

Congress of the United States
Washington, DC 20515

Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi and Leader McCarthy:

Thank you for your leadership on the passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the subsequent Paycheck Protection Program and Health Care Enhancement Act. We have seen how these programs extended vital lifelines to Americans newly out of work because of the coronavirus pandemic and to small businesses that have been closed by the same. Unfortunately, however, it has become clear that the implementation of these laws has still left many without the complete relief that we in Congress intended to provide.

Particularly vulnerable are categories of jobs and types of industries that do not always operate under the rubric of traditional employer-employee relationships. Entertainment, music, and other creative industries, for example, feature many work arrangements involving self-employment and individual contractors and project-based work, such as recording, movie, or television productions, concerts, performances, or theater shows. This sector plays a vital role in the U.S. economy, with core copyright-based industries estimated to add \$1.3 trillion dollars to the GDP and employ approximately 5.7 million people in 2017.¹

Yet the average employee in these industries receives wages comparable to the average wage of individuals across the U.S. as a whole.² They, along with these industries overall, have been particularly hard-hit by the pandemic as live performances and future projects have been postponed or cancelled. Critical sources of income for an industry have disappeared for the foreseeable future, and are likely to be among the last areas of the economy that are fully restored. With this in mind, we urge you to address the following issues in any future legislative coronavirus relief package:

(1) Ensuring that Pandemic Unemployment Assistance (PUA) makes whole those who derive income from project-based work. To date, Department of Labor and state implementation of PUA has left unsettled how to uniformly address applications from those who have worked outside of the state where they are now seeking unemployment insurance, or whose income is reportable both as 1099 and W-2 wages (and in some cases, which does not come with a 1099). To help those who have worked in such project-based jobs but where the projects are now cancelled or postponed, legislation is needed to ensure that these multiple streams of income are considered, and importantly, do not upend or derail the application process, given reports that,

¹ Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2018 Report*, International Intellectual Property Alliance, 3 (2018), <https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf>.

² See *id.* at 12.

for example, submission of out-of-state W-2s has led to rejection of claims. This will help ensure uniformity across the states, particularly where Department of Labor guidance is lacking.

(2) Making the Paycheck Protection Program (PPP) work for self-employed individuals and independent contractors. While PPP was created to be inclusive of these diverse kinds of employment arrangements, implementation has made it difficult for certain categories of affected individuals to seek relief. For example, the requirement of a Schedule C form—when reporting of taxes has been delayed—has needlessly complicated to process of applying. Additionally, the restriction of self-employed individuals to be able to receive relief based on their prior net income fails to account for the various overhead costs which these individuals must still pay for, including mortgages and health insurance premiums. Future legislation needs to more clearly define the documentation required for self-employed individuals and independent contractors and also must reflect the unique costs associated with such working arrangements.

(3) Modifying the Small Business Administration’s (SBA’s) restrictive implementation of Economic Injury Disaster Loan (EIDL) awards, which penalizes sole proprietors. SBA has implemented the CARES Act Emergency EIDL loans so that they are awarded based on how many employees a small business has, at a rate of \$1000 per employee. For sole proprietors, this limitation does not reflect the business needs they may have in terms of overhead and other costs. No such limit was imposed in the CARES Act, and future legislation should make clear that this limitation is contrary to the intent of providing meaningful relief to small businesses of all kinds.

These changes collectively should help to ensure that the creative community, and those whose employment is similarly project- or gig-based, are afforded appropriate relief during these unprecedented times. We rely on the creative industries to get us through these hard times and must ensure that they have the means to weather this pandemic and be positioned to recover quickly and immediately when it is safe to do so. Thank you again for your leadership on these issues and your consideration of these concerns.

Sincerely,

Jerrold Nadler
Member of Congress

Henry C. “Hank” Johnson, Jr.
Member of Congress

Hakeem S. Jeffries
Member of Congress

Ted Lieu
Member of Congress

Judy Chu
Member of Congress