



Sysco's Exclusive Info Session

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Sysco Exclusive Info Session

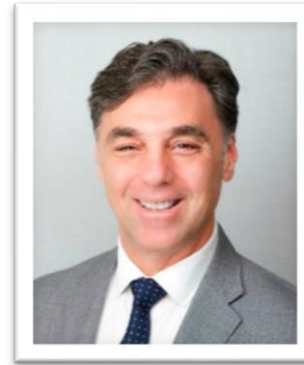
RELIEF FUNDS CUSTOMER WEBINAR



Sheri Pastor | Chair
*Insurance Recovery, Litigation
& Counseling Practice*
Understanding business
interruption insurance
coverage basics.



Howard Berkower | Partner
McCarter & English, LLP
Introduction to SBA
Disaster Loan Program
eligibility and process.



Arnie Mascali | President
Procor Solutions + Consulting
What should restaurant owners
be doing now to identify and
capture loss income and extra
expenses?

Agenda

- Business Interruption Basics
- Potentially Responsive Insurance Policies
- Key Provisions – Property & Business Interruption
- Potential Coverage Grants & Exclusions
- Tips For Maximizing Insurance Recoveries
- SBA Loans/Main Street Loans
- Sysco Cares Act Support Center
- Sysco Marketing Services



Business Interruption Basics

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Business Interruption Basics

TIPS FOR DOCUMENTING AND CAPTURING COSTS

- Time Element includes Business Interruption & Extra Expense
- **Purpose:** Put Insured in same position “but for” the loss
- Definition of BI
 - **Often defined as Net Income + Normal Continuing Expenses (“Bottom Up”**
 - **Lost Revenues – Saved Expenses (“Top Down”)**



Business Interruption Basics

- 1st Step - Project the Top Line (Sales/Revenues)

- 2nd Step – Evaluate expenses
 - **COGS**
 - **Payroll**
 - **Potential limitations for Ordinary Payroll**

- Identify **Extra Expenses**
 - **Extraordinary expenses (e.g. generators, security, etc.)**
 - **Increase in normal expenses (e.g. OT Payroll)**



Potentially Responsive Insurance Policies

- Employment Liability
- General Liability
- Event Cancellation
- Workers Compensation
- Directors & Officers Liability
- Property/Business Interruption



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Key Provisions – Property & Business Interruption



- Property Damage
- Business Income
- Extra Expense
- Extended Business Income
- Other Time-Element Coverages
 - **Civil or Military Authority**
 - **Contingent Business Income**
 - **Contingent Extra Expense**
 - **Leader Property**
 - **Service Interruption**
 - **Ingress/Egress**



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Likely Disputes

- Physical loss of or damage to property, when required
- Scope and application of exclusions
 - **Virus**
 - **Communicable Disease**
 - **Pollution**
 - **Contamination**
- Calculation of Waiting Periods
- Period of Restoration



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Potential Coverage Grants & Exclusions



- Examples
 - This policy covers property against . . . **“all risks of physical loss or damage.”**
 - “We will pay for direct **physical loss of or damage to** Covered Property at the premises . . . caused by or resulting from any Covered Cause of Loss.”
 - “We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your Operations . . . caused by direct physical **loss of or damage to** property. . . caused by or a result from a Covered Cause of Loss.”
- “Loss of” and “damage to” are not synonymous.
- Some policies define damage to include loss of use or function, or may be interpreted that way by a court. E.g., Wakefern Food Corp. v. Liberty Mut. Fire Ins. Co., 406 N.J. Super, 524 (App. Div. 2009)



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Potential Coverage Grants & Exclusions



Civil Authority

- "This Policy covers the Actual Loss Sustained and Extra Expense incurred . . . if an order of civil or military authority limits, restricts or prohibits partial or total access to an insured location provided such order is the direct result of physical damage of the type insured at the insured location or within five miles of it."

Communicable Disease

- "If a location owned, leased or rented . . . has the actual not suspected presence of communicable disease and access to such location is limited, restricted or prohibited by an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease this Policy covers."

Virus

- "We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." ISO form CP 01 40 07 06, Exclusion for Loss Due To Virus Or Bacteria; ISO's July 6, 2006 circular, LI-CF-2006-175.



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Proposed Legislation

- New Jersey, New York, Massachusetts, Ohio, Pennsylvania, and Louisiana have proposed legislation; federal proposals being considered
- Clarifies coverage extends to losses attributable to pandemic and social distancing
- Avoids costly disputes over meaning and scope of insurer-drafted provisions relating to physical loss and damage requirements, and so-called “virus” exclusions
- Insurance industry seeking to framing as “rewriting” policies
- Insurers’ objections ignore states’ and regulators’ role in controlling risk transfer, insurer conduct, and nature of policies sold to their citizens



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Tips For Maximizing Insurance Recoveries



- Carefully review policies
- Give timely notice of claims and/or circumstances
- Consider Grace Periods and extensions of them
- Document and quantify the claim
- Write to coverage positions and explanations of them
- Call conversations in writing
- Challenge denials
- Consider appraisal rights
- Consider time limits (service of suit provisions)



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CARES Act/PPP Loans

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- Title I of the Coronavirus Aid, Relief and Economic Stability Act (the “CARES Act”) establishes a \$349 billion Paycheck Protection Program (“PPP”) to help small businesses retain employees during the COVID-19 pandemic.
- Under the PPP, eligible small businesses may borrow 250% of their average monthly “payroll costs” not to exceed \$10 million from banks and other financial institutions participating in U.S. Small Business Administration (“SBA”) loan programs.
- PPP loan proceeds may be used for payroll costs, rent, utilities and certain other operating related expenses (“Qualified Expenses”) incurred from February 15, 2020, to June 30, 2020, and any other uses permitted for a SBA 7(a) loan (working capital).
- Borrowers are eligible for loan forgiveness, up to the total loan amount, for any loan proceeds used to pay Qualified Expenses incurred during the 8-week period following the origination of the loan (“Forgiveness Period”).



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PPP Loan Forgiveness Reduction

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1. Decrease in Workforce

The total amount spent on Qualified Expenses during the 8-week covered period (“Forgiveness Period”) is reduced if there has been a workforce reduction. In essence, if your workforce is at 75% capacity during the covered period, only 75% of the Qualified Expenses is forgiven.

- a) Workforce Size is based on the Average Monthly Full Time Equivalent Employees (AMFTEE)
- b) Workforce Capacity is determined by comparing the AMFTEE for the Forgiveness Period to the AMFTEE for the selected Reference Period.
- c) Reference Period is (i) February 15 to June 30, 2019 or (ii) January 1 to February 29, 2020, as selected by the borrower.

Exception to Decrease. No decrease in loan forgiveness if the workforce reduction occurred during the period February 15 to April 26, 2020 (30 days after enactment of the CARES Act) and the workforce reduction is eliminated not later than June 30, 2020.



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2. Decrease in Salary or Wages

The total amount spent on Qualified Expenses during the Forgiveness Period is reduced dollar for dollar by the amount of the reduction in total salary or wages of any employee during the Forgiveness Period that is in excess of 25% of the total salary or wages during the most recent full quarter during which the employee was employed before the Forgiveness Period [2019 Q4 or 2020 Q1]

Exception to Decrease. No decrease in loan forgiveness if the salary or wage reduction occurred during the period February 15 to April 26, 2020 (30 days after enactment of the CARES Act) and the salary or wage reduction is eliminated not later than June 30, 2020.



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PPP Loan Forgiveness Mechanics

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1. Documents to be Submitted by Borrower to the Lender

- a) Documentation verifying the number of FTEE on payroll and pay rates for the applicable periods, including:
 - i. Payroll tax filings reported to the Internal Revenue Service; and
 - ii. State income, payroll, and unemployment insurance filings;
- b) Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- c) Certificate of the borrower that:
 - i. The documentation presented is true and correct; and
 - ii. The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- d) Any other documentation the SBA determines necessary.



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2. Lender decision of Loan Forgiveness will be made within 60 days of the submission of the documentation.
3. Section 1106 of the CARES Act requires the SBA to issue guidance and regulations implementing loan forgiveness by April 26, 2020.



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Eligible Businesses

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- Small businesses with less than 500 employees (including self-employed individuals acting as sole proprietorships and independent contractors), private nonprofits, or 501(c)(19) veterans organizations are eligible to apply for PPP loans..
- Businesses with more than 500 employees may also be eligible for PPP loans if the number of employees meets the applicable size standard for the industry on the North American Industry Classification System (“NAICS”).
- Businesses with (i) maximum tangible net worth less than \$15 million and (ii) average net income after federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of the loan application of not more than \$5 million, regardless of the number of employees, are eligible to apply for a PPP loan.



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- Restaurants, hotels and businesses that fall within the NAICS code 72 “Accommodation and Food Services,” where each location has 500 employees or fewer, are eligible.
- Franchises already participating in SBA programs, including 7-Eleven, Ace Hardware, Au Bon Pain, Ben & Jerry’s, Bennigan’s, Best Western, Burger King, Chik-Fil-A, Chuck E. Cheese’s, Cinnabon, Dairy Queen, Dunkin’ Donuts, Friendly’s, Godfather’s Pizza, Gymboree, Holiday Inn, Houlihan’s, Jimmy John’s, Johnny Rockets, KFC, Krispy Kreme Doughnuts, Long John Silver’s, McDonalds, Potbelly Sandwich Works, Qdoba, Quality Inn, Radisson, Ralph’s Famous Italian Ices, Red Robin, Residence Inn by Marriot, Ruth’s Chris Steak House, Smashburger, Sbarro, Shakey’s, Shoney’s, State Farm, Subway, Supercuts, Taco Bell, TGI Fridays, The Halal Guys, Tony Roma’s, Tim Hortons, The UPS Store, True Value, Wendy’s , and Wyndham Hotels and Resorts.



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PPP Loan Amount/Payroll Costs

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- The maximum PPP loan amount a small business is eligible to borrow is 250% of their average total monthly payroll costs incurred in the one-year period before the loan is made, up to \$10 million.
- “Payroll Costs” include the sum of salaries, wages, commissions; payments 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; payments of any retirement benefit; and payments of state or local tax assessed on the compensation of employees.
- Individual salaries are capped at an annualized rate of \$100,000 for determination of payroll costs.
- Payroll costs exclude wages of person outside the United States.



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PPP Payroll Costs

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- Seasonal business expenses will be measured using average monthly payroll expenses for the 12-week period starting on February 15, 2019, or March 1, 2019, whichever the seasonal business chooses.
- Businesses commenced after June 30, 2019, can measure average monthly payroll costs during the period January 1 through February 29, 2020.
- No guarantee or personal collateral will be required, and principal repayment will be forgiven if certain conditions are met, essentially, converting the loan to a federal grant.



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PPP Loan Forgiveness

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- Qualifying businesses will be eligible for loan forgiveness if all employees are kept on the payroll during the Forgiveness Period and the loan proceeds are used for Qualified Expenses incurred during the Forgiveness Period.
- No more than 25% of the forgiven amount may be used for Qualified Expenses which are not payroll costs. Documentation showing payroll, rent, mortgage and utility expenses are required to receive loan forgiveness.
- PPP loan forgiveness will also be reduced (a) in proportion to the decrease in the average monthly full-time equivalent employees ("FTEE") during the Forgiveness Period to the FTEE of selected reference period and (b) by an amount of any reduction in total salary or wages of any employee in excess of 25% of the total salary and wages during the most recent full quarter before the Forgiveness Period.
- Qualifying businesses that rehire laid off workers by June 30, 2020, will not be penalized for having a smaller workforce during the start of the Forgiveness Period.



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Other Loan Provisions and Borrower Certification

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- To the extent that less than the total principal of the loan is forgiven the remaining balance will be due on the second anniversary of the loan closing and interest payments at the rate of 1% per annum will be deferred for six months.
- No guarantee or personal collateral will be required, and no recourse against any owner of a borrower for non-payment except to the extent that loan proceeds are used for an unauthorized purpose.
- Principal and interest fully guaranteed by the SBA.
- No need to for Borrower to demonstrate need or that it has been adversely impacted by COVID-19. Borrower to certify that “the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient.”



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CARES Act/EIDL Loan

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- Section 1110 of the CARES Act expanded the existing Economic Injury Disaster Loan program (“EIDL”) by providing **lower interest rates and longer repayment terms**. EIDL is provided directly from the U.S. Treasury and there is no cost to apply and no obligation to accept the loan if your business qualifies.
- Small businesses can apply for both an EIDL loan and PPP loan.
- Loan proceeds can be used for working capital, payroll and other expenses that the borrower could have paid had the disaster not occurred, but not to replace lost profits or to finance business expansion.



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EIDL Loan/Up to \$10,000 Advance Grant

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- Applicants for an EIDL loan can request an advance of \$1,000 per employee up to \$10,000 (“Advance”) on the loan. The Advance is available from January 31, 2020 to December 31, 2020.
- The proceeds of the Advance can be used for paid sick leave; payroll; increased costs; rent or mortgage payments; or repaying obligations that cannot be met due to revenue losses attributed to COVID 19. However, these funds will be subtracted from the final loan amount.
- The SBA will issue the Advance within three days after receipt of the loan application but the borrower is required to certify, under penalty of perjury, that it is eligible to apply for an EIDL loan.
- The Advance acts as a federal grant because the borrower retains the Advance even if the loan is denied and the Advance is forgiven.



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EIDL Loan Terms and Use of Proceeds

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- EIDL loans up to \$2 million with maximum unsecured loan amount of \$25,000.
- Market Intelligence: Maximum EIDL loan is currently only \$85,000.
- The interest rate is 3.75% for small businesses and 2.75% for non-profit businesses.
- The maximum repayment term of 30 years.
- Payments are deferred for one year; however, interest accrues during the deferment.
- EIDL loans can be used to pay fixed debts, payroll, accounts payable, and other operating expenses that would have been paid if COVID-19 had not occurred, including increased costs to obtain material unavailable from original source due to interrupted supply chains.



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EIDL Eligible Businesses

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- Small businesses (including restaurants, retailers, hotels, manufacturers, owners of rental property, wholesalers) with fewer than 500 employees
- Small agricultural cooperatives or agriculture businesses
- Employee Stock Ownership with fewer than 500 employees
- Sole proprietorships and Independent contractors
- Most private non-profit organizations and tribal businesses with fewer than 500 employees
- Applicants must have been in operation on January 31, 2020, and suffered, or are likely to suffer, substantial economic injury as a result of COVID-19. Waived the requirement that applicant be unable to obtain credit elsewhere.
- Notably, businesses in certain industries may have more than 500 employees if the size of the business combined with its affiliates meets SBA standards for those industries.



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EIDL Criteria for Loan Approval and Collateral

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- SBA acceptable credit history
- Ability to repay EDIL loan
- Physical and tangible (P.O. Box does not qualify) presence in US (declared disaster area)
- No collateral required for loans under \$25,000.
- SBA will seek real estate as collateral.
- SBA does not decline a loan for lack of collateral.
- Loans up to \$200,000 do not require a personal guarantee.
- Loans in excess of \$200,000 will likely require a guarantee by owners of more than 20% of the borrower.



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Main Street Lending Programs

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- In addition to the programs established and the powers granted as part of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), the Federal Reserve Board are leveraging the existing powers of the Federal Reserve under Section 13(3) of the Federal Reserve Act to provide credit to private enterprises under the “exigent” circumstances created by the COVID-19 pandemic.
- On Thursday, April 9, 2020, they announced that they will establish two new facilities to support lending to mid-sized businesses that are adversely affected by the COVID-19 pandemic: (i) the Main Street New Loan Facility and (ii) the Main Street Expanded Loan Facility (collectively, the “Facilities”). The Main Street New Loan Facility will finance new loans originated on or after April 8, 2020 (“New Loans”). The Main Street Expanded Loan Facility will finance the extension of additional credit (an “Upsized Tranche”) with respect to loans originated



April 8, 2020
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Main Street Lending Programs

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- The programs will work as follows: (1) a single-purpose vehicle (“SPV”) will be established and the Treasury Department will capitalize it with \$75 billion made available under the CARES Act; (2) the Federal Reserve Bank will commit to lending \$525 billion to the SPV pursuant to its powers under Section 13(3) of the Federal Reserve Act; (3) eligible lenders (i.e., federally regulated institutions) may but are not required to make a New Loan or provide an Upsized Tranche for an “Eligible Loan” to “Eligible Businesses”; and (4) the SPV will purchase “participations” equal to 95 percent of the amount of the New Loan or Upsized Tranche up to a combined \$600 billion for both Facilities.
- Presumably, lenders will make loans that qualify for the purchase of a participation under the Facilities in circumstances where they would not otherwise provide such loans, and in that way the borrowers of such loans that are adversely affected by the COVID-19 pandemic will benefit.



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- To take advantage of the program, businesses will need to be an Eligible Business, which, according to the term sheet, will include the following criteria:
 - Businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues.
 - Businesses created or organized in the United States or under the laws of the United States with significant operations in the United States and with a majority of their employees based in the United States.



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- The SPV will only purchase participations that meet the criteria for a New Loan or an Upsized Tranche of an Eligible Loan, which, according to the term sheets, include the following:
 - A four-year maturity with amortization of principal deferred for one year.
 - Interest at a rate equal to the adjustable rate of the Secured Overnight Financing Rate plus 240-400 basis points.
 - A minimum size of \$1 million.
 - Prepayment permitted without penalty.
 - Maximum loan size as follows:
 - In the case of the Main Street Expanded Loan Facility, the maximum Upsized Tranche loan size is the lesser of (i) \$150 million, (ii) 30 percent of the business's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to existing outstanding and committed but undrawn debt, does not exceed six times 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA").
 - In the case of the Main Street New Loan Facility, the maximum size of a New Loan is the lesser of (i) \$25 million or (ii) an amount that, when added to the business's existing outstanding and committed but undrawn debt, does not exceed four times the business's 2019 EBITDA.



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Main Street Lending Programs

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- According to the term sheet in the case of an Upsized Tranche, the collateral securing the existing loan must be shared pro rata with the Upsized Tranche. This requirement will be a critical factor as to whether lenders will be willing to provide an Upsized Tranche.
- Of perhaps even more significance is the requirement in the second bullet point under the section regarding required “Attestations,” in which it is stated that borrowers must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the borrower has first repaid the Eligible Loan in full. If this means that the Upsized Tranche needs to be repaid before the remaining amounts owed to a lender, this may make the program unattractive to lenders.



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Main Street Lending Programs

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- The term sheets also lay out other requirements for any New Loans or Upsized Tranches, which include:
 1. Proceeds not be used to repay or refinance preexisting loans or lines of credit.
 2. The lender and borrower must agree not to cancel or reduce any existing lines of credit outstanding to the borrower.
 3. The borrower will make reasonable efforts to maintain its payroll and retain its employees during the term of the Upsized Tranche or New Loan.
 4. The borrower must follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act.



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- The term sheets do not incorporate all the requirements for loans under the CARES Act, such as the rigorous requirements regarding maintaining employment.
- The term sheet provides that a borrower must make “reasonable efforts to maintain its payroll and retain employees” during the period that the Upsized Tranche or New Loan is outstanding. This is a far lower standard than the general requirements imposed under the CARES Act. This is possible because Section 4003(c)(3)(D)(ii) of the CARES Act expressly provides that action by the Federal Reserve under Section 13(3) of the Federal Reserve Act, including actions in which the Treasury participates, need not comply with all the requirements in that subsection of the CARES Act.



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- The next steps in the process will presumably be (1) establishing the terms of the participation being purchased by the SPV by drafting a form of participation agreement and (2) drafting definitive model documents or standard terms for New Loans and Upsized Tranches. Those terms will determine whether the lenders will be willing to make New Loans and Upsized Tranches and whether borrowers will be willing to enter into such transactions. In the case of an Upsized Tranche, the documents will probably need to be custom tailored to work with the existing credit documents.



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To support you as our valued customer during this unprecedented time, Sysco has established a **CARES Act Support Center.**

This Support Center will help you with questions about the CARES Act and the application process to ensure a fast and accurate submission. We have a team of experts standing by.

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Key points of the Small Business Loans:

- Restaurants are eligible.
- Lenders will give consideration for being in business before Feb. 15, 2020.
- Up to \$10 million each, all for companies with 500 or few workers; up to 2.5x average monthly payroll.
- The 500-employee threshold includes all employees: full-time, part-time, and any other status. For restaurants, the 500-employee count is based on the number of workers at each physical location. So a restaurant franchisee or multi-concept group with 500 employees across five properties would still qualify.
- For example, an employer with an average monthly payroll of \$900,000 would be eligible for a loan of \$2.25 million.
- Loans are made through participating banks and large credit unions (SBA certified lenders).
- The loan will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities.
- If not forgiven, loan payments will be deferred for six months, with a maturity of 2 years and an interest rate of 1%.
- The details can be found [here](#) for SBA Relief options.

We're here for you.

For more information about how Sysco can support your business please go to Foodie.Sysco.com/Covid

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Sysco Marketing Services Concierge IS HERE TO HELP



Sysco Marketing Services is here as *your advocate* during this uncertain time.

We can help you shift through all the tools, tips, and products Sysco has available to help you continue to develop your business – such as carry-out and delivery menus, social media messaging, and more.

We have a team of associates available to assist you to:

- Create a limited menu for carry-out and delivery
- Create marketing pieces – posters, thank-you's, and discount cards
- Create Pop Up Shop menus and marketing pieces
- Provide you materials on local relief funds and information on the CARES act for Small Business Loans
- Connect you with our service partners to setup a website, online ordering, and delivery services
- Provide social media messaging
- Provide you with access to helpful tools, such as SyscoStudio



To enlist our help,
please call 1-800-380-6348,
email info@syscomenuservices.com,
or reach out to your Sysco Marketing Associate.

For more information about how Sysco can support your business please go to Foodie.Sysco.com/Covid



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Our Concierge Service available to any customer

- Crisis Menus, Pop Up Shop/Marketplace, Social Media, Thank you cards and other restaurant marketing materials to ensure continuity
- Provide guidance on what you could be doing to promote your business
- Provide guidance and facilitate our iCare Partnerships available to our customers
 - Websites to facilitate Online ordering
 - Delivery
 - Gift cards, etc.

For Marketing Services Help:

- Call: -1-800-380-6348 or
- Email: info@syscomenuservices.com

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