

# COVID-19 Update

Presented by  
The Franklin Partnership, LLP  
Policy Resolution Group at Bracewell  
April 3, 2020



# Your Team in Washington, D.C.



## Lobbying Firm – The Franklin Partnership, LLP

- Bi-partisan Washington, D.C.-based government relations firm
- Representing manufacturing industry since 2002
- Clients include: manufacturing associations, defense contractors, hospitals, cities



## Strategic Communications Firm – Policy Resolution Group at Bracewell

- Wash, D.C.-based public affairs & strategic communications consultants
- Promote NTMA and PMA in print, digital and other media
- Support Franklin Partnership government relations efforts by designing and implementing coordinated strategic communications strategy
- Representing metalworking industry since 2003

# Advocating for You



## 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 ✓

# Agenda

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- Current State of the States
- Who Defines an Essential Business
- Expansion of Paid Sick Leave/FMLA
- SBA Paycheck Protection Program Loan (PPA)
- Questions

# States Set Their Own Guidelines

State	Essential Business Definition	Waiver Process	Effective Date	Expiration Date
AZ	Own	No	3/31/2020	4/30/2020
CA	CISA Modified	No	3/19/2020	Indefinitely
CO	Own	No	3/26/2020	4/11/2020
CT	CISA & Own	<a href="#">Yes</a>	3/23/2020	4/22/2020
FL	CISA & Own	No	4/3/2020	4/30/2020
IL	Own	No	3/21/2020	4/30/2020
IN	CISA & Own	No	3/25/2020	4/6/2020
KS	CISA Modified	<a href="#">Yes</a>	3/30/2020	4/19/2020
KY	CISA & Own	No	3/26/2020	Indefinitely
MA	CISA modified	<a href="#">Yes</a>	3/24/2020	5/4/2020
MD	CISA		3/30/2020	Indefinitely
ME	CISA & Own	<a href="#">Yes</a>	4/2/2020	4/30/2020
MI	CISA & Suppliers	No	3/24/2020	4/13/2020
MN	CISA & Own	<a href="#">Yes</a>	3/27/2020	4/10/2020

State	Essential Business Definition	Waiver Process	Effective Date	Expiration Date
NC	CISA & Own	<a href="#">Yes</a>	3/30/2020	4/29/2020
NH	CISA Modified	Yes	3/27/2020	5/4/2020
NJ	Own	No	3/21/2020	Indefinitely
NM	Own	No	3/24/2020	4/10/2020
NY	Own	<a href="#">Yes</a>	3/22/2020	4/15/2020
OH	CISA & Own	No	3/24/2020	5/1/2020
OR	N/A	N/A	3/23/2020	Indefinitely
PA	Own	<a href="#">Yes</a>	3/19/2020	Indefinitely
RI	Own			4/13/2020
TN	CISA & Own	No	3/31/2020	4/14/2020
WI	CISA & Own	<a href="#">Yes</a>	3/25/2020	4/24/2020

# Essential Critical Infrastructure Definition



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”

*as of March 28, 2020*

# Phase 2: Emergency Paid Sick Leave & FMLA

Emergency Leave applies to all employers with 1-499 employees

- If full time, 80 hours of Paid Sick Leave capped at \$511/day (\$5,110 aggregate)
- If full time caring for other individual/child, capped at \$200/day (\$2,000 aggregate)
- EPSL reasons:
  - Employee subject to federal, state, local quarantine or isolation order (100% pay)
  - Employee told to self quarantine by government, health professional, employer (100% pay)
  - Employee is caring for individual subject to self-quarantine or illness (2/3 pay)
  - Employee caring for child under 18 if school/child care closed or unavailable (2/3 pay)
- EFMLA: 10 weeks paid (2/3 rate) for full time up to \$200/day (\$10,000 total)
  - Only to care for a minor whose school/care facility is closed and cannot telework
- 100% Refundable Tax Credit for EPSL/EFMLA April 1-Dec. 31, 2020 (quarterly)

# Labor Dept. Poster – Sick Leave & FMLA



All employers must put up poster by April 1 (can email/post internal website):

<https://www.dol.gov/agencies/whd/pandemic>



# Under 50 Workers: Company Can Self-Exempt

- The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

# EPSL/EFMLA – Employer Documentation

- Employee must provide written request for leave to employer
  - The employee's name; date or dates for which leave is requested;
  - A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason, and that the employee is unable to work, including telework
- If leave based on quarantine order or self-quarantine advice, employee includes:
  - The name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.
- If leave based on school closing or child care unavailability, employee includes:
  - Name, age of the child/children; name of school closed or place of care that is unavailable, statement that no other person will be providing care during the period for which the employee is receiving family medical leave and, inability to telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

# EPSL/EFMLA Tax Credit – Documentation

- Documentation to show how the employer determined the amount of qualified sick and family leave wages paid to employees that are eligible for the credit, including records of work, telework and qualified sick leave and qualified family leave.
- Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. See FAQ 31 (“Determining the Amount of Allocable Qualified Health Plan Expenses”) for methods to compute this allocation.
- Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
- Copies of the completed Forms 941, Employer’s Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer’s entitlement to the credit claimed on Form 941).

[https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#substantiate\\_eligibility](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#substantiate_eligibility)

# EPSL/EFMLA Refundable Tax Credit – Form 941

Form **941 for 2020: Employer's QUARTERLY Federal Tax Return** 950117  
(Rev. January 2020) Department of the Treasury — Internal Revenue Service OMB No. 1545-0029

Employer identification number (EIN)	<input type="text"/>	<input type="text"/>	-	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Name (not your trade name)	<input type="text"/>								
Trade name (if any)	<input type="text"/>								
Address	<input type="text"/>								
	Number	Street				Suite or room number			
	<input type="text"/>				<input type="text"/>	<input type="text"/>			
	City				State	ZIP code			
	<input type="text"/>				<input type="text"/>	<input type="text"/>			
	Foreign country name				Foreign province/county		Foreign postal code		

**Report for this Quarter of 2020**  
(Check one.)  
☐ 1: January, February, March  
☐ 2: April, May, June  
☐ 3: July, August, September  
☐ 4: October, November, December  
Go to [www.irs.gov/Form941](https://www.irs.gov/Form941) for instructions and the latest information.

Also for Employee Retention Credit  
Use Employer's Quarterly Federal Tax Return  
<https://www.irs.gov/pub/irs-pdf/f941.pdf>

# Can Request Advance on 3 Credits

<b>Form 7200</b> (March 2020) Department of the Treasury Internal Revenue Service		<b>Advance Payment of Employer Credits Due to COVID-19</b>  ► Go to <a href="https://www.irs.gov/Form7200">www.irs.gov/Form7200</a> for instructions and the latest information.	OMB No. 1545-0029
Name (not your trade name)		Employer identification number (EIN)	
Trade name (if any)		Applicable calendar quarter (check one)	
Number, street, and apt. or suite no. If a P.O. box, see instructions.		(2) <input type="checkbox"/> April, May, June	
		(3) <input type="checkbox"/> July, August, September	
		(4) <input type="checkbox"/> October, November, December	
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)			
Foreign country name		Foreign province/county	Foreign postal code
Does a third-party payer file your employment tax return? (See instructions.) If "Yes," enter its name.			Third-party payer's EIN (if applicable)

**Tip:** File Form 7200 if you can't reduce your employment tax deposits to fully account for these credits that you expect to claim on your employment tax return for the applicable quarter. Don't reduce your employment tax deposits and request advanced credits for the same expected credits. You will need to reconcile your advanced credits and reduced deposits on your employment tax return. You can't request an advance payment of the credit for sick and family leave for self-employed individuals.

Employers may obtain advance payments of 3 tax credits:

Employee Retention Credit; EPSL Credit; EFMLACredit

Use IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19

<https://www.irs.gov/pub/irs-pdf/f7200.pdf>

# Workforce FAQ – Consult an Attorney

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- Medical suppliers can be excluded from EPSL; EFMLA
- COVID not compensable under workers comp unless contracted at work
- Prior to making layoff decisions, consult employer health plan obligations
- Furlough has expectation of being rehired
- Employees on furlough or laid off will be eligible for unemployment
- If staying open, tell employees following CDC, other protocols
- Fear of catching COVID-19 is not a valid reason for not going to work
- Employee must provide documentation in support of Paid Sick Leave/FMLA
- EEOC says employer *may* take employee temperatures upon entry
- States are allowing Unemployment Insurance work share for reduced hours
  - California: if you maintain health care, benefits, permitted to reduce hours

*Should not be construed as legal advice, consult your counsel*



# Workforce FAQ – Consult an Attorney

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- If cannot work, but have work, employee can claim EPSL if under Stay at Home
- Companies considered essential may want to provide employees a letter
- Send considered essential letter to delivery drivers, vendors
- If crossing state lines, try getting letter from companies both side of border
- Showing symptoms of COVID is a reason to send an employee home and for the employee to earn Paid Sick Leave
- If Paid Sick Leave begins, must use all days unless qualifying reason changes
- Cannot take intermittent leave under Paid Sick Leave if for self or others
- Can take Paid Sick Leave intermittently if caring for child due to closure
- Employer must offer intermittent EFMLA leave if cannot telework normally
- No set increments for intermittent; employee and employer mutually agree

*Should not be construed as legal advice, consult your counsel*

# Phase 3: Economic Stimulus Bill – Loan Program

- 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
- Capped at \$10 million with formula based on avg. total monthly payments of previous 2019 average payroll, mortgage, rent, payments on other debt
- 1<sup>st</sup> 8 weeks of payroll, rent, mortgage interest, utilities under loan is forgiven if do not reduce payroll (full principal plus interest forgiven, payroll must be 75% of forgiven)
- Loan uses: Working capital, and specifically, payroll support, including paid sick, medical or family leave and costs related to continuation of group health care benefits, salaries, mortgage payments, rent, utilities and certain other existing debt
- Personal guarantee and collateral requirements eliminated

*Contact your lender NOW and ask if they are SBA approved*



# PPP Loan Example

## Treasury Department Example 2 –

- Annual payroll: \$1,500,000
- Some employees make more than \$100,000
- Subtract compensation amounts over annual salary of \$100,000 = \$1,200,000
- Average monthly qualifying payroll -  $\$1.2\text{m} \div 12 \text{ months} = \$100,000$
- Multiply avg. monthly qualifying payroll by 2.5 = \$250,000

Maximum loan amount is \$250,000

# PPP Loan Application

Average Monthly Payroll:	\$	X 2.5 equals Loan Amount:	\$	Number of Jobs:	
Purpose of the loan (select more than one):	<input type="checkbox"/> Payroll <input type="checkbox"/> Rent / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):				

## Applicant Ownership

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN,SSN)	Address

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

Question	Yes	No
1. Is the Business or any owner presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Business, any of its owners, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Business or any owner an owner of any other business or have common management with any other business? If yes, attach a listing of all Affiliates and describe the relationship as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Business received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

# PPP Loan Application

## CERTIFICATIONS

The Business and each 20% or greater owner must certify in good faith to all of the below by **initialing** next to each one:

Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; I understand that if the funds are used for unauthorized purposes, the federal government may pursue criminal fraud charges.

Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.

Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than twenty-five percent (25%) of the forgiven amount may be for non-payroll costs.

During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under this program.

I further certify that the information provided in this application and the information that I have provided in all supporting documents and forms is true and accurate. I realize that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

I acknowledge that the lender will calculate the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those I submitted to the IRS. I also understand, acknowledge and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

# SBA Loan – Prepare at Least the Following Info

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- Payroll costs – consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips);
- Payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal
- Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement;
- Payment of state and local taxes assessed on compensation of employees;
- Utilities, Rent, Mortgage Interest payments

# SBA Loan FAQ – Consult Your Lender

- 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)
- Can use for mortgage interest but not prepayments or principal
- Loan deferral includes principal, interest, and fees
- Unclear if foreign owned; Venture Capital/Private Equity owned eligible
- 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 if credit claimed

*Should not be construed as financial advice, consult your CPA, lender*

# SBA Loan – Business Guides

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## Department of Treasury Guides:

- <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- [For a top-line overview of the program CLICK HERE](#)
- [If you're a lender, more information can be found HERE](#)
- [If you're a borrower, more information can be found HERE](#)
- [The application for borrowers can be found HERE](#)



# More Resources: [www.onevoiceinfo.org](http://www.onevoiceinfo.org)

Follow State Actions and Essential Business Definitions

**ONE VOICE COVID-19 RAPID RESPONSE WEBSITE**

**CALL: (202) 828-7637**



# Tell your story: Media Opportunities

## The Washington Post

“It’s important that we keep our team in place....  
We want to keep providing a paycheck to our  
employees.”

– Gillen Young, Custom Tool Inc., 4/1/2020



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# Questions?

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