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## **The CARES Act and Your Restaurant: What You Need to Know Now**

April 6, 2020

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# Our Presenters



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# Agenda

## CARES Act Summary

- Economic Injury Disaster Loan (EIDL) Advance
- Paycheck Protection Program (PPP)

## Key Takeaways

- Eligibility
- Loan Requirements
- Loan Forgiveness
- Use of Loan Proceeds
- Application Process

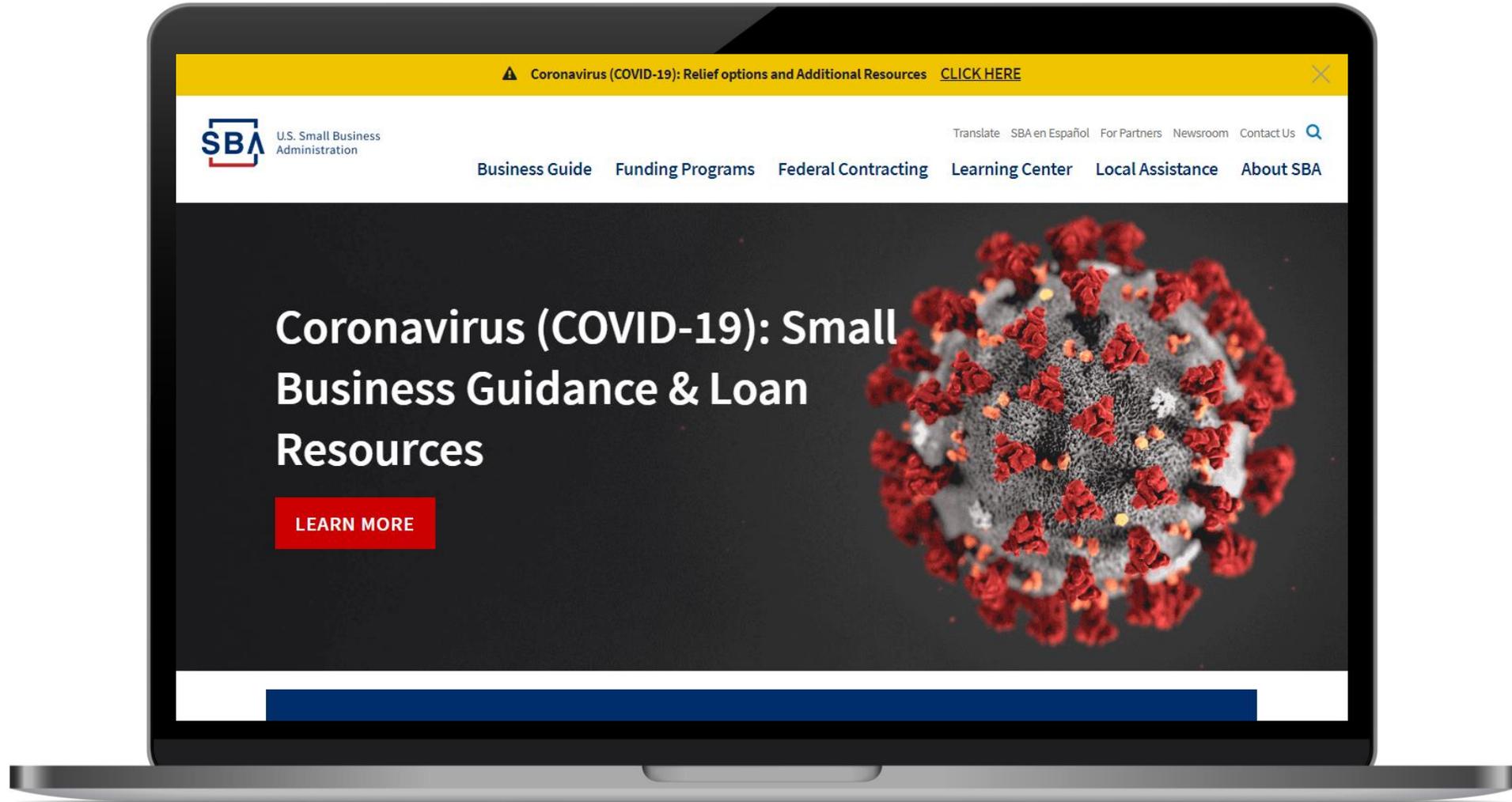
## Q&A



# Implementation Guidance

- CARES Act signed into law March 27, 2020
- SBA Interim Final Rule Released April 2, 2020
- SBA Affiliation Guidance released April 3, 2020
- More information available on SBA and Treasury Department websites
- To keep up to date on these programs, please stay in contact with your local SBA District Office





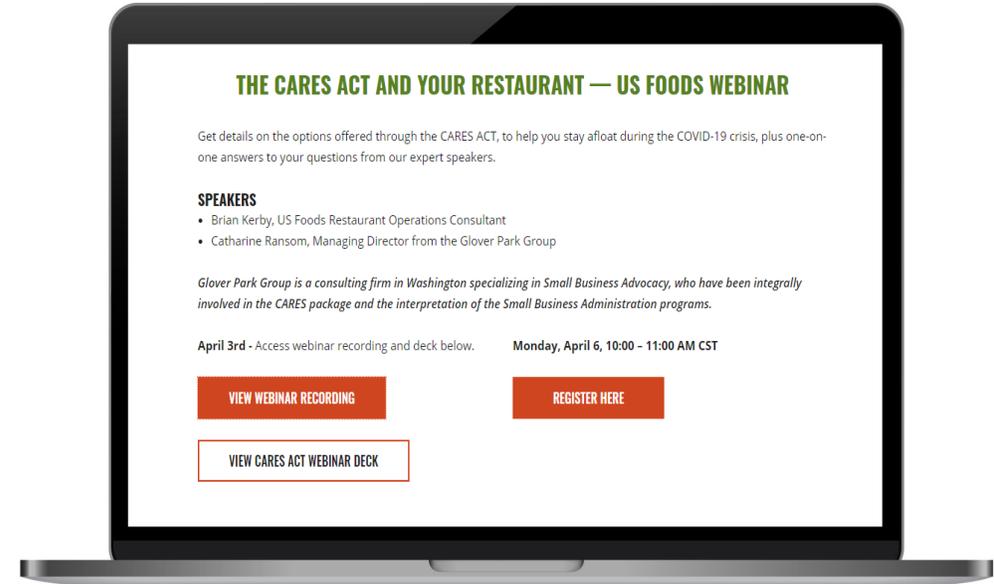
# What You Need to Do Now

## PPP Loan:

- Determine your 2.5 X Average Monthly Payroll Calculation
- Determine your number of Full-Time Equivalent (FTE) Employees
- Find a local lender that is approved to make these loans and schedule a phone consult to discuss the process and what assistance they can provide

## EIDL Loan:

- Seek out assistance from an SBA District Office or local SBA Development Center on process, forms and documentation required
- Gather required documentation and info needed to fill out forms



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## Emergency EIDL Loan Advance and Economic Injury Disaster Loans (EIDLs)



## What is an EIDL Loan Advance?

- Allows an eligible entity who has applied for an Economic Injury Disaster Loan (EIDL) due to COVID-19 to request an EIDL **Advance of not more than \$10,000**, intended to be available within three days of applying for an EIDL.
- **EIDL Advance does not need to be repaid**, even if the loan is denied.
- Available for businesses **in existence on January 31, 2020**.
- **EIDL Advance is available through December 31, 2020**.
- Both PPP and the EIDL Advance **can be obtained, but they cannot be used for the same purpose**.
  - COVID-19 related EIDL loans received between January 31, 2020 and the date on which the PPP becomes available **can be refinanced into the PPP** for loan forgiveness purposes.
  - When determining loan forgiveness under the PPP, the EIDL advance is taken into consideration.

## Who is eligible?

- Businesses with fewer than 500 employees
- Businesses and agricultural cooperatives that meet the applicable size standard for SBA
- Cooperatives, ESOPs, and tribal small businesses with fewer than 500 employees
- Sole proprietorships, with or without employees
- Independent contractors
- Most private nonprofits



# What are the EIDL loan requirements?

- An EIDL is a low-interest, fixed rate loan that can provide up to \$2 million in assistance for small businesses that can be used to pay immediate expenses during an emergency.
  - EIDL applications are available at [SBA.gov](https://www.sba.gov).
  - The loan interest rates are 3.75% for small businesses and 2.75% for nonprofit organizations with terms up to 30 years.
- Rules requiring a borrower to first seek credit elsewhere are waived.
- Up to \$200,000 can be approved without a personal guarantee.
- No collateral is required for loans of \$25,000 or less. For loans of more than \$25,000, general security interest in business assets will be used for collateral instead of real estate.

# What are the EIDL loan requirements?

- Requirement that an applicant needs to be in business for one year before the disaster declaration is waived, BUT the business must have been in operation on January 31, 2020.
- Approval can be based on a credit score and tax returns are not required.
- Payments are deferred for 12 months.

## Can I apply for an EIDL and a PPP?

- EIDL borrowers may apply for the Paycheck Protection Program; when determining loan forgiveness, the advance EIDL grant is taken into consideration.
- A borrower cannot use a PPP loan for the same purpose as the EIDL loan.



# How can EIDL Advance proceeds be spent?

- **EIDL Advance may be used for:**

- Providing paid sick leave to employees unable to work due to direct effect of COVID-19
- Maintaining payroll to retain employees
- Meeting increased costs to obtain materials unavailable from applicant's original source due to interrupted supply chains
- Making rent or mortgage payments
- Repaying obligations that cannot be met due to revenue losses

# How can EIDL Loan proceeds be spent?

These working capital loans may be used to pay fixed debts, payroll, sick leave, accounts payable, rent or mortgage and other bills that could have been paid had the disaster not occurred.

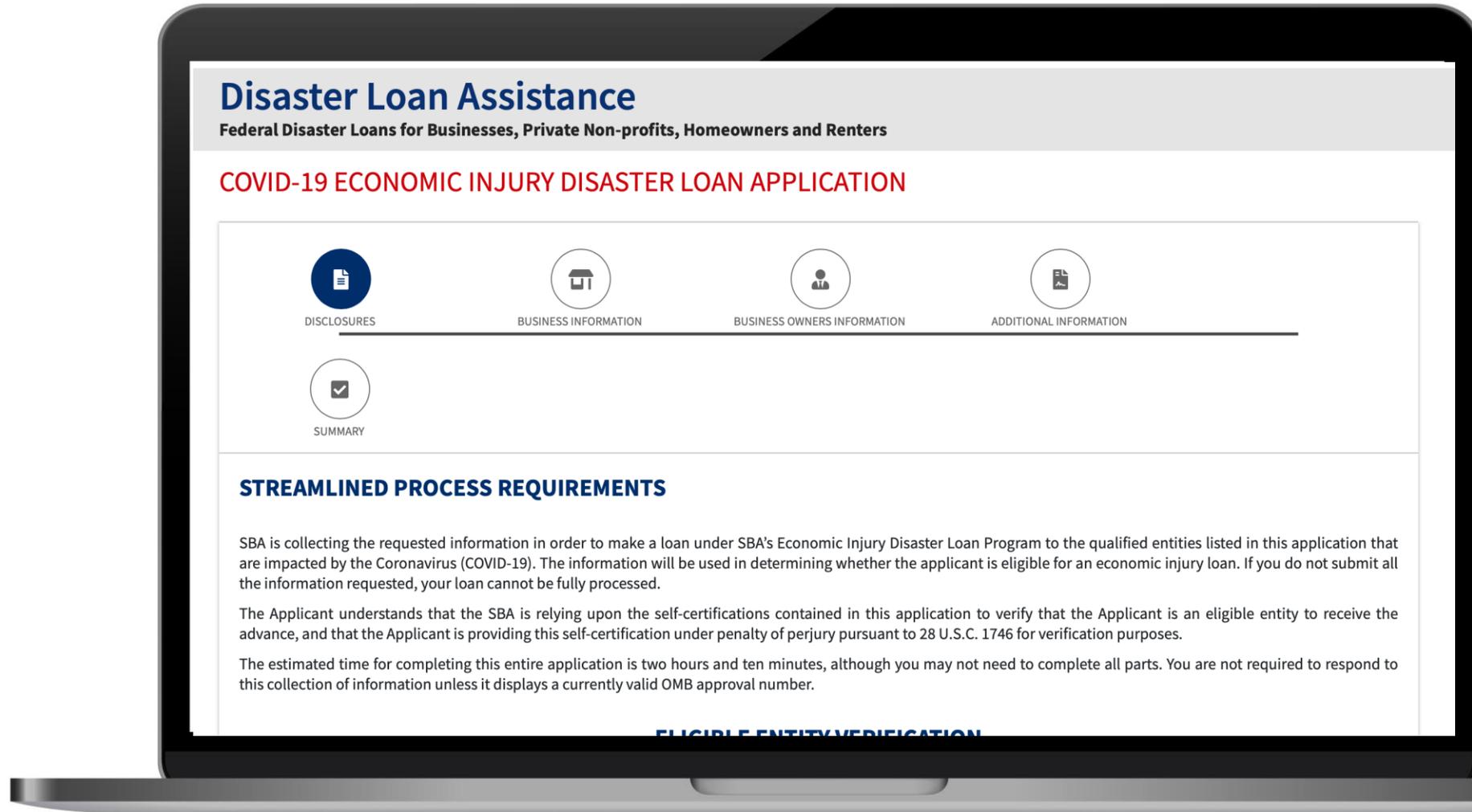
- Working capital necessary until normal operations resume.
- Expenditures necessary to alleviate economic injury, but not beyond that which the business could have provided had the injury not occurred.
- **Not intended to replace lost sales or profits or for refinancing, expansion, growth of any kind, or infrastructure improvements.**

# How do I apply for the EIDL and EIDL Loan Advance?

- **Apply directly** at SBA.gov
- Your SBA District Office **is an important resource** when applying for SBA assistance
- There is **no cost** to apply
- There is **no obligation** to take the loan if offered



# COVID-19 EIDL Loan Application



# FAQs on EIDL

- **Can I apply for an EIDL Loan and the Paycheck Protection Program?**
  - Both PPP and the EIDL Advance and EIDL loan **can be obtained, but they cannot be used for the same purpose.**
  - When determining loan forgiveness under the PPP, the EIDL advance is taken into consideration.
  - COVID-19 related EIDL loans received between January 31, 2020 and the date on which the PPP becomes available **can be refinanced into the PPP** for loan forgiveness purposes.
- **What if I am a new business and was not operating on January 31, 2020?**
  - The EIDL Advance is available for businesses that were in operation on January 31, 2020.
  - The PPP is available for businesses that meet the size threshold and were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors as reported on a 1099-MISC.
- **How do I follow up on my EIDL application?**
  - Contact your SBA district office.



# Paycheck Protection Program (PPP)



# What is the Paycheck Protection Program (PPP)?

- **Provide cash-flow assistance** through 100 percent federally-guaranteed loans to employers who maintain their payroll (or rehire promptly) during COVID-19 emergency.
- **\$349 billion** in new lending capacity.
- **Retroactive from February 15, 2020 through June 30, 2020** so employers can rehire recently laid-off employees.
- **Waives credit** elsewhere requirement, personal guarantee requirement, and collateral requirements.
- **Defers repayment of principal and interest for 6 months** to give small businesses time to get through the crisis; interest will continue to accrue.
- **Administered by SBA**; loans executed through individual providers.
- Provides for **loan principal forgiveness** under certain conditions.
- **First come, first serve.**

# Who is eligible for PPP?

- In operation on February 15, 2020 and had employees for whom you paid salaries and payroll taxes or paid independent contractors.
- Meet one of the following criteria:
  - A small business with **fewer than 500 employees**
  - A small business that has more than 500 employees **if it meets the SBA's size standards for its industry**
  - A **501(c)(3)** with fewer than 500 employees
  - An individual who operates as a **sole proprietor**
  - An individual who operates as an **independent contractor**
  - An individual who is **self-employed** who regularly carries on any trade or business
  - A **Tribal business** concern that meets the SBA size standard
  - A **501(c)(19) Veterans Organization** that meets the SBA size standard

# Who is eligible for PPP - exceptions

- **500 employee limit**

- Applied on a per physical location basis for businesses in NAICS Code 72, Accommodation and Food Services.

- **SBA affiliation rules**

- Do not apply to a franchise in the SBA's Franchise Directory OR entities that receive financial assistance from Small Business Investment Companies (SBICs) licensed by the SBA.
- SBA issued a supplement to its PPP program rules addressing affiliation rules on April 2, 2020.

# What are PPP loan requirements?

- Borrower and lender fees are waived
  - Agent fees paid by lender out of fees the lender receives from SBA
  - Agents may not collect fees from the borrower or be paid out of PPP loan proceeds
- 1% interest rate; maturity of 2 years.
- **Payment deferred for 6 months;** interest will accrue.
- Neither a **personal guarantee nor collateral is required** for the loan.
- Rules requiring a borrower to first seek **credit elsewhere are waived.**
- A recipient **cannot use both the employee retention tax credit (ERTC) and the PPP loan.**



## How much can I borrow?

Loans can be up to 2.5 x the borrower's average monthly payroll costs, not to exceed \$10 million.

If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at \$100,000 annualized for each employee.



# Maximum Loan Amount: Non-Seasonal Employers

• 2.5



Average total monthly payroll costs incurred during the year prior to the loan date



**Max Loan Amount**

*OR, if not operational in 2019:*

• 2.5



Average total monthly payroll costs incurred for Jan and Feb 2020

# Maximum Loan: Seasonal Employer

• 2.5

×

Average total monthly payments for payroll costs during the 12-week period beginning February 15, 2019 and ending June 30, 2019

OR

Average total monthly payments for payroll costs during the 12-week period beginning March 1, 2019 and ending June 30, 2019

=

**Max Loan Amount**

(selected at the choice of the loan applicant)

# What are Payroll Costs?

## Payroll cost will include any compensation with respect to employees, as follows:

- Salary, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Payment required for the provisions of group health care benefits, including insurance premiums and retirement;
- Payment of State or local tax assessed on the compensation of employees; and
- Sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period.

## Payroll cost will be reduced by the following:

- Compensation of individual employee in excess of an annual salary of \$100,000 as prorated for the covered period..
- Taxes imposed or withheld under chapters 21 (Social Security and Medicare taxes, employee and employer portion), 22 (railroad retirement tax), 24 (withholding obligations from employees) of the Internal Revenue Code of 1986
- Compensation of an individual whose principal place of residence is outside the United State.
- Qualified sick leave wages for which a credit is allowed under section 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA).

# How much can I borrow?

## SBA Sample Methodology

- Step 1: Aggregate payroll costs from the last twelve months for employees whose principal place of residence is the US.
- Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000
- Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.
- Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

# How can loan proceeds be spent?

Eligible expenses include:

- Payroll costs: *Must be 75% of loan proceeds*
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Employee salaries, commissions, or similar compensations
- Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period
- Refinancing an SBA EIDL loan made between Jan 31, 2020 and April 3, 2020.



# CARES ACT

“(F) ALLOWABLE USES OF COVERED LOANS.— ‘

‘(i) IN GENERAL.—During the covered period, an eligible recipient may, **in addition to the allowable uses of a loan made under this subsection**, use the proceeds of the covered loan for— ‘

‘(I) payroll costs;

‘(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; ‘

‘(III) employee salaries, commissions, or similar compensations;

‘(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation); ‘

‘(V) rent (including rent under a lease agreement);

‘(VI) utilities; and ‘

‘(VII) interest on any other debt obligations that were incurred before the covered period .

# Eligible uses of an SBA Section 7(a) loan include:

## 13 C.F.R. §120.120

*(b) A Borrower may also use 7(a) ... proceeds for:*

*(1) **Inventory;***

*(2) **Supplies;***

*(3) **Raw materials;** and*

*(4) Working capital (if the Operating Company is a co-borrower with the Eligible Passive Company, part of the loan proceeds may be applied for working capital and/or the purchase of other assets, including intangible assets, for use by the Operating Company).*

*(c) A Borrower may use 7(a) loan proceeds for refinancing certain outstanding debts.*

# Use of PPP Loan for Non-Payroll Costs Limited by SBA

*"...at least 75 percent of the PPP loan proceeds shall be used for payroll costs...."*

*While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), the Administrator believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed." (Page 16, SBA PPP Interim Final Rule)*

# Can my loan be forgiven?

- Full loan principal can be forgiven.
- Forgiveness can be reduced if:
  - Loan proceeds are spent on eligible, but not forgivable expenses.
  - There is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees.
- SBA will issue additional guidance on loan forgiveness.

# Forgiveable vs. Unforgiveable Expenses

- *"...not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs. (SBA PPP Interim Final Rule, page 14)*
- Forgiveable expenses include:
  - Payroll costs
  - Payments of interest on any covered mortgage obligation (which shall not include any pre-payment of or payment of principal on a covered )
  - Payments on any covered rent obligation
  - Covered utility payments
- Other 7(a) eligible expenses cannot be forgiven. Expenditures that are not forgiven will remain a loan under the terms of the PPP program (1% interest rate, 2-year maturity.)

# Determining forgiveness reduction

## Reduction based on reduction of # of employees



### Option 1:

- Average number of FTEs per month from February 15, 2019 to June 30, 2019

### Option 2:

- Average number of FTEs per month from January 1, 2020 to February 29, 2020

### For Seasonal Employers:

- Average number of FTEs per month from February 15, 2019 to June 30, 2019

## Reduction based on reduction in wages



**For any employee who did not earn during any pay period in 2019**, wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.

# What if I have already made changes to employee numbers or wages?

- Reductions in employment or wages that occur during the period beginning on February 15, 2020 and ending 30 days after enactment of the CARES Act (April 26, 2020) shall not reduce the amount of loan forgiveness if by June 30, 2020, the borrower eliminates the reduction in employees or the reduction in wages.

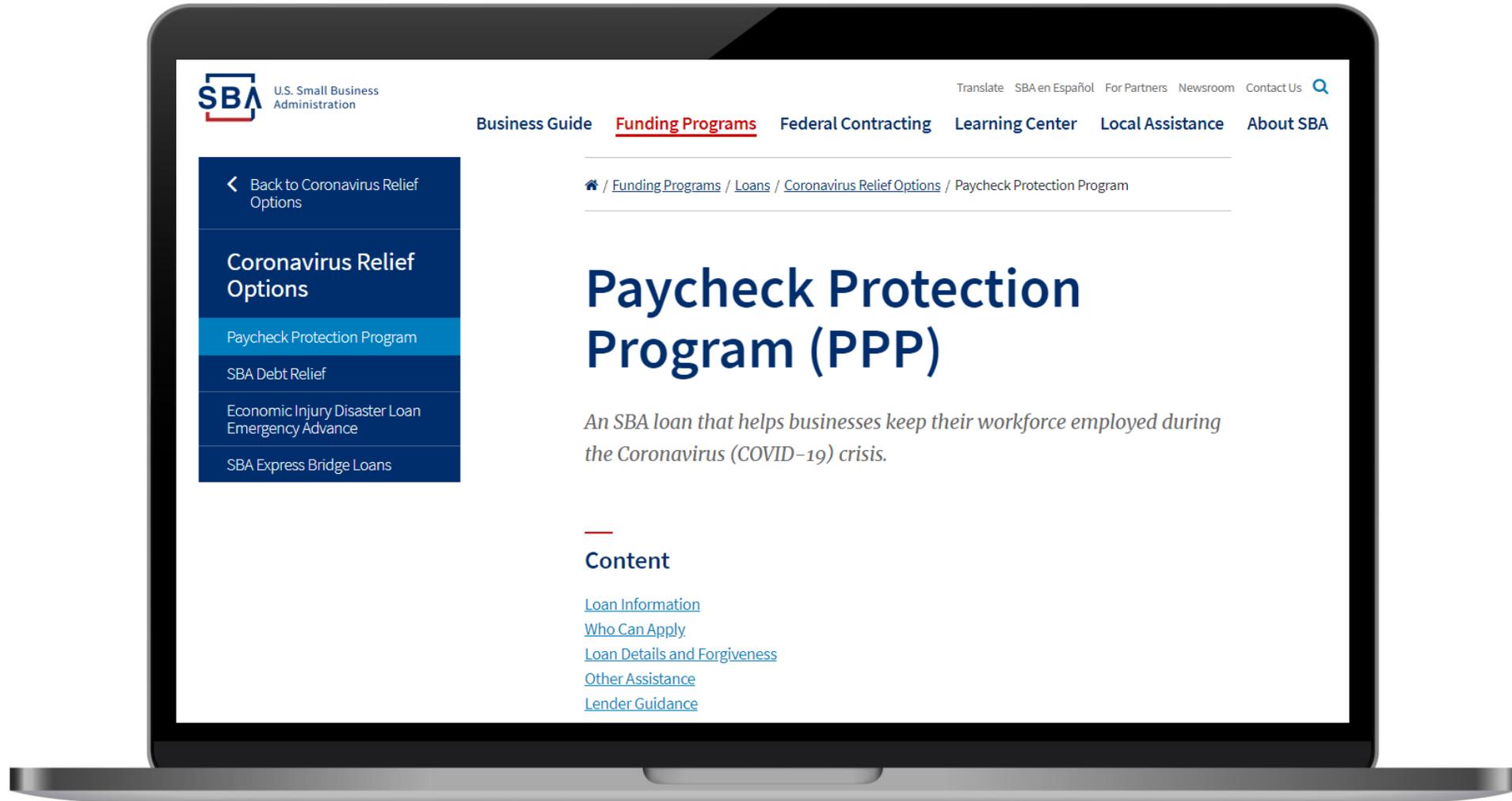


# How do I apply for a paycheck protection program loan?

- Starting April 3, 2020, **small businesses and sole proprietorships can apply.**
- Starting April 10, 2020, independent contractors and self-employed individuals can apply.
  - SBA Form 2843, Paycheck Protection Program Application Program
  - Payroll documentation
  - Series of certifications
- The Treasury Department is encouraging **applicants to apply as quickly as possible** because there is a funding cap.
- **First-come, first-served.**

# Where can I apply?

- **Borrowers can apply through any:**
  - Existing SBA lender
  - Federally insured depository institution
  - Federally insured credit union
  - Farm Credit System institution that applies the requirements under the Bank Secrecy Act and its implementing regulations as a federally regulated financial institution
  - Additional financing providers that meet SBA requirements



# FAQs on PPP

- **How do I handle cash tips when determining payroll costs?**

- Cash tips are included in payroll costs. Cash tip amounts are based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips. (*SBA, PPP Interim Final Rule, p.10*)

- **What if I am closed? How can I hire employees back to work?**

- The PPP does not require employees to be working for payroll expenditures to meet the loan forgiveness requirements.

- **What if I have employees who have already been laid off are already receiving unemployment?**

- Those employees would return to your payroll using PPP loan proceeds and move off unemployment.
- Reductions in employment or wages that occur during the period beginning on February 15, 2020 and ending 30 days after enactment of the CARES Act (April 26, 2020) shall not reduce the amount of loan forgiveness **if by June 30, 2020, the borrower eliminates the reduction in employees or the reduction in wages.**

- **Do independent contractors count as employees for purposes of PPP loan calculations?**

- No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation (SBA Interim Final Rule, page 11)



## Other Provisions



# What else is in the CARES Act that can help my business?

- **Employee Retention Tax Credit**

- Restaurants that closed or whose business declined 50% or more compared to the same quarter last year due to the coronavirus get a refundable payroll tax credit for 50% of wages paid to employees during the crisis. The credit applies to the first \$10,000 of compensation paid, including health benefits, from March 13, 2020, through December 31, 2020. What wages qualify vary somewhat depending on whether you have more or fewer than 100 employees.

- **Delay of Payment of Employer Payroll Taxes**

- Employers can defer payment of the employer share of the Social Security Tax.
- The delayed payment must be deposited next year – 50 percent on or before Dec. 31, 2021, and the remaining 50 percent on or before Dec. 31, 2022.

- **Qualified Improvement Property**

- Business will be able to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.

- **Debt relief for existing SBA loans**

- SBA will cover all loan payments including principal, interest, and fees for six months for SBA loans under section 7(a), 504, and microloan authority.
- SBA will also pay the principal, interest, and fees of **new 7(a) loans** issued prior to September 27, 2020.

## State and local relief funds and grant money

- Many states, counties, and cities have additional sources for relief funds and grant money
  - Check your state restaurant association websites for more information about what is available in your area



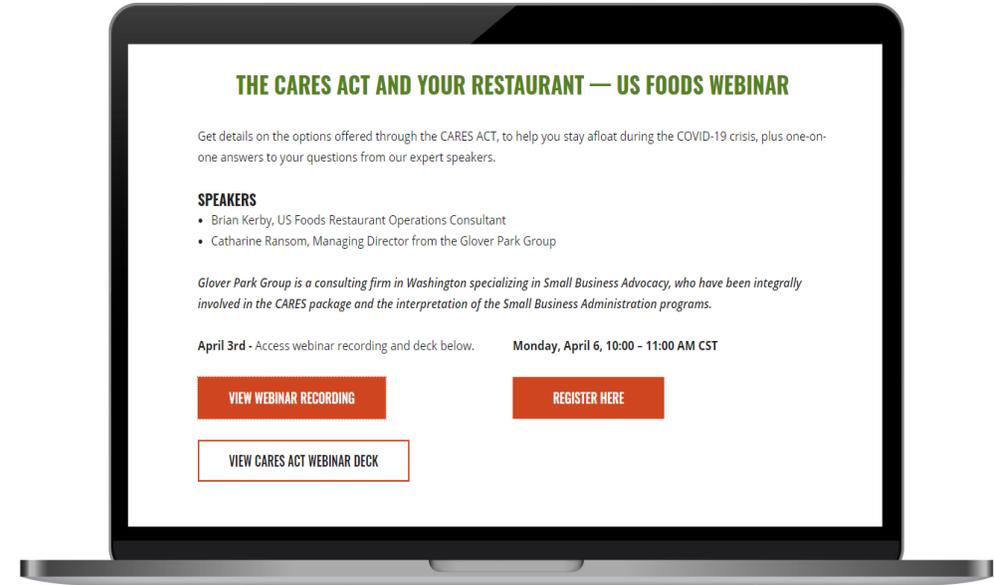
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# What **Questions** Do You Have?

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