



NFIB Phase Four Legislative Priorities for Small Business Recovery

In April, as small businesses were heading into unprecedented shutdowns due to the COVID-19 outbreak, NFIB issued a [10-point plan](#) for small business survival. Elements from that plan were incorporated into subsequent legislation. As Congress and the Administration consider additional policies, NFIB is proposing legislative priorities to ensure small businesses continue to have the resources and protections they need to move forward during the health crisis and recover economically. In the next legislation, NFIB supports:

1. Financial Assistance
2. Liability Protections
3. Tax Relief
4. Unemployment Insurance Reform
5. Regulatory Relief

Financial Assistance: Secure near-term and longer-term financial assistance programs for smaller businesses continuing to experience financial hardship. Recommendations include:

- Allow small businesses that continue to suffer clear economic losses due to COVID-19 to apply for a second Paycheck Protection Program (PPP) loan.
- Change the Economic Injury Disaster Loan (EIDL) program to ensure that loan applications are processed, and the full value of the loans delivered, more efficiently. If EIDL cannot be improved, NFIB recommends Congress enact a program that quickly delivers long term, low interest, flexible, working capital loans to small businesses.
- Eliminate the EIDL Advance Emergency Grant reduction from the PPP loan forgiveness formula.
- Streamline and simplify the PPP forgiveness process by forgiving small business loans up to \$150,000 automatically.

Notes:

- NFIB's most recent [survey](#) shows 46% of small business owners who received an EIDL and/or a PPP loan anticipate needing additional financial support in the next 12 months.¹ With states reopening and the realization that lower than average sales are likely for months to come, many small business owners need additional financial assistance to ensure their businesses survive this public health and economic crisis.
- Unfortunately, the EIDL and the Main Street Lending Program (MSLP) are struggling to deliver. NFIB's [survey](#) also shows that only 55% of those who applied for an EIDL have had their loan

¹ COVID-19 Small Business Survey (9), NFIB Research Center, July 7, 2020, <https://assets.nfib.com/nfibcom/FINAL-Covid-19-9-Write-up-and-Questionnaire.pdf>.



deposited.² Only 1% of small business owners anticipated applying for a MSLP loan, according to another recent NFIB [survey](#).³

Liability Protections: Create strong liability protections that enable small businesses to reopen safely and smartly without the fear of devastating lawsuits. Recommendations include:

- Shield small business owners from lawsuits brought by customers or other third parties unless the customer or third party proves that the business willfully failed to develop and implement a plan to reduce the risk of COVID-19 to customers and other third parties and that the failure caused the injury.
- Grant businesses immunity from COVID-19-related litigation except in cases of gross negligence that causes the plaintiff serious physical injury resulting in hospitalization or death. No claims for emotional injury due to contracting the virus should be permitted.
- Impose sanctions on attorneys found to bring a frivolous COVID-19-related claim. In addition to sanctions, the plaintiff's attorney should be required to pay the defendant's attorneys' fees and other costs relating to the litigation.
- Provide that employer liability for physical injury due to COVID-19 be adjudicated under state workers compensation laws to the extent such liability exists. No separate federal or state tort liability should be permitted for employee injury claims due to the virus.

Notes:

- In a recent NFIB Research Center [survey](#), nearly 70% of small business owners were worried about increases in liability claims as they reopened their businesses.⁴
- NFIB released four [Liability Protection Principles](#) on May 6, 2020, and urged Congress to address these Liability Protection Principles so that our nation's small businesses who have fought to survive over the course of this pandemic can reopen without fear of costly legal battles.⁵

Tax Relief: Provide tax relief for small businesses so they can reopen safely, keep and hire employees, and bolster their communities. Recommendations include:

- Restore Congressional intent by allowing forgiven PPP expenses to be deductible as ordinary business expenses.
- Incentivize small businesses to maintain employment by improving interaction between PPP and the Employee Retention Tax Credit (ERTC) and allowing small business owners to utilize both programs.

² *Ibid.*

³ *COVID-19 Small Business Survey (7)*, NFIB Research Center, May 30, 2020, <https://strgnfibcom.blob.core.windows.net/nfibcom/FINAL-Covid-19-7-Write-up-and-Questionnaire.pdf>.

⁴ *The Small Business Loan Programs and Reopening*, NFIB Research Center, May 1, 2020, <https://www.nfib.com/assets/Final-COVID-19-5-Write-up-Results.pdf>.

⁵ *NFIB Issues Liability Protection Principles for America's Small Businesses*, NFIB Press Release, May 6, 2020, <https://www.nfib.com/content/press-release/coronavirus/nfib-issues-liability-protection-principles-for-americas-small-businesses>.



- Provide targeted tax relief to assist with operating expenses, reopening supplies, and personal protective equipment as small businesses recover from or continue to be impacted by shutdown orders related to COVID-19.
- NFIB opposes rolling back previous business tax relief such as the ability to carryback Net Operating Losses (NOLs), which will provide cash flow as businesses recover from the COVID-19 pandemic.

Unemployment Insurance Reform: Reform unemployment insurance so small businesses can quickly fill open positions and get the economy growing again. Recommendations include:

- Prohibit unemployment insurance compensation from exceeding an employee's prior wages.
- Restrict significant tax increases on small businesses as states replenish unemployment insurance trust funds in 2021 if those state governments receive federal relief funding.
- NFIB opposes extending federal pandemic unemployment compensation (extra \$600 per week) as currently structured beyond July 31, 2020.

Notes:

- According to a recent NFIB Research Center [survey](#), 18% of small business owners have had an employee decline a job offer because they wanted to stay on unemployment insurance. Another 6% of small business owners have increased salaries to encourage a worker to come back to their job.⁶
- NFIB member [Les Neilly testified before the Senate Finance Committee](#) about the challenges the increased federal pandemic unemployment compensation created for his employees and his business.⁷

Regulatory Relief: Protect small businesses from additional regulatory requirements or expanding existing mandates. Recommendations include:

- NFIB opposes:
 - Extending federal paid leave mandates beyond December 31, 2020.
 - Eliminating the small business hardship exemption from federal paid leave mandates.
 - Mandating new regulatory burdens on small business owners such as beneficial ownership reporting requirements.
 - Further expanding PPP loan disclosure.
 - Requiring increased enforcement regulations on small businesses, such as an Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard (ETS).

⁶ COVID-19 Small Business Survey, NFIB Research Center, May 18, 2020, <https://www.nfib.com/assets/Covid-19-6-Write-up-Q.pdf>.

⁷ Testimony of Les Neilly, *Hearing on Unemployment Insurance During COVID-19: The CARES Act and the Role of Unemployment Insurance During the Pandemic*, Senate Finance Committee, June 9, 2020, <https://www.finance.senate.gov/imo/media/doc/09JUN2020NEILLYSTMNT.pdf>.