Restaurant Industry “Blueprint for Recovery”

Authorize and Appropriate a Temporary Emergency $240 Billion Restaurant and Foodservice Industry Recovery Fund (“RFIRF”)

The RFIRF should be authorized as a comprehensive grant program, administered by the U.S. Department of Treasury (“Treasury”), to (1) support ongoing operating expenses and debt obligations from government-mandated closures; (2) rehire and retrain our workforce; and (3) provide a lifeline to reopen and readjust to a new era of increased distancing and heightened health and safety standards. Eligibility criteria shall be determined by Congress, but should be limited to restaurants in business before March 15, 2020 that have suffered significant sales and job losses related to the COVID-19 pandemic.

Available on a quarterly basis, the grants would be requested by restaurants through a new portal at the Internal Revenue Service (“IRS”) where restaurant owners would apply for up to, but no more than, the prior year-on-years quarterly gross revenue, subject to terms and conditions on the use of these funds, through the end of 2020. The size of the $240 billion RFIRF is based off already-accrued and estimated losses industry-wide through the end of 2020. The grants shall be used broadly for payroll expenses and operating expenses, e.g., rent, utilities, ongoing debt obligations, business insurance premiums, vendor payments, etc..; and for reopening expenses, including stock, inventory, sanitation equipment, health and safety compliance, etc..

In the interest of expediency, the RFIRF should be designed to meet grant requests as quickly as possible, with an emphasis on zero tolerance for the misuse of funds. No funds shall be used to pay any owner, operator, board member or officer of a foodservice company more compensation than they received in the prior fiscal year, nor may they be used for retirement contributions, deferred compensation, or pensions. And no funds provided may be used for physical improvements to restaurant facilities unless contractually obligated prior to March 1, 2020 with the exception of those done to enhance the safety of facilities for employees and customers.

Participating restaurants shall submit a form to the IRS in the quarter immediately following the acceptance of a grant that details the use of all funds provided through the program. The form detailing the use of granted funds should allow easy categorization of qualifying expenses while underscoring the requirement that grantees maintain accurate documentation of their expenses. Any granted funds that are either unreported or determined by the IRS to not have been used for allowable expenses will be deemed income taxable at 100%. In other words, improperly used or undocumented funds must be repaid in full, and cannot be offset by operating losses.

This proposed RFIRF will provide much-needed assistance to a critical industry that employs a very large segment of the nation’s workforce and that has suffered disproportionately from the COVID-19 pandemic. The industry is uniquely vulnerable to economic disruption, and for a variety of reasons, the previous federal relief programs have not provided practical relief to save

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the industry from ruin. This RFIRF will be fair, easy to administer, and effective in saving as many small businesses—and ultimately American jobs and families—as possible. Congress should enact this program without delay.

Replenish Funding and Fix the Structural Issues of the Paycheck Protection Program ("PPP")

The PPP, which offers some bridge-assistance to small businesses, became insolvent on April 15, 2020, and is in need additional funding. However, the shortcomings and implementation of the program have created onerous constraints and restrictions on borrowers that should be immediately addressed as additional funding is appropriated. Our previous letter to you, dated April 9, 2020, outlined an extensive list of suggested changes to the program. Here, we are highlighting the top three issues that require your immediate attention, which are as follows:

(1) Enable Restaurants 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 "stay at home" 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 codes, etc.).

Therefore, eligible restaurants seeking a PPP loan must have the flexibility to begin the eight-week loan period a minimum of 3 weeks <u>after</u> 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 its ability to rehire former employees back on payroll, which is the ultimate purpose of PPP.

(2) Revise Loan Forgiveness Restrictions In Light of Industry Realities: In order to achieve loan forgiveness, the Treasury Department requires that at least 75% of the PPP loan be spent on payroll, with no more than 25% spent on limited non-payroll costs. For an industry crippled by the current 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. Additionally, as restaurant closure orders are lifted, allowances must be taken into consideration for smaller capacity operations because of social distancing protocols (e.g., fewer initial customers, fewer employees needed).

(3) Restore Ten-Year Loan Repayment – As Congress Intended: The legislative text of the PPP clearly allows loans to have up to a 10-year maturity date, yet the Treasury Department has 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.

Create a Tax Credit or Grant Program for "Healthy Restaurants"

Restaurants nationwide have already undertaken extraordinary measures to ensure the safety of carry-out and delivery meals, as they struggle to stay open during this crisis. Looking ahead, as America's restaurants prepare to reopen to the public, it is essential that proper health and safety precautions be supported to protect our customers and workforce. As stated, restaurants will be changing the way they operate in many ways, including modifying physical facilities to accommodate continued social-distancing, enhanced sanitization and employee education, the use of personal protective equipment and disposable products facing consumers. These critical measures will not come without great cost at a time when restaurants are facing their biggest financial losses in modern history. With several states planning to lift movement restrictions in the coming weeks, and many Americans reticent to venture into public, we feel it is critical to bolster restaurants' efforts toward ensuring public health.

A refundable tax credit, or administration grant program, to help restaurants bear these costs will support the industry in these difficult times, bolster public confidence, and most importantly – enhance the wellbeing of our employees and customers. Furthermore, it will support efforts to reopen facilities to the public with diminished customer capacity for their health and the health of our employees. Some of the costs to consider for inclusion in a "Healthy Restaurants" tax credit or grant program include: compensation for loss of business due to capacity reduction; physical modifications to public spaces for health and safety; enhanced sanitization and cleaning measures; personal protection equipment; use of disposable products for employee and customer health; and employee education.

Under current circumstances, the forced closings of restaurants is significantly reducing taxable income and creating net operating losses, therefore, the preferred mechanism to quickly support necessary health and safety enhancements would be a grant program. There is precedent for this in natural disaster appropriations from Congress, including those administered by the Department of Commerce's Economic Development Administration and the Department of Health and Human Services. Should a tax credit be enacted, considering the financial predicament of America's restaurants and the public health necessity, a 100% refundable tax credit would support these initiatives while not detracting from meeting payroll, rent, and other necessary expenses to keep our doors open.

Provide Federal Relief for Employer's Share of Unemployment Insurance

The Federal Unemployment Tax Act (FUTA) has been a critical tool for supporting Americans left unemployed during this crisis. We fully support this mechanism for delivering much-needed dollars to those who have unfortunately lost their employment. As Congress considers additional measures to provide relief to employers keeping employees on payroll, a temporary forbearance for FUTA taxes should be considered.

Enact the "SNAP COVID-19 Anti-Hunger Restaurant Relief for You Act of 2020" (SNAP CARRY Act) Proposal

The SNAP CARRY Act proposal, which will soon be introduced by Representative Jimmy Panetta (D-CA) and Senator Chris Murphy (D-CT), would expand the Restaurant Meals Program (RMP) to serve all Supplemental Nutrition Assistance Program (SNAP) participants during the COVID-19 crisis and give the U.S. Department of Agriculture flexibility to temporarily waive requirements allowing states and restaurants to quickly participate in the program. As millions of Americans are struggling to feed their families during this unprecedented crisis, the SNAP CARRY Act will provide more vital food access points for hungry people and the ability for restaurants to continue serving Americans.

Increase Funding for Economic Injury Disaster Loans (EIDLs)

EIDLs provide the base level of assistance for the many small businesses struggling to survive. It is critical to increase funding to a minimum of $50 billion to ensure small businesses can access EIDL loans throughout the course of the crisis. Additionally, it is important to enable eligible businesses to access a second EIDL if they exhausted the first one and are still unable to meet their expenses.