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April 28, 2020

VIA Electronic Submission: www.regulations.gov

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd St., SW
Washington, DC 20416

RE: RIN 3245-AH34, Interim Final Rule, 13 CFR Part 120, *Business Loan Program Temporary Changes; Paycheck Protection Program; Docket No. SBA-2020-0015*

Dear Administrator Carranza:

On behalf of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide, I write on behalf of the nation's franchising community, which prior to the COVID-19 pandemic, was comprised of over 733,000 establishments that employed nearly 8 million individuals and contributed \$674.4 billion of economic output to the U.S. economy. We greatly support and appreciate your leadership in providing relief for franchise business owners, their workers, and families experiencing financial losses related to COVID-19.

IFA strongly supports the refunding of the Paycheck Protection Program, which is vital to the survival of the franchise sector, particularly for the 75% of franchise owners who employ fewer than 20 people and the 89% of franchise owners who have not yet received funding. Today, we respectfully request your consideration of our concerns with the "rolling guidance" being released by the U.S. Department of Treasury. We want to ensure that the franchise owners who employ millions of workers are not overburdened or deterred from accessing the aid Congress has provided specifically for them. We understand and appreciate your mission to ensure that the nation's small businesses are able to apply for and receive funding through the PPP as soon as practicable. However, the issuance of multiple rounds of guidance creates uncertainty within the business sector, exacerbating the complexity of finding a viable path towards business survival during this critical time.

For these reasons, we urge the SBA to issue final guidance that clarifies and maximizes franchise eligibility in the PPP, as in line with Congressional intent. We share your mutual goal of providing liquidity to the economy and appreciate your efforts to ensure the smallest businesses in greatest need are better equipped to compete and survive. With this in mind, we urge you to address the following:

- **Clarify Small Business Franchise Eligibility in the Paycheck Protection Program.** Congress intended to maximize small business franchise eligibility in the PPP by providing a specific and comprehensive waiver of the SBA affiliation rules. Agency guidance issued on April 13, 2020, led to numerous denials of eligibility to certain franchise owners, brands, and unit operators. Clarifying Congressional intent and maximizing eligibility will ensure the workforce can stay connected to their employers.

- **Employee Size:** *Any* “business concern” (and *each* business concern) operating as a franchise in a system registered on the Franchise Registry should be eligible for a covered loan without regard to its number of employees (i.e., even if a single franchisee entity employs more than 500 people). *This interpretation would be consistent with Congressional intent to protect all businesses operating in the franchise sector without limitation, especially since there is no employee limitation in the statutory language. The unit economics of each business are substantially similar.*
- **The SBA Franchise Directory:** Franchise eligibility in the PPP program should *not* be limited to companies affiliated with a brand on the SBA Franchise Directory. The plain meaning of the CARES Act should provide eligibility for any franchisor or franchisee, even if such companies are not on the Franchise Registry or have been previously denied listing on the SBA Franchise Directory, so long as the entity meets the 500-employee cap (which would be required for non-Franchise Registry franchises).
- **Franchisor Eligibility for Corporate Locations:** Franchisors should be eligible for the PPP program for their corporately-owned locations. This interpretation would be consistent with Congressional intent to protect all businesses operating in the franchise sector and the absence of statutory language restricting loan availability to a franchisee; the identifier code assigned by the Franchise Registry is for the benefit of both franchisor and franchisee.
- **Alter the 75/25 PPP ratio that limits non-payroll costs to 25% of the loan.** Small businesses report that a 50/50 ratio to account for debt service, such as utilities and rent, would provide greater relief during the pandemic and better protect small businesses from failure. As you are aware, many of these small businesses – gyms, daycare centers, salons, and the like – are fully closed and in desperate need of maximum relief to cover payroll and non-payroll expenses. Because of the agencies’ election to adopt a 25% non-payroll restriction, the businesses which have been hit the hardest will receive less aid than those hit the least.
- **Allow small businesses to choose a PPP loan period that is reconciled with the end of stay-at-home orders and government-mandated closures.** As currently structured, the eight-week loan period begins on the date the lender makes the loan disbursement to the borrower. By providing flexibility to borrowers to begin the eight-week loan period after the stay-at-home orders are lifted and non-essential businesses can reopen and rehire workers.
- **Ensure small business owners are not penalized if the headcount cannot be restored even after a good faith effort to rehire workers.** When calculating loan forgiveness, a safe harbor should be provided to employers who make a good faith certification that they made efforts to rehire workers, but were unable to do so through no fault of their own.
- **Restore the PPP loan term from 2 to 10 years,** as originally intended by the CARES Act.
- **Discourage healthy businesses from applying.** When calculating loan forgiveness, borrowers should be required to certify “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant” by providing documentation of reductions in revenue; whether the entity is in a “deeply affected industry”, as determined by the Administrator; whether the entity was subject to a mandatory governmental shutdown and unable to institute tele-work or other remote options; whether the entity’s supply chain was substantially disrupted; or whether the entity experienced a significant disruption to the health and safety of its workforce.

- **Define “large” companies for the purposes of Question 31 in the U.S. Department of Treasury’s Frequently Asked Questions document published on April 26, 2020.** Question 31 requires large companies to certify their inability to access “other sources of liquidity”, which directly conflicts with the suspension of this requirement in the CARES Act. Even if Question 31 applied only to publicly-traded companies, our small business owners are concerned that the rules and guidance will continue to change, even after loan applications have been submitted and loan decisions have been made, which questions the stability of the PPP program and relief offered. Considering 75% of IFA’s franchisor members are comprised of “emerging franchisors” with less than 100 units, these small business operations would, under the latest guidance, be burdened by having to produce new evidence of revenue projections, working capital needs, and documentation of liquidity sought through lenders or equity firms. Not only will this extensive documentation curtail the ability of small business owners to get much needed liquidity as fast as possible before the PPP’s latest funding evaporates, but it was expressly prohibited by the CARES Act. The lack of clarifications surrounding Question 31 is resulting in franchisors and franchisees questioning whether to make reductions in staff and may delay the ability of small business franchises to access the working capital they desperately need.

Thank you for your leadership and consideration of our comments. We stand ready to work with you in this critical moment.

Sincerely,



Robert Cresanti, CFE
President and CEO
International Franchise Association

CC: The Honorable Steven Mnuchin