Written Testimony of Tom Boucher
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Subcommittee on Workforce Protections
"Examining the Biden-Harris Attacks on Tipped Workers"
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Chairman Kiley, Ranking Member Adams, and Distinguished Members of the Subcommittee:

Thank you for the opportunity to testify before you today. It is an honor to represent the restaurant industry on behalf of the National Restaurant Association. The policies we are here to discuss—specifically the potential elimination of the tip credit and the Department of Labor's 80/20/30 rule—profoundly impact the livelihoods of millions of restaurant operators and workers, and the sustainability of restaurants across the nation.

My name is Tom Boucher, and I am the CEO and owner of Great New Hampshire Restaurants, Inc. This year marks the 40th anniversary of our company. What began in 1984 as a single restaurant has since grown into nine thriving locations. Our success is the result of the dedication of our employees, many of whom have been with us for years. Our mission goes beyond just serving great food—it's about creating lasting opportunities and building careers in an industry defined by hard work, a sense of community, and meaningful engagement.

For me, the restaurant business is more than just a career—it's personal. In 1987, I started as a server at T-Bones shortly after graduating from college with plans for graduate school. However, the restaurant industry's vibrant energy and strong sense of community captivated me. Over the years, I worked my way up from server to dining room manager, then head kitchen manager, and eventually general manager. By 1995, I had become a partner in the company, and today, I am honored to lead a thriving group of restaurants, serving over 2 million guests annually and employing 800 dedicated team members.

Our success is driven by core values that guide every aspect of our business: Executing Greatness, Care & Understanding, Made-from-Scratch, Respect, Courage, Trust & Entrust, and Teamwork. These values define how we operate, helping to grow our employees' careers and deliver exceptional guest experiences. They also underpin our commitment to the communities we serve. In 2014, we launched FEEDNH.org, a nonprofit that has donated over $1.1 million to support families, older adults, and educational initiatives across New Hampshire.

We do more than serve great food—we create careers. The restaurant industry has always been a springboard for professional growth. Nine out of ten restaurant managers and eight out of ten restaurant owners, like myself, began their careers in entry-level positions. The industry has been America's training ground, with 63% of adults having worked in a restaurant at some point in their lives,[1] learning soft skills like leadership, communication, and time management, that hiring managers in the industry, and outside of it, look for in new hires.

[1] "National Statistics", National Restaurant Association, https://restaurant.org/research-and-media/research/industry-statistics/national-statistics/

Most restaurants in this country are small businesses, operating on tight margins, built on hard work, and reliant on their teams' dedication. This is why policymakers need to understand the specific challenges our industry faces. Well-meaning legislation and regulations can unintentionally hinder job creation and business growth.

Today, I am here to discuss two such policies: the tip credit and the 80/20/30 rule, both of which directly impact the viability of restaurants like mine and the livelihoods of the employees we support.

How the Tip Credit Sustains the Restaurant Industry and Workers

The tip credit is essential to sustaining the restaurant industry's ecosystem. It allows employees to earn significant wages through tips, often far exceeding the federal minimum wage, while providing restaurant owners with the flexibility to manage labor costs. Under the Fair Labor Standards Act (FLSA), the tip credit allows employers to apply a portion of an employee's tips toward meeting the federal minimum wage requirement. This ensures that tipped employees earn at least the minimum wage while allowing restaurant owners to allocate resources to reinvest in their businesses.

Often people call this direct wage a subminimum wage, but it is not. Every tipped worker in a restaurant is making at least the minimum wage – and have the protection of federal law to ensure that.

At my restaurants, servers and bartenders consistently earn more than the federal minimum wage. Across the industry, the median wage for full-service restaurant employees is around $27 per hour, with the top quartile earning over $40 per hour. In fine dining establishments, wages can be even higher, reaching as much as $48 per hour.[2] This income far exceeds what employees would make under a flat minimum wage.

Surveys consistently show that tipped employees overwhelmingly support the tipping model and are opposed to eliminating the tip credit. A CorCom Inc. survey of nearly 4,000 tipped employees found that 90% of respondents preferred the current system, fearing that their earnings would decrease under a flat wage model.[3] Similarly, an Upserve survey revealed that 97% of employees supported the tipping system because it allowed them more control over their income.[4]

The tip credit is essential for restaurant owners to effectively manage labor costs. In an industry that operates on razor-thin margins—typically between only 3 to 5 cents of every dollar of revenue—the tip credit provides the flexibility needed to reinvest in operations, support staff, and offer additional benefits. At my restaurants, the tip credit has allowed us the opportunity to invest in operational improvements, enhance the work environment, and support community initiatives through FEEDNH.org.

At Great New Hampshire Restaurants Inc., some of our team members even launched a grassroots campaign called "welikeourtips.com" to speak out against eliminating the tip credit. They know that high-

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[2] "Tipped Employee Research", National Restaurant Association, https://restaurant.org/getmedia/0abb343e-08af-4502-bda4-201e96bbd93a/web-tipped-employee-research-january-2022.pdf

[3] "Survey: Tipped Employees Nationwide Prefer Keeping the Tip Credit", Minimumwage.com, https://minimumwage.com/2024/07/survey-tipped-employees-nationwide-prefer-keeping-the-tip-credit/

[4] "What Does Your Staff Really Think of 'No Tipping'", Upserve, https://web.archive.org/web/20211116150326/https://upserve.com/media/1612_Content_Infographic_No_Tipping_v1-1.pdf

quality guest service is a hallmark of the restaurant industry, and they want to protect their right to earn a decent wage based on the service they provide.

The Harm of Eliminating the Tip Credit

Eliminating the tip credit would fundamentally disrupt a compensation model that benefits both workers and business owners. Tipped employees, who currently earn well above the minimum wage, would experience a significant reduction in their earnings. For restaurant owners, losing the tip credit would create substantial financial strain, as they would be forced to pay all tipped employees a flat hourly wage, dramatically increasing labor costs. This change would place an especially heavy burden on small, independent establishments that already struggle to remain competitive.

Without the flexibility that the tip credit provides, restaurants like mine would face limited options: raise prices, reduce staff hours, or eliminate positions altogether. In the worst cases, restaurants may be forced to close their doors. I've seen this happen firsthand in New Hampshire, where two local restaurants eliminated the tipping model and moved to a flat wage. Within 18 months, both were forced to close as employees left for higher-paying jobs. These closures didn't just impact workers and their families — the loss of these cherished gathering places affected the local community and businesses that relied on them.

The customer experience would also fundamentally change if the tip credit were eliminated, creating chaos and confusion for customers. According to a National Restaurant Association survey, 75% of customers prefer the existing tipping system[5]. Likewise, a Horizons Media survey found that 81% of restaurant-goers would rather keep tipping than see service charges replace it[6].

The situation here in Washington D.C. provides a cautionary tale. After the city passed Initiative 82, which phases out the tip credit, employment at sit-down restaurants began to fall. According to state-level data from the Bureau of Labor Statistics, nearly 1,000 jobs have been lost since the city began eliminating the tip credit.[7] A survey of restaurant operators in the city revealed that 86% expected the new law to harm their businesses, with 72% predicting they would need to reduce staff or consolidate positions.[8]

The 80/20/30 Rule: A Burden on Restaurant Operations

In addition to the threat posed by the elimination of the tip credit, the restaurant industry recently faced a significant regulatory challenge in the Department of Labor's 80/20/30 rule. This rule placed strict limits on how much time tipped employees could spend on non-tipped tasks, requiring detailed tracking of employee activities. While the rule may seem straightforward in theory, it fails to reflect the fast-paced, fluid nature of restaurant work.

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[5] "How Tip Credit Helps Restaurants, Employees and Customers", National Restaurant Association, https://restaurant.org/getmedia/38f3e0dc-3f22-4a0f-a825-d2454768e7bc/tip-credit.pdf

[6] "Fingers on the Pulse Survey: Consumers Not Ready to Stop Tipping", Horizon Media, https://www.prnewswire.com/news-releases/horizon-media-study-finds-most-consumers-not-ready-to-stop-tipping-300213406.html

[7] "All Employees: Leisure and Hospitality: Full-Service Restaurants in District of Columbia", U.S. Bureau of Labor Statistics and Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/SMU11000007072251101SA

[8] "The Impact of Initiative 82", Employment Policies Institute, https://epionline.org/app/uploads/2023/04/Impact-of-Eliminating-Tip-Credit-for-DC_4-25.pdf

In practice, employees often switch between tasks multiple times throughout a shift. A server might set a table, roll silverware, or refill drinks in-between taking orders and serving food. The rigid thresholds imposed by the 80/20/30 rule—limiting non-tip-producing tasks to no more than 20% of a workweek or 30 continuous minutes—made it nearly impossible to manage operations efficiently. The administrative burden of tracking these activities in real time detracts from the core mission of serving customers and providing a positive dining experience.

Thankfully, the Fifth Circuit Court of Appeals recently struck down the 80/20/30 rule, calling it "arbitrary and capricious."[9] The court recognized that the rule failed to reflect the practical realities of the restaurant industry and imposed unnecessary burdens on operators. However, the threat of its reimplementation still looms, and the restaurant industry remains concerned about the operational challenges it would pose. Restaurant work is dynamic, and regulations that fail to acknowledge this reality create inefficiencies that harm both businesses and employees.

Supporting Practical Solutions – The Tipped Employee Protection Act

The restaurant industry thrives on flexibility and adaptability. We need policies that reflect the realities of our business and support the industry's dynamic nature, not ones that impose unnecessary obstacles. That is why we support H.R. 1612, the Tipped Employee Protection Act, which would prevent future administrations from imposing arbitrary limits on how tipped employees' duties are classified. This legislation would give restaurant owners the stability they need to efficiently run their operations, allowing them to continue focusing on what truly matters—providing excellent service, fostering innovation, and contributing to their communities.

Conclusion

Chairman Kiley, Ranking Member Adams, and distinguished members of the Subcommittee, thank you again for allowing me to testify today. The potential elimination of the tip credit and a reimplementation of the 80/20/30 rule pose significant threats to the restaurant industry, the workers it employs, and the communities it serves.

The tip credit has been a cornerstone of the restaurant industry's business model, enabling employees to earn substantial wages through tips while providing restaurant operators with the flexibility to invest in their operations. Removing it would lead to lower earnings for employees, higher costs for business owners, and a diminished customer experience. Similarly, the 80/20/30 rule creates unnecessary administrative burdens that disrupt the efficient operation of restaurants.

I urge the committee to carefully consider the long-term impacts of these policies. Restaurants are not just businesses—they are vital to our social and economic fabric, providing millions of jobs, fostering connections, and driving local growth. Now more than ever, we need policies that protect jobs, support flexibility, and allow restaurants to continue thriving in the communities they serve.

Thank you for your time and consideration.

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[9] "United States Court of Appeals for the Fifth Circuit. No. 23-50562", Restaurant Law Center v. Department of Labor, https://www.ca5.uscourts.gov/opinions/pub/23/23-50562-CV0.pdf