

Congress of the United States
House of Representatives
Washington, DC 20515-3313

April XX, 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:

Due to your strong leadership, the Coronavirus Aid, Relief, and Economic Security (CARES) Act delivers billions of dollars of relief for America's small businesses so that they can maintain their payrolls during the COVID-19 pandemic. We thank you for prioritizing relief for small business owners and their workers.

Roughly one-third of America's small businesses have business interruption or income (BI) insurance policies in place. As you know from your time as a business owner, insurers pay BI claims to make up the lost income a business suffers when it has been disrupted by physical damage. When hurricanes, tornados, or wildfires hit policyholders, their insurers pay claims to help make these businesses and workers whole again.

The vast majority of BI policies include explicit coverage exclusions for viruses or bacteria because of the magnitude of the exposure. Insurability requires that loss events are due to chance which is not possible if everyone in the risk pool is subject to the same loss at the same time. Furthermore, almost all BI policies deem covered losses as physical damage to the business. Some have suggested retroactively amending BI policies to cover claims related to COVID-19 which would force insurers to pay claims that were not covered under BI policies in place before the pandemic. Such proposals are unworkable and would fail to deliver financial relief to small business owners.

Insurers set their premiums, make investments, and hold onto reserves based on the risk they underwrite. It is a complicated and delicate balance that, if done right, protects policyholders and ensures that their rightful claims are covered by their insurers. Government interference will throw that equation off. Forcing insurers to pay uncovered COVID-19 BI claims will severely compromise their ability to pay covered claims. BI, auto, homeowners, and others claims incurred by natural disasters will not stop coming during this pandemic and after its behind us.

Furthermore, it is important to recognize that insurance policies are legal contracts between insurers and policyholders. Section 10 of Article I of the U.S. Constitution prohibits the States from enacting laws that "impair the Obligation of Contracts." Federal action is similarly constrained by Fifth Amendment's Due Process and Takings Clauses. Our Founding Fathers realized that our country's system of commerce would crumble if a government could retroactively rewrite lawful, private contracts on a political whim. Efforts by Congress or state legislatures to retroactively amend BI policies will engender unprecedented levels of legal challenges while driving up the cost of insurance coverage of all kinds. We look forward to working with you on further PPP funding and other initiatives to support our communities' small businesses during this difficult time.

Sincerely,

Ted Budd
Member of Congress