

# United States Senate

WASHINGTON, DC 20510

April 10, 2020

The Honorable Donald J. Trump  
President of the United States of America  
The White House  
1600 Pennsylvania Ave. NW  
Washington, DC 20050

Dear Mr. President:

We write to thank you for your outstanding leadership of the country during these extremely challenging times and to provide our thoughts on several ongoing economic difficulties being experienced by many of our nation's small businesses.

These are unprecedented times for our country as we continue to grapple with the public health crisis presented by COVID-19. We applaud the decisive actions you have taken to mitigate and reduce the negative health impacts of the virus. We also thank you for your leadership to lessen the economic blow of these essential health policies and for the partnership with Congress on passing the CARES Act to better protect American workers and the economy.

One of the areas of economic focus has rightly been on providing significant aid to negatively impacted small businesses who are suffering because of social distancing and forced closures. Restaurants, shopping malls, movie theatres and thousands of other small businesses have been required to temporarily close or reduce service. To provide these struggling small businesses and their employees relief during this difficult time, the CARES Act created the Paycheck Protection Program (PPP) a new small business lending facility at the Small Business Administration (SBA) that will provide billions of dollars of forgivable loans to impacted businesses with 500 or fewer employees. It is critical that the PPP begins releasing funds as quickly as possible to fulfill the intent of Congress. We thank you for making this program a top priority and look forward to continuing to work closely with your administration to ensure this program's effectiveness.

While Congress and the administration have chosen the PPP as the appropriate approach to get federal aid into the hands of small businesses, some stakeholders and state legislators have put forward proposals that would potentially undermine our understanding of contractual obligations. These proposals promote the idea of retroactively changing business interruption (BI) insurance contracts that do not cover pandemics and viruses, to then require the U.S. insurance industry to fund the relief to these small businesses. These proposals are counterproductive for several reasons.

First, insurance contracts are a foundational pillar of our economy and attempting to ex-post facto rewrite them through knee-jerk administrative action would undoubtedly undermine our insurance system and create major unintended consequences for new contractual relationships going forward. Second, if any attempts to legislatively or administratively rewrite insurance

policies in this manner are successful, the action could be litigated in the courts for years, guaranteeing that no money would make it to small businesses that need it.

Because BI insurance typically does not cover pandemics absent an explicit rider, insureds under these policies were never charged premiums for that risk and insurers did not reserve for or hold capital against the potential future loss. It is our understanding that most policies – especially those written in the aftermath of the 2002 and 2004 Severe Acute Respiratory Syndrome (SARS) epidemic – explicitly bar coverage for losses arising from communicable disease. If the insurance industry were now forced retroactively to cover perils that were never accounted for, commercial insurers could experience significant economic strain and/or insolvencies, given the magnitude of the current cumulative estimated claims. Adding another point of stress during these times, this would likely put our businesses in an even worse position - draining the U.S. insurance reserves to pay these claims could leave us in a position of having inadequate reserves to cover claims that are actually intended to be covered, such as damage from wind, fire, hail, and other covered perils.

The National Association of Insurance Commissioners, whose members are charged with ensuring the safety and solvency of the U.S. insurance industry, shares our concern. The NAIC issued a release stating:

“Insurance works well and remains affordable when a relatively small number of claims are spread across a broader group, and therefore it is not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period. While the U.S. insurance sector remains strong, if insurance companies are required to cover such claims, such an action would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.”

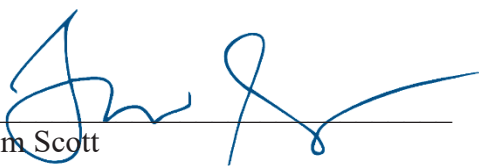
We stand ready and willing to work with you and our Congressional colleagues to ensure that U.S. small businesses have the funds they need to survive this difficult time. However, we cannot help one segment of the economy by seriously harming another. We must continue to work diligently to get the PPP funds out to as many small businesses as quickly as possible. If it becomes clear at some future point that we need additional funds or facilities to get necessary federal money in the hands of small businesses, we will work to achieve that goal at that time.

Finally, there have been several proposals floated by Members of Congress and private sector stakeholders that attempt to create a TRIA-like solution for future pandemics. We believe we must first solve the problems with the current pandemic before considering policies to address future ones. Also, based on our knowledge of the insurance industry and our conversations with industry experts, we remain very skeptical that any such proposal would be able to provide the appropriate coverage at an appropriate price for our nation’s small businesses. We look forward to having a more substantive debate on this


important topic once this current crisis has been resolved and when policymakers are better able to examine the needs of our small businesses and the potential policy options.

Thank you again, Mr. President, for your and your administration's steadfast work to protect the health and security of all Americans and our economy. We stand ready and willing to continue to work with you to address these critical issues facing our country today and tomorrow.


Sincerely,

  
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Tim Scott  
United States Senator

  
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Mike Crapo  
United States Senator

  
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Thom Tillis  
United States Senator

  
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M. Michael Rounds  
United States Senator

  
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Pat Toomey  
United States Senator

  
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Ben Sasse  
United States Senator

  
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David Perdue  
United States Senator

Cc: Hon. Steven T. Mnuchin, Secretary, U.S. Department of the Treasury