



April 9, 2020

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Chuck Schumer  
Democratic Leader  
United States Senate  
Washington, DC 20515

Dear Speaker Pelosi and Leaders McConnell, McCarthy, and Schumer:

The retail sector of the American economy employs more workers than any other sector. According to recently completed PwC research on the employment footprint of the American retail sector, more than 52 million Americans work in jobs in retail or created because of retail activity. Many of these jobs are at risk in the current pandemic. Accordingly, the National Retail Federation urges Congress to build upon the historic CARES Act and provide additional relief.

Government shelter-in-place orders have been adopted to prevent the spread of disease. Aside from a small number of designated “essential” businesses, these orders have forced most retail stores to close. If retailers were air carriers, these closure orders would be directly akin to grounding domestic air travel. Recent analyst data shows that foot traffic in specialty retail, apparel, and luxury segments is declining dramatically. According to a Cowen Retail Team report, U.S. retail traffic in the fourth week of March in these segments decreased by 97.6% versus the same week in the year before. Similarly, traffic in apparel stores decreased 99.3% on a year over year basis.

As retail businesses continue to deal with catastrophic impacts from COVID-19, including government-mandated restrictions and closures, it is critical to ensure relief programs are sufficiently funded and available to more retailers. Attached is a set of recommendations that members of NRF have identified as being necessary improvements to the CARES Act.

Thank you for your leadership, and please do not hesitate to reach out with any questions you might have.

Sincerely,

A handwritten signature in black ink that reads "David French". The signature is stylized and cursive.

David French  
Senior Vice President  
Government Relations



## Technical Corrections and Enhancements to the CARES Act

### Title I: Enhance and Extend Support for Employees of Small Businesses

#### Paycheck Protection Program (PPP)

While public health measures require the retail industry's customers to stay at home and businesses to close, the PPP is intended to provide short-term bridge funding to help small businesses cover basic payroll costs and expenses. Program eligibility should be expanded, however, to provide meaningful relief for a larger number of severely impacted small businesses.

#### Expand Eligibility

- **Small businesses with multiple locations**

Under the CARES Act, certain business concerns with more than 500 employees spread over multiple locations or across multiple NAICS codes are prohibited from receiving a PPP loan, with the exception of business concerns in the lodging and restaurant industries. This limited exemption should be expanded to cover other severely impacted industries, including retail and entertainment.

- **Expand multiple location waivers to entertainment and retail.** Amend Sec.1102(a)(D)(iv) of the CARES Act to allow businesses in severely impacted industries, including arts and entertainment (NAICS 71) and retail trades (NAICS 44-45), with multiple physical locations, but less than 500 employees per location, to receive PPP loans.
- **In the case of entities that operate in one or more unrelated NAICS codes, waive affiliation rule for an entity that has fewer than 500 employees in a particular NAICS code.**

#### Ensure Loan Amounts and Loan Forgiveness Match Small Business Needs

- **PPP loans should reasonably cover BOTH payroll and nonpayroll expenses**

The calculation for maximum PPP loans is just 2.5x the average monthly payroll for 2019 and is inadequate to help small businesses cover both payroll AND expenses during the covered period.

- **Calculate maximum loans at 4x average monthly expenses.** Revise how the loan amount is calculated to include the average payroll, mortgage interest, qualified rent, and utilities for 2019, up to a maximum of \$10 million. This revised calculation will provide small businesses with more flexibility to cover both basic employee costs and necessary expenses, while businesses are closed in the interest of public health.

- **Allow flexible loan forgiveness for small retail and restaurant businesses with few or no customers.** Necessary public health measures have caused small businesses to lose most of their customers or close entirely. Without customers, there is no reason for small businesses to rehire employees to normal levels. Yet, these businesses must also pay rent, mortgages, utilities and other basic costs during the shutdown and beyond. Unfortunately, the PPP forces small businesses to rehire workers to normal levels, even without customers, and discourages them from using loan proceeds to cover basic expenses. For example, the terms of the PPP calculate loan forgiveness based on rehiring to normal business levels and requires that 75% of loan proceeds be used on payroll costs in order to be forgiven. This makes the PPP impractical for helping businesses stay afloat while they are closed or have very few customers in the interest of public health.
  - **Require the SBA to allow small businesses that are closed or have very few customers compared to 2019 to use up to 75% of PPP loan proceeds on payroll, rent, utilities, debt obligations.**
  - **Require the SBA to allow full loan forgiveness on any amount used to cover eligible nonpayroll expenses.**

#### Extend PPP and Increase Appropriations

- **Extend PPP to cover the worst months of the economic slowdown**  
The PPP is expected to run out of funding within the next several weeks and the covered period for the program ends on June 30, 2020. It is clear that extended public health restrictions and a slow return to normal work, public gathering and travel patterns will result in small businesses having limited customers and revenue far beyond June 30.
  - **Extend PPP through December 2020.** This will ensure the PPP provides support through the worst of the economic slowdown.
  - **Appropriate an additional \$600 billion for PPP.** This will ensure the program is sufficiently funded through December 2020.
  - **Allow small businesses to receive up to three PPP loans.** Permit small businesses that have already received a PPP loan to apply for up to two additional 3-month PPP loans if the business interest can prove that proceeds from previous loans have been expended.

#### Economic Injury Disaster Loans

Since Economic Injury Disaster Loans (EIDLs) provides the base level of assistance for the many small businesses and organizations struggling to survive, it's important to get it right and ensure the economic problems created by the virus are not allowed to wipe out huge swaths of the economy. It's critical that the next phase of relief:

- **Increase EIDL funding to \$50 billion:** This will help small businesses access EIDL loans throughout the full length of the outbreak.
- **Enable businesses to access a second EIDL:** Allow eligible entities to take out a second loan if they are still unable to meet their ordinary expenses and they exhaust funds from the first loan.

- **Increase second EIDL cap to \$10 million:** Increase the loan cap to \$10 million for second loans, with an emergency grant of \$500,000, using the same process provided under Section 1110(e) of the CARES Act.
- **Waive all personal guarantees and collateral requirements:** These requirements are not feasible during a protracted and severe economic shutdown.

## **Title II, Subtitle C: Enhance Tax Relief for Businesses of All Sizes**

### **Employee Retention Tax Credit**

Employers are desperate to keep their workers, but with no revenue coming in due to mandated shutdowns and other social distancing measures, it's critical that the Employee Retention Credit be enhanced to help employers keep workers on the payroll, especially those not eligible for other forms of relief in the CARES Act. To prevent further job loss, the next phase of relief must—

- **Increase the max wages allowed for the credit,** under Section 2301(b)(1) of the CARES Act, to \$20,000 per quarter.
- **Allow taxpayers to claim the credit against payroll tax deposits** rather than payroll tax liability, to ensure cash-strapped employers can keep their employees on the payroll for as long as possible, particularly when used with the deferral of payroll taxes.
- **Allow employers with more than 100 employees to use the credit** for employees who are still performing some services.

### **Deferral of Taxes**

Deferral of certain tax payments will provide much needed liquidity without increasing the federal deficit. For retailers, the added liquidity will allow them to pay fixed costs, including payroll, until customers can return to stores.

- **Delay the IRS tax filing and payment date for retailers who are fiscal year taxpayers.** The IRS has already postponed the tax filing and payment date for taxpayers with payments due on April 15. Most retailers close their books on January 31 to account for the holiday shopping seasons, and file their tax returns on May 15, instead of April 15. Because retailers are deeply impacted by social distancing and store closures, the added liquidity that would come from permitting them the same deferral of tax payments that other taxpayers get is extremely important for their ability to pay employees and other fixed costs.
- **Allow taxpayers that receive loan forgiveness under the PPP to defer payroll taxes** owed this year to the next two years, as provided under Section 2302 of the CARES Act. Since economic activity is entirely frozen and inaccessible to many businesses, many of them who use the Paycheck Protection Program to cover employee compensation will not have enough cash on hand to pay the federal payroll taxes connected to that compensation. Therefore, it's important that they can also defer payroll taxes for any compensation provided through the Paycheck Protection Program, without undermining the main benefit of the program, namely loan forgiveness.

### **Expansion of the Net Operating Loss Carryback**

Net Operating Loss Carrybacks (NOLs) also provide an important source of immediate liquidity for taxpayers by allowing taxpayers to take a current year loss against a past year when the company was profitable and had tax liability. If a business cannot use the carryback rules, it must wait to offset the current year's loss against a future year when it is profitable again. Given the current economic climate for many retailers, it is unclear whether they will still be in business in future years if they do not have additional liquidity now. For retailers, the added liquidity will allow them to pay fixed costs, including payroll, until customers can return to stores.

- Expand the ability to utilize NOL carryback by permitting carryback for 10 years and changing ordering rules so that GILTI does not eliminate benefits of the carryback that was added by the CARES Act.

## **Title IV: Enhance and Extend Support for Employees of Larger Businesses**

### **Exchange Stabilization Fund**

The Exchange Stabilization Fund (ESF) is intended to help larger businesses retain employees and remain solvent during the protracted economic shutdown. Unfortunately, the ESF only provides severely distressed businesses with additional debt in the form of loans or loan guarantees, which prevents borrowers from rehiring and powering the economic recovery. To enhance the ESF, the CARES Act should be amended to:

- **Provide loan forgiveness that mirrors PPP loan forgiveness.** Enable mid- to large size businesses to obtain up to 3 months of loan forgiveness for employee retention and basic expenses.