



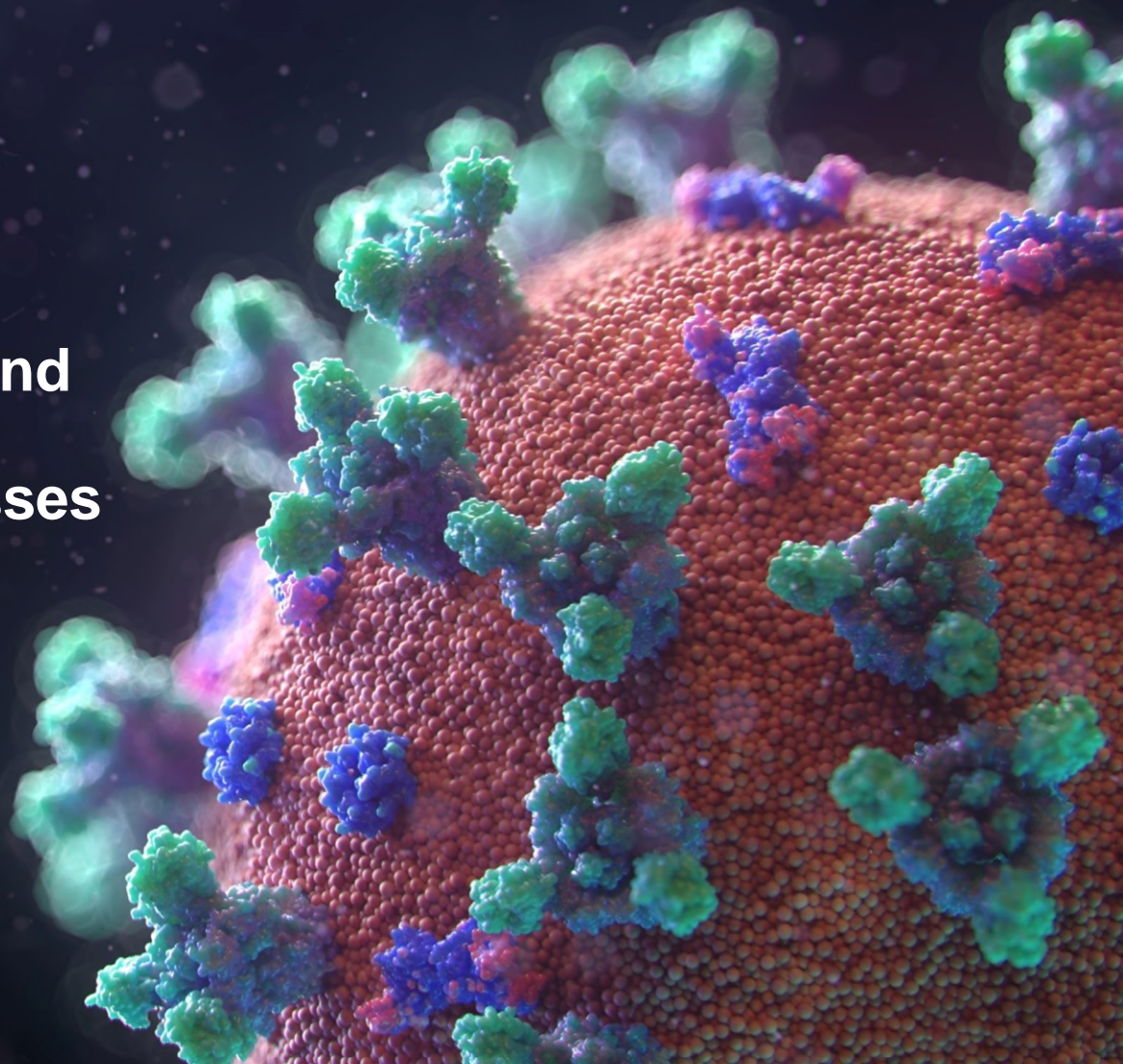
# Understanding Paycheck Protection Program Loans and Other SBA Stimulus for COVID-19 Impacted Businesses

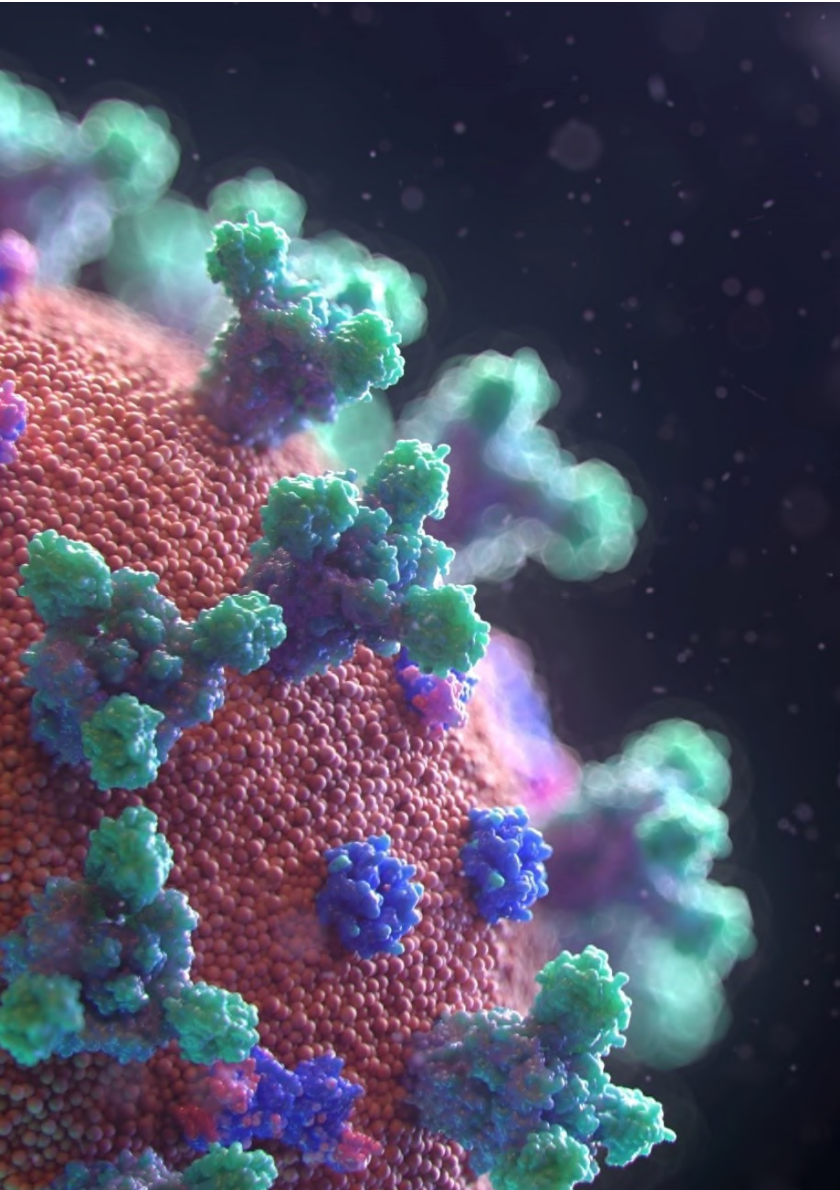
Suzanne Saxman, Partner  
Leslie Kersey, Counsel

April 9, 2020

**Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





## Announcements

- Visit Seyfarth's COVID-19 Resource Center to sign up for daily updates: [www.seyfarth.com/covid19](http://www.seyfarth.com/covid19)
- Seyfarth has a multi-disciplinary core group of COVID-19 First Responders. For help, please reach out to your Seyfarth attorney contact(s), or send an email to [ssaxman@seyfarth.com](mailto:ssaxman@seyfarth.com) or [lkersey@seyfarth.com](mailto:lkersey@seyfarth.com)



## Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

### **Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



# Speakers

---



**Suzanne Saxman**  
Partner  
Seyfarth Shaw LLP



**Leslie Kersey**  
Counsel  
Seyfarth Shaw LLP

# Paycheck Protection Program



- CARES Act makes **\$349 billion** available to small businesses through Paycheck Protection Program (PPP)
- PPP loans eligible for **100% forgiveness**
- **75%** of PPP loan amount **must be used for “payroll costs”**
- SBA and Treasury are publishing new guidance on the PPP program on a rolling basis
- Additional funding anticipated

**S. 3548**  
and health care response for individuals, families, and businesses affected by the 2020 coronavirus  
**IN THE SENATE OF THE UNITED STATES**  
MARCH 19, 2020  
ALEXANDER, Mr. CRAPO, Mr. GRASSLEY, Mr. RUBIO, Mr. SHELLEY, and Mr. WICKER introduced the following  
bill

# Who is Eligible for a PPP Loan?



1. “Small business concerns” and
2. Other businesses, 501(c)(3) nonprofits, 501(c)(19) veterans organizations, and tribal business concerns, in each case that employ not more than the greater of:
  - 500 employees with principal place of residence in US; or
  - SBA size standard in number of employees for the applicable industry of the business
  - NAICS code 72 (i.e., accommodation and food services) businesses can have 500 employees per physical location
3. Sole proprietorships, independent contractors and self-employed individuals

# Who is Eligible for a PPP Loan?



- PPP borrower must have been:
  - **Operational as of February 15, 2020** and
  - Had employees for which it paid salaries and payroll taxes or paid independent contractors (as reported on a Form 1099-MISC)
- SBA affiliation rules (13 CFR 121.301) generally apply in determining eligibility
  - Exceptions:
    - NAICS code 72 (accommodation and food services)
    - Franchises in the SBA Franchise Directory
    - Businesses that receive financial assistance from licensed SBIC

# Affiliation Rules



- Generally, affiliation exists when **one entity controls or has the power to control another**, or a third party controls or has the power to control both
- 4 bases to establish control:
  1. **Ownership** or power to control 50% or more of a business concern's voting stock
    - If no > 50% → Board of Directors, President, CEO
    - Ability to prevent quorum/block action by the board or shareholders
  2. **Stock options, convertible securities, def agreements to merge** – present effect (as if exercised)
  3. **Management** or board controls management or board of other concern
  4. **Identity of interest** between close relatives



# Application Process



- Application deadline: **June 30, 2020** (*first-come first-served*)
- Apply through existing lender
  - <https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>
  - Payroll costs supporting documentation (payroll tax filings, etc.)
- Applications for sole proprietors and independent contractors – beginning April 10, 2020
- Processing time will vary with each lender
  - Expect at least 14-30 days

## PPP: Key Terms

- **Eligible for 100% forgiveness**
- **1.00% interest rate** for non-forgiveness portion
- **2-year term**
- **No prepayment penalties**
- **No personal guarantee or collateral** required
- Credit elsewhere test waived
- 100% SBA guarantee
- **No SBA or lender fees**
- Payments of any unforgiven amounts **deferred for 6 months**
- Only one PPP per business concern
- **At least 75% of the PPP loan proceeds must be used for payroll costs**

## How to Calculate Maximum Loan Amount



Max loan size is **lesser** of **\$10 million** and **amount determined below:**

- **Step 1:** **Total payroll costs** from the applicable period for U.S. employees
- **Step 2:** **Subtract salary** paid to any employee **in excess of \$100,000** per year (prorated for the applicable period)
  - Sole proprietors/ICs subtract any income/net earnings amounts in excess of \$100,000 per year (prorated)
- **Step 3:** **Divide the amount from Step 2 by number of months in applicable period** to get average monthly payroll costs
- **Step 4:** **Multiply** the average monthly payroll costs from Step 3 **by 2.5**
- **Step 5:** **Add** the outstanding amount of any SBA **EIDL** made between January 31, 2020 and April 3, 2020, **less** the amount of any “advance” under an SBA EIDL

# How to Calculate Maximum Loan Amount



Dates in Business	Applicable Period
Between Feb 15, 2019 and June 30, 2019 (other than seasonal business)	12 months prior to loan application date or calendar year 2019
Between Feb 15, 2019 and June 30, 2019 (seasonal business)	At borrowers election:  Feb 15, 2019 through June 30, 2019 <b>or</b> March 1, 2019 through June 30, 2019
Only after June 30, 2019	Jan 1, 2020 through Feb 29, 2020

# What Costs Count as Payroll Costs?

## For employers:

- Salaries, wages, commissions, or similar compensation;
- Payments of cash tip or equivalent;
- Payments of vacation, parental, family, medical, or sick leave;
- Allowances for dismissal or separation;
- Payments required for the provisions of group health care benefits, including insurance premiums;
- Payments of any retirement benefit; and
- Payments of State or local tax assessed on the compensation of employees

## For independent contractors/sole proprietors **ONLY**

- Payments of any compensation or income that is a wage, commission, income, net earnings from self-employment, or similar compensation, up to \$100,000 in 1 year, prorated for period between February 15, 2020 and June 30, 2020.

*NOTE: Independent contractors **do not count** as employees for purposes of PPP loan amount calculations (because they can apply for their own PPP loan)*

## What Costs Are Not Eligible as Payroll Costs?

- Individual employee salary in excess of \$100,000, as prorated for the period from February 15, 2020 through June 30, 2020;
- Taxes imposed or withheld under chapters 21, 22, and 24 of the Internal Revenue Code during the period from February 15, 2020 through June 30, 2020;
- Compensation of employees whose principal place of residence is outside of the U.S.; and
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA)



# Loan Forgiveness

- **At least 75% of loan proceeds must be used for payroll costs**
  - Remaining 25% can be used for additional payroll costs and/or covered mortgage interest, rent and utility payments
- Forgiveness amount reduced for decrease in number of employees or wages during the 8-week period after loan origination
  - No reduction for reduced headcount or wages between February 15, 2020 and April 26, 2020 if reduction eliminated by June 30, 2020
- Forgiveness documentation:
  - Evidence of number of FTEs on payroll and pay rates
    - IRS payroll tax filings and State income, payroll and unemployment insurance filings
  - Documentation of covered mortgage interest, rent and utility payments

# Loan Forgiveness Reductions

Forgiveness amount can be reduced in 2 ways:

1. Based on reduction in headcount:

- Reduced forgiveness amount **equals**
  - Original forgiveness amount **times**
  - Average FTE per month during 8 weeks from loan date **divided by either**
    - Average FTE per month between Feb 15, 2019 and June 30, 2019 OR
    - Average FTE per month between Jan 1, 2020 and Feb 29, 2020

2. Based on reduction in salaries:

- Forgiveness amount further reduced by amount of wage cuts exceeding wage cuts of 25% (as compared to previous quarter before Feb 15, 2020)

## Economic Injury Disaster Loans (EIDLs)

- **\$10 billion** for EIDLs related to COVID-19
- In business on **January 31, 2020** and suffered substantial economic damage as a result of COVID-19
- Eligible borrowers, generally:
  - “Small business concerns”
  - Businesses, cooperatives, ESOPs, and tribal small businesses, in each case with **not more than 500 employees**;
  - Individuals who operate under a sole proprietorship or as independent contractors, with or without employees;
  - Private nonprofit organizations; and
  - Small agricultural cooperatives
- Apply online through the SBA:  
<https://disasterloan.sba.gov/ela>

## Economic Injury Disaster Loans (EIDLs) – Key Terms

- **Maximum loan amount:** \$2 million
- **Maximum term:** 30 years
- **Maximum per annum interest rates:** 3.75% (for-profits); 2.75% (non-profits)
- Principal and interest may be deferred for up to four years
- **No personal guarantee** required for loans < \$200,000
- **No credit elsewhere test**
- Lender can approve based on credit score (no tax return required)
- **Affiliation rules apply**
- **No loan forgiveness**
- **Permitted uses:** expenses that could have been met had the disaster not occurred (including paid sick leave, payroll, increased costs to obtain materials, rent, mortgage payments, repaying debt obligations)
- Cannot use EIDL and PPP for same purposes
- EIDLs obtained between January 31, 2020 and April 3, 2020 can be **refinanced** into PPP for loan forgiveness purposes

## Economic Injury Disaster Grant

- Up to **\$10,000 of an EIDL** will be advanced **within three days** of receipt of an EIDL application as an “emergency grant”
- No requirement to repay advance
- Apply for an EIDL and then request the advance
- If a business applies for a PPP and an EIDL, any grant amount received will be subtracted from the PPP loan forgiveness amount

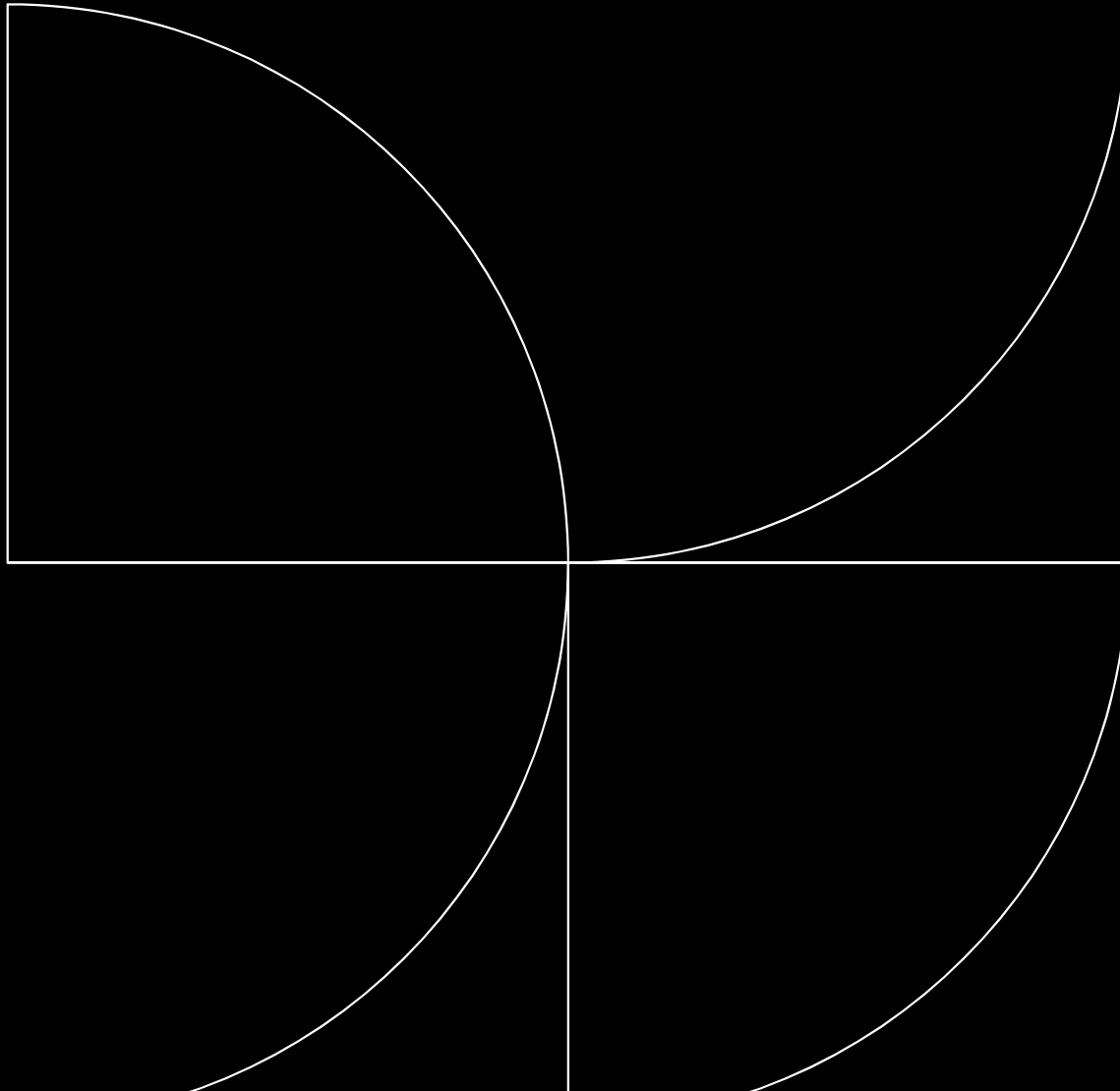
## Benefits for Existing and New SBA Loans

- SBA will make 6 months of principal, interest and fee payments on existing SBA loans
  - 7(a) (other than PPP), Community Advantage, 504, and Microloan programs
- Same for new SBA loans obtained between March 27, 2020 and September 27, 2020
- For loans currently in deferment, SBA will begin making payments after the deferment period



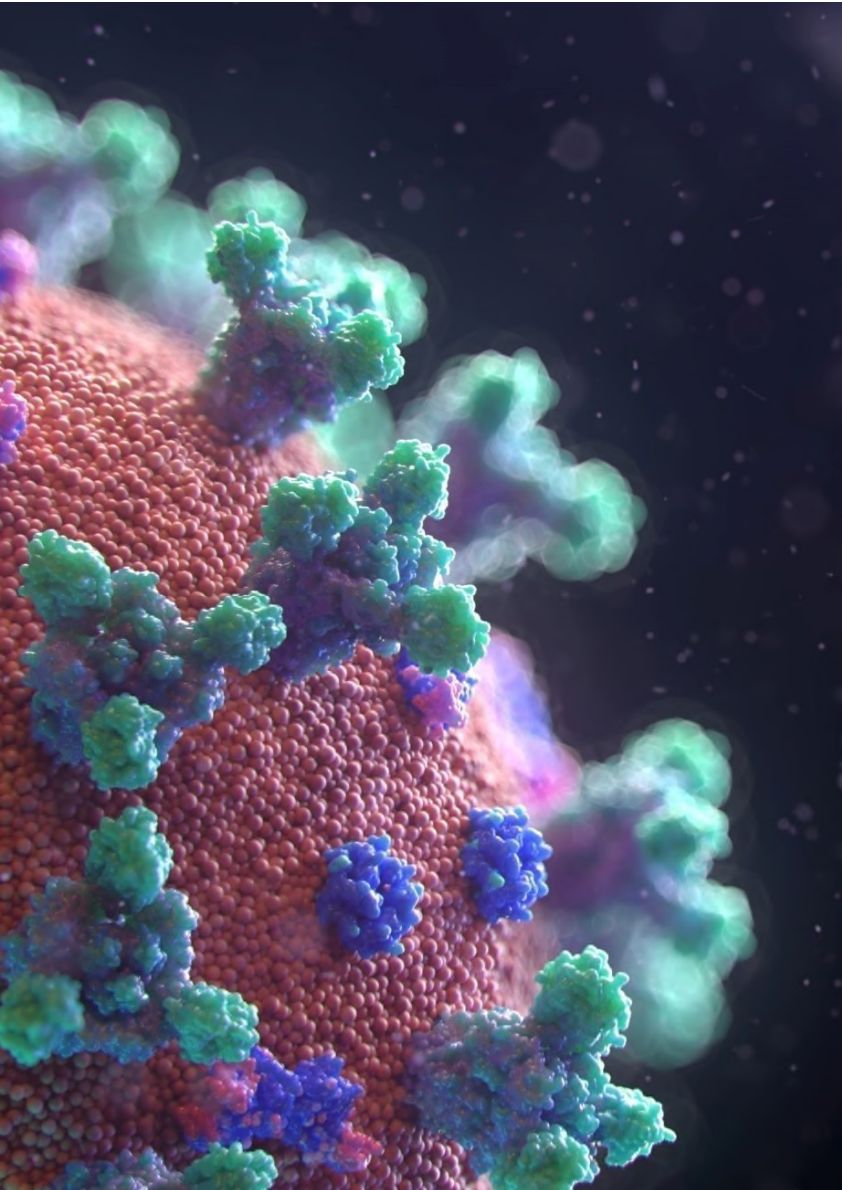
## Other Potential Sources of Funding

- Other existing SBA loan programs
- Main Street Lending Program
- State and local government funding programs
- Private sector
  - e.g., Fund for Investigative Journalism



**Questions?**

Thank you



**Visit Seyfarth's COVID-19  
Resource Center to sign up  
for daily updates:**

[www.seyfarth.com/covid19](http://www.seyfarth.com/covid19)