



April 27, 2020

**VIA Electronic Submission: [www.regulations.gov](http://www.regulations.gov)**

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

**RE: RIN 3245-AH34, Interim Final Rule, 13 CFR Part 120, *Business Loan Program Temporary Changes; Paycheck Protection Program; Docket No. SBA-2020-0015***

Dear Administrator Carranza:

On behalf of the National Restaurant Association and our members, I submit these comments in response to the U.S. Small Business Administration's Interim Final Rule (IFR) on the Paycheck Protection Program (PPP), which was part of the Coronavirus Aid, Relief, and Economic Security Act ("the Act") that was enacted on March 27, 2020.

The Association is the leading business association representing the restaurant and foodservice industry, which is the second largest private sector employer in the nation. The restaurant industry has been the hardest hit by the government-mandated closures – suffering more sales and job losses than any other industry in the country. According to an industry survey, eight million restaurant employees have already been laid off or furloughed, representing two out of every three restaurant jobs. The restaurant/foodservice industry lost \$30 billion in revenue in March and is on track to lose an additional \$50 billion by the end of this month. Assuming a gradual reopening of the economy, we forecast sustained losses of \$240 billion by the end of the year.

A recent study released by the McKinsey Global Institute<sup>1</sup> estimates that 13.4 million jobs in the restaurant industry are considered "vulnerable," subject to layoffs or similar measures during periods of high physical distancing. Overall, the study concludes that the restaurant industry has the highest number of vulnerable jobs and that, of these vulnerable restaurant jobs, 12.6 million are in small businesses with fewer than 100 employees.

While the PPP is a critical lifeline for businesses that have been deeply affected by the ongoing crisis, its structural limitations and restrictions are an impediment to borrowers and potential applicants. Specifically, the PPP is not in alignment with the unique business cycle of the restaurant industry and its path to recovery. A growing number of restaurant owners are concluding that the PPP is not going to prevent them from permanently closing operations in local communities. We urge you to address the following.

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<sup>1</sup> ["Lives and livelihoods: Assessing the near-term impact of COVID-19 on US workers."](#) McKinsey, April 2020

**I. Allow Small Businesses to Choose a PPP Loan Period that Accommodates the End of Government-Mandated Closures.**

As currently structured, the eight-week loan period begins on the date the lender makes the loan disbursement to the borrower. This rule creates an unworkable structure for the vast majority of restaurants, which are still under state-mandated closure orders. We need better alignment between this reality and the loan period. As states begin lifting these orders, it will take some weeks – or months – for restaurants to ramp up operations (restock inventory, recruit and retrain staff, comply with new health and safety codes, etc.).

Therefore, eligible restaurants seeking a PPP loan must have the flexibility to begin the eight-week loan period a minimum of three weeks after the applicable state restaurant closure is lifted. The Treasury Department's recent guidance requiring the eight-week period to commence as loans are disbursed runs counter to a restaurant's operational capacity and rehiring former employees back on payroll, which is the ultimate purpose of PPP.

Additionally, the Act provides that employers that rehire workers previously laid off "will not be penalized for having a reduced payroll at the beginning of the period." The Administration should provide clarity as to this vague period to reflect the realities mentioned above, i.e., to match current realities, the rehire date for full-time equivalent employees (FTEs) should occur after state closure orders are lifted.

**II. Revise Loan Forgiveness Restrictions to Match Industry Realities.**

In order to achieve loan forgiveness, the IFR mandates that at least 75 percent of the PPP loan proceeds be spent on payroll expenses, with no more than 25 percent spent on limited non-payroll expenses, such as rent and utilities. For an industry crippled by the ongoing crisis with vastly scaled-back operations and skeleton workforces – if at all – this rule severely limits the benefit to restaurant owners.

The ratio should be adjusted to reflect industry realities and allow for non-payroll expenses to include efforts to generate revenue and capital back into the business, similar to traditional SBA 7(a) loan program allowances. For example, restaurants will need to make expenditures for inventory, supplies, and equipment. The restrictions on how a business can utilize the loan will hinder efforts to reopen doors.

For example, in urban areas, which have seen some of the sharpest declines in revenue due to decreased business and leisure travel, restaurants often spend 30-40 percent of monthly expenses on mortgages or leases. The 75/25 threshold will either leave the restaurant without the needed liquidity to operate or burden it with significant debt.

Additionally, as closure orders are lifted, overall PPP loan forbearance must be taken into consideration for smaller capacity operations because of social distancing protocols (e.g., fewer initial customers, fewer employees needed).

If the 75/25 restrictions are not addressed, the SBA must provide guidance for how much of the loan amount will be forgiven if less than 75 percent is used for payroll purposes. If there is a sliding scale, PPP recipients need guidance and detailed examples for how this process would work. The IFR states that the SBA will issue additional guidance on loan forgiveness. To date, this guidance has not been published.

Moreover, as businesses comply with the “Certifications” under the SBA application for PPP, the “unauthorized purposes” (found under the third certification) could be interpreted that if a borrower uses the funds for any expense that would not cause it to be converted to a grant, then it would be a fraudulent act. The SBA should provide further guidance to address this concern.

We also seek clarity on the “allowable uses of covered loans,” which includes “interest on any other debt obligations that were incurred before the covered period.” This helps restaurants with ongoing expenses, and if expanded, would be beneficial as investments are made toward reopening as well as standard debt obligations incurred as operating expenses. However, these expenses on debt obligations are not included as an expense that is eligible for forgiveness under Section 1106. We ask that the SBA clarify that these expenses are eligible for forgiveness since they were explicitly detailed in the Act as an allowable use of the PPP loan.

### **III. Restore the Ten-Year Loan Repayment – As Congress Intended.**

The Act clearly allows PPP loans to have up to a 10-year maturity date, yet the SBA and the Department of the Treasury have mandated that loans have only a two-year term. Our industry has a very long, uncertain path to recovery by virtue of state-mandated closures and the long-term effects of social distancing. The terms should reflect the reality that recovery for our industry will take far longer than two years, and extend them to the full ten years.

### **IV. How will SBA “De Minimis” Exemption Authority Be Used for Loan Forgiveness?**

Pursuant to the Act, the SBA and the Secretary of the Treasury have explicit “de minimis” exemption authority under PPP in order to protect businesses that face reductions in loan forgiveness. Please provide clarification as to how this exemption authority will be utilized. Will it be used to protect businesses that have major declines in sales revenue and/or businesses that have challenges recruiting FTEs to achieve loan forgiveness?

Employee retention levels will be a continued challenge for restaurants, as many have changed their business model to accommodate off-premise and online ordering, decreasing the need for servers and other workers. Additionally, sustained social distancing protocols will alter restaurant operations, which will reduce revenue opportunities and staffing levels.

Given these economic realities and other existing programs, we suggest this express authority be used to exempt small businesses from loan forgiveness reduction if they have made good faith efforts to recruit and retain FTEs who nevertheless decline the employer’s offer during the covered period. There should be a safe harbor so that both parties can be held harmless during this time of unprecedented economic turmoil.

## V. Outstanding Issues and Questions from Borrowers and Potential Applicants.

There are several outstanding issues and questions that applicants and borrowers have regarding PPP implementation, as detailed below.

- In the IFR, the SBA requests “Documentation verifying the number of full-time equivalent employees on payroll...” Which definition of full-time employee will be used to aggregate full-time employee equivalent (i.e. the 40 hours per week defined under the Fair Labor Standards Act or an average 30 hours per week under 26 CFR § 54.4980H-3)?
- If an eligible business receives lease, rent or other eligible expense deferral, may the PPP loan still be counted toward the accrual of these expenses for loan forgiveness purposes? To maximize success, PPP recipients should be provided with maximum flexibility to cover all necessary accrued expenses, even if expenses are due after the eight-week period.
- If an eligible business purchases a new location or changes ownership during the covered period, could payroll numbers from the previous owner be reflected in the estimate? To ensure that businesses provide the most accurate calculations, information from the previous owner should be permitted.

Thank you for the opportunity to comment on the Administration’s interim final rule. The PPP is a critical lifeline to many small businesses. We, therefore, urge you to act quickly to strengthen the program and ensure it provides the resources and flexibility needed to restaurants and others trying to navigate this unprecedented crisis.

Sincerely,



Sean Kennedy  
Executive Vice President, Public Affairs

CC: The Honorable Steven Mnuchin  
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