



Business Interruption Insurance and COVID-19: Federal Legislative Initiatives

May 11, 2020

Many businesses across all sectors are experiencing disruption and incurring losses from the Coronavirus Disease 2019 (COVID-19) pandemic. The pandemic has stirred a debate among insurers, policyholders, and other stakeholders about who will be responsible for the losses that companies face from widespread shutdowns. This Insight will focus on efforts at the federal level to address business interruption (BI) insurance coverage for COVID-related shutdown losses. Insurance is primarily regulated at the state level, and there are efforts in a number of states providing for coverage of BI claims on a retrospective basis, which are addressed in CRS Insight IN11382, *Business Interruption Insurance and COVID-19: State Legislative Initiatives*. More detail on BI insurance itself can be found in CRS Insight IN11295, *Business Interruption Insurance and COVID-19*.

Many policyholders who purchased BI are submitting claims to their insurers. However, insurers are largely reluctant to cover COVID-related losses. Both individual insurance carriers and the industry as a whole have asserted that BI claims related to COVID-19 are not covered, particularly as many BI policies expressly exclude coverage for viruses. [The disputes](#) largely center on the extent to which COVID-related impacts are covered by BI policies. Most disputes are not likely to be resolved quickly, leading to calls for a legislative response. For example, the [Business Interruption Group](#), a new non-profit organization representing the restaurant industry, [presented their case to the President](#), and he expressed support for businesses in their claims against insurers at the [White House coronavirus briefing](#) on April 10. The insurance industry has expressed the view that forcing insurers to cover such claims would potentially redistribute billions of dollars of economic losses caused by COVID-19, and would put too much financial strain on insurers that did not price premiums to reflect virus-related losses since they were excluded from policies. They argue that any attempt retroactively to cover BI policies could [make it impossible for insurers to provide affordable coverage](#) in the future.

Federal Actions Related to Business Interruption Insurance

A [bipartisan group of 18 House Members sent a letter](#) on March 18, 2020, to CEOs of the four major insurance trade organizations, calling upon them to cover BI losses due to COVID-19. Those

Congressional Research Service

<https://crsreports.congress.gov>

IN11383

organizations responded with a [letter setting forth the industry position](#) that BI policies generally do not provide coverage for losses resulting from viruses and that the policies had not been priced to provide such coverage. The [bipartisan Problem Solvers Caucus](#) recommended treating the coronavirus as a covered peril for BI policies, though it is silent on how this would be funded. Seven Senators on the [Senate Banking Committee](#), on April 10, 2020, [sent a letter to the President](#) asking that he commit to protecting the insurance industry against state legislation, and warning that paying retroactive BI claims could lead to economic strain and potentially insolvency for commercial insurers.

Legislation in the 116th Congress includes:

- H.R. 6494, the Business Interruption Insurance Coverage Act, would require insurers to make available BI coverage due to viral pandemics, forced closure of businesses or mandatory evacuation by government order, and [public safety power shut-offs](#). The bill would also provide that any exclusion in force on the date of enactment would be void to the extent that it excludes the losses specified above. However, such exclusions may be reinstated if (1) reinstatement is agreed to in writing by the insured; or (2) the insured fails to pay any increased premium for providing such coverage after notice as specified in the legislation. The bill would apply to all property and casualty insurance policies, not just policies issued to small businesses. The bill is not explicitly retroactive and does not include any provision for reimbursing insurers for paying future BI claims.
- H.R. 6497, the Never Again Small Business Protection Act of 2020, would require insurers that offer BI policies to make available optional additional coverage that covers losses from BI due to any government order requiring cessation of activities during a national emergency. The bill would also provide that BI coverage pursuant to the bill would not be available to any business which has involuntarily terminated the employment or terminated the health insurance of any employee during the period of the national emergency. The bill would further provide that a contract for BI coverage could exclude coverage for business interruptions resulting from national emergencies only if (1) reinstatement is agreed to in writing by the insured; or (2) the insured fails to pay any increased premium for providing such coverage. These requirements, however, come into effect only after the Secretary of the Treasury certifies that there is a federal backstop mechanism in place for excess losses due to the requirements. The bill does not contain any provisions limiting the size of the businesses to which it applies.

No bill providing for direct federal support for BI has been introduced, but both [House Financial Services Chair Maxine Waters](#) and Representative [Carolyn Maloney](#) have indicated interest in legislation to establish a Pandemic Risk Insurance Act (PRIA). The model for this is the federal terrorism insurance backstop, the [Terrorism Risk Insurance Act](#) (TRIA), and a [discussion draft](#) has reportedly circulated. The [Risk Management Society](#) issued a letter to congressional party leadership [requesting the creation of a pandemic risk insurance program](#), and the concept has found [support](#) from stakeholders who have been skeptical of government intervention in the past.

It is not clear how many businesses would be affected by legislation related to BI coverage. A [report on disaster-affected firms](#) by the Federal Reserve found that 17% of affected firms had BI insurance at the time of the 2017 disasters (Hurricanes Harvey, Irma, and Maria, and California wildfires). The report also found that 57% had property insurance. Other sources have suggested that 34% or 40% of businesses have BI insurance.

Author Information

Diane P. Horn

Analyst in Flood Insurance and Emergency Management

Baird Webel

Acting Section Research Manager

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.