

# Pandemic Response

## COVID-19 Small Business Insurance Program Proposal

Centers for Better Insurance (CBI) is an independent organization focused on supporting the insurance industry to optimize the value it delivers to all stakeholders (including policyholders, employees and society at large). CBI does so by making available unbiased analysis and insights about key regulatory issues facing the industry for use by insurance professionals, regulators and policymakers.

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# COVID-19 Small Business Insurance Program

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## Overview of the Proposal

The COVID-19 Small Business Insurance Program would establish a wholly voluntary mechanism through which Treasury could leverage the insurance industry's existing catastrophe response capabilities to deliver and control defined benefits to small businesses. These benefits would continue wage payments and offset unavoidable continuing expenses during the period of partial or complete lockdown.

- 1 Treasury offers TRIA eligible insurers the option to participate in the program
- 2 Participating insurers offer their small business policyholders the option to receive program benefits
- 3 Policyholders use the benefits to continue payroll and offset expenses



Lost profits



Continuing operating expenses



- Rent
- Utilities

Extra expense

- Temporary alterations of store front to comply with orders
- Notification to customers

Payroll continuation



Participating insurers agree to:

- Identify and notify small business policyholders likely to meet the benefit eligibility criteria
- Offer those policyholders who are eligible the option to receive benefits under the program
- Administer claims for benefits consistent with the eligibility and compensation guidelines established by Treasury
- Submit claims for reimbursement of benefit payments and allocated loss adjustment expense to Treasury
- Cooperate in any audit, investigation, dispute resolution or similar matter conducted by or for Treasury under the program

Participating policyholders agree to:

- Cooperate in the benefit determination process including submission of all relevant documents, inspections and other matters necessary to establish and determine a claim
- Release any business income and extra expense claim that could otherwise be made under the commercial property insurance policy
- Apply the benefits to cover continuing operating expenses (including payroll continuation) before compensating for lost profits or extra expense

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## Treasury Eligibility and Compensation Guidelines

Treasury's guidelines would require participating insurers to establish and document policyholder eligibility and the determination of compensation. These criteria are similar to those which the insurer routinely evaluates in administering business income and extra expense claims.

### Policyholder Eligibility

A policyholder is eligible to make a claim for benefits under the program if:

- The policyholder is a small business as defined by 13 CFR §121.201 by reference to the annual receipts or employee data submitted to the insurer in the most recent application for insurance;
- The policyholder has ceased (in whole or in part) business activities for the purpose of complying with a general order by a federal, state or local governmental authority issued with the objective of minimizing the spread of COVID-19;
- The first such continuous order became effective during the policy period of the commercial property policy issued by the insurer; and
- The policyholder has submitted a duly executed election of participation and release.

### Policyholder Compensation

An eligible policyholder may claim compensation for actual loss of Business Income the policyholder has sustained and reasonable and necessary Extra Expense the policyholder has incurred due to the order of a civil authority to wholly or partially cease business activities at the insured premises.

- Business Income consists of net income (net profit or loss before taxes) that would have been earned or incurred and continuing normal operating expenses incurred (including payroll).
- Extra Expense consists of reasonable and necessary expenses incurred by the policyholder during the period of eligibility for payment for Business Income loss that would not have been incurred if there had been no order to cease business activities.

Eligibility for payment of Business Income loss commences on the date of the first continuous order to cease business activities and continues until the earlier of the lifting of that order or 6 weeks (unless the Secretary designates a greater number of weeks).

Business Income and Extra Expense payments in relation to any one policy cannot exceed \$100,000 (unless the Secretary designates a greater amount).

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## Advantages of the Program for Stakeholders

The COVID-19 Small Business Insurance Program has the advantage for all stakeholders of keeping benefit administration as normal as possible by leveraging existing insurance industry capabilities, processes and relationships. Moreover, neither the insurance industry nor small businesses would be forced into participation.



### Treasury can:

- Rely on existing insurance definitions of business income and extra expense coverage to define benefits for small businesses
- Leverage existing private catastrophe claims capabilities of the insurance industry to deliver benefits and control fraud
- Establish eligibility criteria which insurers should have underwriting records to validate
- Set time and dollar amount limits on benefits which can be easily adjusted to reflect the ongoing span and duration of emergency

### Insurers can:

- Elect not to participate in the program (although their existing customer base may decide to switch to a participating insurer)
- Benefit from a total release of business income and extra expense claims that policyholders might otherwise make outside of the program
- Avoid potential litigation with policyholders
- Strengthen their relationship and value proposition to their customer base

### Small businesses can:

- Elect not to participate in the program
- Trade the doubtful right to a business income and extra expense claim under the policy for the benefits of the program
- Avoid lengthy litigation with insurers
- Work with the agents or brokers and the insurance company who are already familiar with the business

### Employees can:

- Receive continued wages in the normal manner and in the normal course from their employer during the period of lockdown

# COVID-19 Small Business Insurance Program

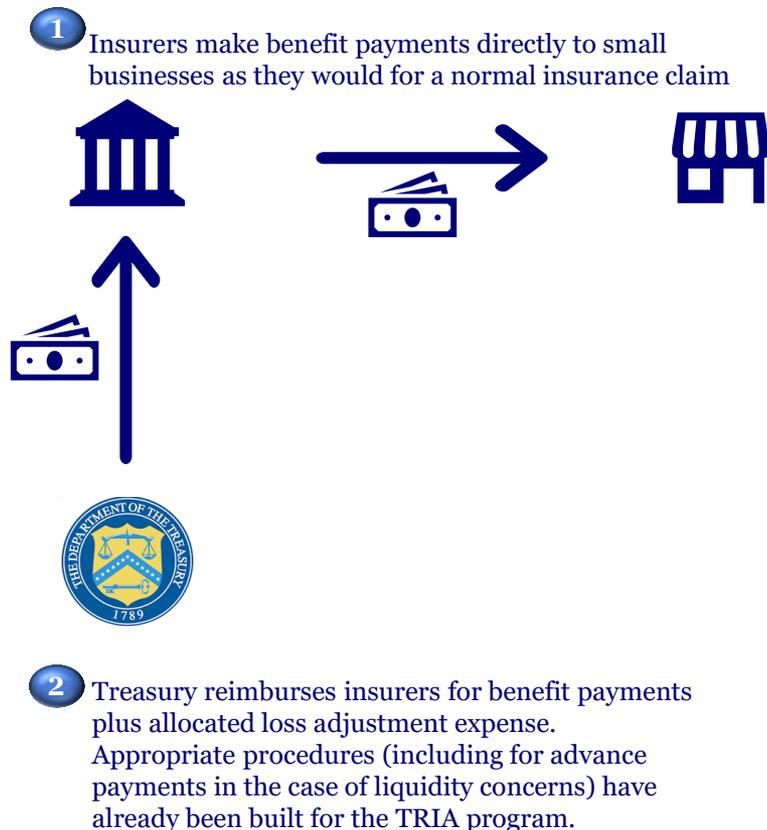
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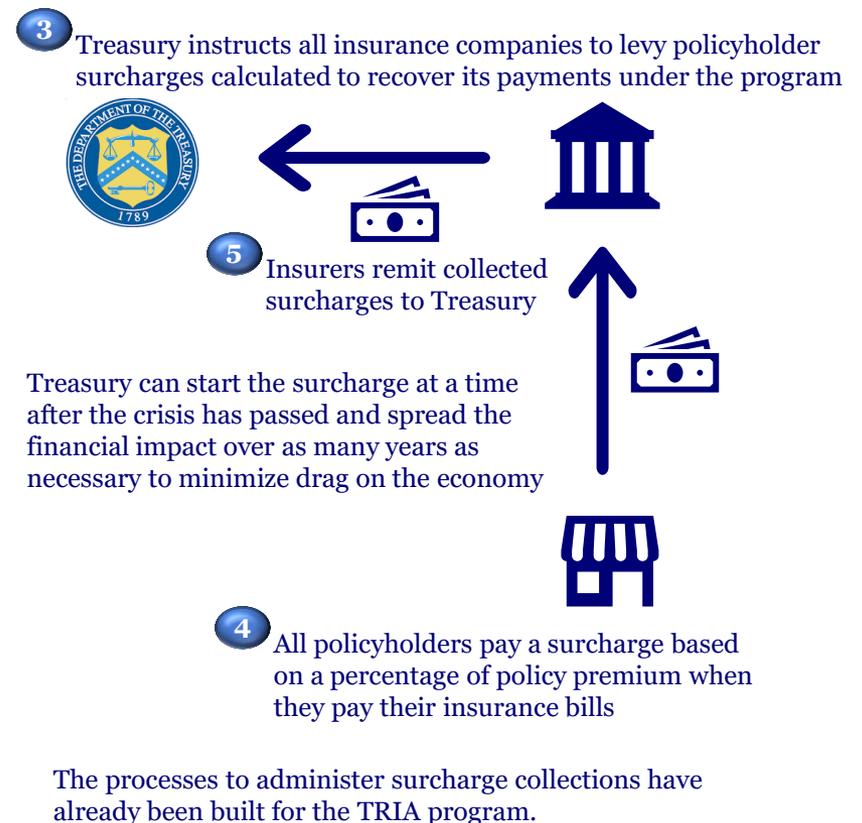
## Funding the Program

The COVID-19 Small Business Insurance Program can be fully funded after the current emergency has passed and the economy has recovered. This approach would spread the costs lockdowns from directly impacted businesses to a broad geographic base and across multiple types of businesses in recognition that the benefits of a lockdown inure to all.

### During the Crisis



### After the Crisis



# COVID-19 Small Business Insurance Program

## Virus Related Governmental Orders

Businesses are beginning to face state and municipal government lockdown orders. The recent Maryland order is a good example of the different types of closure requirements imposed on small businesses. The remainder of this presentation explores typical small business commercial property insurance policy wording to conclude coverage under these policies is highly unlikely.

On March 16, 2020 the Governor of the State of Maryland issued an emergency order intended to reduce the risk of transmission of COVID-19 by limiting the congregation of significant number of people in close quarters.

To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;

The order set forth three types of orders to specified businesses:

### 1. Complete Closure

b. All Theaters are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020.

### 2. Closure of Designated Operations

b. All Fitness Centers are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.

### 3. Prohibition of On-Site Consumption

b. All Restaurants and Bars are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of the Maryland Department of Health, food and beverages may be:

- i. sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; and
- ii. delivered to customers off the premises.

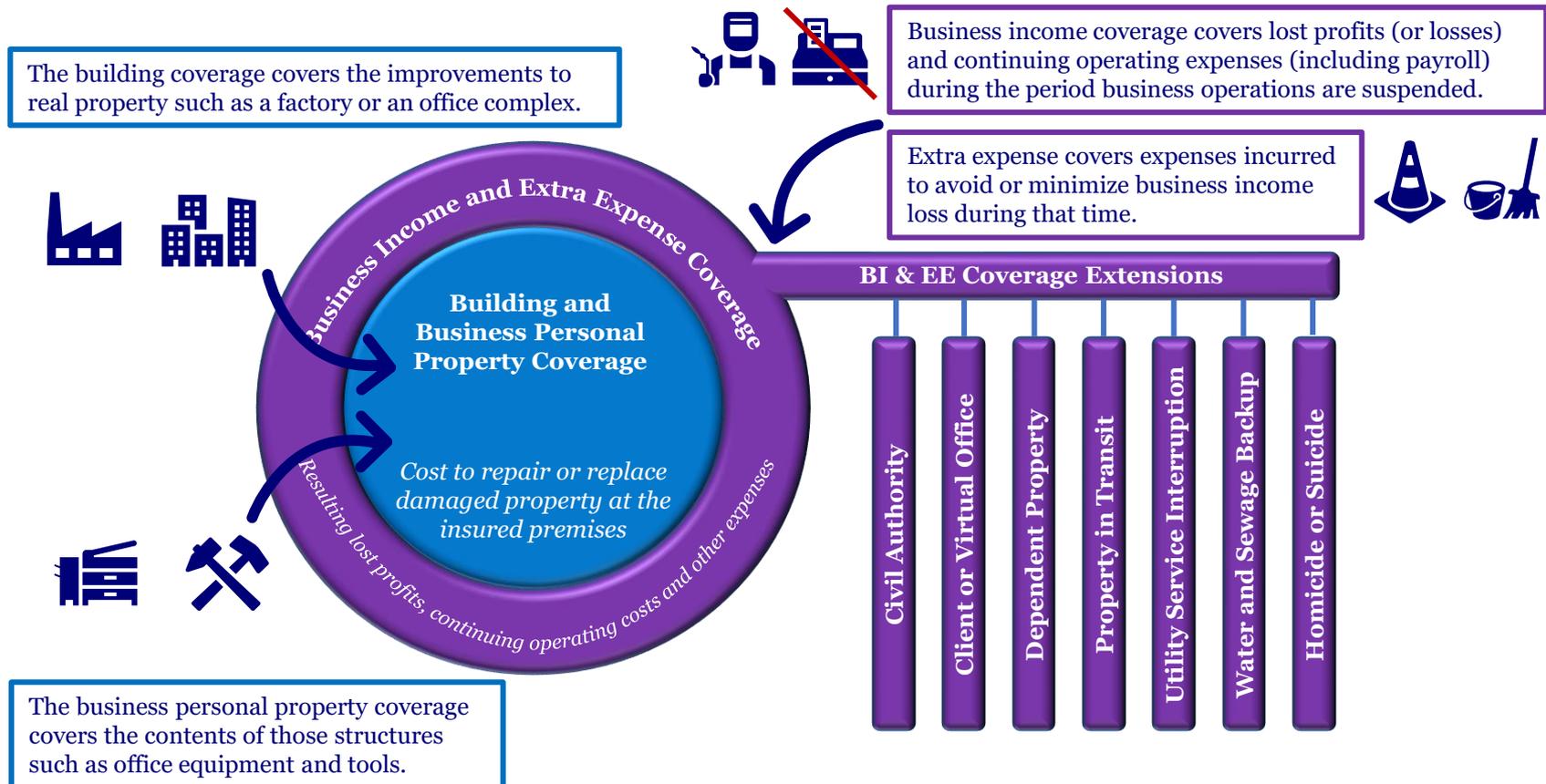
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## Overview of Small Business Property Insurance Coverages

As a result of these orders many small businesses will experience what the insurance industry describes as “business income loss” and “extra expense.” These losses include lost profits and continuing operating expenses during the shutdown as well as expenses incurred in trying to mitigate those losses. Continuation of worker payroll is a recognized operating expense for these purposes.



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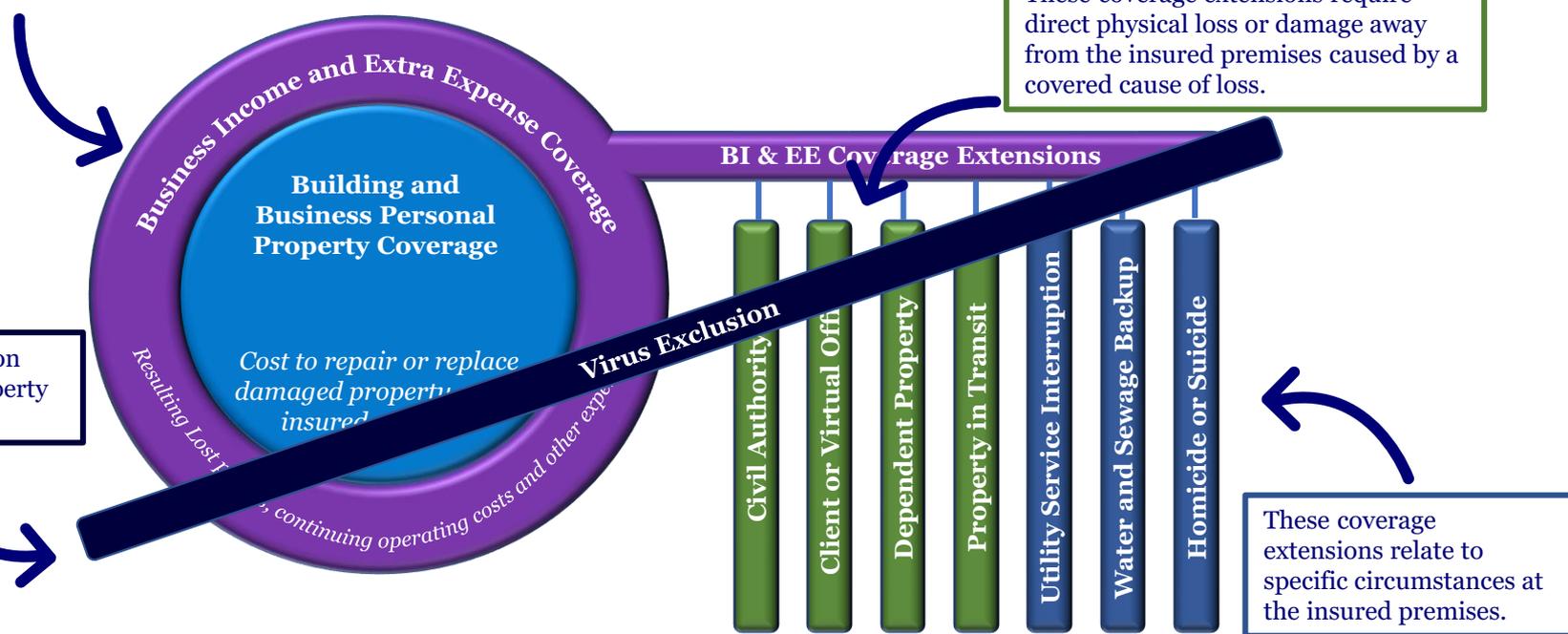
## Business Income and Extra Expense is Unlikely to Respond

Small business property insurance coverages will generally not respond to government ordered business shutdowns to prevent the spread of COVID-19 because: (a) relevant coverages require direct physical loss or damage; and (b) an exclusion in common use across the industry removes viruses from covered causes of loss.

These coverages require direct physical loss to building or business personal property at the insured premises caused by a covered cause of loss.

These coverage extensions require direct physical loss or damage away from the insured premises caused by a covered cause of loss.

The virus exclusion applies to all property coverages.



These coverage extensions relate to specific circumstances at the insured premises.

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## Business Income and Extra Expense Coverage Extensions in Detail

When business income loss and extra expense is triggered under the main coverage (because of direct physical loss at the insured premises) business income coverage typically provides up to 12 consecutive months of coverage which may be further limited by a specific dollar amount. Extra expense coverage is available during that time. Coverage extensions are far more limited.

Business Income and Extra Expense Extension	Physical Loss or Damage	causing	Suspension of Business Activity	Typical Limit
Civil Authority	To property within 100 miles of the insured premises	Partial or complete cessation of business activity	Order of civil authority prohibits access to the insured premises	3 consecutive weeks
Client or Virtual Office	To a building occupied by an employee (e.g., a home office or client location)		Suspension of business activity at the building occupied by the employee	\$25,000 per occurrence
Dependent Property	To a property that delivers or accepts products or services, attracts customers or manufactures under a contract		Suspension of business activity at the insured premises	\$50,000 per occurrence
Property in Transit	To property while in transit at the risk of the insured		Suspension of business activity at the insured premises	\$25,000 per occurrence

Business income benefits pay:

1. The net profit (or loss) before taxes that would have been earned or incurred; and
2. Continuing normal operating expenses actually incurred (including payroll)

until the damaged property should have been repaired, rebuilt or replaced with reasonable speed and similar quality.