NATIONAL RESTAURANT ASSOCIATION

December 7, 2020

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Kevin McCarthy
Republican Leader
United States House of Representatives
Washington, D.C. 20515

The Honorable Chuck Schumer
Democratic Leader
United States Senate
Washington, D.C. 20510

Dear Speaker Pelosi and Leaders McConnell, McCarthy, and Schumer:

For nearly nine months, restaurants—our nation's second-largest private sector employer—have been in an economic free fall as a result of mandated closures and capacity limits due to the coronavirus pandemic. In that time, the National Restaurant Association has led the drive for federal and local support for the owners and employees of the entire industry, including local independents, regional and national chains, and franchisees.

We have just completed our fifth nationwide survey of our membership on the economic state of the industry, and the results should galvanize Republicans and Democrats alike to finally reach agreement on a compromise coronavirus relief package for our industry and employees, our suppliers, and the communities that rely on the strength of the industry.

The findings are stark:

- 87% of fullservice restaurants (independent, chain, and franchise) report an average 36% drop in sales revenue. For an industry with an average profit margin of 5%-6%, this is simply unsustainable. 83% of fullservice operators expect sales to be even worse over the next three months.

- Although sales are significantly lower for most independent and franchise owners, their costs have not fallen by a proportional level. 59% of operators say their total labor costs (as a percentage of sales) are higher than they were pre-pandemic.

- The future remains bleak. 58% of chain and independent fullservice operators expect continued furloughs and layoffs for at least the next three months.

The tide of restaurants closures and bankruptcies continues to rise—sweeping away jobs in some of the most venerated independent and chain restaurants:

- We predict that as of today, 17% of restaurants—more than 110,000 establishments—are completely closed.

- The vast majority of permanently closed restaurants were well-established businesses, and fixtures in their communities. On average these restaurants had been in business for 16 years, and 16% had been open for at least 30 years.

- Only 48% of these former restaurant owners say it is likely they will remain in the industry in any form in the months or years ahead. Our nation is losing a generation of of industry talent, knowledge and entrepreneurial spirit.

What these findings make clear is that more than 500,000 restaurants of every business type—franchise, chain, and independent—are in an unprecedented economic decline. And for every month that passes without a solution from Congress, thousands more restaurants across the country will close their doors for good.

You have each mentioned restaurants as an example of a business that needs unique attention from Congress, and we appreciate your leadership on behalf of our owners and employees. The National Restaurant Association has advocated for our Blueprint for Restaurant Revival, a comprehensive plan to support both restaurants and the communities we serve. The House and Senate each have a version of the RESTAURANTS Act introduced with bipartisan support. While we applaud the sponsors' efforts, we are able to only endorse the Senate version, which ensures that all restaurant segments that are suffering can receive federal support, not just one. We continue to urge the immediate passage of this critical bill.

We appreciate the efforts of a group of moderate members of the House and Senate to advance a true compromise between the competing proposals from Democratic and Republican leaders. The plan represents a "down payment" for a larger relief package in early 2021, providing restaurants with immediate relief to survive the most dangerous point in our business season.

As you know, this plan would implement a second draw from the Paycheck Protection Program (PPP), which could be strengthened to reflect the restaurant industry's unique business model. Attached are a list of changes we hope any "down payment" proposal would make for PPP. There have been bipartisan calls to enhance the Employee Retention Tax Credit, which would also provide immediate support for restaurants struggling to keep their payroll intact. Finally, liability safe harbors for restaurants that comply with federal, state, and local health laws is a vital need for our industry.

In short, the restaurant industry simply cannot wait for relief any longer. Efforts in Washington to find the "perfect" solution are laudable, but the lack of progress in the meantime has led too many operators to give up on the government and close down for good. Since our last update to you, less than three months ago, an additional 10,000 restaurants have closed nationwide.

Thank you again for your leadership. We look forward to working with you for short-term solutions in the days ahead, and on long-term actions early in the new year.

Sincerely,

Sean Kennedy
Executive Vice President, Public Affairs

Enclosure

NATIONAL RESTAURANT ASSOCIATION

## Restaurant Industry Priorities for a Second Draw of PPP

### I. Revenue Loss Threshold Must Not Be Higher than 25 Percent

To be eligible for a second draw at PPP, a small business must demonstrate a gross receipts loss of 25 percent or more in any calendar quarter of 2020 when compared to the same calendar quarter in 2019. While the Association continues to advocate for a threshold of 20 percent, which allows 430,000 restaurants suffering major losses to qualify for a second loan, we urge Congress not to raise the threshold any higher than 25 percent.

### II. PPP Borrowers Must Be Able to Deduct Ordinary and Necessary Expenses

Congress included Section 1106(i) the CARES Act to provide favorable tax treatment to small businesses that received the PPP loan. However, the U.S. Department of Treasury is denying ordinary and necessary tax deductions if there is a "reasonable expectation" of forgiveness. Restaurants urge Congress to advance legislation to correct this deeply flawed interpretation that severely undercuts the PPP and would undermine the economic benefits of a second draw at PPP.

### III. Loans under $150,000 Should Be Eligible for Streamlined Forgiveness

Restaurants seeking PPP loan forgiveness face a continually evolving regulatory process that is burdened with legal and accounting challenges. The loan forgiveness application is a cumbersome, complicated process that creates a disincentive for lenders to work with smaller businesses who may not have the means to contract with an outside accountant or attorney on the application. For PPP borrowers with loans of $150,000 or less, a one-page attestation form can help a small business and its lender save much-needed time and money. For original PPP borrowers or future PPP borrowers – who are eligible only because they have sustained major losses in revenue – streamlined forgiveness fulfills the intent of the program and encourages lenders to work with the smallest of businesses.

### IV. Retain the CARES Act Waiver of Affiliation Rules

Under the CARES Act, business concerns with a NAICS code starting with 72 had a waiver for affiliation rules. This waiver should be maintained to support the hardest hit sector of the economy and maintain eligibility for a second draw of PPP. The Small Business Administration (SBA) released an interim final rule consistent with the CARES Act, waiving affiliation rules contained in §121.103 for "any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a NAICS code beginning with 72." Restaurants support the continuance of this rule.

### V. Structure Established by PPP Flexibility Act Should Be Maintained

The PPP Flexibility Act (PPPFA) made important improvements that helped restaurants and other small businesses utilize funds over a longer time period. For a second PPP loan, borrowers must have 24 weeks to spend the loan funds so they can maximize their loan amount. Additionally, the

PPPFA loan forgiveness updates should be retained such as when business operations do not enable rehiring and the 60/40 ratio for payroll versus nonpayroll expenses. Lastly, unforgiven portions of PPP should have a five-year loan term.

## VI. Ensure that 501(c)(6) Nonprofit Organizations Can Participate in PPP

We urge Congress to include 501(c)(6) organizations in the definition of an eligible nonprofit for a second draw of the PPP. The critical function of State Restaurant Associations is more evident than ever, as restaurants across the nation rely on them for guidance and assistance at the state and local level. These organizations provide training and certifications, partner with local officials on best practices, aid small businesses as they sustain operations, and support their community. Access to PPP will help them save hundreds of small businesses in 2021.

## VII. New Eligible Expenses for Personal Protective Equipment and Cleaning

Restaurants support expanding forgivable expenses to include covered supplier costs, covered worker expenditures, and covered operations expenditures, broadening the program's utility. Despite declining sales revenue, most restaurants are facing increased operating costs in order to safeguard employees and customers during the COVID-19 pandemic. It is vital that additional PPP loan allowance be provided to cover these costs. One proposal, for instance, would provide up to $50,000 for covered worker protection expenditures. These funds should fall outside of the standard PPP loan calculation for forgiveness, to ensure that it will not reduce the amount otherwise reserved for payroll and nonpayroll (rent, mortgage, and utilities) expenses. These PPE expenses should be both retroactive to March 1, 2020 and fully forgivable.

## VIII. Remove Fiscal Caps on PPP Loans for a "Single Corporate Group"

Without statutory authority, the Department of Treasury installed a limit for what a "single corporate group" of businesses could obtain under PPP. The affiliation language of the CARES Act and further defined by the SBA was clear in this matter, and the rule from Treasury offered a complicated limit for many otherwise eligible restaurants. For a second draw, this limit on businesses that are majority owned by a common parent should be removed for a second draw of PPP in order to safeguard the paychecks of millions of restaurant employees during the COVID-19 pandemic.

## IX. Eliminate the SBA's "Related Party Rent" Loan Forgiveness Restriction

On August 24, over four months after the opening of PPP, the SBA released an interim final rule that would restrict loan forgiveness for rent if the PPP borrower made the payment to "related entities." This creates a devastating effect for a family-owned restaurant, in which one family member has a small ownership stake in the building where the restaurant operates, that will now lose loan forgiveness for 40 percent of its PPP amount. If this rule was released in conjunction with original PPP regulations, a PPP borrower could have made appropriate spending shifts. However, the August 24$^{th}$ rule should be eliminated by statute to ensure past and future PPP borrowers do not face a severe and untimely limitation on loan forgiveness for nonpayroll expenses.