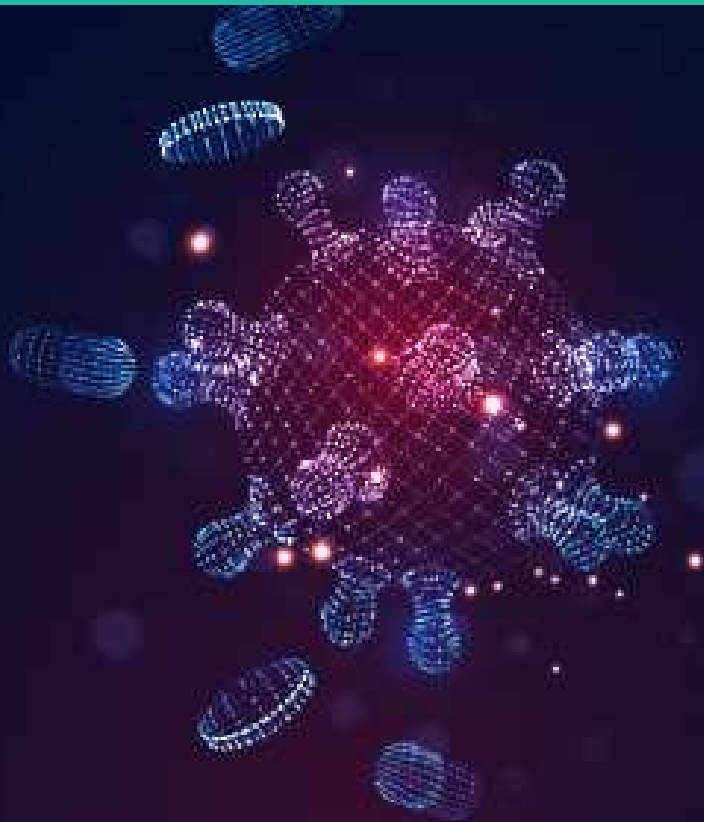


# Coronavirus Aid, Relief and Economic Security (CARES) Act



## COVID-19

Sean Cook, Jeff Segal and Ford Turrell

April 1, 2020

© 2020 Warner Norcross + Judd LLP

These materials are for educational use only. This is not legal advice and does not create an attorney-client relationship.



Warner Norcross + Judd

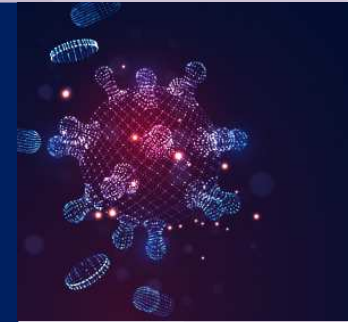
# Small Business Administration Loans



1. 7(a) Loans: Up to \$5 million for certain business that meet specific size standards prescribed by SBA. For working capital, purchasing equipment, leasehold improvements, inventory, purchasing real estate, and refinancing debt under certain circumstances.
  - Require personal guarantees, collateral, affiliation rules, unable to find credit elsewhere.
2. 7(a) Express Loans: Up to \$350,000. Accelerated turnaround for receiving these loans.
3. Disaster Loans:
  - Physical Disaster Loans—For damaged or destroyed property (i.e., in a tornado or hurricane). Likely not as applicable in this situation.
  - Economic Injury Disaster Loans (EIDLs)—For any economic injury (i.e. lost revenue) to the business.

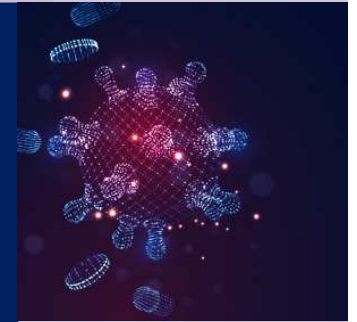
# SBA EIDL Loans

1. Existing loan program. Loans are issued by the SBA/Dep't of Treasury directly, not from the bank, although SBA may change this in order to expedite the lending process.
2. Available in declared disaster areas, which now includes all 50 U.S. States.
3. Up to \$2 million.
4. Fixed interest less than 4% generally.
5. Terms up to 30 years.
6. The actual amount of each loan will be based on the business's actual economic injury and financial needs.
7. Not forgivable.



# EIDL Loans Under CARES Act

1. Businesses, including most private nonprofits, with not more than 500 employees are now eligible for EIDL loans. Religious organizations are not eligible.
2. The covered period begins January 31, 2020 and ends December 31, 2020.
3. EIDL loans made during the covered period will not require (i) a personal guarantee on advances and loans of \$200,000 or less; (ii) an applicant to be in business for a 1-year period prior to the disaster (except the business must have been in operation on January 31, 2020); and (iii) an applicant be unable to find credit elsewhere. Further, lenders are authorized to approve applicants based solely on credit scores or “alternative appropriate methods to determine an applicant’s ability to repay.”
4. SBA affiliation rules are not waived for EIDL Loans.



# EIDL Loans Under the CARES Act



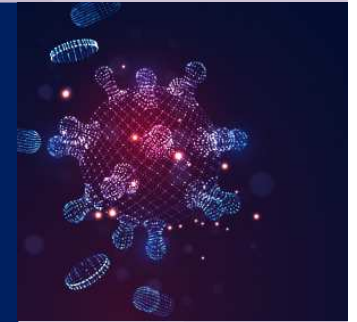
## 1. EIDL Emergency Grant

- up to \$10,000 within 2-3 days to businesses while their EIDL loan is being processed. The advance may be used to (i) provide sick leave to employees unable to work due to the direct effect of COVID-19; (ii) maintain payroll to retain employees during business disruptions; (iii) meet increased costs to obtain materials unavailable from the entity's original source due to interrupted supply chains; (iv) make rent or mortgage payments; and (v) repay obligations that cannot be met due to revenue losses.
- The advance does not have to be repaid even if the EIDL loan application is denied.
- However, if an applicant that receives an advance transfers into, or is approved for a forgivable Paycheck Protection loan, the advance amount will be reduced from the loan forgiveness amount.

Businesses may receive a loan under the Paycheck Protection Program and an EIDL loan so long as they apply the loans to different items. For example, a business may receive a Paycheck Protection loan for payroll assistance and an EIDL to purchase inventory or equipment.

# Paycheck Protection Loans

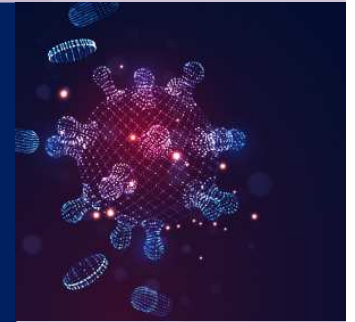
1. Considered 7(a) Loans.
2. Program open until June 30, 2020, but apply early.
3. Eligible Borrowers: Any business concern, 501(c)(3) nonprofit, certain veterans organizations, and Tribal businesses with not more than the greater of: 500 employees, or if applicable, the number of employees established by SBA in its size standards. Sole proprietors, independent contractors, and eligible self-employed individuals are also eligible loan recipients, so long as they submit documentation (such as tax filings) validating their eligibility
4. SBA affiliation rules apply to calculate the number of employees: SBA will aggregate the number of company employees with the employees of all of the company's "affiliates" (parents, subsidiaries, sister companies). VERY broad affiliation rules.
  - **Except:** Under the CARES Act, Affiliation rules do not apply to—businesses in the accommodation and food service sectors (sector 72 under the North American Industry Classification System) with 500 or fewer employees; Franchise businesses assigned a franchise identifier code by the SBA; and any business that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act.



# Paycheck Protection Loans

## Loan Amount

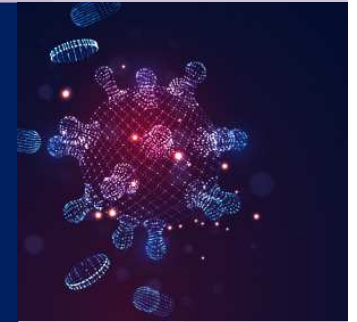
- Lesser of \$10 million or 2.5 times the average total monthly payroll costs incurred in the one-year period before the loan is made, or for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019 or from March 1, 2019 to June 30, 2019.
- PLUS any amounts loaned under the EIDL Program between January 31, 2020, which will be refinanced under the Paycheck loan.



# Paycheck Protection Loans

## “Payroll Costs”

- Compensation to employees, such as salary, wage, commissions, cash tips, or other similar compensation;
- Paid vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation (i.e. severance payments);
- Payment for group health benefits, including insurance premiums;
- Retirement benefits;
- State and local payroll taxes;
- Compensation to sole proprietors or independent contractors up to \$100,000 in 1 year, prorated for the covered period (February 15, 2020 to June 30, 2020)

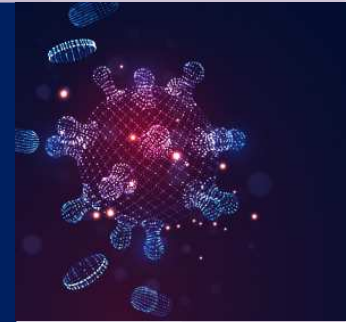




# Paycheck Protection Loans

## Not “Payroll Costs”

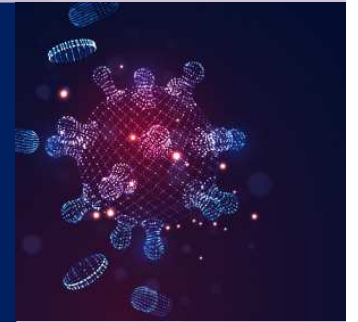
- The compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period (February 15, 2020 to June 30, 2020)
- Certain federal taxes
- Compensation to employees whose principal place of residence is outside of the United States;
- Sick and family leave wages for which credit is allowed under the Families First Coronavirus Response Act



# Paycheck Protection Loans

## Basic Terms

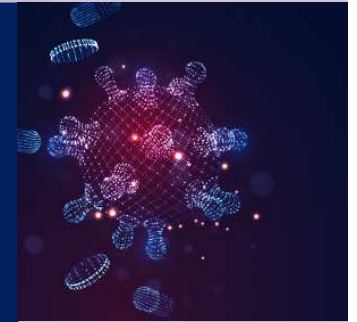
- No guaranty; no collateral
- 100% SBA Guaranty
- 0.5% fixed interest
- 2 year term
- Deferred payments for 6 months.
- No requirement that an applicant be unable to obtain financial assistance elsewhere
- No fees
- No prepayment penalty
- Forgivable



# Paycheck Protection Loans

## Borrower Requirements

- Go to your lender! Contact an SBA Approved lender, federally insured depository institution, federally insured credit union or farm credit system institution. Start with your existing lender.
- Provide payroll information to calculate the amount of the loan.
- Applications were posted online on 3/31/20.
- Borrower Certification: Borrowers have to certify that (i) the uncertainty of current economic conditions **makes the loan request necessary**; (ii) that funds will be used to retain workers and maintain payroll, and (iii) that the recipient does not have an application pending and has not received funding under this section for the same purpose and duplicative amounts.



# Paycheck Protection Loans

## Uses

- Any permitted uses of 7(a) loans
- Payroll Costs
- Costs related to group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries, commissions, or other forms of compensation;
- Interest payments on mortgage obligations;
- Rent payments, including those under a lease agreement;
- Utilities;
- Interest payments on any other debt obligations that were incurred before February 15, 2020.



# Paycheck Protection Loans

## Forgiveness

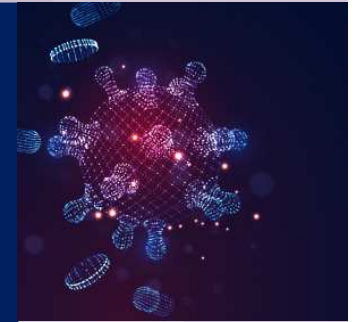
- Forgivable in an amount up to the amount paid by the business for payroll (including wages to tipped employees), rent, utilities, and mortgage interest during the 8 weeks after origination of the loan, but not more than the principal amount of the loan.
- The amount forgiven will be reduced proportionally by a formula related to layoffs or salary or wage reductions during the 8 week period after origination of the loan. A borrower is able to avoid this reduction by rehiring employees and eliminating the reduction in salary.
- The lender forgives the principal, and the SBA pays any accrued interest to the lender.
- The borrower has to apply to the lender for the forgiveness and supply supporting documentation as prescribed in the Act.



# Paycheck Protection Loans

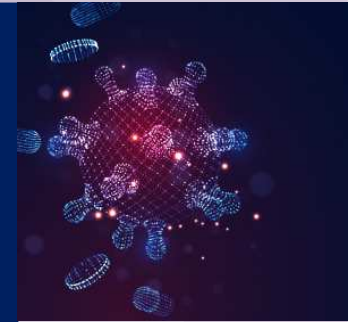
## Next Steps:

- We are waiting on guidance from the SBA.
- Start putting together your documentation, analyzing affiliation issues, reviewing/preparing the proposed application.
- Talk to your lender!
- Starting April 3, 2020, small businesses and sole proprietorships can apply.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply.
- If you are going to get an SBA loan, talk to your lender about existing indebtedness so you do not run afoul of a covenant in existing agreements.



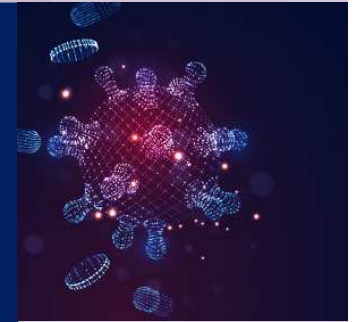
# Employee Retention Tax Credit

- Eligible employers will receive a 50% tax credit on the first \$10,000 of qualified wages (includes qualified health care expenses):
  - Partially or fully suspended operations due to an order; or
  - Significant decline (50%) in gross receipts from same quarter of prior year
- Wages after March 12<sup>th</sup> through December 31, 2020
- This is mandatory unless the employer elects out
- For employees not providing services (unless less than 100 employees then whether or not providing services) – single employer rules apply
- Restrictions if receiving a Small Business Interruption Loan



# Employee Retention Tax Credit

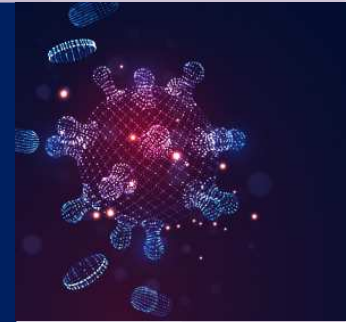
- Anti-stuffing rule
- Restriction on wages paid to Related Party to employer
- No duplicate benefit with wages qualifying for certain other credits
- Governmental entities not eligible
- All activities of a 501(c)(3) qualify - this provision appears to avoid confusion between tax exempt activities and activities subject to UBIT
- Section 6656 penalty waiver
- Rules under Section 280C apply – no deduction for wages qualifying for credit





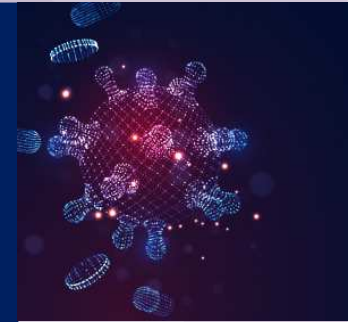
# Employee Retention Tax Credit

- Credit against Employer FICA obligation
- Excess credit of Employer FICA obligation is refundable
- Rules under Section 280C apply – no deduction for wages qualifying for credit



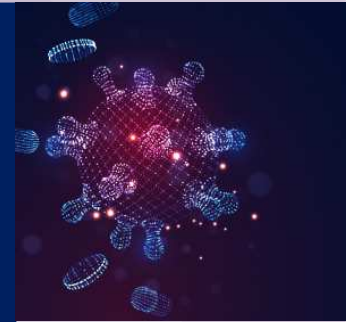
# Other Business Provisions

- AMT credit use expanded
- Elimination of 80% Limit for NOLs and allowing 5 year carryback for 2018 – 2020 NOLs
- Interest expense limit increased from 30% to 50% for 2019 and 2020
- Qualified improvement property eligible for 100% write off effective January 1, 2018
- Delay of Payment of FICA obligations until the end of 2021 and 2022



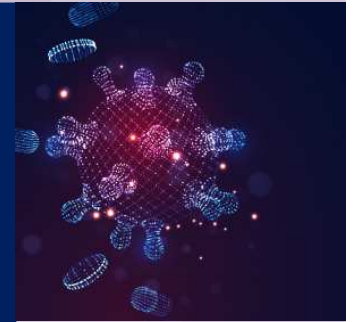
# Other Business Provisions

- No excise tax on spirits used for hand sanitizer for 2020
- Increased charitable contribution limit from 10% to 25%
- Increased limit for contribution of food inventory from 15% to 25%



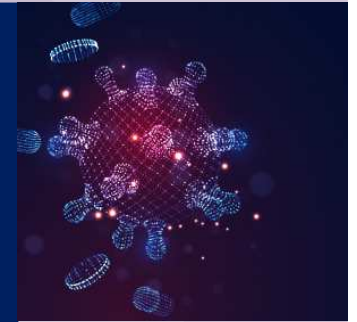
# Individual Provisions

- Rebates for individuals - \$1,200 and \$500 per child – less than \$99,000 of income
- \$300 above the line charitable contribution
- No percentage limit on itemized cash contributions for 2020
- Relaxed excess business loss rules – extends implementation for most taxpayers until 2021



# Individual Provisions

- No penalty for not withdrawing RMD from retirement plan in 2020
- No early withdrawal penalty up to 100% withdrawal from a retirement plan and ability to re-contribute
- Increased plan loan amount from \$50,000 to \$100,000 and favorable repayment amounts
- Delay on contribution to defined benefit plan of a single plan
- Payments in 2020 from employer for education up to \$5,250 not taxable income



# TITLE III – Supporting America’s Health Care System

- Addressing Supply Chain Shortages
- Legislation is mostly aimed at responding to clear gaps in the system that have been exposed
- National Academies of Science, Engineering, and Medicine to examine and report on US medical-supply chain regarding US dependence on critical drugs and devices sources outside of the US and ways to improve US supply
- Requires the national stockpile to include personal protective equipment and includes respiratory devices as “covered countermeasures”
- Creates additional reporting requirements for manufacturers to report discontinuation or disruption of sourcing materials. Requires manufacturers to implement risk-management plans related to shortages.



# Access to Health Care for COVID-19 Patients



- Commercial payers can reimburse for diagnostic testing at previously negotiated rates. If no rate previously negotiated, rate is equal to cash price set by provider and subject to negotiation.
- All entities providing COVID-19 diagnostic tests are required to post the cash price on their website. HHS can assess civil monetary penalties up to \$300 per day for noncompliance.
- Health plans are required to provide rapid coverage for services.
- \$1.3 billion appropriated for entities for prevention, diagnosis, and treatment.
- Public Health Service Act is amended regarding grants rural and small providers related to telehealth; warrants separate discussion.
- Federal and state liability limited for volunteer health care professionals.

# Access to Health Care for COVID-19 Patients Cont'd

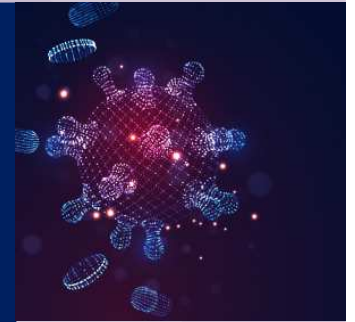


- SAMHSA: confidentiality and disclosure of substance use disorder patient records amended to allow certain re-disclosures to covered entities, business associates, or other programs in accordance with HIPAA after obtaining the patient's prior written consent.
- State agency or area agency on aging can transfer up 100% of the funds received by the agency to meet the needs of the state or area served, and the same meaning shall be given to an individual unable to obtain nutrition due to social distancing as one who is homebound due to illness.
- Provides that within 180 days of the passage of the Act, the Secretary of HHS shall issue guidance on the sharing of patients' protected health information (PHI) related to COVID-19, including guidance on compliance with HIPAA regulations and applicable policies.
- Secretary of HHS shall carry out a national awareness campaign relating to the importance and safety of blood donation, and the need of for donations.



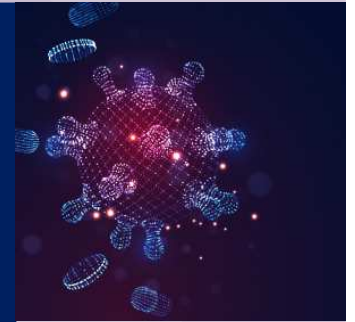
# Innovation

- Removes cap on “other transaction authorities” – allows for competitive procedures for government and industry to enter into agreements for projects related to public-health emergencies. The gov’t also cannot cancel agreements due solely to the applicable emergency ending.
- There are new provisions to expedite development and review of new animal drugs if there is evidence that an animal disease has the potential to cause serious adverse-health consequences or life-threatening diseases in humans.



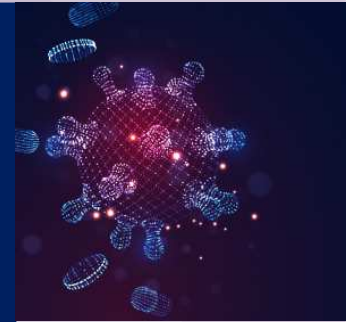
# Health Care Workforce

- Reauthorizes significant appropriations (hundreds of \$millions) for certain entities that teach and train under-represented minorities in health care programs, for scholarships to students in health-care professions from disadvantaged financial backgrounds, and for certain primary-care training programs and educational institutions.
- Grant money also available to certain education and training programs related to geriatrics.
- Additional focus on grants related to funding nursing workforce development for certain eligible programs.



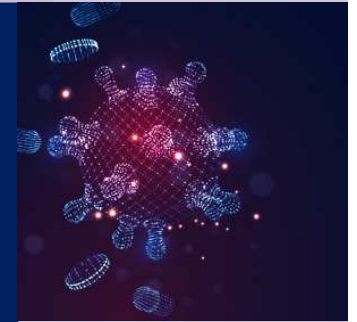
# Finance Committee Provisions

- Certain location requirements that are typically prerequisites for FQHC or RHC to be reimbursed for telehealth services are waived during the emergency period. Face-to-face requirement for ESRD patients is waived during emergency period. Face-to-face requirement for hospice recertification is waived during emergency period.
- HHS Secretary allowed to consider other ways to encourage telehealth during emergency.
- Certain home-health provisions expanded to allow advance practice providers to treat and be reimbursed.



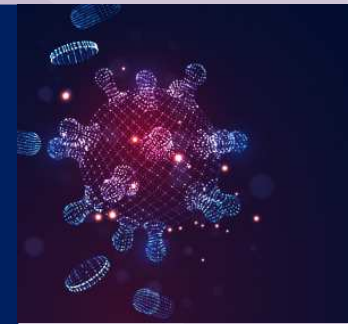
# Finance Committee Provisions, Cont'd

- Inpatient Prospective Payment System weighting factor increased by 20% for individuals diagnosed with COVID-19 that are discharged during the emergency period.
- Certain rules related to inpatient rehab and long-term-care hospitals are waived during emergency period (three-hour rule, discharge percentages, site-neutral payment rates).
- Payment rates for DME adjusted for rural and noncontiguous areas.
- Vaccines covered under Medicare Part B without cost sharing. Individuals can obtain up to 3-month supply of covered drugs.
- Home and community care payments expanded to include payments for home and community-based services, in acute-care hospital, where certain requirements are met.

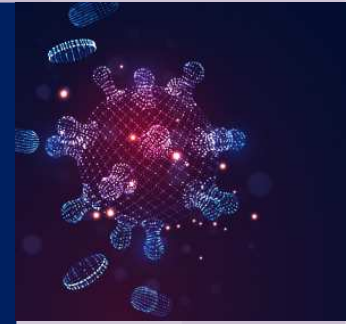


# Finance Committee Provisions, Cont'd

- The definition of uninsured individual added to Social Security Act by FFCRA is supplemented and provides that uninsured individuals can be tested for COVID-19 without cost-sharing in any state Medicaid program that chooses to offer the enrollment option.
- The CARES Act amends the FFCRA by removing the requirement that the diagnostic products administered are approved, cleared, or authorized under the Federal Food, Drug, and Cosmetic Act for medical assistance payments to be authorized.
- Certain clinical laboratory reporting requirements are extended by one year, and scheduled reductions in Medicare payment rates are no longer applicable.



# Finance Committee Provisions, Cont'd



- For the duration of the COVID-19 emergency, the existing hospital accelerated payment program is expanded and allows hospitals to request up to a six-month advanced payment on a periodic or lump sum basis.
- CAH's can elect to receive up to 125 percent of prior period payments, while other hospital types could receive up to 100 percent of prior period payments.
- Hospitals may request to delay payment of loans for up to four months. Hospitals may also request to have at least 12 months from the advance payment date to repay loans without interest.

# Q&A



# COVID-19

