

American Renewal Action Plan

NATIONAL ASSOCIATION OF MANUFACTURERS

Manufacturers have mobilized to respond to the unprecedented COVID-19 pandemic in ways unseen in modern history. The industry has been on the front lines as part of the nation's critical infrastructure, supplying health care workers, working toward treatments and producing Americans' daily needs.

The men and women of manufacturing, even as they are profoundly affected by the economic crisis, have a special and essential role in America's response, recovery and renewal. We offer this **American Renewal Action Plan**, knowing manufacturers possess a unique perspective on the current situation and are critical to ensuring America emerges stronger than ever before.

In accordance with the President's "Opening Up America Again" guidelines, governors and local officials will make the call on exactly when and how we "reopen" and move forward. But it is clear that America urgently needs personal protective equipment to support not only our hospitals but all sectors of the economy. This unforeseen crisis has created an unprecedented demand for PPE—unique to this threat and time—that our nation is woefully unprepared to meet. This is why during the **response** phase manufacturers must be able to ramp up production of PPE in an historic way so that the country is ready and well supplied.

Manufacturing has long been the backbone of the American economy, and our future success will depend on manufacturing's resiliency. For the **recovery** phase, policymakers must provide the tools needed to restart our economy, including strong liability protections. And for long-term **renewal**, we must set the stage for long-term growth, which will include historic investment in our nation's infrastructure, robust workforce training, regulatory improvements and more.

The road ahead is not easy. Bringing our \$22 trillion economy out of our "induced coma" is a herculean task for the ages. This challenge will require our policymakers to innovate and act boldly. This crisis will need the whole of the nation to unite in common pursuit. And, as with other consequential moments in our history, it will be manufacturers who make the difference to lead us forward—to secure the future health, safety and prosperity of all Americans.

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RESPONSE: MANUFACTURERS RISE TO SUPPORT AMERICA DURING THE CRISIS

The nation is not prepared for the near-constant demand for personal protective equipment that will come from all industries as states prepare to reopen their economies. For manufacturers to meet these and other essential needs, and save lives, the nation will also need a significantly larger supply for PPE. Action is needed to allow manufacturers to ramp up production and enhance distribution:

- Congress and the administration should provide **direct financial support and incentives** to domestic manufacturers who can successfully retool production to support the nation's additional PPE demands.
- The **Strategic National Stockpile** should be replenished with appropriate PPE and medical supplies.
- To ensure maximum PPE for the duration of the declared national emergency, the administration should take key steps to **facilitate trade in PPE** and other essential goods, including avoiding imposing additional tariffs, export restrictions or actions that could jeopardize U.S. efforts to reopen the economy.
- Congress and the administration should **expand cargo capacity** and consider prioritizing medical cargo, including active ingredients, raw materials, work-in-process inventory and components.
- The White House, U.S. Trade Representative, Department of State and Department of Commerce should ensure **robust coordination with foreign governments** on essential business guidance implemented around the world, while ensuring the continued safety of those employed by American manufacturing companies around the world.

RECOVERY: THE TOOLS NEEDED TO REOPEN AND RESTART OUR ECONOMY

Ramping up production of essential goods means that **employees must be able to go out in public and into their places of work confident that proper health precautions are being implemented**. More testing is needed, as is clarity on other best practices for staying safe and healthy:

- Congress should appropriate funds to ensure that **COVID-19 tests** are widely available so that Americans can safely return to work.
- The Equal Employment Opportunity Commission should provide guidance to employers on administering employee **temperature checks and COVID-19 testing**.

- The Centers for Disease Control and Prevention, Occupational Safety and Health Administration, Department of Labor and EEOC should publish “**Return to Work**” **guidance** that clearly defines proper hygiene and sanitization processes and practices that employers must follow.
- OSHA must publish a guidance memorandum that defines the differences between face coverings and PPE and whether using **face coverings** is mandatory or voluntary.
- OSHA must notify businesses that they will trigger **PPE requirements** (hazard assessments, testing, etc.) when they require employees to do certain tasks.
- The EEOC should continually **update its guidance materials** to help employers understand what questions they can ask employees and what actions can be taken to increase safety protocols and not discriminate against employees. The EEOC should use its discretion and not penalize employers that have taken good faith efforts to protect workers and increase safety measures.
- The Department of Labor should provide employers **flexibility to modify schedules** and create new work calendars to lower the risk of spreading COVID-19.
- Congress should enhance tax incentives for employers who invest in safety equipment, including handwashing stations, respiratory equipment and cleaning products.

Legal reforms are necessary for companies in essential industries that are trying to do the right things so that they can continue their vital work in keeping America safe and healthy:

- Congress should limit lawsuits in state and federal courts claiming damages for COVID-19 exposure in the workplace to those based on claims that companies had actual knowledge that the person would be exposed to COVID-19 and acted with reckless indifference or conscious disregard as to whether the person would contract it, and require that such allegations be pled with particularity.
- Congress should acknowledge that the patchwork of advice, industry practices and state responses during a national emergency creates difficulties to identifying a clear standard of care.
- Congress should provide employers with a safe harbor for collecting and exchanging crucial information related to employees’ health status and implementing reasonable measures such as temperature checks to combat workplace transmission of COVID-19.
- Congress should place state public nuisance claims off-limits for the spread of a pandemic disease during a declared national emergency.
- Congress should insulate publicly traded companies for claims based on hindsight evaluations of decisions to remain operational during the crisis or to close entirely or at specific sites based on good faith concerns, or for regulatory disclosures made based on the limited and imperfect information available at the time of the disclosure.

- Congress should prevent the creative use of state tort claims from undermining a response to this crisis or one yet to come.
- The Department of Labor should protect employers from frivolous litigation by publicly announcing what California has already said: COVID-19 can be considered an “unforeseeable business circumstance” under the WARN Act.

Manufacturers across the country have completely redesigned their shop floors to produce critical materials like respirators, face shields, masks, gowns and hand sanitizer for the first time. Others have taken protective equipment that they themselves would have used and donated it to local hospitals. Yet state and local Good Samaritan protections vary widely and **may fail to protect manufacturers from unwarranted lawsuits related to these lifesaving actions. Targeted legal reforms are necessary** to protect manufacturers who have acted in good faith to aid those on the front lines of this crisis:

- Congress should enact liability protection from state or federal claims arising out of the use of masks, respirators and other protective equipment.
- Congress should allow manufacturers to use basic masks and other items designed to slow the spread of COVID-19 in their sites without fear of liability if more suitable options are deployed for health care workers on the front lines.
- Congress should extend volunteer protections for employees who deliver protective equipment to hospitals.
- Congress should generally limit liability to attach only to those who acted with actual knowledge of the product’s defect in conscious disregard for the health and safety of others.

Additional steps are also needed to ensure the **financial health of American workers**:

- Congress should provide additional funding to support **unemployment insurance benefits**.
- Congress should exempt COVID-related temporary wage increases or bonuses from **“regular rate of pay” rules** under the Fair Labor Standards Act.
- Congress should allow companies to pay **tax-free bonuses** to employees who work during this crisis.

RENEWAL: A STRONGER AMERICA IS SAFER AND MORE PROSPEROUS

A strong economic recovery will not be possible without a strong manufacturing industry. Investments made today will **protect jobs** and ensure that manufacturing in America remains viable and ready to lead robust economic growth when the crisis abates:

- Congress should continue to provide liquidity up to **\$1.4 trillion in loans and grants** for manufacturers impacted by COVID-19, ensuring financial security for the nearly 13 million men and women who make things in America.
- Congress should **expand the Paycheck Protection Program** by increasing funding sufficient to ensure that all small businesses can qualify for the program.
- Congress and financial regulators should engage in oversight of PPP lenders to ensure that **loans are disbursed fairly** and manufacturers of all sizes, from all areas of the country, including **minority- and women-owned businesses**, are able to access needed funds. Where appropriate, penalties should be assessed for discriminatory actions that prohibit these small businesses from receiving loans.

Clarifying loan requirements and speeding up delivery will make a profound difference for manufacturers:

- The Treasury Department and the Small Business Administration should encourage **rapid and timely disbursements from the Paycheck Protection Program** by providing needed certainty to lenders:
 - Provide clear guidelines regarding eligibility and processes or loan forgiveness.
 - Reduce legal liability for lenders who comply with the legal requirements to disburse funds pursuant to the program.
 - Allow captive finance companies to participate as lenders in the program.
 - Clarify terms of secondary market purchases of loans made pursuant to the program by non-bank lenders.
 - Reform affiliation rules to ensure that all small manufacturers can qualify for the program.
- The Treasury Department and Federal Reserve should **speed the delivery of aid to businesses** by addressing key issues related to their new lending facilities:
 - Clarify the scope of a Federal Reserve provision that prohibits companies from participating in certain liquidity programs if they have otherwise received “specific support” from the CARES Act or other federal legislation. Businesses that utilize general items authorized in the bill, like tax credits, should not be excluded.

- Allow more companies to access funding facilities by expanding the pool of qualifying bond ratings and ratings agencies used to determine eligibility for specific liquidity programs.
- Ensure that a U.S. entity with a substantial American workforce or significant domestic presence can access needed liquidity resources, irrespective of the country in which its legal parent company is domiciled.
- Allow more borrowers to utilize the Main Street Lending Program, including by reducing the minimum loan amount and reforming the maximum loan calculation to encourage participation from smaller companies.

Through **tax and pension provisions**, Congress and the IRS can take additional immediate actions to **inject more liquidity into the manufacturing industry**, further enhancing job security:

- Congress should provide additional liquidity to manufacturing by expanding and improving upon recently enacted tax relief provisions (such as net operating loss carrybacks and the employee retention tax credit) and by allowing companies to **accelerate the utilization of tax benefits**, including general business credits.
- The IRS should further **delay all scheduled federal tax payments** (including quarterly payments of estimated tax) during this crisis and the initial stages of the economic recovery.
- Congress, the Pension Benefit Guaranty Corporation and the IRS should provide **relief to defined benefit plan sponsors** by freezing interest rates at pre-crisis levels for the purposes of determining contribution requirements, extending pension smoothing, modifying the interest rate corridor and extending the time frame for plan sponsors to make funding balance elections.

A renewed economy will also be a changed economy, and **dislocated workers will need significant support through training and jobs programs**. The Manufacturing Institute, the workforce and education partner of the National Association of Manufacturers, recommends a **\$10 billion investment in workforce and job training programs** through Workforce Innovation and Opportunity Act, Perkins and grants programs. \$2.5 billion should be reserved for manufacturing programs with a focus on key priorities:

- Congress and the Department of Labor should award all discretionary or competitive grant funds no later than 18 months after passage of a bill, and funds should be given for grant proposals no longer than 24 months in length.
- Congress and the Department of Labor should prioritize **customized training models** for all funded programs up to two years in length to guarantee a connection to employment for participants.
- Congress should prioritize **earn-and-learn models** in all workforce legislation and allow for expenses that support business participation and student success.

- Federal and state lawmakers should enable recovery funds from Perkins and USDOL grants to be used for the **purchase of necessary equipment** in community and technical colleges and allow for secondary schools to utilize this new equipment through partnerships between high schools and community colleges.
- Congress and the Department of Education should **reduce barriers** and encourage flexibility to allow experienced manufacturing employees to become training instructors.
- Congress should require **partnerships with industry associations** or reserve a portion of funding for industry associations to improve dissemination of successful solutions across companies and regions.

Even before the crisis, America desperately needed bold infrastructure investment. Now, building a **21st-century infrastructure system** will not only provide urgently needed jobs but also lay the foundation for a more competitive economy:

- Congress should approve historic investment of at least \$1 trillion in our nation's infrastructure that aligns with the **NAM's "Building to Win" blueprint**, which calls for upgrades to our transportation, water, energy and digital infrastructure systems.

Smart adjustments to America's tax and financial regulatory policies will further spur growth and safeguard economic progress:

- Congress should enact comprehensive **multiemployer pension reform** to protect retirement benefits and put the Pension Benefit Guaranty Corporation's Multiemployer Program on a path to solvency.
- Congress should enact legislation that **exempts from taxation income from loan modification, forgiveness or cancellation**.
- Congress should enact legislation that reduces to 2018 levels the **base erosion and anti-abuse tax**.
- The Securities and Exchange Commission should finalize reforms that would **expand the pool of "accredited investors"** who can provide capital to manufacturers.
- The Securities and Exchange Commission should allow companies to better convey to their investors the long-term nature of manufacturing investments by **moving away from one-size-fits-all quarterly reporting** obligations.
- Congress should enact a **reinsurance framework** to provide a backstop for manufacturers affected by disruptions from COVID-19 and future pandemics.

Encouraging exports and facilitating international trade will bolster manufacturing in the United States and create lasting job opportunities:

- Customs and Border Protection should **expedite duty drawback payments** and Section 301 tariff refunds, which were delayed before and during the COVID-19 pandemic, to allow these funds to be used to rehire and reinvest as soon as possible.
- Congress, the U.S. Trade Representative and U.S. International Trade Commission should **extend critical tariff relief programs**, such as the Miscellaneous Tariff Bill and the Generalized System of Preferences, to allow the importation of components critical to support the growth and renewal of U.S. manufacturing.
- Congress should **increase the competitiveness of the Export-Import Bank** to allow manufacturers in the United States to compete on a level playing field with foreign manufacturers that are supported by increasingly flexible and tailored financing from foreign Export Credit Agencies.
- The U.S. Trade Representative and Congress should recommit to an **active trade agenda** to remove foreign trade barriers and open critical markets, including by restarting trade negotiations paused or slowed during the coronavirus—such as binding “phase two” China trade agreement negotiations—and launching negotiations to eliminate tariff and nontariff barriers with likeminded countries (for example, U.S.–EU, U.S.–UK and U.S.–Kenya negotiations).
- The White House, U.S. Trade Representative, Department of Treasury and Department of Commerce should postpone internal U.S. government discussions regarding potential U.S. withdrawal from the **World Trade Organization** generally and WTO agreements, including the Government Procurement Agreement, as such moves would create significant business uncertainty and operational disruption.
- The Department of Commerce and Small Business Administration should expand U.S. government **export promotion programs**, enhancing manufacturers’ ability to compete and win in the global marketplace.
- The administration should develop a targeted list of products for which Section 301 tariffs and retaliatory tariffs can be suspended or removed to spur economic growth and job creation; in the interim, credit the tariffs being paid back to the companies affected.

Leaders can take action now to recognize that future economic and national security are both enhanced by a **strengthened U.S. manufacturing supply chain**:

- The administration and Congress should promote manufacturing in the United States by creating a tangible policy plan to support investments in domestic manufacturing. This plan should:
 - Utilize the tax code to encourage investment in U.S. manufacturing.
 - Create a new tax credit to support the onshoring of manufacturing activities, such as moving operations to the U.S. or investing in capital equipment, to support the purchase of property, facilities and more.
 - Provide tax incentives to help companies recruit and train the skilled workforce needed to expand modern manufacturing in the U.S.
 - Ensure that tax incentives for equipment purchases and a full deduction for R&D expenses remain in place.
 - Pass legislation to prevent scheduled tax law changes from going into effect that would increase the cost of obtaining a business loan.
 - Create an incentive, effective for a limited period of time after operations are moved to the U.S., to help mitigate increased labor costs.
 - Direct the General Services Administration to open the federal government's portfolio of surplus and underutilized real property and equipment for purchase—at less than market rates—by companies that want to onshore.
 - Produce an annual, comprehensive report on the relative competitiveness of the U.S. tax and regulatory regime with expedited congressional consideration of recommended actions to ensure that America is the most attractive place in the world to start and grow a business.
 - Expedite federal permitting necessary to acquire and build onshored operations.
 - Expand federal investments in advanced manufacturing technologies to ensure the long-term competitiveness of the sector.