May 15, 2020

The Honorable Mark R. Warner
703 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warner,

Thank you for your role in passing legislation to fund the Paycheck Protection Program (PPP), first created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, to provide financial relief for small and mid-sized businesses nationwide, including franchised auto dealerships in the Commonwealth of Virginia.

In response to the CARES Act and PPP, the U.S. Treasury issued guidance that gives the Virginia Automobile Dealers Association (VADA) concern.

First, the U.S. Small Business Administration (SBA) issued FAQs Questions 31 and 37 about whether businesses owned by large companies—*e.g.*, public companies or those owned by private equity—with adequate sources of liquidity to continue operations qualify for a PPP loan. It is our view this frustrates the purpose of the CARES Act and leaves some auto dealers wondering if they are going to be audited or penalized for loan applications made in good faith. Second, the Internal Revenue Service (IRS) issued Notice 2020-32, which prevents dealers from deducting forgiven PPP expenses for federal income tax purposes, thus drastically modifying the risk/reward analysis dealerships must undergo when considering use of a PPP loan.

We ask Treasury (1) revise its guidance to contemplate that PPP loan decisions were made with employee retention and payment in mind, regardless of whether a dealership was adequately capitalized or could have weathered the COVID-19 storm without the funds, and (2) withdraw Notice 2020-32.

FAQs Questions 31 and 37

- It is our understanding the PPP was designed to encourage employers to retain and pay employees at pre-pandemic earning levels at a time when American workers needed it the most, without consideration to an organization's liquidity or access to capital.
- Even before the PPP, many dealers were prepared to retain their staffs and lose money without any guarantee federal assistance was on the way. The PPP was welcome support for our members. It has undoubtedly helped keep Virginia dealerships open and dealership personnel on the payroll.
- When dealerships applied for PPP loans, they certified on the Borrower Application Form that "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
- VADA is not aware of any definition of "economic uncertainty." With no guidance from any regulatory body, our members sought PPP funds in good faith and in recognition that, in doing so, they would be better able to retain employees and maintain compensation at levels that might otherwise be unsustainable.
- The SBA then issued guidance in the form of FAQs Questions 31 and 37 about whether businesses owned by large companies—*e.g.*, public companies or those owned by private equity—with adequate sources of liquidity to continue operations qualify for a PPP loan. The guidance indicated PPP borrowers should carefully review the required certification, mentioned above. It provided a May 7, 2020 deadline by which borrowers could repay PPP funding and be deemed to have made the certification in good faith. In the form of FAQs Question 43 and an Interim Final Rule, the SBA extended that deadline to May 14, 2020.
- We are pleased the SBA has issued guidance in the form of FAQs Question 46 that "Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan

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request in good faith." We note the SBA has also extended the May 14, 2020 deadline to May 18, 2020 through FAQs Question 47.

- However, while most VADA member dealerships received PPP loans less than $2 million, some received more, and the May 18, 2020 deadline by which those dealerships may choose to repay PPP funding is fast approaching. For any dealership borrower, whether the business had ample liquidity or access to capital before or during the pandemic should not be a determinant of whether it certified for a PPP loan in good faith.
- As such, some dealers remain concerned their applications for PPP loans, made in good faith and consistent with the purpose of the CARES Act, may result in federal audit or penalty. We ask that you urge the SBA and Treasury to accordingly revise the guidance reflected in FAQs Questions 31 and 37.

IRS Notice 2020-32

- When Congress passed the CARES Act, it included Section 1106(i) to exclude from income PPP loan forgiveness, which would otherwise be taxable. This was meant to provide PPP loan recipients an added tax benefit when they deduct forgiven PPP expenses like payroll.
- Nevertheless, earlier this month, the IRS issued Notice 2020-32, which stipulated forgiven PPP loan expenses that are excluded from income pursuant to the CARES Act may ***not*** be deducted for federal income tax purposes.
- IRS Notice 2020-32 is significant for our members for several reasons:
    - ***First***, the IRS notice may significantly alter a dealer group's accounting. Businesses using PPP loans may track these expenses differently than originally anticipated.
    - ***Second***, as stated above, one purpose of PPP funding was to help organization retain employees and pay employees at pre-pandemic earning levels dealerships could not or would not do absent the SBA loan. This new IRS position may impose on dealers a cost of doing so, despite language in the CARES Act that PPP funds were to be non-taxable if forgiven.
    - ***Third***, because of that new cost — in other words, because the utility of PPP dollars is much lower than it was before the IRS issued the Notice — the IRS guidance significantly changes the risk/reward analysis dealerships must undergo to determine whether they should keep and use a PPP loan or return the loan to the SBA.
- We understand and appreciate Congressional leaders have already responded to the IRS guidance in the form of a letter and legislation. We ask for your support of the same.

With help from state and federal government, VADA members have supported employees, customers, and communities throughout Virginia.

We are grateful Governor Ralph Northam included automotive parts, accessories, and tire retailers as well as automotive repair facilities as essential retail businesses in Executive Order 53 and Executive Order 61. We are also thankful sales and finance departments at Virginia franchised auto dealerships have remained open with critical stipulations as non-essential brick and mortar retail operations.

We appreciate the significant steps Congress has taken to help businesses and individuals nationwide. We ask now for help in urging Treasury to reverse guidance that could harm businesses and people in the Commonwealth and beyond.

On behalf of the more than 450 franchised new car and truck dealers in Virginia, thank you for your attention to this matter.

Sincerely,

Donald L. Hall
President and CEO

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