



March 31, 2020

The Honorable Steven Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Jovita Carranza  
Administrator  
U.S. Small Business Administration  
409 3<sup>rd</sup> Street, SW  
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of the National Restaurant Association and our members, thank you for your leadership during this unprecedented global health crisis. The work you are doing to provide economic relief and recovery options to American small businesses is critical. We appreciate the enormous challenge you have of implementing the recently enacted "*Coronavirus Aid, Relief, and Economic Security Act*" (CARES Act).

The restaurant and foodservice industry, representing over 15.6 million employees, is the second largest private sector employer in the nation. We serve not only as a job creator, where one in four Americans get their first job and learn lifetime skills, but as the cornerstone of every local community where everyone is welcome to our tables. The restaurant industry was the first one to bear the brunt of the government response to coronavirus – we estimate roughly three million jobs have been lost, and we forecast the staggering loss of five to seven restaurant jobs in the coming weeks. Sales declines continue to shut restaurants permanently, and we forecast potential losses of \$225 billion.

As our nation's restaurants assess how the CARES Act will allow them to weather this unprecedented storm, we would like to offer our perspective on ways in which the Trump Administration's implementation of the Act can ensure the largest scope of eligibility and maximize recovery efforts for our industry. If not addressed through statutory construction, many provisions of the legislation will carry unintended consequences and block certain businesses from accessing the programs being offered, stifling the success of the Administration's relief package.

## **Section 1102. Paycheck Protection Program (PPP)**

- **Waiver of Affiliation Rules (p. 16-17)**
  - To ensure clarity and to maintain parity, the affiliation rules must include the same language on Page 15, line 23 (regarding *Business Concerns with More Than 1 Physical Location*) to carry over to page 16, line 15; this should read "any business concern that employs not more than 500 persons per physical location."
  - Currently, the waiver of the application of the affiliation rules are more restrictive than the qualifying section may intend. It is unclear how the language "per location" will be interpreted.

- Although well intentioned, the PPP has a problem of scope and the regulation should resolve ambiguity to ensure affiliation rules do not block businesses from qualifying for the program.
- **Eligibility for Loan Forgiveness (p. 15 – 16)**
  - The SBA and Treasury should clarify that a business with over 500 employees, with more than one physical location, can participate in the Paycheck Protection Program on a per physical location basis.
  - Suggested clarification: BUSINESS CONCERNS WITH MORE THAN 1 PHYSICAL LOCATION.—During the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursal shall be eligible to receive a covered loan.
- **Potential Reduction of Loan Forgiveness (p. 45 – 50)**
  - The amount forgiven of the Loan will be reduced “proportionally” by any reduction in employees retained compared to the prior year.
    - This needs to be a “sliding scale” rather than a strict ratio. In an industry, where recruitment and retention is the top challenge, with 100% turnover year over year, it is impossible for restaurants to maintain the precise number of 2019 FTEs during a massive economic disruption. The retention level must reflect that reality. The hiring levels also reflect the realities of hiring or rehiring during a pandemic situation where many previous FTEs may elect to care for family members or observe quarantine protocols.
  - Pursuant to the Exemption section (p. 49), the SBA Administrator and the Treasury Secretary may prescribe regulations granting *de minimis* exemptions from the requirements under this subsection. This provision offers the SBA and Treasury expansive authority on the forgiveness parameters, which must be illustrated clearly for potential borrowers.
- **Exemption for Re-hires (p. 47 – 48)**
  - To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off “will not be penalized for having a reduced payroll at the beginning of the period.”
  - Restaurants need clarification on this exemption. Does this offer a safe harbor for hiring, and if so, how many weeks are required to qualify for the FTE level compared to the previous year? Restaurants may need several weeks or more to onboard employees returning from a furlough or otherwise dislocated status.
- **Payroll costs for loan forgiveness shall not include \$100,000 compensation per year (p. 12 and p. 47)**
  - Clarification is needed on this \$100,000 threshold. Does the \$100,000 threshold include the value of health benefits and other forms of compensation? Or only salary/wages? Additionally, it is unclear if a server or restaurant employee earns

a one-time, two-week equivalent of a \$100,000/year compensation, does that mean that their entire salary is ineligible for loan forgiveness? Same with a salaried manager who may earn a one-time annual bonus, and a single pay period qualifies as an equivalent pay for a \$100,000/year in compensation.

- “The compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period. (P. 12)” But it also says:
- (3) REDUCTION RELATING TO SALARY AND WAGES.—(B) EMPLOYEES DESCRIBED.—An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000. (P. 47)

**Section 2307. Technical amendments regarding qualified improvement property**

- **Qualified Improvement Property (QIP)**
  - We encourage you to adopt a method to efficiently and expeditiously refund restaurants for QIP and bonus depreciation-related amendments to their 2018 and 2019 tax returns. We were pleased that the CARES Act included the technical correction on QIP. As you know, the technical correction allows restaurants to deduct 100 percent of their QIP eligible renovations from 2018-2022.

**Section 2302. Delay of payment of employer payroll taxes**

- The Act allows for deferring payment for Social Security taxes on employers and the self-employed until January 21, 2021 - but not including any employers that have had loan forgiveness through PPP. Restaurants, who are running payroll now, are concerned that using the deferral now might make them ineligible for loan forgiveness under the PPP later. We suggest a clarification that once a PPP loan is granted and later forgiven, deferrals are no longer allowed, but deferrals may be taken until that time. Without such a clarification, employers are left wondering if it is worth deferring employment taxes now, if it may mean losing out on the PPP loan forgiveness program later.

Our nation's restaurants are doing everything possible to serve our communities during these uncertain times, but the financial straits we find ourselves in is unsustainable. Our goal is simply survival as an industry and a critical employer. Thank you again for your leadership, and we look forward to our continued work together.

Sincerely,



Sean Kennedy  
Executive Vice President, Public Affairs