

# COVID-19 Update

Presented by

The Franklin Partnership, LLP

April 3, 2020



**THE COMPETITIVE ADVANTAGE  
FOR U.S. MOLD BUILDERS.**



# 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

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- Current State of the States
- Who Defines an Essential Business
- What are the States Doing
- What is Washington Doing to Help?
- Expansion of Paid Sick Leave/FMLA
- Economic Stimulus
- Questions

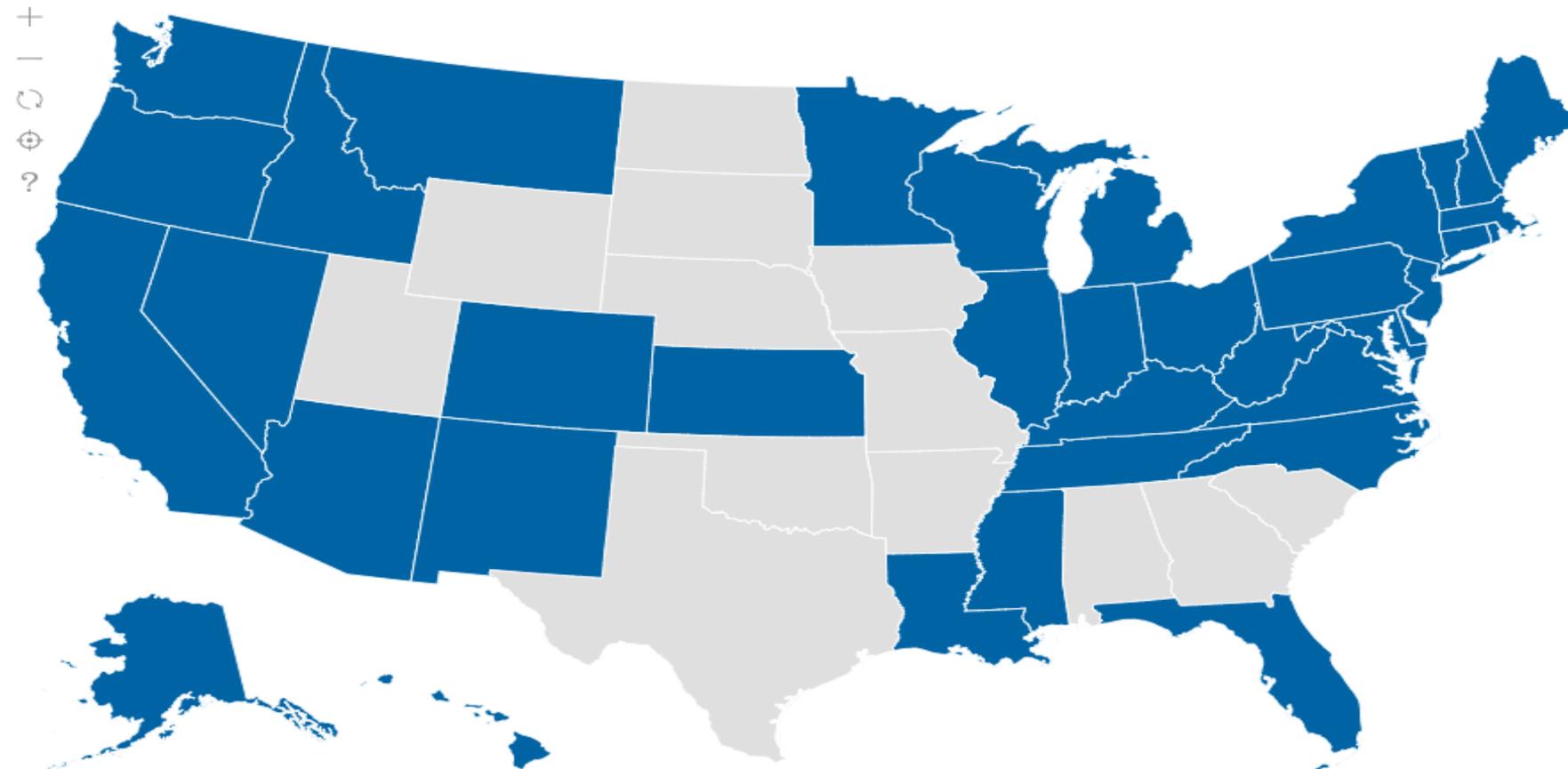
*All information presented as of April 2, 2020*

# 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](mailto:research@naco.org).

COUNTY DECLARATIONS & POLICIES STATE DECLARATIONS & POLICIES FEMA DECLARATIONS



Source: NACo-collected data, as of April 1, 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.

State with a business closure policy

38

State with a safer-at-home and business closure policy

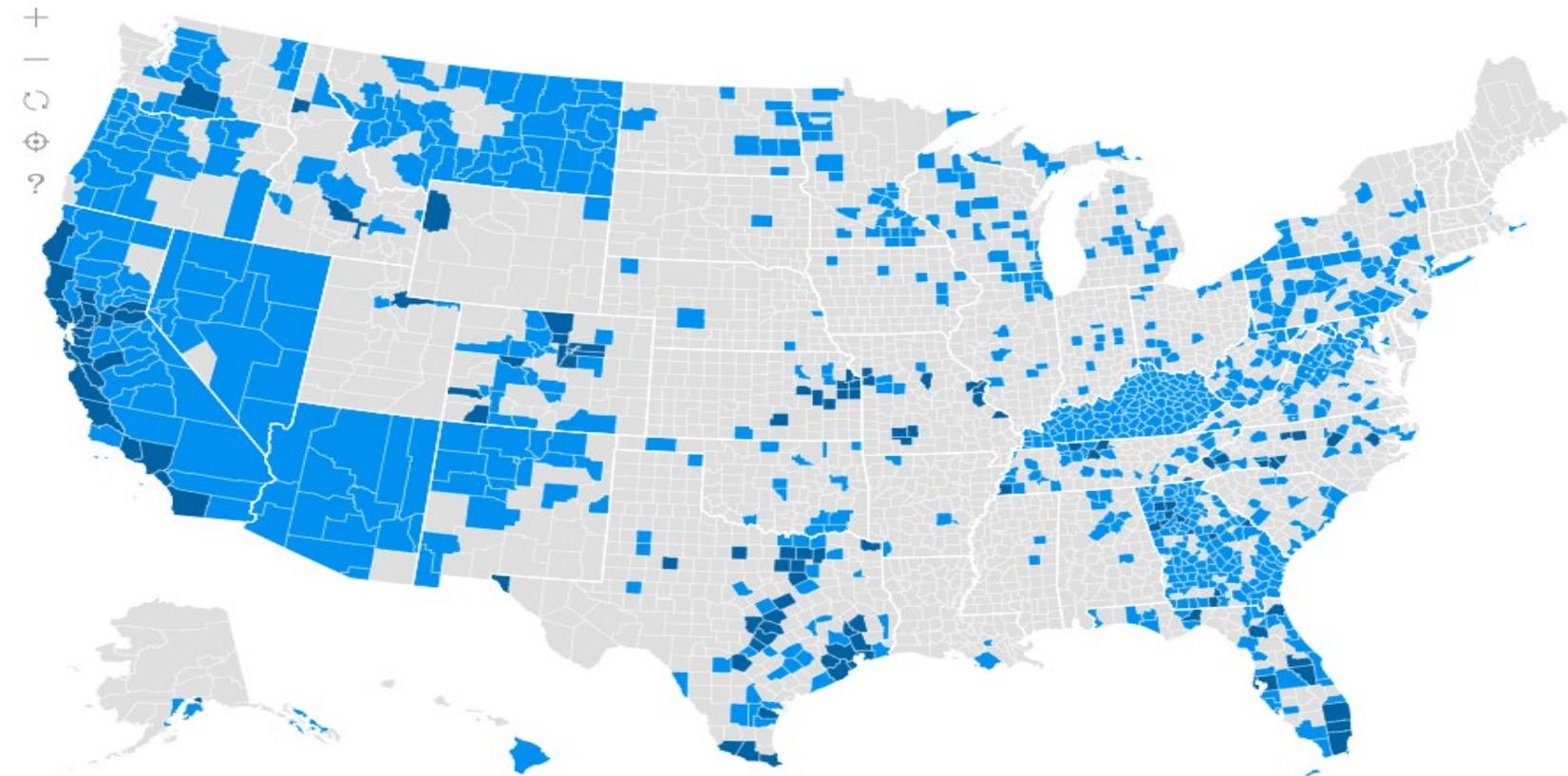
Numbers within each color box represent the distribution of counties.

# Counties Can Have Their Own Restrictions

## COUNTY DECLARATIONS AND POLICIES IN RESPONSE TO COVID-19 PANDEMIC

This map is continuously updated as new declarations and policies are issued in counties across the country in response to COVID-19. If your county has issued an emergency declaration or shelter-in-place policy not reflected in County Explorer, please contact us at [research@naco.org](mailto:research@naco.org).

COUNTY DECLARATIONS & POLICIES STATE DECLARATIONS & POLICIES FEMA DECLARATIONS



Source: NACo-collected data, as of April 1, 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.

2107 No known local policy 832 County with an emergency declaration 130 County with a safer-at-home or business closure policy

Numbers within each color box represent the distribution of counties.

<https://ce.naco.org/?dset=COVID-19&ind=Emergency%20Declaration%20Types>

# Confusion Over Closures

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## **Realities:**

- Businesses and other entities are being told to close their doors in some states.
- People are being told to stay indoors in some cities, states.
- Employees are uncertain about their futures.

## **Questions:**

- Who determines which businesses remain open?
- How do you become listed as an essential/life critical business?
- Can we stay open if I want to?
- What is Washington doing to help?

# Who Determines What is an Essential Business?

- U.S. law gives cities, counties, and states the power to manage their own emergency preparedness
- All determinations as of right now are made by counties, states
- Non-binding list of essential employees came from federal government (Department of Homeland Security Cybersecurity & Infrastructure Security Agency) on 3/19
- 20+ states have begun to voluntarily use federal definition
- However, some states go further
- In most states, if deemed essential, employees must report to work

# 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*

# 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

# What is Washington doing to Help?

- **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 stimulus/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 stimulus
  - Funding for FEMA; additional support for hospitals
  - More direct payments to individuals, payroll tax holiday possible
  - Infrastructure spending? Extending expired/expiring tax credit?

# 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).

# 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"/>	<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](http://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="http://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	
City or town, state, and ZIP code. If a foreign address, also complete spaces below. (See instructions.)		(3) <input type="checkbox"/> July, August, September	
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

- 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

- 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

- **Manufacturers Report:**
  - Must improve cash flow
  - Make sure customers receiving federal bailout pay suppliers
  - Keep banks from pulling lines of credit
  - Have resources on hand to ramp up when time for recovery
- **Senate Phase 3 legislation includes:**
  - \$349 billion small business lending program
  - \$500 billion lending fund for corporations, cities, states
  - \$150 billion for state and local stimulus funding
  - \$130 billion for hospitals
  - Federal emergency Unemployment Insurance Benefits of \$600
  - Net Operating Loss strengthened

# 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 interest 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



## Paycheck Protection Program Borrower Application Form

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

- Check One:**
- Sole proprietor
  - Partnership
  - C-Corp
  - S-Corp
  - LLC
  - Independent contractor
  - Eligible self-employed individual
  - 501(c)(3) nonprofit
  - 501(c)(19) veterans organization
  - Tribal business (sec. 31(b)(2)(C) of Small Business Act)
  - Other

**DBA or Tradename if Applicable**

**Business Legal Name**

**Business Address**

**Business TIN (EIN, SSN)**

**Business Phone**

( ) -

**Primary Contact**

**Email Address**

Average Monthly Payroll:

\$

x 2.5 + EIDL, Net of  
Advance (if Applicable)  
Equals Loan Request:

\$

Number of Employees:

Purpose of the loan

(select more than one):

- Payroll
- Lease / Mortgage Interest
- Utilities
- Other (explain): \_\_\_\_\_

# PPP Loan Application

## CERTIFICATIONS

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- 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 interest payments, lease payments, and utility payments as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes the federal government may hold me legally liable, such as for charges of fraud.
- The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's 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.
- I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 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 the Paycheck Protection Program.
- I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including 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.

# SBA Loan – Prepare at Least the Following Info

- 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
- Payroll Processor records, Form 1099-MISC

# 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](#)
- Final Rule: <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

# Phase 3: Economic Stimulus Bill – Businesses

- \$500 billion lending program for 500 or more employees
  - Treasury to administer fund (similar to TARP) but Congress has some oversight
  - Corporations receiving federal aid must permanently provide 14 days paid sick leave
  - Must permanently pay minimum wage of \$15/hour
  - Must maintain same workforce levels into Sept. 2020
  - Any business applying for a loan is deemed impacted by COVID-19 by fact they are applying
- Non-Loan Business Incentives
  - Social Security payroll taxes due over two years – half 12/31/21; balance 12/31/22
  - Net Operating Loss for both pass-throughs and corporations – carryback 5 years losses from 2018, 2019, 2020
  - Increases interest deduction limitation from 30% of EBITDA to 50% for 2019 and 2020
  - Accelerate ability to recover AMT credits as refunds
  - Employee Retention Credit – 50% on first \$10,000/employee for wages paid and health benefits

# Next Steps

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- More state governments will close to non-essential businesses
- States will likely increase limitations on “essential” if spread continues
- Trump extended federal guidance through April 30
- FEMA asking for support: <https://www.fema.gov/webform/covid-19-donations>
- White House, House Democrats want a Phase 4 measure to move by mid-April
- Impact on Presidential race unclear
- Only act of Congress can move November election (unlikely)
- How will Trump react to experts who want to keep country locked down?

# AMBA COVID-19 Resources Page



**In response to the recent outbreak of COVID-19 across the United States and the globe, AMBA's leadership team worked to generate resources for AMBA members. Check back to this page as we make updates.**

- Webinars
- Essential Businesses by State
- Reports
- Tax Relief
- SBA Loans
- Amerimold Sourcing Assistance

<https://amba.org/covid-19-updates-and-resources/>

# Resources

- DoL Employer Paid Leave Requirements: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- DoL Emergency Leave Questions and Answers: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- County closures: <https://www.naco.org/resources/featured/coronavirus-disease-2019>
- State closures: <https://www.nga.org/coronavirus/#actions>
- OSHA Workplace Guidance: <https://www.osha.gov/Publications/OSHA3990.pdf>
- CDC Business Guidance: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
- CDC Disinfection Guide: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>
- DHS Critical Infrastructure: <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>

# Questions?

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