

Report

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NATIONAL RESTAURANT ASSOCIATION **INSIGHTS**

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NATION'S *Restaurant News*

THIS MONTH

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Take Action to End Burdensome New 1099 Paperwork Mandates

PROFITABILITY & ENTREPRENEURSHIP

Contact your Congressman or woman to stop burdensome paperwork required as part of the new health care legislation.

The provisions will impose expanded Internal Revenue Service reporting mandates on businesses to help pay for the new health care law. The National Restaurant Association is working on multiple fronts to eliminate the 1099 reporting rules, which are to take effect in 2012. The Association recently joined the U.S. Chamber of Commerce to fight the reporting requirements.

In a joint letter to Congress, the groups pointed out that the requirement will dramatically increase accounting costs and expose businesses to costly and unjustified IRS audits. "The increased costs will heavily penalize honest taxpayers, creating an even more unlevel playing field between those who pay their fair share of taxes and those who do not," the letter states.

The letter also points out that the reporting mandate could drive purchases away from small vendors and start-ups, creating a negative impact on smaller businesses.

Nearly 40 million entities, including businesses, governmental bodies and non-profit organizations, will be subject to the reporting requirements.

Recently, the revenue service's National Taxpayer Advocate expressed concern to Congress that the provision would cause a "significant compliance burden" for those entities.

What the reporting mandate means to you:

- Restaurants will have to track purchases by amount, vendor and method, then issue appropriate forms to the IRS and suppliers.
- Restaurateurs will have to obtain taxpayer ID numbers from suppliers before ordering or apply backup withholding.
- Businesses must report to the IRS and suppliers on 1099 forms all purchases of goods and services in aggregate of \$600 or more in a year, whether purchases are from a corporate or non-corporate entity. Credit- and debit-card payments are exempt because the IRS will require banks and payment processors to report those amounts.

Help step up the pressure on Congress

The Senate is scheduled to vote Sept. 14 on several amendments to repeal or scale back the expanded 1099 requirement.

Contact your senators and representatives through the Capitol switchboard at (202) 224-3121. Or e-mail lawmakers through the NRA website at www.restaurant.org/advocacy. Tell them why you're concerned about the paperwork and expenses the new rule will impose on your business.

Eliminating the expanded reporting requirement has broad bipartisan support in Congress. Lawmakers have introduced several bills that would eliminate or scale back the expanded 1099 information reporting requirement. They include S. 3578, H.R. 5141, H.R. 5982 and amendments by Sens. Mike Johanns (R-Neb.), Bill Nelson (D-Fla.), Max Baucus (D-Mont.) and Mary Landrieu (D-La.).

Mid-term Elections Less than 75 Days Away

PROFITABILITY & ENTREPRENEURSHIP

The approaching mid-term congressional elections will have a significant impact on job growth and other issues that affect the restaurant industry.

This fall, 37 Senate, 435 House and 36 gubernatorial races are on the ballot. Changes in the make-up of the Senate and House of Representatives will affect immigration reform, small businesses' access to credit, union card check and other issues. As candidates debate those issues, the restaurant industry can't afford to miss out on such an important election.

Over the years, mid-term elections have become indirect referendums on the sitting president's performance. Over the past 17 mid-term elections, the president's party has lost an average of 28

DID YOU KNOW?

More than a third of U.S. senators are serving their first terms. That means they were elected in 2004 or later.



House seats and four Senate seats. Pundits are closely watching the races to determine how many seats the majority party will lose and where.

Senate

Next year, the Senate is expected to have more new faces with 13 open and several competitive races. An open race is where the incumbent isn't running for re-election. Competitive races are those where incumbents face challengers.

At this time, the Senate consists of 59 Democrats and 41 Republicans. To gain a majority, the

GOP must win 10 seats. Political analysts say Republicans could take over six or seven Democratic seats and pick up seats in Arkansas, Delaware, Indiana and North Dakota. To gain the majority, Republicans must win solidly blue states like California, Washington and Wisconsin.

Although Californians haven't elected a Republican to the Senate in nearly 20 years, the Massachusetts election last January showed anything's possible. In that race, a state that hadn't had a Republican senator in nearly 40 years elected Republican Scott Brown to replace the late Ted Kennedy.

In November, California businesswoman Carly Fiorina is challenging three-term Democratic incumbent Barbara Boxer.

This year, Democrats are defending six open Senate seats, including those that belonged to President Obama in Illinois and Vice President Biden in Delaware. Others include those held by Chris Dodd in Connecticut, Evan Bayh in Indiana and Byron Dorgan in North Dakota.

As for the competitive races, Democratic seats in Colorado, Illinois, Nevada and Pennsylvania and Republican seats in Florida, Kentucky, Missouri and Ohio are considered "toss-ups," or up for grabs by either party. Many of those races are too close to call, as the political climate changes daily.

House of Representatives

The House currently consists of 255 Democrats and 178 Republicans. Two seats are vacant. To get 218, a majority, the GOP will need to win 40 seats.

About 10 percent of the House races are open seats. Democrats are defending 19 open seats, and Republicans are defending 23. Regardless of the outcome, at least 24 states will have a new member of Congress next year. Florida will have five new representatives, and Arkansas, Indiana, Kansas, Michigan, South Carolina and Tennessee each will have three.

Seventy to 75 House races are considered competitive. Half are held by so-called "majority makers," Democrats elected in 2006 and 2008 who helped propel the party to power. Of the 57 Democrats elected at that time, 34 face challengers. Many of those races are in Colorado, Ohio, Pennsylvania, New Hampshire, New Mexico and Virginia — all states that turned blue last cycle, but where red is resurging.

New Gift Card Rules in Effect

PROFITABILITY & ENTREPRENEURSHIP

Restaurants that sell gift certificates and gift cards need to know about new rules on expiration dates and fee restrictions and new wording on gift cards and gift certificates.

The new law is part of the Credit CARD Act of 2009, part of which took effect Aug. 22.

The consumer-protection measure:

- Limits certain fees, such as inactivity or service fees, on gift cards and gift certificates.
- Prevents retailers or other gift-card and gift-certificate issuers from setting expiration dates for card balances of less than five years.
- Requires new disclosure statements on the cards and certificates.

The law applies to gift certifi-

cates and cards, as well as general-use gift cards that can be used anywhere, such as those issued by Visa and American Express. The law doesn't apply to reward cards or reloadable prepaid cards not intended for use as gifts.

Under the new law, gift-card and gift-certificate recipients can use card balances for at least five years from the date the card is purchased, or at least five years after any money is added to the card, whichever is longer.

New gift cards and certificates must carry information about the frequency and amount of fees, expiration dates and a toll-free number for people to call for more information.

What happens to existing cards/certificates?

Existing cards or certificates produced before April 1, 2010, can

be sold through Jan. 31, 2011, without the new on-card disclosure statements. Congress made that change last month to ensure retailers and others wouldn't have to throw out existing cardstock.

However, the new rules on expiration dates and fee limits apply to existing cards, and retailers need to disclose consumers' rights through alternative sources, such as in-store signs.

New cards or certificates produced after Aug. 22, 2010, must carry the new disclosure statements. After Jan. 31, 2011, all gift cards and certificates need to include the required disclosure statements.

Many states have rules on gift cards. State provisions that provide greater protection to consumers take precedence over federal provisions.

Visit www.restaurant.org/legal for more information.

In Brief

FOOD & HEALTHY LIVING

Toy ban could set dangerous precedent

A proposed San Francisco toy ban could set a dangerous precedent for other jurisdictions. The city's Board of Supervisors wants to force restaurants to meet certain nutrition limits to put toys and other "incentive" items in kids' meals. The proposed ordinance would limit meals to 600 calories or single items to 200. It also says beverages can't have excessive fat or sugar. The California Restaurant Association is working to show how the restaurant industry has been proactive in promoting healthful menu items, physical activity and better nutrition for kids. It's also urging members to contact lawmakers to oppose the proposal. The proposal follows a similar ban in Santa Clara, Calif.

NUTRITION DISCLOSURE

FDA: Federal nutrition disclosure law in effect now

The Food and Drug Administration announced Aug. 24 that as of March 23, 2010, federal nutrition disclosure rules trump state and local menu-labeling laws that aren't identical to the federal law. The new federal nutrition-disclosure law requires restaurants with at least 20 locations to post nutrition data on menus and menu boards. The requirements are part of the new health care law. The FDA, which is responsible for clarifying and implementing the law, outlined its plans Aug. 24 in a teleconference briefing for the industry. Read the two new compliance documents at www.restaurant.org/menulabeling. The National Restaurant Association is analyzing the guidance and soon will have a summary for members. The NRA is working to ensure the law doesn't impose unnecessary burdens on restaurants.

MENU-LABELING

County to proceed with menu-labeling plans

Schenectady County (N.Y.) says it plans to implement menu-labeling rules enacted last March, despite new federal nutrition-disclosure rules for most chain restaurants. The federal law supersedes local and state menu-labeling rules that aren't identical to the federal law. The county plans to implement its rules Sept. 12. The New York State Restaurant Association has serious concerns about the county's decision to implement the rules. The NRA is working with the NYSRA to communicate with the county.

NRA Comments on Employer Health Care Plan Proposal

PROFITABILITY & ENTREPRENEURSHIP

The National Restaurant Association is looking out for its members as federal agencies start to issue regulations related to the new health care act, the Patient Protection and Affordable Care Act.

The NRA this month filed comments with the Departments of Health and Human Services, Treasury and Labor with feedback on interim final regulations that detail how the new health care law affects existing employer health plans.

The law allows health care plans that existed on March 23 (the day the bill was signed into law) to make "routine changes" to their health-care plans between now and 2014 without triggering new rules or requirements.

But if employers make substantial changes to these "grandfathered" plans — such as significantly reducing benefits or greatly increasing out-of-pocket spending for employees — the plans lose their grandfathered status and will be subject to different rules outlined in the health care law. Plans also lose status when a business moves to a new health insurance issuer.

The NRA said in its Aug. 16 comments to the federal agencies that the restaurant industry is concerned that the federal rules could inhibit restaurateurs from controlling costs or maintaining plans that they may want to keep.

Report Can Help Operators Improve Financial Performance

PROFITABILITY & ENTREPRENEURSHIP

The National Restaurant Association's new *Restaurant Industry Operations Report* shows the importance of labor and food costs to restaurateurs. The median cost of food and beverage in a typical restaurant is about 32 percent of the sales dollar. Salaries and wages run about 34 percent.

"Cost management has become even more important in this tougher economic environment," said Hudson Riehle, senior vice president, research and knowledge, NRA. That's why operators should use the report to sharpen their restaurant's financial performance, he said.

The *Operations Report* is based on surveys of operators throughout the country. The report analyzes restaurant income and expense statements to profile operations data for four categories of restaurants: three in fullservice, one in quickservice.

While no two restaurants are alike, the operations report data can help restaurants understand how they compare to businesses with a similar profile.

"Day-to-day changes in expenses can be small and go unnoticed, but when you're in a business where those costs drop directly to the bottom line, it's important to understand why things are going the way they are and take action quickly," Steve Steinhauser, director, Deloitte & Touche's restaurant industry practice, said in an Aug. 8 NRA webinar. "Periodic analysis of your food, beverage and operating costs can help you detect potential problems."

The report includes a simple worksheet to help restaurateurs quickly identify cost categories where their operations could significantly vary from similar operations.

The Association and Deloitte have published the *Restaurant Industry Operations Report* together for nearly 20 years. Buy a copy of the report at www.restaurant.org/store.

Oil Spill Recovery Could Plague Industry for Months

PROFITABILITY & ENTREPRENEURSHIP

Tommy Cvitanovich was finally getting his business back on track nearly five years after flood water ravaged New Orleans. Then a BP oil rig exploded in the Gulf of Mexico, killing 11 people and wreaking havoc on those whose livelihoods depend on Gulf Coast seafood.

“We were just getting back to pre-Katrina stages,” says Cvitanovich, incoming Louisiana Restaurant Association chairman. “Now we have a national perception that our oysters aren’t safe. It’s going to take years to recover.”

Cvitanovich is among the restaurateurs, hospitality workers and others in the tourism industry filing claims seeking compensation for lost business after the April 22 explosion. BP agreed to pledge \$20 billion to reimburse business owners, their employees and individuals affected by the oil spill.

Business losses

Although Cvitanovich closed his Metairie, La., restaurant for a month after Hurricane Katrina, his losses from the oil spill are far greater because he never raised prices after the spill, he says.

Sales for July and August at Drago’s Seafood Restaurant & Oyster Bar in Metairie are down more than 30 percent from the same period last year. Sales also are down at Drago’s in downtown New Orleans, he says.

Before the oil spill, he paid 12 cents to 20 cents an oyster; now he pays up to 58 cents. His employees receive 20 to 40 calls a day asking whether the restaurants have oysters and shrimp. Cvitanovich is proud the restaurants have been able to serve oysters every day since the spill, except for three shifts.

Oil Spill Hearings Continue

Congress continues to study the effects of the April 20 BP oil spill, as restaurateurs and other tourism-related businesses try to recover from lost revenue and higher seafood prices.

A House of Representatives subcommittee examined seafood safety, the amount of oil in the Gulf of Mexico and related issues in an Aug. 19 hearing. The Energy and Commerce Committee and its subcommittees have conducted about a dozen hearings on the issue.

In July, former NRA Chairman Ralph Brennan appeared before the Commerce, Trade, and Consumer Protection Subcommittee on behalf of the National Restaurant Association. In the July 27 hearing, the president of New Orleans-based Ralph Brennan Restaurant Group urged Congress to take action to encourage travel to the Gulf of Mexico, correct public misperceptions about clean beaches and seafood safety, and provide tax and other incentives to help businesses recover from the BP oil spill.



Former National Restaurant Association Chairman Ralph Brennan testifies July 27 before Congress.

Regional problem

The fallout from the oil spill goes far beyond Louisiana’s restaurants. NRA members throughout the Gulf Coast, as well as restaurateurs elsewhere who rely on Gulf seafood, are dealing with lost sales and higher prices.

Bob Omainsky, president and chief operating officer of Wintzell’s Oyster House, says sales are down 25 percent to 30 percent at his Mobile, Ala., restaurants and close to 50 percent down at his coastal locations. Fresh oysters and blue crab cost three times what the company normally pays, and shrimp and fish prices are up 30 percent. Wintzell’s has four company-owned restaurants in Alabama and eight franchises in Alabama and Florida.

“Nobody dreamed we would be talking about the BP oil spill 100 days after it happened,” says Omainsky, president of the Mobile chapter of the Alabama Restaurant Association.

Scott Weinberg, owner, Blow Fly Inn, Gulfport, Miss., deals with similar issues. The restaurant serves about four gallons of oysters a day, which now cost about

\$55 a gallon, up from \$35. “Oysters aren’t like shrimp,” Weinberg says, noting that it will take years to bring back the oyster beds.

Weinberg, president, Mississippi Hospitality & Restaurant Association, has trained employees to address guest questions, such as where seafood comes from and safety. “We tell them Gulf seafood is safer than it’s ever been because it’s tested three times as much.”

Although Omainsky says customer traffic began to trickle back

after BP capped the well, Gulf Coast restaurants still must deal with nearly three months of sales losses. “Lost business is still lost business,” he says. “This has really put us way back.”

The perception that Gulf Coast seafood isn’t safe — or isn’t available — will take years to overcome, the restaurateurs say.

“It will take a huge grassroots effort from the industry and a whole lot of marketing dollars,” Drago’s Cvitanovich says.

NRA Advocates for Immigration Reform

Angelo Amador, the National Restaurant Association’s new immigration expert, participated in an Aug. 12 immigration summit. The event, sponsored by ImmigrationWorks USA and the U.S. Chamber of Commerce, drew 150 employers who rely on immigrant workers. Amador, vice president, labor and workforce policy, represented the Association on a panel of business representatives and former policymakers who discussed recent changes in immigration enforcement and visa policy.



Loyalty Programs Drive Business in Downturn

PROFITABILITY & ENTREPRENEURSHIP

Guest loyalty programs helped operators increase business during the economic downturn, according to new National Restaurant Association research.

“This research clearly shows the value of guest loyalty programs and offers great insight into loyalty strategies,” says Hudson Riehle, senior vice president, research and knowledge, NRA.

Repeat customers are an important demographic for restaurant operators, and loyalty

programs can be strong incentives to increase repeat visits, he says.

Ninety percent of operators who responded to the survey say loyalty programs give them a competitive advantage. The vast majority say they plan to invest more in loyalty programs because the programs drive growth.

The research found that:

- More than four in 10 respondents (41 percent) have loyalty programs. Nearly half of those who don't (47 percent) are planning to launch one.
- Of the operators who operate guest loyalty programs, 84 percent

plan to maintain or increase their program investment this year.

- About three-quarters of respondents (74 percent) use social media to support their loyalty programs. Facebook was the most common social networking site (65 percent), followed by Twitter (40 percent) and blogging (17 percent).

The Association partnered with Loyalty 360—the Loyalty Marketer's Association and rDialogue to survey 1,300 NRA member restaurant operators. The survey examined restaurant loyalty programs' market penetration and the kinds of loyalty practices restaurants use. It

also collected metrics used to measure performance and measured the resources restaurants dedicated to strategy, implementation and management of the programs.

“These findings clearly show that dining loyalty programs continue to grow because they work to accomplish strategic business objectives,” says Mark Johnson, CEO, Loyalty 360.

Find out more about the survey results and best practices to increase customer engagement and build loyalty programs. Listen to an Aug. 17 webinar on loyalty programs at www.restaurant.org/events/webinars.

Make Food Safety Training Fun with Free Activities, Tools

FOOD & HEALTHY LIVING

Focus on the needs of children, pregnant women, the elderly and people with weak immune systems during National Food Safety Education Month.

This year's theme is “High-risk customers: serve your fare with extra care.” The campaign runs throughout September.

Each year, the National Restaurant Association provides the restaurant industry with weekly training activities and promotional pieces to enhance staff training. The NFSEM website contains weekly activities



National Food Safety Education Month®

and promotional materials in an easy-to-use downloadable format.

The activities are related to the each year's theme. The Association chose this year's theme to recognize that operators are responding to more requests from parents and children about customized menu options, greater variety in kids' meals and food safety.

The Association encourages restaurants to use the tools to drive home food safety initiatives within their restaurants. The activities are based on food safety guidelines from the Association's ServSafe food safety and training certification program and deliver critical food safety training in less than five minutes.

National Food Safety Education Month was created in 1994 to promote the importance of food safety education. Download the free materials at www.servsafe.com/nfsem.

NRA Sets Fall Study Group Dates

Discover solutions to the challenges that plague you and other restaurant professionals in your field. Learn best practices, the latest research and network with other leading restaurant executives at the National Restaurant Association Executive Study Group meetings.

Registration is underway for the next round of meetings. Here's a look at those coming up:

■ Quality Assurance

Sept. 28-30 | Paris Hotel | Las Vegas

The agenda includes a workshop on building restaurant food safety culture and a keynote presentation from Walmart's vice president of food safety. Discussion topics include Food Code changes, acrylamide, food allergens, sodium reduction, hand hygiene and regulatory challenges. www.restaurant.org/education/studygroups/qa

■ Information Technology

Sept. 28-Oct. 1 | Millenium Hotel | Minneapolis, Minn.

Education sessions will focus on social media, electronic ordering, loyalty marketing and cloud computing. www.restaurant.org/education/studygroups/it

■ Internal Auditors

Sept. 29-Oct. 1 | Hotel Valencia | San Antonio

This executive-level meeting explores the restaurant industry's diverse financial challenges, such as payment-card industry standards, purchasing audits and tax issues. Attendees earn continuing education credit for educational sessions on auditing issues, profitability, Securities and Exchange Commission requirements, and more. www.restaurant.org/education/studygroups/ia

■ Marketing Executives Group

Oct. 13-15 | Hotel Valley Ho | Scottsdale, Arizona

The group is expected to release its agenda in the next few weeks. Previous topics have included social media, loyalty marketing, small budgets/big ideas and sales-building ideas. www.restaurant.org/education/studygroups/meg



FOOD FOR THOUGHT

Cape Cod Operators Inspire Employees, Guests to Help End Childhood Hunger Clancy's Restaurant is 1 of top fundraisers among independent restaurateurs in 2009 Great American Dine Out

Guy Erickson and Martha Mendoza believe in taking care of the community. As owners of Clancy's Restaurant in Dennis Port, Mass., they motivated their employees and guests to help them



Martha Mendoza and Guy Erickson

raise \$3,000 last year for Share Our Strength's Great American Dine Out. The restaurant raised the second highest amount from an independent restaurant in the week-long, national fundraiser. This year's event, sponsored by the National Restaurant Association, is Sept. 19 through 25. www.strength.org

PILLARS OF SUCCESS: Clancy's has been on Cape Cod for 24 years. We pride ourselves on food, service and atmosphere. A lot of our staff has been here a long time. It's like a family. In the summer season, we employ more than 100 people; during the rest of the year, we have about 65 employees. Our

kitchen staff can't be beat — collectively, they have more than 100 years of experience.

PAYING IT FORWARD: We're a very philanthropic business. We get three or four requests a week for donations, and we do as many as possible. It's all about taking care of the community. We support the American Cancer Society, the police benevolent association, the library, schools, the fire department. It pays dividends for us. When I reach out to people to support things like the Great American Dine Out, they're willing to help.

HELPING THE HUNGRY: Most of our philanthropy is local, and we wanted to spread out into a national cause. No restaurants on Cape Cod were involved in the

Great American Dine Out, so we decided to get involved. We're such a nation of abundance, and it bothers me that so much food goes to waste. It's important to help end childhood hunger.

GETTING ON BOARD: We signed up for the Great American Dine Out in late August last year and scrambled to get our check stuffers and posters printed. The community and staff jumped on board right away and reached out to their friends and families. They just wrapped their arms around it.

REACHING OUT: We did some creative marketing. We have a frequent diner program with 2,500 e-mail addresses and a database of 4,000 e-mail addresses for our monthly newsletter. We sent out blast e-mails and mentioned Share Our Strength and the Great American Dine

Out on our monthly radio ad. People started flocking in. We donated 5 percent of sales and accepted donations from guests through a special function on our point-of-sale system. Each check had a notice about the Great American Dine Out, as well as a place where guests could add a donation.

WORKING TOGETHER: We're a community restaurant. Our business success, and the success of our fundraisers, is all about teamwork. My wife and I can't do this by ourselves. We rely on our employees and the extended family in our community. Our staff is our front line of marketing. Thanks to our employees and guests, we're profitable year-round. We can't do it without the great team we've surrounded ourselves with.

— As told to Linda Busche