



May 5, 2020

Greetings from VADA,

In today's message, read about Governor Ralph Northam's extension of Executive Order 53 and plans to loosen restrictions on Virginia businesses as early as next Friday (May 15). Take in a motivating message from VADA Chairman and Loyalty Automotive President Dave Perno, as featured yesterday (May 4) on *Richmond BizSense*. See a reminder about recent IRS guidance that changes a dealer group's risk/reward analysis of a Paycheck Protection Program (PPP) loan. Learn about changes the Federal Reserve Board (FRB) made to the Main Street Lending program. Lastly, view updated PPP FAQs from the U.S. Small Business Administration (SBA)/U.S. Treasury and NADA.

Governor Northam extends Executive Order 53 and outlines three phases for reopening the Commonwealth.

In a press conference yesterday (May 4), Governor Northam announced an extension of Executive Order 53 — which imposes on Virginia's franchised auto dealerships enhanced sanitization and social distancing requirements plus a 10-patron limit on sales/finance customers in a dealership at any one time — from May 8 through May 14, 2020. Review [past VADA updates](#) for what Executive Order 53 means for your store(s).

Governor Northam also announced a modification of Executive Order 55 — the "stay at home" directive for Virginians. "Safer at home" will be the mantra, as the Commonwealth experiences fewer restrictions.

He also outlined a three-phase plan for reopening Virginia businesses. The Governor said his administration's decisions about when to loosen restrictions will be based on science and data; however, he seemed optimistic about entering Phase I of that plan next Friday (May 15). Each phase is expected to last three weeks or longer.

What will Phase I mean for your store(s)? Probably little. A slide presentation displayed during the Governor's remarks suggested Phase I will involve physical distancing, enhanced cleaning and disinfection, and enhanced workplace safety. The slides showed Phase I will also feature no social gatherings of more than 10 individuals, continued social distancing, continued teleworking, facial coverings recommended in public, and easing of limits on businesses and faith communities.

That's largely what Executive Order 53 has required for the Commonwealth's franchised auto dealers. The administration will release industry-specific guidelines in the coming days, including those for retail. We'll share that information once available.

Phases II and III will feature even fewer restrictions on social gatherings and businesses, while aiming to protect the most vulnerable individuals. See this [bullet point summary](#) from *Richmond Times-Dispatch* for more.

When asked about a regional approach to easing restrictions — reflecting the idea that localities less affected by COVID-19 should have fewer restrictions on businesses — the Governor rejected it. He indicated his [COVID-19 Business Task Force](#), assembled to consider restrictions on businesses and individuals, has overwhelmingly advised him to treat the Commonwealth as one.

Why? The Governor reasoned travel could cause the virus to spread and that a regional reopening would mean "picking winners and losers" among parts of Virginia. The pandemic has brought Virginia together, the Governor said, adding, "the last thing we need in this state, the last thing we need in this country right now is more division."

Governor Northam closed by stating Virginia entered the pandemic as a strong Commonwealth and will emerge from it even stronger. Click here for a recording of yesterday's [press conference](#). Stay tuned for more.

Richmond BizSense features VADA Chairman, Loyalty Automotive President Dave Perno.

For weeks, *Richmond BizSense* has shared motivating messages from the area's corporate leaders in its "Pep Talk RVA" series, as all businesses work through this difficult time.

On Monday (May 4), the publication featured VADA Chairman and Loyalty Automotive President Dave Perno, who discusses the auto industry specifically and business generally and encourages us all to carry on.

"For any industry, business owner, or employee, you need to look at this moment as a time to adapt and innovate," Dave says. "You can't sit there and wonder what's next — you have to keep moving and turn challenge into opportunity." Well put, Mr. Chairman! Read [the full message](#).

Reminder: IRS issued guidance changing risk/reward analysis for businesses considering PPP loans.

Last Thursday (April 30), the IRS issued [Notice 2020-32](#), drastically modifying the risk/reward analysis dealerships must undergo when considering use of a PPP loan.

In response, we notified dealers of the change and referenced three points dealers should consider when working with your dealer group's controller, outside accountant, and counsel to make business decisions concerning your PPP loan.

- **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**, one purpose of PPP funding was to help your organization retain employees and pay employees at pre-pandemic earning levels you could not or would not do absent the SBA loan. If that is the case, 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 this position — 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 U.S. Small Business Administration. If you are analyzing whether you wish to return the proceeds of a PPP loan by the **May 7, 2020 deadline because of recent SBA positions on alternative liquidity, you should take into account this altered risk/reward analysis**. There has already been significant criticism of the new IRS position, and there is always the possibility of further changes. However, as the May 7 deadline approaches, you will have to take into account enforcement guidance as it exists today.

We will keep you informed of any corresponding guidance from the federal government or related material from NADA. In the meantime, see [this summary](#) from the accountants at Dixon Hughes Goodman LLP.

Federal Reserve makes changes to Main Street Lending program.

Last month, the Federal Reserve Board and Treasury announced the Main Street Lending program, designed to provide further payroll assistance for small and mid-sized businesses affected by the coronavirus.

While the program was welcome added support for dealers, including those who have obtained a PPP loan, certain restrictions in the Main Street Lending program as announced may have kept dealers from wanting to pursue such a

loan. On April 16, NADA's Paul Metrey wrote the Federal Reserve, thanking it and asking that it remove such unnecessary limitations. See [the letter](#).

We are pleased to share the FRB has announced NADA-recommended changes to the program. An S corporation or other tax pass-through entity that is an Eligible Borrower under the program can now make distributions "to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings," according to the [FRB's FAQs](#) (effective April 30, 2020).

See [NADA's revised summary](#) of the program (updated May 1) and the [FRB's Main Street Lending webpage](#) for more.

So you've tried to rehire a previously laid off employee, but they declined your offer. Will this reduce your PPP loan forgiveness amount?

No. According to [FAQs](#) the SBA and Treasury updated May 3, the agencies will soon issue an interim final rule making clear that if you laid off an employee, offered to rehire that same employee, and the employee declined your offer, that will not work against you in the CARES Act's loan forgiveness calculation.

The answer to Question 40 of the FAQs stipulates, "[t]he interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower." Former employees who deny such offers of re-employment may lose continued unemployment compensation.

Sticking with the PPP, a separate SBA/Treasury [interim final rule](#) indicates borrowers cannot take multiple draws from a PPP loan and thus delay the start of the eight-week covered/forgiveness period. See [NADA CARES Act FAQs](#) (updated May 1) reflecting both this guidance and the SBA/Treasury FAQs mentioned above.

More than ever, it is a pleasure to serve the new car and truck dealers of Virginia.

Sincerely,



Donald L. Hall
President and CEO