

May 18, 2020

The Honorable Mitch McConnell
Majority Leader, U.S. Senate
U.S. Capitol, S-230
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader, U.S. Senate
U.S. Capitol, S-221
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

The members of the undersigned organizations consist of freelancers, self-employed individuals, independent contractors, and microbusinesses—business composed of ten or less employees. Our collective members include photographers, illustrators, songwriters, freelance authors, and their representatives. Nationally, our members are part of an independent worker community that make up about one-third of the total employable workforce in the U.S.

All our members are being financially devastated by the pandemic. Because of recent events, they have seen their entire businesses dry up overnight from the cancellation of contracts, events, and limitations imposed on travel. As one commentator has noted, “[these independent workers and microbusinesses] are also among the most vulnerable to the current crisis. If they get sick, they must take time off to care for a family member, or simply experience a decline in sales as customers as they tighten their budgets—they can’t call on a colleague to cover for them or rely on a steady paycheck. ... They are truly going it alone, and they are falling through the cracks when it comes to COVID-19 relief efforts.”¹

We recognize the level of urgency that prompted passage of financial assistance programs such as PPP and EIDL. Unfortunately, despite Congress’s prior dramatic and greatly appreciated efforts to stem the

¹ “Coronavirus economic relief proposals are overlooking the 57 million Americans who are self-employed” by Josh Silverman, Fortune Magazine, March 20, 2020, available at <https://fortune.com/2020/03/20/coronavirus-economic-relief-gig-economy-self-employed/>

catastrophic impact of the pandemic on all Americans, our members have far too often found themselves unable to secure benefits under the existing stimulus programs. This is due in part to burdensome application procedures that require the services of a CPA or a tax professional navigate.

We write at this time to urge Congress in its next stimulus package to take concrete, critical steps that expressly focus on the plight of our members and the many millions of Americans similarly situated throughout the nation.

1. Pooling Federal Monies for Recipients of Discrete Sizes.

It would be extremely helpful for Congress to separate PPP funds into “pools” for businesses of different sizes, say those with 500-51 employees, businesses with 50-11 employees, and sole proprietors and microbusinesses businesses with 10 and fewer employees. Moreover, a specific overall funding level for each such category would be spelled out in the legislation. Under such a system, businesses of similar sizes would compete against one another rather than sole proprietorships and other businesses with limited staff being left out in the cold. Most importantly, it would require that a set amount of federal monies would flow to the microbusinesses, freelancers and the self-employed.

2. Expanding Eligibility of PPP to reach 501(c)(6) non-profit organizations.

As created, the PPP reaches some, but by no means all, non-profit organizations that have been negatively impacted by the current crisis. Unfortunately, left out of that assistance, are the thousands of non-profits trade and professional organizations that fall outside of the 501(c)(3) or 501(c)19 designations. This exclusion of 501(c)(6) is simply unfair and it behooves Congress to take remedial action promptly. As 501(c)(6) entities we are the voice and representative bodies of Americans who are suffering due to the COVID-19 pandemic. Our organizations provide vital help, support, and guidance to our members, especially with respect to providing them with critical information as they seek federal and state assistance as they struggle to make ends meet. We urge Congress to include 501(c)(6) non-profit associations in any future phases of relief.

3. Improving Access to the federal Pandemic Unemployment Assistance Program

Presently, confusion in the unemployment provisions of the CARES Act is harming small business and self-employed individuals. The Pandemic Unemployment Assistance (PUA) program offers benefits to those normally excluded from state UI programs such as independent contractors, sole proprietors, and the self-employed. Although well-intentioned, the implementation for many has been disastrous. The statutory eligibility criteria do not clearly cover freelancers who regularly work from home. Additional criteria added by the Secretary of the Department of Labor in the Unemployment Insurance Program Letter (UIPL) 16-20 to cover freelance workers does not go far enough to clear up that confusion; and, moreover, many states' unemployment forms have not incorporated it. Other states have implemented application systems for PUA haphazardly and in many cases, in circuitous and overly burdensome ways. The result is that thousands of freelance creators have been denied PUA by their states. While the PUA program was included in the CARES Act that was signed on March 24, 2020, according to an ABC News analysis, only 20 states have started providing PUA benefits or have rolled out systems but not yet initiated payments.

Various reasons were given for this delay, but the reliance on state unemployment offices to implement a wholly new system has proven to be misplaced. It is critical that the Department of Labor be designated to assist states with standardized applications and a path to help these workers. Each week that passes with no relief adds to the domino effect of crippling the economy and hurting families.

4. Addressing the “mixed income problem.”

“Mixed income” workers have been deprived of their benefits under the law, leading to unintended hardships. If a state does have a pathway for independent contractors, sole proprietors, and the self-employed to apply for PUA, often these workers are prevented from obtaining the benefit designated for them in the CARES Act due to the strictures of the PUA program. As it stands now, if you derive the majority of your money from freelance work or other work where you are paid via 1099-MISC reports, but you have a nominal amount of W-2 income, *you are shut out entirely from the PUA program!* Many states are saying your unemployment benefits are only based on your W-2 income, leading to minimal amounts of relief and a complete disregard for the intent of the law.

As an example, if a worker were to make \$50,000 in 1099-MISC income, and just \$2,500 in W-2 income (for example as a side job in the service industry), multiple states have indicated that such a worker is only eligible for benefits based on the W-2 income of a fractional amount, and not the income he or she actually earned. This is occurring despite the fact that the CARES Act specifically set up a program to help those who are self-employed. The reason is that the PUA specifically states that workers are only eligible for this program if they are ineligible for traditional state unemployment benefits. As having W-2 income allows for traditional state benefits, they are then locked out of the PUA program. We cannot imagine that this interpretation is in keeping with the spirit of the law.

The undersigned would respectfully ask in a future stimulus bill or in regulatory guidance Congress or the appropriate government agency (1) clarify to lenders, that PPP loan applications should be submitted to the SBA from the order in which they were received regardless of loan amount (2) standardize the implementation of the PUA program across all the states; and, (3) offer a pathway of relief wherein those with minimal W-2 income who live primarily on their 1099-MISC income can take part in the programs that were designed to benefit them.

In addition, beginning long before our members livelihoods were ravaged by the current pandemic, individual creators and small businesses have been victimized by a longstanding inequity in the copyright law that all too often leaves them without legal redress when their works are infringed – an increasingly common occurrence in the digital age. Currently, the only solution for a creator to seek damages against an infringer is through burdensome and prohibitively litigation in federal court, an unrealistic option when the average cost of filing and maintaining a case is >\$397,000. The CASE Act will help end this longstanding inequity by creating a small claims tribunal in the Copyright Office.

Critically, CASE Act is one step from final action in the Senate. Last October the House approved the CASE Act by an overwhelming vote of 410-6. Shortly thereafter, the Senate Judiciary Committee passed the bill by voice vote. Unfortunately, for months Senate action on the CASE Act has been frustrated by a hold on the bill placed by Senator Wyden. We hope that steps can be taken to remove this hold so the full Senate can vote on this important legislation.

We thank you for listening to the perspective of the creative community and look forward to working with you to ease the difficulties that our industry faces. Your consideration is greatly appreciated during this vexing time.

Most sincerely,

Professional Photographers of America
American Society of Media Photographers
American Photographic Artists
American Society for Collective Rights Licensing
The Authors Guild
Digital Media Licensing Association
Graphic Artists Guild
North American Nature Photographers Association
National Press Photographers Association
Songwriters Guild of America



CC: Members, U.S. Senate