NATIONAL RESTAURANT ASSOCIATION

January 15, 2021

VIA Electronic Submission: www.regulations.gov

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

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

RE: RIN 3245-AH63, Interim Final Rule, 13 CFR Parts 120 and 121, *Business Loan Program Temporary Changes; Paycheck Protection Program Second Draw Loans;* Docket No. SBA-2021-0002

Dear Secretary Mnuchin and Administrator Carranza:

On behalf of the National Restaurant Association, we appreciate the diligent efforts of the U.S. Department of Treasury and the U.S. Small Business Administration (SBA) to establish the second draw of the Paycheck Protection Program (PPP). We submit these comments in response to the SBA's Interim Final Rule (IFR), which implements section 311 of the *Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act* (the Economic Aid Act).

For over 100 years, the Association has been the leading business association representing the restaurant and foodservice industry, the second largest private sector employer in the nation. Ten months after restaurants were initially ordered closed or restricted due to COVID-19, restaurants remain extremely economically vulnerable. Over 110,000 restaurants have been permanently closed, and millions of restaurant employees – the second largest private sector workforce in the nation – are unemployed. Alarming COVID-19 surges continue to paralyze on premise economic behavior, with restaurant capacity severely reduced if not eliminated. Restaurants and the communities they serve are eager for a comprehensive vaccination effort that can reach every American, but they fear that ongoing fiscal challenges will permanently lock doors before fully reopened as COVID-19 effects are constrained.

We ask the Department of Treasury and SBA to make the following changes to the IFR on second draw PPP in order to maximize employee retention and save restaurant livelihoods:

1) Adjust "single corporate group" limitations so that restaurants can maximize PPP's primary intent – helping employees receive paychecks and employers pay rent.
2) Recognize the 3.5 multiplier for the NAICS 72 "Accommodation and Food Services" sector to increase the maximum loan amount for borrowers.
3) Provide flexibility for calculating gross revenue losses under a three-month measurement period in 2020 rather than a strict calendar quarter period.
4) Clarify that otherwise eligible entities, under new ownership, can be eligible for second draw by demonstrating the applicable revenue losses from the previous owner.

I. Adjust Single Corporate Group Limitations

On May 4, 2020, the SBA and Treasury created a single corporate group limitation of $20,000,000 for first draw PPP borrowers who are majority owned by a common parent. On January 6, the IFR reduced the limitation to $4,000,000. Neither of these limitations are explicit within the CARES Act or the Economic Aid Act. Restaurants recommend the following changes to single corporate group limitations.

For NAICS 72 companies, SBA and Treasury should retain the $20 million loan cap established by SBA/Treasury First Draw. Both the CARES Act and Economic Aid Act designed special provisions for the NAICS 72 sector to improve access for eligible restaurants with multiple locations. This included, in statute, a waiver of the SBA Affiliation Rules and the "Per Physical Location" provision to help restaurants remain viable and employees be retained during government-mandated closures. These closure orders could have exacerbated the already overwhelmed unemployment insurance program, but these statutory safeguards helped the second-largest private sector employer maintain far more employees than conditions warranted.

Closure orders have persisted into 2021, and restaurants of all sizes continue to struggle to make payroll. Considering the focus of the program to retain employment for the hardest-hit businesses, this limitation should not be significantly reduced and subsequently reduce the amount of employees supported.

In 2020, restaurants were severely challenged by the continuously evolving regulatory process for first draw PPP while sustaining a COVID recession. In order to sustain operations and begin a long recovery process, restaurants strongly recommend regulatory simplicity and, when appropriate, maintaining existing PPP rules.

For all companies, the single corporate group limit should be proportionate with overall funding for first draw and second draw. The original May 4 regulation explained that a corporate group limitation was necessary under first draw PPP to "preserve the limited resources." For second draw, there are guardrails in place to ensure funds are preserved such as the revenue loss threshold, smaller employer size, increased oversight, restrictions on publicly-traded companies, and lower loan amounts for individual borrowers.

The second draw's single corporate group limit should be set at $10 million, half of the first draw cap of $20 million, as PPP available funds for second draw equal roughly half of PPP loan distributions for first draw. Under PPP first draw, $525 billion was released to eligible borrowers. Under PPP second draw, there will be $284.5 billion available for the hardest-hit businesses. As $284.5 billion represents roughly 54% of what was released under first draw (which did not have similar guardrails), restaurants assert that a single corporate group borrower limit should accurately reflect the overall distributed funds. SBA and Treasury should move the second draw limit from $20 million to $10 million, half of first draw, rather than reducing it by 80 percent ($20 million to $4 million) as currently written.

II. Increase maximum loan amounts to recognize 3.5 multiplier for NAICS 72

Restaurants were the first economic sector to be dramatically hit by COVID-19 closure orders, and restaurants will be the last to recover. By the time PPP's covered period began to lapse in September, over 100,000 restaurants were permanently closed due to the economic conditions of the pandemic. Congress recognized the devastating financial situation our industry when it enhanced access to second draw PPP for eligible restaurant borrowers, allowing a 3.5 multiplier of an average monthly payroll calculation, rather than the 2.5 multiplier for other industries.

Congress' efforts to enhance support for restaurants will be undermined if the IFR applies the same $4 million cap to our industry, as it does to others, irrespective of the statute's additional multiplier. The SBA and Treasury should recognize Congress' attempt to target relief to our industry, by establishing a higher maximum loan amount for restaurants and their workforce.

Second draw maximum loans for NAICS 72 companies should, at a minimum, increase to $2,800,000 (from $2 million), and for a NAICS 72 single corporate group $5,600,000 (from $4 million).

- For example, a second draw PPP borrower who "maxes out" at a $2,000,000 loan would have an average monthly payroll of $800,000 (800,000 multiplied by 2.5 = 2,000,000).
    - A NAICS 72 borrower with an $800,000 payroll would multiply this figure by 3.5 and be eligible for a $2,800,000 loan (800,000 multiplied by 3.5 = 2,800,000).
- A single corporate group who "maxes out" at $4,000,000 within its affiliated companies would have a monthly payroll amount of roughly $1,600,000 (1,600,000 multiplied by 2.5 = 4,000,000).
    - A NAICS 72 single corporate group with the same payroll, $1,600,000, would multiply this figure by 3.5 and be eligible for a $5,600,000 loan (1,600,000 multiplied by 3.5 = 5,600,000).

III. Provide flexibility for calculating gross revenue losses under a three-month measurement period in 2020 rather than a strict calendar quarter period.

Gross receipt revenue losses of 25% or more must be demonstrated during a calendar quarter, with the assumption that this is reflected through the first (JAN-MAR), second (APR-JUN), third (JUL-SEP), and fourth (OCT-DEC). However, many restaurants were uniquely impacted by COVID-19 shutdowns across calendar quarter time periods in 2020. Restaurants generally measure their cash flow and available credit across a matter of days or weeks, not calendar quarters.

For example, the vast majority of restaurants were closed or severely restricted in mid-March after collecting normal revenue in January and February. Losing three weeks of revenue is devastating for restaurants, but may not calculate into a "25% loss" for the overall quarter.

- Additionally, a restaurant located in the Sun Belt may not have seen COVID activity in March but was nonetheless subject to initial government restrictions.
- These regions then saw an increase in COVID activity just as restaurants were trying to reopen in June and July. Again, revenue losses were spread across calendar quarters and therefore eligibility is at risk.

In the spirit of the calendar quarter measurement period, we recommend the SBA permit an otherwise eligible entity to select a consecutive three-month period in 2020 to demonstrate the 25 percent revenue loss when compared to the same consecutive three-month period in 2019.

IV. Clarify that otherwise eligible entities, under new ownership, can be eligible for second draw by demonstrating the applicable revenue losses from the previous owner.

Revenue losses sustained in 2020, when compared to the applicable time period in 2019, should allow an otherwise eligible business to access a second draw of PPP while under new ownership.

Restaurants appreciate the SBA and Treasury's role in establishing a badly-needed second draw PPP. As we learned with the first draw of PPP, and subsequent Congressional action of the *PPP Flexibility Act* and the Economic Aid Act, federal rules must be streamlined and consistent with the program's intent of the program to support small businesses. With these key improvements, the IFR will help build an invaluable short-term bridge for many restaurants and their valued employees.

Thank you for the opportunity to comment on the Administration's IFR.

Sincerely,

National Restaurant Association

CC: The Honorable Mitch McConnell
The Honorable Chuck Schumer
The Honorable Nancy Pelosi
The Honorable Kevin McCarthy
The Honorable Marco Rubio
The Honorable Ben Cardin
The Honorable Nydia Velázquez
The Honorable Steve Chabot