full-time.

What we support: The National Restaurant Association supports raising the threshold that determines which employers are considered large employers under the ACA — and thus covered by the employer mandate. Several bills would change this threshold. S. 2168, the Small Business Stability Act, by Sen. Heidi Heitkamp (D-N.D.) and H.R. 2577, the Small Business Job Protection Act, by Rep. Luke Messer (R-Ind.), would move the threshold for employer-mandate coverage to 100 FTE employees, from the current 50. The Obama Administration itself acknowledged this new threshold in February, when Treasury/IRS gave businesses with 50 to 99 FTE employees an extra year (until 2016) before they face employer-mandate penalties. Separate legislation — S. 2205, the Small Business Fairness in Health Care Act, by Sen. Mike Enzi (R-Wyo.) — would redefine "small business" under the ACA so it parallels certain SBA standards.

5. Seasonal-employment definition

The issue: The ACA contains two definitions of seasonal — seasonal worker and seasonal employee. The seasonal worker definition is used to determine if an employer is an "applicable large employer" and thus subject to the ACA's employer mandate and reporting requirements. The seasonal employee definition is used to determine which seasonal employees must be offered coverage by a large employer.

The problem: The two definitions are causing significant confusion, especially among smaller employers.

What we support: The NRA supports H.R. 5213, by Reps. Jim Renacci (R-Ohio), Kurt Schrader (D-Ore.), Lynn Jenkins (R-Kan.) and Jim Costa (D-Calif.), and S. 2881, by Sen. Kelly Ayotte (R-N.H.). These bills — known as the STARS Act, for "Simplifying Technical Aspects Regarding Seasonality Act of 2014" — would align the separate definitions of seasonal employment, and simplify the process for small employers with seasonal employees to determine if they are considered "applicable large employers" under the ACA.

MESSAGE TO CONGRESS: Take steps now to mitigate the negative impact of the ACA on employers and their employees.