



September 28, 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–AH56, Interim Final Rule, 13 CFR Part 120, *Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Owners and Forgiveness of Certain Nonpayroll Costs; Docket No. SBA-2020-0044***

Dear Administrator Carranza:

On behalf of the National Restaurant Association and our 52 state restaurant association partners, we appreciate the commitment of the U.S. Small Business Administration (SBA) to implement and improve the Paycheck Protection Program (PPP). We submit these comments in response to the SBA's Interim Final Rule (IFR) on the PPP, which was part of the Coronavirus Aid, Relief, and Economic Security Act ("the Act").

The Association is the leading business association representing the restaurant and foodservice industry, the second largest private sector employer in the nation. Six months following the first shutdown of restaurants due to the coronavirus pandemic, restaurants are at a crossroads. Nearly 1 in 6 restaurants, about 100,000 restaurants, has either closed permanently or for the long-term, according to an Association survey. Three million restaurant employees remain out of work, as restaurants are on track to lose \$240 billion in sales by the end of the year.

With these concerns in mind, we ask that the SBA eliminate the section of the IFR that restricts PPP rent forgiveness to "no more than the amount of mortgage interest owed on the property during the Covered Period" and altogether eliminates rent forgiveness for "mortgage interest payments to a related party." **These restrictions, as outlined on "2. Eligibility of Certain Nonpayroll Costs for Loan Forgiveness" in Question b, impose a severe and untimely limitation for a restaurant's ability to achieve loan forgiveness for their nonpayroll expenses.**

**I. Lack of timeliness on how nonpayroll expenses would be treated.**

On April 2, the SBA published its first IFR on how PPP loans would be offered in response to the COVID-19 pandemic. In the following 20 weeks – over four months – there was no guidance offered to small businesses, PPP applicants, PPP recipients, or their lenders about how nonpayroll rent forgiveness could be restricted due to this issue. For restaurants facing government-ordered closures in the spring and summer, there was little certainty in the PPP loan process other than this funding could help pay rent for the coming months. Despite months

of evolving guidance, new legislation, regularly updated Frequently Asked Questions (FAQs), and other communications, there was no indication that businesses may see severely restricted rent forgiveness. **Unfortunately, the IFR issued by the SBA on August 24<sup>th</sup> said that payments to “related entities” may not count at all towards forgiveness.**

Related party provisions particularly hurt restaurants as they are predominantly family-run businesses, with seven in ten operated as sole proprietorships. It is a standard practice for restaurants, especially those involving multiple generations, to have common ownership of the building and provide rent through a separate entity. This is strongly recommended by many banks, accountants, and attorneys to manage liability and ensure business continuity.

**For a family-owned diner in Pittsburgh, Pennsylvania, the SBA’s unexpected rule will cost them \$43,000 in loan forgiveness.** The diner was founded by Greek immigrants in the 1950s, with multiple generations continuing to operate the diner. A few members of the family own part of the property along with outside owners. When they received PPP, the family paid their employees – who were not working – and paid rent for April. When President Trump signed the Paycheck Protection Program Flexibility Act (PPPFA) into law in June, the family paid rent for the summer. But due to the SBA’s rule and the family’s partial ownership of the building, the diner is ineligible for the loan forgiveness they desperately need.

**A Pennsylvania brewery and restaurant would lose \$47,000 in loan forgiveness if their rent expenses are limited to only the mortgage interest amount.** The brewery operates in one section of a larger building, and used a PPP loan to pay about \$63,000 in rent during their 24-week covered period that ended in early August. However, one of the brewery owners is also a partial owner of the building. The unanticipated SBA rule will slow any rehiring they anticipate now that capacity restrictions are slowly being lifted.

The timing of this rule runs counter to the intent of the PPP, creating a backward-looking disincentive for restaurants utilizing a PPP loan when the restaurant was closed but still paying staff.

## **II. Adding confusion to the PPP loan forgiveness process.**

Cash flow shortfalls and loan forgiveness drove restaurants to PPP in April. While we commend the SBA for delivering more than \$525 billion in PPP loans from April to August, we strongly urge the SBA to avoid adding new complexities to the equally important forgiveness process.

Current PPP forgiveness guidance requires small businesses to invest time and resources into multifaceted loan documents and legal attestations. Navigating PPP forgiveness can cost up to \$4,000 and 20 to 100 hours of work per business, according to one analysis.<sup>1</sup>

Even in positive economic climates without state-ordered capacity restrictions, most restaurants survive on single-digit profit margins without dedicated accounting or legal resources. In order to avoid significant PPP loan debt, many restaurants are considering hiring additional financial and legal consulting at a time when small businesses cannot afford it. We are asking the SBA to

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<sup>1</sup> “Is It Easier to Ask for Forgiveness Than Permission? Not for PPP Loans Under \$150K,” AQN Strategies.

eliminate this IFR provision on related party rent to reduce loan forgiveness confusion, as the Government Accountability Office warns that the “complexity of the process could result in additional difficulties and delays for borrowers in obtaining loan forgiveness.”<sup>2</sup>

### III. Compounding cash flow problems during a crucial time period.

When restaurants evaluate the 40 percent of PPP loan nonpayroll expenses that would be eligible for forgiveness, the vast majority of this portion goes directly to rent. Limiting this nonpayroll expense curtails a restaurant’s ability to achieve forgiveness for a major part of their PPP loan, **especially considering how most PPP recipients have already outlaid its expenses in forgiveness applications.**

According to the House Small Business Committee, the SBA has only received 56,000 forgiveness decisions, or about 1% of the 5.2 million PPP loans made, as of September 8. At the end of the PPP covered period, restaurants are holding back on loan forgiveness applications due to the devastating consequences if issues like these are unresolved.

At a time when four in ten restaurants are considering permanent closure in the next six months if there is no additional federal relief, this IFR severely exacerbates a problem that restaurants did not know would exist. An unexpected denial of rent forgiveness will push loan debt onto restaurants, creating more shuttered businesses and unemployment, despite the best intentions of the SBA and the PPP.

Restaurants appreciate the SBA’s commitment to integrity and the goals of PPP. But this IRF on related party rent forgiveness does not achieve “equitable treatment” for restaurants due to the uniquely family-owned operators that lead our industry. Due to this economic and operational reality, we respectfully ask that you eliminate Question b of the “Treatment of Owners and Forgiveness of Certain Nonpayroll Costs.”

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

Sincerely,

National Restaurant Association

Alabama Restaurant & Hospitality  
Association  
Alaska Cabaret, Hotel, Restaurant &  
Retailers Association  
Arizona Restaurant Association  
Arkansas Hospitality Association  
California Restaurant Association

Nebraska Restaurant Association  
Nevada Restaurant Association  
New Hampshire Lodging & Restaurant  
Association  
New Jersey Restaurant & Hospitality  
Association  
New Mexico Restaurant Association

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<sup>2</sup> “Federal Efforts Could Be Strengthened by Timely and Concerted Actions,” GAO, September 21, 2020.

Colorado Restaurant Association  
Connecticut Restaurant Association  
Restaurant Association of Metropolitan  
Washington  
Delaware Restaurant Association  
Florida Restaurant & Lodging Association  
Georgia Restaurant Association  
Hawaii Restaurant Association  
Idaho Lodging & Restaurant Association  
Illinois Restaurant Association  
Indiana Restaurant & Lodging Association  
Iowa Restaurant Association  
Kansas Restaurant & Hospitality Association  
Kentucky Restaurant Association  
Louisiana Restaurant Association  
Hospitality Maine  
Restaurant Association of Maryland  
Massachusetts Restaurant Association  
Michigan Restaurant & Lodging Association  
Minnesota Restaurant Association  
Mississippi Hospitality & Restaurant  
Association  
Missouri Restaurant Association  
Montana Retail Association

New York State Restaurant Association  
North Carolina Restaurant & Lodging  
Association  
North Dakota Hospitality Association  
Ohio Restaurant Association  
Oklahoma Restaurant Association  
Oregon Restaurant & Lodging Association  
Pennsylvania Restaurant & Lodging  
Association  
Puerto Rico Restaurant Association  
Rhode Island Hospitality Association  
South Carolina Restaurant & Lodging  
Association  
South Dakota Retailers Association  
Hospitality Tennessee  
Texas Restaurant Association  
Utah Restaurant Association  
Vermont Chamber of Commerce  
Virginia Restaurant, Lodging & Travel  
Association  
Washington Hospitality Association  
West Virginia Hospitality & Travel Association  
Wisconsin Restaurant Association  
Wyoming Restaurant Association

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