September 29, 2021

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

The Honorable Chuck Schumer
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 Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

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

As Congress considers the "Build Back Better Act" (BBBA), we appreciate the discussion and engagement on the many issues that affect the lives of our nation's workforce. Discussion on issues from pre-K education and childcare to investments in public transit are long-overdue, and now is absolutely the time for you to consider bold ideas. But the overall cost of the Act, and the burdens it will place on the struggling restaurant industry are of grave concern to us. We would like to update you on the latest state of our sector and outline specific areas of concern with the proposed legislation.

Today, we are releasing a new national survey of the economic condition of restaurant operators. The conclusions are bleak – deteriorating business conditions are impacting operators' outlook to the point that they state a recovery from the pandemic will be prolonged well into 2022. Overall, a majority of fullservice and limited-service operators say business conditions are worse now than three months ago. These findings come on the heels of rising food and supply costs, a well-documented labor shortage, nearly $300 billion in lost sales, and debilitating debt that continues to mount.

Specifically, our survey found:

- 78% of operators say their restaurant experienced a decline in customer demand for indoor, on-premises dining in recent weeks because of the delta variant spike.

- 63% of operators said their sales volume in August, historically one of the busiest months for restaurants, was lower than it was in August 2019.

- Costs are up – 91% of operators are paying more for food; 84% have higher labor costs; 63% are paying higher occupancy costs, but profitability is down – 85% of operators reported smaller margins than before the pandemic.

- Although the industry has added back many of the jobs lost during the pandemic, 78% of operators say their restaurant doesn't have enough employees to support current customer demand.

- 95% of restaurant operators say their restaurant experienced supply delays or shortages of key food or beverage items during the past three months.

It's against this grim economic backdrop that we offer our input on the Build Back Better Act – specifically, our opposition with proposed tax increases on restaurants, our renewed call for replenishing the Restaurant Revitalization Fund, and our objections to the unprecedented changes to the National Labor Relations Act that could bankrupt many businesses.

Prevent New Tax Increases During the Pandemic

The restaurant industry would be one of many small businesses that would see their tax liabilities increase as a result of the BBBA. Congress has done admirable work to provide a lifeboat for restaurants during the pandemic, and should not reverse these efforts with a multitude of higher taxes.

Specifically, we oppose:

- Any cap on the Section 199A *Small Business Tax Deduction*, which would deny small businesses earning over $400,000 or $500,000 in annual income the ability to preserve more of their working capital. Nine in 10 restaurants are small businesses, situated as pass-through entities like LLCs, S-Corporations, or partnerships, relying on Sec. 199A to invest in employee growth and expanded operations. This deduction ensures the federal tax code does not have significantly different rates for small businesses and corporations. Capping the Sec. 199A deduction would worsen the ongoing financial struggle of many small and midsize restaurants and inhibit restaurants' growth in the years to come.

- Repeal of the stepped-up basis, which would make death a taxable event for family-owned businesses. Restaurants carry an average cash-on-hand to cover 16 days of expenses. Taxing a restaurant as it is passed down to the next generation would require cash that simply cannot be produced in the short-term. If implemented, this would lead to a restaurant reducing operations, scaling back employment, and selling off assets or locations – causing more heartbreak in the community it serves.

- Increases in the corporate tax rate, will cost companies – including restaurants – over $540 billion. As the second-largest private sector employer in the nation, restaurants will have fewer opportunities to invest in employee growth and expansion.

Restaurant.org | @WeRRestaurants
2055 L Street NW, Suite 700, Washington, DC 20036 | (202) 331-5900 | (800) 424-5156

Raising taxes during a pandemic imperils restaurants' prospects for survival, our workforce, and the recovery of the communities we serve. If Congress institutes new taxes, many more restaurants will likely have to close their doors for good.

Replenish the Restaurant Revitalization Fund (RRF)

As you know, about 2 in 3 eligible restaurants who applied for the RRF did not receive any funds. These 177,000 small businesses remain financially unstable, with eligible pandemic losses of over $43 billion even after deducting Paycheck Protection Program loan amounts. The RRF is a proven way to provide efficient and effective support for restaurants to meet payroll, pay rent, ease debt obligations, and stabilize their operations in the face of the economic uncertainty of COVID-19.

As winter approaches and outside dining contracts, RRF replenishment is extremely time-sensitive and must not wait for subsequent legislative vehicles. We urge Congress to use any opportunity now available to replenish the RRF to sustain restaurants, workers, and suppliers in every state.

Avoid Devatasting Labor Fines for Technical Violations

The restaurant industry is extremely concerned with proposals to fundamentally change the National Labor Relations Act (NLRA) by allowing fines of $50,000 to $100,000 for each labor violation. As you well know, for over 85 years, Congress and the Surpeme Court have focused on making employees whole in labor actions, not subjecting employers to punitive fines. Under the proposed change, a business that made inadvertent or technical errors could face fines high enough to put them into bankruptcy. Workers deserve protections in the workplace and bad actors who violate labor law should be held accountable. But the text as drafted would essentially be using a bludgeon to intimidate and punish businesses that make inadvertent errors or who believe they are acting within their legal rights and in accordance with labor law.

Our nation's restaurant recovery is officially moving in reverse. The lingering effects of the delta variant is a further drag on an industry struggling with rising costs and falling revenue. We support many of the goals of the Build Back Better Act, but the legislation is too large and too expensive a check for small businesses to take on. Restaurants still need help today and overwhelming them with costly new obligations will only prevent progress in turning the tide of recovery.

Thank you for your consideration and we appreciate your attention to the restaurant industry.

Sincerely,

Sean Kennedy
Executive Vice President, Public Affairs

Enclosure

NATIONAL RESTAURANT ASSOCIATION®

COVID-19 UPDATE

Restaurants are still feeling an ECONOMIC IMPACT

Restaurant Industry Impact Survey • September 2021

To assess the impact of the pandemic the National Restaurant Association Research Group conducted a survey of 4,000 restaurant operators Sept. 7-15, 2021.

Delta variant dampened indoor dining in 3 out of 4 restaurants

44% are not yet at full capacity

71% of restaurants are understaffed

63% of restaurants' Aug. 2021 sales were weaker than Aug. 2019

75% of restaurants changed menu items due to supply chain issues

44% of operators think it will be **12+ months** until business normalizes

→ **19%** think it never will

Costs are up

91% paying more for food

63% paying higher occupancy

84% have higher labor costs

For more information & resources, visit restaurant.org