



June 11, 2020

PRESENTED BY



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TODAY'S PRESENTERS



Jay A. Organek
Bond Attorney



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REOPENING WESTERN NEW YORK
Part II

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NY PHASED REOPENING – OVERVIEW

Phase One Industries (WNY Since May 19, 2020):

- Construction
- Agriculture, Forestry, Hunting and Fishing
- Retail (curbside pickup only)
- Manufacturing
- Wholesale Trade

Phase Two Industries (WNY Earliest Date June 2, 2020):

- Professional Services
- Finance and Insurance
- Retail
- Administrative Support
- Real Estate / Rental & Leasing



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NY PHASED REOPENING – UPDATE

Phase Two Industries (WNY Earliest Date June 2, 2020):

- Offices
- Real Estate
- Phase Two In-Store Retail
- Vehicle Sales, Leases, and Rentals
- Retail Rental, Repair, and Cleaning
- Commercial Building Management
- Hair Salons and Barber Shops
- Outdoor and Takeout/Delivery Food Services

- Higher Education Research



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NY PHASED REOPENING - UPDATE

Phase Three Industries (WNY Projected Earliest Date June 16, 2020):

- Restaurants / Food Services
- Personal Care

Phase Four Industries (WNY Projected Earliest Date June 30, 2020):

- Arts / Entertainment / Recreation
- Education

Child Care & Day Camp Programs (WNY projected June 29, 2020)

- Guidance available at:
https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Child_Care_Daycamps_Detailed_Guidelines.pdf

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NY PHASED REOPENING – UPDATE

Businesses that Remain Closed:

- Malls
 - Phase Two now includes curbside pick-up for all stores within malls
- Indoor on-premise restaurant and bar service
- Large gathering/event venues
- Gyms, fitness centers, and in-person exercise classes
- Video lottery and casino gaming facilities
- Movie theaters
- Places of public amusement

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NY REOPENING GUIDANCE FOR PHASE TWO

For each Phase Two industry:

- Summary Guidelines
- Detailed Guidelines
- Template Business Safety Plan
- Affirmation

<https://forward.ny.gov/phase-two-industries>

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NY REOPENING GUIDANCE FOR PHASE THREE

Phase Three Guidance:

Food Services

VIEW SUMMARY GUIDELINES

READ AND AFFIRM DETAILED GUIDELINES

PRINT BUSINESS SAFETY PLAN TEMPLATE

Personal Care

VIEW SUMMARY GUIDELINES

READ AND AFFIRM DETAILED GUIDELINES

PRINT BUSINESS SAFETY PLAN TEMPLATE

<https://forward.ny.gov/phase-three-industries>

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NY REOPENING GUIDANCE FOR PHASES TWO & THREE

Similar to Phase One:

- Occupancy limitations
- Physical distancing
 - Planning for situations where distancing is not possible
- Face Coverings
- Hygiene and Cleaning
- Communication
- Screening
- Contact tracing and disinfection of contaminated areas

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PHASE TWO INDUSTRY SPECIFIC HIGHLIGHTS

Offices

- Utilize technology throughout the office to avoid congregation/touchpoints
- Limit the use of shared work stations
- Applies to office portions of other businesses

Commercial Building Management

- Close non-essential common areas and amenities
- Set policies for areas under their control (i.e. elevators/stairwells)

Real Estate

- In-person showings allowed (social distancing and face coverings)
- Limited to one party (or household) at a time
- Advise not to touch surfaces

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PHASE TWO INDUSTRY SPECIFIC HIGHLIGHTS

Vehicle Sales, Leases, and Rentals

- Occupancy never exceed 50% of capacity of vehicle
- Unaccompanied test drives should be allowed
- Should encourage appointments for all activities

In-Store Retail

- Touchless payment options or pay in advance
- Close amenities where available (samples, water fountains, etc.)

Retail Rental, Repair, and Cleaning

- Reduce walk-ins to the extent possible
- Encourage customers of in home visits/deliveries to follow protocols

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PHASE TWO INDUSTRY SPECIFIC HIGHLIGHTS

Hair Salons and Barbershops

- Six feet between stations unless physical barrier installed
- Consider implementing appointment only policy
- Close waiting areas to the extent possible (wait outside/in car)
- Still prohibited from providing services not related to cut, color, or style
- Beard trimming, facials, nails, makeup, threading, tweezing, or waxing o Consider flexible cancellation policy

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PHASE THREE INDUSTRY SPECIFIC HIGHLIGHTS

Food Service Guidance

- Includes indoor dining
- Occupancy: limited to 50% of the maximum occupancy as set by the certificate of occupancy, but does not include employees.

Personal Care Services

- Includes tattoo parlors, nail salons, massage tables
- Does NOT include gyms, pools, hair-related personal care services

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ADDITIONAL UPDATES

Executive Order 202.38

- Authorizes commercial building owners and retail store owners to:
 - Require patrons to undergo temperature checks
 - Deny admittance to:
 - Any individual who refuses to undergo a temperature check; and
 - Any individual whose temperature is above that proscribed by NY Department of Health Guidelines (currently 100.4 degrees or higher)
- Note: cannot be implemented in a discriminatory manner

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COMMON EMPLOYMENT ISSUES

- Enforcement of safety plan
- Documentation
- Employees that refuse to return to work
- Employees that screen positive for Covid-19 symptoms

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FREQUENTLY ASKED QUESTIONS

How do we enforce our safety plan?

- Designate safety monitor for enforcement
- Develop checklists
- Have regular meetings to discuss compliance and issues
- Ensure signage and communication of expectations is clear
- Disciplinary action for violations

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FREQUENTLY ASKED QUESTIONS

What documentation do we need to maintain?

- Worker and visitor logs
- Sanitation logs
- Documentation of screening
 - Should be maintained separately
- Steps to ensure employee safety
- Communications
- Changes to safety policies

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FREQUENTLY ASKED QUESTIONS

What if an employee refuses to return to work?

- **First, we need to know why**
 - General fear?
 - Higher risk group?
 - Live with someone in higher risk group?
 - Childcare obligations?
- **Second, determine if any laws/agreements/policies apply**
 - FFCRA or NY Paid Emergency Sick Leave Law?
 - ADA/FMLA?
 - Others?

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FREQUENTLY ASKED QUESTIONS

What if an employee screens positive for Covid-19 symptoms?

- Cleaning and disinfection
- Isolation
- Tracing and tracking

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NY PHASED REOPENING – NEXT STEPS

Check back often:

<https://forward.ny.gov/industries-reopening-phase>

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TODAY'S PRESENTERS



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Audit Director, Freed Maxick



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PAYROLL PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA)

**Signed into law by President Trump on Friday, June 5.
Significant provisions include:**

- Extension of "covered period" to up to 24 weeks or December 31, 2020
- Reduce threshold of required use on payroll from 75% to 60%
- Loan term extension from 2 years to 5 years
 - Interest rate charged remains unchanged
- Extension of rehire date to December 31, 2020
 - Two exceptions are permitted
- Permitting entities to participate in both the FICA deferral as well as PPP



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PPPFA UNANSWERED QUESTIONS

Many questions still remain unanswered including:

- If an employer spends less than 60% on payroll will it result in no forgiveness or a proportionate reduction in forgiveness?
- Is the \$100,000 compensation thresholds still using 8/52 or is it updated to 24/52?
 - Same for health insurance and retirement contributions
- Tax consequences – IRS has ruled that no deduction for covered expenses but will there be a legislative fix to correct this?



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MAIN STREET LENDING PROGRAM OVERVIEW

- Established as part of Title IV - Coronavirus Economic Stabilization Act of 2020 (CARES Act)
- Official launch date still yet to be determined, but expected to launch within the coming days
- Five-year loans to businesses that meet specific criteria that were in good financial standing prior to the onset of the Covid-19 pandemic
- Loans are not forgivable
- Interest payments are deferred for one year, principal payments are deferred for two years
- Eligible to apply if participating in the Paycheck Protection Program (PPP)
- Not-for-profit organizations are not currently eligible under the Main Street Lending Program, Federal Reserve is currently working to establish a program for not-for-profit organizations
- The Special Purpose Vehicle will cease purchasing participations in Eligible Loans on September 30, 2020 (unless extended)



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IS MY BUSINESS ELIGIBLE?

Eligible borrowers for the Main Street Lending Program are businesses that meet the following criteria:

- Have up to 15,000 employees **OR** up to \$5 billion in 2019 annual revenues (employees and revenues must be aggregated with the employees and revenues of affiliated entities)
- Must be established prior to March 13, 2020, and was created or organized in the United States or under the laws of the U.S., with significant operations in and a majority of its employees based in the U.S.
- Must not be an ineligible business per 13 CFR 120.110(b)-(j),(m)-(s), as modified and clarified by SBA regulations for purpose of PPP on or before April 24, 2020 (including interim final rules available at 85 Fed. Reg. 20811, 85 Fed. Reg 21747 and 85 Fed. Reg. 23450)- **currently NFPs are ineligible**



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IS MY BUSINESS ELIGIBLE?

Eligible borrowers for the Main Street Lending Program are businesses that meet the following criteria:

- May only participate in one of the three Main Street facilities
- Must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Title IV)
- Must make all of the certifications and covenants required under the Program



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PROGRAM OPTIONS

	NEW LOANS	PRIORITY LOANS	EXPANDED LOANS
Term	5 years	5 years	5 years
Minimum loan size	\$250,000	\$250,000	\$10,000,000
Maximum loan size	Lesser of (a) \$35M, or (b) 4x 2019 adjusted EBITDA when added to outstanding and undrawn debt	Lesser of (a) \$50M, or (b) 6x 2019 adjusted EBITDA when added to outstanding and undrawn debt	Lesser of (a) \$300M, or (b) 6x 2019 adjusted EBITDA when added to outstanding and undrawn debt
Payment (year one deferred for all)	Years 3-5: 15%, 15%, 70%	Years 3-5: 15%, 15%, 70%	Years 3-5: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%



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REQUIRED BORROWER CERTIFICATIONS

In addition to certifications required by applicable statutes and regulations, the following certifications will be required from the Borrower:

- Refrain from repaying principal balance and interest on any debt, unless the debt or interest is mandatory and due (Priority Loan Option exception)
- Commit that it will not seek to cancel or reduce any of its committed lines of credit
- Certify that it has reasonable basis to believe that, as of the date of the loan (or the upsizing of a loan in MSELF) and after giving effect to such loan (or upsizing), it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period



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REQUIRED BORROWER CERTIFICATIONS

In addition to certifications required by applicable statutes and regulations, the following certifications will be required from the Borrower:

- Attest that it will follow compensation, stock repurchase and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings
- Make commercially reasonable efforts to maintain its payroll and retain its employees during the time the eligible loan is outstanding
- Certify that it is eligible to participate in the program, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act



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LOAN RESTRICTIONS

Borrowers must comply with the limitations on compensation under section 4003(c)(3)(A)(ii) of the CARES Act, which are summarized below:

- Officers or employees with total compensation over \$425,000 in calendar year 2019:
 - Shall not receive total compensation in excess of what was received in calendar year 2019
 - Severance pay or other benefits received upon termination shall not exceed twice the total compensation received in calendar year 2019
- Officers or employees with total compensation over \$3,000,000 in calendar year 2019:
 - Shall not receive total compensation over \$3,000,000 plus 50% of the excess over \$3,000,000 received in 2019



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LOAN RESTRICTIONS

The CARES Act conditions, which are summarized below, apply through the duration of the loan and for the 12 months after the date on which the loan is no longer outstanding:

- May not repurchase an equity security that listed on a national securities exchange of the business or any parent company of the business, except to the extent required under a contractual obligation that was in effect on the date of enactment of the CARES Act (March 27, 2020)
- May not pay dividends or make other capital distributions with respect to the common stock of the business



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THANK YOU



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