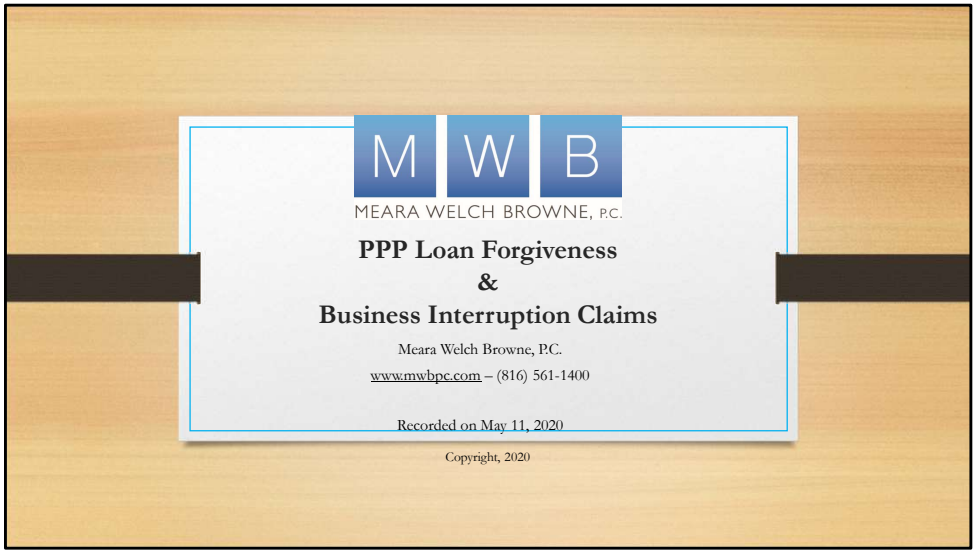

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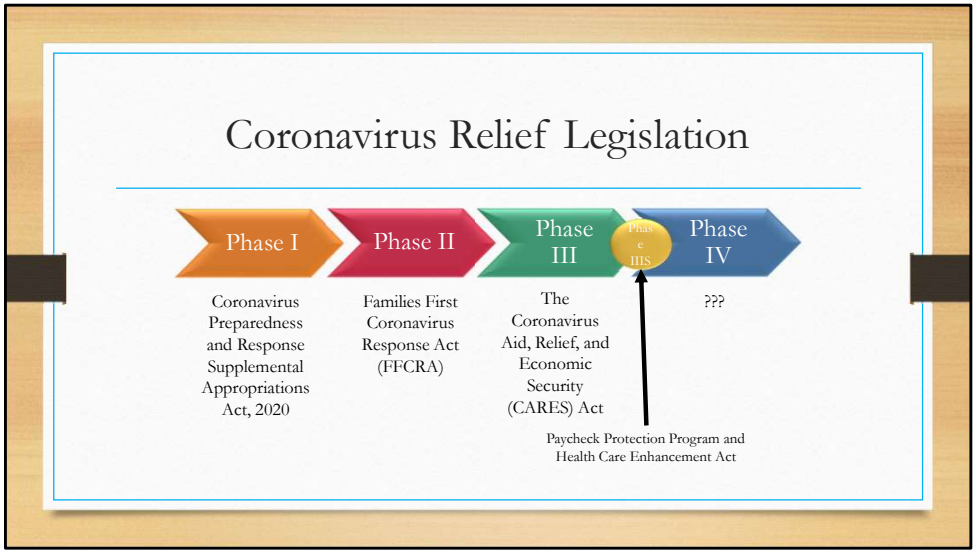


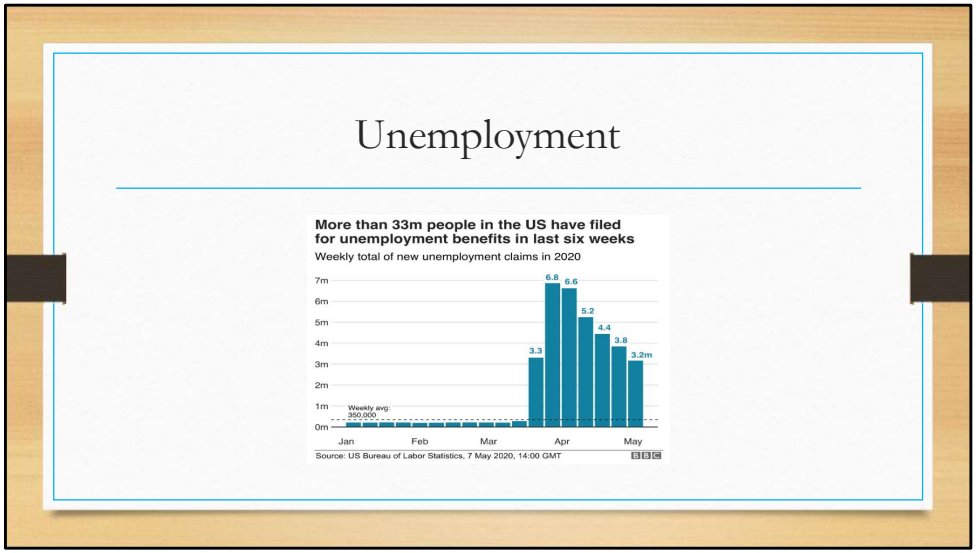
Phase I, H.R. 6074, known as the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, was enacted into law March 6, 2020 and provides $8.3 billion in emergency funding for federal agencies to ensure vaccines developed to fight the coronavirus are affordable, that impacted small businesses can qualify for Small Business Administration (SBA) Economic Injury Disaster Loans (EIDLS), and that Medicare recipients can consult with their providers by telephone or teleconference, if necessary or desired.

Phase II, H.R. 6201, the Families First Coronavirus Response Act, became law March 18, 2020. This $100 billion package includes provisions for paid sick leave, free coronavirus testing, expanded food assistance, additional unemployment benefits, and requirements that employers provide additional protection for healthcare workers.

Phase III, H.R. 758 (116), the CARES Act, signed into law March 27, 2020. The legislation provides direct payments to individual taxpayers and their dependents, a huge expansion to unemployment benefits, including the self-employed, student loan forbearance, and much more. Bill totals $2.2 trillion. This is the largest relief package in U.S. history. This stimulus bill is bigger than the 2009 recovery act and 2008 bank bailout combined, according to reporting from the Associated Press. Officials expressed hope the stimulus would inspire $4 trillion in economic activity.

- Phase 3.5 H.R. 266, the "Paycheck Protection Program and Health Care Enhancement Act," signed April 24, 2020, serves as interim funding for parts of the "CARES Act“ by providing a total of $484 billion in relief. Specifically, Phase 3.5 restarts the PPP and EIDL loan programs and refreshes funding for hospitals, health care providers, and coronavirus testing provided for in Phase 3. Of the $484 billion, $60 billion was designated for replenishing the Economic Injury Disaster Loan (EIDL) program, $310 billion was provided to replenish the Paycheck Protection Program, and $100 billion was designated for Health and Human Services (HHS) to provide hospitals with equipment, supplies, and an increase in effort to provide coronavirus testing.

Phase 4? – Each party is drafting a list of priorities. The House may consider it week of May 18. It could be as large as $2 trillion.



Since mid-March, there have been 33.3 million unemployment claims in the United States, which accounts for approximately 20% of the US labor force. The US Bureau of Labor and Statistics released the April unemployment rate on May 8, 2020, which was 14.7%. Just two months ago, the unemployment rate was at 3.5%, a 50-year low.

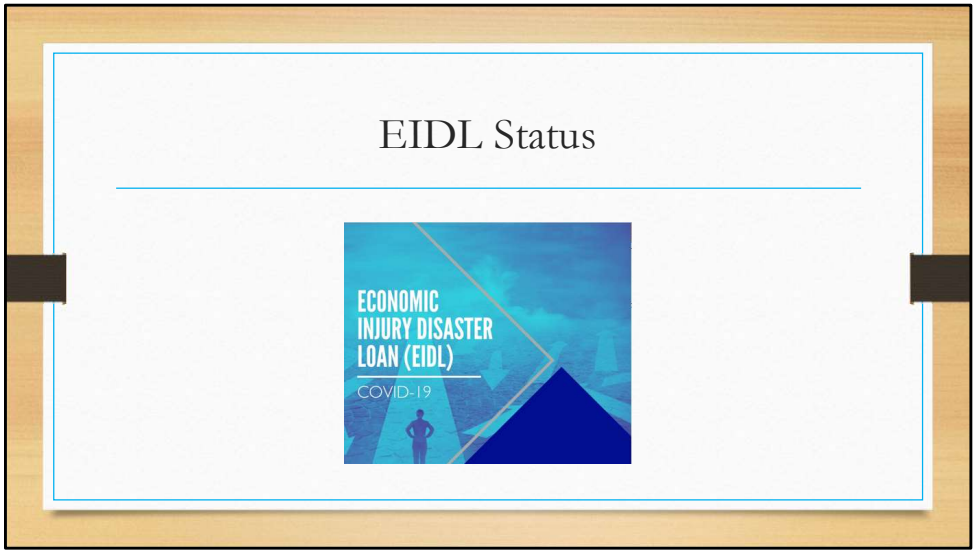
Unemployment Benefits

A temporary fund is created that provides unemployment to individuals who are not traditionally eligible for such benefits like self-employed people or workers in the “gig” economy.

An additional $600 per week above “normal” benefits is available for each recipient for up to 4 months.

States will be reimbursed by the Federal government for the additional week of benefits if they opt to start benefits immediately instead of waiting the traditional one-week waiting period.

An additional 13 weeks of federally funded unemployment benefits, through the end of 2020, for individuals who exhaust their state unemployment benefits.



From Phase 3.5 of the coronavirus relief legislation, $50B was allocated to replenish loans given through this program, additionally $10B was allocated to grants given through this program.

Learned after the launch of the CARES Act that the advance would be $1,000 per employee. SBA began processing approvals on Monday, April 27

Available to small businesses with less than 500 employees, sole proprietors, and independent contractors that suffer economic injury due to a declared disaster. As such, the USA has declared a national disaster due to COVID-19.

Meant to support small businesses to help overcome the temporary loss of revenue they are experiencing as a result of a declared disaster. (December 2007 blizzard, tornado in Joplin - 2011, flooding across the Midwest summer 2019, and COVID-19 2020.)

These loans are from the SBA – not your bank. Some of the SBA's usual requirements have been relaxed due to the current economic climate.

Low-interest (3.75% for small businesses, 2.75% for nonprofits) with terms up to 30 years.
No personal guarantees on loans of less than $200k.
Business assets can be used to secure loans of up to $500k.
Loans larger than this require real estate to secure the loan. The SBA said they will not turn away potential borrowers due to lack of collateral.

Advantageous for businesses that are capital-intensive with limited payroll as opposed to a PPP Loan. Rental Real Estate Businesses qualify which normally are excluded from SBA loans – most businesses are able to apply for these loans. Amount of maximum PPP loan is a payroll-based calculation.

Maximum loan of $2,000,000, however, many applicants are receiving back their loan proposal with a maximum loan amount of $15,000 (which the

SBA says is an initial two months of working capital). SBA has not commented if this program is capped at $15k due to overwhelming demand during the pandemic. No payments for the first year.

The SBA determines the loan amount. The formula the SBA uses to determine the loan amount is intended to cover six months of operating expenses.

Business must have been in operation as of January 31, 2020.

Application information includes the business' general information, gross revenues and cost of goods sold for the 12 months ended January 31, 2020. They may request additional information including (but not limited to); federal tax returns and a YTD income statement.

It typically takes the SBA approximately two weeks to make a decision on an EIDL, however, with the overwhelming increase in applicants, processing has slowed down.

$10k grant

CARES Act created a special program as a part of the EIDLs, in which businesses can request up to a $10k grant as a part of their application. Deadline for this grant is December 30, 2020.

Applicants can request an advance of $10,000 (max) as a grant which must be distributed within three days of application submission. There has been debate due to the interpretation of the CARES Act whether this advance/grant is $10k or $1k/employee (up to $10,000 max). The SBA released an email bulletin on Monday April, 6 stating that it is $1k/employee.

The applicant does not need to repay this advance even if the application is denied if it is used for:

- Sick leave for employees unable to work due to the impact of COVID-19
- Maintaining payroll
- Increased cost of materials due to interruptions in the business' normal supply chain
- Repaying obligations that cannot be satisfied due to revenue loss

If you receive these funds, the forgivable portion of the business' PPP loan is reduced by that amount.

Loan information:

Non-recourse loan with no personal guarantees, Two-year maturity date, 1% interest rate, Deferred payments for first six months of loan with no prepayment fees, No collateral is required

Loan is the lesser of $10,000,000 or 2.5 times the average monthly payroll costs (as defined below)

Exceptions to the time period of average monthly payroll exist for seasonal and new businesses

Expenses need to be monitored – A great way some businesses are anticipating monitoring these expenses is creating a new bank account with the lender, with the loan proceeds being deposited in this account. Then, the only time money is drawn from this account over the next eight weeks is to fund qualifying expenses.

Total PPP loan amount is based off of your average monthly payroll (or net self-employment earnings + wages paid) times 2.5. To calculate, you can use the previous twelve months' (April 2019 – March 2020) or 2019 payroll information. For businesses not in operation in 2019 they may use average monthly payroll for January and February 2020. If your business is seasonal you may use applicable time periods for your calculation. Average monthly payroll costs are defined as:

Salary, wages, commissions, tips.

For a sole proprietor or independent contractor: net profit from 2019 Schedule C.

Employee benefits include costs for vacation, parental, family, medical or sick leave.

Allowance for separation or dismissal.

Other payroll costs included in excess of the $100k cap per employee are:

Payments required for the provisions of group health care benefits including insurance premiums.

Payment of any retirement benefit.

State and local taxes assessed on compensation (such as SUTA).

*******Interim Final Rule on loan increases issued subsequent to recording.*******

The SBA issued an Interim Final Rule on May 13, 2020, providing additional guidance for previously disbursed PPP loan funds to partnerships and seasonal employers. If a partnership applied for and received a PPP loan in the amount of the payroll costs of the partnership's employees but did not include the amount of the partner compensation, the partnership's lender can submit a request to the SBA to increase the loan amount to incorporate partner compensation if the lender's first Form 1502 report on the PPP loan has not been submitted to the SBA. Additionally, if seasonal businesses received their PPP loan prior to guidance issued on April 28, 2020 that stated seasonal employers can use any consecutive twelve-week period between May 1, 2019 and September 15, 2019 for the purposes of calculating their maximum loan amount, the seasonal employer's lender could submit a request to the SBA requesting an increase in the loan amount if the lender's first Form 1502 report on the PPP loan has not been submitted to the SBA.

Who Received PPP Funding?

Paycheck Protection Program Funding as of April 16, 2020 (Round I)

Loan Size	Approved Loans	% of Count	Approved Dollars	% of Amount
$150K and Under	1,229,893	74.03%	$58,321,791,761	17.04%
>$150K - $350K	224,061	13.49%	$58,321,791,761	14.88%
>$350K - $1M	140,197	8.44%	$80,628,410,796	23.56%
>$1M - $2M	41,238	2.48%	$57,187,983,464	16.71%
>$2M - $5M	21,566	1.30%	$64,315,474,825	18.79%
>$5M	4,412	0.27%	$30,897,983,582	9.03%

Average loan size = $206K

This data is from SBA's PPP loan data and reflects the first round at https://www.sba.gov/sites/default/files/2020-04/PPP%20Deck%20copy.pdf.

Loans funded greater than $1M comprise only approximately 4% of approved loans while accounting for 44.5% of the total dollar amount of loans approved.

Loans funded less than or equal to $1M comprise approximately 96% of approved loans while only accounting for 55.5% of the total dollar amount of loans approved.

Available Aid for both rounds 1 & 2 was $659B and is available to Sole Proprietors, Independent Contractors, Companies with <500 employees.

Eligibility (from Fourth Interim Final Regulations)

- Hedge funds. Private equity funds not eligible because primarily engaged in investment or speculation
- Portfolio company warning that affiliation rules apply to private equity-owned businesses and should carefully review Application certifications stating "current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."
- Hospital owned by government can qualify if less than 50% funding comes from state/local services other than Medicare. Basically more than 50% of revenues must come from fee for services.
- Legal gambling businesses allowed
- Business participation in an ESOP does not result in affiliation between the ESOP and the business
-Bankruptcy entities are NOT eligible.

Who Received PPP Funding?

Paycheck Protection Program Approvals April 27 – May 1, 2020 (Round II)

Loan Size	Approved Loans	% of Count	Approved Dollars	% of Amount
$50K and Under	1,567,355	70.86%	$28,388,688,805	16.15%
>$50K - $100K	304,561	13.77%	$21,565,070,866	12.27%
>$100K - $150K	121,086	5.47%	$14,793,771,283	8.42%
>$150K - $350K	138,968	6.28%	$30,739,136,703	17.49%
>$350K - $1M	58,758	2.66%	$32,766,135,277	18.64%
>$1M - $2M	13,481	0.61%	$18,619,762,249	10.59%
>$2M - $5M	6,110	0.28%	$18,121,875,023	10.31%
>$5M	1,472	0.07%	$10,748,807,702	6.12%

Average loan size = $76K

Data is from SBA's latest PPP loan data at https://www.sba.gov/sites/default/files/2020-05/PPP2%20Data%2005012020.pdf.

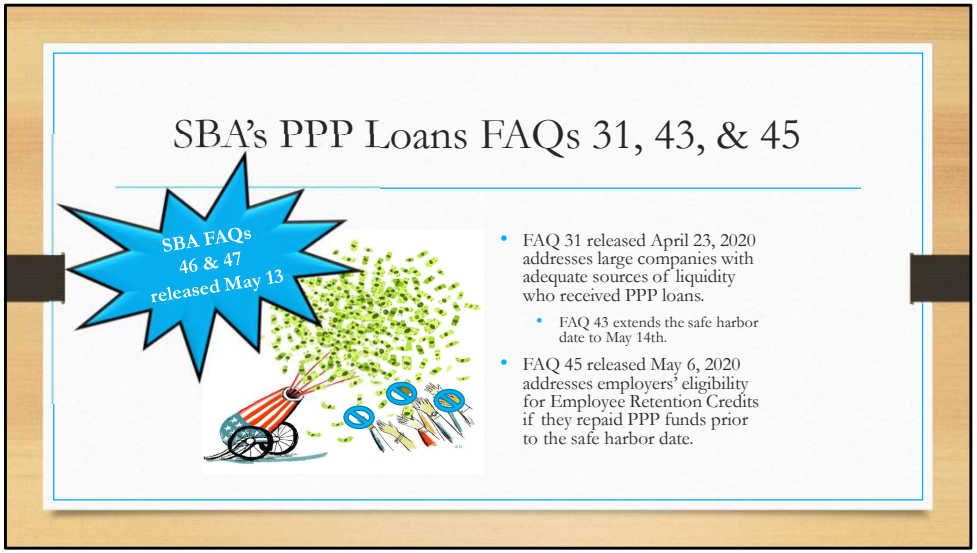
Loans funded greater than $1M comprise only approximately 1% of approved loans while accounting for 27% of the total dollar amount of loans approved.

Loans funded less than or equal to $1M comprise approximately 99% of approved loans while accounting for 73% of the total dollar amount of loans approved.

It is interesting to note that the average loan size is approximately $130K less in round II than round I.

Above are articles highlighting some of the public backlash over the first round of PPP loan funding. Many large publicly traded companies received PPP loan funding while smaller business did not.

Treasury Secretary Mnuchin says recipients of PPP loans in excess of $2 million will be audited.



Fourth Interim Final Rule on 4/24/20
Formalized May 14 safe harbor for repayment and won't violate the federal banking laws related to certification that "current economic uncertainty makes this loan necessary to support the ongoing operations of the Applicant."

https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf
SBA Q&A #31 **Question:** Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

Answer: In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "current economic uncertainty makes this loan necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

Lenders may rely on a borrower's certification requiring the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.

SBA Q&A 43 **Question:** FAQ #31 reminded borrowers to review carefully the required certification on the Borrower Application Form that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?

Answer: SBA is extending the repayment date for this safe harbor to May 14, 2020. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor. SBA intends to provide additional guidance on how it will review the certification prior to May 14, 2020.

The SBA released FAQ 45 on May 6, 2020 addressing employers' eligibility for Employee Retention Credits if they received a PPP loan and repaid the loan prior to the safe harbor deadline prescribed above.

SBA Q&A 45 **Question:** Is an employer that repays its PPP loan by the safe harbor deadline (May 14, 2020) eligible for the Employee Retention Credit?

Answer: Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

*******FAQs 46 and 47 were issued subsequent to recording.*******

The SBA released FAQs 46 and 47 on May 13, 2020. FAQ 46 addresses the "good-faith certification review" concerning the necessity of the loan. To summarize the FAQ, entities who receive PPP loans less than $2 million will be deemed to have made this certification in good faith, while entities who receive PPP loans greater than or equal to $2 million will be subject to review by the SBA for compliance with the program requirements and necessity of the loan. FAQ 47 extended the safe harbor repayment date to May 18, 2020 to give recipients time to review the content of FAQ 46. Below is the text of the FAQs:

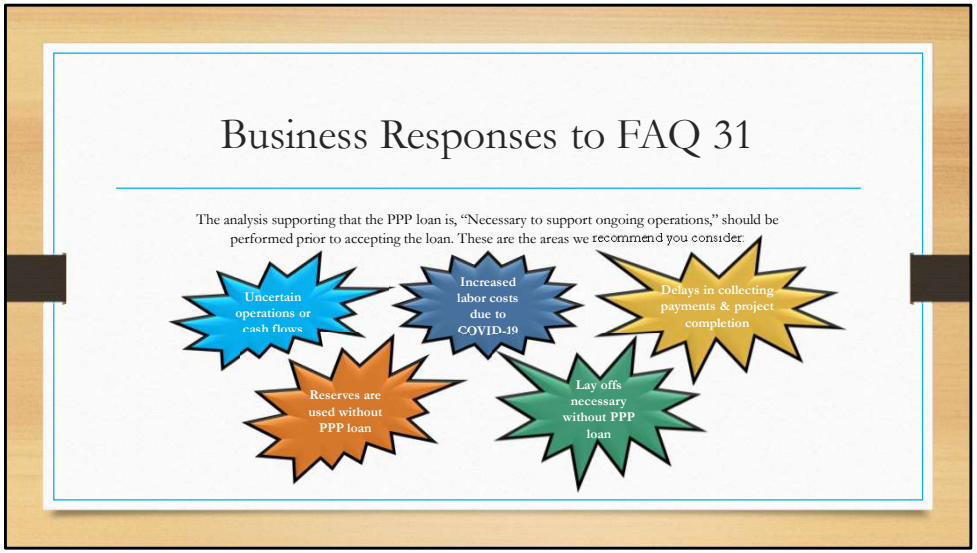
SBA Q&A 46 **Question:** How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?

Answer: When submitting a PPP application, all borrowers must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: Any borrower that, together with

its affiliates, received PPP loans with an original principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith. SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns. Importantly, borrowers with loans greater than $2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of $2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

SBA Q&A 47 **Question:** An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?

Answer: Yes, SBA is extending the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46. Borrowers do not need to apply for this extension. This extension will be promptly implemented through a revision to the SBA's interim final rule providing the safe harbor.



How far will this go? Limited to public companies? Senator Rubio stated "entity of any size", which seems to anticipate everyone. Mnuchin says, SBA will be auditing all companies with loans over $2M. On the PPP loan forgiveness application, there is a box to select if the borrower's received PPP loan funds in excess of $2M.

Problematic for borrowers w/ FAQ #31. Document economic uncertainty and necessary portion from certification standpoint:

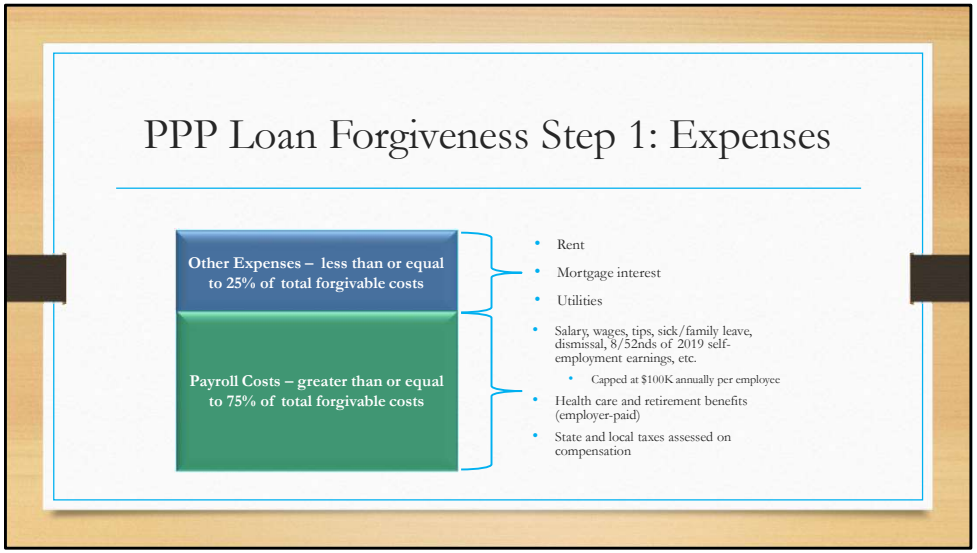
- Memo to file with Projections
- Customer Base
- Metrics
- 13 week Cash Flow projection

Access to other sources of capital – just because have LOC or available cash, the right answer isn't necessarily to suck the company dry to keep people employed

Debt Forgiveness Application to banks. Know what the bank is going to request for forgiveness. Borrowers must submit to the banks:

- Documentation verifying employees on payroll and their pay rate
- Documentation on covered costs/proof of payments
- Certification from business representative
- Additional documentation as requested (Copy of cancelled checks, bank statements)

SBA FAQ #45 Clarified that employer that repays its PPP loan by the safe harbor deadline (May 14) are eligible for the Employee Retention Credit (up to 50% wages up to $10,000 or $5,000/employee)



According to the CARES Act, each business has eight weeks to spend their PPP loan funds on forgivable expenses. This eight weeks is known as the Covered Period. All expenses must be incurred and paid in order to be considered for forgiveness.

75% of total forgivable expenses must be used on payroll costs, shown in green above. These costs include salaries, wages, tips, commissions, sick/family leave, allowance for dismissal or separation, and 8/52nds (8 weeks out of 52 weeks) of 2019 self-employment earnings capped at $100K annualized per employee. These costs are referred to as, "Cash compensation." In addition, any amounts paid by the employer for employee health care benefits, retirement benefits, or state and local taxes assessed on compensation can be included in excess of the $100K cap per employee on cash compensation.

The CARES Act also allows 25% of forgivable costs to include payments for rent, mortgage interest, and utilities.

*******SBA PPP loan forgiveness application was issued subsequent to recording.*******

The PPP loan forgiveness application was released by the SBA May 15, 2020. The language in the application allows for entities with a biweekly payroll schedule to use a covered period that begins on the first day of their first pay period following the PPP loan disbursement date. Generally, only payroll costs (above in green) may use this Alternative Payroll Covered Period.

The application also provides guidance on the definition of "incurred and paid" regarding forgiveness-eligible costs. The application instructions make clear that a borrower can count cash compensation payments to employees as forgiveness-eligible as long as, "Eligible costs paid during the 56-day period [Covered Period] regardless of when they were incurred and eligible costs incurred during the 56-day period [Covered Period] so long as they are paid by a standard payment date defined for each cost type." Therefore, the last payroll of the covered period does not need to be modified to be paid inside of the Covered Period. Employer-paid employee retirement benefits and health insurance plan costs must be paid during the covered

period to be forgiveness-eligible.

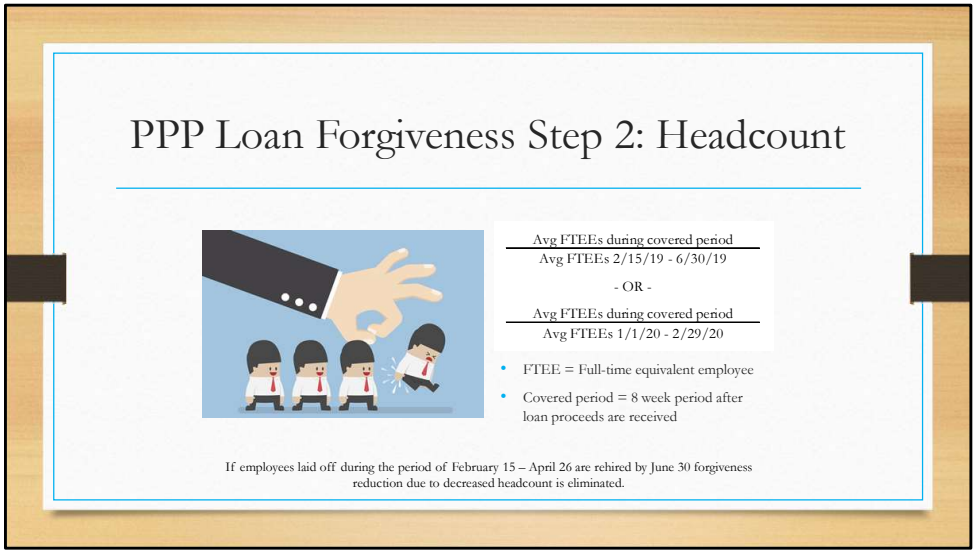
As the application is certified by a representative of the borrower, one certification includes that the amount requested as forgiveness, "… Does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at $15,385 per individual."

If a cost is both incurred and paid during the Covered Period, the cost may only be counted once towards eligible forgiveness.

For other expenses (above in blue), the Alternative Payroll Covered Period is not permitted period for forgiveness-eligible expenses. Thus, there will be two different periods to measure for borrowers who pay bi-weekly payroll who elect to use the Alternative Covered Period. The SBA clarified nonpayroll costs would include those costs incurred during the 8 week Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Additionally, the SBA maintained its definition of rent obligations to include leases for both real and personal property (equipment used for business).

The SBA also clarified that any EIDL advance received after PPP funds were received by a business will reduce the total amount of forgiveness in a $1:$1 ratio.

To view the SBA's PPP loan forgiveness application, visit https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf.



The amount of total forgiveness-eligible expenses will be reduced by any reduction in full-time equivalent employee (FTEE) headcount. The reduction is calculated as the average number of FTEEs during the Covered Period divided by the average FTEEs during the period of 2/15/19 – 6/30/19 OR 1/1/20 – 2/29/20. Seasonal employers can elect to use the period of 05/01/2019 – 09/15/2019. Each business will want to use the denominator that most accurately represents the true number of FTEEs they expect to have over the covered period. The quotient of the formula is the percentage of total forgiveness-eligible expenses that are eligible for forgiveness.

The SBA PPP loan forgiveness application clarified that if FTEE headcount is reduced during the period of February 15 – April 26, 2020, the business has until June 30, 2020 to restore headcount back to the February 15 level to eliminate the forgiveness reduction due to a reduction in FTEE headcount. When hiring back employees to restore headcount, the same employees do not need to be hired back, headcount is restored if new employees are hired in place of former employees.

*******SBA PPP loan forgiveness application was issued subsequent to recording.*******

The SBA's PPP loan forgiveness application defines for two calculations for determining the number of FTEEs during a period.

(1) For each employee, take the average number of hours per week divided by 40 hours (as opposed to the Affordable Care Act (ACA)'s definition of full-time which is 30 hours/week) and round the total to the nearest tenth. The result cannot be more than one.
(2) For each employee, assign a 1.0 to any employee working 40 hours or more per week and 0.5 to any employee working less than 40 hours per week.

The second calculation is a simplistic approach that employers who have many part-time employees with varying hours worked per week may find beneficial. Instead of determining each part-time employee's FTEE impact by hours worked, all part-time employees are included as 0.5 of a FTEE.

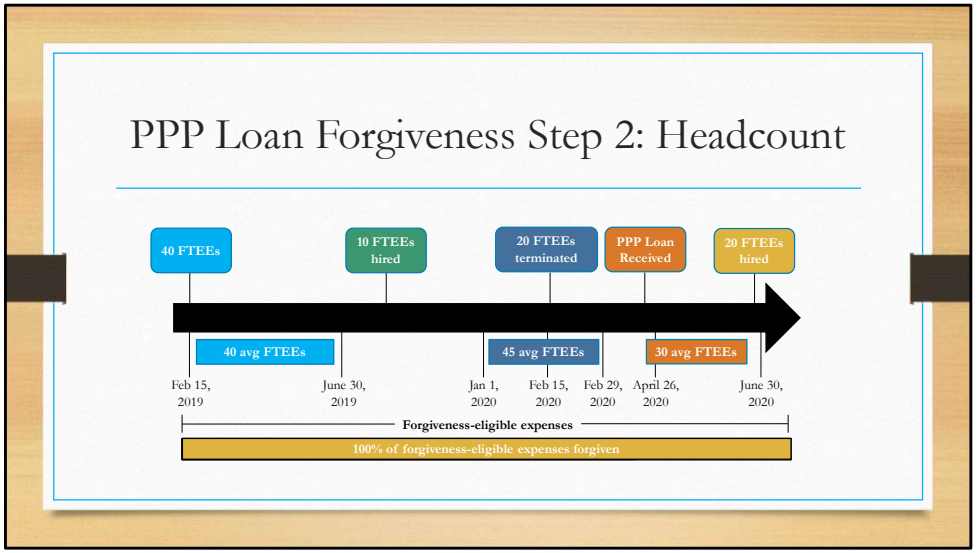
If a business lays off employees and offers in good faith to rehire the employees The business must document the employment offer and rejection by the potential employee in order to submit for potential PPP forgiveness.

SBA FAQ #40
Question: Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

Answer: No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

*******SBA PPP loan forgiveness application was issued subsequent to recording.*******

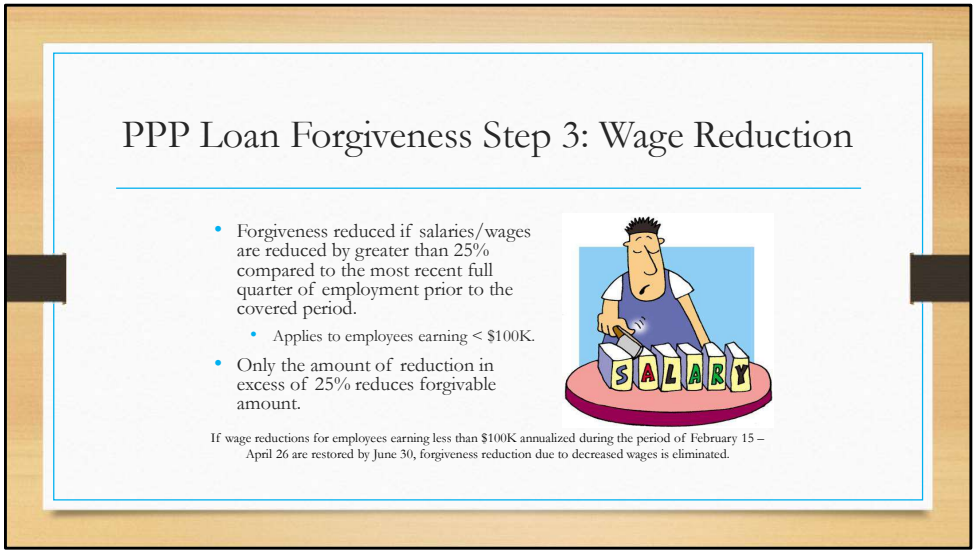
The SBA further clarified the attempted rehire exclusion noting it also included those employees who (1) were fired for cause, (2) voluntarily resigned, or (3) voluntarily requested and received a reduction of their hours. As noted above, each business must document each scenario in order to receive maximum forgiveness. In terms of the forgiveness reduction calculation due to a decreased headcount, employees in the three previously listed scenarios, as well as the scenario listed on the slide, should be included in the average FTEE calculation as long as the position(s) have not been filled during the Covered Period or Alternative Payroll Covered Period.



2/15/19 – 6/30/19 Average FTEEs = 40
1/1/20 – 2/29/20 Average FTEEs = 45
Covered Period Average FTEEs = 30

It would be advantageous for the business in this example to use the comparison period of 2/15/19 – 6/30/19 as 75% (30 FTEEs / 40 FTEEs = 75%) of forgiveness-eligible expense are allowed to be forgiven. If they used the comparison period of 1/1/20 – 2/29/20, only 67% (30 FTEEs / 45 FTEEs = 66.667%) of forgiveness-eligible expenses would be forgiven.

The SBA PPP loan forgiveness application clarified that if the business rehires FTEEs to restore the decrease in FTEEs from 2/15/20 – 4/26/20 to the 2/15/20 employment level by 6/30/2020, the reduction in total forgiveness due to a reduction in FTEE headcount if eliminated and 100% of forgiveness-eligible expenses can be forgiven.



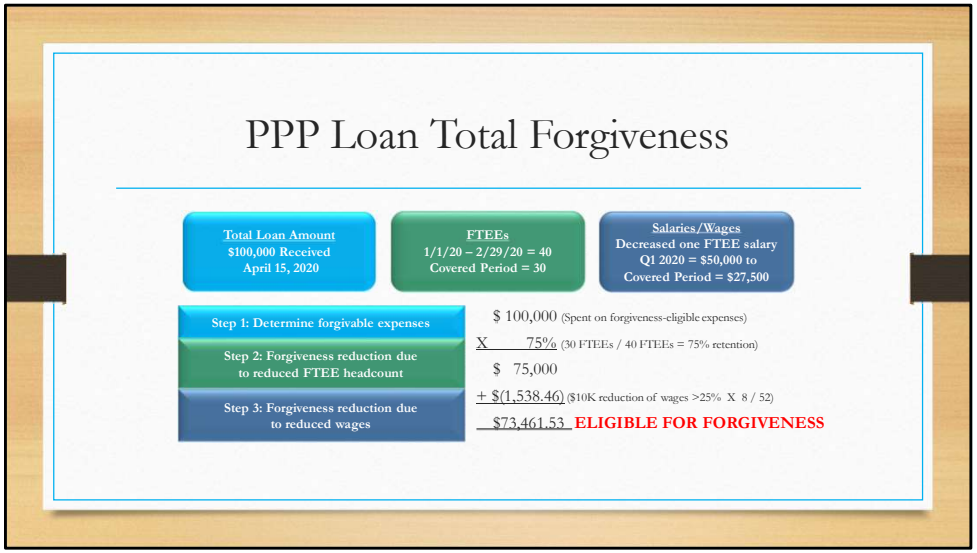
The reduction is calculated on an employee by employee basis for any employees who earned less than $100K in 2019.

The wage paid to each employee during the covered period is compared to the wage paid in the most recent quarter (Q1 2020) for all employees earning less than the threshold stated above. If the employee's rate of pay is less during the Covered Period as compared to Q1 2020, the reduction of forgiveness-eligible expenses will be applied after the reduction due to a decrease in FTEE headcount has been applied. Total reduction for each salaried employee is calculated as the amount of reduction in excess of 25% from the average annual salary of the Covered Period compared to Q1 2020 average annual salary multiplied by 8, then divided by 52. For each hourly employee the calculation is Q1 2020 average hourly wage minus the Covered Period average hourly wage. The amount of reduction in excess of 25% of Q1 is then multiplied by the average weekly hours worked during Q1 2020. Lastly, the product is multiplied by 8.

The reduction due to decreased wages is a direct reduction from the forgiveness-eligible expenses ($1:$1) as opposed to a total percentage reduction.

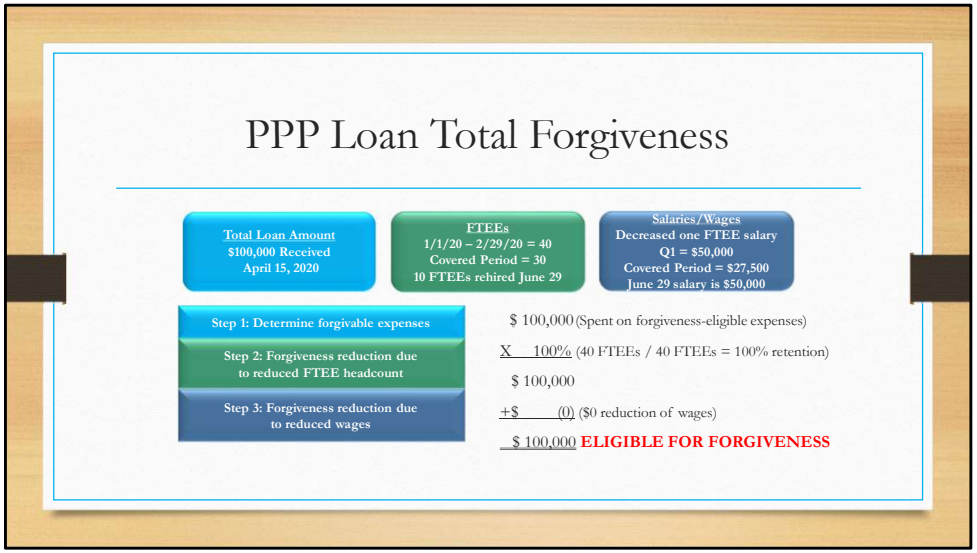
*******SBA PPP loan forgiveness application was issued subsequent to recording.*******

The SBA clarified that recipients of PPP loans are exempt from the reduction in forgiveness due to wage reduction if one of the following conditions are met:
(1) Average annual salary or hourly wage between 2/15/20 and 4/26/20 is equal to or greater than the annual salary or hourly wage on 2/15/20; OR
(2) Average annual salary or hourly wage on 6/30/20 is equal to or greater than the annual salary or hourly wage on 2/15/20.



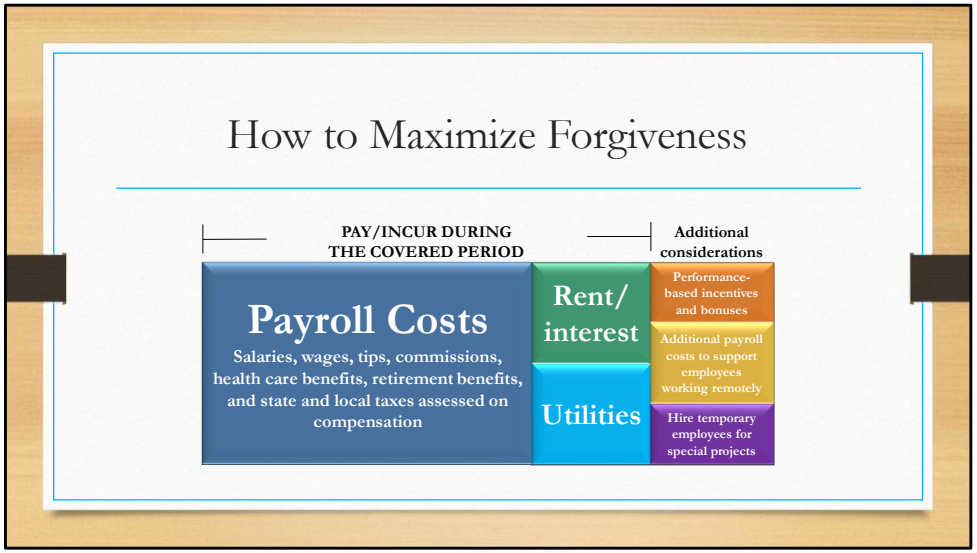
Scenario 1

The Company receives a PPP loan of $100,000. At the beginning of the covered period, the Company terminates 10 full-time equivalent employees (FTEEs) and reduces one FTEE's average annual salary from $50,000 to $27,500. The Company expends the funds on forgiveness-eligible expenses during the eight-week covered period, determining the amount of possible forgivable costs. Next, the Company determines what portion of those expenses are eligible for reduction due to a decreased headcount. As the Company had an average of 30 FTEEs during the covered period, the total forgiveness-eligible expenses are reduced by 25% (30 FTEEs/40 FTEEs = 25%)). This reduced forgiveness-eligible expenses to $75,000. Finally, the Company reduced wages for one FTEE from their Q1 average annual salary of $50,000 to an average annual salary during the covered period of $27,500. The total reduction is $22,500, or 45%. The amount of the reduction in excess of a 25% reduction, $10,000, is the multiplied by 8 and divided by 52. Total reduction of forgiveness-eligible expenses due to a decrease in wages is $1,538.46. Therefore $73,461.53 is remaining that can be forgiven.



Scenario 2

All facts are materially the same with the exception that FTEE headcount and wage reductions are restored on June 29, 2020. As the two reductions were nonexistent prior to June 30, 2020, there are no reductions of the total forgivable expenses due to reduced headcount or wages. The full $100,000 of forgiveness-eligible expenses are forgiven.



In order to maximize your amount forgiven, accurate record-keeping and planning is of the utmost importance.

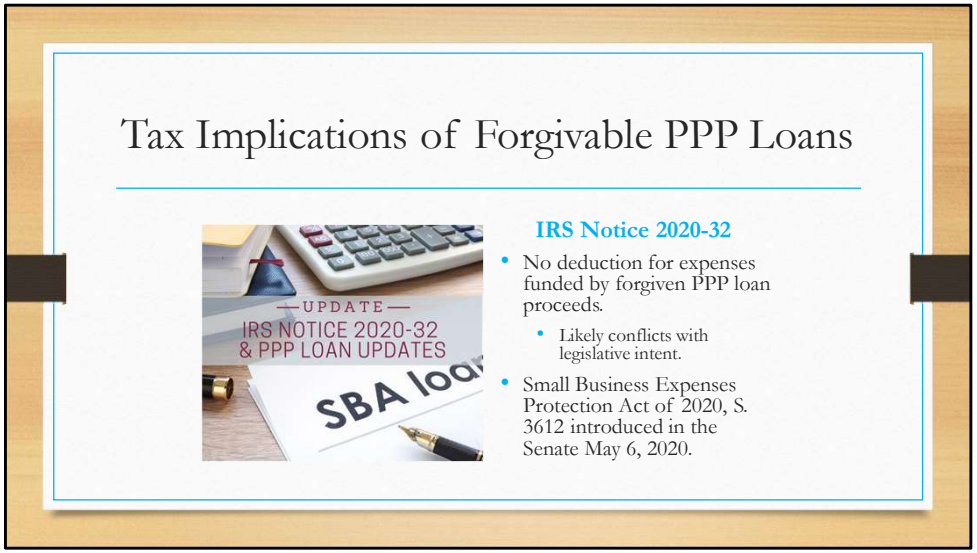
The expenses must be incurred, therefore no prepayments allowed (even though they may be paid during the covered period).

Additional considerations when planning the eight-week covered period:

- Performance-based incentives and bonuses are included under payroll costs during the covered period. This is a great way to generate additional revenue that may have been lost during this economic slow-down.
- Have your employees taken on additional costs to transition to working remotely? Show your appreciation with a one-time bonus to help cover these unexpected costs.
- Are there projects that your company has put aside due to staff high levels of utilization before coronavirus? Hire an extra employee during the covered period to perform these projects. There is an abundance of unemployed individuals that are looking for work currently as there have been 33.3 million unemployment claims since mid-March.

*******SBA PPP loan forgiveness application was issued subsequent to recording.*******

The SBA PPP loan forgiveness application did not specifically mention any restrictions on incentive pay or bonuses. Therefore, incentive pay or bonuses in the normal course of business will be eligible for forgiveness. The application requires a certification (listed on slide 11) that limits the amount of forgiveness for any owner-employee or self-employed individual's/general partner's compensation as the lesser of eight weeks' worth of 2019 compensation or $15,385 per individual.



According to IRS guidance issued April 30th, PPP Loan recipients with loan forgiveness cannot deduct related expenses that are normally deductible to the extent amounts were reimbursed by PPP Loan that was forgiven.

Section 265 disallows deductions for amounts allocable to wholly tax exempt income. The intent is to prevent a double benefit by disallowing a deduction for excluded income.

The CARES Act itself does not address whether deductibility of otherwise allowable expenses by a loan recipient with subsequently forgiven amounts. However, the ACT specifically provides that loans forgiven under the PPP are not subject to income tax (e.g. as cancellation of indebtedness income). By including this provision, the PPP can effectively be viewed as a tax-free grant with conditions.

Planning & risks associated with taking a position contrary to Notice 2020-32. Claiming deductions for these expenses likely makes sense from a financial perspective.

It's possible that legislation will address this issue in the coming months, there appears to be support to taking a position contrary to the Notice

Bipartisan statements indicate that Congress did not intend for these deductions to be negated by another little-known statutory provision.

Senator Chuck Grassley, Chair of the Senate Finance Committee, indicated that “[t]he intent [of the PPP] was to maximize small businesses’ ability to maintain liquidity, retain their employees and recover from this health crisis as quickly as possible. This notice [Notice 2020-32] is contrary to that intent.”

Richard Neal, Chair of the House Ways and Means Committee similarly indicated that Congress intends to fix this issue in upcoming legislation.

IRS Notices are among the least authoritative guidance available to taxpayers. Published notices can be relied upon by taxpayers to the same extent as revenue rulings or revenue procedures to avoid accuracy-related penalties, they do not have the force and effect of Treasury regulations and can be affected by subsequent legislation, regulations, revenue rulings, revenue procedures, and case law.

Inequitable Application - The non-deductibility of the expenses (to the extent they result in non-taxable cancellation of indebtedness income) would create a difference in application between different types of businesses.

- Example LLC taxed as S-Corporation v. taxed as a partnership. Self-employed income replacement is not taxable, whereas S or C Corp paying wages would not get a deduction, resulting in owners of S-Corp subject to additional tax with respect to income and putting them at a competitive disadvantage over those structured as partnership. Similarly true of self-employed for health insurance and retirement benefits for self-employed related to "payroll" expenses

Although contrary to Notice 2020-32, businesses can likely prevail on merits of the deduction, or at least avoid the assessment of accuracy related penalties based on reasonable cause.

Bipartisan Senate bill (S. 3612) introduced May 6 to clarify PPP so small businesses can deduct expenses paid with a forgiven PPP loan from their taxes

Tax Implications of Forgivable PPP Loans

	Totals	*IRS Notice 2020-32* Forgiveness nontaxable, Deductions disallowed	*Intent of S. 3612* Forgiveness nontaxable, Deductions allowed
Operating Income			
PPP Loan Forgiveness	$ 100,000	$ -	$ -
Other Operating Income	200,000	200,000	200,000
Total Operating Income	300,000	200,000	200,000
Operating Expenses			
Payroll Costs	75,000	-	75,000
Rent	20,000	-	20,000
Utilities	5,000	-	5,000
Other Operating Expenses	25,000	25,000	25,000
Total Operating Expenses	125,000	25,000	125,000
Taxable Income	$ 175,000	$ 175,000	$ 75,000
Federal Corporate Tax (21%)	36,750	36,750	15,750

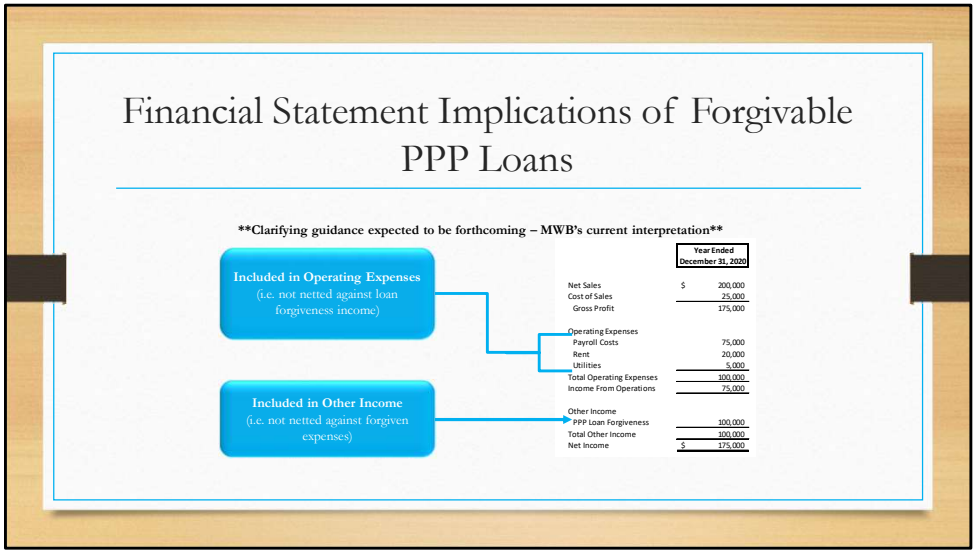
Above are the operating results for a business who received $100,000 in PPP loan forgiveness.

Scenario 1 – IRS Notice 2020-32

The middle column is what the entity's operating results would look like if IRS Notice 2020-32 from the previous slide is applied. The income generated from the forgiveness of the PPP loan is non-taxable and the expenses paid with forgiven PPP loan funds are non-deductible. They are not allowed as deductions, therefore, increasing total taxable income. Only $25,000 of the entity's expenses are allowed to be deducted from other operating income of $200,000, resulting in total taxable income of $175,000. After applying the entity's federal tax rate, $36,750 is due in taxes.

Scenario 2 – S. 3612 Intent

After the IRS received backlash subsequent to releasing IRS Notice, Bipartisan Senate bill (S. 3612) was introduced May 6, 2020 to clarify PPP so small businesses can deduct expenses paid with a forgiven PPP loan from their taxes, as noted on the previous slide. As the intent of the CARES Act was not to increase the tax burden of entities receiving PPP loans, MWB believes that this bill, or one similar in content, will be passed in the near future. The third column above illustrates the tax effect a bill of this nature would have. The PPP loan forgiveness income remains non-taxable (as stated in the CARES Act) and all expenses are allowed to be deducted on the entity's tax return. This decreases taxable income to $75,000, with a $15,750 tax expense after the entity's federal tax rate is applied.

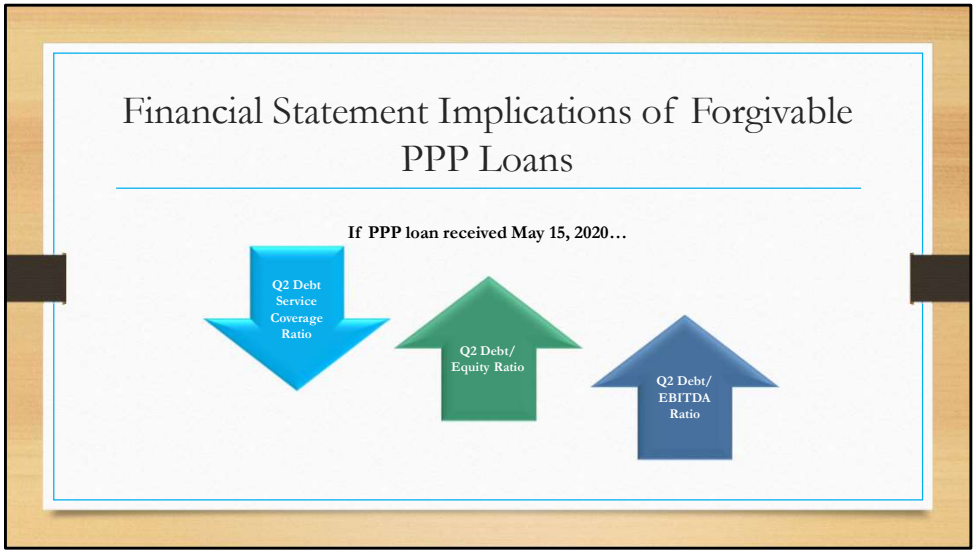


As there is no current GAAP guidance detailing the treatment of PPP loan forgiveness and the expenses forgiven resulting in the forgiveness, the example above is MWB's current interpretation on what financial statements will look like after loans are forgiven.

The expenses paid which resulted in forgiveness will remain in operating expenses.

PPP loan forgiveness (debt forgiveness income) will be included in other income.

The alternative would be to net the expenses paid which resulted in forgiveness with the PPP loan forgiveness income. This would result in further book-to-tax differences if the Bipartisan Senate bill (S. 3612) is signed by the President.

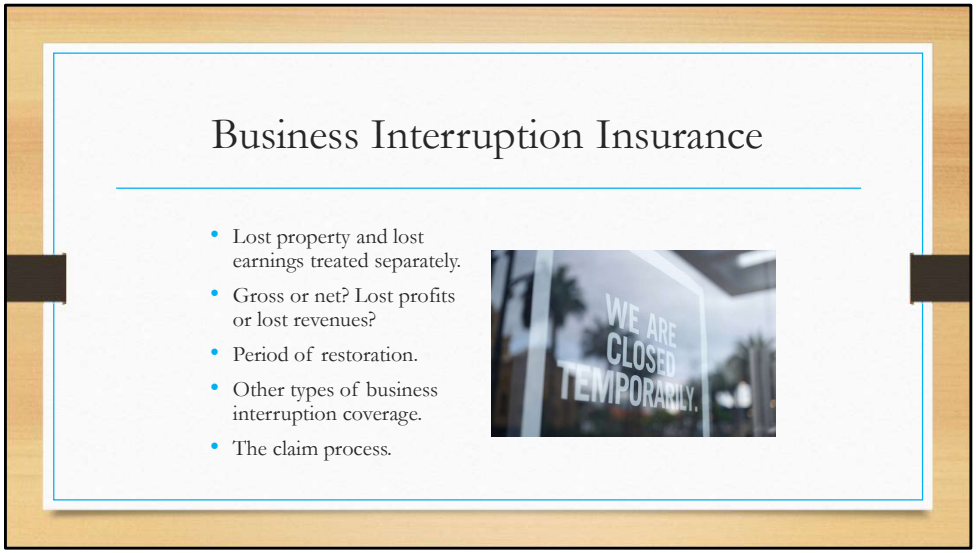


Depending on the timing of when you receive your loan, certain financial ratios could be negatively impacted for 2020 quarter two (Q2) operating results.

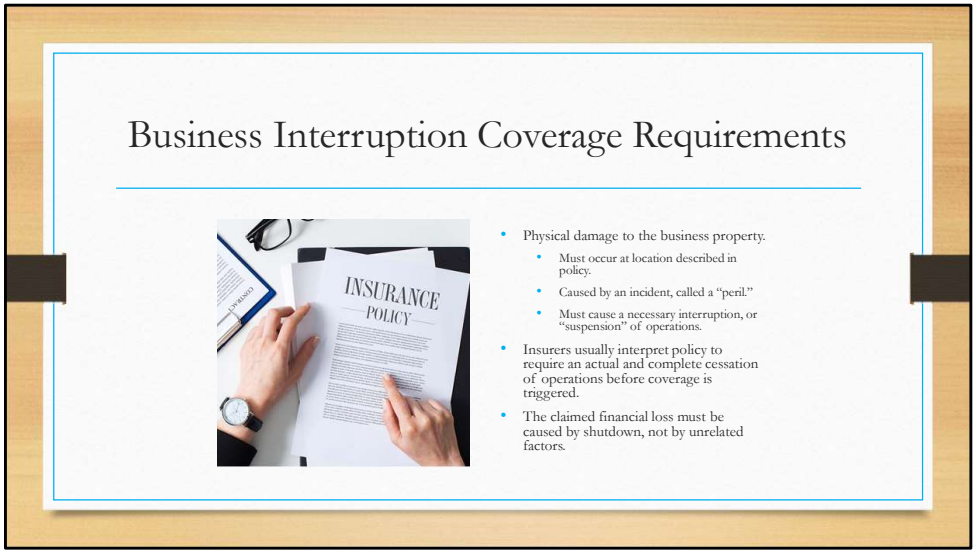
The debt service coverage ratio would decrease if the debt is outstanding as of the end of Q2, only to have it forgiven weeks later.

The debt to equity and debt to EBITDA ratios would both increase if the debt is outstanding as of the end of Q2, only to have it forgiven weeks later.

If your business has quarterly debt covenant ratios it has to meet, work with your lender on obtaining a waiver or modification to the calculation if you are negatively impacted by the timing of you PPP loan.



- Business interruption insurance provides funds to make up the difference between your business' normal income and its income during and immediately after a forced shutdown.
- The But For vs Actual that we discussed in our first class – What would our profits have been if not for the pandemic?
- Typically can get there two different ways - lost profit plus unavoidable costs = revenues less avoidable costs.
- The policy language governs - it can get very granular, going to the definitions of specific words.
    - Without a doubt from a distancing and a time perspective there are ongoing economic impacts. In the context of business interruption insurance - Time – what does the policy cover if an event occurs during the policy period but the economic losses continue for years.
- How long the coverage period will be depends almost entirely on the facts of each loss and each business.
- Most policies contain a specified maximum limit on the "period of restoration," typically expressed as one or two years after the physical loss itself occurred.



New case law discussing the definition of physical damage.

"Contingent business" interruption extends the coverage to include income losses that are incurred as a result of property loss at a key supplier or customer location.

- Review current policies to see if business is covered.
- Does COVID-19 meet the loss definition triggered in the policy?
- Is there contingent business interruption coverage for the inability to secure essential supplies or provide goods and services?
- Are there sub-limits that cap or limit coverage?
- Is there a relevant "extension" or additional coverage?
- Is coverage expressly excluded altogether ("act of God")
- Potential legislation is being crafted in various jurisdictions which might force insurers to cover claims related to COVID-19.
- BIG Business Interruption Group non-profit formed largely by restaurants to bring legal action in every state if insurers do not start paying.
- Federal subsidies for insurers may be inevitable (Terrorism Risk Insurance Act after 9/11 - will there be a Pandemic Risk Insurance Act).

Regulation/Litigation

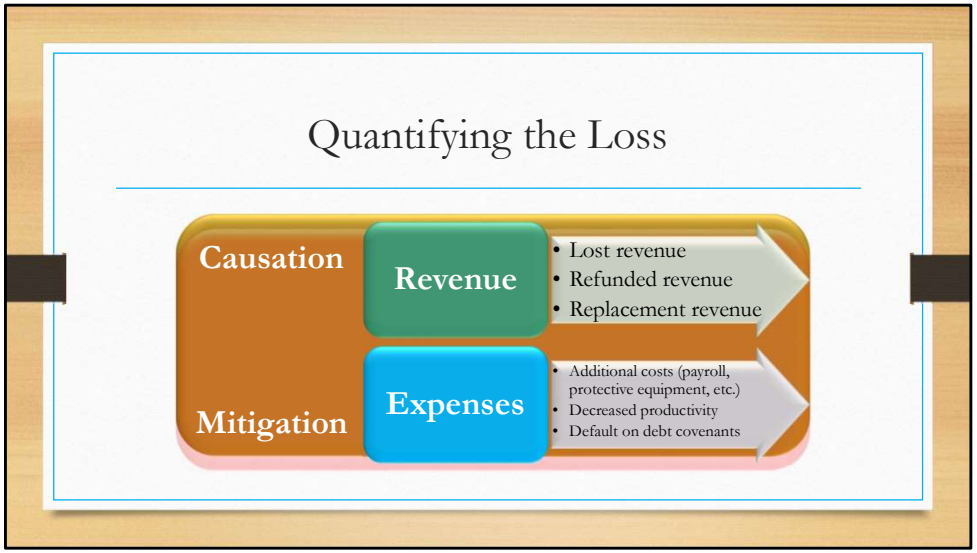
March 18 - Congress members write letter to insurance industry trade associations urging them to "work with member companies and brokers to recognize financial loss due to COVID-19 as part of policyholders business interruption coverage." The letter can be accessed here: https://cunningham.house.gov/sites/cunningham.house.gov/files/wysiwyg_uploaded/Signed%20BII%20Letter_Final.pdf

April 2 - Insurance trade groups write letter to Congress stating that "standard business interruption policies do not, and were not designed to, provide coverage against communicable diseases such as COVID-19 and as such were not actuarially priced to do so." These groups have called for a "COVID-19 Business and Employee Continuity and Recovery Fund from the federal government to aid impacted businesses and their employees. The letter can be accessed here:
https://www.namic.org/pdf/20memberadvisory/200403_ca_business_interuption_trade_response.pdf?mod=article_inline

April 10 - In a White House briefing, President Trump addresses the issue saying, "would like to see the insurance companies pay if they need to pay." He added, "in a lot of cases I don't see it" when referring to an exclusion for pandemics, saying, "we can't let that happen." The press briefing transcript can be accessed here:
https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-24/

April 10 - Senators write to President Trump warning, "commercial insurers could experience significant economic strain and/or insolvencies, given the magnitude of the current cumulative estimated claims. They also state skepticism about efforts to create a TRIA-like solution for future pandemics referring to growing support for a Pandemic Risk Insurance Act that would mirror the Terrorism Risk Insurance Act (TRIA). The letter can be accessed here:
https://www.scott.senate.gov/imo/media/doc/20.04.10%20Sen.%20Tim%20Scott%20Letter%20on%20BI%20Insurance.pdf?mod=article_inline

May 4 - Standard & Poor's expects state legislators to lose bids to mandate retroactive coronavirus business interruption coverage due to expectations of fierce insurance industry fueled legal challenges.
https://www.carriermanagement.com/news/2020/04/29/206068.htm



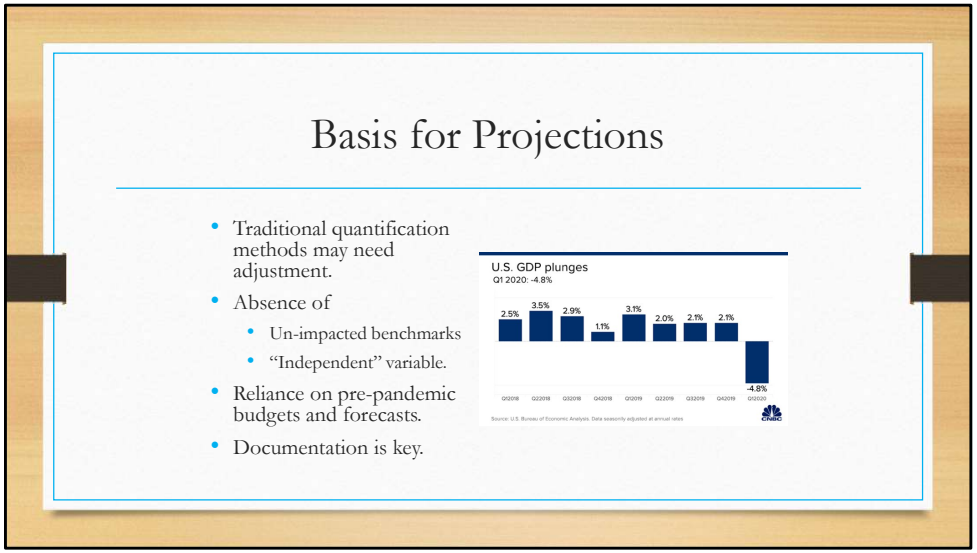
Causation

Quantification of losses should be based on specific cause.
Is the business interruption caused by the pandemic or a government mandated closure or modification?
Are there going to be arguments made that damages fall under physical damage policy coverage due to presence of virus inside facilities?
Health considerations may cause costs/efforts to protect employees and customers.

Mitigation

What actions were taken to mitigate losses, such as changes in business model, different mechanisms to continue some form of operations = decrease losses.
What additional costs were incurred in mitigation efforts = increase losses. - It seems like almost everyone is incurring new or additional costs – the question is what is covered
PPP funds discussed earlier could decrease losses. Could be economic mitigation to BI losses IF and only IF the loan is forgiven.
Otherwise may be an increase to losses as a cost of mitigation.

But-for vs. actual, or what would have happened compared to what did happen.
Includes two elements of lost profits and extra expenses -
Revenues less non-continuing/avoidable/variable costs OR Lost profit plus continuing/non-avoidable/fixed costs = same amount of total loss



If the entire market, industry, economy, etc. is impacted but the event causing the BI loss, then traditional quantification methodologies may need to be adjusted for losses due to the pandemic.

There may be no un-impacted benchmark or yardstick to determine a reasonable basis for what should have happened (secondary location, industry and/or macro-economic data. May need to rely upon historical trending and/or pre-pandemic budgets or forecasts if available.

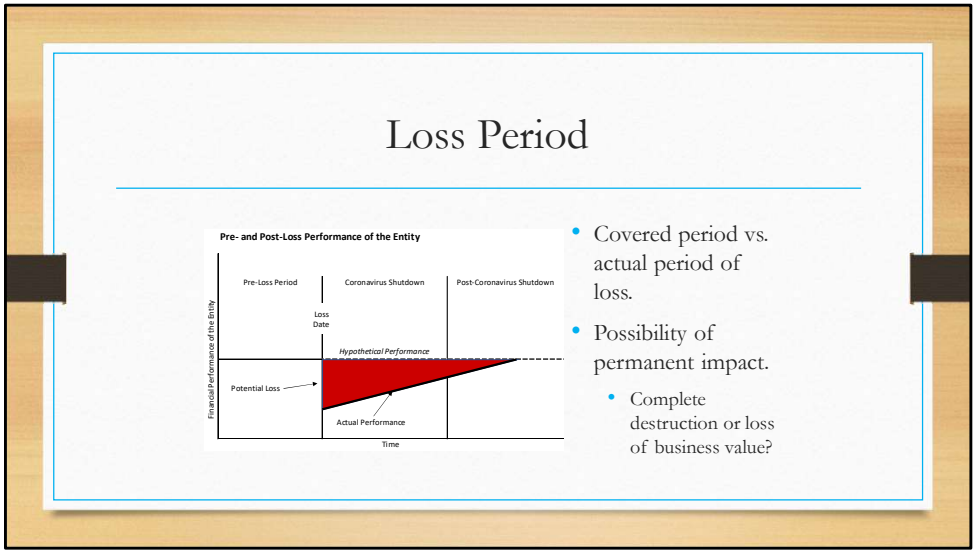
Is there any truly "independent" variable data available to regress and predict what the "dependent" variable should have been?

Vital to document all aspects of interruption including cause, impact, reactions, rationale for operating changes.

Could include management meetings minutes, internal memorandums, communications with customers, advisors, lenders, accountants.

Additional considerations include:

- Seasonality
- Capacity constraints
- Varying cost structures
- Reasonableness of computed results
- Financial discounting of future lost profits to present value; time value of money and "normal" or pre-pandemic risk
- Mitigation – may actually be an increase to computed losses
- Potential crossover between BI insurance and government financial assistance/stimulus?

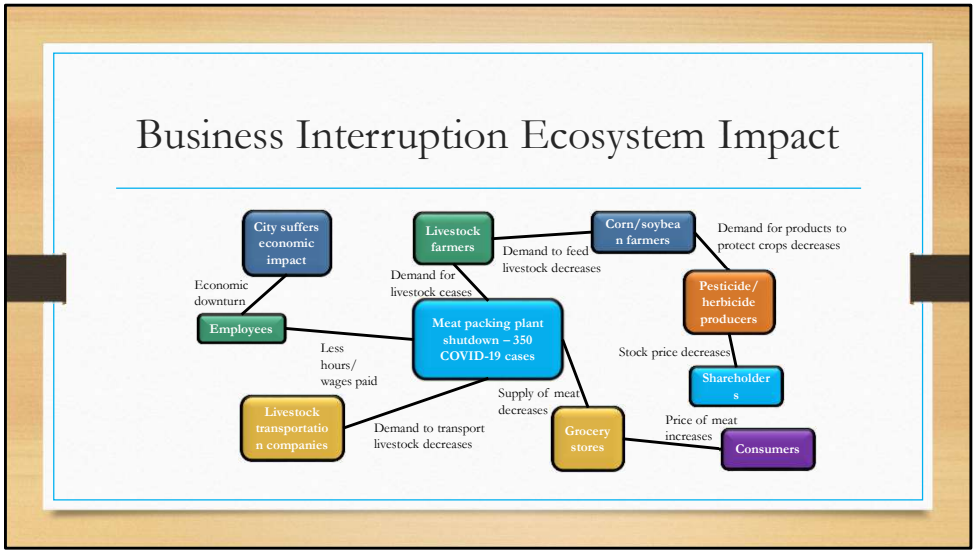


What is the covered period in the policy vs. what is the actual period of loss?

Could the business be permanently impacted and/or potentially not be able to recover at all, and thus suffered a complete destruction or loss of business value instead of just lost profits/extra expenses?

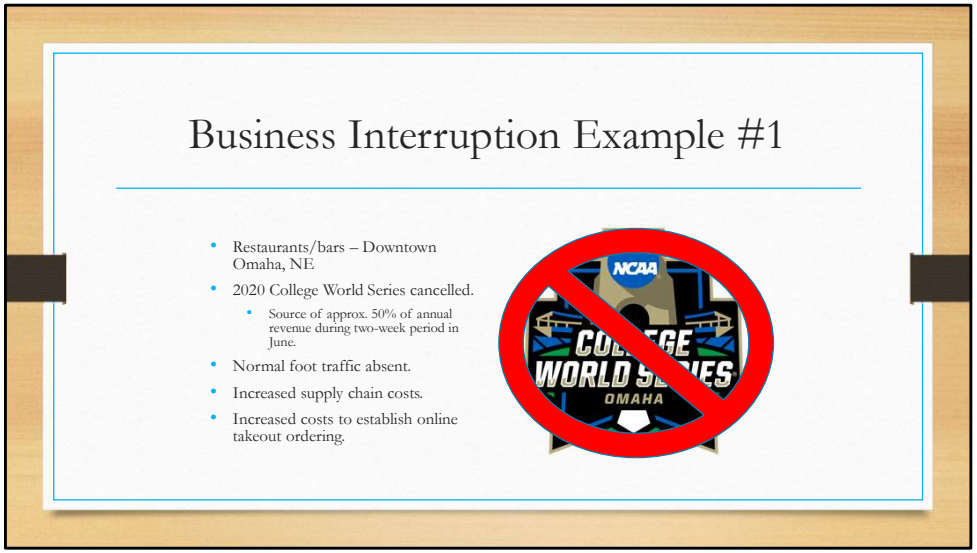
Some businesses may only experience delays and not interruptions; what if delay occurs post BI coverage period? Is delayed business still a loss if there is no capacity to fulfill delayed and normal business?

BI claims in process when COVID-19 hit, consider filing separate claims and calculations.

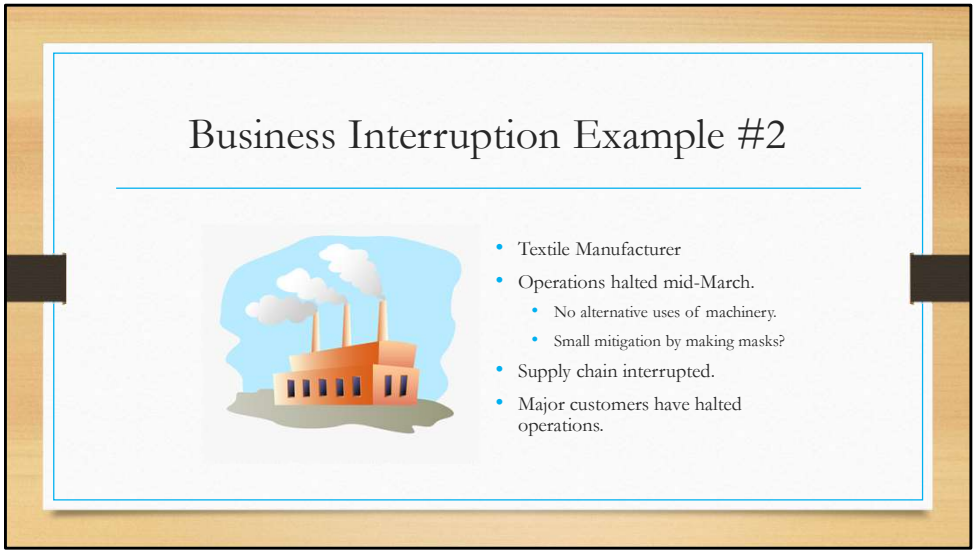


This slide shows just one example of the ripple effect within an industry that highlights both economic chain reactions as well as health concerns.

Depending on their BI coverage and efforts to mitigate damages or triage their business, each player in this chain could have lost profits and/or unavoidable costs.

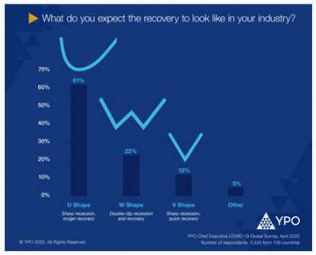


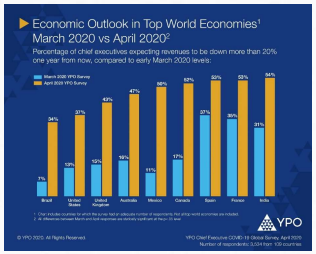
Above is an example of businesses that are impacted by the coronavirus shutdown. Bars and restaurants in Omaha, NE are dependent on the revenue generated during the College World Series, which has been cancelled due to the coronavirus. In addition to the lost revenue due to the College World Series cancellation, the normal revenue generated from normal foot traffic is absent as they are unable to host customers who would like to dine in. Additional costs have been incurred due to interruptions in their supply chain and creating an online takeout order platform.



Above is an example of a textile manufacturer whose manufacturing plant was shutdown to the coronavirus pandemic. They have mitigated a small portion of their lost revenues by creating masks instead of their traditional textile manufacturing process, however, their major customers have also shutdown which generates a majority of their revenue.

Coronavirus Recovery





There is uncertainty of what the economic recovery will look like. Many executives believe the recovery will be a long drawn-out process, while others believe there may be another shutdown, causing the “W” curve.

We hope you and your families remain safe and healthy during this unprecedented COVID-19 pandemic. If there is anything we can do to help, please let us know.

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