



Owner-Operator Independent Drivers Association

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May 13, 2020

The Honorable Mitch McConnell
Senate Majority Leader
S-230, The Capitol
Washington, DC 20510

The Honorable Chuck Schumer
Senate Minority Leader
S-221, The Capitol
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
House Minority Leader
H-204, The Capitol
Washington, DC 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi and Minority Leader McCarthy;

Since the outbreak of COVID-19 in the United States, small-business truckers have been risking their lives to deliver critical supplies to communities across the country. OOIDA represents 160,000 small-business truckers and professional drivers, most of which have continued working through this emergency to keep our country healthy, safe and productive. As the initial surge in demand for transporting critical goods has subsided and freight rates are on the decline, many now face significant economic challenges that threaten the viability of their business.

To ensure the viability of small-business truckers, Congress must provide more targeted relief specific to our industry. OOIDA recommends the following steps be taken as soon as possible:

ADDRESS UNSCRUPULOUS BROKERS AND FREIGHT RATES

An urgent concern among our members is plummeting rates in the freight market. Historically low rates are making it impossible for many truckers to cover their basic operating costs. This has created unsustainable conditions for many small trucking businesses.

While there is no simple solution to addressing low rates, Congress must help confront the problem by ensuring that existing transparency regulations related to brokered loads are functioning as intended.

- **Improve transparency of transaction records maintained by brokers by requiring automatic electronic disclosure of records under 49 CFR 371.3.**

Under current regulations, brokers are required to maintain records related to transactions with motor carriers, including how much each party is paid for their services. These same regulations require that all parties to the transaction, including truckers and motor carriers, have access to these records. Many brokers have exploited loopholes in this requirement, making it very difficult – if not impossible - for truckers to access the information they unquestionably have a right to see. In fact, many drivers reluctantly sign contracts with brokers in which they waive their right to access this information, simply because they have no other options in acquiring loads. This practice has become so widespread among brokers it's practically an industry norm, rendering the requirements of 49 CFR 371.3 obsolete. Often, drivers who are able to acquire this information from brokers report being essentially blacklisted by specific firms.

Congress must ensure that records currently required to be maintained by brokers and provided to truckers are delivered electronically to all parties upon completion of a transaction. Immediately transmitting this information to truckers will dramatically improve transparency, giving small trucking businesses greater opportunity to avoid contracting with unscrupulous brokers or those who don't provide adequate compensation.

- **Reform broker bond requirements to combat unscrupulous brokers who take advantage of small-business truckers.**

Congress must also finally take steps to remedy the long-time problem with broker bonds. For more than 20 years, OOIDA has been pushing Washington to address the inadequacy of the current statutory and regulatory framework for broker bonds and trusts, which provides no assurance that motor carriers are fully compensated for their work when brokers do not pay them. While MAP-21 increased the amount of the broker bond to a minimum of \$75,000, simply raising the bond has not stopped brokers from stealing transportation services in excess of the minimum amount. Absent sufficient regulatory and legislative action, brokers will continue to take advantage of drivers without any intention of ever paying them. With drivers desperately seeking loads to haul just to remain solvent, we anticipate even greater manipulation of these loopholes by unscrupulous brokers during COVID-19 recovery.

- **Reduce overcapacity by allowing current truck weight emergency exemptions to expire.**

At the outset of the COVID-19 emergency, it was prudent for states to increase truck weight limits to allow for the quick transportation of emergency supplies. These waivers helped drivers make critical deliveries in a timely manner. However, now that emergency and panic buying has slowed and most other economic activity has ground to a halt, there is no longer a need for these exemptions.

In fact, there is currently an excess of trucking capacity, and motor carriers are more than capable of meeting the nation's ongoing transportation needs. Unfortunately, maintaining the weight exemptions

only further increases capacity. As a result, our members have seen freight rates drop to historic and unsustainable lows.

To help improve conditions for small-business truckers, FHWA should work with states to ensure that their emergency weight exemptions expire as soon as possible and are not extended. If not, these policies will continue to add excess capacity to the freight market, further reducing already weak rates and worsening the economic outlook for tens of thousands of small-business truckers.

INCREASE DRIVER COMPENSATION

- **Repeal the Fair Labor Standards Act (FLSA) overtime exemption for truck drivers.**

As drivers work tirelessly during the COVID-19 crisis, it would seem noncontroversial that they should be paid for all of the time they spend completing a haul. But because of decades-old, outdated laws, employee drivers are not eligible for overtime compensation under FLSA. Congress must repeal this exemption so that drivers are properly compensated for all hours they work.

- **Provide hazard pay for drivers working during the emergency period.**

As essential workers, truckers should be receiving hazard pay throughout the emergency period. They are not only risking their own well-being while ensuring hospitals, grocery stores and manufacturers are properly supplied. For decades, driver compensation has been woefully inadequate. It's unacceptable that many drivers are continuing to be underpaid while they work longer hours and face greater risk of exposure.

Unfortunately, many professional drivers have been forced to independently purchase PPE equipment or find free distribution sites. OOIDA has worked closely with the Administration to obtain and distribute protective masks to drivers. We have been successful in these efforts, and are updating our members on locations where FMCSA is distributing equipment free of charge. Still, many truckers have had to track down and personally pay for PPE, hand sanitizer, and other supplies to protect themselves and those they come into contact with during their daily operations.

IMPROVE SBA ASSISTANCE

We have provided as much information as possible to small-business truckers to help them apply for federal assistance through SBA. While some have been successful, the majority have unfortunately failed to receive any financial support. Several improvements can be made by Congress to maximize the effectiveness of these programs and ensure the trucking industry is receiving the relief it needs.

- **Allow trucking companies to include truck payments, insurance payments, and depreciation when calculating the maximum PPP loan amount, permit greater flexibility in how these loans may be used by businesses, and provide loan forgiveness for these purposes.**

One of the biggest problems with PPP for small-business truckers, and in particular independent contractors, has been the calculation of loans. Because the maximum PPP loan is calculated using net profits for independent contractors and sole proprietors, many applicants are either ineligible for a loan or would only receive a small amount of assistance to cover their expenses. Small businesses take numerous business deductions, and therefore net profit often does not accurately reflect their earnings or the cost of doing business. For example, if an owner-operator replaces both truck and trailer, bonus or accelerated depreciation may totally offset their income.

- **Allow PPP recipients to deduct expenses paid for with forgivable loan proceeds.**

As with so many other aspects of the PPP rollout, the implementing guidance from federal agencies has run counter to Congressional intent. Congress must fix the Treasury's and IRS' decision and allow PPP recipients to deduct expenses that are paid for with a forgiven loan. Otherwise, small businesses will have a tax bill they were not expecting when they applied to the program.

- **Fix functionality and processing.**

Applicants have encountered continued delays in submitting applications, and many are being turned away by multiple banks who say they are no longer accepting applications. We understand that the federal government and financial institutions face enormous challenges in implementing a program of this size, but that doesn't change the reality for small businesses left in limbo.

Facing unsustainably and historically low rates in the freight market, and with virtually no assistance from programs that are supposed to help them remain viable, many hard-working truck drivers could actually get more assistance by collecting unemployment than continuing to deliver critical supplies. This is not what Congress intended when they sought to keep small businesses in operation, but this is the economic reality for many small-business truckers. While our members have tried to exercise patience in accessing this aid, they have reached a breaking point.

- **Provide additional funding for the Emergency Economic Injury Disaster Loan (EIDL) program and ensure that all eligible small businesses can apply.**

Small-business truckers are having serious problems with the EIDL program. Many have been waiting for weeks to hear back about the status of their application. And since Congress provided additional funding for the program, the application process has only been open for agricultural businesses. Because the PPP is currently unable to cover many of truckers' expenses, they must have access to the EIDL.

PROVIDE TARGETED FINANCIAL RELIEF

Even if changes to PPP are made, many small-business truckers will still be unable to obtain relief through the program. This could be due to their difficulty in working with a bank or the program simply running out of funding before they are able to acquire a loan. While we appreciate the tremendous

amount of funding already provided for SBA programs, our members do not believe the survival of their business should depend on whether they have the right relationship with the right bank or won a race to submit their application.

Therefore, Congress must also consider action that will directly impact all small trucking businesses. These targeted financial relief measures would help countless truckers stay in business through the ongoing crisis and the recovery that will follow.

- **Suspend the Heavy Vehicle Use Tax (HVUT) [Form 2290] and Unified Carrier Registration (UCR) Fees for 2020.**

Providing relief from these fees is a straightforward way to give truckers financial relief, allowing them to devote limited resources to sustaining their business, rather than paying federal taxes.

COMBAT THE TRUCK PARKING CRISIS

- **Enact H.R. 6104, the Truck Parking Safety Improvement Act.**

As a part of the next emergency recovery package or upcoming surface transportation reauthorization, Congress must help end the truck parking crisis, which remains a top concern among those driving during the pandemic. Our industry has come together to support H.R. 6104, a bipartisan bill that takes an important step toward improving one of the biggest problems truckers are currently facing and will continue to face as the nation recovers. This legislation devotes hundreds-of-millions of dollars to expanding truck parking capacity. To improve safety for professional drivers, H.R. 6104 must be included in any subsequent relief packages or the next highway bill.

We appreciate your consideration of these recommendations and look forward to working with you to address these issues facing truckers. If you have any questions, need additional information or would like to work with OOIDA to advance any of these recommendations, please contact Collin Long, Director of Government Affairs, via email at collin_long@ooida.com.

Sincerely,



Todd Spencer
President & CEO
Owner-Operator Independent Drivers Association