

Conservative Coalition to Congress: Fix Overreaching Obamacare Menu Labeling Rule



AMERICANS FOR
PROSPERITY



AMERICAN COMMITMENT



COUNCIL FOR



FreedomWorks



November 30, 2017

Dear Senators and Representatives:

Several years after the former president signed it into law, Obamacare continues to be a case study of the unintended consequences of overreaching regulation. One case in point is a rigid Food and Drug Administration (FDA) menu labeling rule that requires companies that have 20 or more locations to list nutritional information on their menus.

When FDA issued its final rule, the agency failed to account for the variety of businesses that fall under this new regulation. It advocated for a one-size-fits-all-solution instead of differentiating between the different models present in the restaurant industry. This action vastly expanded FDA's definition of a menu. FDA indicates that it now believes any and all materials that include a photo of an item and a phone number to be a menu. This vague and overly broad definition has caused a great deal of confusion among many small business owners, and will likely do little to enhance consumer education. The final rule also incurs excessive fines and other penalties on businesses that could result from an honest mistake on the part of an employee.

We are troubled by FDA's current approach to fixing this rule. In August, New York City was sued for enforcing the rule before it went into full effect. Under pressure from the De Blasio Administration, FDA Commissioner Gottlieb announced that FDA would be issuing further interpretive guidance to industry before the end of the year rather than reforming the rule. Guidance is insufficient, however, to address longstanding concerns about the rule.

In contrast, we applaud the ongoing bipartisan efforts in Congress to remedy through legislation the problems caused by this overreaching menu labeling rule. Sponsored by Representatives Cathy McMorris Rodgers (WA-05) and Tony Cárdenas (CA-29) in the House and Senators Roy Blunt (R-MO) and Angus King (I-ME) in the Senate, the *Common Sense Nutrition Disclosure Act of 2017* (H.R. 772 and S. 261) will provide relief from the burdens of this overreaching FDA rule for many businesses, including restaurants, convenience stores, and grocery stores. We were encouraged to see the House of Representatives pass this in 2016 with a bipartisan vote of [266-144](#), with 33 House Democrats joining with 233 House Republicans in supporting this important legislation. This Congress, the bill already



has passed through the House Energy & Commerce Committee and awaits floor action by House leadership.

Not only would the *Common Sense Nutrition Disclosure Act* correct these egregious problems, it would also level the playing field between businesses of all sizes. This important legislation would benefit thousands of businesses, regardless of their size or scope, in giving them the flexibility they need to comply with the rule. The fact that some of the largest restaurant chains lobbied Congress in favor of this onerous, costly rule is due largely to that fact that expensive regulations gives them a competitive advantage over their smaller competitors.

We encourage all Members to fight crony capitalism by supporting H.R. 772 and S. 261.

Sincerely,

- Americans for Prosperity
- American Commitment
- American Conservative Union
- American Encore
- Americans for Tax Reform
- Americans for Limited Government
- Campaign for Liberty
- Center for Individual Freedom
- Coalition Opposed to Additional Spending and Taxes (COAST)
- Competitive Enterprise Institute
- Consumer Action for a Strong Economy
- Council for Citizens Against Government Waste
- FreedomWorks
- Generation Opportunity
- Independent Women’s Voice
- The LIBRE Initiative
- National Taxpayers Union
- Small Business & Entrepreneurship Council
- Taxpayers Protection Alliance
- Tea Party Nation