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## **The Restaurant Law Center and the Texas Restaurant Association File Lawsuit Against Biden Administration's Tip Credit Regulation**

*Lawsuit follows 80/20 Tip Credit Rule Change Set to Take Effect at the End of the Month*

**Washington, D.C.** – The Restaurant Law Center (Law Center) and the Texas Restaurant Association (TRA) [filed a lawsuit](#) against the Biden Administration stating that its new “Dual Jobs” tip credit regulation is really a new statute in disguise that directly conflicts with the plain language of the law. Furthermore, if allowed to stand, it would severely impair small and local restaurant owners’ ability to operate their businesses. The lawsuit seeks to have the new regulation enjoined and then vacated by the Court because it is arbitrary, capricious, and contrary to the Fair Labor Standards Act.

The Small Business Administration Office of Advocacy (SBA Office of Advocacy) also expressed concern that the Department of Labor's certification lacks an adequate factual basis. SBA Office of Advocacy [called](#) on the Department of Labor to withdraw the regulation and reassess its cost estimates to reflect the economic impact of this rule on small entities and consider significant regulatory alternatives.

“The Administration’s attempt to improperly use the regulatory process to legislate changes to the Tip Credit would severely impact operators who are currently focused on labor and supply chain shortages and working to keep their doors open after an economically devastating pandemic,” said **Angelo I. Amador, Executive Director of the Restaurant Law Center**. “As we have previously stated, this is an arbitrary change that only creates confusion and enormous compliance challenges for restaurants.”

“Tasks such as getting the restaurant ready for customers, restocking items during meal service, cleaning, and closing down the restaurant at the end of the day have long been an integral part of the tipped occupations commonly found in restaurants,” said **Emily Williams Knight, President and CEO of the Texas Restaurant Association**. “Because restaurant employees often move rapidly from one task to another throughout a shift, there is no practical way for an employer to keep the task by task records the Administration’s regulations would

demand to avoid potential liability. Operators are exhausted after a very difficult 20 months of the pandemic; now is the wrong time to burden them with unnecessary regulations.”

The "tip credit" is the difference between what an employee makes through hourly minimum wage from tips received during each shift and the amount owed to the worker by the restaurant owner. The Biden Administration is moving to formally withdraw regulations on tip credits and issue new ones. The proposed regulation would be difficult for the restaurant industry to implement as it would require restaurants to divert existing resources to monitor and reclassify the types of tasks that restaurant workers perform. This creates additional challenges for restaurant owners and managers and will likely drive up operating costs. The regulations are set to take effect on Friday, December 28.

The Restaurant Law Center and the Texas Restaurant Association are represented by Angelo I. Amador of the Restaurant Law Center and Paul DeCamp, Brian Spang, Kathleen Barrett, and Greta Ravitsky of Epstein Becker & Green, P.C.

A copy of the Complaint without exhibits is found [here](#).

For more information on the Restaurant Law Center, visit [here](#).

For more information on the Texas Restaurant Association, visit [here](#).

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### **About the Restaurant Law Center**

The Restaurant Law Center is an independent 501(c)(6). The Center's goal is to promote pro-business laws and regulations that allow restaurants to continue growing, creating jobs and contributing to a robust American economy. The Center is the voice of America's restaurants in the courtroom advancing the policy interests of the industry.

### **About the Texas Restaurant Association**

Formed in 1937, the Texas Restaurant Association (TRA) serves as the advocate in Texas and the indispensable resource for the foodservice industry. As a leading business association, the TRA represents the state's \$70 billion restaurant industry, which is comprised of approximately 50,000 locations and a workforce of 1.3 million employees. Along with the Texas Restaurant Foundation, the workforce development arm of the TRA, the Association proudly continues to protect, advance, and educate a growing industry as the TRA enters its 85th anniversary year.