A PROPOSAL FOR SPECIAL ASSISTANCE TO RESTAURANTS, DINERS AND SMALL EATERIES

Sponsored by the Pan Gregorian Cooperatives*

May 14, 2020

Discussion:

As a result of COVID 19's devastating effect on the economy, most restaurants, diners and small eateries will be fighting for their survival. This fight is expected to continue for months after current restrictions are lifted and may persist even after a vaccine is found (if ever). The public's widespread fear of contracting the virus and the rules of social distancing which will continue to apply to foodservice employees and patrons will cause a reduction of approximately 50% of any eat-in establishment's seating capacity, resulting in an equivalent loss of revenue.

The Independent Restaurant Coalition (the "Coalition") recently conducted a survey with the James Beard Foundation and found that after the first round of Paycheck Protection Program ("PPP") loans was distributed, eighty percent (80%) of independent restaurant owners still weren't sure they would be able to reopen. Andrew Zimmern, a founding member of the Coalition and TV host, said that "PPP's eight-week Band-Aid isn't enough to keep 500,000 small eateries open and over 11 million people employed." In a letter sent to U.S. House and Senate leaders, the Coalition proposed a $120 billion stabilization fund to supplement the shortcomings of the PPP and to save closely-held restaurants, the employees of which are the most significant contributors to unemployment claims nationwide. Indeed, the National Restaurant Association ("NRA"), the nation's largest foodservice trade group, recently estimated that the size of any such relief fund would need to be closer to $250 billion.

Beyond the funds needed to get the industry back on its feet, an issue that has not been discussed or given proper attention is the likelihood that once reopened, many restaurants will need to subsidize their servers' compensation to meet the requirements of federal and state minimum wage laws. In normal times, a restaurant's service staff can achieve the minimum wage through a combination of salary and tip income. A fearful public, combined with social distancing mandates, assures that once restaurants reopen, servers' tip income will shrink by as much as fifty percent (50%). Consequently, even as restaurant patronage is drastically reduced, restaurant owners will need to supplement server compensation to achieve governmentally-mandated minimum wage requirements. Thus, even as their overall revenue plunges, restaurant owners will face an increase in compensation expense or risk violating minimum wage guidelines that apply to their service staff.

Our Proposals:

1. We urge the leaders of the U.S. House and Senate to support the establishment of a stabilization fund earmarked for the benefit of restaurants, diners and small eateries (but excluding publicly-traded restaurant companies, large restaurant chains and franchises with more than 20 restaurant locations (collectively, "Large Foodservice")). We believe that to be effective, any such fund must be in the $120 billion to $250 billion range outlined by the Coalition and the NRA.

2. We strongly urge U.S. House and Senate leaders to support the adoption of a new payroll tax credit, the "Tip Infusion Payment and Employer Reinstatement" ("TIPER") credit, for the benefit of restaurants, diners and small eateries (but excluding Large Foodservice) that employ service staff dependent on tip income. The credit will be earned only after any PPP loan funds received by a business establishment have been expended and will be equal to the dollar amount of the aggregate tip shortfall that an employer must subsidize in order for its staff's earnings to be in compliance with the applicable minimum wage requirements. The credit will be computed with respect to each payroll period and will be applied to reduce, dollar-for-dollar, the employer's obligation to remit that period's federal employment and withholding taxes. Any TIPER credit earned in any relevant period that exceeds that period's federal employment and withholding taxes could then be carried forward to the next payroll period until fully utilized by the employer. The credit would remain in effect for a period of two years from the date of enactment. We would also strongly urge the state legislatures of each state along the Eastern Seaboard to enact a state-level TIPER credit that would provide similar relief with respect to that state's employment and withholding taxes.

3. Once foodservice businesses are permitted to provide eat-in service, then even if they carefully abide by all governmentally mandated safety precautions, they will be exposed to potentially crushing legal liability if and when employees and/or patrons claim that they contracted COVID 19 in such business premises. The only viable way for such businesses to reopen and serve the general public is if federal and state authorities provide broad legal indemnification from such claims as long as the mandated safety precautions have been observed by a business owner.

4. The PPP requirements need to be refined and expanded for the restaurant industry. Under current SBA guidelines, PPP funds must be expended within eight weeks of **receipt**, but in many states restaurants still have not, as of the date of this memorandum, been permitted to reopen for eat-in service. Moreover, given the current $600 per week supplemental unemployment compensation that furloughed restaurant workers are receiving, there is a

significant disincentive for low-wage employees to return to work while this supplement is payable. In any event, re-employing service staff before there are customers to serve makes no economic sense.

Businesses in the foodservice industry should have eight weeks **measured from the date that they are permitted by the relevant government authorities to reopen for eat-in service** to expend the portion of their PPP funds that must be used to compensate their service staffs.

5. Until the business environment returns to normal in the foodservice industry, any and all pending increases in the minimum wage for workers in the industry should be postponed.

Closing Comment:

At best, the funding made available by the PPP will provide temporary assistance to restaurants in and around the nation. It has become clear, however, that there will be a need for further meaningful assistance that must extend beyond the benefits provided by the PPP. Such assistance should be acted upon urgently in order to solidify the benefits realized thus far and to prevent millions of restaurant employees from returning to the unemployment lines and the permanent closure of thousands of family-owned restaurants, diners and small eateries.

[* "Pan Gregorian" is the trade name of an association of cooperative corporations originated by Pan Gregorian Enterprises, Inc. in New Jersey and which includes Pan Gregorian Enterprises of Metro NY and Long Island, Pan Gregorian Enterprises of Upper New York, Pan Gregorian Enterprises of New England, Pan Gregorian Enterprises of the Carolinas and Pan Gregorian Enterprises of Maryland, Inc.

Each Pan Gregorian cooperative negotiates food and service contracts for the benefit of its member restaurants, which are primarily family-owned businesses. By combining the buying power of hundreds of small foodservice businesses, Pan Gregorian can obtain pricing for its members that is only available to the largest chain and franchise eateries. The Pan Gregorian cooperatives listed above have well over 3200 member businesses and employ over 100,000 individuals in the aggregate. Each Pan Gregorian member is a closely-held restaurant, diner, catering/banquet hall or small dining establishment.

This proposal was prepared for Pan Gregorian by Andreas D. Comodromos, CPA with assistance from McCarter & English, LLP and was unanimously adopted and endorsed by each Pan Gregorian cooperative.]