April 8, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Washington, DC 20510

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20510

Dear Speaker Pelosi, Leader McConnell, Leader Schumer & Leader McCarthy:

On behalf of the American Hotel & Lodging Association (AHLA), the sole national association representing all segments of the U.S. lodging industry, including iconic global brands, hotel owners and franchisees, lodging real estate investment trusts (REITs), hotel management companies, independent properties, bed and breakfasts, state hotel associations, and industry suppliers, we thank you for your steadfast leadership in guiding our nation through this unprecedented health and economic crisis. The economic impact of the COVID-19 health crisis on the hotel industry is estimated to be **seven times greater** than the September 11th terrorist attacks.

As you consider technical corrections and amendments to the Coronavirus Aid, Relief, and Economic Security (CARES) Act or additional legislation to address the economic fallout due to COVID-19, we urge you to consider the following technical corrections and critical enhancements which are necessary to aid the hotel and lodging industry through this incredibly challenging period.

I. Technical Corrections Where Treasury Implementation and Guidance Has Departed from Congressional Intent

1. **Business Concerns with More than 1 Physical Location (Section 1102(a)(2) adding (36)(D)(iii) of the Small Business Act).**
    - **a.** AHLA proposes Congress should amend the CARES Act to ensure any business concern that employs not more than 500 employees per physical location and is in the accommodation or food service industry (NAICS Code Series 72) can submit an application for each eligible physical location.
    - **b.** Rationale: The CARES Act amends Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) to add a new section (36)(D)(iii) that provides for "any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursal shall

be eligible to receive a covered loan." This will require more than one application per business concern for each eligible location. Currently the SBA Paycheck Protection Program lenders are only allowing one application per business concern (specifically, per EIN) even if they meet the requirement under (36)(D)(iii) as an eligible business that can submit applications for separate physical locations. The limitation on one PPP loan per EIN also limits hotel owners with multiple properties within a single LLC to a single PPP loan.

2. **The requirement that 75% of SBA Loan proceeds be used for Payroll Costs makes the program too restrictive and discourages companies from rehiring.**
   - **a.** AHLA proposes reducing the percentage threshold to 50% for hotels and related industries with significant real estate related costs. An average hotel pays more in debt service and real estate taxes than total payroll expenses. A hotelier unable to service debt and taxes is not likely to maintain or re-hire employees by taking on more debt that is not forgivable. An alternative remedy would be to extend the covered period until the December 31, 2020 (see item 2 under Amendments Necessary to the Hotel Industry below) giving the hotelier the opportunity to increase payroll expenses as demand returns.

   - **b.** Rationale**:** The CARES Act does not include a 75% rule rather it was included in guidance released by the SBA on April 2, 2020. When combined with the requirement that loan proceeds would be used to cover payroll costs from the date of the loan origination through 8 weeks renders the PPP inadequate for many hotel owners and makes it unlikely that most hotel businesses will utilize these proceeds to rehire their employees. The significant costs associated with operating a hotel far outstrip payroll costs. Consequently, most hotels will choose to remain closed because they will lose less money than if they attempted to reopen; payroll costs are less than 50% of total operating expenses. AHLA recommends reducing the threshold to 50% or allowing companies to use proceeds to cover payroll costs to the end of the year, not just the 8 weeks from loan origination. Companies have already incurred substantial financial losses. Allowing them to use proceeds from the SBA loan/grant to help their businesses recover will hasten their financial recovery and allow them to be able to rehire employees sooner.

3. **In the hotel and lodging industry, the eligible borrower for a PPP loan is the business entity responsible for employee payroll, benefit, and insurance expenses.**
   - **a.** AHLA seeks affirmation that the eligible borrower on a PPP loan is the entity ultimately responsible for the provision of employee payroll, benefit, and insurance expenses.

   - **b.** Rationale: The hotel industry utilizes a unique ownership and management structure. In a typical arrangement, a property owner contracts with a third-party management company to operate a hotel property, including hiring property employees. The property owner – or in the case of a REIT, a Tax REIT Subsidiary (TRS) who leases the property from the property owner - remains legally responsible, via the management contract, for reimbursing the third-party management company for all operating expenses, including employee payroll, benefit, and insurance. PPP loans are intended to provide a bridge for critical operating expenses, including payroll expenses. In the example provided above, the eligible PPP borrower would be the property owner or TRS, even though employees are employed by the management company.

4. **Counting Employees on Paid Sick or Emergency Leave (Section 1106(d))**
   - **a.** AHLA proposes Congress should amend the SBA PPP forgiveness provisions to provide for how to count employees that are out on paid sick or emergency leave during the covered period as required for businesses under 500 employees to provide under Families First Coronavirus Response Act (Public Law 116-127).

5. **The time period used for determining prior-year payroll and employee counts**
   a. AHLA recommends clarifying and using the calendar year 2019. Obtaining 2020 employee and financial information is more difficult in the current environment because of the COVID crisis. Some SBA banks are requesting the calendar year 2019 information. Some are on trailing 12-month periods ending February 2020. Having a trailing 12-month period that does not end on December 31 creates a significant amount of additional work for all parties. Plus, payroll data for year-end 2019 W2/W3 information are more readily available.

II. Critical Enhancements to CARES Act Supported by the Hotel Industry

Section 1102 – Paycheck Protection Program (PPP)

1. **Maximum Loan Amount should be amended to include a multiple of Covered Costs, as defined in the CARES Act, not just 250% of Payroll Costs.**
   a. AHLA proposes amending the maximum loan amount to eight (8) months of covered costs as defined in the CARES Act.

   b. Rationale: The maximum loan under the PPP, defined as 250% of average monthly payrolls for the prior calendar year, is insufficient for the hotel industry. Industries with significant real estate-based expenses, like hotels, typically have debt service and property tax requirements greater than payroll expenditures. Given the high costs of servicing real estate debt and taxes, along with significant insurance and utilities costs, only including 250% of average monthly payroll will cover less than 40% of basic operating costs during the allowable 8-week covered period. Consequently, many hotels will continue to furlough all or a substantial portion of their workforce due to lack of demand (or governmental order) and the SBA loan amounts, combined with limited funds allowed for non-payroll expenditures, require hotel owners to reduce payroll to meet debt obligations. Further, there is not likely to be sufficient demand to justify re-opening and re-hiring back employees in the near term or re-opening may not be permitted under local governmental orders.

2. **The requirement to spend PPP payroll funds in 8 consecutive weeks from the loan origination date may only temporarily delay job loss.**
   a. AHLA proposes amending the "covered period" found in section 1106 "Loan Forgiveness" to be defined as the time period between the loan origination date and the re-hire date or December 31, whichever is later.

   b. Rationale: If PPP funds are required to be spent prior to a return to normal business demand and operations, employers will be left with no revenue to maintain payroll after that 8-week period. Consequently, the goal of maintaining employees will be lost. Further, mandating payroll usage on the heels of the loan origination will almost assure that hoteliers will be forced to furlough employees after the 8-week period. In certain jurisdictions, bringing employees back to work would violate wide-spread shelter-in-place mandates and more importantly, presents a safety concern. By providing employers flexibility to utilize PPP payroll funds over a longer time period, many employees will be retained through the most severe period of revenue loss and return to full time employment once demand returns.

3. **Covered Period should be extended beyond June 30, 2020**.
   a. AHLA proposes amending the date to December 31, 2020.

b. Rationale: Many hotels have been forced to close by local and federal government mandates and executive action. If not directly ordered to close, business and leisure travel is almost non-existent due to shelter in place requirements, including some which are in place until June. Hotels are not likely to resume normal operations until much later this summer at the earliest. Additionally, many banks and financial institutions remain unable to accept PPP applications and/or process loans.

4. **Two-year Term on SBA loans is not enough time for the borrower to pay back the PPP loans.**
    a. AHLA proposes to increase the term of the loan to at least four years.

    b. Rationale: Full recovery for the lodging industry following both the September 11, 2001 terrorist attacks and the 2008 recession took more than two full years. Given the far greater impact of the COVID-19 health crisis, full recovery is not expected until 2022. It will take hotel owners more than two years to aggregate profits in sufficient amounts to pay back the PPP loans. Thus, most hoteliers will not have the ability to begin repayment of additional debt incurred because of this crisis until 2023 at the earliest.

Section 1106 – Loan Forgiveness

1. **Ongoing Franchise Fees are not specified as Utilities**
    a. AHLA purposes including and clarifying that ongoing franchise fees be included in covered costs under Section 1102 F(i) “Allowable uses of covered loans”.
    b. Rationale: in the same manner utilities are necessary in maintaining a hotel, franchise fees are a required contractual expense.
2. **Definition of “Covered Rent Obligation” (Section 1106(a)(4)).**
    a. AHLA proposes that Congress should amend the definition of “covered rent obligation” to include real property, including rent paid by a REIT Taxable REIT subsidiary to a hotel owner for the ability to occupy a hotel, and personal property. The definition of “covered mortgage obligation” includes “any indebtedness or debt instrument incurred in the ordinary course of business that—(A) is a liability of the borrower; (B) is a mortgage on real or personal property; and (C) was incurred before February 15, 2020;” but the definition of rent does not address personal property. Lots of small businesses rent equipment that should be eligible in addition to rent for real property.

Again, on behalf of our nation’s domestic lodging industry and the more than 8 million employees it supports, we thank you for your leadership during this unprecedented time and for your consideration of these technical corrections and critical enhancements to the CARES Act. We stand ready to work with you in this critical moment to help stabilize our economy and support our impacted employees.

Sincerely,

Brian Crawford
Executive Vice President of Government Relations
American Hotel and Lodging Association