



Statement of the U.S. Chamber of Commerce

ON: Promoting Economic Recovery: Examining Capital Markets and Worker Protections in the COVID-19 Era

TO: Subcommittee on Investor Protection, Entrepreneurship and Capital Markets

BY: Neil Bradley, Executive Vice President and Chief Policy Officer, U.S. Chamber of Commerce

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Chairman Sherman, Ranking Member Huizenga, and members of the Subcommittee on Investor Protection, Entrepreneurship and Capital Markets: my name is Neil Bradley, executive vice president and chief policy officer of the U.S. Chamber of Commerce (“Chamber”). Thank you for the opportunity to testify today regarding the current state of America’s capital markets and the nation’s workforce in the wake of the coronavirus pandemic.

For the last several months, Americans have endured a period of incredible hardship. The lives lost from the pandemic are a national tragedy, and many people remain deeply concerned over the health of their loved ones. But even during these difficult times, we continue to hear stories of individuals and businesses doing extraordinary things to help their families and communities. Most of these stories will not make national headlines, but they showcase the resilience of Americans who—when faced with the most daunting challenges—still come together and see our nation through a crisis.

The pandemic also triggered the swiftest and most severe economic downturn in U.S. history. Millions of Americans have lost their jobs and businesses are struggling to survive as some parts of the economy ground to a near halt. While the employment gains in May and June are a welcome and positive sign, we have a long way to go and the rapid spread of the disease in a growing number of states will only slow the process. This uncertainty is unlike anything businesses have ever faced and points to a long road ahead in terms of a full economic recovery.

The government response to the pandemic is also unprecedented in its scope and scale. The Coronavirus Aid, Relief, and Economic Security (CARES) Act and subsequent legislation authorized over \$650 billion for the Paycheck Protection Program (PPP) that has been an indispensable lifeline for businesses, while the Federal Reserve has committed to providing upwards of \$3 trillion in credit through a number of emergency lending facilities. These actions have stabilized markets, helped businesses stay afloat, and allowed millions of Americans to continue to earn a paycheck.

While this has been an extraordinarily challenging time for businesses of all sizes, one thing is clear: American businesses are critical to our country’s economic recovery and will be at the forefront of shaping what a post-pandemic economy and workplace look like. Whether it is joining the race to find a vaccine and treatment, reorienting assembly lines to produce productive equipment for those on the front lines, or taking extraordinary measures to help employees or their communities, America’s businesses and their workers have stepped up and shown they are willing and able to meet this national challenge.

As emergency measures continue to make their way through the economy and additional relief is considered, the Chamber believes it is critical that policymakers recognize the evolving nature of the recovery. Congress and regulators should not assume that work and life will go back to “business as usual” once the pandemic is over. Temporary actions taken by companies – including moving certain operations online or providing flexible work arrangements – will in many cases become permanent. Access to capital and an appropriate regulatory environment will be necessary to assist workers and businesses as these changes permeate throughout the economy.

The Chamber’s views on the current state of our economy, the American workforce, and certain legislative proposals to be considered at today’s hearing are discussed in further detail below.

The Current Economic and Employment Situation

The economic shock caused by the pandemic is unprecedented in both speed and severity. Since March, over 45 million Americans have filed unemployment claims, and the current unemployment rate is 11.1%. The Federal Reserve Bank of Atlanta estimates that gross domestic product (GDP) collapsed by over 35% in the second quarter¹, and some economists predict that total GDP for 2020 will fall by 5% or more.

The pain has been especially pronounced in certain industries that are more vulnerable to lockdowns. For example, by the end of April, 46% of employees in the food, travel, and events industry lost their jobs, the retail industry lost 14% of its employees, and the services industry lost over 17%.² Most of the employees in these industries are part-time or hourly wage earners and can ill-afford a long-term interruption in their ability to earn a livelihood.

A University of Chicago study demonstrates how the economic crisis has disproportionately disrupted the lives of lower-wage workers. The study found that only 37% of the U.S. workforce is fully capable of working remotely.³ This demographic is largely made up of white collar, higher-wage positions that can be done anywhere from a laptop. The stay-at-home orders and mandated government

¹ Federal Reserve Bank of Atlanta: GDPNOW. Available at <https://www.frbatlanta.org/cqer/research/gdpnow>

² Analysis: Breaking Down the Unemployment Crisis by Industry. May 20th, 2020. Available at <https://www.uschamber.com/series/above-the-fold/analysis-breaking-down-the-unemployment-crisis-industry>

³ How Many Jobs Can Be Done From Home? Jonathan Dingel, Brent Neiman. April 16th, 2020. Available at <https://bfi.uchicago.edu/working-paper/how-many-jobs-can-be-done-at-home/>

shutdowns of businesses affect blue collar and service-oriented workers much more than they do office jobs.

A series of surveys conducted by the U.S. Chamber and MetLife also shows how dire the situation has become for small businesses over the last several months. By early April, 43% of small businesses believed that they were less than six months away from *permanent* closure, which would have eliminated millions of jobs throughout our economy. The latest Chamber/MetLife showed that while the vast majority of small businesses (79%) had either fully or partially reopened by early June, over half (55%) believe it will take six months to a year before the U.S. business climate returns to normal.⁴

As businesses continue to open their doors, the safety of employees and customers and compliance with state and local guidelines is of paramount concern. As part of our Path Forward initiative, the Chamber has provided sector and state-specific guidance for businesses as they re-open.⁵ The Chamber also recently called on the Trump Administration and the nation's governors to establish standards for imposing mandatory mask requirements.⁶

It is important for policymakers to keep in mind that this crisis was not caused by a market or regulatory failure and did not originate as part of the normal business cycle. Countless businesses and workers have been harmed through no fault of their own and in many cases were mandated by a government entity to shut down or limit their operations. Relief efforts should focus exclusively on ensuring businesses and households can meet their obligations until the economy returns to more normal conditions.

Importance of Lending Programs for Workers and the Economy

The Chamber supported the inclusion of several provisions in the CARES Act, including the PPP for businesses with no more than 500 employees. As recently reported by the Small Business Administration (SBA), as of July 1st the PPP has provided over \$520 billion in loans that supported 51 million jobs, making the program one of the more critical tools to helping small businesses survive.

⁴ Chamber/MetLife Coronavirus Impact Poll. June 3rd, 2020. Available at <https://www.uschamber.com/report/small-business-coronavirus-impact-poll-june#latest>

⁵ <https://www.uschamber.com/reopening-business>

⁶ Letter available at <https://www.uschamber.com/letters-congress/joint-letter-business-leaders-call-president-vp-and-nga-lead-face-covering-concerns>

The CARES Act also provided \$454 billion in funding for Federal Reserve lending facilities under Section 13(3). Since mid-March, Treasury has approved the establishment of the following facilities:

- The Commercial Paper Funding Facility
- The Primary Dealer Credit Facility
- The Money Market Mutual Fund Liquidity Facility
- The Term Asset Backed Securities Loan Facility
- The Primary Market Corporate Credit Facility
- The Secondary Market Corporate Credit Facility
- The Main Street Lending Program
- The Municipal Liquidity Facility; and the
- PPP Liquidity Facility

As Secretary Mnuchin recently noted before this Committee, Treasury has appropriated roughly \$200 billion of CARES Act funding and stands ready to commit the remaining \$250 billion as necessary. The Federal Reserve and Treasury have appropriately made necessary adjustments to a number of these programs to ensure they are accessible for market participants.

Of particular note is the \$600 billion Main Street Lending Program (MSLP), which recently became operational and is intended to provide credit for middle market businesses. While the Federal Reserve has made several changes to the terms of the MSLP, the Chamber remains concerned that the program remains too restrictive for borrowers. We are particularly concerned about indiscriminate prohibitions on shareholder distributions as well as restrictions on “affiliated” borrowers from accessing the MSLP. The Chamber will continue to work proactively with Treasury, the Federal Reserve, and Congress to ensure that the MSLP meets its ultimate objectives.

Improvements to U.S. Capital Markets

One notable recent development has been the increase in business formations across the United States. According to U.S. Census data, high-propensity business applications (which the Census Bureau defines as “applications that have a high propensity of turning into businesses with payroll”) have seen a significant increase in

recent weeks as compared to last year.⁷ Undoubtedly, some of these businesses are being formed by individuals who have been laid off or seen an interruption in their pay. This surge in business formation is a welcome change as the last decade was a period of historically low business formation following the 2008 financial crisis.

In order for these newly-formed and other young businesses to survive, they must be able to communicate with potential investors and have access to capital. The Securities and Exchange Commission's ("SEC") regulatory agenda contains several initiatives that would help increase access to capital and reduce regulatory burdens during this time. These include modifications to rules governing crowdfunding offerings, harmonizing exempt offerings, amendments to the definition of an "accredited investor," and disclosure simplification. These rulemakings should be finalized and implemented without delay, and the SEC has stated it has the capacity to continue this agenda while properly managing the COVID crisis.

The Chamber is also currently working on developing proposals that will specifically focus on access to capital for minority-owned businesses. Just last week, the Chamber released our initial [Equality of Opportunity Agenda](#) that includes a number of proposals for how to promote entrepreneurship and create jobs in minority communities. We look forward to working with Congress on a bipartisan basis as some of these proposals develop.

There are several current legislative proposals that Congress should consider that would expand opportunities for businesses. Much of the bipartisan "JOBS Act 3.0" bill negotiated by Chairwoman Waters during the last Congress is even timelier and should be taken up by Congress. Swift enactment of such a bipartisan package, in addition to recent measures put forward in the wake of the pandemic, would provide a big boost to our economic recovery. Some of these legislative proposals supported by the Chamber include:

- **H.R. 6253, the "Crowdfunding to Combat the Coronavirus Act"** H.R. 6253 would eliminate offering ceilings under Regulation Crowdfunding, Regulation A, and Regulation "A+" under the Securities Act. While this would provide important capital raising options for companies not ready to complete an IPO, the SEC should remain vigorous in its enforcement of any company – regardless of what exemption they may use under the securities laws – that makes false claims, particularly related to the pandemic.

⁷ <https://www.census.gov/econ/bfs/index.html>

- **H.R. 6252, the “Relief for Small Businesses Through Micro-Offerings Act of 2020”** This bill would provide an exemption from registration requirements for small offerings that do not exceed \$250,000 in the aggregate, no more than \$5,000 to any one investor, and that is conducted through a regulated broker or funding portal. This would benefit entrepreneurs that are looking to raise relatively small amounts of capital and cannot afford costly legal and registration requirements.
- **H.R. 4860, the “Crowdfunding Amendments Act”**– The Crowdfunding Amendments Act would address some of the unnecessary compliance burdens that currently exist under the SEC’s crowdfunding rules by allowing for the use of “crowdfunding vehicles” and also exempting securities issued in crowdfunding offerings from registration requirements under the Securities Exchange Act.
- **H.R. 1909, the “Helping Angels Lead our Startups Act” (HALOS)** – The HALOS act would help startup businesses communicate with potential investors by clarifying the definition of “general solicitation” under the 2012 Jumpstart our Business Startups (“JOBS”) Act. The bill would affirm that startups and angels can participate in “demo days” or other similar events where no specific offerings of securities are made.
- **H.R. 7375, the “Access to Small Business Investor Capital Act”** H.R. 7375 would exempt business development companies (BDCs) from the acquired fund fees and expenses (“AFFE”) requirement which currently mandates the disclosure of misleading information regarding the costs of investments in BDCs. Passage of this bill will increase institutional investment in BDCs, which are a critical source of nonbank financing for small and middle market companies throughout the country.
- **H.R. 6254, the “Gig Economy Infrastructure Act”** This legislation would expand the pool of workers that can receive equity compensation under the SEC’s Rule 701 to include independent contractors and “gig” economy workers.
- **H.R. 609, the “Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2019”** H.R. 609 would create an appropriate registration framework for mergers and acquisitions (M&A) brokers that help private companies (those with less than \$250 million in annual revenue) with transfer of ownership.

- **H.R. 2899, the “Main Street Growth Act”** establishes the legal framework for the creation of “venture exchanges” in the United States. Venture exchanges would provide a better trading environment for small capitalization companies and ultimately make the public markets more attractive for growing businesses.
- **H.R. 4918, the “Helping Startups Continue to Grow Act”** This bill would extend emerging growth company (EGC) status under the JOBS Act for businesses that have maintained all other conditions of being an EGC but have run up against the five-year window. The extension would help these businesses focus their resources on employees and growth in the wake of the pandemic instead of costly compliance requirements. Importantly, the scaled disclosure and other provisions of Title I of the JOBS Act have not jeopardized the protection of investors – building upon the success of the JOBS Act is a smart and bipartisan approach that Congress should take.
- **H.R. 2919, the “Improving Investment Research for Small and Emerging Issuers Act”** This bill would direct the SEC to study and provide recommendations for how to improve research coverage for small capitalization and pre-IPO companies. A lack of analyst coverage in small companies has plagued much of our equity markets for years. This bill would ultimately help increase the flow of information to investors.
- **H.R. 4762, the “Fair Investment for Professional Experts Act”** This bill would expand the SEC’s definition of accredited investor beyond existing income and net worth thresholds, an initiative that is currently underway at the SEC. This would open up opportunities to invest in certain private businesses for investors that can fully understand the risks and rewards associated with such investments.
- **H.R. 3987, the “Alleviating Stress Tests Burdens to Help Investors Act”** **This bill** would amend the stress test requirements under the Dodd-Frank Act by exempting nonbank financial institutions that are not under supervision by the Federal Reserve. The Chamber has long argued against the misguided application of bank-centric regulation and supervision to non-bank companies. The professional staff of the Securities and Exchange Commission has concurred. In 2016, the SEC Chief Economist described how the application of stress tests to asset managers was premised on a “false parallel.”

- **H.R. 4076, the “Modernizing Disclosures for Investors Act”** This bill permits an alternative method for public companies to provide quarterly disclosures, including through a shortened form or press release. This would cut down on repetitive and costly disclosure requirements without depriving investors of material information they need to make informed decisions.

Additional Legislation under Consideration

Regrettably, many of the bills up for discussion at today’s hearing would impede our economic recovery by placing substantial burdens on businesses. Further, the policy issues underlying many of these bills are entirely unrelated to the unique nature of the pandemic and are drafted on the assumption that the economic crisis was the result of a market or regulatory failure. Accordingly, the Chamber opposes the following measures:

- **H.R.____, Permanent requirements on large accelerated filers receiving Federal aid.** This bill would impose mandated disclosure and corporate governance requirements on certain public companies regarding political spending, human capital management, environmental, social, and governance (ESG) issues, federal aid, and country-by-country financial performance.

As the Chamber explained in testimony to the Senate Banking Committee last month, using this crisis and exploiting the CARES Act facilities to pursue unrelated policy goals – or to shame certain companies or industries for availing themselves of programs they are legally eligible for – should not be confused with legitimate Congressional oversight of these programs. The crisis should also not be used as an excuse to shoehorn policies that have otherwise already been rejected through the democratic process. Our economy will never fully recover if lending programs become politicized and used as a mechanism to direct policy outcomes that are uncorrelated to putting Americans back to work and getting the economy growing again. And public frustration will grow if people see Congress focused on political fights instead of targeted and immediate relief.

Accordingly, the Chamber strongly opposes this bill that would impose *permanent* requirements on businesses that received Federal aid during this crisis. Using the crisis to impose one-size-fits-all disclosure mandates on public companies would only harm shareholders and workers that depend on vibrant public markets for their retirement. The vast majority of companies already

report on ESG issues voluntarily and are responsive to investor concerns regarding ESG. The Chamber has also consistently opposed efforts by special interests to mandate the disclosure of certain political spending. Electioneering activities that are the subject of such a rulemaking petition are already disclosed under election law, and such a petition is outside the jurisdiction of the SEC. Furthermore, shareholders have routinely rejected these disclosures when they have been proposed by shareholder resolution.⁸

- **H.R. __, the “Ensuring Shareholder Governance Act of 2020”** would prohibit the SEC from implementing a long-overdue rulemaking regarding the shareholder proposal system under Rule 14a-8 of the Securities Exchange Act. The shareholder proposal system exists to facilitate constructive communication between shareholders and companies but has devolved over the years into a mechanism that special interests use to advance their own agendas at the expense of shareholders as a whole.

The “resubmission thresholds” under Rule 14a-8 have not been updated in decades. This has allowed special interests to continuously submit unpopular, immaterial proposals year after year at great cost to shareholders. A 2018 [report](#) from the Chamber showed that “zombie” shareholder proposals – those that have been submitted three or more times at a company without garnering shareholder support – constituted roughly 30% of all proposals submitted during the years 2001-2018.

The current resubmission thresholds permit proposals to be continuously submitted even if 90% of shareholders routinely vote against them. This has allowed matters of a social and political nature to proliferate on corporate proxies at great cost to companies and shareholders. According to the Manhattan Institute, [only 6% of all shareholder proposals](#) at Fortune 250 companies received majority support in 2019, down from 11% in 2017 and 10% in 2018.

Nothing in the SEC’s proposed rulemaking would “disenfranchise” shareholders in any way. Shareholders would still be able to submit proposals and have their voice heard. But if the vast majority of other shareholders oppose them, they won’t be able to continuously impose costs and distractions year after year.

⁸ A study by the Manhattan Institute has found that shareholder proposals for political spending disclosures at Fortune 250 companies only garner, on average, 18% support.

- **H.R. 6778 to amend the CARES Act of 2020 to place certain requirements on corporations receiving Federal aid related to COVID-19**
H.R. 6827, the “Corporate Accountability Act,” H.R. 6851, to require major corporations receiving Federal aid related to COVID-19 to make annual payments of equity to employees of the corporation while such aid is outstanding, H.R. ___ Temporary requirements on all corporations receiving Federal aid; and H.R. ___ Temporary requirements on all corporations receiving Federal aid until all aid has been repaid. These bills would collectively place prohibitions on companies amending certain benefits plans and collective bargaining agreements, impose limitations on certain executive compensation, mandate minimum wage requirements on all businesses, and require disclosures that are immaterial to investors. As noted previously, the coronavirus pandemic is unique in that businesses have had to seek Federal aid through no fault of their own, and once lockdowns were imposed it was their only financing option available. The PPP and other programs are not designed to benefit executives or a small number of employees: they are designed to ensure that employees of all learning levels are able to still receive a paycheck until the crisis recedes. Further imposing burdens on businesses – some of which are intended to achieve long sought policy goals unrelated to immediate relief – is the wrong approach.

While the Chamber is more than willing to engage in discussions with lawmakers regarding a national minimum wage, we strongly oppose efforts to tie such a discussion to businesses (many of which are struggling to survive) that availed themselves of programs passed almost unanimously by Congress. Moreover, as the Chamber pointed out in a [letter](#) last year to the House, the Congressional Budget Office has estimated that an increase to \$15/hour would result in as many as 3.7 million workers losing their jobs. An increase to \$10, on the other hand, would raise the wages for approximately 3.5 million workers with minimal job losses

- **H.R. 6339 to temporarily ban stock buybacks until the impact of COVID-19 on the American financial system has ended** is another misguided attempt to ban share repurchases by public companies. As the Chamber has noted previously, businesses must make the most productive decisions possible with the capital they have – share repurchases are one method companies use to return capital to shareholders. There is no evidence that share repurchases are part of a “zero sum game” and take away from other capital expenditures. In fact, research and development by companies reached record highs in recent years even as share repurchases increased, while the 2017

tax reform bill allowed many companies to increase hiring and provide bonuses and raises to employees. Investors are also harmed if businesses are hamstrung in their ability to deploy capital efficiently – an important fact given that Americans rely on consistent investment returns in order to have a secure retirement or send a child off to college. H.R. 6339 is a wholly misguided bill and should be rejected by this Committee.

- **H.R. 6852, to prohibit the Secretary of the Treasury and the Board of Governors of the Federal Reserve System from waiving provisions related to COVID-19 emergency relief and taxpayer protections for such relief.**

In late March, Congress recognized the urgency of our nation’s economic situation, and passed the CARES Act by a vote of 419-6 in the House and 96-0 in the Senate. The CARES Act established the PPP and granted authority for emergency lending programs under Section 13(3) of the Federal Reserve Act. The legislation wisely granted discretion to the Treasury Secretary and Federal Reserve to waive certain prohibitions placed on borrowers, for example certain corporate governance restrictions, payments of dividends, and share repurchases. We believe this discretion should be retained and have called for Treasury and the Federal Reserve to use prudence when deciding when prohibitions should remain in place. Businesses still need to attract and retain investors, and the CARES Act should not be used as a vehicle to impose policy goals that don’t prioritize getting Americans back to work. Accordingly, the Chamber opposes this legislation.

- **H.R. 5933, the “Disclosure of Tax Havens and Offshoring Act”** H.R. 5933 would impose unworkable and complex reporting requirements on companies with operations overseas without providing any decision-useful information for investors. Further, the materiality standard that has guided corporate disclosure for decades would already capture any information this bill attempts encompass. Recent mandated disclosures that stray from the principle of materiality – such as the conflict minerals and pay ratio rule – have only imposed costs on public company shareholders and not contributed to long-term value creation.

Conclusion

Despite the unprecedented headwinds of the last few months, America’s capital markets have shown remarkable resiliency and businesses are eager to fully re-open their doors for customers and their employees. The Chamber looks forward to continuing to be an active partner with Congress and the administration to ensure that

relief measures help our economy recover as quickly as possible. Thank you again for the opportunity to testify, I would be happy to answer any questions you may have.