

CARES ACT: Looking Ahead to What's Next

Featuring Brownstein Hyatt Farber Schreck

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Introductions



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Agenda



CARES Act, New Stimulus Package:
Small and Large Business Opportunities

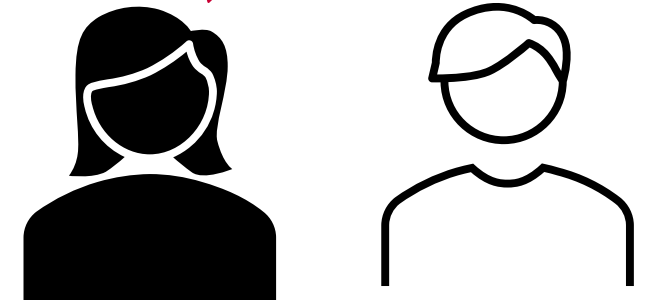
Looking Ahead at What's Next:
Future Packages, Recessions, Employment and
More



**Long-Term Economic Development
Growth Trends**



*Throughout the
Webinar, feel free to
ask questions via the
chat feature!*



➤ Q&A At the End

Opportunities for Small Businesses

The CARES Act of 2020

Brownstein Hyatt Farber Schreck
National Tax Policy Group

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What Is the Goal of the CARES Act?

- Help workers either retain their jobs or receive prompt temporary assistance until the pandemic recedes.
 - Incentives for employers to retain workers—full-time or part-time.
 - Unemployment benefits increase of \$600 per week.
 - Access to savings as a bridge.
 - Rebates payments.

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What Is the Goal of the CARES Act?

- Help small businesses survive the adverse consequences of the virus and social distancing protocols.
 - Loans that convert into grants.
 - Refundable tax credits to offset costs of retaining employees.
 - Creative cost-sharing arrangements.
 - Zero-interest loans through deferral of tax payments.

Webinar Agenda

- I. **Liquidity.** What cash programs are available to help small businesses?
 - Paycheck Protection Program
 - Economic Injury Disaster Loans (EIDL) and Emergency Economic Injury Grants
 - Small Business Debt Relief and Subsidy for Certain Loan Payments
 - Deferred Employer Payroll Taxes
 - Main Street Fund for Larger Businesses
- II. **Employee Retention.** What other assistance is available to help retain employees?
 - Employee Retention Tax Credit
 - Unemployment Benefits (UI)
 - Short-time Compensation (STC) Arrangements

Webinar Agenda

III. **Employee Benefits.** What benefits are available for employees?

- Defined Contribution Retirement Funds
- Student Loan Repayments

IV. **Looking Ahead.** What can I expect in terms of economic reopening?

- Unemployment
- Reopening
- COVID-19 Arc
- Recession
- Federal Investment
- Priorities for Next Package

Liquidity Measures

A. Paycheck Protection Program: Who is Eligible?

- Applicants that have:
 - 500 or fewer employees whose principal place of residence is in the United States; or
 - a small business under the applicable North American Industry Classification System (NAICS) code employee size standard. Every industry is assigned a distinct NAICS code, which determines eligibility for small business loans.
- Small businesses that are already eligible for loans under the Small Business Act, as well as the following entities with 500 or fewer employees:
 - section 501(c)(3) non-profits;
 - Prior to the pandemic, SBA implemented 13 CFR § 120.110, which restricts the businesses that may receive SBA loans. Nonprofits and gaming operations have been exempted.
 - veterans organizations; and
 - tribal small business concerns with 500 or fewer employees.
- Sole proprietors, independent contractors, and other self-employed individuals may also participate in the program.
- Businesses must have been in operation as of Feb. 15, 2020.

A. Paycheck Protection Program: How much can I borrow?

- The CARES Act provides \$700 billion in small business forgivable through banks and the Small Business Administration (SBA).
- Loans are capped at \$10 million dollars for businesses adversely impacted by the coronavirus.
- Typical loan amounts are 250% of one month's payroll costs.
- Compensation exceeding \$100,000 per employee is not taken into account when computing total payroll costs.
 - The limit applies only to cash compensation, not to non-cash benefits such as retirement plans, health care coverage and state and local taxes.

A. Paycheck Protection Program

	Annual Compensation	One Month
Owner	\$240,000	\$8,333
Manager	\$120,000	\$8,333
Shift Supervisor	\$48,000	\$4,000
Sr. Barista	\$36,000	\$3,000
Barista	\$24,000	\$2,000
Barista	\$24,000	\$2,000
Property Manager	\$12,000	\$1,000
Total		\$28,666

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- Loan amount: $\$28,666 \times 2.5 = \text{\$71,666}$

A. Paycheck Protection Program: What constitutes compensation?

- Amounts include all payroll costs:
 - Wages, commissions, bonuses and tips
 - Healthcare contributions
 - Vacation and sick leave
 - Retirement contributions
 - State and local taxes
- Independent Contractors are not considered employees and may not be included in payroll cost calculations.

A. Paycheck Protection Program

- What period do I use to calculate average monthly payroll costs?
 - The statute says the average payroll costs are computed over the previous 12 months (e.g., April 2019 – March 2020).
 - Most applications ask for average 2019 payroll costs.
 - If not in operation between Feb. 15, 2019 and June 30, 2019, then the period is January to February 2020.

A. Paycheck Protection Program: What are allowable uses for the loan proceeds?

- The CARES Act provides loans to small businesses for the covered period of Feb. 15, 2020 through June 30, 2020 to cover:
 - payroll costs;
 - continuation of group health care benefits;
 - employee salaries, commissions or similar compensation;
 - mortgage payments, rent and utilities; and
 - interest on any other debt obligations that were incurred before the covered period.

A. Paycheck Protection Program : What are the terms of the loan?

- The maximum maturity with respect to a loan that has a balance after a loan forgiveness reduction is 2 years.
- The interest rate on the loans is 1%.
- Businesses may defer interest payments on loans for six months to one year.
- The program waives fees, the credit elsewhere test, as well as collateral and personal guarantee requirements.
- Loans are 100% federally guaranteed.

A. Paycheck Protection Program

- How do I apply for the loan?
 - SBA-approved banks began lending on Friday, April 3. Lenders must disburse loan proceeds within 10 days of approval of the loan.
 - Non-SBA loan banks will be authorized to process loans if they are FDIC-insured.
 - Businesses should prepare payroll computations and related compensation.
 - For sole-proprietors Form 1099-MISC, or income and expenses are needed.

A. Paycheck Protection Program: Is there loan forgiveness?

- Partial loan forgiveness is also available for amounts used to cover:
 - eight weeks of payroll costs for U.S. employees;
 - mortgage interest on debt incurred before Feb. 15;
 - rent for a lease in effect before Feb. 15, 2020; and
 - utility payments for services in effect before Feb. 15, 2020.
- The accrued interest on the PPP loan may also be forgiven.

A. Paycheck Protection Program: Are there reductions in forgiveness amounts?

- Employers who conduct layoffs or reduce employee compensation may have their forgiveness amounts reduced.
 - Layoffs: The average number full-time equivalent (FTE) employees per month in the eight-week period following the origination date of the loan compared to either the average number of FTE employees per month previously.
 - Compensation Reduction: Reduction in compensation by more than 25% for employees over the eight-week period following the origination date of the loan, as compared to such employees' salary from the previous full quarter.

A. Paycheck Protection Program: Loan forgiveness example—FTE Reduction.

	Annual Compensation
Loan Amount	\$100,000
Loan Period	April 6 – June 1 (8 weeks)
Employees During Pre-COVID Testing Period (Feb. 15 – June 30, 2019)	20
Number of Employees During Loan Period	10
Reduction in Forgiveness Computation	$\$100,000 - (\$100,000 \times (10/20)) = \$50,000$
Loan Forgiveness Amount	\$50,000

A. Paycheck Protection Program

Loans approved by April 25, 2020

Loan Count	Net Approved Dollars	Lender Count
1,661,367	\$342,277,999,103*	4,975

A. Paycheck Protection Program

Loan Size

Loan Size	Approved Loans	Approved Dollars	% of Count	% of Amount
\$150K and Under	1,229,893	\$58,321,791,761	74.03%	17.04%
>\$150K - \$350K	224,061	\$50,926,354,675	13.49%	14.88%
>\$350K - \$1M	140,197	\$80,628,410,796	8.44%	23.56%
>\$1M - \$2M	41,238	\$57,187,983,464	2.48%	16.71%
>\$2M - \$5M	21,566	\$64,315,474,825	1.30%	18.79%
>\$5M	4,412	\$30,897,983,582	0.27%	9.03%

- Overall average loan size is \$206K.

B. Economic Injury Disaster Loans and Grants

- Who is eligible?
 - Small business concerns;
 - Cooperatives, employee stock ownership plans (ESOPs), and tribal small business concerns with fewer than 500 employees;
 - Sole proprietors or independent contractors; and
 - Private nonprofit organizations (including faith-based organizations) and small agricultural cooperatives.
 - Congress expanded eligibility to agricultural operations last week.

B. Economic Injury Disaster Loan Grants

- What is the amount of the loan?
 - The CARES Act provided \$10 billion for Economic Injury Disaster Loan (EIDL) grants. Last week Congress passed an additional \$10 billion in grants and an additional \$50 billion in loans.
 - It allows small businesses to receive immediate cash payments of up to \$10,000 in three days.
 - The maximum loan amount for an EIDL is \$2 million, with principal and interest deferment available for up to 4 years.
 - EIDL loans and advances can be used for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

C. Small Business Debt Relief and Subsidy for Certain Loan Payments

- Eligibility
 - 7(a) loans not made under the Paycheck Protection Program (PPP)
 - 504 loans
 - Microloans.
- What benefit is provided under this program?
 - The SBA will cover all loan payments on these SBA loans—including principal, interest and fees—for six months.
 - Relief is available to new borrowers who take out eligible loans within six months of the president signing the bill into law (until Sept. 28, 2020).

D. Payroll Tax Deferral

- Who is eligible?
 - Generally, all employers are allowed to defer paying the employer portion (6.2%) of OASDI payroll taxes through December 2020.
 - A deferral is not available to employers who have debt forgiven through the PPP.
 - A deferral is also not available for taxpayers who have debt forgiven related to the financing of certain short-time compensation agreements.



D. Payroll Tax Deferral

- When are the deferred amounts required to be paid back?
 - The deferred amounts are required to be paid in two installments:
 - 50% on Dec. 31, 2021; and
 - 50% on Dec. 31, 2022.
 - No interest is owed on account of the deferral.
- What tax payments are not delayed through this provision?
 - This provision does **not** delay the payment and deposit of:
 - the employer's share of the hospital insurance (HI) portion of FICA;
 - the employees' portion of any FICA taxes (OASDI and HI portions) that are required to be withheld from employee wages; or
 - any of the HI portion of SECA imposed on self-employment income.

D. Payroll Tax Deferral

April 2020 Wages Subject to OASDI	\$28,666
Employer Share	6.2%
Pre-CARES Act OASDI Payment	\$1,777
X 9 months	9
Total April-Dec. 2020 OASDI Tax	\$15,995
2020 Payments	\$0
Amount of Deferral	\$15,995
Dec. 2021 Payment	\$7,997
Dec. 2022 Payment	\$7,997

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E. Main Street Funds for Larger Businesses

- What is the Main Street Fund?
 - Treasury Department is capitalizing several loan facilities, established by the Federal Reserve, to make direct secured business loans to companies.
 - The Act gives broad discretion to the Fed and Treasury to create the specific rules for the program.
- What is the amount of the fund?
 - The CARES Act allocates \$454 billion.



E. Main Street Funds for Larger Businesses

- The loans must have the following covenants:
 - no stock buybacks while the loan is outstanding plus 12 months;
 - no dividends while the loan is outstanding plus 12 months; and
 - executive compensation must be limited for those earning more than \$425,000.
- The Treasury Secretary may waive any of these requirements.

Employee Retention

A. Employee Retention Tax Credit: What is the amount of the credit?

- Equal to 50% of the qualified wages for each eligible employee per calendar quarter (limited to \$10,000 for all calendar quarters).
- Allowed against the employer's OASDI taxes (reduced first for any benefits of the new FMLA or Paid Sick Leave tax credits). IRS Notice 2020-22 expands to include employee's OASDI, both employer's and employee's share of Medicare, and federal income taxes withheld from employee's wages. Credit is refundable to the extent that it exceeds that amount.

A. Employee Retention Tax Credit: Who is eligible?

- Any employer carrying on a trade or business during calendar year 2020 and with respect to any calendar quarter:
 - the trade or business is fully or partially suspended during the calendar quarter as a direct result of COVID-19; or
 - the period where gross receipts are less than 50% and not greater than 80% of the prior year.
- An organization exempt from tax under section 501(c) is eligible.

A. Employee Retention Tax Credit: What constitutes fully or partially suspended operations?

- The operation of a business may be suspended if an appropriate governmental authority imposes restrictions upon the business operations by limiting:
 - commerce,
 - travel, or
 - group meetings (for commercial, social, religious, or other purposes) due to COVID-19 such that the operation can still continue to operate but not at its normal capacity.

A. Employee Retention Tax Credit: What constitutes a 50% reduction in revenues?

- Generally, amounts paid to an employee during a period that the business is suspended or during a calendar quarter where gross receipts are less than 50%.
- Employer remains eligible until revenues in a subsequent quarter hit 80% of revenues in the prior year.

A. Employee Retention Tax Credit: What are qualified wages?

- There are different rules, depending on the number of employees:
 - More than 100: If an employee is working on a reduced schedule, wages paid to that employee are qualified to the extent they exceed what the employee otherwise would have been paid for the services performed.
 - 100 or Less: Wages for all employees qualify, regardless of how much they work.

A. Employee Retention Tax Credit: How does this interact with the SBA Paycheck Protection Program?

- A taxpayer may defer payroll taxes until the PPP loan is forgiven, however, from that point the deferral of payroll taxes is no longer permitted.
- A taxpayer may first take advantage of the payroll tax deferral provision, and then the employee retention tax credit, which is also included within the CARES Act. This will allow taxpayers flexibility when determining how to maximize the benefits of these new provisions.

B. Unemployment Benefits: What benefits are available to workers under the CARES Act?

- This program is intended to provide unemployment assistance for those individuals not otherwise covered by traditional state unemployment benefits.
- Program provides up to 39 weeks of unemployment assistance from Jan. 27, 2020 through Dec. 31, 2020. Workers will be eligible for retroactive benefits.
- Those eligible for PUA include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long-enough work history to qualify for state UI benefits.

B. Unemployment Benefits

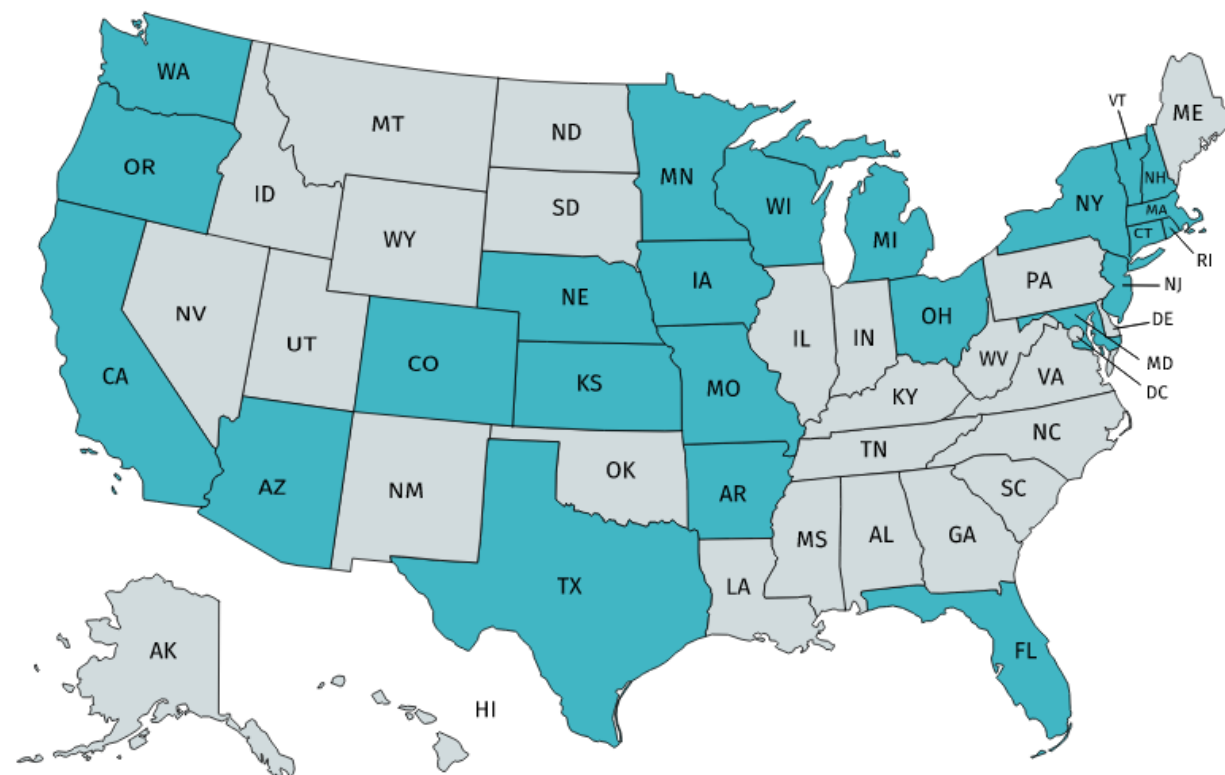
- Who is eligible for benefits?
 - Applicants need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work because of one circumstances directly related to COVID-19.
- What is the amount of the monetary benefit under the PUA?
 - Generally, unemployed individuals are entitled to the state benefit amount for unemployment compensation.
 - However, pursuant to the CARES Act, **all unemployed workers** who receive at least one dollar (\$1) of unemployment compensation will be entitled to an additional \$600/week for up to a total of four months (through July 31, 2020) of unemployment related to COVID-19.

C. Short-time Compensation (STC) Arrangements

- What is a short-time compensation program?
 - STC programs are also known as work sharing or shared-work programs.
 - STC allows employers to reduce hours of work for employees rather than laying-off some employees while others continue to work full time.
 - Those employees experiencing a reduction in hours are allowed to collect a percentage of their unemployment compensation (UC) benefits to replace a portion of their lost wages.

C. Short-time Compensation (STC) Arrangements

- Currently, 26 states (in blue) have operational STC programs. Under the CARES Act:
 - ✓ States with STC laws can be fully reimbursed for the costs they incur paying STC benefits through Dec. 31, 2020 (limited to the amount per person that an individual would have received on unemployment insurance).
 - ✓ States without STC programs can receive up to 50% of costs incurred, subject to the same restrictions mentioned above.



Employee Benefits

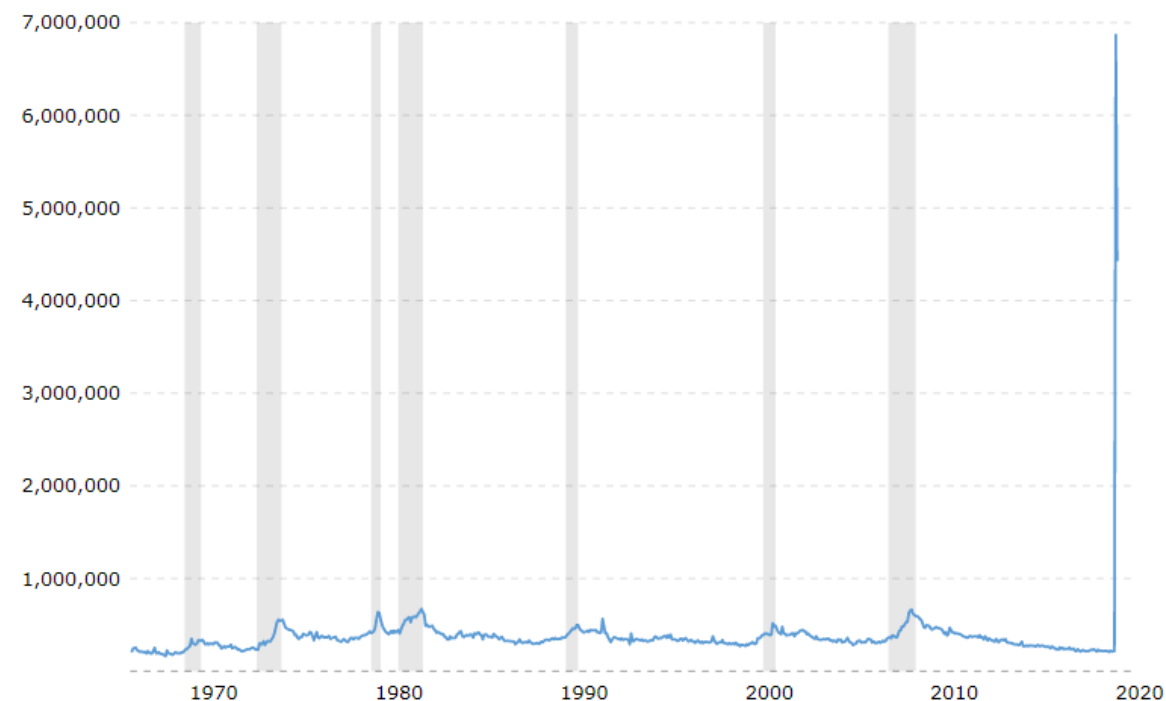
A. Defined Contribution Retirement Funds and Student Loan Repayments

- The 10% early distribution penalty is waived for COVID-related distributions taken during 2020, up to an aggregate of \$100,000. These are added to taxable income or may be re-contributed within three years.
- The maximum plan loan amount is increased to lesser of \$100,000 or the vested balance. Repayments are delayed by one year.
- Employer payments towards qualified education loans of employees are treated as section 127 education assistance and excluded from income. These cannot exceed \$5,250 per employee per year and must be pursuant to a written employer plan. .

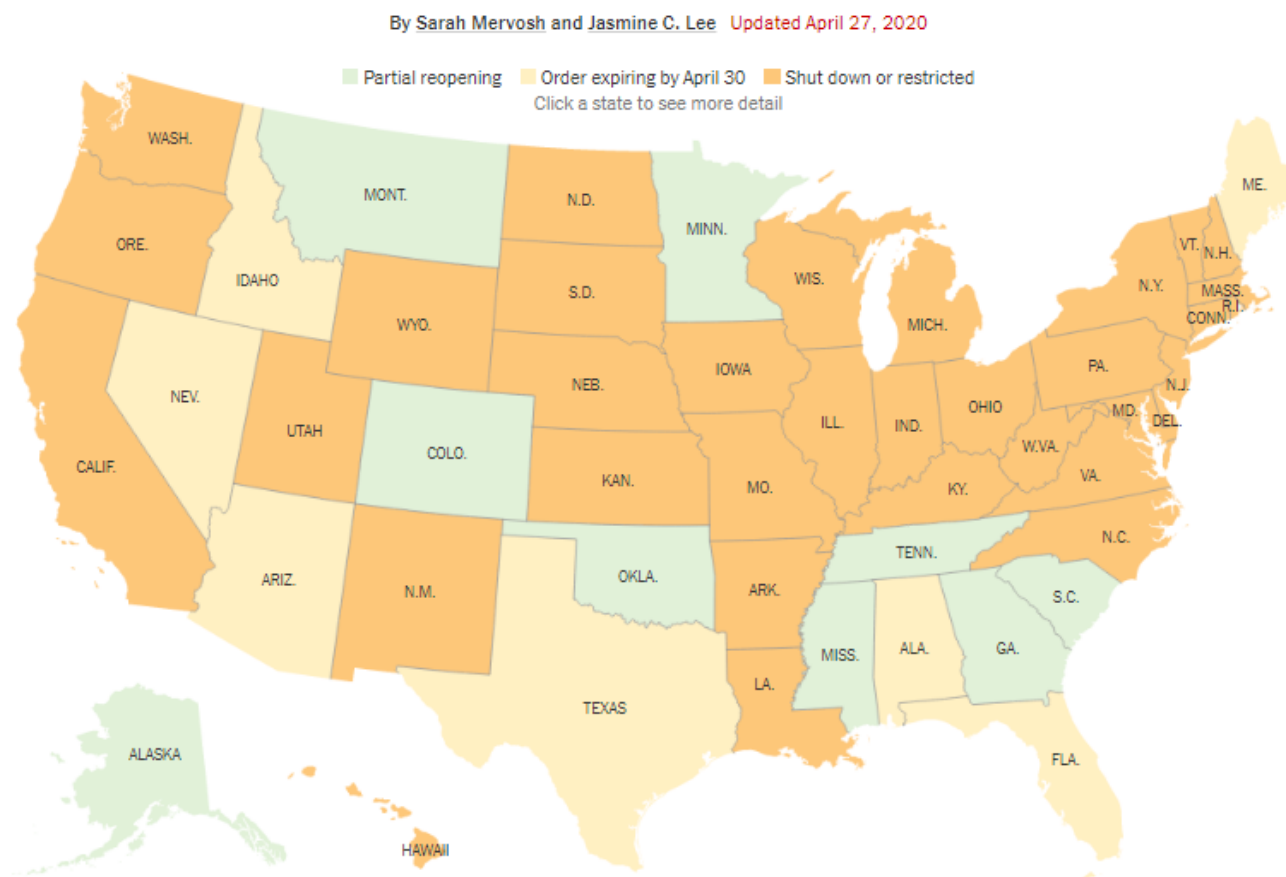
Looking Ahead

Looking Ahead: Unemployment

- In March, unemployment increased to 4.4%, the largest over-the-month increase since Jan. 1975
- 26.45 million Americans have filed for unemployment in 5 weeks
- Employment in leisure and hospitality fell by 459,000

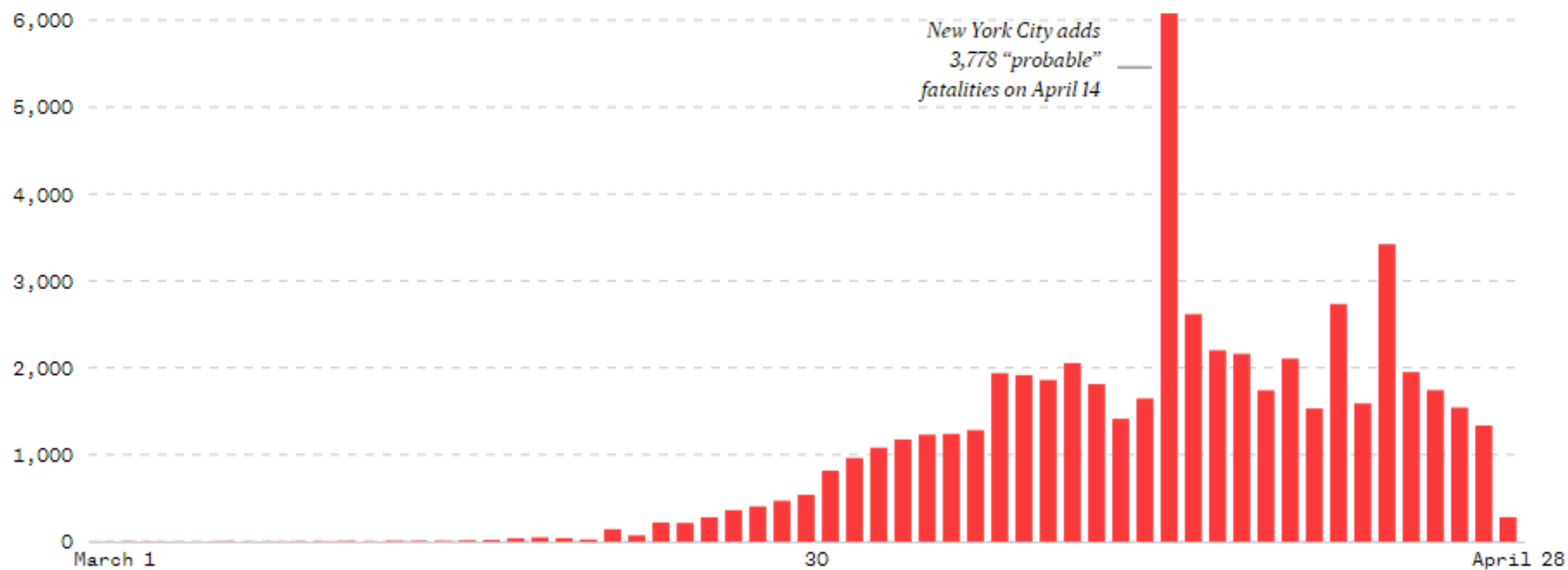


Looking Ahead: Staying at Home or Reopening?



Looking Ahead: Reported Deaths per Day

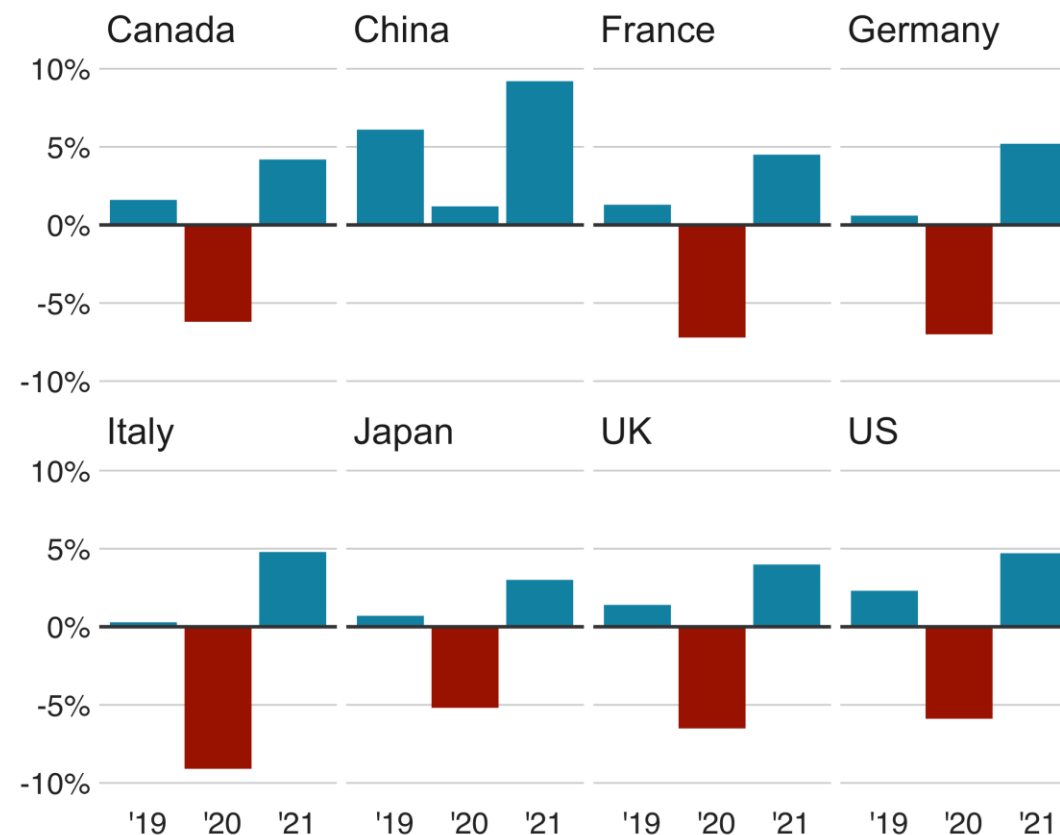
Reported coronavirus deaths, per day, in the U.S.



Looking Ahead: Recession

- IMF stated the decline is the worst since the Great Depression.
- U.S. GDP is expected to decline the first two quarters of 2020

National annual GDP



Source: International Monetary Fund

BBC

Looking Ahead: Cost of Bills So Far

Bill	Cost
<i>The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 (P.L.116-123)</i>	\$8.3 billion
<i>The Families First Coronavirus Response Act (P.L.116-127)</i>	\$192 billion
<i>The Coronavirus Aid, Recovery and Economic Security (CARES) Act (P.L.116-136)</i>	\$2,200 billion
<i>The Paycheck Protection Program and Health Care Enhancement Act (P.L.116-139)</i>	\$500 billion
Total	\$2.9 trillion

Looking Ahead: Next Package

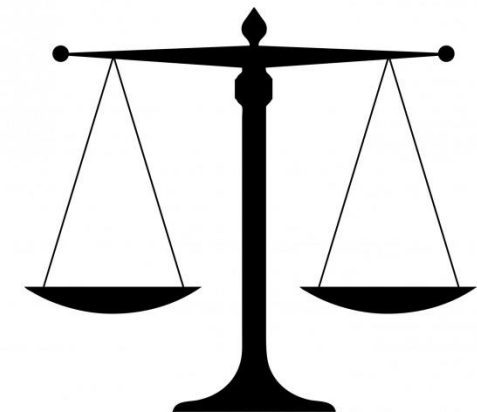
Democrats	President Trump	Congressional Republicans
		PPP 3
	Liability Protection	Liability Protection
State and Local	State and Local	
Infrastructure	Infrastructure	
	Payroll Tax Holiday	Business Tax Cuts
	Reopening Incentives	
Unemployment		
Loans for Business		Loans for Business
Heroes Payments		

Looking Ahead: PPP

- Lawmakers may need to once again refund the Payment Protection Program.
 - Congressional Democrats are expected to support more funding but only if certain restrictions are in place that prevent large companies from obtaining loans meant for small businesses.
- The administration, primarily through Treasury Secretary Steven Mnuchin, is less certain on the need for more PPP funding. He thinks the \$700 billion will be enough, but he has also said the administration will ask for more funding if needed.

Looking Ahead: Liability Protection

- Liability protection was included in CARES for health-care volunteers.
- Sen. Ben Sasse (R-NE) introduced legislation to limit liability for all health-care professionals fighting coronavirus. The bill would:
 - limit liability for using a medical device for unapproved use,
 - practice without a license or outside an area of specialty, and
 - conduct testing outside the premises of standard health-care facilities.
- Republicans may push for protection for businesses where coronavirus is transmitted.



Looking Ahead: State and Local

- Democrats sought \$150 billion in funds for state and local governments but were thwarted by Republicans.
- Sens. Bill Cassidy (R-LA) and Bob Menendez (D-NJ) have proposed \$500 billion.
- Senate Majority Leader Mitch McConnell (R-KY) has offered bankruptcy as a possible alternative.
- Expect something for state and local governments in the next substantial package.



Looking Ahead: Infrastructure

- Members of Congress are talking with frequency about infrastructure spending.
- Sen. Richard Shelby (R-AL), Chair of the Appropriations Committee, has also touted infrastructure legislation.
- House Democrats have proposed a \$760 billion package that moves beyond surface transportation funding to include broadband and other investments.
- President Trump has suggested a \$2 trillion package.



Looking Ahead: Payroll Tax Holiday

- President Trump has suggested suspending the payroll tax for remainder of year.
- This could come in the form of decreasing the 6.2% payroll tax or a tax credit based on previous legislation.
- Sen. Josh Hawley has introduced a plan to increase the refundable Employee Retention Tax Credit of the CARES Act to 80% of employer payroll costs.



Looking Ahead: Reopening Incentives

- President Trump's reelection may hinge on the strength of the U.S. economy. Dow Jones Industrial Average erased all the gains it had acquired since President Trump assumed office.
- Three phases of implementation:
 - Return to work in phases;
 - Non-essential employer travel can resume, schools and bars may reopen with under social distancing protocols; and
 - All venues (including large venues) will reopen with limitations.
- Tax and other incentives will be considered to help businesses reinvent themselves, reconfigure and retool.



Looking Ahead: Unemployment Insurance

- Congressional Democrats have pushed for additional Unemployment Insurance funding and are likely to object to any legislation in which this is not included.
 - In addition, congressional Democrats are pushing for hazard pay and another round of Economic Impact Payments.
- Congressional Republicans, led by Senate Majority Leader Mitch McConnell (R-KY), are experience “spending fatigue” and may not go along with this.
 - Congressional Republicans are more focused on ensuring employers are able to retain their workers as opposed to providing payments.
 - There is concern that UI benefits are so high that it is more beneficial for workers to claim UI as opposed to returning to work. Republicans want to address this.

Looking Ahead: Loans For Business

- Congress passed an interim stimulus package providing additional funding to small businesses.
- Still, many small businesses do not qualify for PPP.
- Others do not qualify for the Main Street lending facilities due to their leverage rates.
- Certain members of Congress are looking to repeal certain provisions of the CARES Act in order to provide additional funding to small businesses.

Conclusion

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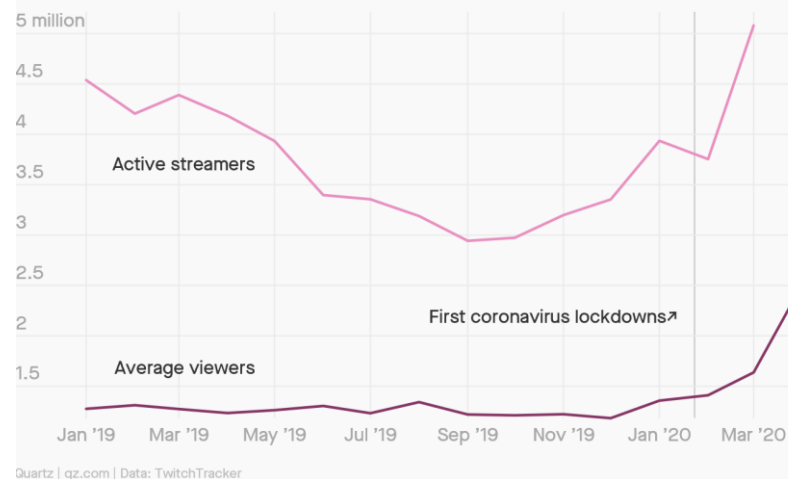
Long-Term Economic Development Growth Trends from Pandemic

Data, Transportation, Agriculture, Distribution

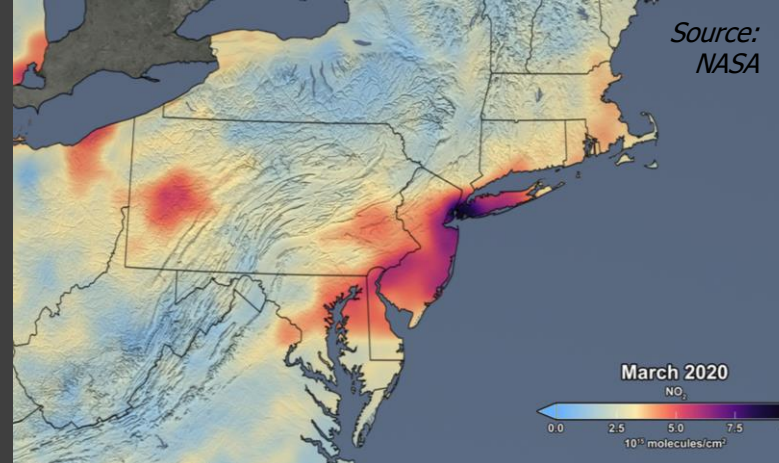
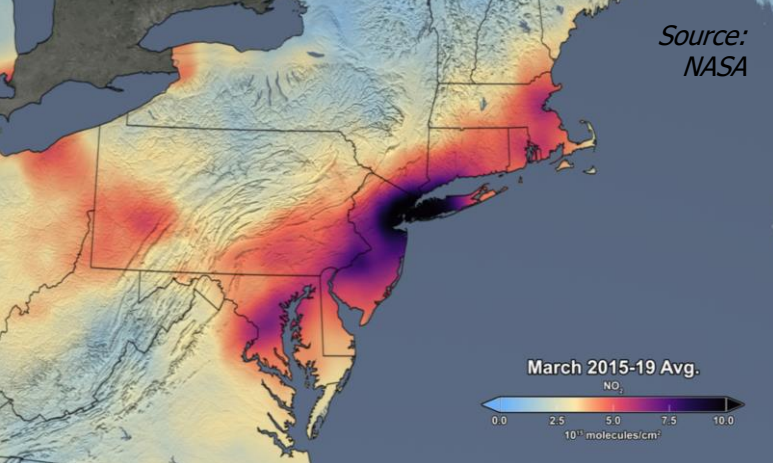
Virtual Economy, Data Centers

- » Digital workers, online classes, zoom, VPN services, video games, cloud computing, online transactions, virtual workforce
- » Chicago MSA is the fourth largest data center market in the US and passed data center incentives in 2019

Twitch's audience growth since 2019

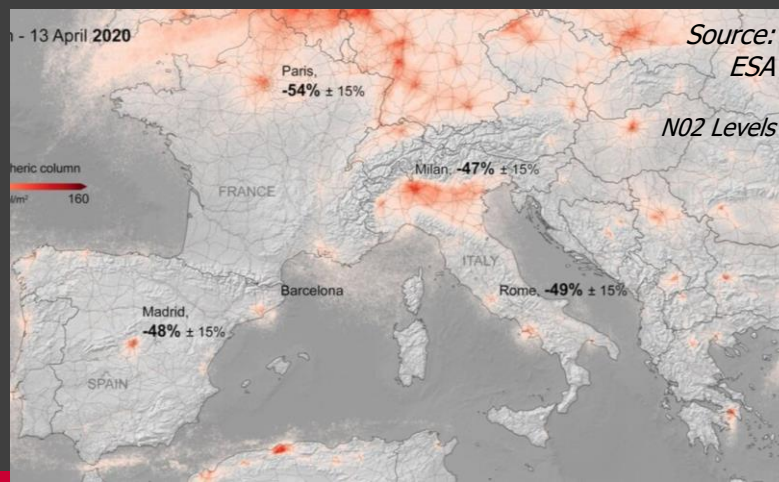
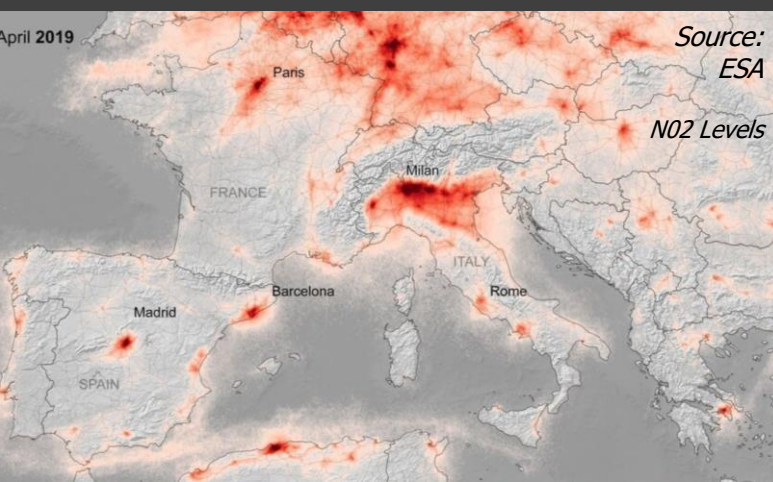


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Emissions Reduction, Transportation

- » Pollution levels in major cities down 30-50%
- » According to World Health Organization, air pollutants kill 7 million people worldwide annually
- » Considerable growth in electrification of transportation

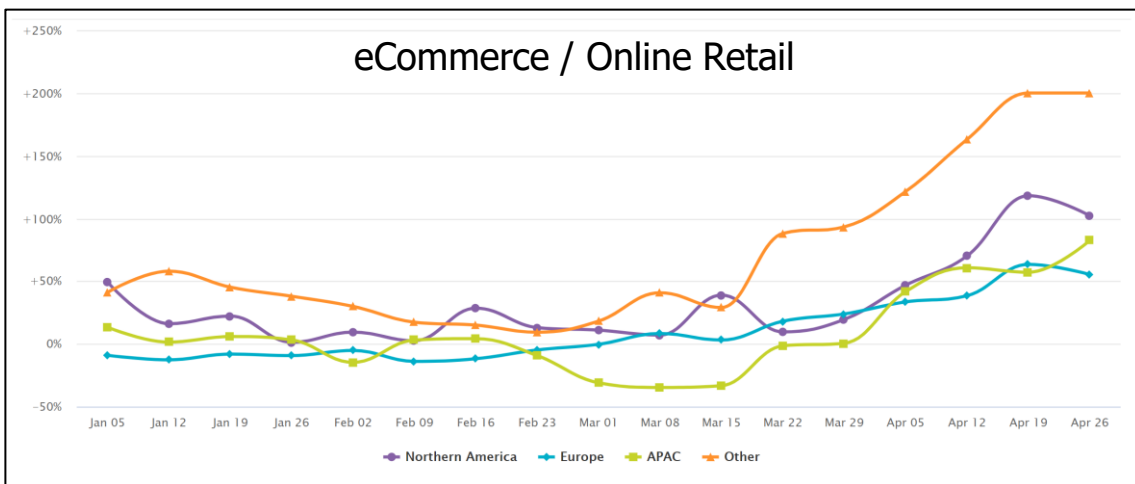


Food Security, Indoor Farming

- » “Panic Buying”
- » Tyson closed a pork processing plant that supplies 4% of US pork
- » Vertical farming growth supplies local markets



eCommerce / Online Retail



Source: Emarsys/GoodData

Next Day Shipping, Distribution & Logistics

- » Online transactions up 25-30%
- » Amazon hired 100,000 workers
- » Toilet paper, hand sanitizer, and other needs highlighting the importance of distribution & logistics



Questions?

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