COVID-19 Update

Presented by
The Franklin Partnership, LLP
April 16, 2020
About The Franklin Partnership

• Bi-partisan Washington, D.C.-based government relations firm
• Provide direct lobbying services on Capitol Hill, White House, Federal Agencies
• Strategic consulting on impact of government actions on clients
• Speak to business, associations about impact of Washington on their operations
• Supply chain risk analysis
• Clients include:
  - Manufacturing companies and associations
  - Defense manufacturers
  - Hospitals,
  - Cities

*The Franklin Partnership is not a law firm and nothing contained herein shall be construed as legal advice.*
Agenda

• Current State of the States
• Who Defines an Essential Business
• What are the States Doing
• What is Washington Doing to Help?
• Next Steps
• Questions

All information presented as of April 15, 2020
Current State of the States

STATE POLICIES IN RESPONSE TO COVID-19 PANDEMIC
All 50 States and DC have declared a state of emergency. To access a state declaration, click on the state. This map is continuously updated as new declarations and policies are issued across the country in response to COVID-19. If your state has issued a shelter-in-place and/or business closure policy not reflected in County Explorer, please contact us at research@naco.org.

Source: NACo-collected data, as of April 13, 2020. In the event of a discrepancy between NACo data and data reported by state and local public health officials, data reported by state and local public health officials should be considered the most up-to-date.
Essential Business Definition – No Change

U.S. Department of Homeland Security
Cybersecurity & Infrastructure Security Agency (CISA) list:

Critical Manufacturing Definition:

“Workers necessary for the manufacturing of metals (including steel and aluminum), industrial minerals, semiconductors, materials and products needed for medical supply chains, and for supply chains associated with transportation, energy, communications, information technology, food and agriculture, chemical manufacturing, nuclear facilities, wood products, commodities used as fuel for power generation facilities, the operation of dams, water and wastewater treatment, processing and reprocessing of solid waste, emergency services, and the defense industrial base. Additionally, workers needed to maintain the continuity of these manufacturing functions and associated supply chains, and workers necessary to maintain a manufacturing operation in warm standby.”

Transportation and Logistics Definition:

“Automotive repair, maintenance, and transportation equipment manufacturing and distribution facilities”
## States Set Their Own Guidelines

<table>
<thead>
<tr>
<th>State</th>
<th>Essential Business Definition</th>
<th>Waiver?</th>
<th>Effective Date</th>
<th>Expiration Date</th>
<th>State</th>
<th>Essential Business Definition</th>
<th>Waiver?</th>
<th>Effective Date</th>
<th>Expiration Date</th>
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<td>4/2/2020</td>
<td>4/30/2020</td>
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</tbody>
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ORDER OF THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA
TO ENSURE THE EFFICIENT ALLOCATION AND EFFECTIVE USE
OF CRITICAL MEDICAL RESOURCES

In accordance with sections 7304(f)(4) and 7313(10) of the Emergency Management Services Code, the Pennsylvania Emergency Management Agency, in coordination with Commonwealth agencies engaged in the procurement of PPE and other medical resources, is hereby authorized to commandeer and utilize all PPE, pharmaceuticals, and other medical resources required to respond to, provide care for those afflicted by, or otherwise prevent the spread of COVID-19 from all private, public, and quasi-public health care providers and facilities, as well as manufacturers and suppliers of PPE, pharmaceuticals, and other medical resources located within the Commonwealth of Pennsylvania. 35 Pa. C.S. §§ 7304(f)(4), 7313(10).
States Issue Face Mask Orders for Employees

• OSHA: During N95 filtering facepiece respirator (FFR) shortages, the federal government advises that specific N95 FFRs that are beyond their manufacturer’s recommended shelf life will provide greater protection than surgical masks (i.e., facemasks, other than surgical N95s; see below) or non-NIOSH-approved masks (e.g., homemade masks or improvised mouth and nose covers, such as bandanas).

• Pennsylvania: Businesses should “provide masks for employees to wear during their time at the business, and make it a mandatory requirement to wear masks while on the work site, except to the extent an employee is using break time to eat or drink.”
• OSHA complaints received mostly relate to lack of PPE

• OSHA has also received complaints expressing concern about a lack of training on appropriate standards and about possible COVID-19 illnesses in the workplace.

• Formal complaints alleging COVID-19 exposure, where employees are engaged in medium or lower exposure risk tasks will not normally result in an on-site inspection (Lower exposure risk jobs do not require contact with people known to be, or suspected of being, infected with COVID-19, nor frequent close contact within 6 feet of the general public).

• Inadequate responses to a phone/fax investigation considered for an on-site inspection.

• Observation of hazards. Where no violations of OSHA standards, regulations, or the general duty clause are observed or documented, inspectors shall terminate the inspection and leave the facility.
OSHA Considers COVID a Recordable Illness

• OSHA will exercise enforcement discretion as they recognize it is difficult for the employer to determine if COVID is work-related

• This enforcement policy will help employers focus their response efforts on implementing good hygiene practices in their workplaces, and otherwise mitigating COVID-19’s effects, rather than on making difficult work-relatedness decisions in circumstances where there is community transmission.

• OSHA said employer should make work-related determination if:
  - There is objective evidence that a COVID-19 case may be work-related. This could include, for example, a number of cases developing among workers who work closely together without an alternative explanation; and
  - The evidence was reasonably available to the employer. For purposes of this memorandum, examples of reasonably available evidence include information given to the employer by employees, as well as information that an employer learns regarding its employees’ health and safety in the ordinary course of managing its business and employees.
CDC Releases New Workplace Guidelines

CDC Interim Guidance for Essential Workers Who May Have Had Exposure
• The employee should wear a face mask at all times while in the workplace for 14 days after last exposure.
• Information on persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled.
• Others at facility with close contact within 6 feet of employee during this time would be considered exposed.

CDC How to Disinfect the Workplace
• Close off areas visited by the ill persons. Open outside doors and windows and use ventilating fans to increase air circulation in the area. Wait 24 hours or as long as practical before beginning cleaning and disinfection.
• Cleaning staff should clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment like tablets, touch screens, keyboards, remote controls, and ATM machines used by the ill persons, focusing especially on frequently touched surfaces.
• If it has been more than 7 days since the person with suspected/confirmed COVID-19 visited or used the facility, additional cleaning and disinfection is not necessary.

Check the EPA List of “Disinfectants for Use” Against COVID-19
COVID-19 Laws and Legislation

• **Phase 1**: $8.3 billion “Coronavirus Supplemental” for vaccines, test kits

• **Phase 2**: $100 billion Families First Coronavirus Response Act signed into law
  - Paid Sick Leave, FMLA Expansion
  - Tax credits for employers

• **Phase 3**: $2 trillion economic stabilization law
  - Direct funds to individuals, states, loans to small businesses
  - Support for larger companies, tax provisions to support industry

• **Phase 4**: Multitrillion dollar continuation of stabilization (early May)
  - Additional funding for Small Business loans; Funding for FEMA; additional support for hospitals
  - More direct payments to individuals, payroll tax holiday possible, extension of expiring/expired tax credits

• **Phase 5**: Multitrillion dollar stimulus (Likely late June or mid-July)?
  - If entering recovery stage, Congress will move an economic stimulus package
  - Transportation infrastructure? Tax incentives
Paycheck Protection Program (PPP) Loan Status

- Congress provided $349 billion for 100% SBA guaranteed loans up to $10 million
- Companies 500 employees or fewer or size standards SBA sets based on NAICS
- Loan applications April 3-June 30, 2020
- Loan due in 2 years at 1.00% fixed rate with payments deferred 6 months
- First come, first served loan

Through April 13, 2020:
- 1.035 million loans given out; $247.5 billion of $349b allocated
- Avg. PPP Loan Size: $239,152
- 12% of all PPP loans have gone to 72,728 manufacturers
- *Program has run out of funds as of April 15*
## Paycheck Protection Program (PPP) Loan Status

### Industry by NAICS Subsector

<table>
<thead>
<tr>
<th>NAICS Subsector Description</th>
<th>Approved Loans</th>
<th>Approved Dollars</th>
<th>% of Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction</td>
<td>114,838</td>
<td>$33,994,993,103</td>
<td>13.73%</td>
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<tr>
<td>Professional, Scientific, and Technical Services</td>
<td>126,572</td>
<td>$30,347,630,866</td>
<td>12.26%</td>
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<tr>
<td>Manufacturing</td>
<td>72,728</td>
<td>$30,324,381,642</td>
<td>12.25%</td>
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<tr>
<td>Health Care and Social Assistance</td>
<td>114,236</td>
<td>$27,907,315,755</td>
<td>11.27%</td>
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<tr>
<td>Accommodation and Food Services</td>
<td>108,179</td>
<td>$22,729,710,765</td>
<td>9.18%</td>
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<tr>
<td>Retail Trade</td>
<td>105,795</td>
<td>$21,205,661,588</td>
<td>8.57%</td>
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<tr>
<td>Wholesale Trade</td>
<td>42,280</td>
<td>$14,340,947,724</td>
<td>5.79%</td>
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<tr>
<td>Other Services (except Public Administration)</td>
<td>93,538</td>
<td>$12,302,748,049</td>
<td>4.97%</td>
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<tr>
<td>Administrative and Support and Waste Management and Remediation Services</td>
<td>45,492</td>
<td>$10,620,220,830</td>
<td>4.29%</td>
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<tr>
<td>Real Estate and Rental and Leasing</td>
<td>48,840</td>
<td>$7,963,204,190</td>
<td>3.22%</td>
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<tr>
<td>Transportation and Warehousing</td>
<td>28,181</td>
<td>$7,824,422,844</td>
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<tr>
<td>Finance and Insurance</td>
<td>36,714</td>
<td>$5,780,025,663</td>
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<td>Educational Services</td>
<td>15,213</td>
<td>$5,664,150,353</td>
<td>2.29%</td>
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<tr>
<td>Information</td>
<td>13,893</td>
<td>$4,449,853,324</td>
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<tr>
<td>Arts, Entertainment, and Recreation</td>
<td>25,785</td>
<td>$3,690,034,066</td>
<td>1.49%</td>
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<td>Mining</td>
<td>8,133</td>
<td>$3,010,017,154</td>
<td>1.22%</td>
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<tr>
<td>Agriculture, Forestry, Fishing and Hunting</td>
<td>27,428</td>
<td>$2,973,951,117</td>
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<td>Management of Companies and Enterprises</td>
<td>2,278</td>
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<td>Public Administration</td>
<td>3,058</td>
<td>$824,899,859</td>
<td>0.33%</td>
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<td>Utilities</td>
<td>2,056</td>
<td>$701,335,031</td>
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### Loan Size

<table>
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<tr>
<th>Loan Size</th>
<th>Approved Loans</th>
<th>Approved Dollars</th>
<th>% of Count</th>
<th>% of Amount</th>
</tr>
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<tbody>
<tr>
<td>$150K and Under</td>
<td>725,058</td>
<td>$37,178,984,187</td>
<td>70.05%</td>
<td>15.02%</td>
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<td>&gt;$150K - $350K</td>
<td>156,590</td>
<td>$35,735,615,983</td>
<td>15.13%</td>
<td>14.44%</td>
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<td>&gt;$350K - $1M</td>
<td>102,473</td>
<td>$59,291,602,643</td>
<td>9.90%</td>
<td>23.95%</td>
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<tr>
<td>&gt;$1M - $2M</td>
<td>31,176</td>
<td>$43,278,883,532</td>
<td>3.01%</td>
<td>17.48%</td>
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<tr>
<td>&gt;$2M - $5M</td>
<td>16,516</td>
<td>$49,288,997,593</td>
<td>1.60%</td>
<td>19.91%</td>
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<td>&gt;$5M</td>
<td>3,273</td>
<td>$22,769,309,582</td>
<td>0.32%</td>
<td>9.20%</td>
</tr>
</tbody>
</table>

* Overall average loan size is $239,152.
Loan Forgiveness: 8 weeks of Principal and Interest

- Will owe money if loan used for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan.
- Not more than 25% of the forgiven amount may be for non-payroll costs (mortgage interest, rent, utilities).
- The 8-week period begins on the date lender makes first disbursement to borrower.
- You will also owe money if you do not maintain your staff and payroll.
  - Number of Staff: Loan forgiveness will be reduced if you decrease your full-time employee headcount.
  - Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019.
  - Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.
- Borrower submits request to lender for loan forgiveness.
- Request will include documents verifying the number of FTE and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments.
- The lender must make a decision on the forgiveness within 60 days.

Should not be construed as financial advice, consult your CPA, lender.
Lender must make first disbursement in ten calendar days from loan approval

Business affiliation rules apply for 500 employee count

Borrowers can calculate their aggregate payroll costs and employee count using data either from the previous 12 months or from calendar year 2019

Businesses count employees contracted through PEO as their own

Temporary employees count towards your employee calculation

Do not count independent contractors in payroll or employee count

Lender can accept a single signature on behalf of other owners

Employer payroll tax not eligible under PPP but employee withholding is sent to federal government still out of the loan for salary:

- Example: Employee earns $4,000/month gross wages ($500 federal taxes withheld); counts as $4,000 in payroll costs, employee receives $3,500, and $500 paid to the federal government.

Should not be construed as financial advice, consult your CPA, lender
SBA Loan FAQ – Consult Your Lender (4/3/2020)

• Waives Credit Elsewhere requirement
• Number of Jobs count – “Employed on a full, part time, or other basis”
• Payroll costs include salary, wage, commission, or similar compensation; paid
vacation, leave; health insurance, retirement, state, local payroll taxes
• Salary capped at $100,000 per employee (can cover first 100k of $120,000)
• If employee over 100k, can still use loan for their benefits, health, retirement
• Can use for mortgage interest but not prepayments or principal
• Loan deferral includes principal, interest, and fees
• Cannot use loan for equipment, other expenses not specified
• If use Employee Retention Credit cannot have loan forgiven
• Cannot use the loan to cover pay during EPSL/EFMLA as credit is offered

Should not be construed as financial advice, consult your CPA, lender
Federal Reserve Creates 9 Programs at $2.3 Trillion

- Congress, Treasury extended $450b to cover Fed losses in its lending programs
- Fed will finance PPP loans banks make and allow banks to exclude those loans from required capital ratios, freeing the banks to make more of those SBA guaranteed loans
- Fed rule clarifies that a zero percent risk weight applies to PPP loans for capital purposes
- Main Street Lending Program
  - Fed will create two facilities to encourage banks to lend to small, midsize businesses – fewer than 10,000 employees or less than $2.5 billion in revenues last year.
  - Will enable up to $600 billion in lending
  - Firms can apply for those loans on top of the forgivable SBA PPP loans
  - Banks will be able to sell 95% of the debt to the Fed
  - For new loans – Minimum: $1 million / Maximum: $25 million
  - 4-year maturity; Fed’s SOFR of 0.01% plus 25-400 basis points; principal and interest deferred one year
  - Cannot reasonably obtain “Credit Elsewhere” provision included
  - 90% employee retention provision applies
  - Must be organized in U.S., majority of employees in U.S. but no foreign ownership limitation as of now
NADCA Secured 8 of 10 Recommendations in Law

10 Recommendations for COVID-19 Phase 3

1. Provide a payroll tax holiday to improve cash on hand
2. Offer 24-month small business loans, personal guarantee provision
3. Lift 163(j) interest limit Government Guaranteed Accounts Receivable Insurance, Loans
4. Temporarily relax Dodd-Frank bank lending rules for existing lines of credit
5. Require prompt payment to suppliers by Federal Aid Recipients
6. Allow net operating loss (NOL) 5-year carrybacks
7. Allow estimated tax deferral
8. Include a temporary overtime tax credit
9. Offer programs to encourage employee retention including part time status
10. Provide an e-Learning training expenses subsidy or tax credit for employer expenses
Next Steps

• Congress considering COVID-19 Phase 3.5 legislation
  - PPP program has run out of money – Sen. Rubio says needs $250b more
  - Democrats want $500b for states loan setasides for minority, women lending, small banks
  - Pelosi says House likely not coming back in April

• Phase 4 bill likely another economic *stabilization* with some stimulus
• Phase 5 bill if needed will be an economic *stimulus* bill

• What do manufacturers need in next round of legislation?
  - Additional funding for PPP?
  - Direct payments to businesses to cover payroll each month?
  - Payroll Tax holiday? Tax incentives? Employee support?
  - Employer liability protection?
Questions?

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