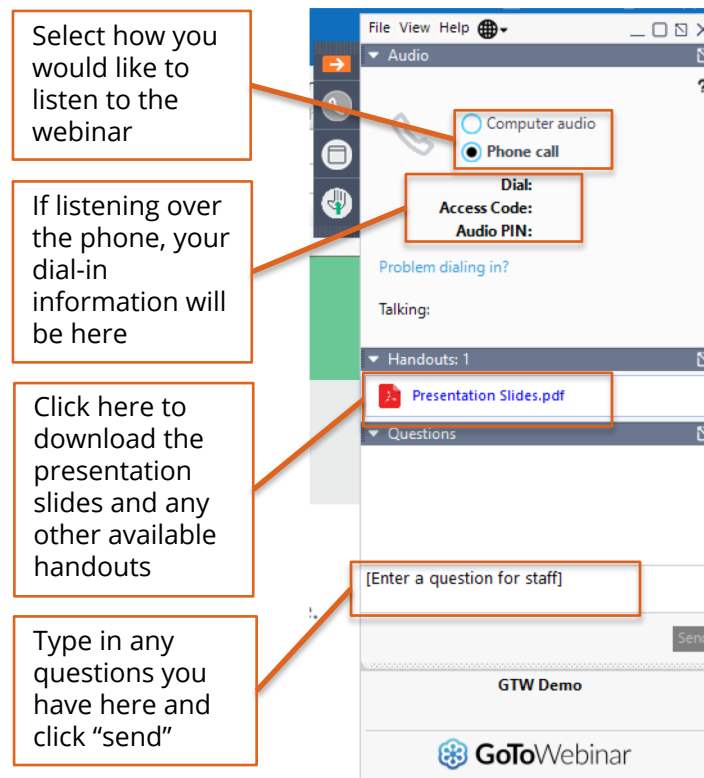


Financial Relief Under the CARES Act

Thank you for joining us today.
The webinar will begin shortly.

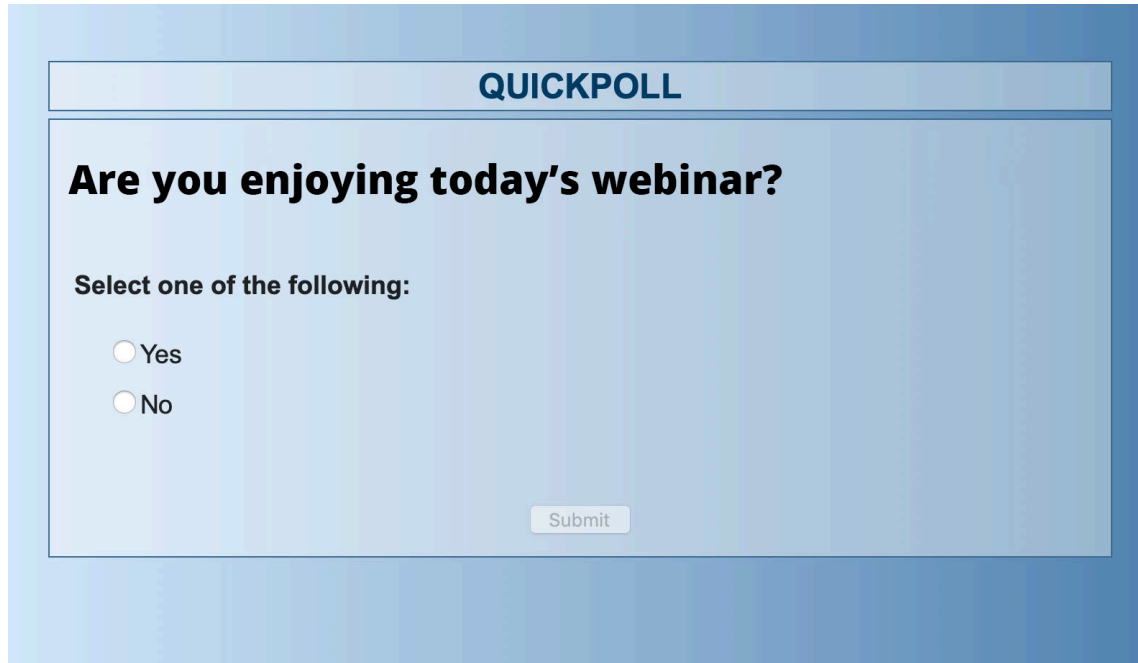
Operating the Navigation Panel



[Presentation Slides](#): Click the arrow on the handouts tab and then the document icon.

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Polling Questions Required for CPE Credit

A screenshot of a web-based polling interface. At the top, there is a light blue header bar with the word "QUICKPOLL" in dark blue capital letters. Below this header is a larger light blue rectangular area containing the poll question. The question "Are you enjoying today's webinar?" is written in bold black text. Underneath the question, the text "Select one of the following:" is displayed. There are two radio button options: "Yes" and "No", each preceded by a small white circle with a grey border. At the bottom right of the poll area, there is a small, light grey rectangular button with the word "Submit" in dark grey text.

QUICKPOLL

Are you enjoying today's webinar?

Select one of the following:

☐ Yes

☐ No

Submit

Throughout today's webinar we will be asking the audience a series of questions to provide a more interactive experience. To answer a polling question, click the button next to your answer and then click the 'Submit' button.

If you purchased CPE Credit for this webinar you are required to answer at least five (5) out of the seven (7) polling questions to receive full credit.

Financial Relief for Health Centers, Other Nonprofits and Businesses During the COVID-19 Public Health Emergency

April 16, 2020

Michael B. Glomb
Joseph P. Loman

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OVERVIEW

- Paycheck Protection Program
- Economic Injury Disaster Loans and Emergency Grants
- Department of Treasury Loans

Polling Question #1

Paycheck Protection Program

PAYCHECK PROTECTION PROGRAM

- Part of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act enacted on March 27, 2020.
- Provides the Small Business Administration (“SBA”) \$349 billion for a small business loan “Paycheck Protection Program.”
- The Paycheck Protection Program is a new type of SBA loan under the SBA’s broader “7(a) loan program” authority.
 - Significantly expands the scope of eligible borrowers;
 - Waives many of the traditional 7(a) program prerequisites and requirements;
 - Provides loans that are subject to full forgiveness under certain circumstances.

PAYCHECK PROTECTION PROGRAM

❖ **Is my organization eligible for a loan under the Paycheck Protection Program?**

Polling Question #2

PAYCHECK PROTECTION PROGRAM

- Loans are available for nonprofit entities such as health centers and other community-based organizations, for-profit businesses, veterans' organizations, and Tribal concerns, that have **no more than 500 employees**.
- Small businesses that are eligible for a 7(a) SBA loan based on applicable SBA size standards and alternative size standards also are eligible.
- Individuals who operate as a sole proprietorship or as an independent contractor and certain qualified self-employed individuals are eligible.

PAYCHECK PROTECTION PROGRAM

- In calculating the 500-employee threshold for the Paycheck Protection Program, most entities will be required to count the employees of all affiliates. However, we note that the affiliation rules have been waived for certain industries.
- For purposes of determining whether concerns or entities are affiliates of each other, the SBA will look to see whether one controls or has the power to control the other, or a third party or parties controls or has the power to control both. Moreover, it does not matter whether control is exercised, so long as the power to control exists.
- Affiliation can be based on, among other things, ownership; management; identity of interest; or based on the totality of the circumstances.

PAYCHECK PROTECTION PROGRAM

❖ **Are we eligible for a loan under the Paycheck Protection Program if we already receive funding through a grant for payroll expenses?**

PAYCHECK PROTECTION PROGRAM

- **Yes.** An applicant must certify that the loan is necessary to support its ongoing operations, but there is no requirement that it first use other available funds for payroll costs.
- The loan may be treated as a flexible additional source of funding for payroll and other eligible costs.
- For many grantees it will be best applied as a funding source of first resort before charging costs to federal grants.
- **Note that re-programming of grant awards may be required, consistent with grantor requirements.**

PAYCHECK PROTECTION PROGRAM

❖ **Can we apply for a loan under the Paycheck Protection Program if we have received an Economic Injury Disaster Loan (“EIDL”) from the SBA?**

PAYCHECK PROTECTION PROGRAM

- **Yes.** If you received an EIDL between January 31, 2020 and April 3, 2020, you may apply for a Paycheck Protection loan.
- If your EIDL was used for payroll costs, your Paycheck Protection loan must be used to refinance your EIDL. The proceeds from any emergency EIDL grant or advance, up to \$10,000, will be deducted from the total amount of the Paycheck Protection loan.
- If your EIDL was not used for payroll costs, it does not affect your eligibility for a Paycheck Protection loan.

PAYCHECK PROTECTION PROGRAM

❖ **What can the Paycheck Protection loan proceeds be used for?**

PAYCHECK PROTECTION PROGRAM

- Loans may be used to pay for certain costs incurred due to the COVID-19 pandemic, in particular:
 - Payroll costs;
 - Costs related to the continuation of group health care benefits during periods of sick leave, medical, or family leave, and insurance premiums;
 - Mortgage interest payments;
 - Rent; and utility costs incurred in the eight-week period following disbursement of the loan proceeds.
 - In addition, loan proceeds can be used to pay interest on any other debt obligation that was incurred before the covered period.

Polling Question #3

PAYCHECK PROTECTION PROGRAM

❖ What constitutes “payroll costs”?

- Salary, wages, commissions, or similar compensation;
- Payment of cash tip or equivalent;
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for separation or dismissal;
- Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums;
- Payment of any retirement benefit; or
- Payment of state and local taxes assessed on compensation of employees.

PAYCHECK PROTECTION PROGRAM

❖ How much can we borrow?

- Eligible borrowers can qualify for up to 2.5 times their average total monthly payroll costs during the 1-year period before the date on which the loan is made, not to exceed \$10,000,000.
- For purposes of calculating payroll costs, borrowers must subtract the component of compensation representing annualized salary/wage amounts **in excess of \$100,000** for each individual employee.

PAYCHECK PROTECTION PROGRAM

❖ **How do we apply for a loan under the Paycheck Protection Program?**

PAYCHECK PROTECTION PROGRAM

- Lenders began accepting applications on April 3, 2020 and **applicants have until June 30, 2020 to apply.**
- However, funds are limited absent further appropriations from Congress, and SBA guidance suggests that loans will be awarded on a “first come, first served” basis.
- Early applications are encouraged.
- While lenders may use their own application form, the SBA approved application is on the SBA’s website.

PAYCHECK PROTECTION PROGRAM

- Applicants will be required to certify the following:
 - Applicant was in operation on February 15, 2020 and had employees for whom the applicant paid salaries and payroll taxes;
 - Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant;
 - Funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; and
 - Applicant has not received another Paycheck Protection Program loan.

PAYCHECK PROTECTION PROGRAM

❖ What is the Interest Rate?

- According to the SBA's interim final rule, the interest rate for loans will be **1%**.

❖ Do we have to first try to obtain credit elsewhere before applying?

- **No.** Though an attempt to obtain alternative sources of credit is required for most 7(a) loans, the CARES Act waived this requirement for loans under the Paycheck Protection Program.

PAYCHECK PROTECTION PROGRAM

❖ Will we have to provide a personal guarantee or collateral to be eligible?

- **No.** Applicants for Paycheck Protection Program loans need not provide any personal guarantee or collateral.

PAYCHECK PROTECTION PROGRAM

❖ Am I eligible for the employment tax credit if I receive a Paycheck Protection Program loan?

- **Unfortunately, No.** Section 2301 of the CARES Act expressly states that you are not eligible for a tax credit if you receive a Paycheck Protection Program loan under Section 7(a) of the Small Business Act.

PAYCHECK PROTECTION PROGRAM

❖ **When must we pay back the loan?**

- The loans are for a two-year term.
- Loan payments are deferred for 6 months.
- However, interest will accrue during the deferral period.

PAYCHECK PROTECTION PROGRAM

❖ Will I have to repay my Paycheck Protection loan?

- **Possibly.** Loan will be forgiven for payments made for:
 - Payroll costs (as defined previously);
 - Payments of interest on mortgage obligations;
 - Rent; and
 - Utilities
- During the covered 8-week loan period.

PAYCHECK PROTECTION PROGRAM

- **But there are three important limitations** on the potential forgivable amount.
 - **First**, the amount of the loan forgiven will be reduced if the employer reduces its workforce during the covered loan period.
 - **Second**, the amount of the loan forgiven will be reduced by the amount of any reduction in total salary or wages of any employee in excess of 25% during the covered loan period.
 - **Third**, according to SBA guidance, the portion of the loan used for non-payroll costs that exceeds 25% of the loan proceeds will not be forgiven.

Polling Question #4

Economic Injury Disaster Loans ("EIDL") & Emergency Grants

EIDLS & EMERGENCY GRANTS

- The CARES Act provides the SBA with \$562 billion for Disaster Loans authorized by Section 7(b) of the Small Business Act and \$10 billion for Emergency EIDL grants.
- Although, Economic Injury Disaster Loans (“EIDL”) were already authorized under Section 7(b) of the SBA, the CARES Act expanded the program in response to the current emergency:
 - Authorized Emergency EIDL grants up to \$10,000;
 - Expanded eligibility for EIDLs; and
 - Relaxed some of the traditional EIDL program requirements.

EIDLS & EMERGENCY GRANTS

❖ Is my organization eligible for an EIDL?

- To qualify for an EIDL, the applicant must have suffered a “**substantial economic injury**” as a direct result of a declared disaster and the SBA must have a **reasonable assurance** that you can repay your loan.
- The SBA does not consider loss of anticipated profits or a drop in sales a substantial economic injury.

EIDLS & EMERGENCY GRANTS

- Prior to the Enactment of the CARES Act, small business concerns, private nonprofit organizations, and small agricultural cooperatives were already eligible for EIDLs under Section 7(b) of the SBA.
- The CARES Act expands eligibility to:
 - Any business;
 - Any cooperative;
 - Employee Stock Ownership Plan (“ESOP”); or
 - Tribal small business concern
 - With not more than 500 employees

EIDLS & EMERGENCY GRANTS

❖ What is an Emergency EIDL Grant and is my organization eligible?

- EIDL applicants can request emergency grants for up to **\$10,000** while their EIDL application is being processed with funds being made available within days of filing your application.
- The Emergency EIDL grant **does not** have to be repaid.

EIDLS & EMERGENCY GRANTS

- Borrowers can use the emergency EIDL grant for such things as:
 - Providing paid sick leave to employees unable to work due to the COVID-19;
 - Maintaining payroll to retain employees during business disruptions or substantial slowdowns;
 - Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
 - Making rent or mortgage payments; and
 - Repaying obligations that cannot be met due to revenue losses.

EIDLS & EMERGENCY GRANTS

❖ **What can the EIDL be used for?**

EIDLS & EMERGENCY GRANTS

- EIDLs **may** be used for, among other things:
 - Paying fixed debts;
 - Payroll expenses;
 - Accounts payable;
 - Rent and utilities; and
 - Other bills that could have been paid had the disaster not occurred.

EIDLS & EMERGENCY GRANTS

- EIDLs **may not** be used to, among other things:
 - Refinance indebtedness which you incurred prior to the disaster event;
 - Make payments on loans owned by another federal agency (including the SBA) or a Small Business Investment Company (“SBIC”) licensed under the SBA; and
 - Pay dividends or other disbursements.

EIDLS & EMERGENCY GRANTS

❖ How much can we borrow?

- Eligible borrowers may borrow up to **\$2,000,000** and may request an increase in the amount of the EIDL in certain circumstances.
- Ultimately, the SBA will determine your loan amount on actual economic injury suffered as a result of the COVID-19 disaster.

EIDLS & EMERGENCY GRANTS

❖ Will our EIDL be forgiven?

- **Unfortunately, No.** Unlike the Paycheck Protection Program, **EIDLs will not be forgiven**, except for the emergency grant which does **not** have to be repaid.

❖ What is the interest rate?

- The interest rates for EIDLs are:
- **2.75%** for non-profits
- **3.75%** for small businesses

EIDLS & EMERGENCY GRANTS

❖ How do we apply for EIDLs and Emergency grants under Section 7(b) of the SBA?

- Applicants can apply for EIDLs and Emergency grants directly through the SBA at <https://covid19relief.sba.gov/#/>

Polling Question #5

EIDLS & EMERGENCY GRANTS

❖ Do we have to first try to obtain credit elsewhere?

- **No.** The CARES Act has waived this requirement for both the Paycheck Protection Program and for EIDLs.

EIDLS & EMERGENCY GRANTS

❖ Am I eligible for an employment tax credit under the CARES Act if I receive an EIDL?

- **Likely Yes.** Tax credits are still available for EIDL borrowers.
- However, as discussed earlier, **you may not receive a tax credit** if you receive a loan under the Paycheck Protection Act.

EIDLS & EMERGENCY GRANTS

❖ **Will we have to provide a personal guarantee or provide collateral to be eligible for an EIDL?**

EIDLS & EMERGENCY GRANTS

- Unlike the Paycheck Protection Program, **the CARES Act does not waive** the personal guarantee requirement in its entirety.
- However, personal guarantees are only required for EIDLs in excess of **\$200,000**.
- While the CARES Act expressly waived collateral requirements under the Paycheck Protection Program, **the CARES Act does not expressly waive the collateral requirements for EIDLs**.
- It is likely that collateral will be required for EIDLs in excess of **\$25,000**.

EIDLS & EMERGENCY GRANTS

❖ When must we pay back the loan?

- The term of the loan is determined by the SBA and is specific to each borrower's financial condition, with a maximum loan term of 30 years.
- EIDL payments may be **deferred for up to 1-year**, however, it is likely that interest will continue to accrue during the deferral.

EIDLS & EMERGENCY GRANTS

❖ What do I have to submit with my loan application?

- According to the CARES Act, lenders may approve loans based solely on an applicant's credit score and may not require an applicant to submit a tax return or a tax return transcript.
- However, we recommend that applicants check with the SBA regarding what forms will be required when applying for an EIDL, as guidance on this continues to develop.

Polling Question #6

Treasury Loans for Mid-Sized Nonprofits and Businesses

TREASURY LOANS

- The CARES Act provides \$454 billion to the Department of the Treasury for loans to mid-sized businesses, nonprofits, States, and municipalities that do not otherwise qualify for other loans or loan guarantees under the Act.
- While States and municipalities are also eligible, this portion of the Webinar is directed to mid-size businesses and nonprofit organizations with 500-10,000 employees.

TREASURY LOANS

- Under this loan program, the interest rate is capped at **2%**.
- No principal or interest is due for the first **6 months**.
- However, unlike the Paycheck Protection Program, the loan amount will **not be forgiven** at the end of the loan period.

TREASURY LOANS

- During the application process, borrowers must make a good faith certification that, among other things:
 - Uncertainty of economic conditions makes necessary the loan request to support its ongoing operations;
 - Funds will be used to retain at least 90% of the applicant's workforce at full compensation and benefits, until September 30, 2020;
 - The applicant intends to restore not less than 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to its workers no later than 4 months after the termination date of the public health emergency.

TREASURY LOANS

- The applicant will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security that is listed on a national securities exchange of the applicant or any parent company of the applicant while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act;
- The applicant will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan.

TREASURY LOANS

- Executive Compensation Limitations:
 - Employees or officers whose total compensation exceeded \$425,000 in 2019 cannot receive more than what they received in 2020. These same employees' or officers' severance pay cannot exceed twice the maximum total compensation received in 2019.
 - Employees or officers whose total compensation exceeded \$3,000,000 in 2019 may not receive more than \$3,000,000 plus half of the amount they received in total compensation in excess of \$3,000,000 in 2019.

Polling Question #7

RESOURCES

❖ FTLF COVID-19 Resource Center:

- <https://www.feldesmantucker.com/tag/covid-19/>

❖ FTLF COVID-19 National Emergency Federal Response Framework White Paper, April 8, 2020:

- <https://www.feldesmantucker.com/wp-content/uploads/2020/04/Federal-Response-to-COVID-19-FTLF-White-Paper.pdf>

RESOURCES

- ❖ **FTLF Client Alert: Financial Relief for Health Centers, Other Nonprofits, and Businesses During the COVID -19 Public Health Emergency, April 7, 2020:**
 - <https://www.feldesmantucker.com/client-alert-financial-relief-for-health-centers-other-non-profits-and-businesses-during-the-covid-19-public-health-emergency/>

- ❖ **FTLF Client Alert: The Small Business Administration (“SBA”) and the Treasury Department Issue a Frequently Asked Questions (“FAQ”) on the Paycheck Protection Program, April 8, 2020:**
 - <https://www.feldesmantucker.com/client-alert-the-small-business-administration-sba-and-the-treasury-department-issue-a-frequently-asked-questions-faq-on-the-paycheck-protection-program/>

RESOURCES

- ❖ **FTLF Client Alert: What You Need to Know About Economic Injury Disaster Loans & Emergency Grants During the COVID-19 Pandemic, April 14, 2020**
 - <https://www.feldesmantucker.com/client-alert-what-you-need-to-know-about-economic-injury-disaster-loans-emergency-grants-during-the-covid-19-pandemic/>
- ❖ **Small Business Administration:**
 - <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
- ❖ **Department of the Treasury:**
 - <https://home.treasury.gov/policy-issues/cares>
- ❖ **Internal Revenue Service:**
 - <https://www.irs.gov/coronavirus-tax-relief-and-economic-impact-payments>

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Upcoming Live Webinars

April 20 th	CARES Act Money is Out? Now What? (@ 3 PM ET)	All webinars start @ 1 pm ET unless otherwise noted.
April 21 st	Community Action Agency Federal Programs During the COVID-19 Public Health Emergency (@ 3 PM ET)	
April 23 rd	Opioid Epidemic: Enforcement Update	
May 14 th	PACE and Health Centers – Key Opportunities and Risk Areas	
June 18 th	Top Ten Tips for OSV Prep	

COVID-19 Response Resources

Click [here](#) to learn more about FTLF's training resources related to the COVID-19 public health emergency or check out FTLF attorneys' [client alerts and blogs](#) to stay most up-to-date on how COVID-19 affects your organization.

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