



# COVID-19: Maximizing Relief for the Restaurant Industry

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# Presenters



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# Overall Update on Loan Programs

# Overall Update

- Payment Protection Program
  - As of May 5<sup>th</sup>, round two funding totaled \$176B
  - Overall average loan size is \$79K
- Economic Injury Disaster Loan Program
  - As of April 24<sup>th</sup>, 39K loans approved, \$8B funded
  - Funding was restored as part of latest legislation
  - Applications only being taken for agricultural producers
- Main Street Lending Program
  - Not available to borrowers yet
  - No forgiveness factor
  - Administered by banks and authorized lenders
  - Recipients of PPP funds may apply
  - Need to prove losses/damages

# Expectations for PPP Final Guidance

- Initial guidance was expected by Monday, April 27th (30 days after CARES Act became law)
  - Estimated timeline is now May 15th (unofficial)
- Unanswered questions:
  - Flexibility of 8-week covered period
  - Define “costs incurred and payments made”
  - Parameters around incentive pay or bonuses
  - Define “full-time equivalent employee” calculation
  - Measurement of FTEs on June 30<sup>th</sup>
  - Measurement of wages for hourly employees with reduced hours only (no decrease in hourly wage)
  - Definition of utilities
  - Whether rent includes property tax and/or CAM
  - Whether interest of other debt can be forgiven
  - Measurement of wage reduction over 8 weeks vs. prior quarter
  - Flexibility of penalty “cure date” of June 30<sup>th</sup>
  - Guidance around questions 31 and 37

# Economic Injury Disaster Loan

	Disaster Loan
Eligibility	Generally, less than 500 EEs or applicable industry size standard determined by SBA
Loan Amount	Up to \$2M based on formula
Loan Proceeds Use	Payroll, paid sick leave, payables, debt service
Interest Rate	3.75% for business and 2.75% for nonprofits
Terms	Up to 30 years
Debt Forgiveness	None
Deferral of Payments	Up to one year
Personal Guarantee	Waived on advances and loans of \$200,000 or less for all applicants
Prepayment Penalties	Waived
Credit Elsewhere	Waived
Approval Documentation	No tax return submission required. Based solely on credit scores or alternative methods to determine ability to pay

# Main Street Lending Program

	New Loans	Priority Loans	Expanded Loans
Origination Date	After April 24, 2020	After April 24, 2020	On or before April 24, 2020 (added to existing loan already with lender)
Term	4 Years	4 Years	4 Years
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%
Minimum Loan Size	\$500K	\$500K	\$10MM
Maximum Loan Size	Lesser of (a) \$25MM or (b) an amount that doesn't exceed 4x the borrower's 2019 EBITDA (including undrawn committed debt)	Lesser of (a) \$25MM or (b) an amount that doesn't exceed 6x the borrower's 2019 EBITDA (including undrawn committed debt)	Lesser of (a) \$200MM, (b) 35% of undrawn committed bank debt, or (c) an amount that doesn't exceed 6x the borrower's 2019 EBITDA (including undrawn committed debt)
Payments (year one deferred for all with unpaid interest capitalized)	Year 2-4: 33.33% each year	Year 2: 15% Year 3: 15% Year 4: 70%	Year 2: 15% Year 3: 15% Year 4: 70%
Risk Retention by Lender	5%	15%	5%





# PPP Issues – A Deeper Dive



# Develop a Plan – What are your priorities?

- Plan to maximize debt forgiveness in a way that makes economic and business sense
- What are your priorities?
  - Forgiveness
  - Retain workforce
  - Liquidity needs (survival)
  - All of the above
- Evaluate the other loan programs
  - EIDL
  - Main Street Lending Program

# Segment Impact

Segment	Sales Impact	Strategy	PPPL Payback
Pizza	Minimal	Full forgiveness	Minimal
QSR	Sales down 20% initially but improving	Partial forgiveness	Likely unless pay incentives utilized
Fast Casual	Sales down 20% to 30% initially but improving	Partial forgiveness	Likely unless pay incentives utilized
Casual/ Upscale Casual	Sales down significantly or operations closed	Liquidity with some forgiveness	Likely majority will need to be paid back; dependent on payroll strategy

# Question 31 and 37 – Increased PPP Loan Scrutiny

- Good faith certification

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

- Develop financial projections of having not received the PPP loan
  - Inability to retain employees and pay operating expenses
  - Loss of revenues (e.g., mandated closures)
  - Dipping into other funds that would be detrimental to ongoing operations (e.g., cash reserves, remodels, capex projects)
  - Supply chain disruption impact
- Determine whether to pay back
  - Ability to pay back without penalty by May 14, 2020
  - False Claims Act
  - Become eligible for Employee Retention Tax Credit
- Documentation re basis for good faith certification

# Eight Week Covered Period

- Eight week covered period starts when loan disbursed.
  - Can go beyond June 30, 2020
  - One-time full disbursement
  - Banks must disburse funds within 10 days of SBA approval date (effective 4/28/20)
  - Banks will not be penalized if borrower takes up to 20 days to complete paperwork
- We believe the language “incurred and paid” indicates a cash basis measurement for forgiveness during the eight week time period.
  - For example, payroll pay dates occurring within the eight week period are eligible for forgiveness.

# 75/25 Ratio on Eligible Expenses

- The 25% / 75% rule is a ratio requiring 75% spent on payroll costs.
- No more than 25% of what is being requested for forgiveness can be non-payroll dollars.
- The non-payroll dollars are determined based on the payroll dollars.
  - For example, if your loan is \$200,000 and you spent \$100,000 on payroll, the maximum amount you can be forgiven for non-payroll costs is \$33,333 ( $\$100\text{K} / 75\% \times 25\%$ ).



# Workforce Retention Penalty

- Full-time equivalent employee (“FTEE”)
  - Using definition under Affordable Care Act of 30 hours
  - Leverage your payroll provider reports
- Sets a baseline – at the company’s option, either:
  - Average monthly FTEEs 2/15/2019 to 6/30/2019 –OR–
  - Average monthly FTEEs 1/1/2020 to 2/29/2020
- Compares the baseline to the average FTEEs during the eight week period to create a % of FTEEs retained
- Can be “cured” by rehiring 100% of workforce by June 30, 2020
  - Q40 allows a FTEE credit for laid off employees declining to return to work
- Not the same employees, simply an FTEE count

# Calculating FTEEs

- The FTEEs are an average during the 8 weeks worked, not the last day of the 8 weeks:
  - Weeks 1 to 4 = 10
  - Weeks 5 to 8 = 12
  - Average FTEES = 11
- As of current guidance there is no indication as to the amount of time you have to retain employees after June 30th. We anticipate there will be additional conditions, but currently, there do not appear to be any. We also do not know how FTEEs will be measured based on one day.
- You can pay employees in accordance with how they previously worked and have them not work, as well as count towards FTEE. Consult with legal counsel on applicable employment laws.

# Wage Reduction Penalty

- Further reduction for any “individual” whose pay has been reduced by more than 25%
  - Does not include employees who make more than \$100,000 on an annualized basis.
- Can be “cured” by putting salaries back to pre-reduction levels by June 30, 2020
- Terminated employees vs new hire employees - no comparison
- How to measure:
  - Compare listing of employees for prior full quarter, prior to “covered period” pro-rata compared to average wage over eight week period OR at June 30, 2020
  - For those wages reduced by more than 25%, those incremental reductions (>25%) are reduced from the forgiveness amount.

# Wage Reduction Penalty

## Part-time employee considerations (subject to interpretation)

- Generally, a decrease in hours is expected rather than a decrease in the hourly wage
  - Decrease in hours impacts FTEE calc
  - Decrease in hourly wage impacts Payroll Reduction calc
- Example assuming one employee
  - If an employee worked 30 hours a week at \$10 an hour – then they were getting \$300 and counted as 1 FTEE per the ACA.
  - Then the employee's hours were cut to 15 hours. They will only count as 0.5 FTEs resulting in a workforce reduction of  $0.5/1.0 = 50\%$  forgivable.
  - If you then compare average wages per FTE to after FTE, then you're going to get the same average wages.  $\$300/1 = \$300$  or  $\$150/0.5 = \$300$ .
  - If you then also decreased the rate to \$5 per hour, that's when you'd see the decrease for the pay rate reduction portion.

# Question 38 – Acquired Businesses post 2/15/20

- In operation on 2/15/20
- Change in ownership is not relevant
- Asset purchase exemption
- Pre-sale business operations in place
  - Historic payroll costs
  - Headcount



# Question 40 – Rehiring Employees

- Laid off, offer to rehire, employee declined?
- Does not affect the forgiveness amount
- Assumes same salary wages and hours were offered
- Employee decline must be documented by borrower
- Employee may forfeit eligibility for unemployment

# Eligible Expenses for Forgiveness Specifics

- Payroll costs
  - Tipped employees
  - Bonuses
  - Hazard pay
  - Retirement contributions
- Nonpayroll costs
  - Rent – both real and personal property
  - CAM and property tax – not eligible?
- Interest on mortgage debt
  - Collateralized by real or personal property

# Other Allowable Uses Under 7(a) Program

## Frequent Question:

- Can I use PPP loan proceeds for other 7(a) allowable purposes (e.g., working capital)?

## Interpretation:

- There is some disagreement about this. The PPP loans are under the SBA 7(a) program and the CARES Act indicates that in addition to the 7(a) uses, the funds can be used for payroll, rent, mortgage interest, etc. However, other guidance does not indicate the other 7(a) uses and there was certification in the application that the funds would be spent on payroll and retaining employees.
- However, PPP loan proceeds can continue to be used outside of the 8 week period for payroll, rent, utilities and interest on debt.

# PPP Loan for Self-Employed, Partners and Independent Contractors

- Individuals with self-employment income who file a Form 1040, Schedule C are eligible for a PPP loan if:
  - You were in operation on February 15, 2020
  - You are an individual with self-employment income (independent contractor or sole proprietor)
  - Your principal place of residence is in the United States
  - You filed or will file a Form 1040 Schedule C for 2019
- Based on your 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over \$100,000, reduce it to \$100,000. If this amount is less than zero, use zero.
- Refer to [webinar](#) held on May 6th

# Debt Forgiveness Example

- Single store location
- Loan Amount – \$100,000
- Loan Funded 4/15/2020
- Spent in eight weeks after 4/15/2020
  - Payroll costs \$26,000
  - Rent \$15,000
  - Utilities \$5,200
  - Interest on debt \$9,800
- Total FTEE – 2/15/2019 – 6/30/2019 = 30
- Total FTEE – 1/1/2020 – 2/29/2020 = 33
- **Total FTEE eight weeks after the loan = 10**



# Debt Forgiveness Example

- Total Spent - \$82,000
- Total Spent Payroll – \$26,000
- Maximum of Non Payroll - \$8,667 (25%)
- Eligible Dollars For Forgiveness – \$34,667
- Workforce Retention Factor – 10/30 – 33.3%
- Debt Forgiveness –  $\$34,667 * 33.3\% = \mathbf{\$11,556}$

## ----- Trigger the June 30<sup>th</sup> Clause -----

- Eligible Dollars For Forgiveness – \$34,667
- Workforce Retention Factor – 10/30 – 33.3%
- Rehired by June 30, 2020? Yes. Percentage = 100%
- Debt Forgiveness –  $\$34,667 * 100\% = \mathbf{\$34,667}$

# Debt Forgiveness Example

	Baseline	Hire 10 During Week 4	Hire 10 During Week 6	Hire 10 During Week 8
Loan Amount	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
Payroll	\$ 26,000	\$ 42,250	\$ 35,750	\$ 29,250
Non-Payroll	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
Maximum Non-Payroll	\$ 8,667	\$ 14,083	\$ 11,917	\$ 9,750
Avg FTEEs – Baseline	30	30	30	30
Avg FTEEs - 8 Weeks	10	20	20	20
Workforce Retention	33.3%	66.7%	66.7%	66.7%
No wage reductions assumed				
Debt Forgiveness	\$ 11,556	\$ 37,556	\$ 31,778	\$ 26,000
<b>Trigger June 30<sup>th</sup> Cure</b>	<b>\$ 34,667</b>	<b>\$ 56,333</b>	<b>\$ 47,667</b>	<b>\$ 39,000</b>
<b>% of Loan Forgiven</b>	<b>35%</b>	<b>56%</b>	<b>48%</b>	<b>39%</b>



# Legislative Advocacy

# Legislative Advocacy

- NRA's Blueprint for Recovery
- PPP Proposed Changes
- Business Interruption Insurance
- Reopening Ohio



# Maximizing Tax Relief post CARES Act

- CARES Act Tax Provisions which can begin generating cash NOW:
  - Qualified Improvement Property – QIP “fix”
  - Enhanced Utilization of Losses
  - Changes to Interest Expense Limitations
  - Retirement Fund Withdrawals
  - Employee Retention Tax Credit (ERTC)
  - Payroll Tax Deferral



# Qualified Improvement Property (“QIP”)

## QIP Basics:

- Broad definition: Non-structural improvement to interior portion of non-residential building. Referred to as QIP “Restaurant/Retail Glitch”
- New restaurant locations or refresh/remodels may qualify
- Bonus eligible starting 1/1/18 (100% write-off through 12/31/2021)

## Action Items for QIP Revision:

- Review new locations/remodels from 1/1/18 through present
- Hold off filing any 2019 returns to determine full effect
- Real Life Impact –QSR obtains \$550,000 deduction in 2019 due to remodel saving approximately \$120,000 in federal tax

# Enhanced Loss Limitations

## Enhanced Loss Limitation Basics:

- Net Operating Losses (NOLs) can be carried back 5 years starting with 2018 year through 2020
- NOLs can offset 100% of income
- Business Losses, referred to as “Excess Business Loss Limitation”, no longer capped at \$500,000 (joint filer)
- Carryback of losses = refunds from previously closed tax years
- NOTE: Quick refunds for 2018 must be filed by June 30, 2020

## Action Items for Loss Limitations:

- Determine/evaluate 2018 and 2019 loss positions
- Determine appropriate years to utilize losses, NOTE: higher rates 2017 & prior
- Real Life Impact: Fast-Casual Proprietor filing for \$250,000 of refunds as result of loss carrybacks to 2013 - 2016

# Interest Expense Limitations

## Interest Expense Limitation Basics (163j):

- Interest expense deduction now limited to 50% of tax based EBITDA for 2019 and 2020
- Prior limit was 30% of tax based EBITDA
- No impact if in negative EBITDA

## Action Items for Interest Expense Limits:

- Review current debt structure and EBITDA to determine applicability

# Retirement Fund Distributions

## Retirement Fund Distribution Basics:

- 10% early withdrawal penalty potentially waived for distributions up to \$100,000 for taxpayers impacted by COVID-19
- Distribution taxable over a three year period, **or**
- Can be repaid over three year period

## Considerations:

- Additional source of capital for cash strapped restaurant owners
- Potential interest free loan

# Employee Retention Tax Credit

## Credit Basics:

- Refundable payroll tax credit up to \$5,000 per employee
- Qualifying employers must either be: a business fully or partially suspended by government order for COVID-19 during the calendar quarter OR whose gross receipts are below 50% of the comparable quarter in 2019
- In effect March 12, 2020 until December 31, 2020
- Ineligible for credit if you received the PPP and cannot use on wages, which are eligible for WOTC

## Benefit of Credit (Example):

- Restaurant has 20 employees, which each is paid \$20,000 each from now through the end of 2020
- Potential refundable credit = \$100,000
- NOTE: less than 100 employees, all qualify; more than 100, only wages paid to employees who are not working qualify

# Payroll Tax Deferral

## Deferral Basics:

- Employers share of FICA deferred (i.e. not required to be deposited)
- Deferral allowed from now until December 31, 2020
- Deferred taxes paid 12/31/2021 (50%) and 12/31/2022 (remaining 50%)
- If PPP recipient and loan forgiven, can defer only until PPP is certified to be forgiven

## Benefit of Credit (Example):

- Restaurant has 20 employees, which each is paid \$20,000 each from now through the end of 2020
- Potential deferral = \$30,600 (\$15,300 repaid 12/31/2021, \$15,300 repaid 12/31/2022)
- NOTE: no deduction for employer portion until actually paid

# CARES Act Action Items

## Now

- Don't file 2019 until all CARES items are carefully reviewed
  - Impact of QIP fix, NOL carrybacks, interest expense limitations
  - Strategically plan for NOL's – higher vs lower rate tax years
- If no PPP loan, look into Employee Retention Tax Credit
- Take advantage of payroll tax deferral – be mindful of PPP forgiveness
- Note "Quick Refund" for NOL CB is due June 30, 2020

## Ongoing

- Evaluate impact of PPP income once debt forgiveness is determined
- Monitor clarifications and additional guidance on current changes

# Additional Resources

- [COVID-19: Bankruptcy or Out of Court Restructuring...](#) (April 20, 2020)
- [FAQs – COVID 19: Maximizing Debt Forgiveness PPP Loan](#)
- [SBA PPP Loans: IRS Guidance on Forgiveness Expenses](#) (NEW – May 1, 2020)
- [Do You Need To Give Your PPP Loan Proceeds Back?](#) (NEW – April 28, 2020)
- [Round 2 Of The Paycheck Protection Program](#) (NEW – April 22, 2020)
- [PPP Loan for Self-Employed, Partners & Contractors](#) (April 20, 2020)
- [Accounting For PPP Loans And Forgiveness](#) (April 17, 2020)
- [5/6/20 COVID-19: SBA PPP Loans – Forgiveness Updates, Myths and Additional Scrutiny Webinar Recording](#)





# Upcoming COVID-19 Webinars

- **“Save The Date” COVID-19: GAAP Accounting Considerations in 2020**
  - May 13, 2020 from 12:00 – 1:00 PM
  - Topics include:
    - PPP Loan accounting
    - Asset impairments
    - Debt restructurings
    - Exit or disposal activities
    - Loss contingencies
    - Accounts receivable collectability

# Questions



# What to Expect from GBQ

- **Knowledge.** We're reading and reacting all day every day so that we can share important information with you quickly.
- **Accessibility.** We're not in the office, but we're on high alert to help with whatever you need.
- **Reliability.** One of us may not know the answer, but our team will find it, whether inside or outside of GBQ. We will help you solve your problems.
- **Empathy.** We are learning every day, just like you. We are worried about our employees, our customers and our families, just like you.

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