



April 10, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
United States Small Business Administration
409 3rd Street, SW
Washington, D.C. 20416

Re: Request to Authorize Additional Limited Category of PPP Lenders

Dear Secretary Mnuchin and Administrator Carranza:

As the heads of the trade associations representing the nation's more than 18,000 franchised automobile and truck dealerships (NADA, ATD, NAMAD, and AIADA) and the overwhelming majority of motor vehicle manufacturers that own captive finance companies (Auto Innovators), we write to request that the Small Business Association (SBA) and the Department of the Treasury (Treasury) immediately exercise their joint authority under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to identify motor vehicle captive finance companies that currently provide commercial loans to dealers/distributors of their affiliated manufacturers as a separate and distinct group of additional lenders under the Paycheck Protection Program (PPP).

The action we are seeking is needed to carry out the purpose of the PPP "to provide economic relief to small businesses nationwide adversely impacted" by the COVID-19 crisis. The pandemic and the responsive measures it has prompted have created enormous economic challenges for small businesses throughout the nation, including main street automobile and truck dealers. This has included, in part, the layoff of an extraordinarily large number of dealership employees as they have been forced to significantly scale back or completely close their operations in compliance with various state governmental orders.

The PPP seeks to mitigate this condition by providing critical payroll support – through an expanded group of SBA lenders – for the rehiring and retention of persons employed by small businesses. It provides this support through an expanded set of Section 7(a) loans and, as

currently implemented in the April 2, 2020 PPP Interim Final Rule, authorizes several new categories of lenders to disburse them. These categories include (i) federally insured depository institutions and credit unions, and (ii) other depository and non-depository institutions that conform to certain requirements, including compliance with the Bank Secrecy Act (BSA).

Regrettably, however, these categories do not allow a critical group of lenders to participate in the PPP – namely, automobile and truck manufacturer captive finance companies (Ford Credit, GM Financial, Honda Financial Services, etc.) – and their inability to participate is resulting in a large number of small business automobile and truck dealers having to layoff – or losing their ability to rehire – much of their workforce.

Most franchised automobile and truck dealers have long established lending relationships with their manufacturer's captive finance company that support their essential financing needs for working capital, real estate, wholesale inventory purchases, and retail installment sales and leases. This typically is their primary lending relationship, so many dealers do not have an established relationship with a federally insured depository institution that would facilitate quick access to PPP funds. This condition is frustrating the goals of the CARES Act by preventing the disbursement of PPP funds to dealers and, in turn, their employees.

To be sure, the regulatory dilemma is not that the current categories of eligible PPP lenders *per se* exclude captive finance companies. Rather, the problem is that those categories *effectively* exclude captive finance companies by requiring them to demonstrate compliance with the BSA before they can be eligible to make PPP loans to authorized dealers of their manufacturing affiliate's products. The BSA imposes a series of requirements on banks, including the need to develop an anti-money laundering program and customer identification procedures. While captive finance companies have developed and implemented robust compliance programs covering their financing business, they have not been required – and therefore have not developed – procedures that are applicable to banks. That does not mean, however, that they are unregulated. Captive finance companies are supervised by both the Consumer Financial Protection Bureau and state regulators and routinely must demonstrate compliance with an array of federal and state laws and regulations. These factors, coupled with the reality that virtually no little money laundering and ID fraud risks exist with their longstanding automobile and truck dealer customers, removes the need to impose the BSA requirements on captive finance companies.

In light of the exigency to expand broader and quicker access to PPP funds to automobile and truck dealers by responsible lenders, we request that you immediately publish guidance under the PPP Interim Final Rule identifying motor vehicle captive finance companies as a separate and distinct category of “additional lenders” that is authorized to make PPP loans. To facilitate this request, we have set forth in the attachment draft guidance language that could be used for this purpose.

We thank you for the extraordinary and ongoing efforts Treasury and SBA have taken to support the nation's employees and manage the COVID-19 crisis.

Sincerely,



Peter Welch
President and CEO
National Automobile Dealers Association
and American Truck Dealers



John Bozzella
President and CEO
Alliance for Automotive Innovation



Damon Lester
President
National Association of Minority
Automobile Dealers



Cody Lusk
President and CEO
American International Automobile
Dealers Association

Attachment

Cc: The Honorable Kathy Kraninger
Director, Consumer Financial Protection Bureau

Draft Guidance¹

Any depository or non-depository financing provider that (i) is affiliated with the manufacturer of automobiles or trucks; (ii) originates, maintains, and services business loans or other commercial financial receivables and participation interests for authorized dealers of its affiliated manufacturer; (iii) has a formal compliance program relating to, e.g., auditing and compliance with applicable laws; (iv) has been operating since at least February 15, 2019; and (v) has originated, maintained, and serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months, shall be deemed to satisfy the requirements of a lender under 3.a.iii.III. of the Interim Final Rule and is therefore designated as an additional lender for purposes of making loans under the PPP to authorized dealers of its affiliated manufacturer, and is automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (SBA Form 3506 or 3507) unless currently designated in Troubled Condition by its primary federal regulator or is subject to a formal enforcement action by its primary federal regulator that addresses unsafe or unsound lending practices.

¹ As an alternative to issuing guidance that identifies this additional category of eligible PPP lenders, SBA could include it as a new paragraph (IV) under 3.a.iii of the Interim Final Rule.