

# NONPROFIT NEW YORK

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Testimony for New York State Assembly Public Hearing June 22, 2020

**To:** New York State Senate Committee on Commerce, Economic Development, and Small Business;  
New York State Assembly Committee on Small Businesses

**Regarding:** The federal response and economic impact of COVID-19 on small businesses

**From:** Chai Jindasurat, Policy Director, Nonprofit New York

Thank you for the opportunity to testify today. My name is Chai Jindasurat and I am the Policy Director at Nonprofit New York, an association of 1,500 nonprofit organizations in the downstate region. The over 60,000 nonprofits in New York employ 18% of the private workforce, 8% higher than the national average. We provide more than 1.4 million jobs and pay \$80 billion in wages.

**Nonprofits make our communities and our economy more equitable and inclusive.** Nonprofits have experienced significant revenue losses, layoffs, and closures due to COVID-19, particularly nonprofits heavily reliant on revenue-generating events and fundraisers, nonprofits with fee-for-service contracts reimbursed for the number of people or units served, and community development corporations who generate revenue from rent.<sup>1</sup> Nonprofit New York surveyed our members twice since the pandemic came to New York, and of respondents, 85% canceled programs and events, 70% lost revenue, and 64% disruption of services to clients and communities. A follow up survey found that out of 66 nonprofit respondents, over 900 staff had been laid off and together these organizations lost over \$30 million. Nonprofits in New York are not financially strong<sup>2</sup> and these losses could lead to significant closures, lost jobs, and adverse consequences to the communities we serve.

We are very grateful for Congressional action in response to COVID-19, including the Families First Coronavirus Response Act, CARES Act, and Paycheck Protection Flexibility Act. However there remain gaps in economic relief for nonprofits and our communities. Nonprofits with more than 500 staff members are excluded from the Paycheck Protection Program loans, nonprofits that “self-insure” most pay 100% of unemployment insurance costs for laid off staff and be reimbursed 50% at a later date, business interruption insurance for most nonprofits does not cover COVID-19 related losses, and many New Yorkers have been left out of relief. Nonprofit New York has been coordinating a sector wide nonprofit coalition with over 100 members since mid-March to support nonprofits through COVID-19. We have taken positions and discussed state relief efforts and legislation which I will share in my testimony.

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<sup>1</sup> According to a pulse poll that was sent out by Nonprofit New York, 85% of respondents canceling programs and/or events, 70% experiencing reduced revenue, and 64% reporting a disruption of services to clients and communities. Dance/NYC reported that its survey respondents had lost at least \$15.2 million in income and that due to mandated social distancing, 69% of dance organizations surveyed are experiencing cash flow issues and/or financial hardship. New Yorkers for Culture & Arts found that surveyed freelance artists were reporting an average of \$7,021.88 worth of canceled work. *Times Union* reported that Planned Parenthood of Greater New York reportedly will be reducing its staff by roughly 28% across all departments. As reported by the *NY Post* and *ABC News*, roughly 40% of food pantries in NYC have shut down.

<sup>2</sup> SeaChange Capital Partners. (2016). Risk Management for Nonprofits.

Nonprofit New York

CARES Act loan programs

PPP - exclusions, first come/first serve, and limited English proficiency

EIDL

Main Street

- A follow-up pulse poll from Nonprofit New York found that respondents lost (or was postponed) a total of \$31,107,940 in revenue. And collectively, respondents have had to lay off or furlough 947 staff

Unemployment insurance

Prohibiting nonprofits from being charged back for unemployment insurance claims in instances of mandated facility closures due to COVID-19. The CARES Act provided 50 percent funding for this purpose; however, the remaining 50 percent liability is financially burdensome in this climate. Nonprofits had the operational capacity to pay unemployment claims in a normal economic environment, but with mandatory shutdowns and extreme reductions in revenue that forced layoffs, the other 50 percent of this protection is a critical need now.

Business interruption

State contracts

City and state budget

Rent relief

The federal actions taken by Congress have been critical for our country, and we are grateful the payroll reimbursement for paid sick and family leave allows nonprofits to be reimbursed for new requirements under the Families First Coronavirus Response Act. However, the cash flow crunch to make it through the first quarter caused nonprofits to have to lay off staff. Under the CARES Act, nonprofits up to 500 staff are eligible for PPP loans. However we have heard small, culturally specific nonprofits have had challenges accessing the program, and our larger social service nonprofits with more than 500 staff are ineligible but these organizations operate on very thin margins.

Most nonprofits with general liability or commercial property insurance have very limited business interruption coverage.<sup>3</sup> Unlike for-profit entities, most nonprofits are not well-versed in insurance

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<sup>3</sup> For those that do purchase the insurance, the coverage often does not extend to contingent business interruption, which is designed to cover business income loss resulting from loss, damage, or destruction of property owned by others, including: direct “suppliers” of goods or services to the insured and/or direct “receivers” of goods or services manufactured or provided by the insured. In addition, even if a claim for

coverage negotiations and do not have weighty insurance brokers advocating for their interests. Accordingly, without specific legislative intervention, nonprofits are unlikely to receive coverage under their business interruption coverage for any COVID-19 related losses.

While the Commerce Clause of the U.S. Constitution imposes certain limits on the ability of states to retroactively interfere with vested contractual rights, such an interference can be upheld if it is rationally related to a legitimate state interest.<sup>4</sup> We believe states have the power to retroactively mandate business interruption coverage of COVID-19 losses under existing policies under the current circumstances.

### Business compensation

[S08319 \(AKSHAR\)](#), would create the coronavirus business interruption and municipal recovery program to provide grants through the empire state development corporation to businesses and municipalities which sustain economic losses as a result of the COVID-19 emergency. The bill would authorize the issuance of bonds to fund the grants. The bill was introduced on May 11.

[A 10387\(Epstein/S8473\(Hoylman\)\)](#): Provides that no default in the payment of rent due or judgment of possession shall be entered against a tenant who is a small business between March seventh, two thousand twenty and a date six months after the expiration of the state disaster emergency, as such term is defined in section twenty of the executive law, declared pursuant to executive order two hundred two of two thousand twenty, as amended.

### [A10329-A\(Reyes\)/S08442A\(Sanders\)](#)

Provides for assessment of activities conducted by the banking institution to support persons, small businesses, minority- and women-owned businesses, and certain not-for-profit corporations affected by the outbreak of coronavirus disease 2019 (COVID-19). Support provided to a nonprofit shall only be considered for the purposes of this bill where the nonprofit utilized its resources to assist underserved communities during the state disaster emergency declared.

### State Comptroller 2019 Nonprofit Prompt Contracting Annual Report

The Office of the NYS Comptroller's [2019 Calendar Year Not-For-Profit Prompt Contracting Annual Report](#) released this week found the percentage of late contracts increased from 47% in 2018 to 50% in 2019. Almost half of the agencies reported at least three quarters of their contracts were not processed on time.

### Other bills that passed we're monitoring:

- [A10498/S8412](#) (Paulin/Benjamin), which would codify the permissibility of virtual member meetings through the end of the coronavirus state of emergency.
- [A10294A/S8181A](#) (Stipre/May), establishes a state disaster emergency loan program to be administered by industrial development agencies for small businesses and small

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business interruption is related to COVID-19, insurers have disputed whether the physical loss requirement has been met and have pointed to pandemic, infectious or contagious disease exclusions in their policies to deny coverage.

<sup>4</sup> General Motors Corp. v. Romein, 503 U.S. 181, 191 (1992)

not-for-profit corporations. Industrial Development Agencies can make \$25,000 loans to nonprofits and small businesses to purchase PPE and other fixtures needed to help prevent the spread of COVID-19.

#### Bills we're supporting

- [A10226B](#) (Carroll)/[S8211A](#) (Gounardes), which would expand business interruption insurance to cover COVID-19 related losses.
- [A10208](#) (Buchwald) / [S8169](#) (Jackson) which would create a loan program for nonprofits and small businesses. Read our legislative [memo](#) of support.

#### New York Forward Loan: ESD \$100 million loan program for nonprofits, small businesses, and small landlords

Empire State Development announced a [\\$100 million loan program](#) for nonprofits and small businesses with fewer than 20 employees, and small landlords. For nonprofits, the loans are only available to entities offering direct services such as after-school programs or food assistance with gross revenues totaling less than \$3 million per year. They also must not have received funding from the federal Paycheck Protection Program or Economic Injury Disaster Loan program. The loans are not forgivable in part or whole. The loans will need to be paid back over a 5-year term with interest.

For these reasons, Nonprofit New York strongly support A10226/S8211, which would allow business interruption claims to be filed for losses sustained as a result of COVID-19, and asks the legislature to consider this legislation as critical to support our state's small businesses and economy to survive the COVID-19 crisis.

Thank you,

A handwritten signature in black ink, appearing to read "Ch. JS".