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Concept Paper for a Paycheck Guarantee Plan
April 10, 2020

Background: Governments across the globe have shut down non-essential businesses and have imposed social distancing protocols to “flatten the curve” and stop the spread of COVID-19. While many countries are experiencing precipitous drops in economic activity as a result of these protocols, not all countries are experiencing the level of mass unemployment seen in the United States. In just the last three weeks, more than 16.8 million Americans filed jobless claims. This collapse in employment is unprecedented, but mass unemployment is the result of policy choices, not pandemics. Other countries (i.e. Denmark, the United Kingdom, the Netherlands, Ireland, France, Germany, and Australia) have quickly implemented employment policies to guard against the mass unemployment and the needless extinguishing of productive labor market matches between workers and employers that we are seeing at home. The United States can and should choose differently.

Congress should act immediately to prevent further layoffs and incentivize rehiring of workers by passing a paycheck guarantee plan in the next COVID-19 response legislation, before millions more Americans lose their jobs. The enhanced unemployment benefits, cash assistance, and small business relief protocols in the CARES Act are an important first step, but they do not go far enough. State unemployment offices are already overwhelmed with applications.¹ The Department of Treasury has said that some Americans won’t receive cash assistance until September.² And early reports suggest that the small business relief program is facing significant implementation hurdles.³ As Congress considers additional legislation to deliver relief, it must make preventing layoffs and encouraging the rehiring of furloughed employees a top priority.

Without immediate, direct cash support for paychecks, there is a significant risk that the downward cycle of unemployment, lost incomes, reduced demand, and business insolvency will accelerate. Economic forecasters are predicting that unemployment could rise above 30% as a result of this crisis.⁴ By putting a brake on this decline, a paycheck guarantee will enable a

¹Khristopher Brooks, *Millions wait for jobless pay as state agencies overwhelmed by claims*, CBS (Mar. 31, 2020), <https://www.cbsnews.com/news/unemployment-benefits-millions-wait-for-jobless-pay-as-state-agencies-seek-more-workers-from-stimulus/>.

²Rick Noack, et al., *Coronavirus stimulus payments begin April 9, but some won’t receive checks until September*, Wash. Post (Apr. 2, 2020), <https://www.washingtonpost.com/world/2020/04/02/coronavirus-latest-news/>.

³Trish Turner & Sarah Kolinovsky, *On first day, small business loan application process plagued with problems*, ABC (Apr. 3, 2020), <https://abcnews.go.com/Politics/day-small-business-loan-application-process-plagued-problems/story?id=69965976>.

⁴Jeff Cox, *Coronavirus job losses could total 47 million, unemployment rate may hit 32%, Fed estimates*, CNBC (Mar. 30, 2020), <https://www.cnbc.com/2020/03/30/coronavirus-job-losses-could-total-47-million-unemployment-rate-of-32percent-fed-says.html>.

speedier recovery and reduce the ultimate cost of the crisis to taxpayers by keeping people employed.

In addition, we must incentivize the correct behavior to control the spread of the virus and adhere to public health guidelines. The return to work will not be the flipping of a switch. Without income to support themselves and their families, both workers and businesses will be tempted to return to work more quickly than recommended by public health experts. This will, in turn, mean we will not beat the spread of the virus, including stemming of second and third waves of infection.

To provide relief to workers and businesses, speed and ease of both implementation and delivery should be top of mind. We must both keep paychecks going to workers so that they have a reliable source of income to pay the bills, while also prioritizing relief that keeps employers afloat and prevents layoffs. Our ability to recover quickly from this crisis will depend on businesses' ability to quickly reopen. If American businesses first have to rehire and retrain their labor force, our recovery will lag far behind our peer countries and it will cost our economy enormously.

Although the CARES Act provided \$500 billion in loans to companies, this money is poorly targeted and there are no enforceable requirements that companies that receive the relief maintain their workforce. Congress also provided for \$350 billion in loans and grants for small businesses in the CARES Act with stronger employee retention incentives, but businesses have to apply through third-party banks (not directly through the government) and the SBA is not well-equipped to administer such a large program that requires rapid turnaround to be successful. Further, the U.S. banking system is not responsive enough to the needs of small and medium-sized businesses to process this volume of loans effectively. Early reports suggest that there are numerous challenges to using this program to quickly and effectively meet the needs of all businesses.⁵

Additionally, policies that keep Americans employed are uniquely important in the United States since nearly 160 million Americans receive their health insurance coverage through their employer.⁶ Because of skyrocketing unemployment, analysts predict that more than 35 million

⁵ If SBA employs a verification process to match employers' statement of need to their payroll data, SBA will need to obtain information from other agencies, such as the IRS, which may prove difficult. In contrast, the IRS is part of the Treasury Department, and has all of the payroll data readily available, making the Treasury Department a more seamless payer for a paycheck guarantee program.

⁶KFF, *Health Insurance Coverage of the Total Population* (2018), <https://www.kff.org/other/state-indicator/total-population/?dataView=1¤tTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

Americans could lose their health insurance in the midst of a pandemic.⁷ Providing payroll assistance through employers, rather than through enhanced unemployment insurance, will enable Americans to keep their health care benefits.

This paycheck guarantee proposal quickly delivers paychecks to workers through their employers and provides additional support to businesses to ensure that they are ready to open their doors once social distancing protocols are lifted. The design prioritizes keeping Americans on their current payroll and out of the unemployment line; speedy implementation of relief; maintenance of critical benefits like health care; and, importantly, a speedy partial or full return to work once we've flattened the curve. If Americans who aren't essential workers have to wait for employers to staff up once we're finally able to leave our houses and apartments again, we'll unnecessarily prolong the suffering of many families and small businesses, turning a recession into a depression.

Paycheck Guarantee Design. The Treasury Department should administer a program to allow employers to maintain 100% of base payroll and benefits, which should be maintained regardless of hours of service, over the next three months, including fully replacing employee wages up to the equivalent of a \$100,000 annual salary per employee. Companies that have been fully or partially shuttered due to COVID-19 will file a sworn declaration attesting to their impairment with Treasury, who will then use the company's 2019 quarterly payroll tax return (IRS Form 941) for Q2 or Q3 to immediately disburse three months of total wages and compensation to the business.⁸ This payroll relief should be in the form of grants, not loans. To encourage employers to put recently-furloughed workers back on to payroll and to ensure that temporary furloughs do not become permanent, the paycheck guarantee will also apply retroactively, allowing employers to re-hire and receive funds to pay workers who were let go or furloughed between March 1st, 2020 and the date of their application. States and cities would also be eligible for these payroll grants if they can show that they are suffering a COVID-19-related loss in revenue. Self-employed individuals and independent contractors would also be eligible.

IRS Form 941 includes both the total number of employees the employer has and also the total wages, tips, and other compensation paid to those employees. To ensure that Treasury does not pay wages in excess of the equivalent of an annual salary of \$100,000, Treasury shall divide the total number of employees reported on Form 941 by the total wages reported and reduce the quarterly wage disbursement by any amount above \$100,000 per employee. All employees making \$100,000 or less should receive full wage replacement.

⁷Health Mgmt., Covid-19 Impact on Medicaid, Marketplace, and the Uninsured, by State (2020), <https://www.healthmanagement.com/wp-content/uploads/HMA-Estimates-of-COVID-Impact-on-Coverage-public-version-for-April-3-830-CT.pdf>.

⁸ IRS, Employee Retention Credit for Employers Subject to Closure Due to COVID-19 Crisis (2020), <https://www.irs.gov/pub/irs-pdf/f941.pdf>.

If state and federal governments are still requiring businesses to remain shut down and/or encouraging social distancing that results in significant suppression of demand after the three-month period ends, the program will automatically renew on a monthly basis, until the Bureau of Economic Analysis's nominal personal consumption expenditures (PCE) estimates register two consecutive months that are at least 95% as high as the three-month average level between December 2019 and February 2020. To incentivize employers to maintain payrolls and benefits, and to ensure that the recovery is robust, Congress should give the Treasury Department the authority to continue the paycheck guarantee program for an additional three months, in the form of zero-interest loans rather than grants, on a case by case basis.

In the absence of this program, these costs would not be borne by the employer--they would be borne by the taxpayer, via unemployment insurance, or by the worker, who would receive no income replacement and suffer economically. The design of the paycheck guarantee is also a more efficient delivery mechanism than expanding unemployment insurance to meet the needs of shut down businesses--since Treasury cuts one three-month check to each employer, instead of each employee applying for unemployment insurance benefits individually.

Finally, where possible, Treasury, working with the Internal Revenue Service (IRS), the Department of Labor, and the Federal Reserve, should build upon existing public and/or private delivery systems to facilitate speedy disbursement of funds. The following options should be considered as part of this process:

OPTION A: Augment the system Treasury established to advance employers the full value of the paid family leave credit to include disbursement of paycheck guarantee funds.

OPTION B: Partner with one or more of the major payroll software firms many businesses use to disburse paycheck guarantee funds.

OPTION C: The IRS could be responsible for processing paycheck guarantee payments.

Necessary Costs Design. While labor costs make up a large fraction of total business costs, many businesses do not have enough liquidity to weather this demand shutdown without additional support. Keeping workers paid and on the job will speed the recovery--but only if their employers survive the downturn. The impacted businesses did not cause the crisis and a raft of bankruptcies and closures is not in our best interest. This drop in demand is temporary, and if we can step in and prevent some of the churn, we will be better for it on the other side.

In addition to the direct paycheck guarantee grants, we propose that the Department of the Treasury increase the disbursement amount by 20-30% to account for necessary maintenance, such as rent, utilities, or interest on debts. These payments would cover the full costs of staying shut down for businesses that are shuttered and partial costs for businesses that are still partially operational (like restaurants providing take-out). Denmark and Italy have pursued this approach.

Possible Discounting for Partial Revenue Loss. The Treasury Department could discount both the payroll and the necessary expenses benefits for employers that are partially operational. The discount formula should be based on the difference in second quarter revenues between 2020 and 2019. Companies that have lost 70% of expected revenue should get 70% coverage of necessary expenses.

Eligibility. Public and private employers of all sizes who are shut down or impacted by COVID-19 demand shortfalls should be eligible for the payroll grants beginning five days after the date of enactment of this Act. Businesses in these industries will have a presumption of eligibility, regardless of whether their states have issued shutdown orders. This is to encourage non-essential businesses to stay closed to protect the public health, regardless of whether their cities or states have required them to do so. In addition, any employer may file a declaration with Treasury certifying lost revenues or the anticipation of revenue loss as a result of COVID-19, and may qualify on this basis. (See the section below on penalties for noncompliance which addresses knowing and willful misstatements by employers concerning revenue losses.)

Conditions on Relief. Under the paycheck guarantee plan, Congress would provide significant subsidies to employers to keep workers paid and businesses afloat during this pandemic. Continuing paychecks through employers is in lieu of providing additional unemployment insurance payments and will benefit workers, employers, taxpayers, and state budgets. This is not meant to be an overly generous subsidy to large employers, but it is a subsidy. In exchange for this assistance, any employers that receive it should be held to a high standard of labor practices and be subject to stringent conditions to ensure that they do not game the system.

As a condition of receiving any funds, employers must accept the following conditions:

1. Recipients must maintain full employment and base payroll and benefits for the duration of the national health emergency and for a period of at least six months afterwards. If employers determine that they no longer need the same level of employment when the pandemic subsides they will be required to pay back a proportion of the paycheck guarantee as a no-interest or low-interest loan for each employee that is let go.
2. Where applicable, the recipient should be prohibited from engaging in share repurchases, increasing dividends, or paying executive bonuses while they are receiving relief and for three years thereafter unless the support received is fully repaid to the Treasury.

3. Where applicable, collective bargaining agreements shall remain in place and shall not be reopened or renegotiated pursuant to this relief program, unless agreed to by both parties. Further, recipients shall not engage in or hire any entities to conduct union avoidance activities. Violation of this section will result in loss of program funds.
4. Public companies and private companies with revenues above \$500 million that receive paycheck guarantee funds must set aside at least one seat on the board of directors for a representative elected by workers.
5. Any company that files for Chapter 11 bankruptcy after receiving payroll grants will be subject to all of the provisions of the Protecting Employees and Retirees in Bankruptcies Act, S. 2518 (Durbin, 2018).

Penalties for Noncompliance or Fraud. The policy design purposely prioritizes providing as much relief as quickly as possible to employers to keep employees paid and to stay afloat. In this moment, the costs of doing too little far outweigh the risk of doing too much. But to discourage fraud and gaming, it is important to specify both clawback mechanisms (in case of innocent reporting errors that result in overpayments) and penalties (in case of fraud). In the event of overpayment, the Treasury should convert direct payments into loans. For example, if an employer lays off 20 percent of its workforce during the grant period, the Treasury should require 20 percent repayment of payroll costs. In the event of partial workforce reductions during the period of the grant, to avoid discouraging uptake, the Treasury should not require repayment of necessary maintenance costs (e.g., utilities and rent) beyond those costs associated with employee payroll (e.g., employer-sponsored health insurance). Loans should be no-interest or low-interest, and must be repaid within one year of the completion of the program. In the event of fraud or failure to abide by any of the above payment conditions, criminal penalties for executives and owners will be triggered and claw back of funds will be required. Treasury should audit the program within one calendar year of its completion to identify any fraud and to determine whether overpayments were made. Treasury can ensure that the payroll grants go to employees by cross-checking the employers' grants with the payroll taxes that they paid over the period. Any mismatches should be prioritized for audit. Any non-fraudulent overpayments identified should simply be converted into a low or no-interest loan.

Oversight and Monitoring. To ensure that these conditions are met, Congress shall set up a temporary oversight body, with oversight authorities such as subpoena power, and full access to the staff and resources of the Internal Revenue Service's audit division. Treasury should also establish a joint labor management board, including representatives from local governments, to ensure that this program is carried out fairly and quickly, and to maximize the impact of this program on employee retention.

Interaction with Existing Programs. Employers that take advantage of the paycheck guarantee program cannot also access the Employee Retention Tax Credit (passed in the CARES Act) or the Exchange Stabilization Fund, or the Paycheck Protection Program.

Appropriations. Congress should appropriate sufficient funding to carry out the provisions of this Act, including funds necessary to carry out ongoing oversight and monitoring provisions and program audits.