May 15, 2020

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

Dear Speaker Pelosi and Leader McCarthy:

On behalf of the International Franchise Association (IFA), the world’s oldest and largest organization representing franchising worldwide, I write to express our views on the “HEROES Act.” While the bill includes some welcome improvements to the structure of the Paycheck Protection Program (PPP), we believe the overall HEROES Act falls far short of providing the necessary relief for workers, small businesses, and the broader economy to ensure our members survive the COVID-19 pandemic. Furthermore, we urge the House to pursue an aggressively bipartisan process to match the heroic efforts of American small businesses and their employees at this historic time.

Prior to COVID-19, America had 733,000 franchise establishments that employed more than 7.6 million Americans. These businesses operate in hundreds of business lines, including food and beverage, automotive, education, fitness, residential services, senior health services, salons, and hotels. The vast majority of these franchise owners are small business owners in every sense. According to industry research firm, FRANdata, 75% of all franchise owners have fewer than 20 employees. Franchising is also more diverse than non-franchise businesses: nearly 30% of franchises are minority-owned, compared to 18% of non-franchised businesses.

Results from a recent IFA survey revealed that 74% of franchise businesses in the country are closed due to COVID-19. The CARES Act provided a temporary lifeline to many of these businesses, and we appreciate that the HEROES Act makes bipartisan, commonsense reforms to the PPP, which will: (1) extend the program to December 31, 2020; (2) extend the rehiring deadline for loan forgiveness from 8 to 24 weeks; (3) extend the loan maturity date from 2 to 5 years; (4) expand eligible expenses to include mortgage, lease, and utility obligations; (5) provide an important “hold harmless” provision to business owners who were unable to re-hire employees to meet the loan forgiveness obligations; (6) include set-asides for micro-businesses and CDFIs; and (7) expand eligibility for 501(c)(6) organizations. We also support the enhancements made to the Employee Retention Tax Credit (ERTC), which will complement the PPP and allow business owners to claim the credit for payroll that is not included in the PPP loan forgiveness calculation.

Out of all of these provisions, we highlight the urgent need to provide businesses with certainty on the loan forgiveness calculation. At the time of obtaining the PPP loans, significant decisions were made on maintaining employment, and those business owners should be able to rely on the CARES Act. The extension of the 8-week loan forgiveness provision from 8 to 24 weeks is a needed improvement that will be beneficial to many, especially to those concepts that have not been able to open during the initial 8-week period.
However, left out of the HEROES Act is a PPP reform that will protect franchise eligibility in the program. Approximately 35,500 franchise businesses that are associated with 95 franchise brands were not provided eligibility in the program, as the U.S. Small Business Administration (SBA) has required all brands to be temporarily listed on the SBA Franchise Directory. More than 160,000 employees would benefit from a legislative solution that prevents the SBA from imposing the directory requirement.

Additionally, we urge you to carefully consider the practical impact of extending the expanded unemployment insurance provisions beyond July 31. Many employers are still struggling to survive and even put food on their own tables. While some attempt to re-open, they are finding it extremely challenging to bring workers back online. Many workers are reporting they prefer to benefit from the inflated unemployment insurance system, rather than re-start employment, while the government grapples with expanding access to testing and necessary Personal Protective Equipment (PPE). An extension of expanded unemployment will only make this economic recovery that much more difficult. Instead, we strongly urge Congress to provide financial assistance to small business owners who need access to PPE and testing. Likewise, as small business owners adapt to a new norm, we also ask that you protect them from unscrupulous lawyers seeking to take advantage of the pandemic by blindsiding them with COVID-related lawsuits.

For these reasons, we believe the HEROES Act does not go far enough to help the franchise sector and its workers survive. Instead, we urge you to enact a series of pro-growth policies aimed at ensuring America’s franchise businesses can safely and fairly return to their pre-pandemic levels as quickly as possible, which will also encourage saving as many jobs as possible, including:

- **Liquidity to Help Businesses Remain Solvent during the Pandemic.** Congress should build upon the relief provided in CARES to address the continuing and overwhelming need for additional capital support to businesses. Whether Congress considers direct financial assistance to small businesses, an American Recovery Fund that is administered by the U.S. Department of Treasury, or a concept such as the RESTART program that provides low-interest, long-term loans with a longer-term amortization schedule for affected businesses, such relief is urgently needed to allow businesses to remain solvent throughout the pandemic, meet debt obligations, and rehire and retrain staff as owners re-open their doors.

- **Extend, Expand and Improve the Paycheck Protection Program** to maximize eligibly and create more flexibility for businesses to support their employees and keep their businesses afloat.
  - **Maximize Franchise Eligibility in the Paycheck Protection Program** – Congress intended to maximize franchise eligibility in the PPP by providing a waiver of the SBA affiliation rules. However, SBA guidance issued on April 13, 2020, led to numerous denials of eligibility for franchise owners, brands, and unit operators who are not on the SBA Franchise Directory. Maximizing eligibility will ensure the workforce can stay connected to their employers. Franchisors with corporate locations or franchisees that meet the definition of a business format franchise under part 436 of title 16,
Code of Federal Regulations should be eligible for a PPP loan, so long as any single location has less than 500 employees per location.

- **Alter the 75/25 PPP ratio that limits non-payroll costs to 25% of the loan** – 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. 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’ decision to adopt a 25% non-payroll restriction, the businesses which have been hit the hardest will receive less aid.

- **Amend the requirement that PPP payroll proceeds be used in the immediate eight consecutive weeks from loan origination** – This will provide fully closed small businesses the flexibility to rehire workers once the stay-at-home orders are lifted and non-essential businesses are allowed to reopen.

- **Amend the PPP loan term from 2 to 10 years**, as originally intended by the CARES Act.

- **Increase the maximum PPP loan to 8 months of covered costs** – PPP loans should cover both payroll and operational expenses to ensure employees have a business to return to post health crisis.

- **Extend the covered period for loan forgiveness under PPP to December 31, 2020 and consider automatic refunding triggers based on economic indicators** – The current date of June 30 is not realistic based on shelter in place orders’ anticipated return of demand and business operations.

- **Separate PPP from 7(a) loan program** – The PPP has been overwhelmingly popular and necessary in recent weeks. It needs to be prioritized and should operate independently from the traditional 7(a) loan program, particularly given once PPP funds are exhausted, the 7(a) program is likely to shut down as well.

- **Provide Liability Protection** for franchise businesses that are currently preparing their employees, management teams, facilities, equipment, products, and services in anticipation of the nation’s economy reopening. We are becoming increasingly concerned about efforts by trial lawyers to file unfounded lawsuits against small businesses, alleging that customers or employees were infected with COVID-19 because of the nation’s essential critical infrastructure businesses that kept operating. Congress and the administration should provide Good Samaritan protection for essential and non-essential business owners from frivolous lawsuits pertaining to COVID-19.

  - ** Include Joint Employer Liability Protection** – Franchisors and franchisees will be working to implement new policies and procedures to protect workers and employees from COVID-19. Congress should make clear that franchisors and franchisees are not jointly responsible for the terms and conditions of employment over the same group of employees. Evidence of joint liability should especially not include best practices guidance, educational resources, or training as it relates to COVID-19.
• **Business Interruption Insurance** – Congress should ensure existing business interruption coverage covers losses related to COVID-19. Requiring coverage will provide comprehensive relief and assistance to residents and local business owners being denied coverage.

• **Unemployment Insurance Benefits** – IFA supports providing furloughed or unemployed workers with additional unemployment insurance benefits during the pandemic. However, we urge Congress and the administration to ensure UI enhancements are capped at levels commensurate with employees wage rates before the pandemic. Doing so will ensure demand exists for jobs to return to when offered by employers after stay-at-home orders are lifted and a business can reopen. Furthermore, enhanced UI benefits that exceed an employees’ previous pay rate create perverse incentives for employers seeking to bring employees back and receive loan forgiveness as part of the PPP.

Small businesses are closing. Employees are losing hope. There is no time to lose by considering partisan bills with ancillary objectives. Astonishingly, the U.S. lost 1,082,200 franchise jobs in April, according to the ADP National Franchise Report. Each day that passes means that more Americans lose their jobs and their businesses, and so we urge the House to pursue an aggressively bipartisan & bicameral course to ensure meaningful relief legislation can pass a divided Congress. On behalf of our member brands, our franchise businesses - and most importantly - franchise employees and their families, we thank you for considering our views. We stand ready to continue to work with you during this critical moment.

Sincerely,

Matt Haller
Senior Vice President of Government Relations & Public Affairs
International Franchise Association