



COVID-19 After Effects of Rescue Funding for Foreign-Owned U.S. Subsidiaries

May 28, 2020



We will be starting at 10:00 am ET. There is currently no audio until we start.

Audio

The screenshot displays a Cisco Webex Events window. At the top, the title bar reads "Cisco Webex Events" and the menu bar includes "File", "Edit", "View", "Communicate", "Participant", "Event", and "Help". The main content area shows a webinar slide with the text "Pepper Hamilton Webinar" and the logo for "Pepper Hamilton LLP Attorneys at Law". A red text overlay in the center of the slide reads "Audio should stream automatically on entry through your computer speakers", with a grey arrow pointing to an "Audio Broadcast" control window. This window shows a status of "24.7 Kbps" and buttons for "Pause" and "Stop". The bottom of the interface features a toolbar with icons for mute, video, chat, and other functions. On the right side, a "Participants" panel is visible, listing "Panelist: 1" (Brian Dolan, Host) and "Attendee: Brian Dolan (me)".

Audio

The screenshot shows a Cisco Webex Events window titled "Cisco Webex Events" with a menu bar (File, Edit, View, Communicate, Participant, Event, Help) and a "Connected" status indicator. The main content area displays a webinar slide with the text: "If you cannot stream audio, click phone icon and a phone number will be sent to you" and "Pepper Hamilton Webinar". A small "Audio Broadcast" window is overlaid on the slide, showing "24.7 Kbps" and "Pause" and "Stop" buttons. At the bottom of the window is a control bar with icons for mute, video, chat, and other functions. A grey arrow points from the text on the slide to the phone icon in the control bar. On the right side, a "Participants" panel shows "Panelist: 1" (Brian Dolan, Host) and "Attendee: 1" (Brian Dolan, me).

Q&A

Cisco Webex Events

File Edit View Communicate Participant Event Help

BD

Brian Dolan (Host)

Viewing Pepper Hamilto...

Click here to send questions to us

Pepper Hamilton Webinar

Pepper Hamilton LLP
Attorneys at Law

Audio Broadcast

24.7 Kbps

Pause Stop

BD Brian Dolan (Host)

BD Brian Dolan (me)

Q&A

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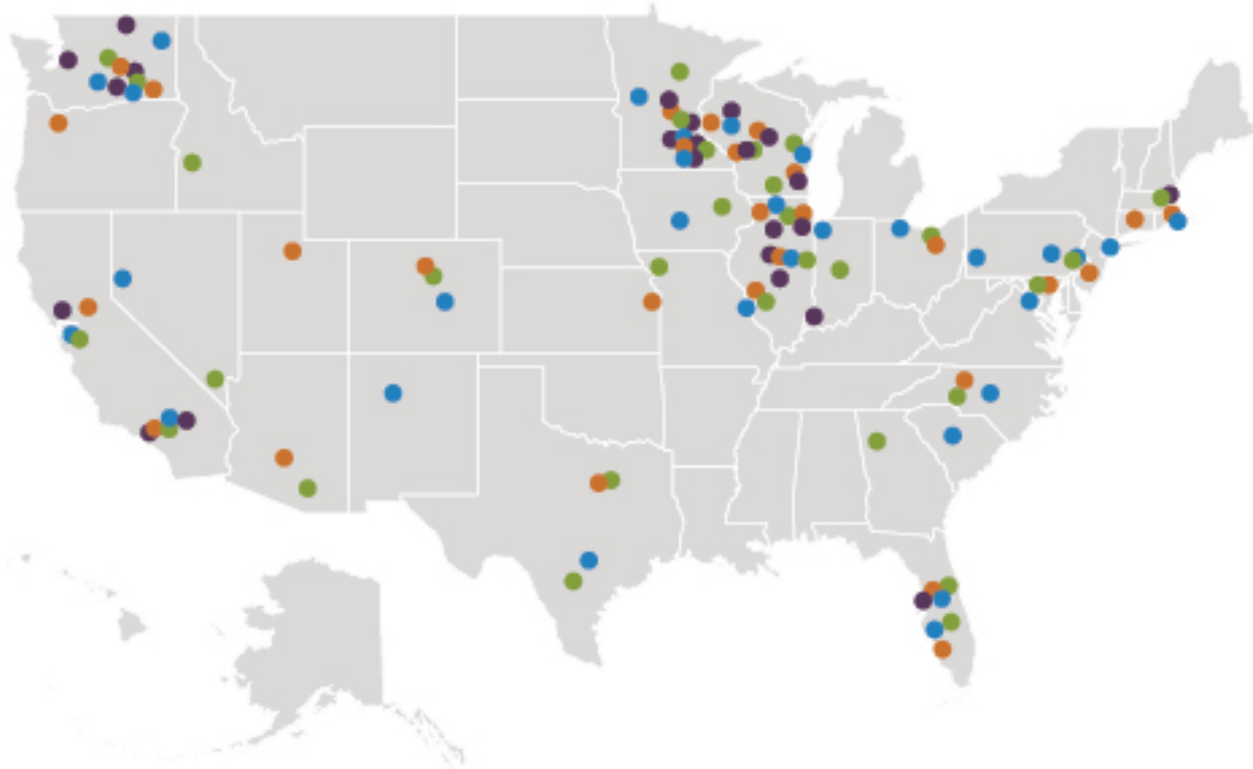


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Agenda

- General Update
- Some of the Key Difference from US to EU in Covid-19
- Paycheck Protection Program (PPP) Update & Forgiveness – Reassessing other Available Programs
- Trade Finance and other collateral; based short & medium term lending options
- Other US Income Tax Opportunities

General Status of US Market



US Federal Legislation- Coronavirus Pandemic

1st Bill

Initial Support and Vaccine Development

- H.R. 6074- Coronavirus preparedness & Response Supplemental Appropriateness Act
- \$8.3B in COVID-19 Response Funding
- Became Law 3/6/20

2nd Bill

Paid Leave, Unemployment and Food assistance

- H.R. 6201- Families First Coronavirus Response Act (FFCRA)
- \$100B in Worker Assistance, including emergency paid sick leave, food assistance and unemployment payments
- Became Law 3/19/20

3rd Bill

Coronavirus Aid, Relief and Economic Security Act (CARES)

- H.R. 748 Stimulus Packages
- Major Stimulus Package (\$2 Trillion)
- Loans and support to major industries- broken down by industry and Scale of Business
- Direct Payments to Individuals
- Became Law on 3/27/20

Cares Act- Second Funding

- \$310 billion increase (total of \$659 billion) for Paycheck Protection Program
- \$10 billion increase (total of \$20 billion) for EIDL Grants and an additional \$50 billion to support EIDL Loans
- \$75 billion increase (total of \$175 billion) for reimbursement to hospitals and healthcare providers
- \$25 billion for COVID-19 tests

Main Street Lending

- Treasury Secretary charged to build a program to help mid-sized businesses and not for profits with between 500-10,000 employees
- We will cover the high level of items available



Key Nuances between US and EU responses/ Current Environments

Key Components of Relief



Loans – MSL, PPP & EIDL

Payroll -- Employee Retention
Payroll Tax Holiday -- FFCRA



Income Tax Opportunities
Cares Act

State & Local Programs



Trade Finance

Overview Of Main Street

- Companies > 500- 10K Employees & < \$2.5B in 19 Revenues
- The Main Street Lending Program is comprised of two loan facilities:
 - the “Main Street Expanded Loan Facility”
 - the “Main Street New Loan Facility”
- The combined size of both facilities will be up to \$600 billion
- No Forgiveness like PPP
- **Maximum loan size:** The lesser of \$25 million or an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed four times the borrower’s 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA)
- **Minimum loan size:** \$1 million

Main Street Lending

- “To be eligible to obtain a Program loan, a prospective borrower must meet all of following criteria:
 - It must be a business;
 - It employs up to 10,000 employees (but not more) or it has up to \$2.5 billion in 2019 annual revenues (but not more);
 - It must be created or organized in the U.S. (or under the laws of the U.S.) with significant operations in and a majority of its employees based in the U.S.;
 - It must have been “in good financial standing” before the COVID-19 pandemic; and
 - It is not participating in the Primary Market Corporate Credit Facility.”

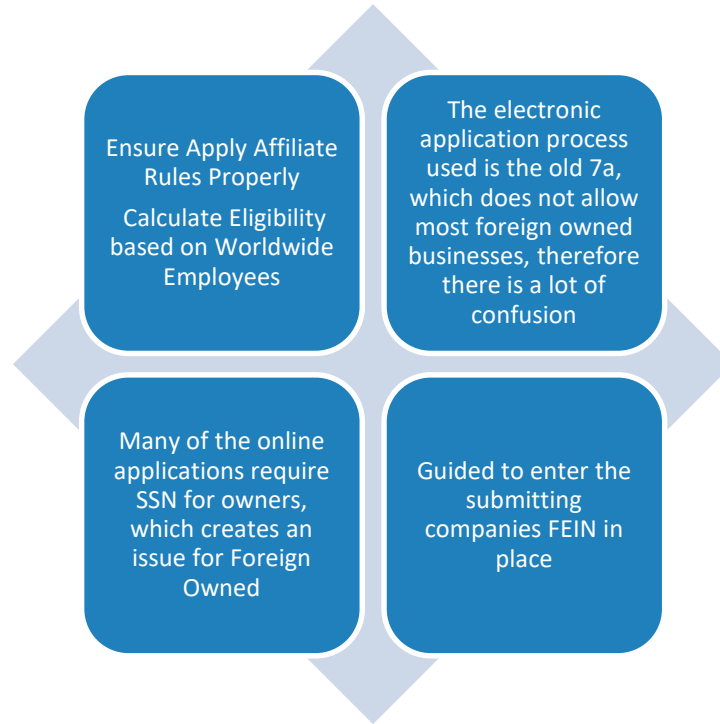
Paycheck Protection Program



- Must certify that loan is needed
- There are fines and penalties so must understand that Certifications

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

Key Tips for Foreign Owned Businesses



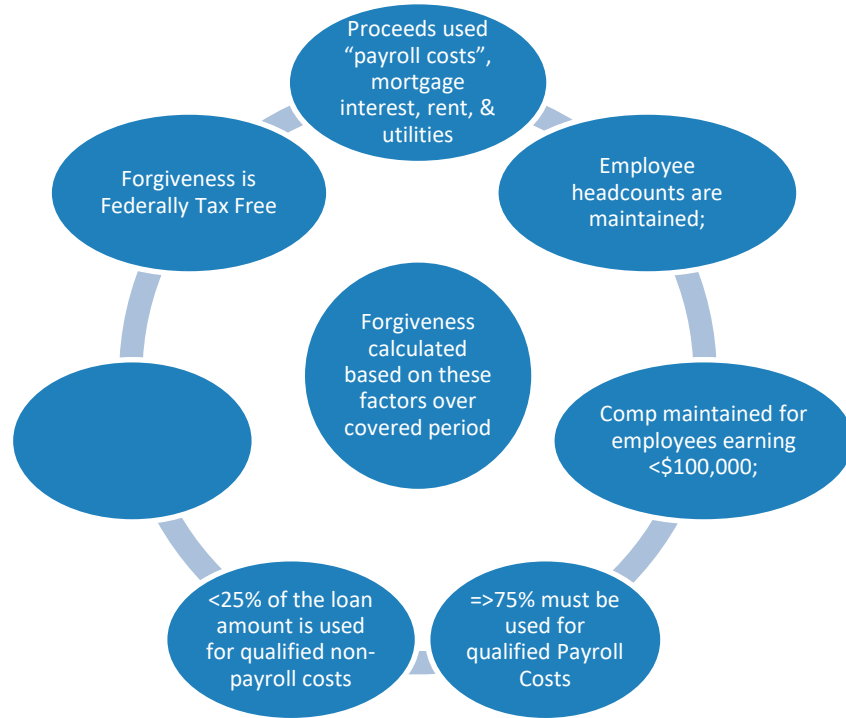
Key Insights

- The SBA issued a multi-part PPP loan forgiveness application on the evening of May 15, 2020.
- The application (including instructions and worksheets) provides directions for calculating forgiveness requests.

PPP Forgiveness Maximization

“Covered Period” = eight-week period subsequent from Funding Date. For “payroll costs” the Covered Period can start on either (1) PPP loan disbursement date or (2) first day of the first pay period following the PPP loan disbursement date

Process will be managed by a Loan Forgiveness Application from the SBA, Released on May 15th



- **Headcount Maintenance**
A reduction in forgiveness if the average number of FTEs per week* during covered period is less than average number of employees per week* during the look-back period (which can be February 15, 2019 to June 30, 2019, or January 1, 2020 to February 29, 2020, at the borrower’s discretion).

* Note: CARES Act provides for monthly, SBA Loan Forgiveness Application provides for weekly.

- **Salary/Hourly Wage Maintenance**
A reduction in forgiveness by the total amount that the average annual salary/hourly wages for each (1) new employee in 2020 or (2) existing employee not paid > \$100K (annualized) during any pay period in 2019 is reduced during covered period by >25% as compared to 1Q 2020.

- **Approved Use Test**
At least 75% of funds must be used for approved payroll costs in the covered period

1st Test - FTE Maintenance

- The first condition to getting your Paycheck Protection Program loan completely forgiven is proving that you maintained the same number of FTEs (full-time equivalents) during the eight-week PPP period as before COVID-19.
 - The measurement period to compare are self selected to be February 15, 2019 to June 30, 2019, or January 1, 2020 to February 29, 2020, at the borrower's discretion. A special measurement period is available to "seasonal employers."
- Key Clarifications
 - Loan forgiveness will not be reduced by FTE reduction that 1) employees who rejected rehire attempts and 2) employees who were fired for cause, who voluntarily resigned or who voluntarily requested a reduction in hours.
 - Method for Calculation for FTE, Can calculate based on a 40 hour week rounding to the nearest 10th or can use the simplified method, 40 Hours= 1, less than 40 hours = .5; Methodology used must be consistently applied across all relevant periods
 - Less Flexibility on rehires than expected - If some, but not all, FTEs were rehired it will impact your forgiveness. However, the application makes clear that borrowers must rehire enough FTEs by June 30 to match their February 15 level, in order to qualify for the exemption under Section 1106.

2nd Test - Salary/Hourly Wage Maintenance

- Forgiveness will be reduced by the total amount that the average annual salary/hourly wages for each (1) new employee in 2020 or (2) existing employee not paid > \$100K (annualized) during any pay period in 2019 is reduced during covered period by >25% as compared to 1Q 2020. If the reduction in average annual salary/wages for an employee is less than 25%, then there is no reduction in forgiveness attributable to that employee.
- The calculation is performed on a per employee basis, not in the aggregate
- To compute the amount of reduction for an hourly employee, multiply the amount by which the reduction in the average hourly wage for such employee during the covered period exceeds 25% of the average hourly wage for such employee during the 1Q 2020 by the average number of hours per week worked by such employee during the 1Q 2020, and then multiply that result by 8.
- To compute the amount of reduction for a salaried employee, multiply the amount by which the reduction in the average salary for such employee during the covered period exceeds 25% of the average salary for such employee during the 1Q 2020 by 8, and then divide that result by 52.
- The reduction in forgiveness attributable to an employee will not apply if the >25% reduction in average annual salary/hourly wages occurred between 2/15/20 – 4/26/20 and the employee's average annual salary/wage as of 6/30/20 is equal to or greater than the employee's average annual salary/hourly wage as of 2/15/20.

3rd Test - Use of Funds for Approved Purposed

- The loans may be used for the following expenses/costs during the **covered period**:
 - Payroll costs (as defined to the right)
 - Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums
 - Employee compensation
 - Mortgage interest obligations (but not principal)
 - Rent and utilities
 - Interest on debt incurred prior to the loan
 - Refinancing of SBA EIDLs that are made between January 31, 2020 and April 3, 2020
- **Payroll Costs**
- For a borrower other than an independent contractor, the sum of payments of any compensation with respect to employees (excluding employees whose principal place of residence is outside of the U.S.), that is:
 - Salary, wage, commission, or other similar compensation*
 - Cash tips or equivalent*
 - Payment for vacation, parental, family, medical, or sick leave (other than qualified sick leave wages or qualified family leave wages under the FFCRA)
 - Allowance for dismissal or separation*
 - Payment of group health care benefits and insurance premiums (generally, medical, dental, vision and health flexible spending account benefits)
 - Payment of retirement benefits
 - Payment of State or Local tax assessed on employee compensation.

Key Clarifications

- Authorized Rep to Certify that funds were used for approved items
- Borrowers can use an Alternative Payroll period (first pay date)
- Timing of payroll costs generally must be incurred or paid during the covered period; those incurred and paid during the covered period cannot be double counted
- No prepayments are allowed
- Cap for cash compensation per individual is \$15,385
- Self Employment rules limits forgiveness based on 8 weeks of 2019 Net Profit
- Forgiveness limitation requiring 75% is measured based on gross payroll costs incurred during covered period, not an amount reduced by the separate employee retention & salary wage reduction calculations
- Treatment of certain debt items still not clear
- Certain Items which will be incurred but not paid are not addressed (retirement paid annually or commissions holdbacks)

Preparing for Forgiveness

- Separate Bank Account
- Track Payroll
- Prepare the Look-Back Period Support
- FTE tracking
- “Other than Payroll” expenses scrutinized and keep audit support

Will Pending Legislation Change Anything?

- There are bills being worked on in the House and Senate which may impact the PPP loan forgiveness
- Collect info and make decisions based on what you know today, but stay in touch with the SBA guidance and our advisors for changes
- No need at this time to rush to seek forgiveness unless certain that full forgiveness available based upon current law.

The background features a perspective view of a shipping yard with rows of stacked metal containers. A large, semi-transparent globe is overlaid on the right side of the image. The globe has a grid of latitude and longitude lines and several blue circular icons with white symbols (a square with an 'X') placed on its surface. The text is centered within a dark blue rectangular box.

OTHER SHORT AND MEDIUM TERM FUNDING OPTIONS

When government led rescue funding programs aren't enough

When bank loans are more difficult to obtain

FACTORING

**PURCHASE
ORDER
FUNDING**

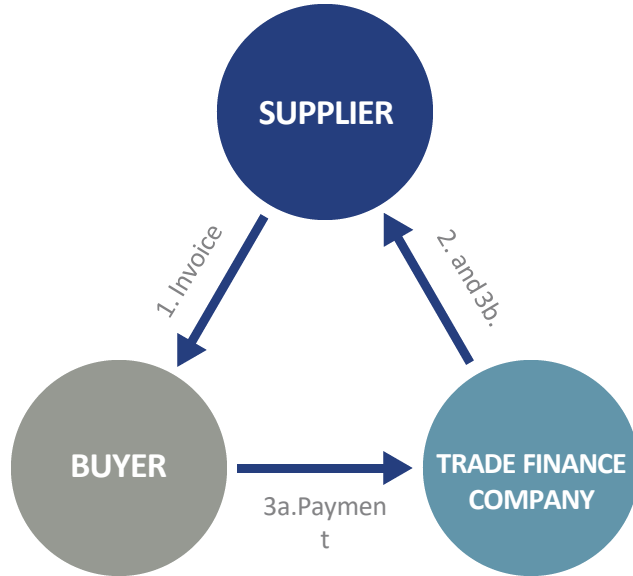
**CREDIT
INSURANCE**

**INVENTORY
FINANCE**

**SUPPLY
CHAIN
FINANCE**

EXPORT FACTORING

POST-SHIPMENT



HOW IT WORKS:

1. Supplier invoices buyer
2. The trade finance company advances up to 80% to 90% of invoice within 1-2 days
3.
 - a. On invoice maturity, buyer pays the trade finance company
 - b. The trade finance company remits the reserve to the supplier



EXPORT FACTORING

SUITE OF SERVICES:

- **Accelerated Cash Flow**
Trade finance companies typically advance up to 95% of invoice value and fund within 24-48 hours of receiving your request.
- **Credit Protection (Non-recourse)**
The services provided include the elimination of buyer credit risk by insuring your accounts receivable and covering the risk of shortfall of payment due to buyer's insolvency.
- **Collections and Reporting**
Trade finance companies also perform collections, buyer credit reviews and accounts receivable bookkeeping on your behalf.

BENEFITS OF EXPORT FACTORING



Off-balance Sheet

This type of financing are not loans so, for many companies, this financing doesn't show up on their balance sheet as debt.



Tailored Solutions

Most factors offer scalable funding that grows with their client's company and adapts to the different conditions of each country, specific products, customers and payments terms.



Offer Longer Payment terms

Suppliers can generate more sales and appeal to larger buyers by offering longer payment terms without disrupting cash flow.



Turn AR into cash within 48 hours

Quick turnaround from initial contact to account setup and funding is generally provided within 24-48 hours of invoice submission to free up cash flow.



Greater Access to Financing

Financing is provided even if companies don't qualify for traditional bank services as the primary focus is on leveraging the credit of their clients or their entire supply chain.

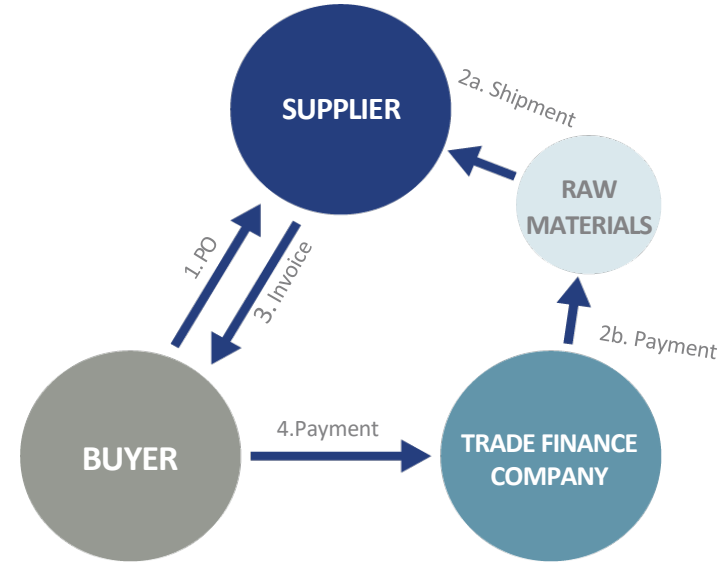


100% Credit Protection

Trade finance companies monitor the creditworthiness of the buyers and assume the risk of shortfall of payment for their clients, giving them peace of mind.

SUPPLY CHAIN FINANCE

- Supply chain finance programs help align the needs of both buyers and suppliers and minimize risk across the supply chain.
- These programs ensure that suppliers have cash on time so buyers can expect quality products delivered on time and in full.
- Funding is provided to foreign suppliers based on the creditworthiness of their buyers.
- Services provided are typically: factoring, purchase order funding, inventory lending, letters of credit, and structured guarantees.
- Facilities based on payables, receivables, and inventory are generally supported by trade finance companies.





Tradewind
Intelligent Trade Finance

WHO CAN BENEFIT FROM TRADE FINANCE

TYPES OF CLIENTS:



Manufacturers
& Processors



Importers
& Exporters



Branded
Companies



Wholesalers &
Distributors



Traders

INDUSTRIES SERVED:



Apparel
&
Textiles



Food &
Beverage



Gaming &
Media



Industrial
& Mechanical



Electronics &
Consumer
Goods



Medical
Supplies

ESPECIALLY WELL-SUITED FOR:



Fast
Growth



Buying &
Selling
Internationally



Financially
Stressed or
Impaired



Asset-light
and/or Capital
Intensive

Other Relief Programs to Consider



CliftonLarsonAllen



European American
Chamber of Commerce
New York



Tradewind
Intelligent Trade Finance



Osborne
Clarke

Employee Retention Credit

- 50% of first \$10,000 of compensation (including health benefits) paid from 3/13/20 to 12/31/20
- Offset employer payroll taxes (6.2%)
- Available if:
 - Operations fully or partially suspended due to COVID-19 or
 - Gross receipts <50% of same quarter in prior year
- Employer > 100 employees: only compensation paid to out-of-work employee
- Employer ≤ 100 employees: any compensation paid during one of two situations

Delay of Employer Payroll Taxes

- Employer share of social security tax deferred
 - 50% due 12/31/21
 - 50% due 12/31/22
- Applies to wages paid from enactment to 12/31/20
- Not available LONG TERM if taxpayer uses paycheck protection loan forgiveness
 - Can defer them up until PPP forgiveness period

States Have Their Own Programs

Washington is offering small business emergency grants of up to \$10K

California - San Francisco and Los Angeles have emergency loan programs for small businesses

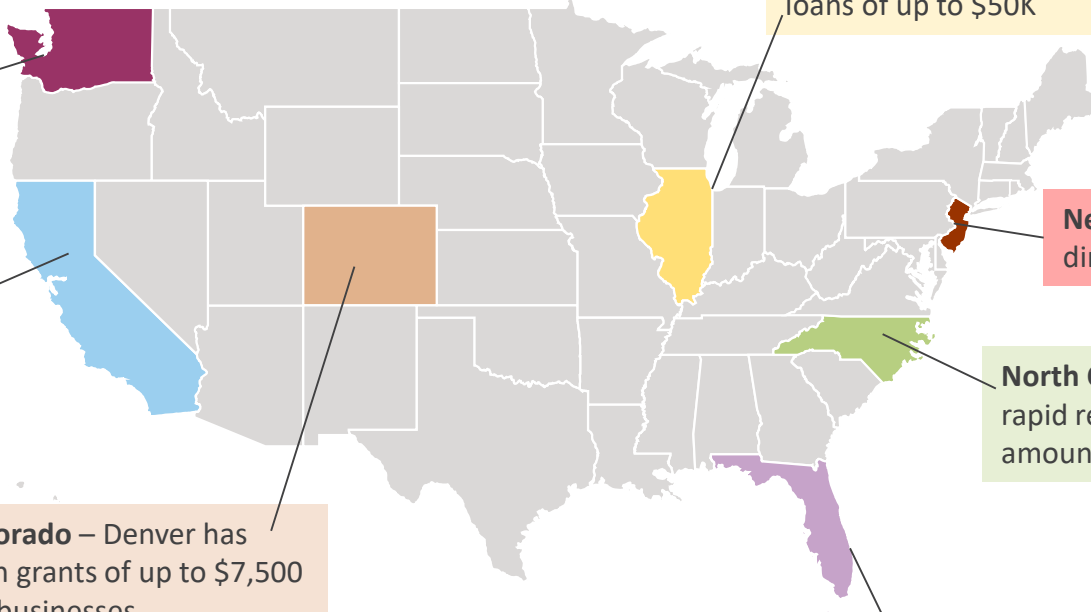
Colorado – Denver has cash grants of up to \$7,500 for businesses

Illinois – Chicago has a small business resilience fund with loans of up to \$50K

New Jersey is offering direct loans of up to \$100K

North Carolina has created rapid recovery loans for amounts up to \$50K

Florida is offering emergency bridge loans of up to \$50-100K





Other Cash Planning Opportunities



Assessing U.S. Tax Relief Provisions

Identify your tax footprint

Federal
State
Local
Income Tax
Sales Tax
Franchise Tax
Property Tax

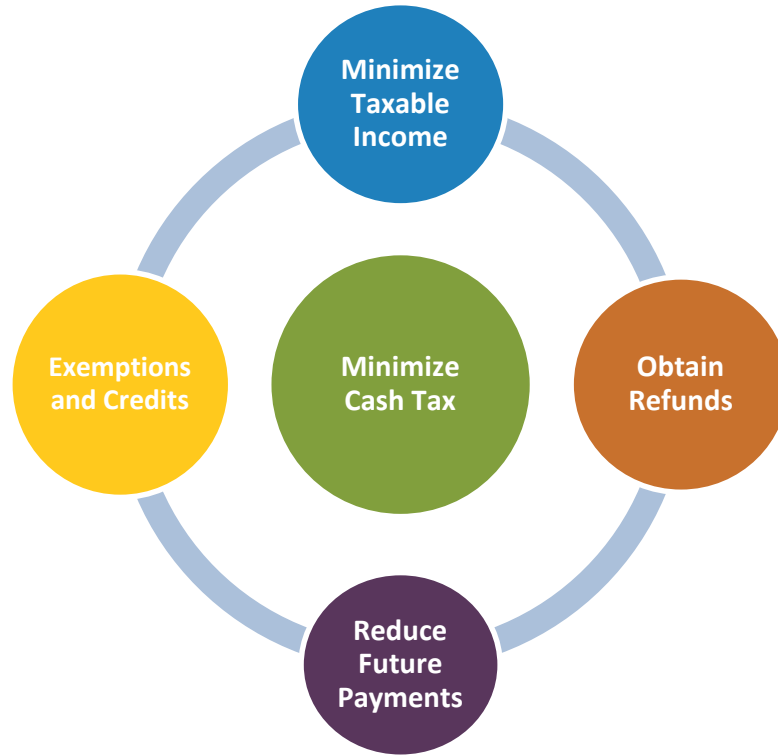
Determine available relief provisions

Extended deadlines
Deferral of payments
Waiver of penalty and interest
Payroll tax credits

Implement plan to access relief provisions

Internal coordination
Disciplined approach
External advisors
Coordination of relief provisions

Managing Future U.S. Cash Tax Exposure



Select CARES Act Tax Provisions

Net Operating Losses ("NOLs")

5 year carryback for NOLs
from 2018, 2019, or 2020

80% of taxable income
limitation suspended
through 2020

Interest Deductibility Limitation

Limit increased from 30%
of adjusted taxable
income to 50% of
adjusted taxable income
for 2019 and 2020

Qualified Improvement Property

Favorable change to tax
depreciation rules for
building property

Process for Corporate Refund Claims & Filing Procedures

Determine Loss Years (2018-2020)

Already have NOL's in tax years 2018-2020?

Create NOL's in tax year 2018-2020 using:

- » Qualified Improvement Property Change
- » Interest Deductibility

Determine taxable income and taxes paid in the 5-year period preceding the loss year? (Tax Years 2013-2017)

Elect to waive the loss carryback if opting out

Expedited Refund Claim or Amended Return

Amended Tax Return in Carryback Year, or

Tentative Refund Claim – Form 1139, IRS has 90 Days to Process

Note: Deadlines to file expedited refund claims and amended returns

Check State Conformity

Check filing attachments and procedures carefully

Filing Procedures: Internal Revenue Service

IRS Service Centers Remain Closed

Recommended procedural changes, when possible:

- » Electronically file
- » Consider waiting to file paper returns
- » Electronic Signatures
- » Fax Refund Claims (less than 100 page)
- » Monitor IRS Website

Q&A

