NATIONAL
RESTAURANT
ASSOCIATION

Statement
On behalf of the
National Restaurant Association

Hearing:	Implementation of the Affordable Care Act: Understanding Small Business Concerns
Before:	Committee on Small Business and Entrepreneurship U.S. Senate
By:	Kevin Settles President and CEO Bardenay Restaurant & Distillery
Date:	July 24, 2013

Statement for the hearing
"Implementation of the Affordable Care Act:
Understanding Small Business Concerns"

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Committee on Small Business and Entrepreneurship,
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By
Kevin Settles,
President and CEO,
Bardenay Restaurant & Distillery

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July 24, 2013

Chairwoman Landrieu, Ranking member Risch, and members of the Senate Committee on Small Business and Entrepreneurship; thank you for the opportunity to testify today on the Affordable Care Act's implementation and the concerns of small businesses like mine.

My name is Kevin Settles and I own and operate Bardenay Restaurants & Distilleries with three locations: Boise, Eagle and Coeur d'Alene, Idaho. I'm honored to share the perspective of my company and the National Restaurant Association, where I serve on the organization's Board of Directors.

I have spent a lot of time studying the impacts of this law on my business and was appointed by Governor C.L. "Butch" Otter to Idaho's Health Insurance Exchange Board as one of four small employer business interests.

Today, my testimony will focus on some of the issues that my company has been struggling with while trying to understand the health care law. I want to ensure that Bardenay is fully compliant with the law, while remaining healthy and vibrant. These issues are:

- The definition of a full-time employee;
- Employee Classifications – such as full time, part time, variable hour and seasonal;
- The determination of who is a small or large employer;
- Auto Enrollment;

- Non-discrimination rules;
- Employer reporting;
- Communicating with employees; and
- Policy costs.

Even after more than three years, there is still a tremendous amount of uncertainty, which has been a key factor in extending what for me is the longest time period without expansion in my years as an independent businessman. Bardenay is operated for the long run, which means that we do not make long-term commitments to unmanageable expenses. One can only manage the law's effects once all of the rules are known.

BARNENAY RESTAURANT & DISTILLERY

Bardenay Restaurant and Distillery is a cornerstone of Idaho's restaurant and bar industry, with three locations that capture the spirit of Idaho and the Northwest. Employing about 200 people, Bardenay is a small business with a goal of being the employer of choice in our industry.

As the nation's first restaurant distillery, Bardenay has set an industry precedent as the full service restaurant and bar with the ability to create handcrafted liquor on-site. We made history on April 25, 2000, when we served the first cocktail to included spirits distilled in a restaurant in the U.S.

THE RESTAURANT AND FOODSERVICE INDUSTRY

The National Restaurant Association is the leading trade association for the restaurant and foodservice industry. Its mission is to help members like me establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 980,000 restaurant and foodservice outlets employing 13.1 million people who serve 130 million guests daily. Restaurants are job-creators. While small businesses comprise the majority of restaurants, the industry as a whole is the nation's second-largest private-sector employer, employing about ten percent of the U.S. workforce.[1]

The unique characteristics of our workforce create compliance challenges for restaurant and foodservice operators within this law. It's difficult for restaurants to determine how the law impacts them and what they must do to comply. Many of the determinations employers must make to figure out how the law impacts them – for example the applicable large employer calculation – are much more complicated for restaurants than for other businesses that have more stable workforces with less turnover.

[1] *2013 Restaurant Industry Forecast*.

Restaurants are employers of choice for many looking for flexible work schedules and the ability to pick up extra shifts as available. As a result, we employ a high proportion of part-time and seasonal employees. We are also an industry of small businesses — more than seven out of ten eating and drinking establishments are single-unit operators. Much of our workforce could be considered "young invincibles," as 43 percent of employees are under age 26.[2] Hence, high turnover is the norm. In addition, the restaurant business model produces relatively low profit margins of only four to six percent before taxes, with labor costs being one of the most significant line items for a restaurant.[3]

Business owners crave certainty, because it enables us to plan for the future and make decisions that benefit our employees, customers, and communities. One of the most difficult things to predict about the impact of this law is the choices employees will make.

> Will they accept restaurant operators' offers of minimum essential coverage more than they do today?
>
> Will our young workforce choose to pay the individual mandate tax penalty instead of accepting the employer's offer of coverage in 2015, 2016 and beyond?
>
> Will exchange coverage be less expensive than what our operators can afford to offer under the law?

With the younger, healthier population of the workforce, we may find that more team members will favor the tax penalty because it is less expensive than employer-sponsored coverage. This provides less certainty for employers to predictively model.

COMPLYING WITH THE HEALTH CARE LAW IS CHALLENGING FOR RESTAURANT AND FOODSERVICE OPERATORS GIVEN THE UNIQUE CHARACTERISTICS OF THE INDUSTRY

Since the law was enacted in 2010, the National Restaurant Association has taken steps to educate America's restaurants about the requirements of the law and the details of the Federal agencies' guidance and regulations. Through the National Restaurant Association Health Care Knowledge Center website (Restaurant.org/healthcare), we offer one place where restaurant operators of every size can go to better understand the law's requirements and determine its impact on their employees and businesses.

The National Restaurant Association has actively participated in the regulatory process, from the beginning, to ensure that the implementing regulations and Federal agencies' guidance consider the implications for businesses that are not just one type or size. As co-leaders of the Employers for Flexibility in Health Care (E-Flex) coalition, we have partnered with other businesses and organizations with similar workforce characteristics. Together we advocate for

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[2] Bureau of Labor Statistics, U.S. Department of Labor.
[3] *2013 Restaurant Industry Forecast.*

greater flexibility and options within the implementing regulations, especially for those that employ many part-time, seasonal, or temporary employees.

The overarching challenge restaurant and foodservice operators face in complying with the law is to first understand its complicated and interwoven requirements. By far, the definition of "full-time employee" under the law poses the greatest challenge. It does not reflect current workforce practices and could have a detrimental impact on a restaurant operator's ability to offer flexible schedules for his or her employees.

In addition, the applicable large employer determination is too complex. It stifles smaller employers' ability to manage their workforces, expand their businesses and prepare to offer health care coverage. Finally, the automatic enrollment provision could cause financial hardship and greater confusion about the law for some employees, without increasing their access to coverage.

All of these factors combine to complicate what a restaurant and foodservice operator must consider when adapting their business to comply with the law.

APPLICABLE LARGE EMPLOYER DETERMINATION

To determine the law's impact on a restaurant, the employer must first determine if they are considered small or large under the definitions of the law. The statute prescribes a very specific calculation that must be used by employers to determine if they are an applicable large employer and hence subject to the Shared Responsibility for Employers and Employer Reporting provisions. Due to the structure of many restaurant companies, determining the employer may be more complicated than expected.

Aggregation rules in the law require employers to apply the long-standing Common Control Clause[4] in the Internal Revenue Code (Tax Code) to determine if they are considered one or multiple employers for the purposes of the health care law. These rules have been part of the Tax Code for years, but this is the first time that many restaurateurs, especially smaller operators, have had to understand how these complicated regulations apply to their businesses. The Treasury Department has not issued, nor to our knowledge plans to issue, guidance to help smaller operators understand how these rules apply to them. Restaurant and food service operators are forced to hire expensive tax advisors to determine how the complicated rules and regulations associated with this section of the Tax Code apply to their specific situations. Often, entrepreneurs own multiple restaurant entities with various partners. Though these restaurateurs consider each operation to be a separate small business, many are discovering that, for the purposes of the health care law, all of the businesses can be considered one employer due to common ownership.

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[4] Internal Revenue Code, §414 (b),(c),(m),(o).

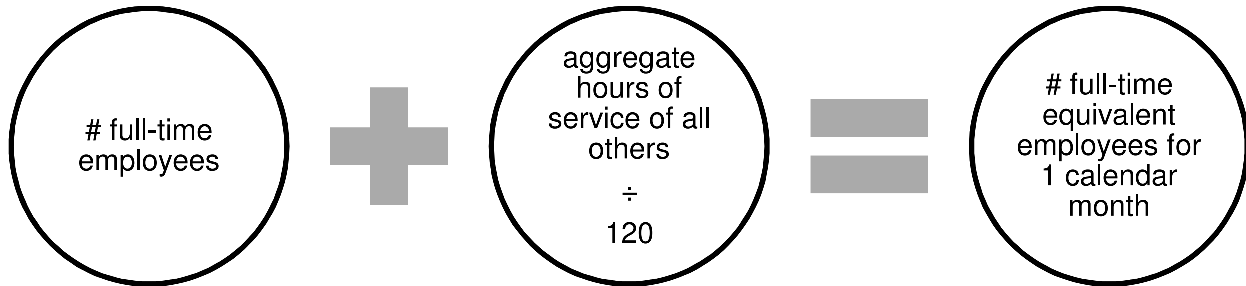
Once a restaurant or foodservice operator determines what entities are considered a single employer, they must determine their applicable large employer status annually. For some restaurants, like Bardenay, it is clear that we have more than 50 full-time equivalent (FTE) employees employed on business days in a calendar year. However, many small businesses will have to complete this calculation annually to determine their responsibilities under the law. That is not so easy given the number of employees' hours of service that must be tracked due to the labor intensive nature of the business.

Unfortunately, operators on the cusp of 50 full-time equivalent employees are struggling to understand how to complete this complicated calculation each year. An employer must consider each employee's hours of service in all 12 calendar months each year. Immediately after they achieve this cumbersome calculation at the end of the year, they must begin to offer coverage January 1st.

Smaller restaurant and foodservice operators need clarification on when such employers must offer coverage in future years. Will small businesses just reaching the applicable large employer threshold on December 31, 2015, for example, be able to offer coverage a day later on January 1, 2016? Currently, the law does not allow any time to shop for coverage or conduct open enrollment once a small employer determines they are now a large employer. Congress should allow small businesses an administrative period between determining large employer status and offer of coverage, before it creates further confusion, especially in the second year of implementation and beyond.

The applicable large employer determination is complicated. Employers must determine all employees' hours of service each calendar month, calculate the number of FTEs per month, and finally average each month over a full calendar year to determine the employer's status for the following year. The calculation is as follows:

1. An employer must first look at the number of *full-time employees* employed each calendar month, defined as 30 hours a week on average or 130 hours of service per calendar month.
2. The employer must then consider the hours of service *for all other employees*, including part-time and seasonal, counting no more than 120 hours of service per person. The hours of service for all others are aggregated for that calendar month and divided by 120.
3. This second step is added to the number of full-time employees *for a total full-time equivalent employee* calculation for one calendar month.



4. An employer must complete the same calculation for the remaining 11 calendar months and average the number over 12 calendar months to determine their status for the following calendar year.

This annual determination is administratively burdensome, especially for those employers just above or below the 50 FTE threshold who must most closely monitor their status – most likely smaller businesses. Many restaurant operators rely on third-party vendors to develop technology or solutions to help them comply with these types of requirements but, in addition to the added costs and time this requires, vendors are backlogged and solutions are not easily accessible at this time.

Congress should simplify this calculation and help small businesses more easily determine their status under the law. A more workable definition of large employer is needed as the current calculation stifles smaller employers' ability to manage their workforces, plan to expand their businesses, and prepare to provide health coverage.

OFFERING COVERAGE TO FULL-TIME EMPLOYEES

The health care law requires employers subject to the Shared Responsibility for Employers provision to offer a certain level of coverage to their full-time employees and their dependents, or face potential penalties. The statute defines a full-time employee as someone who averages 30 hours a week in any given month.

This 30-hour threshold is not based on existing laws or traditional business practices. In fact, the Fair Labor Standards Act does not define full-time employment. It simply requires employers to pay overtime when nonexempt employees work more than a 40-hour workweek. As a result, 40 hours per week is generally considered full-time in many U.S. industries. In the restaurant and foodservice industry, operators have traditionally used a 40-hour definition of full-time. Adopting such a definition in this law would also provide employers the flexibility to comply with the law in a way that best fits their workforce and business models.

Compliance based on a 30-hour a week definition is further complicated by the fact that, for restaurant and foodservice operators who are applicable large employers, it is not easy to predict which hourly staff might work 30 hours a week on average and which will not. Hourly employees are scheduled for more or less hours depending on several factors, including customer traffic flows.

One reason so many Americans are drawn to restaurant jobs is the flexibility to change your hours to suit your own personal needs. However, under this law, for the first time, the federal government has drawn a bright line as to who is considered full-time and who is considered part-time. As a result, employers with variable workforces and flexible scheduling must alter their practices and be very deliberate about scheduling hours. The reason being that the law imposes a greater financial impact than before in the form of potential liability for employer penalties if employees who work full-time hours are not offered coverage. If the definition is not changed to align with workforce patterns, the flexibility so many employees value will no longer be as widely available in the industry. This could result in significant structural changes to our labor market.

At Bardenay, we have redefined who is a full-time employee because of the definition within this law. And it will have an impact on my employees' ability to pick up extra hours when they would like them. We will be requiring full time employees to work a full 40 hours. At the rates we are currently paying for insurance, our costs per employee that we provide insurance to will increase by over $3.00 per hour. To ensure that we obtain maximum value for this benefit, we have already set up our scheduling program to alert us when an employee is close to crossing over from the variable classification to full time.

The National Restaurant Association supports efforts, such as Senators Susan Collins' and Joe Donnelly's bipartisan bill S. 1188, and Congressman Todd Young's bill H.R. 2575, that would define a full-time employee under the Affordable Care Act as someone working 40 hours or more a week.

We appreciate that the Treasury Department, in its January 2nd proposed rule, recognized that it may be difficult for applicable large employers to determine employees' status as full-time or part-time on a monthly basis, causing employee churn between employer coverage and the exchange or other programs. Such coverage instability is not in our employees' best interests. We are pleased that the Lookback Measurement Method is an option that applicable large employers may use.

While the Lookback Measurement Method's implementing rules are complex, it could be helpful for both employers and employees. Employers will be better able to predict costs and accurately offer coverage to employees as required. Employees whose hours fluctuate (variable hour and seasonal employees) have the peace of mind of knowing that if their hours do decrease from one month to the next, coverage will not be cut short before the end of their stability period.

CHALLENGES FOR APPLICABLE LARGE EMPLOYERS OFFERING COVERAGE TO THEIR FULL-TIME EMPLOYEES AND THEIR DEPENDENTS

Once an applicable large employer has determined to whom coverage must be offered, he or she must make sure that the coverage is of 60 percent minimum value and considered affordable to the employee, or face potential employer penalties.

Minimum value is generally understood to be a 60 percent actuarial test; a measure of the richness of the plan's offered benefits. This is a critical test for employers especially relating to what the employer's group health plan covers and hence what the premium cost will be in 2014. Business owners strive for certainty, and that means the ability to plan for their future costs. Employers are eager to know what their premium costs will be under the new law. Minimum value is necessary to determining that information.

On February 25, 2013 the Health and Human Services Department included the Minimum Value Calculator, one of the acceptable methods to determine a plan's value, in its Final Rule: Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation. Minimum value can now be determined using this calculator or other options, but it is still difficult to anticipate premium costs this far in advance.

Why? Rates are not usually available until a few months before the employer's plan year begins because insurance companies provide quotes based on the most current data with the greatest amount of claims history. This gives operators a short timeframe to budget and make business decisions in advance of the new plan year. Restaurant operators are eager to see premiums for 2014 and better evaluate the impact and costs associated with the employer requirements for voluntary compliance and then full implementation in 2015.

I employ about 200 people with 60-90 of them full-time employees, depending on the season. We currently provide insurance to our full time, salaried staff. Since the health care law passed, the cost of that insurance has doubled and our deductible has gone from $500 to $2,000. This policy renews September 1 and our initial quote was for it to go up another 11% this year. No other cost has ever increased at this rate, not even close.

Insurance has been offered to key hourly employees in the past. Their flexible hours and freedom that affords has caused them to decline our offer of coverage as it would require a fixed schedule. What many do not realize, is that some employees are not looking to restaurants to offer them health care coverage. That is their personal choice. They have the hours they need to work and live the lifestyle they choose. The problem is that under this law, with the significant added cost of insurance or penalties, we cannot let them inadvertently fluctuate between part-time and full-time.

The cost of health care coverage has long been a major concern for restaurant and foodservice operators. Many of us are subject to the requirement to offer coverage under the law, but are not large enough to qualify for large group rates, yet too large to use the Exchanges being set up for small employers. I have discussed the issue with the CEO's of the three largest insurers in Idaho and they confirmed that employers sitting between 50 and 400 employees are in the least desirable position in regards to the health care law.

To help us manage this new cost, we may end up asking participating employees to contribute financially. The law allows for this and sets out terms for calculating the maximum employee contribution. The danger is that we need a certain percentage of eligible employees to participate or the carrier will decline to bind coverage. In Idaho, that participation rate is generally 75 to 80 percent. Ask our employees to contribute too much so they decline coverage

and we could find ourselves unable to purchase the insurance that will soon be required by law. The Department of Health and Human Services recently issued a proposed rule[5] which clarified that guaranteed availability and renewability apply in the individual, small group *and* large group markets. If the rule is finalized with this language, it should mean that participation rate restrictions will not be allowed for businesses purchasing group health plans like me, but it may also increase premiums.

In addition, Idaho's exchange will impose a 2.5 percent fee on each policy sold within the exchange. Since all policies in the state, whether sold on or off the exchange, must be sold for the same rate, that fee will be applied to all policies. This means that even though my company cannot utilize the Exchange, the policy costs will be higher due to it.

Speaking of cost, employers must also ensure at least one of their plans is affordable to their full-time employees or face potential penalties. A full-time employee's contribution toward the cost of the premium for single-only coverage cannot be more than 9.5 percent of their household income to be considered affordable. Employers will not know household income – which the statute specifies as the general standard – nor do they want to know this information for privacy reasons. Hence, they needed a way to estimate before a plan is offered if it will be affordable to employees or potentially trigger an employer penalty.

What employers do know are the wages they pay their employees. Almost always, employees' wages will be a stricter test than household income. Employers are begrudgingly willing to accept a stricter test in the form of wages so that they know they are complying with the law and are provided protection from penalty under a safe harbor. The Treasury Department's proposed rule allows employers to use one of three Affordability Safe Harbors based on Form W-2 wages, Rate of Pay or Federal Poverty Line. The option of utilizing these methods will be helpful to employers as they determine at what level to set contribution rates and their ability to continue to offer coverage to their employees.

I believe that Bardenay will have to go by percentage of pay rate even though that will end up as a variable amount. Even though many of my employees have been with us long enough for us to use the income from company issued W-2's, if their hours are less and we do not adjust, we could be penalized.

The law speaks to affordability for employees but is silent regarding whether the coverage required to comply with the Shared Responsibility for Employers section of the law is affordable to employers. As restaurant and foodservice operators implement this law, considering all of the interlocking provisions, some will be faced with difficult business decisions – between offering coverage they cannot afford with a finite dollar for benefits, and paying a penalty – an option they do not want to take, but that is equally unaffordable to them as well.

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[5] Centers for Medicaid and Medicare Services, Department of Health and Human Services, Proposed Rule: Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards (CMS-9957-P), June 19, 2013.

We encourage policymakers to address the cost of coverage so that the employer-sponsored system of health care coverage will be maintained, and businesses aren't forced to choose between plans they cannot afford and penalties they cannot afford.

AUTOMATIC ENROLLMENT REQUIREMENT

Applicable large employers who employ 200 or more full-time employees are also subject to the Automatic Enrollment provision of the law. This duplicative mandate requires these employers to enroll new and current full-time employees in their lowest cost plan if the employees have not opted out of the coverage.

This provision also interacts with the prohibition on waiting periods longer than 90 days and effectively means that on the 91st day, employers must enroll a new full-time hire in their lowest cost plan if the employee does not opt out by that deadline. Employee premium contributions will begin to be collected.

I share the concern many of my restaurant industry colleagues that this could cause financial hardship and greater confusion about the law, especially for our young employees. Since 43 percent of restaurant employees are under age 26, and therefore more likely to change jobs frequently or enroll in their parents' plans, many are likely to inadvertently miss opt-out deadlines and will be automatically enrolled in their employer's health plan. This would cause significant, unexpected and, most importantly, unnecessary financial hardship.

Automatically enrolling an employee and then shortly thereafter removing them from the plan when the employee opts out increases costs without increasing our employee's access to coverage as the law intended. Since the health care law's employer Shared Responsibility provision already subjects large employers to potential penalties if they fail to offer affordable health care coverage to full-time employees and their dependents, the auto-enrollment mandate is redundant. It adds a layer of bureaucracy and, burdens businesses without increasing employees' access to coverage.

Some compare automatically enrolling employees in health benefit plans to automatically enrolling them in a 401(k) plan, but this isn't a good parallel. The financial contribution associated with health benefits can be much larger, for example: 9.5 percent of household income toward the cost of the premium for employees of applicable large employers versus an average 3 percent automatic 401(k) contribution.[6] The financial burden on employees of automatic enrollment in health benefit plans would be much greater than that of 401(k) plans. Additionally, 401(k) rules allow employees to access their contributions when they opt out of automatic enrollment; however, health benefit premium contributions cannot be retrieved.

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[6] "Disparities in Automatic Enrollment Availability," Bureau of Labor Statistics, August 2010.

Restaurateurs will educate their employees about how this provision impacts them, but if an employee misses the 90-day opt out deadline, a premium contribution is a significant amount of money, which can be a serious financial burden. Since the same full-time employees must be offered coverage by the same employers subject to the Automatic Enrollment provision and the Shared Responsibility for Employer provisions, we believe the automatic provision is unnecessary and should be eliminated.

The National Restaurant Association supports H.R. 1254, legislation introduced by Congressman Richard Hudson, together with Congressman Robert Pittenger, that would eliminate the automatic enrollment requirement that could hurt both employees and employers.

While I now know that we are exempt from Auto Enrollment until I expand, it was the uncertainty regarding how this rule would be applied, combined with not knowing what a policy would cost, that has stopped me from looking into expansion. As an employer, life gets more complex when you pass 50 FTE's and you do not gain a cost advantage due to size until you exceed 400 FTE's.

NONDISCRIMINATION RULES NOW WILL APPLY TO FULLY-INSURED PLANS

The health care law applies the nondiscrimination rules that currently apply to self-funded plans to fully-insured plans in the future. These rules state that a plan cannot offer benefits in favor of their highly-compensated individuals over other employees. This rule is not in effect as the Treasury Department has put implementation on hold until further guidance has been issued in this complex area. Under the law, these rules apply to all insured plans, regardless of where they are offered by an applicable large employer or a small business. I am watching this rule closely as it could impact what future plan offerings and compliance with the law.

Current group health plan participation rules often forces operators to carve out the group of employees who will participate in the plan. In our members' experience, these are almost always a group that would be considered in the top 25 percent based on compensation.

However, management carve-outs are not just for upper level executives who may receive richer benefit plans than the rest of the employees. In the restaurant and foodservice industry, management-only plans are sometimes the only option that operators have to provide health care coverage to those employees who want to buy it and pass participation requirements at the same time. As a result, these plans are quite common in the industry.

The rules the Treasury Department writes to apply non-discrimination testing to fully-insured plans could have an impact on our industry. Regardless of how they are written, restaurant and foodservice operators will need sufficient transition time to apply these rules as it could create upheaval for plans and employers alike.

With the new non-discrimination rules set to apply to group health plans like the ones I purchase, I must be careful not to offer a better policy to my CFO with an MBA than I do to any other employee. Today's restaurants are very sophisticated business and its employees must

have a variety of skill sets for it to succeed. While Restaurants are still the place where many people learn to work, our staff varies from young people without much work experience or those with a troubled past to people with college degrees. I need to ensure that I can retain my highly skilled staff while not breaking the bank. To avoid this, we may end up asking participating employees to contribute financially.

APPLICABLE LARGE EMPLOYER REPORTING REQUIREMENTS

The employer reporting requirements are a key area of implementation for employers: the required information reporting under Tax Code §6055 and §6056 from the Internal Revenue Service and the Treasury Department. These employer reporting requirements are a critical link in the chain of the law's implementation. They represent what could be a significant employer administrative burden and compliance cost.

The Administration's July 2nd announcement and subsequent July 9th IRS Notice 2013-45 provides transition relief and voluntary compliance in 2014 for the Employer Reporting requirements under Tax Code Sections 6055 and 6056, and hence the Employer Shared Responsibility requirements under Tax Code Section 4980H.

The restaurant and foodservice industry welcomes this transition relief after asking the Administration and Congress for more time to receive, understand, and comply with the complex implementing regulations for Employer Reporting under Sections 6055 and 6056. As early as October 2011, the National Restaurant Association, as part of the E-Flex coalition, submitted comments to the Administration requesting transition relief and time to implement the reporting requirements under Tax Code Sections 6055 and 6056 once the rules were issued. The proposed rule from the Treasury Department concerning Tax Code Section 4980H was published in the *Federal Register* on January 2, 2013 to implement the employer mandate, but employers have been waiting for the also critical proposed rules on Tax Code Sections 6055 and 6056.

Employers need the rules for these reporting requirements to set up the systems that will track data on each full-time employee and their dependents to then report this data to the IRS annually. While the first report was not originally required to be submitted to the IRS until January 31, 2015, six months (July-Dec 2013) was too short a time frame for employers to receive the rule, set up systems or engage vendors to develop information technology systems that would begin tracking the necessary data as of January 1, 2014.

We welcome the transition relief and await the proposed rule on Tax Code Sections 6055 and 6056 that the Administration stated it plans to issue later this summer.[7] Regarding those rules, of particular concern is the flow of information and the timing of reporting employers must make to multiple levels and layers of government. Streamlining employer reporting will help

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[7] "Continuing to Implement the ACA in a Careful, Thoughtful Manner," Mark Mazur, Treasury Notes Blog, July 2, 2013: http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx

ease employer administrative burden and simplify the process. The restaurant and foodservice industry, along with other employer groups, have advocated for a single, annual reporting process by employers to the Treasury Department each January 31st that would provide prospective general plan information and wage information for the affordability safe harbors, as well as retrospective reporting as required by Tax Code Section 6056 on individual full-time employees and their dependents.

While my comments revolve around the unknowns of this law, there is one certainty; the workload in accounting will go up, significantly. To minimize the impact, we have increased the required skillset for office assistants – they must have experience in accounting – and are working with our timekeeping and accounting software provider to try to make reporting as easy as possible. Possibly the most positive aspect of transition relief is the added time to understand the required reports and I urge that the Treasury Department release the proposed rule as soon as possible.

COMMUNICATING THE LAW'S IMPACT TO OUR EMPLOYEES

I have made a concerted effort to educate not only myself, but my staff. If the people responsible for implementing the law cannot launch it in time due to its complexity, how can anyone else possibly understand it. My staff is as informed as they can be with the information available. They know that some may benefit and some may not but they all know that everyone will pay at least something for this law.

CONCLUSION

Since enactment of the law, the industry has worked to constructively shape the implementing regulations of the health care law. Nevertheless, there are limits to what can be achieved through the regulatory process alone. Ultimately, the law cannot stand as it is today given the challenges restaurant and foodservice operators face in implementing it.

Congress must address key definitions in the law: The law should more accurately reflect restaurant and foodservice operators' needs – and our employees' desire for flexible hours.

We ask you to simplify the applicable large employer determination and remove the unnecessary burdens on small businesses, who must closely track their status from year-to-year.

And we ask you to eliminate the duplicative automatic enrollment provision, as it has the potential to confuse and financially harm employees while burdening employers, without increasing employee's access to coverage.

In closing, I would like to state that I am not against offering health care insurance to my employees. I have been able to provide insurance for employees that have had serious illnesses and that is very satisfying. When discussions about the law started, I thought great, the U.S. has the largest economy in the world and we spend 9% more of our gross domestic production than

any other country on healthcare, find the money in there. More than three years after its enactment, we still do not know what will happen. What I do know is that for those of us with a goal of growing a business, things have gotten much more complex.

Thank you again for the opportunity to testify before you today regarding small business concerns as we implement the health care law.

This law is one of the most significant requirements our industry has had to comply with that most any can remember. While we appreciate the transition relief, giving us the opportunity to receive and understand the rules and then implement them, the industry still faces challenges only Congress can address: the definition of full-time employee, the determination of who is an applicable large employer under the law, and the elimination of the automatic enrollment provision.

We are both proud and grateful for the responsibility of serving America's communities – creating jobs, boosting the economy, and serving our customers. We are committed to working with Congress to find solutions that foster job growth and truly benefit the communities we serve.