COVID-19 Update

Presented by
The Franklin Partnership, LLP
May 28, 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

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Agenda

• NADCA Survey Results
• Chicago Reopening Manufacturing Guide
• OSHA Resuming Enforcement/Update on Recordables
• Main Street Lending Facilities FAQ Issued
• PPP Interim Final Rule: Forgiveness Guidelines
• PPP Interim Final Rule: Forgiveness Procedures
• PPP Legislation
• COVID-19 Legislation
• Questions

All information presented as of May 28, 2020
NADCA Survey Results – Operational Status

Is your shop currently:

- Fully operational: 35.00%
- 90% - 95% of normal operations: 25.00%
- 70% - 75% of normal operations: 20.00%
- 50% - 60% of normal operations: 20.00%
- Skeleton crew only: 15.00%
- Facility is closed: 5.00%

If you experiencing customer disruptions, for how much longer do you expect those to last prior to returning to normal orders?

- 1 week: 0.00%
- 2 weeks: 0.00%
- 15-30 days: 30.00%
- 60 days: 25.00%
- 90 days: 25.00%
- 6 months: 20.00%
- 1 year: 10.00%
- 2 years: 5.00%
- Other (please specify): 0.00%
NADCA Survey Results – Operational Status

If you applied for a PPP loan, what is the status?

- Loan awarded, funds received (70.00%)
- Loan awarded, awaiting funds (10.00%)
- Loan awarded, funds returned (5.00%)
- Application submitted, pending approval (5.00%)
- Application denied (10.00%)
- Being turned away/Cannot find a bank to accept application (10.00%)
- Plan to submit application (0.00%)
- Do not plan to request a loan (0.00%)
**Face covering required when entering/exiting buildings and when 6 ft. social distancing is not possible**

- In any outdoor and indoor common spaces, face coverings must be worn over nose and mouth (exceptions can be made for people with medical conditions or disabilities that prevent them from safely wearing a face covering or if hazardous based on work site conditions)
- Employees doing health checks must wear face shields over face coverings
- Equip first response teams with proper PPE, as appropriate for each worksite

**Employee health screening prior to entering workplace (e.g., temperature checks, questionnaires, interviews)**

- No visitors except for essential services (e.g., repair, construction), deliveries, and pickups
- Visitors required to wear face coverings, maintain distance, and are subject to any entry protocols
- Prior to leaving home, all individuals encouraged to self-identify symptoms and stay at home if symptomatic
- Prior to entering establishment, employees self-screen to ensure no symptoms of COVID-19 (e.g., questionnaire – see appendix)

**No travel except for critical operations**

- Report any travel for critical operations outside of defined travel zone; employers decide on any needed work adjustments to travel
OSHA: May 26 Resumed Normal Enforcement

- In geographic areas where community spread of COVID-19 has significantly decreased, OSHA will return to the inspection planning policy that OSHA relied on prior to the start of the COVID-19 health crises, as outlined in the OSHA Field Operations Manual (FOM), CPL 02-00-164, Chapter 2, when prioritizing reported events for inspections, except that:
  - OSHA will continue to prioritize COVID-19 cases;
  - OSHA will utilize non-formal phone/fax investigations or rapid response investigations in circumstances where OSHA has historically performed such inspections (e.g., to address formal complaints) when necessary to assure effective and efficient use of resources to address COVID-19-related events; and
  - In all instances, the Area Director (AD) will ensure that CSHOs utilize the appropriate precautions and personal protective equipment (PPE) when performing inspections related to COVID-19.

- In geographic areas experiencing either sustained elevated community transmission or a resurgence in community transmission of COVID-19, ADs will exercise their discretion, including consideration of available resources, to:
  - Continue prioritizing COVID-19 fatalities and imminent danger exposures for inspection. Particular attention for on-site inspections will be given to high-risk workplaces, such as hospitals and other healthcare providers treating patients with COVID-19, as well as workplaces, with high numbers of complaints or known COVID-19 cases.
  - Where resources are insufficient to allow for on-site inspections, the inspections for these types of reported events will be initiated remotely with an expectation that an on-site component will be performed if/when resources become available to do so.
  - Where limitations on resources are such that neither an on-site nor remote inspection is possible, OSHA will investigate these types of reported events using a rapid response investigation (RRI) to identify any hazards, provide abatement assistance, and confirm abatement.
  - OSHA will develop a program to conduct monitoring inspections from a randomized sampling of fatality or imminent danger cases where inspections were not conducted due to resource limitations.
  - Utilize non-formal phone/fax investigation instead of an on-site inspection in industries where doing so can address the relevant hazard(s); and
  - Ensure that CSHOs utilize the appropriate precautions and PPE to protect against potential exposures to COVID-19.

OSHA: New Recordable Guidance

Because of the difficulty with determining work-relatedness, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations. In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, CSHOs should apply the following considerations:

- **The reasonableness of the employer's investigation into work-relatedness.** Employers, especially small employers, should not be expected to undertake extensive medical inquiries, given employee privacy concerns and most employers' lack of expertise in this area. It is sufficient in most circumstances for the employer, when it learns of an employee's COVID-19 illness, (1) to ask the employee how he believes he contracted the COVID-19 illness; (2) while respecting employee privacy, discuss with the employee his work and out-of-work activities that may have led to the COVID-19 illness; and (3) review the employee's work environment for potential SARS-CoV-2 exposure. The review in (3) should be informed by any other instances of workers in that environment contracting COVID-19 illness.

- **The evidence available to the employer.** The evidence that a COVID-19 illness was work-related should be considered based on the information reasonably available to the employer at the time it made its work-relatedness determination. If the employer later learns more information related to an employee's COVID-19 illness, then that information should be taken into account as well in determining whether an employer made a reasonable work-relatedness determination.

- **The evidence that a COVID-19 illness was contracted at work.** CSHOs should take into account all reasonably available evidence, in the manner described above, to determine whether an employer has complied with its recording obligation. This cannot be reduced to a ready formula, but certain types of evidence may weigh in favor of or against work-relatedness. For instance:
  - COVID-19 illnesses are likely work-related when several cases develop among workers who work closely together and there is no alternative explanation.
  - An employee's COVID-19 illness is likely work-related if it is contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation.
  - An employee's COVID-19 illness is likely work-related if his job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.
  - An employee's COVID-19 illness is likely not work-related if she is the only worker to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public, regardless of the rate of community spread.
  - An employee's COVID-19 illness is likely not work-related if he, outside the workplace, closely and frequently associates with someone (e.g., a family member, significant other, or close friend) who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.

  CSHOs should give due weight to any evidence of causation pertaining to the employee's illness, at issue provided by medical providers, public health authorities, or the employee herself.

The Main Street Lending Program is administered by the Federal Reserve Bank of Boston, which has established a special purpose vehicle to purchase loan participations from eligible lenders across the U.S.
F.1. How can I apply for a Program loan?

To obtain a loan under the Program, an Eligible Borrower must submit an application and any other documentation required by an Eligible Lender to such Eligible Lender. Eligible Borrowers should contact an Eligible Lender for more information on whether the Eligible Lender plans to participate in the Program and to request more information on the application process.

Updates regarding the Program, including the official launch date and the time and date at which the Main Street SPV will begin purchasing participations in MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches, will be made available on the Board’s Main Street page.

F.2. Is a Business eligible to borrow if it receives a PPP loan?

A Business that receives a loan through the SBA’s PPP can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria.

Why LIBOR? Interest Deferred

G.3. Why are Program loans based on LIBOR rather than SOFR?

The Federal Reserve received feedback from potential participants that quickly implementing new systems to issue loans based on SOFR would require diverting resources from challenges related to the pandemic. Although financial institutions are transitioning to more robust reference rates, LIBOR remains the most common base rate used in business lending, even though firms cannot rely on LIBOR being published after the end of 2021. Consistent with the recommendations of the Alternative Reference Rates Committee, Eligible Lenders and Eligible Borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan.

G.4. When do I need to start paying interest on my loan?

No payments of principal or interest will be required during the first 12 months of the loan. Principal and interest payments for all loans obtained under the Program (MSNLF, MSPLF, or MSELF) are deferred for one year. Unpaid interest will be capitalized.

### PPP Round 2 Status

Summary of cumulative Paycheck Protection Program data as of 5:00 p.m. EDT, May 26, 2020.

<table>
<thead>
<tr>
<th>Approved Loans</th>
<th>Approved Dollars</th>
<th>Average Loan Size</th>
<th># of Participating Lenders</th>
</tr>
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<tbody>
<tr>
<td>4,435,038</td>
<td>$511,253,599,685</td>
<td>$115,276</td>
<td>5511</td>
</tr>
</tbody>
</table>

In total, the SBA guaranteed 4,426,118 Paycheck Protection Program loans through May 23, 2020. For more information on loan activity, [click here](#).

In total, the SBA guaranteed 4,341,145 Paycheck Protection Program loans through May 16, 2020. For more information, [click here](#).

In Round Two of the Paycheck Protection Program (April 27 - May 8, 2020), the SBA has guaranteed 2,571,167 loans. For more information, [click here](#).

In Round Two of the Paycheck Protection Program (April 27 - May 1, 2020), the SBA has guaranteed 2,211,791 loans. For more information, [click here](#).

In Round One of the Paycheck Protection Program, (through April 16, 2020), the SBA guaranteed 1,661,367 loans. For more information, [click here](#).
PPP: Benefits Count as Compensation for Owners

c. *Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals’ own payroll compensation?*

Yes, the amount of loan forgiveness requested for owner-employees and self-employed individuals’ payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or $15,385 per individual in total across all businesses. See 85 FR 21747, 21750.

In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.
PPP: Include Billing Period Costs After 8 Week Ends

a. When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?

A nonpayroll cost is eligible for forgiveness if it was:

i. paid during the covered period; or

ii. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

Example: A borrower’s covered period begins on June 1 and ends on July 26. The borrower pays its May and June electricity bill during the covered period and pays its July electricity bill on August 10, which is the next regular billing date. The borrower may seek loan forgiveness for its May and June electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its July electricity bill through July 26 (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date.
PPP: Employee Does Not Return & Unemployment

i. the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;

ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;

iii. the offer was rejected by such employee;

iv. the borrower has maintained records documenting the offer and its rejection; and

v. the borrower informed the applicable state unemployment insurance office of such employee’s rejected offer of reemployment within 30 days of the employee’s rejection of the offer.\(^4\)
PPP: Forgiveness Reduced if FTEs Reduced

In general, a reduction in FTE employees during the covered period or the alternative payroll covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. The borrower must first select a reference period: (i) February 15, 2019 through June 30, 2019; (ii) January 1, 2020 through February 29, 2020; or (iii) in the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between May 1, 2019 and September 15, 2019. If the average number of FTE employees during the covered period or the alternative payroll covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees. For example, if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.
PPP: Forgiveness Reduced if Wages Lowered by >25%

e. What effect does a borrower’s reduction in employees’ salary or wages have on the loan forgiveness amount?

Under section 1106(d)(3) of the CARES Act, a reduction in an employee’s salary or wages in excess of 25 percent will generally result in a reduction in the loan forgiveness amount, unless an exception applies. Specifically, for each new employee in 2020 and each existing employee who was not paid more than the annualized equivalent of $100,000 in any pay period in 2019, the borrower must reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages between January 1, 2020 and March 31, 2020 (the reference period), subject to exceptions for borrowers who restore reduced wages or salaries (see g. below). This reduction calculation is performed on a per employee basis, not in the aggregate.
PPP: Have Until June 30, or earlier to Return to Full FTE

g. If a borrower restores reductions made to employee salaries and wages or FTE
employees by not later than June 30, 2020, can the borrower avoid a reduction in its loan
forgiveness amount?
Yes. Section 1106(d)(5) of the CARES Act provides that if certain employee salaries and
wages were reduced between February 15, 2020 and April 26, 2020 (the safe harbor
period) but the borrower eliminates those reductions by June 30, 2020 or earlier, the
borrower is exempt from any reduction in loan forgiveness amount that would otherwise
be required due to reductions in salaries and wages under section 1106(d)(3) of the
CARES Act. Similarly, if a borrower eliminates any reductions in FTE employees
occurring during the safe harbor period by June 30, 2020 or earlier, the borrower is
exempt from any reduction in loan forgiveness amount that would otherwise be required
due to reductions in FTE employees.

This provision implements section 1106(d)(5) of the CARES Act, which gives borrowers
an opportunity to cure reductions in FTEs, salary/wage reductions in excess of 25
percent, or both, using the applicable methodology set forth in section 1106(d)(5). The
Act provides that the reduction in FTEs or the reduction in salary/hourly wages must be
eliminated “not later than June 30, 2020.”
PPP: Forgiveness Timeline

• Within 60 days of receiving complete forgiveness application from borrower, lender must send to SBA a decision of approval (in whole or in part) denial, or denial pending SBA review

• SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA

Lobbying for changes to Paycheck Protection Program Loans

• If denied forgiveness by lender, borrower has 30 days to request an SBA review

• SBA can review any loan and provide notice to lender who must notify borrower within 5 days their forgiveness application is under review
Survey Results – PPP Legislative Priorities

**PPP Loan Changes**
- Expand 8 weeks to 16 or 24 weeks for the period of loan forgiven
- Extend the June 30 deadline to rehire employees under forgiveness to September 30
- Allow the deductibility of wages, rent, utilities as expenses under IRC 265
- Remove 75% requirement to spend on payroll costs
- Extend loan term to ten years as intended by Congress instead of 2 years
- Enhance the Employee Retention Credit and permit PPP recipients to claim the credit
Survey Results – COVID Phase 4 Bill Priorities

**Restarting U.S. Manufacturing**

- Make permanent 100% bonus depreciation expensing for qualified property
- 10-year government guaranteed long term low interest loans: uses include equipment, tools, materials, R&D, facility improvements/expansions.
- 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.
- 6.2% payroll tax holiday for March-December 2020
- Make General Business Credits Refundable (General Business Credits include: R&D, investment, work opportunity, renewable, new markets, etc.)
- Establish business liability protection for employers who follow OSHA/CDC guidelines specific to their industry
Next Steps on COVID Legislation – PPP Changes

- Lobbying for changes to Paycheck Protection Program Loans
- Concerns over forgiveness terms, uses of loan funds

- House moving their PPP bills today
  - Pelosi promised members vote on PPP bill in exchange for vote on $3 trillion HEROES Act
  - Extends 8 week forgiveness period to 24 weeks
  - Changes requirement that borrower spend 75% on payroll costs for full forgiveness to 60%
  - Change loan terms to 5 years instead of 2 years as written in CARES Act
  - Extend loan period from June 30 to December 31, 2020
  - Permit PPP recipients to defer payroll taxes under CARES Act
  - Directs SBA to publish names of recipients with over $2 million in PPP loan

- Senate could move week of June 2
  - Extends forgiveness term from 8 weeks to 16 weeks
  - Does not address 75% payroll costs threshold; Rubio said will not lower beyond 50% level
Next Steps on COVD Legislation – Phase 4 Bill

- Negotiations likely begin week of June 2 between
- Senate will not vote on House-passed $3 trillion HEROES Act
- House Democrats wants funding for state, local governments
- Senate GOP wants business liability protections

- Lobbying to support Onshoring/Reshoring initiatives underway
  - House GOP creates China Task Force (initially was bipartisan)
  - Discussion of how to reduce costs of mfg in U.S. vs China
  - Temporary tax credit for hiring Americans, purchasing equipment, and installing machinery in U.S.
  - White House close to finalizing domestic drug supply chain initiative

- Senate GOP Drafting industry-supported Liability Protection Bill
  - Focusing on Gross Negligence or Wrongful Conduct
  - Treats employees and customers equally
  - Attempts to push cases to federal court
Questions?

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