
Empire State Restaurant & Tavern Association

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Testimony of

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Empire State Restaurant & Tavern Association

Before a Joint

Assembly and Senate Legislative Hearing

on the

Impact of the Federal Response to the COVID-19 Pandemic's

Economic Impact on Small Businesses

in New York State

May 13, 2020

I'm Scott Wexler and I appear today in my capacity as Executive Director of the Empire State Restaurant & Tavern Association. The Association represents restaurants, taverns, bars, and other businesses licensed for the on-premises consumption of alcohol. Our members are located throughout the state, including in most of your communities.

Thank you for the invitation to present feedback on behalf of New York's independent restaurants and bars on the federal response to the COVID-19 pandemic and whether the federal assistance provided was adequate and accessible for small businesses across the State. The short answer to your question is NO – in spite of the good intentions of the architects of the programs they are both inadequate and generally inaccessible. While this is true for all small businesses, it is particularly true for the businesses we represent. In the time afforded me today I'd like to lay out our principal concerns and offer our suggested solutions.

The federal programs of greatest interest to our members are the Paycheck Protection Program and the Economic Injury Disaster Loan program, commonly referred to as the PPP and EIDL programs. The EIDL program is a longtime staple offered directly by the Small Business Administration while the newly created PPP requires potential borrowers to apply through an SBA approved lender. Both programs have many positive attributes, but their weaknesses have made them far less helpful than intended.

The Paycheck Protection Program presents challenges for small business, but restaurant and tavern owners find it particularly problematic. The chief complaint our members have about the PPP is the eight-week loan forgiveness provision which requires the borrower to spend 75 percent of the funds on payroll costs starting eight weeks after receiving the funds. But how do businesses that are essentially closed now and don't know when they will be allowed to reopen meet that condition? And even when they are allowed to open they'll likely be required to operate under restrictions that will require fewer staff – at least for some period of time.

The other major problem with the Paycheck Protection Program is the limitation that no more than 25 percent of the funds be spent on non-payroll costs such as rent which was imposed by administrative action by the SBA. Given the cost of rent in many areas of the state as well as many other parts of the country, this program creates a situation where the federal government will assist you with your payroll expenses so your workers can have steady income but won't help you keep the doors to your business open so those workers have a place to work.

After our members discovered the flaws in the highly touted PPP, at least as it applies to their circumstances, they found their way to the EIDL program. The EIDL program does not offer the loan forgiveness provisions that the PPP does, but it's an attractive loan vehicle. And then the SBA messed it up by changing the rules – reducing the emergency cash grant available and significantly capping the maximum loan amount.

These challenges are not surprising. The federal government, like state and local governments all across the country, are building the airplane and flying it at the same time so it's understandable that there will be problems along the way. But we need the federal government to address these problems and do it soon – everyday that they delay makes it harder for our members to persevere and more likely they'll not be able to reopen when the State gives them the green light.

The restaurant industry has broadly supported efforts to modify the PPP to address our concerns. Sen. Schumer told representatives of the industry this week that he's pushing for fixes to these problems – calling for extending the forgiveness period to twenty-four weeks and removing the 25% limit on non-payroll expenses. That's a good start. We also support allowing restaurants to select their loan period after the government restrictions end and to restore the 10-year maximum loan term provided in the CARES Act. The SBA arbitrarily imposed a two-year maximum loan term in spite of the language in the statute.

The fix for the problems with the EIDL program are quite simple – fund the program appropriately to meet the need and require the SBA to follow the law in disbursing emergency cash advances and in setting loan limits. It's a good program – let it work as intended.

Our Association has also endorsed the National Restaurant Association's proposal to establish the Restaurant and Foodservice Industry Recovery Fund and a similar proposal by the Independent Restaurant Coalition to create a fund to compensate restaurants for government-ordered closures and to provide the financial assistance they'll need to reopen.

The other suggestion I hear from our members regularly is to require insurance companies to cover their losses under the business interruption provisions of their insurance policies – even though most of their policies exclude coverage for these losses. To this end, Congress is considering the “Business Interruption Insurance Coverage Act of 2020”. This draft bill, which has been circulating through Congress, would force all insurers that offer business interruption insurance to offer coverage for a viral pandemic and any exclusion in a contract for business interruption insurance that is in force on the date of the enactment of the Act would be void to the extent it excludes viral pandemics.

Another proposal being discussed is the Pandemic Risk Insurance Act which would require insurers to cover business losses due to a pandemic. The federal government would serve as a “backstop” that provides funds as insurance company reserves run dry similar to how the Terrorism Risk Insurance Act, enacted following 9/11, helps insurance companies reimburse businesses after a terrorist attack. This new legislation could provide relief from pandemics by capping the total losses that insurance companies would face from the pandemic and requiring insurers void exclusions in current, in-force policies for pandemic-related losses.

We support these efforts to use business interruption insurance as a means to compensate small business owners for their losses due to the COVID-19 outbreak.

Finally, while the focus of today's hearing is the federal response to the pandemic's impact on small business, I want to express our members' appreciation for the healthcare workers, first responders, teachers, and essential workers for everything they're doing to serve our communities. And I want to voice our full throated support for the efforts of Governor Cuomo, Leader Stewart-Cousins, Speaker Heastie and all of you to obtain federal aid for New York to help shoulder the enormous costs the outbreak has imposed on the State. Without that aid it's hard to imagine how you and your colleagues will avoid imposing layoffs, furloughs, or other economically damaging measures on these very workers we universally hail and whose services we've defined as essential.

So, while we're here asking for your support for our member restaurants and taverns, we're also here to pledge our support for your efforts to make sure our fellow New Yorkers get the support they need and deserve.

Thank you.