Independent Insurance Agents
& Brokers of America.

Statement for the Record
Submitted to the House Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance

"Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers"

November 19, 2020

Founded in 1896, the Independent Insurance Agents & Brokers of America (IIABA or the Big "I") is the nation's oldest and largest association of independent insurance agents and brokers, representing more than 25,000 agency locations united under the Trusted Choice brand. Trusted Choice independent agents offer consumers all types of insurance—property, casualty, life, health, employee benefit plans and retirement products—from a variety of insurance companies. Independent agents sell nearly 80 percent of all commercial lines insurance policies in the United States, and our expertise and experience with businesses and the commercial marketplace affords our membership a distinct perspective with which to speak on the topic of insuring against a pandemic.

The businesses and nonprofit organizations our members serve have been impacted by the COVID-19 pandemic in distressing and sometimes heartbreaking ways, and IIABA welcomes and greatly appreciates the subcommittee's examination of how to better prepare our country's economy against future pandemics. The world now recognizes that events of this nature can indeed occur, and we need to prepare for the possible occurrence of similar outbreaks in the future. Although the United States remains in the midst of the current COVID-19 pandemic, the discussion among policymakers, the business community, the insurance industry, and other stakeholders about how to address future pandemics has appropriately begun. IIABA looks forward to assisting your efforts.

The challenge with addressing pandemic risk is that these events possess unique characteristics and can have a global reach. They are unlike other types of risks that the insurance industry and private marketplace are typically able to address. As many experts and observers have noted, pandemics can produce an immense magnitude of potential financial losses, do not allow for the spreading of such risk in traditional ways, and make it challenging for the insurance industry to provide coverage to the millions of businesses and nonprofit entities in the United States. The simple and unfortunate reality is that the risk we are confronting is unique and anomalous and will require a prospective solution all its own. We can learn lessons and incorporate elements from past experiences, but there are no off-the-shelf public policy solutions.

IIABA believes any proposal for addressing future pandemics should satisfy the four principles outlined below:

- First, any legislative solution that is enacted and any product ultimately designed and offered as a result of that action must effectively meet the needs of the businesses we serve. Any action taken should ensure that businesses and other enterprises can receive timely financial assistance when their operations are disrupted as a result of a pandemic that rises to the level of a public health emergency. This type of financial protection program needs to be as efficient and seamless as possible.

- Second, any prospective solution should provide an active and relevant role for the insurance industry in the delivery of assistance for business consumers (a perspective shared by a growing universe of policymakers and industries). Businesses and nonprofit organizations look to their insurance agents to help them address and protect against risk, and any conversation about whether an entity is protected against a particular risk is almost certainly and most appropriately going to come up as part of the insurance placement process and in conversations between an owner and their agent. The product that may ultimately be developed to respond to pandemic risks may not be an insurance product, but our members want a solution that can fill the gap that traditional insurance is unable to fill and enable insurance agents to help their clients weather future pandemics.

- Third, given the unique nature of pandemic risk, it is essential that the federal government bear all or nearly all of the financial responsibility for business losses associated with COVID-19-like events. The insurance industry is simply unable to cover these potential losses. Some insurers may be able to assume very small and precise portions of the risk on their own but requiring insurers to assume that responsibility would be troubling.

- Fourth, the product or program designed to fill this protection gap must reflect the unique nature of pandemics. Among other things, this means the product must be parametric in nature and obviate the need for traditional claims adjustment. Financial assistance to businesses should be based on their existing payroll, expenses, and other factors and should begin to flow when clearly defined triggers are satisfied. Traditional claims adjustment in this sort of instance would be overwhelming and impractical and would unnecessarily delay much-needed payments to businesses.

One proposal that the Big “I” supports that satisfies these high-level principles is the Business Continuity Protection Program (BCPP). This proposal would establish a voluntary federal program within the Treasury Department that allows for the purchase of revenue replacement assistance for business interruption caused by a viral pandemic or other epidemic infectious disease that have been federally declared as public health emergencies (Please see the attached document for a detailed overview of the BCPP).

While IIABA has expressed strong support for the BCPP concept, we should also note that there may be other meaningful proposals that satisfy the principles outlined above. The Business Continuity Coalition (BCC), for example, is working on a proposal that relies heavily on the BCPP framework and envisions the same type of parametric program, and we believe their ideas possess significant merit and deserve serious consideration.

IIABA is excited to work with the Committee on this critical issue and hopes the information above provides helpful insight into how all parties can come to the table to create a pandemic risk program. IIABA is thankful for your consideration of our views.

Business Continuity Protection Program

(Updated September 2020)

Insurers fundamentally agree that pandemic business interruption is an uninsurable risk. This proposal would establish a voluntary federal program within the Treasury Department that allows for the purchase of revenue replacement assistance for business interruption caused by viral pandemic or other epidemic infectious disease that have been federally declared as public health emergencies.

The proposal also establishes a voluntary federal excess coverage program with a federal backstop for losses beyond what is covered by the BCPP's revenue replacement assistance and provides for the design of financial protection products to address event cancellations resulting from pandemic emergencies through rulemaking requirements. This proposal contemplates the creation of the ***Business Continuity Protection Program (BCPP)*** authorizing the Secretary of the Treasury to name a director and stand up the program within Treasury with an effective date six (6) months after enactment of the legislation.

Program Purpose

- The program is designed to bolster the country's economic resilience by providing timely and efficient financial protection including payroll, benefits, and expense support to the private sector in the event of a future declared public health emergency
- To enable interested businesses and nonprofit institutions to purchase access to revenue replacement assistance, excess coverages, and event cancellation protection and thereby affordably obtain financial protection from economic shutdowns due to viral outbreaks not found in the private market

Participating in the Program

- **Eligibility –**Revenue replacement assistance will be available to any interested firm incorporated in the United States or a U.S. territory
  - o All for-profit and non-profit entities would be eligible
  - o Entities would not be barred from purchasing assistance due to size
  - o Entities must enroll at least 90 days prior to a Presidential viral emergency declaration in order to receive assistance payments

- **Application –** The program director shall develop a simple program application process
  - o An easy to complete, one-page electronic application form for participants
  - o Program director would request the business' previous one to two years of annual tax returns to determine expected assistance benefit
    - ▪ IRS Form 1120 (e.g., Lines 13, 14, 16, 17, 18, 23, 24 and 26)
    - ▪ Form 990 (e.g., Lines 15, 17, etc. – similar to above 1120 lines)
    - ▪ Other official forms as the program director allows

- Businesses with physical locations in more than one state would specify the allocation of risk at time of purchase (EX: 40% of their revenues in NJ and 60% in NY)
- Provide the business categorization based on the North American Industry Classification System (NAICS) for purposes of determining assistance benefit formula based on closure status
- The business owner would be required to attest to certain things on the application
  - The facts of the application
  - Future compliance with federal CDC, OSHA, and other specified guidelines
  - That the funds would be used to retain employees and keep the business viable
- The Program should work with risk mitigation experts (e.g., the Insurance Institute for Business and Home Safety's (IBHS)Open for Business-EZ program, the International Organization for Standardization [ISO], and/or others) to develop viral risk mitigation guidelines and safety standards for businesses that would be provided at time of application and payment

- **Term of Participation** – The program would be open to participants six (6) months after the date of enactment and each certificate issued would be valid for up to one year
  - Once purchased, the program director would provide the details (amount, frequency, and other information) related to the expected assistance benefit

- **Renewal –** Once purchased the terms of participation cannot be cancelled or altered, but participation is guaranteed to be renewable on an annual basis
  - With each annual renewal participating organizations will be required to submit updated tax information to provide ongoing proof of revenue and expense information
  - Participating organizations will also be required to review, select, and purchase assistance annually

Distribution Network

- The successful support of the U.S. economy during the next pandemic will require a robust level of participation in the BCPP
- Licensed insurance agents and brokers will be authorized to act as the distribution network to market and sell the program's revenue replacement assistance
- Insurers will be required to offer the federal program product to all policyholders who purchase covered lines of commercial insurance coverage
- Businesses and non-profits declining protection must sign a declination page acknowledging they will be ineligible for BCPP benefits
- The program director will establish an administrative fee for application and enrollment servicing

Revenue Replacement Assistance

The program would provide participating entities with revenue replacement assistance based on a percentage of the participant's total payroll and expenses

- Participants could receive up to a maximum of three (3) months relief
- Assistance amount would be for up to 80% of:
    - Ordinary payroll and employee benefits;
    - Contractually obligated payments;
    - Rent or mortgage obligations for commercial property;
    - Other loan obligations;
    - Equipment rental and maintenance costs;
    - Tax and insurance payments; and
    - Other categories of acceptable expenses as the program director see fit to promulgate by rule
- No profits, extra expense, high level compensation or other costs would be considered as part of this program
- Participating entities could choose from desired levels of protection that would be pre-determined by the program director (i.e. 20%, 40%, 60% - up to a maximum of 80% of the program determined expenses)
- The program director would also develop a pre-determined formula for any partial or non-payment based on determinations of an "essential business" by closure order / presidential declaration

Pricing for Assistance

The program director shall from time to time provide by regulation for general terms and conditions regarding the amounts paid for access to the program's revenue replacement assistance

- Rates charged by the program will be calculated as a percentage of revenue each participating organization seeks to replace (payroll and applicable expenses)
- That percentage will be uniform for all participants, and will not vary based on geography or industry
    - The risk of pandemic business interruption presents a unique case in which risk-based premiums could actually induce even greater moral hazard
    - A risk-based model would require firms most likely to be vectors of viral transmission—such as restaurants or hotels—to pay higher rates
    - That would have the effect of depressing the take-up of the program protection and make it more likely that businesses would resist closing their doors
    - Aligning public health interests with policy design recommends instead pricing coverage to maximize take-up by those firms most exposed to the risk of pandemic to align incentives properly for a public health-oriented program
- The program director would set appropriate minimum amounts for assistance
- Pricing would include a charge for administrative costs
- Pricing would be designed to ensure widespread take-up and reduce moral hazards
- The program director would develop a payment plan option

Assistance Payment Trigger

Revenue replacement assistance would be parametrically triggered and disbursed automatically to those affected businesses based on a formula and the protection level selected

- Public health emergencies generally are declared by state and/or local officials, however, deferring to such declarations to trigger coverage under the BCPP could run afoul of the nondelegation doctrine
- Based on the on-the-ground situation, states would request a federal viral emergency declaration
- The contours of the presidential emergency declaration would be laid out in the authorizing legislation which would include the states and business codes of the industries impacted
- The presidential viral emergency declaration would automatically trigger payment

Assistance Payment Process

Once a presidential viral emergency has been declared and BCPP assistance triggered, payments will immediately be disbursed based on a pre-determined formula

- Provided access to assistance was purchased 90 days prior to the presidential declaration, payments would be wired electronically without waiting periods or further requirements
- Participating firms would receive the first full monthly benefit upfront, with additional payments for additional months distributed as needed at 30 and 60 days (for the maximum 90-day protection period)
- Declaration of a public health emergency in a state where a participating business is located would trigger assistance for that portion of a participating organization's expenses located in the emergency zone (as allocated in the application form)
- There would be no traditional claims or claims adjustment process
- Payments would be distributed directly from the federal government to the program participants

Program Asset Management

The program director shall be responsible for the careful management of the BCPP's accrued assets year-over-year

- In years without losses, which should be most years, collected program funds could be used to purchase Treasury securities, which would be credited under federal budget rules as program assets
- Because the program's exposure in any loss year is likely to exceed its available assets, the program should be granted authority to borrow from the Treasury to pay all recorded losses
- To the extent that demand exists for risk transfer at some price and attachment point, the program director could be authorized to retain brokerage services to leverage coverage by using participant payments to place traditional reinsurance or issue insurance-linked securities

Auditing Process / Penalties

- A final audit and accounting of all funds will be completed annually by the federal government no later than 12/31 for any fiscal year ended 9/30

- The program director will establish a post-event auditing process for beneficiaries of the BCPP to ensure the validity of application attestations
- Any participating firm found to have knowingly defrauded the program will be expelled and be subject to stringent penalties, including fines and jail time
- The program director shall be granted clawback authority to require the return of benefits not applied to allowable expense categories

Additional Excess Coverage Backstop

- The proposal would also establish a federal excess insurance backstop to facilitate additional private insurer coverage for losses beyond what is covered by the BCPP's revenue replacement assistance
- Participation in this program would be voluntary for both insurers and policyholders – insurers would not be required to offer the excess coverage and policyholders would not be required to buy it
- Insurers eligible to participate would include those that are admitted in any state, non-admitted insurers that are eligible surplus lines insurers, insurers approved for purposes of offering property-casualty insurance by a federal agency in connection with maritime, energy, or aviation activity, and state residual market entities or state workers compensation funds
- Businesses would need to first participate in the BCPP to purchase this excess product
- Insurers offering business continuity insurance related to business suspension due to an emergency pandemic closure order, including event cancellation or principal speaker cancellation coverage, would be able to utilize the federal backstop
- An insurer would pay claims directly to policyholders and submit claims for reimbursement from the federal backstop (potentially establishing a line of credit with the federal government)
- The federal co-share would be 90% and insurer co-shares 10% of each calendar year's losses (the co-share would not change for the duration of the program)
- There would be a prohibition on duplicative compensation, but insurers are expressly permitted to purchase reinsurance to cover their retained risks
- The bill includes an automatic appropriation to fund both federal claims payments under the backstop and expenses of administering the program.

Event Cancellation Protection

- The program director would also design financial protection products to address event cancellations resulting from pandemic emergencies through rulemaking requirements:
    - Requires that a parametric event cancellation product be created and integrated with the revenue replacement assistance product by the end of 2021
    - Requires that the excess backstop support private insurance coverage for event cancellation by the end of 2021

Miscellaneous

- The BCPP would be run by Treasury, with limited administrative assistance from private contractors
- Businesses purchase this protection product through state-regulated insurance entities that voluntarily participate with the BCPP

- Entities marketing the program or contracting with Treasury to administer the program would not assume any liability for the application process or the determination and payment of benefits
- Aggregated data on prices and payments would be publicly available