



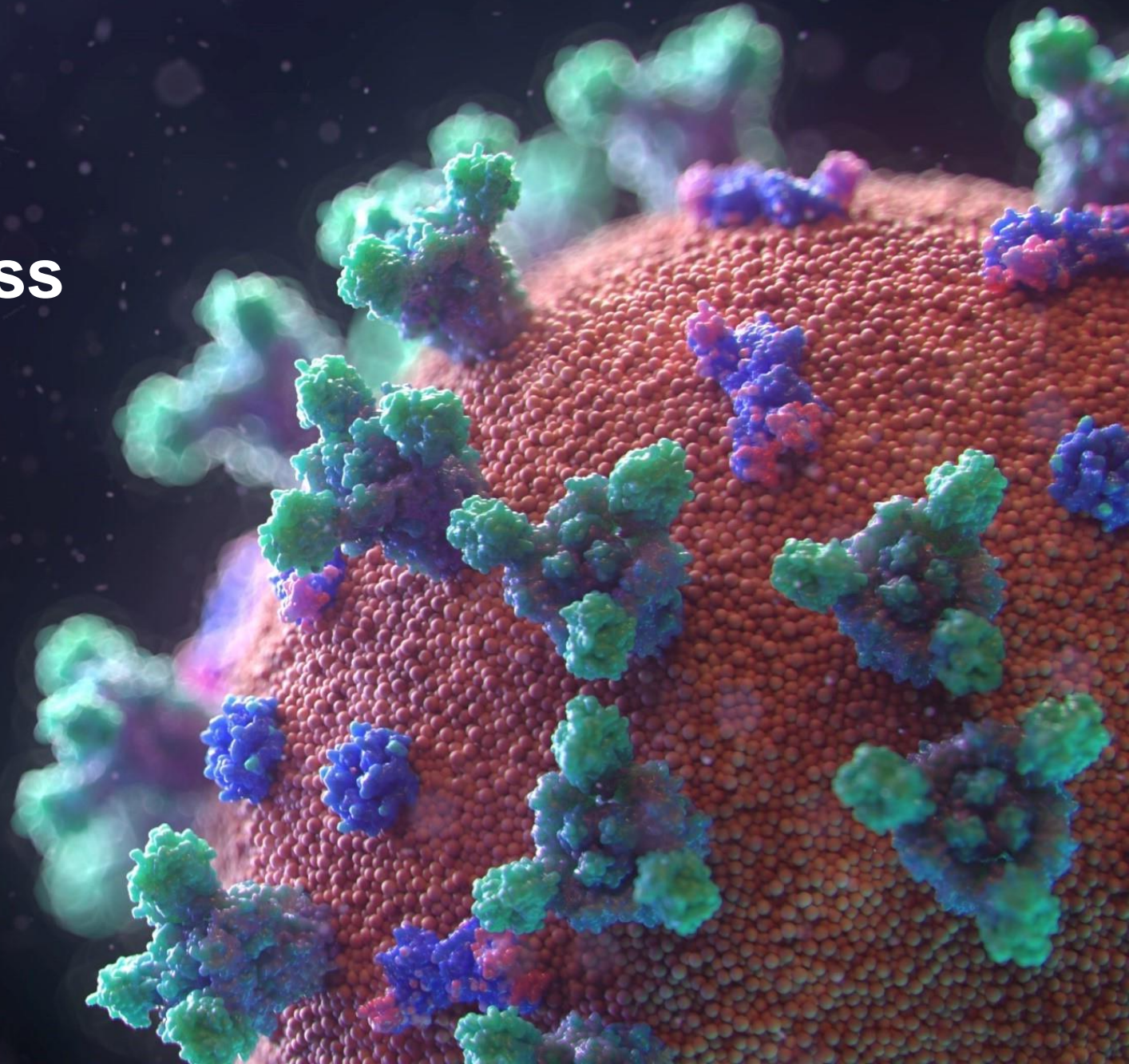
Accessing Small Business Stimulus Dollars Under the CARES Act

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April 2, 2020

Seyfarth Shaw LLP

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Announcements

- **UPDATE WEBINAR: April 9, 2020
Administrative Developments and
Guidance for Accessing Small
Business Stimulus Dollars**
- **Visit Seyfarth's COVID-19 Resource
Center to sign up for daily updates:
www.seyfarth.com/covid19**
- **Seyfarth has a multi-disciplinary core
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an email to mwbarnes@seyfarth.com**



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Agenda



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2 | A Word about “Small Business” Concerns



3 | Overview of Primary SBA “Stimulus” Loan Programs



4 | Eligibility Requirements



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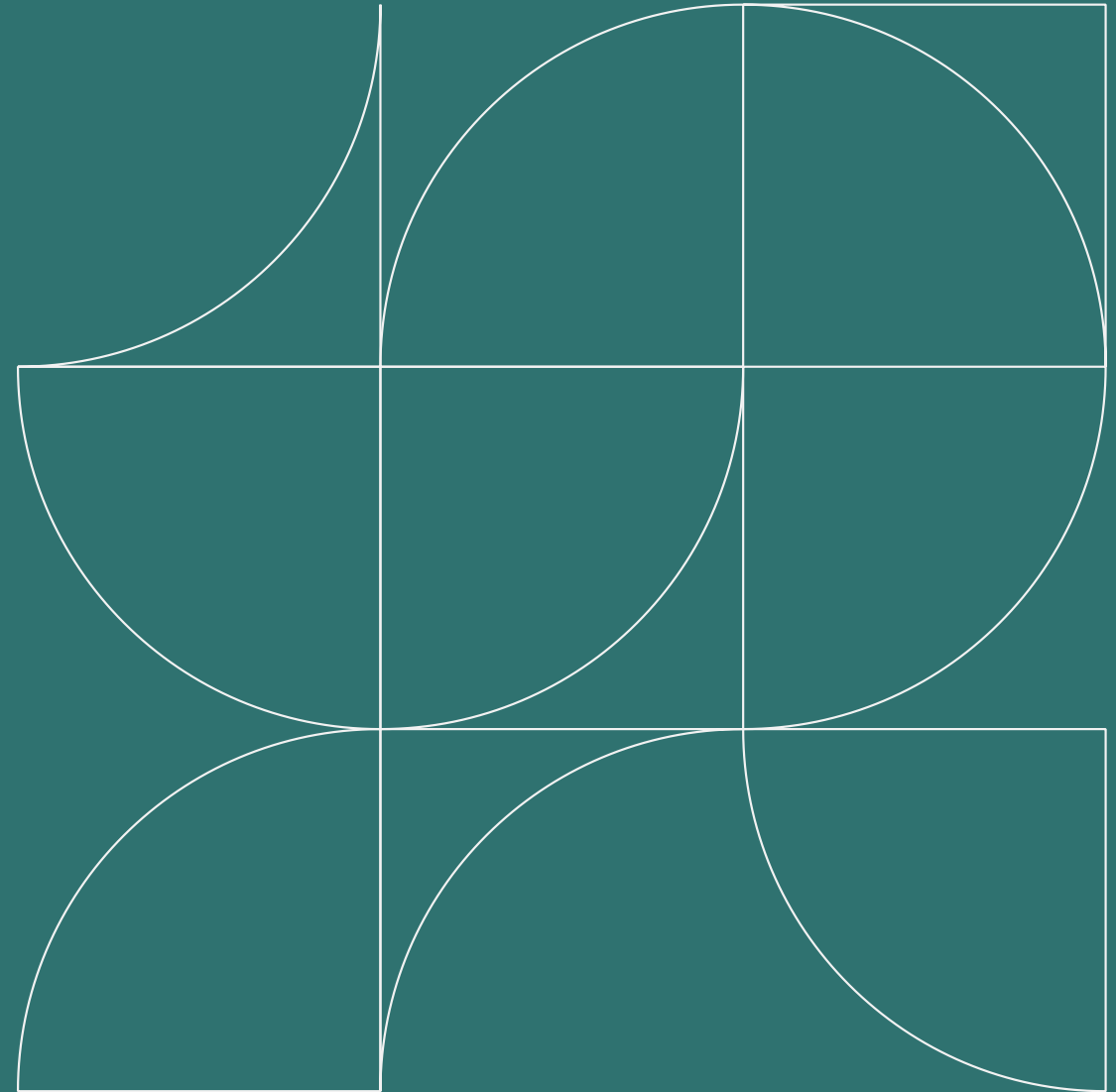


6 | Application Process, Cycle and Disbursements



7 | Business Considerations

Review of Landscape



Review of Landscape



- CARES Act has far-reaching implications for SBA-administered programs.
- Both SBA and Treasury are writing guidance providing details regarding program CARES Act implementation and administration.
- Also awaiting guidance on exclusivity of relief between agency programs (e.g. SBA and FFCRA relief).
- Changes to existing eligibility and features of other SBA programs are also being considered and developed as a means of providing additional access and relief.
- Paycheck Protection Program (PPP) has garnered the most attention, but businesses should examine all available options

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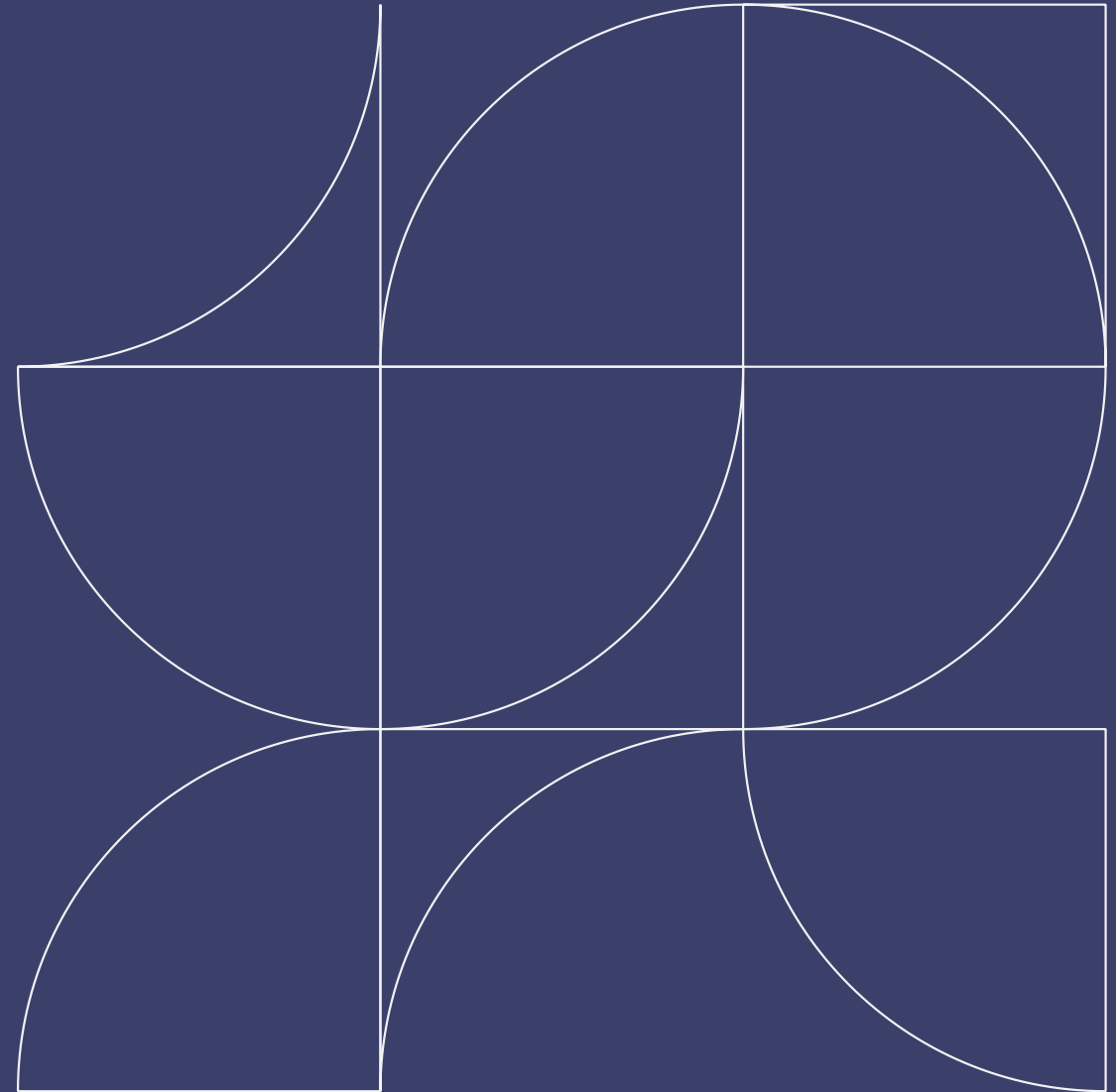
and health care response for individuals, families, and businesses affected by the 2020 coronavirus

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2020

Mr. GRASSLEY, Mr. RUBIO, Mr. SHELLEY, and Mr. WICKER introduced the following

A Word about “Small Business” Concerns



A Word About “Small Business” Concerns



SBA Size Standards

- Generally, must be “small business concern” in order to be eligible for certain Federal programs and certain federal contracts and subcontracts.
- SBA size regulations (13 CFR part 121) and program availability are generally based on gross receipts and/or employees as specified within the Small Business Table of Size Standards.
- CARES Act relaxes size and affiliation rules in some instances to provide relief to larger group of businesses (e.g., NAICS code 72 Accommodation and Food Services)

A Word About “Small Business” Concerns



SBA Affiliation Rules

- SBA decides whether a business’s affiliations preclude it from being “small”
- SBA will count the receipts, employees, or other measure of size for the concern whose size is at issue combined with the receipts, employees, or other measure of size for all of its domestic and foreign affiliates.
 - Franchises historically required registration to avoid affiliation
- Possible further expansion of Affiliation Rule relief

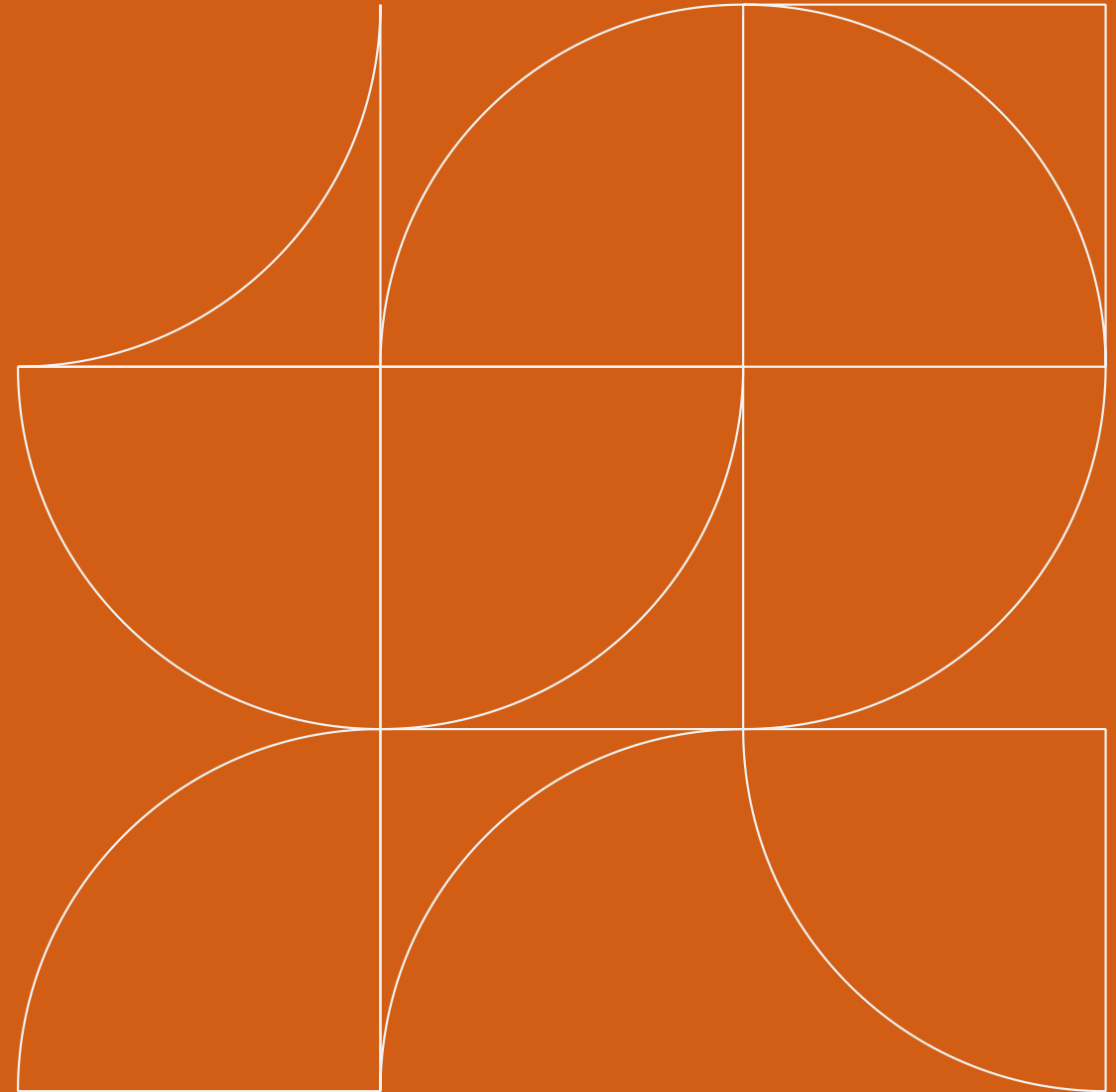
A Word About “Small Business” Concerns



Passive Enterprises

- Generally, passive (i.e., non-operating) small businesses are ineligible for SBA programs, **EXCEPT**
 - SBICs to structure investments utilizing a passive small business intermediary: (1) a holding company exemption under which an SBIC could structure an investment in a small business through one or two levels of passive intermediaries; and (2) a blocker company exemption
 - Other eligible passive companies that lease to one or more operating companies for conducting the operating company's business

Overview of Primary SBA “Stimulus” Loan Programs



Overview of Primary Stimulus Loan Programs



Section 7(a) Loans (Standard and Express Loans)

- Most popular SBA Loan program used to provide long and short-term working capital to small businesses.
- Lender-originated
- Maximum loan is \$1M (Express Loan) and \$5M (Standard Loan) with negotiable interest rates up to SBA Maximum, with up to 10 year repayment period.
- SBA provides loan-guarantee to SBA Lenders to make them more willing to lend money to small businesses with weaknesses in their loan applications.
- For new 7(a) loans (originated between March 27, 2020 and September 27, 2020), SBA will cover principal, interest and fees for six months.

Overview of Primary Stimulus Loan Programs



Express Bridge Loans (EBL)

- SBA provides direct loans assistance in Presidentially-declared disaster areas to support “survival and/or re-opening” of small businesses.
- Delegated Lender-originated (direct loan from the delegated SBA Express lender)
- Maximum loan about \$25,000, with up to 7 year repayment period and terms generally consistent with Express Loan program.
- Other features: streamlined underwriting, quicker disbursements
- Credit considerations, product delivery are all based upon the lender policies and procedures.

Overview of Primary Stimulus Loan Programs



Economic Injury Disaster Loans (EIDL)

- SBA offers designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19).
- SBA-originated
- Maximum loan is \$2M with interest at 3.75% or 2.75% (qualifying non-profits) with repayment term up to 30 years.
- Emergency advance for up to \$10,000 within three days of applying for EIDL.
 - No repayment of advance under any circumstances.

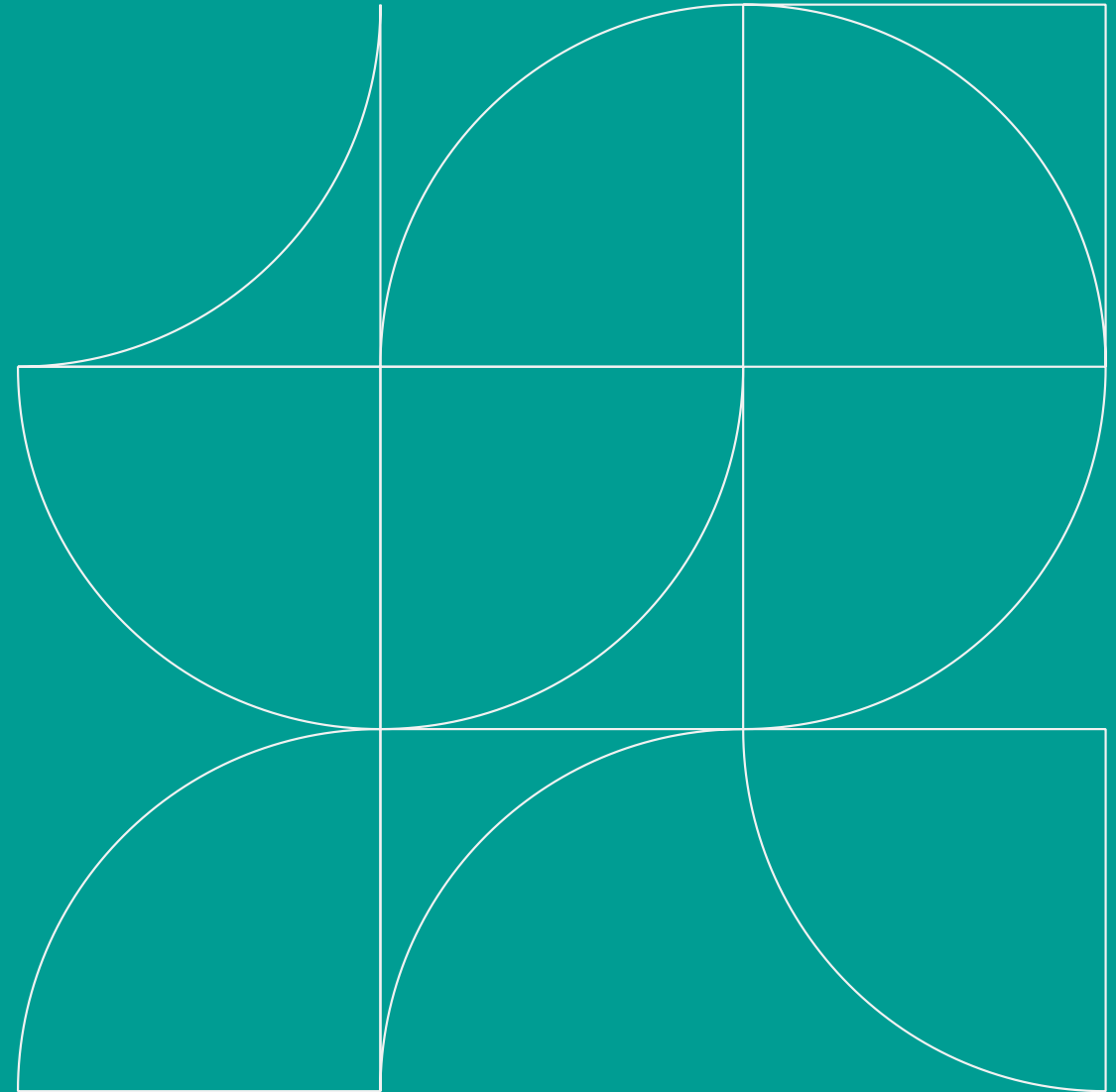
Overview of Primary Stimulus Loan Programs



Paycheck Protection Program (PPP)

- Loan forgiveness for loan funds specified by statute, remaining must be repaid.
- Direct SBA Lender program offered by SBA to provide capital to small businesses to help them meet their short-term ongoing expenses, including payroll costs, rent, utilities, and other costs specified by statute.
- Lender-originated
- Maximum loan amount is \$10M OR applicant's total monthly payroll for prior 1 year period x 2.5 with some MINUS reductions for seasonal employers and other SBA disaster loans.
- 100% SBA guarantee, SBA-paid origination fees, maximum .50% rate for non-forgiveness portion.
- Can't use both EIDL and PPP for same expenses.

Eligibility Requirements



Eligibility Requirements



Section 7(a) Loans (Standard and Express Loans)

- Small business concerns
- SBA rescinded the interim final rule that was issued on 2/10/20 and the affiliation standards will revert back to the provisions in place prior to 3/11/2020.
- SBA Express Loans have increased from \$350,000 to \$1 million effective 3/27/20 to 12/31/20. This is also a lender program what will follow current SBA guidelines and Lender requirements
- Qualified lenders may be granted delegated authority (Preferred Lending Program) to make eligibility determinations without SBA review.

Eligibility Requirements



Express Bridge Loans (EBL)

- Small businesses located in any state, territory and the District of Columbia that have been adversely affected by the COVID-19 emergency.
- Must have been operational when the declared disaster began and must meet all other 7(a) loan eligibility requirements
- Can only be made by SBA approved Express lenders to their existing customers
- Express Lender must continue to follow their established and proven internal policies and procedures used for similarly sized, non-SBA Loans.
- Credit elsewhere and affiliation policies prior to the Interim final rule are currently in place.

Eligibility Requirements



Economic Injury Disaster Loans (EIDL)

- Small businesses, agricultural cooperatives, aquaculture businesses, and most private non-profit organizations
- Businesses physically located in a declared disaster area and suffering working capital losses due to COVID-19
- Can qualify even if business has an existing SBA Disaster Loan
- Most small businesses, 501(c)(3) non-profit, tribal business concern and Veteran's organization with fewer than 500 employees are eligible.
- 500-employee rule is applied on a per physical location basis, If you are an accommodation, food service or qualified franchise
- Relaxed credit criteria: no credit elsewhere, personal resource test or standard SBA requirements as the program focus is on operating expenses and payroll. The loan documentation is centered around those parameters.

Eligibility Requirements



Paycheck Protection Program (PPP)

- 500 employees; **OR**
- Small business concern, including sole proprietorships, independent contractors and eligible self-employed individuals
 - Affiliation waived for NAICS code 72 (Accommodation and Food Services); franchises in the SBA Franchise Directory; and businesses that receive financial assistance from licensed SBIC.
- Operational as of 02/15/2020; **AND**
- Had employees for whom it paid salaries and payroll taxes OR paid independent contractors (i.e., 1099)
- 501(c)(3) nonprofit organizations, veterans organizations, tribal business concerns.

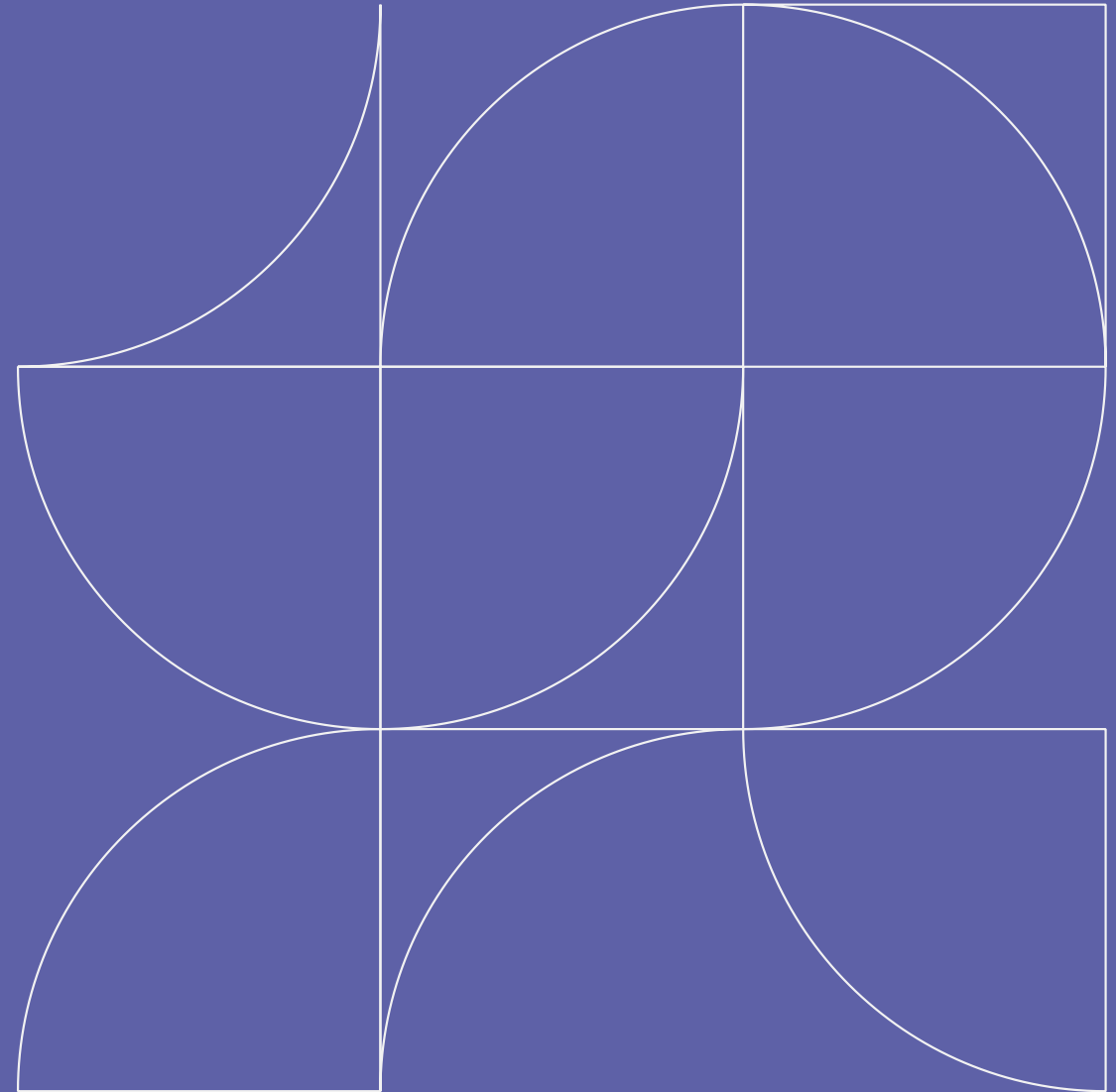
Eligibility Requirements



PPP Loan Forgiveness Eligibility

- Forgiveness for costs incurred and payments made during the covered period
 - Payroll costs, interest payments on any covered mortgage obligation, payments on rent obligations, any covered utility payment.
- Reductions or increases in forgiveness will depend on changes in FTE (# of staff and re-hiring) and/or salary during the applicable period.
 - (Average eligible forgiveness) x (average FTE per month during covered period/ (average FTE per month between 2/15/2019 and 6/30/2019) OR (average FTE per month between 1/1/2020 and 2/29/2020...OR, if seasonal employer, average FTE per month during 2/15/2019 and 6/30/2020.
- Other considerations:
 - No reduction of forgiveness if reduction of FTE's or salaries of PPP loan recipient for 30 days after enactment. Reduction of forgiveness amount for wages cut by more than 25% during previous quarter before 2/15/2020
 - Amount forgiven will not be reduced if either reduction of FTE's or reduction of salaries returns by 6/30/2020

Documentation Requirements



Documentation Requirements



Section 7(a) Loans (Standard and Express Loans)

- SBA Forms: 1919 (borrower information); 912 (personal history); 413 (personal financial statement, IRS 4506T)
- Financial statement: P&L-3years, Balance Sheet, Reconciliation of Net Worth, Interim Balance Sheet, Interim P&L, 1-year projected financial statements
- Business license, loan application history, income tax returns, resumes, resumes, business overview and history, business lease, etc.
- 7(a) loans are based upon the lender's established and proven internal policies and procedures and may vary by lender

Documentation Requirements



Express Bridge Loan

- SBA Forms: 1919 (borrower information); 159 (fee disclosure); 601 (agreement of compliance); 4506-T (IRS tax information); 912 (personal history)
- Other forms as required by lender
- Only available to existing clients and are based upon the lender's established and proven internal policies and procedures and may vary by lender

Documentation Requirements



Economic Injury Disaster Loans

- SBA Forms: 5 (loan application); 4506T (IRS tax information); Form 2202 (schedule of liabilities); 413 (personal financial statement)
- Most recent Federal Income Tax Return (including all schedules)

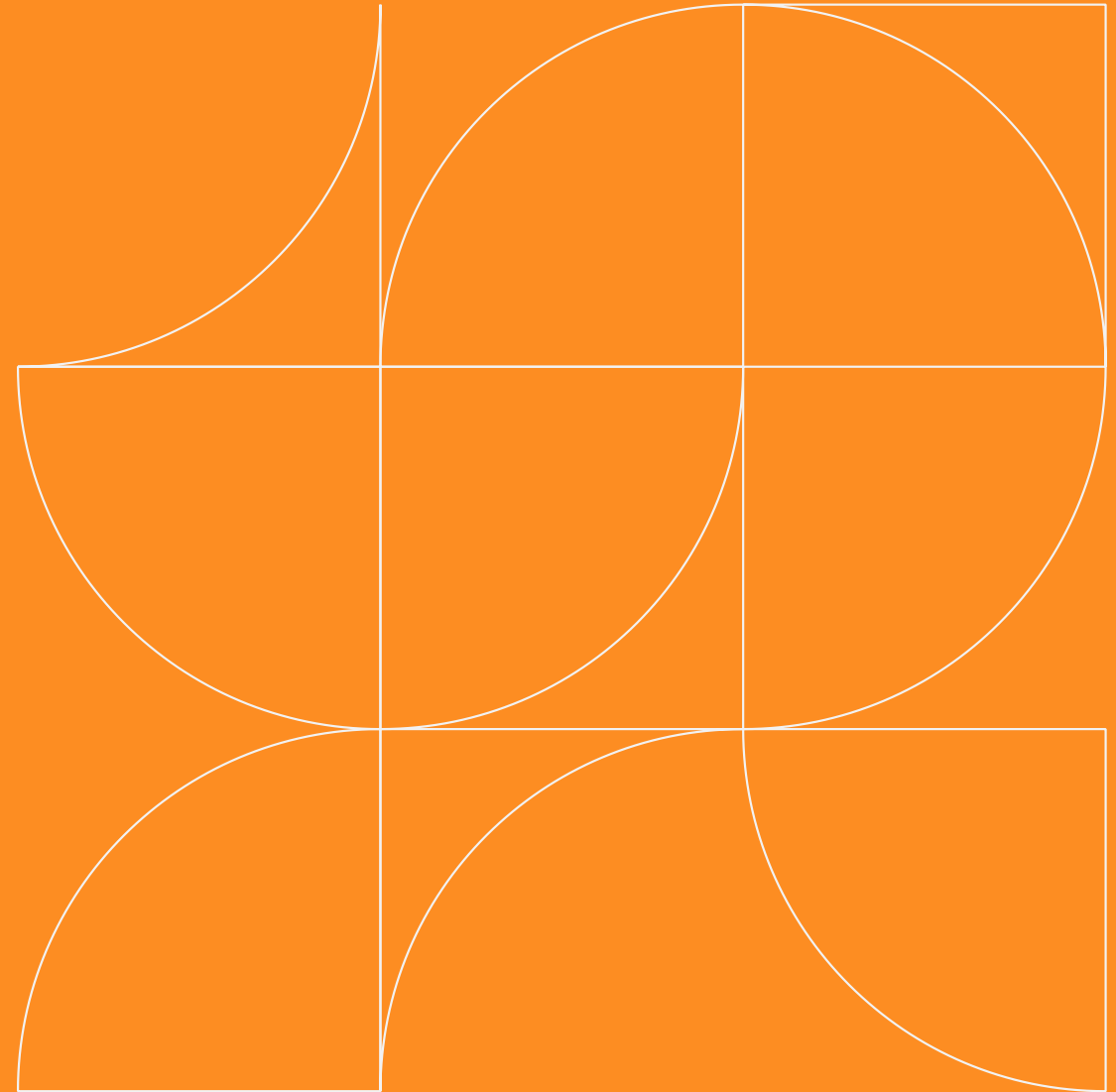
Documentation Requirements



Paycheck Protection Program

- Awaiting guidance, but likely focus payroll filings, unemployment insurance filings, lease/mortgage statements, and certification by business owner of these costs
- Also will require certification by borrower (not lender) of necessity due to economic conditions
- Borrower certification
- **Lender documentation requirements will be made available by SBA on Friday, April 3**

Application Process, Cycle and Disbursement



Application Process, Cycle and Disbursement



Section 7(a) Loans

(Standard and Express & Express Bridge Loans)

- Applications are submitted directly to the SBA Lender.
- Loan processing and closing is also dependent upon the lenders established policies and procedures and this will vary with each SBA lender.
- Delegated lenders (also SBA Express) approved these loans directly and take the risk of determining eligibility and credit worthiness.
- Non-delegated lenders submit these loans to the SBA processing center for approval.
- Average cycle time will vary from lender to lender, but expect 3 weeks to 90 days

Application Process, Cycle and Disbursement



Economic Injury Disaster Loan (EIDL)

- Application submitted directly to the SBA at [SBA.gov](https://www.sba.gov).
- This program is designed to provide the quickest access to capital.
- Cycle time from application to disbursement is dependent upon current SBA processing capacity, but normally 60-90 days.

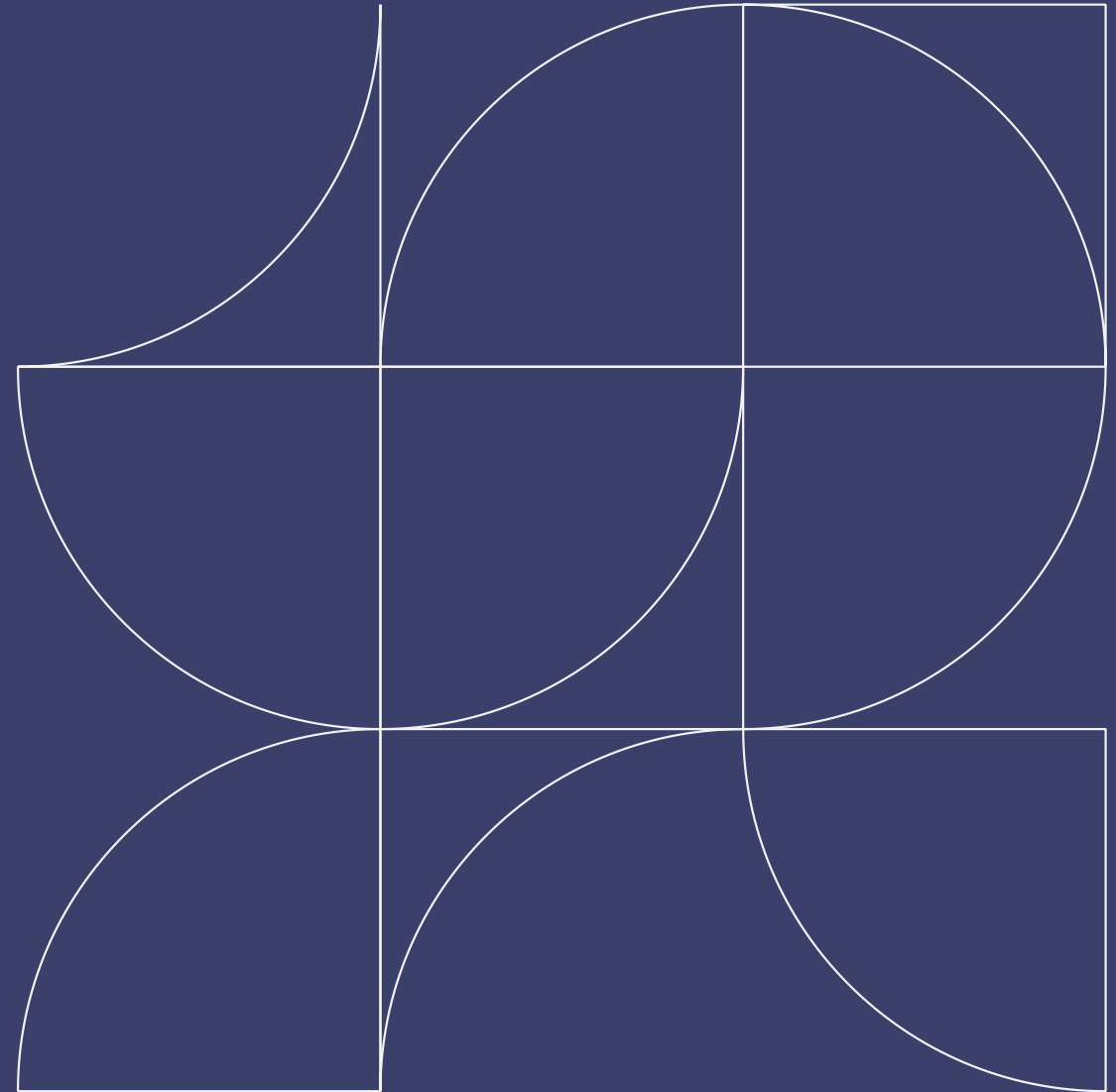
Application Process, Cycle and Disbursement



Paycheck Protection Program (PPP)

- April 3 –small businesses and sole proprietorships can apply (April 10 independent contractors and sole self-employed).
- PPP is intended to provide a streamlined application process for lenders to provide better access to capital with minimal requirements and documentation.
- Application through existing SBA Lender, federally insured depository institution, federally insured credit union, and participating Farm Credit System.
- The SBA has all but eliminated any lender certifications thus mitigating any fear of losing the guaranty.
- Program delivery and cycle times will vary with each lender as this is a program that has never been offered.
- Loan approval and disbursement will vary by lender, but expect 14-30 days.

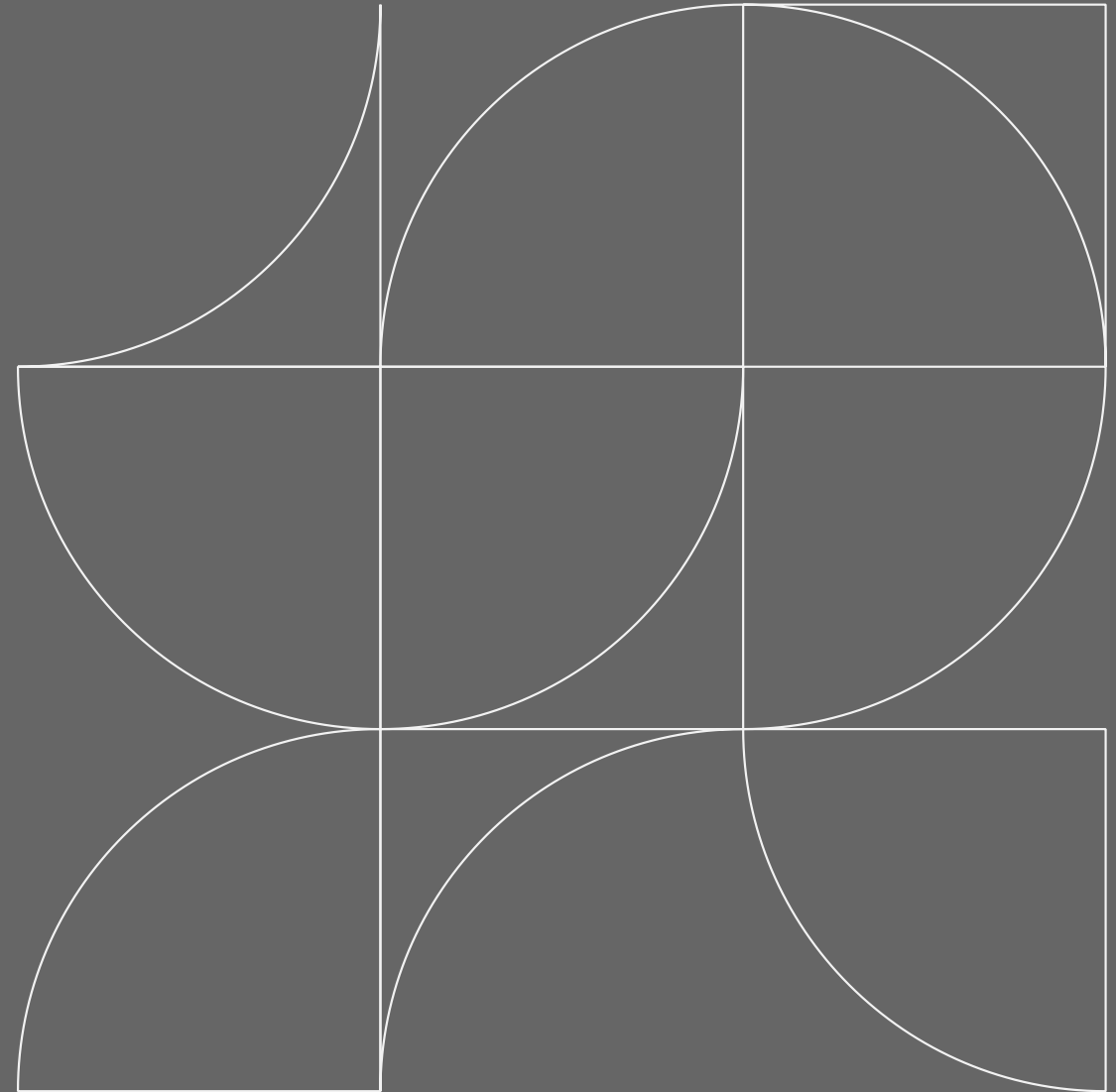
Summary Table



	Max. Loan Size	Use of Proceeds	Interest Rate	Repayment Terms	Down Payment/ Collateral/ Personal GU/ 620-40 Credit Req'd?	Average Cycle Time (App-Disb)	Deferment/ Loan Forgiveness
7(a) Standard and Express	\$1,000,000 (Express); 5,000,000 (standard) 50% GU 1% GU fee on loan amount	long and short-term working capital	Fixed/Variable at Loans less than 7 years: \$0 - \$25,000 Prime + 4.25% \$25,001 - \$50,000 P + 3.25% Over \$50,000 Prime + 2.25% Loans 7 years or longer: 0 - \$25,000 Prime + 4.75% \$25,001 - \$50,000 P + 3.75% Over \$50,000 Prime + 2.75%	Max 10 years (real estate is 25 years) *Prepayment Penalty (15+ years)	Yes	3 weeks-90 days	Yes (6 months deferment)
Express Bridge Loan	\$25,000 50% GU 1% GU Fee on loan amount	survival and/or re-opening of small business	Fixed/Variable at Loans less than 7 years: \$0 - \$25,000 Prime + 4.25% \$25,001 - \$50,000 P + 3.25% Over \$50,000 Prime + 2.25% Loans 7 years or longer: 0 - \$25,000 Prime + 4.75% \$25,001 - \$50,000 P + 3.75% Over \$50,000 Prime + 2.75%	Max 7 years	Varies by lender	20-30 days	No
Economic Injury Disaster Loan*	\$2,000,000 SBA-originated direct loan	pay fixed debts, payroll, AP, and other bills	3.75% or 2.75% (non-profit)	Max 30 Years	Yes (credit/ collateral)	60-90 days	No
Paycheck Protection Program* (CET and Affiliation Waived)	\$10,000,000 100% GU No Fees	short-term on-going expenses (e.g., payroll, rent, utilities) ++ONLY 25% available for non-payroll expenses.	.50% fixed rate for non-forgiveness portion	Max 2 years (non-forgiveness portion)	No (but borrower cert)	14-30 days	Yes (forgiveness for qualifying expenses AND deferment for 6 months)

*Cannot use proceeds for the same expense

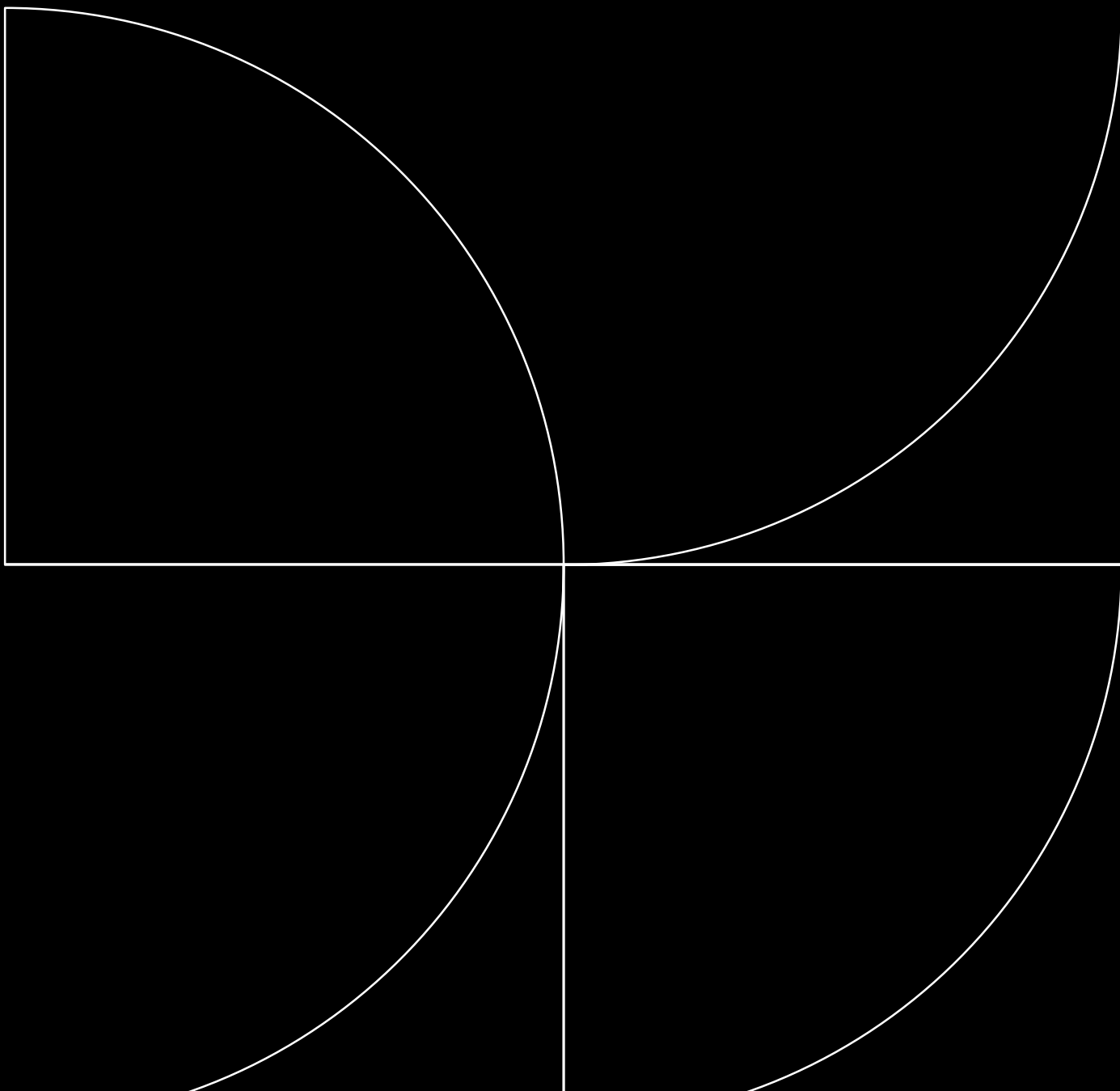
Business Considerations



Business Considerations

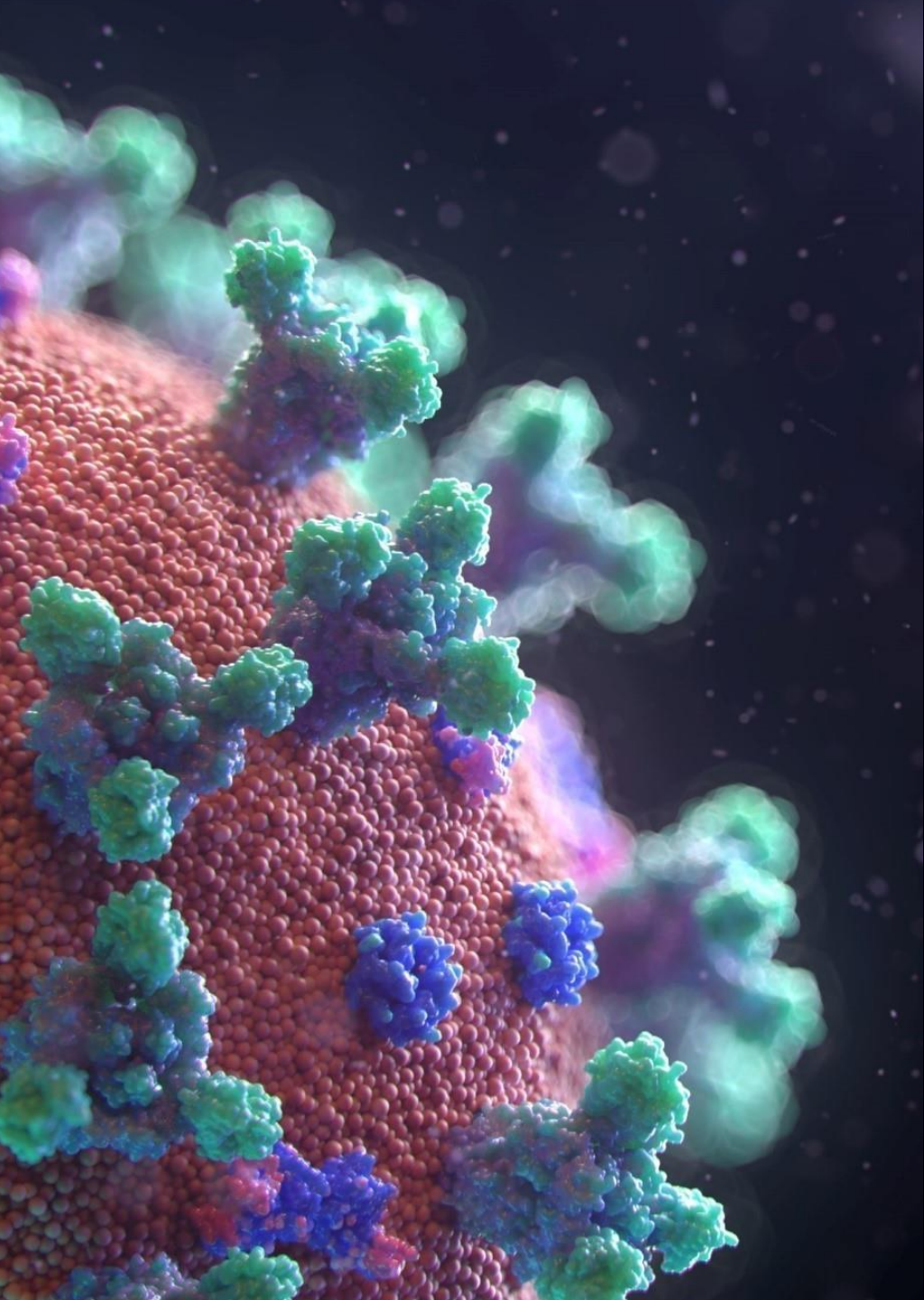


- Business and financial analysis is critical to the future success of your business, including whether/how the business obtains access to stimulus programs.
 - Important to understand the issues that are and will impact the business, as well as which program(s) addresses those specific issues.
 - Case Study: Axxum Technology and Cloudburst Security
- Seek advisors to evaluate eligibility, documentation and available options, as well as implementation by the business of the solution (both financial and operational).
- Begin to assemble and organize financial and other business records to ensure successful application, as well as post-closing reporting obligations (e.g., PPP and any **post-closing** loan forgiveness documentation requirements).
- Deliver on your strategy, including operational changes to the business, as well as your plan for servicing any future obligations.



Questions?

Thank you



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