NATIONAL ASSOCIATION OF
Manufacturers

Chris Netram

Vice President,
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The Honorable Marco Rubio
Chairman
Committee on Small Business and
Entrepreneurship
United States Senate
284 Russell Senate Office Building
Washington, DC 20510

The Honorable Ben Cardin
Ranking Member
Committee on Small Business and
Entrepreneurship
United States Senate
509 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Rubio and Ranking Member Cardin:

The National Association of Manufacturers commends your continued dedication to the success of the Paycheck Protection Program, and we appreciate that there is significant emphasis on improving and expanding the PPP in the HEALS Act. The PPP has been a lifeline for many small manufacturers, allowing them to keep their doors open and their workers on payroll during the COVID-19 crisis. To date, more than 230,000 small manufacturers have received PPP loans, totaling nearly $54 billion in vital payroll support.

As you continue your important work on the legislative response to COVID-19, we encourage you to include many of the reforms to and enhancements of the PPP that are proposed in the HEALS Act, including the PPP Second Draw program. Enacting these improvements, with the suggested modifications discussed below, will allow the PPP to continue to support small manufacturers across the country as the industry leads America's economic renewal.

Paycheck Protection Program

- **Borrower Flexibility:** The NAM appreciates that the HEALS Act allows for enhanced flexibility for PPP loan recipients. In particular, manufacturers are hopeful that the final bill will retain the provisions expanding the allowable and forgivable uses of PPP loans, including for PPE and other worker accommodations. These expenses are critical to protecting the health and safety of workers and customers alike.

  We also strongly support the HEALS Act provision allowing PPP borrowers to choose a covered period that works for their business needs rather than being forced into a binary choice between eight or 24 weeks. This enhanced flexibility will ensure that small businesses can utilize their PPP loan proceeds as effectively as possible without having to artificially shorten or lengthen the natural spend of the funds just to qualify for loan forgiveness.

- **Deductibility of PPP Expenses:** Under the CARES Act, forgiven PPP loans are not subject to taxation, but a recent IRS notice would deny the deductibility of business expenses paid with PPP loan proceeds—increasing PPP borrowers' federal tax liability at a time of significant capital scarcity. The Chairmen of both the Senate Finance and House Ways & Means Committees have made clear that congressional intent was for these expenses to remain tax deductible, and a bipartisan group of Senators has introduced the Small Business Expense Protection Act (S. 3612) to allow small businesses to deduct their PPP expenses—

but the IRS has announced no plans to reconsider its stance. The NAM respectfully encourages you to direct the IRS to reconsider and reverse its guidance on the deductibility of business expenses paid with PPP loan proceeds in order to provide additional liquidity to small manufacturers participating in the PPP.

- **Simplified Forgiveness Applications for Smaller Businesses:** The NAM appreciates that the HEALS Act allows PPP borrowers receiving loans of less than $150,000 to receive loan forgiveness based on borrower attestations and that it provides for a streamlined forgiveness application for PPP borrowers receiving loans between $150,000 and $2 million. These simplification measures will make it much easier for the smallest businesses to apply for and receive loan forgiveness, which is crucial to the success of the PPP.

  However, we are concerned about the proposed $2 million maximum loan limitation for PPP borrowers. Many small manufacturers have payroll costs that would necessitate a PPP loan in excess of $2 million. These higher-than-average payroll costs—driven by the industry's need for highly skilled, well-compensated employees—are not a proxy for access to other sources of liquidity. Rather, they reflect the 21st century workforce necessary for modern manufacturing. Prohibiting many small manufacturers from utilizing the PPP to its fullest extent would prevent them from protecting all their workers during the ongoing economic crisis.

- **501(c)(6) Eligibility:** The NAM strongly supports PPP eligibility for trade associations exempt from taxation under Section 501(c)(6) of the Internal Revenue Code. Small manufacturing industry associations across the country are vital resources for their local communities through their workforce development, technical training, and standards setting programs. In many instances, they also provide health or retirement benefits to the employees of the companies they represent. These organizations are facing enormous economic uncertainty due to the ongoing crisis, but they will play an important role in supporting businesses and workers as the economy recovers. Allowing 501(c)(6) associations to access liquidity through the PPP will enable them to maintain their workforce and continue to serve as a resource for the manufacturing economy during these uncertain times.

  - As you work to finalize the HEALS Act provision granting PPP eligibility to 501(c)(6) groups, the NAM would encourage you to include as broad a range of entities as possible. While the current version of the HEALS Act sets a 300-employee threshold for eligibility, early drafts would have required trade associations to have fewer than 50 employees to qualify for the PPP. Such a limited threshold would be unnecessarily restrictive on manufacturing groups across the country.

  - We would also encourage you to re-consider the hard cap on lobbying activities included in the HEALS Act. The NAM supports the HEALS Act's outright ban on PPP borrowers using their loan proceeds for lobbying expenses, but the bill's requirement that associations conduct no more than 10% of their activities on lobbying could disqualify associations for whom representing their members before state, local, and federal leaders is an important (and First Amendment-protected) mission. Raising the 10% limitation, changing it from a hard cap to a sliding scale, or removing it altogether would in no way direct PPP funds to lobbying activities. It would simply allow small manufacturing associations to use PPP funds for vital workforce and training programs even if they also provide the industry's perspective on policy debates in statehouses across the country and in the halls of Congress.

PPP Second Draw Loans

In addition to the reforms to the PPP included in the HEALS Act, the bill also allows for PPP Second Draw loans, which would enable businesses that already received PPP financing to apply for a second loan under the program. The NAM strongly supports the proposed PPP Second Draw program, and we encourage you to maintain the ability for PPP borrowers to return to the program in the next phase of Congress's response to COVID-19.

- **Loan Terms:** The NAM appreciates that the Second Draw loan terms are identical to those of the PPP. The 2.5-times monthly payroll calculation to determine a business's maximum loan amount, combined with the flexible covered period created by the HEALS Act, will provide important alignment with the PPP and reduce borrower confusion for businesses applying for a second loan. The NAM also supports the continuation of the PPP's requirement that businesses allocate at least 60% of their loan proceeds to payroll costs.

- **Revenue Test:** The NAM is concerned that the requirement that PPP loan recipients experience a 50% revenue decrease in order to qualify for a Second Draw loan will prove overly restrictive for most manufacturers. Though the economic slowdown has had a drastic impact on small manufacturers, over the course of an entire quarter a business's revenue drop may not come to a full 50%. A comparison of Q1 2020 vs. Q1 2019 is unlikely to qualify any manufacturers for a Second Draw loan given that the pandemic did not take full effect until late in the quarter. While a Q2 comparison would likely show a more significant revenue drop, many manufacturers that suffered significant revenue declines could still be disqualified from Second Draw eligibility due to governors' essential business designations in the late spring and many states' phased re-openings in the early summer. This *de facto* prohibition on manufacturers receiving Second Draw loans would mean that these critical businesses will not have access to much-needed funds to keep their workers paid and protected as the crisis continues.

  The NAM encourages you to eliminate the hard cap revenue loss requirement in favor of a test that allows increased access to capital for businesses that have experienced the worst revenue losses without disqualifying companies with less severe but still substantial revenue drops due to the pandemic. At the very least, the hard cap limit should be significantly reduced so that more businesses with substantial revenue losses can benefit from the Second Draw program, not just those that exceed 50%.

- **Size Restrictions:** The NAM believes that all businesses eligible for the PPP should also be eligible for a PPP Second Draw loan. As such, we would respectfully encourage you to raise the 300-employee cap to 500 employees. We would also encourage you to allow companies defined as a small business concern by the SBA's NAICS-based size tests to qualify for a Second Draw loan, as was the case with the PPP. We appreciate and support Congress's continued focus on the smallest businesses, including the PPP Second Draw set-aside for businesses with fewer than 10 employees, but we believe that the PPP and the PPP Second Draw can and should provide vital support for a wide range of small businesses across the country.

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Small manufacturers continue to face significant business disruptions due to the COVID-19 crisis. The NAM strongly supports your continued efforts to improve the PPP, and we look forward to working with you to include needed enhancements to the program, including the proposed PPP Second Draw, in the next phase of Congress's response to COVID-19.

Sincerely,

Chris Netram
Vice President, Tax and Domestic Economic Policy

cc: The Honorable Mitch McConnell
The Honorable Chuck Schumer
The Honorable Susan Collins