COVID-19 Update

Presented by
The Franklin Partnership, LLC
Policy Resolution Group at Bracewell
July 31, 2020







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More Resources: www.onevoiceinfo.org



Latest One Voice Survey Results

WHAT ARE MANUFACTURERS EXPERIENCING?

- 1 91% of respondents received a Paycheck Protection Program (PPP) loan.
- 91%
- 90% of PPP recipients report the loan allowed them to retain employees they would have otherwise furloughed or let go.
- 79% would seek another PPP loan if permitted to do so.



- **86%** report revenues are lower than pre-COVID levels, with **51%** reporting that revenues are down more than 25%. **57%** expect it to take six months to one year for revenues to return to pre-COVID levels.
- **47%** will let go or furlough employees if revenues do not improve in the next 90 days.

WHAT DO MANUFACTURERS NEED?

Equipment was ranked as a top priority by respondents.
Manufacturers need long-term low interest loans to purchase raw materials.



Manufacturers are essential critical infrastructure. To continue operating, they need business liability protection as they follow government guidelines.



Providing an immediate claim of General Business Credits and expanding the Employee Retention Credit to PPP recipients is a quick way to free up cash for manufacturers.



Agenda

- CDC: Optimizing PPE During Shortages
- DoL FFCRA Furloughed Employees
- IRS FFCRA Advance Credits Guidance
- FLSA Work from Home FAQ
- OSHA COVID Investigations
- MSLF Status
- EIDL Loans Open; Grants Closed
- PPP Status
- PPP Lender Forgiveness Guidance
- COVID-19 Legislation
- New PPP and Lending Proposals
- Questions

CDC: Strategies to Maintain PPE Supply

Summary Strategies to Optimize the Supply of PPE during Shortages

Updated July 16, 2020 Print Frint Fr

This quick reference table summarizes <u>CDC's strategies to optimize personal protective equipment (PPE)</u> supplies in healthcare settings and provides links to CDC's full guidance documents on optimizing supplies. These strategies offer a continuum of options using the framework of surge capacity when PPE supplies are stressed, running low, or absent. When using these strategies, healthcare facilities should:

- Consider these options and <u>implement them sequentially</u>
- Understand their current PPE inventory, supply chain, and <u>utilization rate</u>
- Train healthcare personnel on PPE use and have them demonstrate competency with donning and doffing any PPE ensemble that is used to perform job responsibilities
- As PPE availability returns to normal, promptly resume standard practices

Conventional Capacity

strategies that should already be in place as part of general infection prevention and control plans in healthcare settings

Contingency Capacity

strategies that can be used during periods of anticipated PPE shortages

Crisis Capacity*

strategies that can be used when supplies cannot meet the facility's current or anticipated PPE utilization rate

*Not commensurate with U.S. standards of care

CDC: Strategies to Maintain PPE Supply

PPE Type	Conventional	Contingency	Crisis
All PPE	 Use <u>physical barriers and other engineering controls</u> Limit number of patients going to hospital or outpatient settings Use telemedicine whenever possible Exclude all HCP not directly involved in patient care Limit face-to-face HCP encounters with patients Exclude visitors to patients with known or suspected COVID-19 Cohort patients and/or HCP 	 <u>Selectively cancel</u> elective and non-urgent procedures and appointments for which PPE is typically used by HCP Decrease length of hospital stay for medically stable patients with COVID-19 	Cancel all elective and non-urgent procedures and appointments for which PPE is typically used by HCP
Facemasks	Use facemasks according to product labeling and local, state, and federal requirements Additional guidance	 Place facemasks in a secure and monitored site Provide facemasks to symptomatic patients upon check-in at entry points Implement extended use of facemasks Restrict facemasks for use by HCP, rather than asymptomatic patients (who might use cloth face coverings) for source control Additional guidance 	Use facemasks beyond the manufacturer-designated shelf life during patient care activities Implement limited re-use of facemasks Prioritize facemasks for selected activities such as essential surgeries, activities where splashes and sprays are anticipated, prolonged face-to-face contact with an infectious patient, and aerosol-generating procedures When no facemasks are available: Use a face shield that covers the entire front (that extends to the chin or below) and sides of the face with no facemask Additional guidance

CDC Translates Mfg Reference Guides

Quick reference guides for manufacturing facility employees and employers

CDC has also developed one-page flyers with recommendations and strategies for preventing the spread of COVID-19 in manufacturing facilities. The first flyer includes <u>key strategies for employers</u> to prevent COVID-19 infection among employees. The second flyer includes <u>tips for employees</u> to protect themselves and other from COVID-19 at work and at home. The fliers are available in multiple languages.

DoL FFCRA FAQ: Returning Furloughed Employees

95. I was working full time for my employer and used two weeks (80 hours) of paid sick leave under the FFCRA before I was furloughed. My employer said I could go back to work next week. Can I use paid sick leave under the FFCRA again after I go back to work?

No. <u>Employees are limited to a total of 80 hours of paid sick leave under the FFCRA.</u> If you had taken fewer than 80 hours of paid sick leave before the furlough, you would be entitled to use the remaining hours after the furlough if you had a qualifying reason to do so.

96. I have an employee who used four weeks of expanded family and medical leave before she was furloughed. Now I am re-opening my business. When my employee comes back to work, if she still needs to care for her child because her child care provider is unavailable for COVID-related reasons, how much expanded family and medical leave does she have available?

Under the FFCRA, your employee is entitled to up to 12 weeks of expanded family and medical leave. She used four weeks of that leave before she was furloughed, and the weeks that she was furloughed do not count as time on leave. When she returns from furlough, she will be eligible for eight additional weeks of leave if she has a qualifying reason to take it.

Because the reason your employee needs leave may have changed during the furlough, you should treat a post-furlough request for expanded family and medical leave as a new leave request and have her give you the appropriate documentation related to the reason she currently needs leave. For example, before the furlough, she may have needed leave because her child's school was closed, but she might need it now because her child's summer camp is closed due to COVID-19-related reasons.

FFRCA Advance Credits — IRS: Overpayment is Erroneous Refund

IRS provides guidance on recapturing excess employment tax credits

IR-2020-169, July 27, 2020

WASHINGTON — The Internal Revenue Service issued a <u>temporary regulation</u>

and a <u>proposed regulation</u>

to reconcile advance payments of refundable employment tax credits and recapture the benefit of these credits when necessary.

The regulations authorize the assessment of erroneous refunds of the credits paid under both the Families First Coronavirus Response Act (Families First Act) and Coronavirus Aid, Relief and Economic Security Act (CARES Act).

The Families First Act generally requires employers with fewer than 500 employees to provide paid sick leave for up to 80 hours and paid family leave for up to 10 weeks if the employee is unable to work or telework due to COVID-19 related reasons. Eligible employers are entitled to fully refundable tax credits to cover the cost of the leave required to be paid.

The CARES Act provides an additional credit for employers experiencing economic hardship due to COVID-19. Eligible employers who pay qualified wagesto their employees are entitled to an employee retention credit.

The IRS has revised or is in the process of revising the Form 941, Form 943, Form 944 and Form CT-1, so that employers may use these returns to claim the paid sick and family leave and employee retention credits.

Employers may also receive advance payment of the credits up to the total allowable amounts. The IRS has created <u>Form 7200</u>, <u>Advance Payment of Employer Credits Due To COVID-19</u>, which employers may use to request an advance of the credits. Employers are required to reconcile any advance payments claimed on Form 7200 with total credits claimed and total taxes due on their employment tax returns.

Any refund of these credits paid to a taxpayer that exceeds the amount the taxpayer is allowed is an erroneous refund for which the IRS must seek repayment.

For more information on the employer credits, see Employer Tax Credits.

https://www.irs.gov/newsroom/irs-provides-guidance-on-recapturing-excess-employment-tax-credits

FLSA: Major Changes to Future of Work

- 14. I am an employer who allows my employees to telework during the COVID-19 emergency. Now that my employees are no longer at my worksite, how do I determine their hours of compensable work? Do I have to pay my employees for hours I did not authorize them to work? Do I have to pay them for hours worked even when they do not report those hours? (added 07/20/2020)
- 15. I am an employer who allows my employees to telework during the COVID-19 emergency. I would also like to give my employees flexibility in hours of work so they can take time out of the normal workday for personal and family obligations, such as caring for their children whose schools have closed. If I allow my employees to begin work, take several hours in the middle of the workday to care for their children, and then return to work, do I have to compensate them for all of the hours between starting work and finishing work? (added 07/20/2020)
- 16. Can a salaried executive, administrative, or professional employee who is exempt from the Fair Labor Standards

 Act's (FLSA's) minimum wage and overtime requirements under Section 13(a)(1) perform other nonexempt duties

 during the COVID-19 public health emergency and continue to be treated as exempt? (added 07/20/2020)
- 17. Is hazard pay required under the Fair Labor Standards Act (FLSA) for employees working during the COVID-19 pandemic? (added 07/20/2020)
- 18. I am a salaried employee exempt from the minimum wage and overtime pay requirements under Section 13(a)(1) of the Fair Labor Standards Act (FLSA) as a bona fide executive, administrative, or professional employee. Will I lose my exempt status if I take leave under the Families First Coronavirus Response Act (FFCRA)? (added 07/20/2020)
- 19. I am a salaried employee exempt from the minimum wage and overtime requirements under Section 13(a)(1) of the Fair Labor Standards Act (FLSA) as a bona fide executive, administrative, or professional employee. Can my employer reduce my salary during the COVID-19 pandemic or an economic slowdown? Would I lose my exempt status if my employer does? (added 07/20/2020)

OSHA COVID Investigations



Contact by email or call 603-738-5635 Featured Columns ▼ Underwrite InDepthNH.org *Coronavirus/COVID-19*

COVID-19

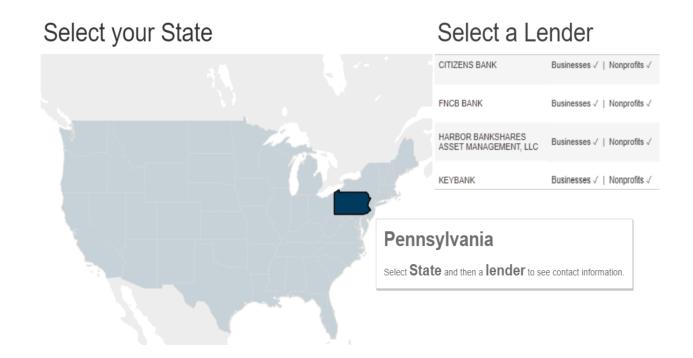
4 NH Businesses Face OSHA Probes for **COVID-19 Worker Death or Hospitalization**

By Nancy West 9 21 hours ago

Four businesses in New Hampshire are facing federal workplace investigations because of employee death or hospitalization due to COVID-19, according to the Occupational Safety and Health Administration.

Three of the businesses involve a fatality investigation, including Walmart on Loudon Road in Concord, which denies its associate died from COVID-19; Fwm Inc., a manufacturing plant employing 49 people in Hudson; and Hackett Hill Nursing Home in Manchester.

Main Street Lending Facility Extended to Dec. 31



FEDERAL RESERVE SYSTEM

Main Street Lending Program

The Federal Reserve Board on Tuesday announced an extension through December 31 of its lending facilities that were scheduled to expire on or around September 30, including the **Main Street Lending Program**. The three-month extension will facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic.

Read the full press release here

https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program.aspx

EIDL Status

July 15, 2020

SBA Disaster Assistance Update Nationwide EIDL Loans / COVID-19

Loans Approved

2,622,203

Dollars Approved \$150,177,958,290

- EIDL grant portion out of money no more grants
- Loans still available but the \$10,000 grant is closed

PPP Loan Application Period Extended through Aug. 8

Summary of PPP Approved Lending

Loan Count	Net Dollars	Lender Count	
5,005,261	\$519,505,881,228	5,458	

Industry by NAICS Sector

NAICS Sector Description	Loan Count	Net Dollars	% of Amount
Health Care and Social Assistance	516,495	\$67,103,739,655	12.92%
Professional, Scientific, and Technical Services	654,344	\$66,203,641,832	12.74%
Construction	477,478	\$64,46 <u>3,185</u> ,787	12.41%
Manufacturing	232,871	\$53,822,176,226	10.36%

Amount of Funding Remaining

\$130,096,258,496

PPP Forgiveness: SBA Loan Review Documents

SBA may review any PPP loan of any size at any time at its discretion. If SBA undertakes such a review, SBA will notify the Lender via the PPP Forgiveness Platform and the Lender must notify the borrower in writing within five business days of receipt of notification.

Within five business days of receipt of the notice of review, the Lender shall also submit via the PPP Forgiveness Platform the following documents:

- 1) The Borrower Application Form (SBA Form 2483 or Lender's equivalent form) and all supporting documentation provided by the borrower.
- 2) The Loan Forgiveness Application (SBA Form 3508, 3508EZ, or Lender's equivalent form), and all supporting documentation required to be submitted by the borrower to the Lender with the Loan Forgiveness Application, including payroll documentation, non-payroll documentation, and full-time equivalent employee documentation, if applicable.⁴ The Lender must also request that the borrower provide the Lender with the applicable documentation that the instructions to the Loan Forgiveness Application Form (SBA Form 3508, 3508EZ, or Lender's equivalent form) instruct the borrower to maintain but not submit (documentation listed under "Documents that Each Borrower Must Maintain but is Not Required to Submit"). The Lender must submit the additional documents received from the borrower to SBA within 5 business days of receipt from the borrower.
- 3) A signed and certified transcript of account.
- 4) A copy of the executed note evidencing the PPP loan.
- 5) Any other documents related to the loan requested by SBA.

PPP Forgiveness: Portal Unlikely to Open August 10

SBA has partnered with a financial services technology provider – Goldschmitt-CRI – to make available a secure SaaS platform (the PPP Forgiveness Platform) to accept loan forgiveness decisions, supporting documentation, and requests for forgiveness payments. The PPP Forgiveness Platform is available only to PPP Lenders, not PPP borrowers.

This platform makes available a user interface for Lenders to upload required data and documentation, monitor the status of the forgiveness request, and respond to SBA in case of an inquiry or if SBA selects the loan for review. SBA will post a link to the PPP Forgiveness Platform on its website. The PPP Forgiveness Platform will go live and begin accepting Lender submissions on August 10, 2020, subject to extension if any new legislative amendments to the forgiveness process necessitate changes to the system.

Loan Forgiveness Process

To receive PPP loan forgiveness, a borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, 3508EZ, or Lender equivalent) to its Lender (or the Lender servicing its loan). A borrower may submit a Loan Forgiveness Application before the end of the 8-week or 24-week covered period, provided that the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness and the borrower's loan forgiveness application accounts for any salary reductions in excess of 25 percent for the full covered period.

PPP Forgiveness: Lender Decision Options

Documentation and Data Required to be Submitted When the Lender Issues its Decision to SBA

When the Lender issues its decision to SBA, it must submit through the Forgiveness Platform the required items that follow.

The Lender must check a box indicating the decision being issued to SBA. The choices are as follows:

- 1) Approved in Full Lender approved in full the forgiveness amount requested by borrower and the forgiveness amount requested by Lender equals that amount.
- Approved in Part Lender did not approve the full forgiveness amount requested by borrower and the forgiveness amount requested by Lender is less than the forgiveness amount requested by borrower.
- 3) Denied Lender denied the entire forgiveness amount requested by the borrower.
- 4) Denied without Prejudice Lender should use this status when an SBA loan review is pending at the time the borrower submits a loan forgiveness application.

Advice on Forgiveness

- Congress is making changes to the PPP
 - Flexibility on forgiveness period length could change your application
 - Senate GOP proposing to expand eligible non-payroll costs
 - Wants to simplify forgiveness applications for under \$2 million loans
- Remember the Paycheck Program Flexibility Act (PPFA)?
 - Yes, Congress can change the rules on borrowers, again (and again)
- Timing for submission of Forgiveness Application
 - Lender portal scheduled to open August 10, likely delayed pending Congressional action
 - Advising borrowers to wait until at least mid-August to submit forgiveness application
 - SBA has 30 days from time bill becomes law to issue new regulations, so expect more changes from regulators
 - SBA may not finalize forgiveness Interim Final Rules (IFRs) until end of August
- Talk to your lender, continue to put together information

Remain patient, know these are proposals until they are laws

Next COVID Bill: Senate Challenges Remain

McConnell's U.S. Senate starting to look like former Speaker Paul Ryan's U.S. House

Lindsey Graham on Sunday Morning Futures: "Half the Republicans are going to vote no to any phase four package. That's just a fact."

1:13 PM · Jul 26, 2020 · Twitter for iPhone

412 Retweets and comments 373 Likes

Comments like these increase leverage of Senate Democrats
McConnell will need Democrats' votes more than ever
Bill will require 60 votes, need Democrats regardless

COVID Phase 4 — Troubles Ahead, Troubles Behind

- Senate GOP released bills as part of their package
 - Will not become law; part negotiating positioning, part to appease Senate GOP and Trump
 - Needed to get something on paper to start negotiations
 - White House and Senate GOP must fully agree before really talking with Democrats
- Democrats have leverage over Senate GOP, Trump 90+ days ahead of election
 - Pelosi will not agree to temporary extension, knows GOP gets blame for Unemployment expiring
- Parties not close on key issues
 - Unemployment Insurance \$600 extension
 - School spending
 - State funding
 - Liability protections for businesses
- Total cost of bill is a guiding factor for Republicans running for White House in 2024
 - Tom Cotton, Ted Cruz, Josh Hawley, Mike Lee, Rand Paul, Marco Rubio

COVID Phase 4 — What is Under Serious Consideration?

- Senate GOP bill has Employee Retention Tax Credit expansion
 - Not as generous as House bill but helps employers, allows PPP recipients to claim ERTC
 - Increases percentage of qualified wages reimbursed through credit from 50% to 65%
 - Increases qualified wages per employee from \$10,000/year to \$10,000/quarter starting 2020 Q2
 - Lowers gross receipts loss test from 50% of revenues to 25% revenue loss
 - Raises FTE limit from 100 to 500, removing phaseout
- There will be some support for employer's purchasing PPE, likely tax credits
- Work Opportunity Tax Credit for hiring COVID-related unemployed
- Direct \$1,200 payments to individuals supported all around
- Ability to deduct expenses if PPP loan forgiven Overruling IRS Notice 2020-32
 - Was in McConnell draft bill, Trump administration opposes, Mnuchin had fix stripped out prior to release
 - Top House, Senate tax writers support
 - Sources on Capitol Hill say House Democrats likely have to fix this and override Trump administration

COVID Phase 4 — The PPP Provisions

- Changes to PPP are certain, Rubio and Senate Democrats working closely
- GOP Proposal: PPP Will Continues (PPP1)
 - Removes 24-week covered period; choose between 8 weeks and up to Dec. 31, 2020
 - Allows businesses to ask for increase in loan amount even if already awarded
 - Clarifies that employer-provided group insurance benefits are included in eligible payroll costs
 - Expands eligible uses to include covered operations expenditures (software, HR/accounting needs)
 - Expands eligible uses to include expenditures on PPE, worker protections
 - Expands eligible uses to include payments to suppliers with a contract in effect prior to Feb. 15, 2020
 - O Yes, can use PPP funds for steel, raw materials from a supplier
 - o Be careful: DO NOT cross the 60/40 forgiveness threshold no more than 40% on non-payroll costs
- GOP Proposal: Creates a Second PPP Draw up to \$2 million (Second Draw)
 - Employers with fewer than 300 employees AND 50% revenue drop
 - Compare gross receipts in 1Q or 2Q 2020 to 2019
 - Can only secure no more than \$10 million total through SBA loans

COVID Phase 4 — The Other Lending Provisions

- Senate Small Business Committee Chairman Marco Rubio pushing long term loans
- Concerns over cost of new, expanded programs as price tag grows
- Rubio proposal expands SBA 7(a) loan program
 - Eligibility: fewer than 500 employees; 50% or more in lost revenues; and located in a low income location (majority of receipts also from low income census tract)
 - Had also included small manufacturing (NAICS 31-33) regardless of locations but dropped due to cost concerns
 - SBA 100% guaranteed loans; 20 year maturity; 1% to the borrower
 - SOFR plus 300 basis points, SBA covers difference between the 1% borrower pays and total interest charged
 - Principal and interest payments delayed two years
 - Allowable uses include working capital, acquisition of fixed assets, and refinancing existing indebtedness
 - The credit elsewhere test is waived.
- Goal is use PPP for previous expenses, switch to 7(a) moving forward
- Some groups prefer Federal Reserve loan facility

COVID Phase 4 Bill Timing – Be Patient

- Unemployment Insurance expires July 31
- Federal eviction moratorium expired
- House, Senate, scheduled to leave for summer break on August 8
- Congress will not return until September 8
- Democratic National Convention starts Monday, August 17
- Expect 7-10 days of shouting and blame, then 2-4 days of quiet, then a deal

Prediction: Bill sent to President Trump by August 14



For Immediate Release July 24, 2020 Contact: Maya Bogle Tel. 202-828-1727 Yemaya.Bogle@Bracewell.com

Survey: Manufacturers Don't Expect Recovery until 2021; More Federal Loan Programs Needed

Cleveland, OH: A new survey of members of the National Tooling & Machining Association (NTMA) and Precision Metalforming Association (PMA) shows that manufacturers are facing continued economic challenges caused by the COVID-19 pandemic resulting in the need for Congress to continue to provide access to federal loan programs. The survey of 126 NTMA and PMA manufacturing member companies was taken between July 9 and July 20, 2020.

The survey highlights included:

- 86% of manufacturers reported revenues lower than pre-COVID levels, including 51% reporting revenues down more than 25%.
- 57% of respondents expect that revenues won't return to pre-COVID levels for at least six months to one yea
- 47% of those surveyed report that they may be forced to furlough employees if revenues do not improve in the next 90 days.
- As Congress works on more lending options, cash flow remains a concern as 79% of respondents said they would seek another PPP loan if available.

The survey showed that manufacturers' top policy priorities for Congress are to create long term low interest loans to purchase raw materials and equipment, business liability protection as they follow government guidelines, and an immediate claim of General Business Credits and expanding the Employee Retention Credit to Small Business Administration's Paycheck Protection Program (PPP) recipients to quickly free up cash for manufacturers.

The survey also shows the continued importance of the PPP loan program, with more than 90% of respondents reporting that they have received a PPP loan and that it allowed them to retain employees. Full survey results are available here.

Media Request

Are you a One Voice member who has benefitted from a regulatory reform effort undertaken by the Trump Administration?

For example, have you secured approval of a permit that was previously held up?

The **WSJ** wants to talk to you!

Contact: paul.nathanson@bracewell.com

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Donate Today!

https://www.pma.org/advocacy/donate-today.asp

Questions?

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https://www.pma.org/advocacy/donate-today.asp

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