



March 18, 2013

Internal Revenue Service, Room 5203
POB 7604, Ben Franklin Station
Washington, DC 20044

Attention: Treasury REG-138006-12.

Submitted electronically via www.regulations.gov

Dear Sir or Madam:

The National Retail Federation (NRF) appreciates the opportunity to submit comments on the proposed rule, “Shared Responsibility for Employers Regarding Health Coverage,” issued by the Department of Treasury on December 28, 2012.

As the world’s largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants (represented by NRF’s division, the National Council of Chain Restaurants) and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing \$2.5 trillion to annual GDP, retail is a daily barometer for the nation’s economy. NRF’s ***Retail Means Jobs*** campaign emphasizes the economic importance of retail and encourages policymakers to support a **Jobs, Innovation and Consumer Value Agenda** aimed at boosting economic growth and job creation. www.nrf.com

NRF supports the effective implementation of the Affordable Care Act (ACA) as a practical reality for our retail and chain restaurant members and employees. NRF has worked diligently and cooperatively with the Administration to best accommodate the law to our industry’s variable workforce. We recognize and appreciate the Administration’s efforts to work to understand our industry.

NRF is party to several coalition letters submitting comments to this proposed rule. The most significant of these submissions is that of the Employers for Flexibility in Health Care Coalition (E-Flex). NRF participates on the E- Flex steering committee.

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This letter will not seek to replicate or expand upon these coalition comments – we stand behind them. Rather, we seek to focus in on several particular concerns of the greater retail and chain restaurant communities we represent.

NRF appreciates the opportunity to work with the Treasury Department and Internal Revenue Service in development of this regulation. Key elements of flexibility reflect the direct discussions between retail and chain restaurant members of NRF and senior Treasury officials in several in-person meetings – highly educational on both sides. We found common purpose in building more workable solutions to complex requirements on varied and changeable workforce. We value and appreciate this collaboration.

We also appreciate the effort evident in the rule to provide transitional relief to key ACA provisions otherwise effective January 1, 2014. Still, we are concerned by some of the additional complexity in the rule surrounding specific relief for non-calendar year plans. Such plans developed from the particular needs of the retail industry, especially during the frenetic holiday season. Eligibility for the non-calendar year transition relief should not be qualified based on prior coverage offered.

We are also concerned by the short-timeline for general ACA applicability. The ACA requires employers to take on entirely new methods of managing full, part-time, and seasonal employees. Our members tell us that tracking variable hour employees will be difficult, though we still remain grateful for the flexibility represented by the “look-back” methodology of averaging part-time employee hours. Monthly fluctuations in eligibility for employer health plans and/or the new insurance markets (formerly known as “exchanges”) would create serial nightmares for employer and markets alike.

These retailers and chain restaurants utilize many of the same exact vendors for this tracking task, which could well create administrative bottlenecks at key junctures. New vendors will undoubtedly emerge in response to these new demands across the employment spectrum, but, retailers and chain restaurants will be reluctant to shift vendors at the 11th hour. We continue to urge you to strongly emphasize compliance assistance rather than penalty application in the early years of ACA applicability.

In our most recent Treasury/IRS meeting, some participants even found controversy in the 95 percent compliance threshold transition relief: specifically regarding compliance for smaller employers who fall under the “large employer” rubric under the ACA. Though grateful for the relief that this standard provides, the margin for error in a smaller “large employer” context is consequently much smaller, too. Because of the diversity in retail and chain restaurant

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workforces and approaches to managing them, we continue to believe a “good faith” standard for compliance in the early years of ACA applicability is appropriate.

NRF welcomes not only the opportunity to comment on these proposed regulations but also our cooperative relationship with regulators. The retail and chain restaurant industries present a particular challenge to implementation of the ACA. High numbers of part-time, temporary and seasonal employees coupled with high turnover make administering benefits challenging for any retailer or chain restaurant.

Thank you for allowing NRF to comment on this proposed rule. We look forward to continuing to provide input as the regulatory process continues. Retail and chain restaurants share the Administration’s interest in ensuring that the ACA is implemented in the least burdensome manner possible.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Neil Trautwein", with a stylized flourish at the end.

E. Neil Trautwein

Vice President, Employee Benefits Policy Counsel

National Retail Federation