

April 1, 2020

**By E-mail**

The Honorable Chris Van Hollen  
110 Hart Senate Office Building  
Washington, DC 20510

**RE: Thank you for continuing to help save nearly 1,800 Jobs**

Dear Senator Van Hollen,

On behalf of Silver Diner and its nearly 1,800 employees (including nearly 1,000 Maryland employees), thank you for your support in crafting the CARES Act and ensuring that local and regional chain restaurants are able to participate in the Paycheck Protection Program (PPP).

Here's a quick update on Silver Diner:

1. Once our restaurants were closed, in order to have the cash to survive the COVID-19 crisis, we were forced to make the tough decision to lay off 1,600 employees.
2. We retained our management team (at dramatically lower salaries comparable to unemployment) so that we can maintain to-go and delivery operations as a service to our communities. **But in light of the ongoing loss over \$6 million per month of revenue, we're losing approximately \$1.3 million per month.**

Accordingly, it's critical that Silver Diner can take advantage of the loan forgiveness provisions of the PPP. But Silver Diner will face a devil's choice because of two key factors: (i) PPP loan forgiveness is only based on eight weeks of eligible spend **after loan origination** but (ii) the latest information indicates that we will be essentially closed for much longer than anticipated when the legislation was enacted last Friday (Virginia Governor Northam's stay-at-home order lasts until June 10, 2020; even President Trump acknowledges that it will be at least May).

We have three options, all of which threaten the viability of our previously thriving business:

1. Burn Through Loan Funding Without Operations. We could take advantage of the funding now, as soon as it's available. Based on our pre-COVID-19 payroll costs of \$3.6 million per month, we expect to receive approximately \$9 million of loan proceeds. But if we do so, and we bring back our employees even though we have no jobs because the business is essentially closed (which is the only way to ensure that most of the loan proceeds are forgiven) our payroll will balloon back to \$3.6 million per month. Accordingly, we won't have any cash left in a little over two months, when, in the most optimistic scenario, we'll need cash to support our reopening and ongoing losses. In essence, we'll burn through the PPP funds **bringing back employees who we can't use**, only to lay them off again in two months.

2. Take the Funding Now and Save the Cash For When We Re-open. We could take the PPP loan now, and, of course, delay bringing back our employees until we have jobs when our restaurants are allowed to reopen. But in this situation we would **forego loan forgiveness of over \$5 million** (our monthly management payroll during the forced closure is only \$1 million per month, so for each month that our business is required to be closed, we expect to lose about \$2.6 million of forgiveness eligibility based on our full staffing estimate of \$3.6 million per month). Given the lost revenue we've absorbed during the forced closure (and reduced revenue we expect during the ramp-up) servicing an additional \$5 million of debt on top of what would already not be forgiven will drain our company's cash flow in a way that will imperil Silver Diner even after we reopen.

3. Delay Obtaining Funding Until Re-Opening is More Certain. We could theoretically delay applying for PPP funding to help ensure that our use of proceeds is forgivable and aligns with our reopening. But we don't have the funds to survive

such a delay. Further, there is a real risk that PPP loan funding will be oversubscribed and none will remain if we apply in a few weeks or months.

Because the limited eight-week covered period for loan forgiveness doesn't reflect the post-enactment understanding of the COVID-19 timeline, we're left without a viable option to save our small business in the way Congress intended. Here is what Congress can do to help:

1. Align the "Covered Period" for Forgiveness with COVID-19's Timeline. Expanding the "covered period" for forgiveness (*e.g.*, 16 weeks after loan origination) in a future COVID-19 relief bill will help businesses that expect a significant ramp up period actually use the loan forgiveness provisions that your team fought hard to enact. ***Better yet, tying the covered period to when the business is permitted to reopen (e.g., eight weeks after permitted reopening of the business) will ensure that loan forgiveness isn't tied to a loan origination date that doesn't have any relation to when the funds will actually be needed to preserve jobs in the long term.***

2. Guide SBA Regulations to Preserve Small Businesses. The regulations governing the PPP need to preserve Congress's intention to help small businesses survive this crisis and its aftermath. For example:

a. Just as I was finishing this letter, I received the Treasury Department's fact sheet (enclosed), indicating that all PPP loans will have a maturity date in ***two years*** instead of the maximum loan term of 10 years in the CARES Act. Accordingly, for any portion of our PPP loan that is not eligible for forgiveness, we'll need to find cash to service that debt over a very short period of time, which would be impossible in normal circumstances (let alone on the back of an unprecedented national crisis).

b. Loan proceeds used to pay deferred rent and payroll for periods occurring after February 15, 2020 but before loan origination, should clearly be deemed "incurred" after loan origination and therefore eligible for forgiveness (under the CARES Act, covered rent and payroll must be *incurred* after loan origination in order to be eligible for forgiveness). For example, if our landlords defer April 2020 rent until after we receive loan proceeds, a payment of that rent from loan proceeds should be eligible for reimbursement, and this should be clarified in the SBA regulations.

We appreciate that Congress (especially you and your staff) moved mountains to bring this legislation together. But as our understanding of the pandemic evolves day by day, more needs to be done now to ensure that small businesses like ours are able to reopen and survive after the immediate crisis is over. We would appreciate the opportunity to discuss these issues with you further.

Sincerely,



Robert T. Giaimo  
President  
Silver Diner, Inc.

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Enclosure