



## Legislative Plan for The Survival of America's Small Businesses

1. **Extend Paycheck Protection program and Make Sure the Smallest Employers Get Help.** To help small businesses meet payroll, rent and mortgage interest payments, and utilities payments, and survive until at least June 30, 2020, Congress should appropriate \$400 billion more for the Paycheck Protection Program (PPP) (sec. 1102 of the CARES Act, Public Law 116-136), **of which not less than \$200 billion should be for loans to small businesses with 20 or fewer employees**, who have been disadvantaged in attempting to participate in the program.

2. **Increase flexibility for forgivable loan terms in the Paycheck Protection Program.** To ensure that small businesses have the flexibility they need to keep their businesses alive to support their employees, Congress should:

- Lengthen the eight-week window for forgiveness as government shutdown orders have been extended and the public health and economic future is uncertain. This broadened forgiveness window should be determined by small businesses, as the statute allows.
- Override the Small Business Administration requirement (85 *Fed. Reg.* 20811, April 15, 2020, see items III.2.o. and r.), which was not required by the Paycheck Protection law (sec. 1102 of the CARES Act), that 75% of a PPP loan must be used for payroll costs. Congress should eliminate this restriction unilaterally imposed by the executive branch or should at least reduce the requirement to a more reasonable 50%.
- Congress should expand the maximum loan amount to more than 250% of payroll and include operating expenses in the maximum loan amount calculation. Further, Congress should extend the covered period of the PPP.
- Increase the loan interest rate from 1% to the rate established by the Federal Reserve's Main Street Lending Program for businesses with more than 500 employees to deter large businesses from using the PPP as a low interest loan when other loan programs would be more appropriate for them.
- Allow for "in good faith" re-hire efforts to satisfy the pre-crisis employee count requirement for loan forgiveness to those employers who have already reduced staff. Employers who want to retain their reduced workforce levels using the loan should be allowed to take advantage of loan forgiveness as many will not be able to compete with more generous UI benefits in attracting workers back into the labor market.
- Allow borrowers to use the loan (and loan forgiveness) for those permissible expenses under the Economic Injury Disaster Loan. The PPP and the EIDL loan

programs offer varying financial supports for small businesses. The EIDL program allows for an expanded list of qualifying working capital expenses compared to the PPP. If the PPP is the only program available to small business owners, those needing more financial support for those expenses covered in the EIDL will be severely disadvantaged.

- Expand the list of qualifying expenses under the Paycheck Protection Program.

3. **Prohibit Discrimination Against Small Employers in the Paycheck Protection Program.** To eliminate financial institution loan practices of big-customers-first and favored-customers-first in the PPP -- practices that leave the smallest businesses with the greatest need at the back of the loan line -- Congress should amend section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) to prohibit discrimination among applicants in the order or speed of processing or granting of loans based in whole or in part on the number of employees of the applicant business, dollar value of the business, or length of relationship of the business with the financial institution.

4. **End the Costly COVID-19 Mandates on Small Businesses for Paid Sick Leave and Extended Family and Medical Leave on May 31, 2020.** To lift from small businesses the heavy burden of the cost of new leave mandates when they can least afford them, Congress should repeal, effective at the end of May 31, 2020, Divisions C and E of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-27) and the amendments made by those Divisions.

5. **Fully Fund the COVID-19 Economic Injury Disaster Loan Program and Improve the Related Grant Program.** To help small businesses survive the substantial economic injuries COVID-19 has caused them, Congress should (a) raise from \$10,000 to \$25,000 the maximum allowable emergency advance EID grant (sec. 1110(e)(3) of the CARES Act), (b) appropriate such sums as may be necessary for COVID-19 EIDL loans (sec. 7(b) of the Small Business Act), to remain available through December 31, 2020, and (c) require the Small Business Administration (SBA) to report monthly to the Congress and via the internet to the American people on the number of applications for EID loans, the mean and median times taken to process such applications, the number of loans granted, denied, and withdrawn, and the mean and median amounts of the loans granted.

6. **Recognize the Limits to the Ability of Small Businesses to Learn of and Comply with Laws and Regulations.** While large businesses have staffs of lawyers, accountants, and clerks to learn of and comply with laws and regulations, for small businesses such compliance activity often is a do-it-yourself off-hours assignment for the busy owner. Congress should enact legislation to provide that no penalty shall apply to a small business, for violation of a COVID-19 response statute (such as the Coronavirus Preparedness and

Response Supplemental Appropriations Act, 2020, FFCRA, CARES Act, and similar statutes) or regulations implementing such statutes, unless the violation was "willful." Willful should mean the person charged with violation of a rule knew that its conduct was prohibited by the rule, or that a reasonable person situated similarly to the person charged with violation of the rule would have known that its conduct was prohibited by the rule (with mere publication in the *Federal Register* not by itself giving sufficient reason to know).

**7. Tapered Transition Out of Programs After COVID-19 No Longer Represents a Significant Threat to Public Health.** Congress should ensure that COVID-19 relief programs for small businesses (specifically including the Payroll Protection Program) eventually end in a phased-out fashion, rather than a sudden shutdown, after COVID-19 no longer represents a significant threat to public health. After the COVID-19 crisis is over, the small businesses that survive will not suddenly achieve the robust economic state they may have enjoyed before COVID-19 arrived in the United States. The best for which they can hope is a slow and steady climb to that state. As the economic health of small businesses generally climbs bit by bit, COVID-19 federal relief to small businesses should go away bit by bit. Congress should enact statutory provisions to: (a) direct the heads of agencies administering COVID-19 small business relief programs to provide tapered transitions out of such programs under their existing authorities after COVID-19 no longer presents a significant threat to public health, and (b) if the existing authorities of those agency heads do not suffice to provide for tapered transitions, request that the President submit for the consideration of Congress such legislation as he may consider necessary and expedient to achieve such tapered transitions.

**8. Narrowly-tailor Any New Requirements Related to the Reopening to Account for the Realities of Different Industries and Business Sizes.** If ever there was a time for the federal government to avoid "one-size-fits-all" mandates on American businesses, it is now. As America goes back to work, Congress should recognize that all industries and businesses are not the same. For example, the testing and sanitation protocols for an orthodontist's office are necessarily going to be significantly different than those used by an autobody shop. Similarly, a business with five employees, four of which are in outside sales, will not have the same concerns as a 10,000-person firm with hundreds of outside sales representatives. Any new requirements to ensure the safety of employees returning to work should be flexible to the business size and industry.

**9. Require Each Agency to Conduct a Regulatory Look-Back Review in Light of the Government's Response to the COVID-19 Pandemic.** Section 610 of the Regulatory Flexibility Act (RFA) of 1980 requires each agency to develop a plan for the review of its existing rules that have or will have a "significant economic impact on a substantial number of small entities." As America comes back to work, Congress should, at a minimum, require

each agency that waived regulatory requirements during the crisis to conduct a 610 review of those regulations to determine if they even need to be reinstated.

10. **Statement of Policy from Congress on the Future of Small Businesses.** Prior to the arrival of COVID-19, small businesses accounted for half of the American economy and nearly half of all jobs. America's small businesses eventually will return to, and even exceed, such production of goods, services, and jobs in the future, thanks to the extraordinary entrepreneurs who create, own, operate, and grow small businesses in America and the employees of those businesses. Congress should recognize and encourage them by expressing the sense of Congress.