



Statement  
On behalf of the  
National Restaurant Association

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ON: TRUE COST OF PPACA: EFFECTS ON THE BUDGET AND JOBS

TO: SUBCOMMITTEE ON HEALTH, U.S. HOUSE ENERGY & COMMERCE  
COMMITTEE

BY: LARRY SCHULER, OWNER  
SCHULER'S GRILL & BAR AND SCHULER'S RESTAURANT OF MARSHALL  
MARSHALL, MICHIGAN

DATE: MARCH 30, 2011

**Statement on  
True Cost of PPACA: Effects on the Budget and Jobs  
Before the  
Subcommittee on Health, U.S. House Energy & Commerce Committee  
By  
Larry Schuler, Owner  
Schu's Grill & Bar and Schuler's Restaurant of Marshall  
Marshall, Michigan**

**On behalf of the  
National Restaurant Association**

**March 30, 2011**

Chairman Pitts, Ranking Member Pallone, and members of the Subcommittee on Health of the House Energy & Commerce Committee, thank you for this opportunity to testify before you today on behalf of the National Restaurant Association. It is an honor to be able to share with you the impact the Patient Protection and Affordable Care Act (PPACA) is having on businesses like mine, particularly in our ability to create jobs.

My name is Larry Schuler. I am an independent restaurateur operating a 4<sup>th</sup> generation family business with my father Hans, as well as two of my own operations. Schuler's Restaurant of Marshall, Michigan is an institution in the community and has been known as such since my great-grandfather opened the business back in 1909. My grandfather and father continued in the business as have I. In 1990, I opened a casual themed restaurant called Schu's Grill and Bar in downtown St. Joseph, and also a seasonal business called S.O.S. Schu's on Silver Beach right on the beach. My children Jenna, Kaitlin, and Rob have all worked as fifth generation Schulers at Schu's Grill and Bar and S.O.S.

I have had the distinct honor to serve as President of the Michigan Restaurant Association in 2002-2003, as my grandfather Winston Schuler had done in 1965, and continue to be involved with both the Michigan Restaurant Association and the National Restaurant Association.

**THE RESTAURANT AND FOOD SERVICE INDUSTRY IS UNIQUE AND THESE  
CHARACTERISTICS INCREASE THE IMPACT OF THE NEW HEALTH CARE LAW**

The National Restaurant Association is the leading business association for the restaurant and food service industry. Its mission is to help its members, such as myself, establish customer loyalty, build rewarding careers, and achieve financial success. The industry is comprised of 960,000 restaurant and foodservice outlets employing 12.8 million people who serve 130 million guests daily. Restaurants are job creators. Despite being an industry of predominately small businesses, the restaurant industry is the

nation's second-largest private-sector employer, employing over nine percent of the U.S. workforce.

The restaurant and food service industry is unique for several reasons. First and foremost, small businesses dominate the industry with more than seven out of ten eating and drinking establishments being single-unit operators. We also employ a high proportion of part-time, seasonal, and temporary workers. Restaurants are employers of choice, especially for employees looking for flexible work hours.

Our workforce is typically young, with nearly half under the age of 25. We also have a high average workforce turnover rate relative to other industries with 75 percent average turnover rate in 2008 compared to 49 percent for the overall private sector. In addition, the business model of the restaurant industry 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.

The National Restaurant Association supports repeal of this law and the development of new health care reform that promotes an affordable health insurance system in America that functions well for low-profit per employee, labor-intensive, industries, such as the restaurant and hospitality industry. Restaurants are proponents of cost containment in the health care system.

Our industry's goal is to lower the cost of employer provided and employee accessed health insurance by passing real health care cost containment measures and by eliminating the current employer mandate. The restaurant and food service industry wants health care reform, but PPACA is not the solution.

### **THE LAW'S IMPACT ON RESTAURANT INDUSTRY JOBS**

Growth and success in the restaurant industry means opening more restaurants and locations, which in turn mean jobs in our communities. For some time, I have been considering several options to expand our businesses, including adding a management contract and another restaurant location. Up until recently, when I closely examined the impact of this new law on my businesses, I had not taken into account the additional costs and burdens this law imposes. I am now reexamining these expansion options and may not take on that additional growth.

The uncertainty of the regulatory process and the many rules that are yet to be clarified and fully defined worry me. The cost increase estimates we have done will only increase as we know more about this law. As a business owner, you plan several years in advance. Thus, 2014, when the most serious employer requirements take effect, is not that far away. Regulatory implementation is moving ahead at full-steam and it seems like a new requirement comes to light every day that is even more burdensome than the last.

Entrepreneurs, like me, are used to dealing with uncertainty and risk. We do so by preparing as best we can for the unknown. We have a glimpse of what is to come and

have already begun preparing for the full implementation of this new law to preserve our businesses. It requires close examination of our employment base and how we handle it going forward. We are already an industry that utilizes many part-time employees and I believe we will see an even greater trend towards that type of employment in our industry because of this law.

### **RESTAURANT INDUSTRY CHALLENGES WITH PPACA**

As we witness the implementation of this new law by the agencies, we have discovered troubling challenges that need to be addressed. We are actively participating in the regulatory process to address these challenges.

While we would prefer repeal of PPACA, serious changes need to be made to its implementation now to avoid serious job dislocation in our industry not just in 2014, but right now, as we begin attempts to comply with its new requirements. In addition, many of the new requirements impact all employers, regardless of size, and come into effect well before January 1, 2014. Below is a brief mention of the industry's main concerns and suggested changes.

#### ***THE EMPLOYER MANDATE SHOULD BE REPEALED***

The requirement that large applicable employers offer minimum essential coverage to full-time employees or face penalties will create a significant cost escalation for employers offering such coverage. Our industry forecast shows that the combined penalties will become the largest cost-driver for restaurateurs after 2014.<sup>1</sup> Thus, we call on Congress and the President to eliminate the costly employers' mandate.

#### ***THE DEFINITION OF FULL-TIME EMPLOYEE SHOULD BE BASED ON A 40 HOUR WORK WEEK***

The new law redefines full-time employment as 30 hours per week, which will have significant implications for business management and employee work hours in the industry. I have spoken with fellow restaurateurs and everyone agreed that one of the biggest impacts will come from this change in definition.

As a result of this change in the definition of a full-time employee, the industry will very closely manage employees' hours to 29 hours or less. In practice, it will mean a larger employee base, working less hours—no more than 25 hours to avoid bumping into the cap—and an increase in labor and training costs, already one of the most significant line item costs for our businesses. For the employees, it will mean the need to get a second and third job to make up for lost hours and, thus, income.

In addition, compliance is nearly impossible without guidance on what "any given month" actually means. For consistency and to avoid having employers cut the hours of

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<sup>1</sup> Specifically, this would be the case for those who currently offer coverage today and will be considered "large applicable employers" under the new law.

part-time workers below the new 30 hours threshold, it makes sense to continue basing full-time work under the current 40 hour work week standard.

***COMPLIANCE TIMELINES MUST BE CONSISTENT AT 120 DAYS***

The inconsistent timelines will cause unnecessary increased costs for restaurateurs. Currently the employer waiting period is 90 days, a seasonal employee is defined as working 120 days or less, and the definition of full-time employee considers hours worked per week in any given month. A consistent 120 day compliance timeline should exist for all of these provisions.

***ELIMINATE MINIMUM ESSENTIAL COVERAGE REQUIREMENT FOR LOW PROFIT-PER EMPLOYEE INDUSTRIES***

The new law requires employers to offer a certain level of coverage to satisfy the mandate requirements that low profit-per-employee industries, like ours, will find difficult to comply. In fact, we fully expect many restaurants that are already operating on the margins of profitability to close. We would also urge you to allow catastrophic coverage to be an option for employers to offer their employees to satisfy current or any future coverage requirement.

Sixteen to twenty-four year olds make up the majority of the industry's workforce. If an individual under 30 years of age can purchase catastrophic coverage to satisfy the individual mandate, employers should be able to offer this same coverage to employees to satisfy the employer mandate obligations.

***REPEAL THE EXPANDED 1099 REQUIREMENTS***

We also call on Congress to repeal the expanded 1099 information reporting requirements contained in the new law. This is a bipartisan issue—one that almost everyone agrees must go away. Both the House and the Senate have voted to repeal this provision.

The 1099 repeal bill should be sent as soon as possible to the President for his signature. Otherwise, businesses will have to start wasting money, time, and resources this year to start preparing to comply with this requirement because our systems would have to be up and running when the mandate starts on January 1, 2012. There are more pressing challenges that we must address as the implementation of this law continues to move forward than complying with a requirement that most in Congress agree needs to be repealed.

***AUTO-ENROLLMENT REQUIREMENT IS DUPLICATIVE AND SHOULD BE ELIMINATED***

This requirement will increase employer costs and create greater exposure to penalties or free choice vouchers. This provision poses additional administrative burdens for our industry, especially due to the high turnover rate the industry experiences. The

applicability of the waiting period to this provision must also be clarified through regulations.

### ***ZERO PAYCHECKS AND PPACA***

Paychecks of zero or negative value are common in the restaurant industry, as tipped employees receive most of their income in tips paid by the customer. The paychecks paid by the restaurant sometimes cannot even cover the required federal and state taxes that must be applied. Today, if an employee chooses to participate and take health care coverage offered at the restaurant, they would pay their portion of the premium. If the employee contribution is not paid through the paycheck, then, it is paid directly to the insurer to maintain coverage. Today, if payment for the coverage is not received, coverage is dropped for nonpayment. However, under the new law, if that employee were dropped from an employer's plan and, instead, obtained a premium tax credit and used it to purchase coverage on the exchange, the employer would be penalized.

### **THE IMPACT OF PPACA ON MY BUSINESS**

My businesses are typical of many restaurants in our industry. Each of my 3 restaurant locations is a distinct entity: a Sub-S Corporation with shared ownership with my father, and two Limited Liability Corporations fully owned by me, one of which is solely a seasonal business.

For the most part each of these businesses employs different employees with some overlap. We have a large group of seasonal employees that include a number of college students, some who work seasonally for us multiple times per year. The law defines a single employer based on the common control clause in the tax code and so based on the ownership of these restaurants we must consider the employees of all three restaurants as one employee pool for the purposes for the health care law.

Yet other benefits, such as 401(k), will continue to be offered separately by each company, making benefits administration more complicated. Our employees appreciate the flexible scheduling the industry is known for, and their hours can fluctuate greatly based on the time of year. For one of our locations, average hours worked during the 2<sup>nd</sup> quarter range from 18 to 35 hours per week, while the 4<sup>th</sup> quarter is our busy season and hours average 40 to 65 hours per week for the same employees.

We are very close to the fifty full-time equivalent workers threshold. How many hours our part-time employees work will determine if we are a large applicable employer or not. What this means for my restaurants and our employees is that depending on the time of year and the number of hours worked by our team, the three entities considered together could be considered a large applicable employer and subject to the most stringent employer mandates in the law some months, but not others.

In addition, our employees could be full-time employees one month and part-time employees the next, changing the obligation we have as a large applicable employer to each of them under the new law. Like so many of my peers, how closely employees' hours are managed may determine if we are above or below the large applicable employer threshold of 50 full-time equivalent employees.

We recently completed a detailed analysis of the new law's impact on our restaurants, including the impact of the seasonality of our business. We examined four different work periods in each quarter throughout the year<sup>2</sup> for just one of our restaurants (the S-corp) and first considered the cost impact to the business if all full-time employees were offered and took our plan.<sup>3</sup> We also considered the costs if half of the regular and seasonal full-time employees to whom coverage would be required to be offered declined the coverage.

Lastly, we considered the penalty amount we would be required to pay if we decided to no longer offer coverage to our employees. This is not something we want to do, as we are very proud of the fact that we have offered full medical coverage to our employees for a long time. Not only is it the right thing to do, but in such a competitive industry, where good employees who stay with the company for a long time are rare, offering coverage like we have does create a competitive advantage for a business like mine. Employee loyalty also keeps training costs to a minimum. The restaurant and foodservice industry experiences such high turnover rates that attracting and retaining employees is a top priority for all restaurant operations.

We first calculated the number of full-time equivalent (FTEs) employees just for this one location as defined in the law, using real 2010 employment numbers.<sup>4</sup> Whether combined with the other restaurants as one employer or not, this one location would put us over the 50 FTE threshold. We feel that we are a small business yet this law considers us a "large applicable employer." Here, we present the average of our analysis and what follows are the breakouts by quarterly periods examined.

In 2010, on average, the restaurant employed 33 full-time employees and 26 full-time equivalents working part-time hours, for a total of 59 FTEs that place us over the threshold and subject to the coverage and penalty requirements of the law. We employed 24 seasonal part-time employees and 5 seasonal full-time employees as well, for a total of 38 full-time employees to whom we would be required to offer coverage under the new law as a large applicable employer.

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<sup>2</sup> Work periods are based on payroll periods in looking at the employment data for our restaurant in 2010. (Qtr 1) Period 2: 1/25/10 to 2/21/10; (Qtr 2) Period 6: 5/17/10 to 6/13/10; (Qtr 3) Period 9: 8/09/10 to 9/5/10; and (Qtr 4) Period 13: 11/29/10 to 12/26/10.

<sup>3</sup> We had to assume that current premium rates would apply and that we would continue to contribute 50 percent towards the premium. However, premiums will continue to increase and there is also a possibility that depending on how minimum essential coverage is defined, our current plan may not satisfy the requirements for large applicable employers. This would also cause an increase in our premiums as well.

<sup>4</sup> For compliance purposes, all employees of each of the three locations would be combined into one pool, however currently there are two different health care plans between the three businesses.

Should all 38 employees opt-in to the coverage, we would see a 282% cost increase to the business over current premiums. Today, we insure 7 employees at a cost of \$2,067 monthly/\$24,808 annually. This would jump to \$7,892 per month or \$94,669 per year, if all 38 full-time employees opted into our coverage.

If we assume our pick-up rate is 50 percent and half of those eligible opted in for coverage (19 employees) the cost increase would be 141% over current premiums, or \$4,979 monthly/\$59,754 annually. If we chose not to offer coverage at all, we could pay on average \$1,375 monthly/\$16,500 annually in penalties.

The penalties are less than what we are paying for health care now. We believe that offering health care coverage is the right thing to do. However, faced with these very large increases in coverage costs, which do not take into consideration the likely premium increases, it will be extremely difficult for us to absorb these costs and continue offering coverage.

We cannot raise menu prices high enough to cover these costs and to do so would drive away the customers who are just beginning to return to our tables. Our only option will be to closely manage our workforce's hours to be able to eliminate 10 FTEs from our staff and remain below the 50 FTEs large applicable employer threshold. Across the industry, part-time will probably be 25 hours or less on average in a week, impacting the number of jobs some of our employees may need to take on. It is not something I want to do, but given that this law will only increase my costs, I will have to do what I can to keep our 4<sup>th</sup> generation family business profitable and operating.

My fellow restaurateurs are thinking about this law in the same context as I am. As a result, we are all taking a second look at any expansion opportunities we had been considering because of the additional burden and cost, which is somewhat still undefined. Because this law is so complicated and there remain so many unanswered questions about how it would function, it is extremely difficult to know how to expand and handle the hurdles you know will be coming at you.

Every fellow restaurateur I talk to says that they feel in the dark, that they had no idea just how complicated and burdensome this law is. I fear that there are many in our industry who, despite our efforts to educate them about these challenges, do not yet realize the magnitude of the impact this law will have on their businesses. At the very least, this law and the requirements it imposes on employers will impact all of our decisions going forward, especially in regards to our employee base.

#### Quarter 1: Large Applicable Employer with 55 FTEs.

This is one of the slowest work periods for our restaurant given the slowdown in customer traffic following the holidays in January to February. We have determined that during the first quarter, we had 26 full-time employees working an average of 30 hours per week with an additional 29 full-time equivalents for a total of 55 FTEs. In addition we had 18 seasonal part-time employees and 3 seasonal full-time employees. Since we

would be required to offer coverage to all full-time employees, including seasonal full-time employees past the allowed waiting period, we could be required to offer 29 employees coverage.

If all of these employees accepted our offer and took the coverage, assuming current premium rate and our 50 percent employer contribution, the business would experience a 200 percent increase in premiums to be paid just for this 4 week period. Should half of those 29 employees opt out of our offer of coverage, we would experience a 100 percent increase in premium cost. And, finally, if we were to no longer offer coverage and instead decide to pay the \$2,000 annual penalty per full-time employee (including seasonal full-time employees), we would be subject to no penalty.

The law allows an employer to consider the number of their full-time employees minus 30 for the purposes of calculating this penalty. Since we have 29 regular full-time and seasonal full-time employees combined in this period, we would have zero employees for whom to pay the penalty.

#### Quarter 2: Large Applicable Employer with 60 FTEs.

During the second quarter, we employed 31 full-time employees and 29 full-time equivalents working part-time hours for a total of 60 FTEs. In addition, we employed 22 seasonal part-time employees and 3 seasonal full-time employees. We employed a total of 34 full-time employees in this time period. Should all 34 full-time employees accept our offer of coverage it would represent a 245% increase in premium costs for that month.

If half of the full-time employees opted out of our coverage, it would represent a 123% increase in premiums for us during just that month. If we chose to pay the penalty for not offering any coverage, we would be subject to a \$667 penalty per month for this period of time.<sup>5</sup>

#### Quarter 3: Large Applicable Employer with 59 FTEs.

During the third quarter, we employed 38 full-time employees and 21 full-time equivalents working part-time hours for a total of 59 FTEs. We employed 31 seasonal part-time and 4 seasonal full-time employees. We employed a total of 42 full-time employees— both regular and seasonal— in this time period. Should all full-time employees accept our coverage offer, it would represent a 318% increase in premiums for the business.

If half of these employees opted out it would represent a 159% increased cost. If we decided to pay the penalty, then it would be assessed as \$2,000 per month for this period because, with the 30 employee discount, we would be paying the penalty on 12 employees.

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<sup>5</sup> 34 full-time employees minus 30 multiplied by \$166.67 equals \$667.

#### Quarter 4: Large Applicable Employer with 61 FTEs.

During the fourth quarter, we employed 38 full-time employees and 23 full-time equivalents working part-time hours for a total of 61 FTEs. In addition, we had 25 seasonal part-time staff and 9 seasonal full-time employees. In total, we had 47 full-time employees to whom we would be required to offer coverage. If they all accepted the offer of coverage, it would mean a 364% increase over our current premiums. If half declined, it would be a 182% increase. If we decided to pay the penalty, then it would be assessed as \$2,833 per month for this period because, with the 30 employee discount, we would be paying the penalty on 17 employees.

Currently, we offer coverage and 7 employees opt-in to take our plan in one of our restaurants. However, with the requirements of the new law on the individual, this will greatly impact how many employees will opt-in to take our offer of coverage. I have one employee who has worked for us for a very long time. He is a valuable member of our team, and health care coverage has been offered to him many times over the years.

He has a wife who also works, and a child who will be going into the armed forces soon. However, he chooses not to take advantage of the major medical coverage we offer but instead chooses it as more take-home pay. And, we aren't talking a lot of money for the premiums per month—only \$90 per month for an individual and \$180 per month for a family. There are a lot of employees in our industry, like this particular employee of mine, who have an option and simply do not wish to take it.

Another issue that impacts my situation in particular is the lack of consistency in compliance timelines. The new law allows for a maximum waiting period of 90 days before coverage must be offered or an employer is considered as not offering coverage. However, a seasonal employee is defined as working 120 days or less.

The new law requires that a large applicable employer offer seasonal employees who work full-time (more than 30 hours on average a week) coverage. One of my LLCs is strictly a seasonal business that is open 107 days a year, from the week before Memorial Day weekend until the week after Labor Day weekend. We do employ a few employees before that time to get the operation ready for business, but most work full-time during this time.

As I understand this portion of the new law, in 2014, I am now required to offer my seasonal full-time employees in this restaurant coverage from day 91 through day 107 or pay the penalty for that month on each of them for not offering coverage.

There are two solutions to this. First, Congress could change the waiting period and make it consistent with the seasonal employee definition of 120 days. Such a change in the waiting period time would prevent driving up the cost of my premiums by ensuring that such a group of people would not be added to insurance roles one month, just to be dropped the next. An employer could also just pay the penalty for one month, but that does not achieve anyone's goal of reducing cost or offering the uninsured coverage.

Second, I could shorten the number of days I will be open to 89 to avoid the complexity and cost of being open an additional 17 days.

This is the perfect example of how this new law will drive the way restaurants across the country will run their businesses. It will certainly change it dramatically and likely change the dynamics of our workforce as well.

### **HEALTH CARE REFORM RESTAURANTS SUPPORT**

The restaurant and food service industry has long supported health care reform that controls costs and in turn makes affordable coverage available to more people. One of the key factors of cost-reduction is informed consumer choice in health care product purchasing. The new health care law does not address the rising costs of health care coverage and, in some instances, works to increase costs by limiting the use and flexibility of cost-reducing policies.

The National Restaurant Association supports allowing purchasing across state lines. For many years, the industry has supported health care pooling arrangements that provide small businesses increased options for affordable health care. Pooling statewide or nationwide would work to achieve lower rates for employees' health care coverage.

The Association long supported the bipartisan Small Business Health Options Program Act (SHOP Act), a concept that was used in developing the SHOP exchanges in the law. Mr. Chairman, we also support your bipartisan Small Business Cooperative for Healthcare Options to Improve Coverage for Employees Act (Small Business CHOICE Act) that would allow all businesses to form cooperatives of similar to risk pools and provide coverage for high-cost claims. We continue to encourage Chairman Pitts of this Subcommittee and Representative Nydia Velázquez (D-NY) to reintroduce the bill again in this Congress, and for the Congress to consider including it in alternatives to replace PPACA.

The new health care law limits the use and flexibility given to Health Savings Accounts (HSA), Health Reimbursement Arrangements (HRAs), and Flexible Spending Accounts (FSAs). No longer can over-the-counter medicines be reimbursed by these cost-reduction tools without a prescription by a doctor.

Opinion polling the Association conducted several years ago shows that 70 percent of restaurant employees have a strong interest in HSAs. We support expansion of the flexibility in use and contribution amounts to these accounts as a means to give consumers the ability to control and reduce their own health care costs. In addition, the law restricts contributions to FSAs beginning in 2013. We support repeal of this provision, as FSAs reduce health care costs for consumers.

The industry supports health insurance coverage portability options that put control of health care decisions in the individual consumers' hands. To provide coverage to a mobile workforce, allow uninterrupted coverage, and extend coverage to the

uninsured, tax laws and insurance regulations should permit employees to take their coverage with them when they change jobs. Given that restaurant employees change jobs more often than other workers, such an option would be of great benefit to them.

Tort-related matters have contributed to the increasing cost of health insurance and medical care through law-suit abuse. The skyrocketing health insurance premiums caused by frivolous suits hurt both employers and employees. The National Restaurant Association supports medical malpractice reform to address one of the cost-drivers of health insurance premiums.

**IN CONCLUSION, LET US WORK TOGETHER TO FIND A SOLUTION THAT BOTH  
LOWERS HEALTH CARE COSTS AND PROVIDES BETTER BENEFITS WITHOUT  
BANKRUPTING THE RESTAURANT INDUSTRY**

Since enactment of PPACA, the National Restaurant Association has been attempting to constructively shape the regulations. Nevertheless, there are limits to the scope of change we can achieve through regulations, particularly if those charged with their drafting choose to ignore the industry's comments. Ultimately, PPACA itself needs to be repealed or drastically changed to mitigate the most harmful effects on the restaurant industry.

The National Restaurant Association will continue to be active in urging Congress to either repeal or pass major legislative changes to PPACA because some of the fundamental problems cannot be fixed through regulations alone. The National Restaurant Association looks forward to working with this Committee and all of Congress on these and other important issues to improve health care for our employees without sacrificing their jobs in the process.

Thank you again for this opportunity to testify today on the true cost of the new health care law and its negative impact on jobs in the restaurant industry and my businesses in particular.