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# Restaurant Rebound.
# COVID-19 Business Update

**Presented by Brinker Simpson**

*In partnership with the Delaware County Chamber of Commerce*

*and the Delaware County Commerce Center*

March 30, 2021

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Please use the Q&A to ask questions, we may not see questions asked in the chat section.

We will email the slides to all participants after the presentation.

Please refer to our website **brinkersimpsoncares.com** for additional information. Details are updated regularly.

# AGENDA

- Introduction
- Restaurant Revitalization Grants
- PPP and ARPA – Highlights and Important Changes
- ARPA – Credits for Sick and Family Leave
- ERC and ARPA – What's New? Next Steps
- ERC – Important Information/Updates and What We Still Don't Know
- Other COVID19 Lending Updates - EIDL
- Questions?

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# ARPA & Restaurant Revitalization Fund / Grants to Food and Beverage Providers

**Who is eligible?**

- Restaurants, food stands, food trucks and carts, caterers, bars and saloons, taverns, inns, lounges, brewpubs, tasting rooms, taprooms, licensed facilities or premises of a beverage alcohol producer where the public may taste, sample or purchase products, or other similar places of business in which the public or patrons assemble for the primary purpose of being served food or drink, including those located in an airport terminal or businesses that are tribally-owned.
- Some SVOG recipients.

**How much is it?**

- For entities in business prior to 2019, the lesser of $5M ($10M for a business with 2 or more locations) or 2020 receipts minus 2019 receipts.
- For entities opening in 2019, pandemic-related revenue losses are 2020 gross receipts subtracted from 12 times average 2019 monthly gross receipts.
- For eligible entities that opened in 2020, pandemic-related revenue losses are eligible expenses incurred in 2020 (see below for eligible expenses) minus any gross receipts received in 2020.
- PPP 1 & 2 will be deducted from calculated amount.

# ARPA & Restaurant Revitalization Fund / Grants to Food and Beverage Providers

**How can we use the money?**

**Eligible use of the grants include:**

- Payroll costs (not including employee compensation exceeding $100,000 per year);
- Payments of principal or interest on any mortgage obligation (but not prepayments), rent payments, including rent under a lease agreement (but not prepayments);
- Utilities; maintenance expenses (including construction for outdoor seating, walls, floors, deck surfaces, furniture, fixtures, and equipment); supplies (including protective equipment and cleaning materials); food and beverage expenses; covered supplier costs;
- Operational expenses; paid sick leave; and any other expenses as determined by SBA.
- Payroll costs for the grant program do not include qualified wages under the Employee Retention Tax Credit or COBRA premiums.

It may not be necessary based on language in ARPA, but we advise all eligible businesses to confirm they have or apply for Date Universal Numbering System (DUNS) number and are registered with the System for Award Management (SAM).

**We have helped several people with this; please reach out for assistance.**

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# ARPA & Restaurant Revitalization Fund / Grants to Food and Beverage Providers

## PREPARE NOW!

**Register with the System of Award Management (SAM)**

- Create login.gov account
- Sign up to receive a DUNS number (free but takes 1-2 days to process)
- Use login.gov email, DUNS number and standard business information to register with SAM – this process can take several weeks; register now to be ready to apply when the RRF program begins accepting applications.
- Review SVOG checklist for potential information to compile in advance of preparing your application.
- Meet with your accountant to review and assist with any open items.

The RRF application process is expected to look like the SVOG.  The SVOG opens 4/8; we would expect the RRF to be available shortly thereafter.

You may want to consider joining the SBA webinar on preparing for the SVOG. There is one today at 2:30 – if you are interested in registering, we can share a link, or you can visit the SBA website.

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# PPP & ARPA – Highlights of Important Changes

- Expands eligibility to any 501(c) organizations other than 501(c)(4)s; adds additional eligibility category of "other covered nonprofits"
- Eliminates restriction on borrowers receiving a PPP loan after December 27, 2020 and a grant for shuttered venue operators under the Economic Aid Act (SVOG). SVOG will be reduced by the amount of PPP funds borrowed after December 27, 2020. Approval of SVOG grant eliminates eligibility to apply for PPP.
- Excludes the following from forgivable costs:
  - Qualified wages considered in determining the Employee Retention Tax Credit (ERTC) under Section 2301 of the CARES Act  or Section 3134 of the Internal Revenue Code or the disaster credit under Section 393 of the ARPA and
  - Premiums for COBRA continuation coverage (covered later) considered in determining the credit under Section 6432 of the Internal Revenue Code.
- Clarifies alternative size standards that allow certain borrowers with more than 500 employees to be eligible for First Draw Loans do not apply to Second Draw Loans. Borrowers who, together with their affiliates, have more than 300 employees are only eligible if the borrower has an NAICS code beginning with 72 and has no more than 300 employees per physical location or is a news organization or media company that meets certain additional ownership requirements and has no more than 300 employees per physical location.

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# PPP – Important Updates

- Lenders are anxious about implementing ARPA changes; can not implement and aid newly eligible applicants and meet a 3/31 deadline.
- Bi-partisan support for a deadline extension.
- House passed H.R.1799 - PPP Extension Act of 2021 on 3/22 to extend PPP deadline to 5/31; expected to be signed into law.
- 8-week borrowers have approaching due dates to apply for forgiveness –
  - As of today, the due date for a borrower electing an 8-week covered period who received their loan before 5/28/20 will have to use a longer covered period in order to remain eligible for forgiveness.
  - Communicate with your bank about when you can apply for forgiveness.

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# ARPA Expands Voluntary FFCRA Leave and Extends Through September 2021

The CAA 2021 extended the FFCRA paid leave but eliminated the mandate - employers can voluntarily choose to grant FFCRA paid leave to employees for qualifying reasons and take tax credits for the leave.

Tax credits are available to employers with fewer than 500 employees who voluntarily provide FFCRA leave to qualifying employees through September 30, 2021.

**HOT TOPIC – ARPA adds qualifying reasons**

- When an employee is seeking or awaiting results of a test for or a diagnosis of COVID-19.
- When an employee is obtaining COVID-19 immunization.
- When an employee is recovering from any injury, disability, illness or condition related to COVID-19 immunization.

**NEW NON-DISCRIMINATION RULES**

- FFCRA tax credits are not available to employers who discriminate in favor of highly compensated employees, full-time employees, or employees based on tenure in providing FFCRA benefits.

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# ARPA Expands Voluntary FFCRA Leave and Extends Through September 2021

**RESET THE BANK @ 4/1/21!**

- 10-day availability for FFCRA paid sick leave, effective April 1, 2021 is reset; employees who exhausted their FFCRA sick leave prior to April 1 will still be eligible for up to 10 days of FFCRA paid sick leave, and employers will be able to take tax credits for such leave if they choose to provide it.

**NEW EFMLA EXPANSION**

- Previously, expanded family and medical leave (EFMLA) under the FFCRA could only be taken by employees caring for children whose schools or place of care was closed, or whose care provider was unavailable for reasons related to COVID-19.
- However, beginning April 1, 2021, EFMLA can be taken for all of the reasons that an employee can take FFCRA paid sick leave, including all of the new qualifying reasons listed.

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# ERC & ARPA – What's New?

ARPA extended the Employee Retention Credit ("ERC") program through the end of 2021.

The ERC generally allows eligible business to take a credit of up to $5,000 per employee (for 2020) and $7,000 per employee per quarter (for 2021) against certain payroll taxes. ARPA extended the credit for all quarters in 2021.

A business is generally eligible for an ERC when it has a demonstrated receipts reduction or is / was subject to a full or partial shut-down order.

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# ERC & ARPA – What's New?

**What's new?**

- **Extends through 12/31 ($14K max credit potential becomes $28K)**
- Expands eligibility (only applicable for Q3 and Q4

**Recovery Startup businesses**

- Established  after February 15, 2020;
- <  $1 million in average gross receipts over a specified period;
- Not subject to a shutdown order and did not have a decrease in gross receipts;
- ERC is limited to $50,000 for a recovery startup business.

**Severely financially distressed employer**

- Can Demonstrate a 90% reduction in receipts compared to same calendar quarter in 2019.
- These businesses will be able to treat all wages up to the $10,000 limitation as qualified wages, even if the business is a large employer.

**Provision to extend normal three-year statute of limitations to five years during which the IRS can audit and issue assessments related to the ERC.**

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# ERC & ARPA – Next Steps

Borrowers who have already applied for and received forgiveness have less flexibility, but that doesn't mean that care shouldn't be taken to maximize the credit based on what was listed on the forgiveness application.

**A borrower should first determine the minimum wage amount necessary to support the forgiveness obtained.** The 60% calculation is a starting point here, since forgiveness can be no more than payroll costs divided by 0.60. Looked at from the other direction, payroll costs used in forgiveness will have to be at least 60% of the forgiveness obtained.

**Consider how many payroll costs listed in the forgiveness application would not be qualified wages for ERC purposes and use those first to meet the required minimum. That includes:**

- Wages paid by a large employer to employees performing services
- Wages paid to employees not eligible to be used for ERC purposes due to the related party rules
- Payroll costs such as retirement plan costs and payroll taxes paid to state and local governments
- Wages paid to an employee in excess of the $10,000 cap on ERC qualified wages for 2020

After minimizing the ERC qualified wages used to meet the 60% test, determine if the borrower reported sufficient non-payroll costs to have obtained forgiveness if only this minimum amount of ERC qualified wages listed on the PPP application are included as leading to forgiveness.

If the non-payroll expenses are not sufficient, determine the minimum amount of qualified wage costs that need to be treated as expenses leading to forgiveness to obtain the forgiveness granted.

Borrowers will want to make sure they maximize the use of non-payroll costs in obtaining forgiveness, as well as maximizing the use of non-ERC qualified payroll costs for the minimum payroll costs that must be included in the forgiveness application.

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# Employee Retention Credit Continued

| | CARES Act | CAA 2021 | ARPA |
|---|---|---|---|
| Effective Date | 3/13/2020 through 12/31/2020 | 1/1/2021 through 6/30/2021 | 1/1/2021 through 6/30/2021 (12/31/21 for some provisions) |
| PPP Borrowers Eligible | NO | Yes, retroactively. | Yes, retroactively. |
| Maximum Credit $ | $5,000<br>max per employee in total (50% of a maximum amount of $10,000 of qualifying wages) | $14,000<br>$7,000 max per employee per eligible quarter (70% of a maximum amount of $10,000 of qualifying wages) | $28,000<br>$7,000 max per employee per eligible quarter (70% of a maximum amount of $10,000 of qualifying wages) |
| Eligibility – Gross Receipts Reduction Percentage Compared to the same quarter in 2019 | 50%<br>(remain eligible until the end of the quarter receipts are restored to 80% over same quarter in 2019 or 12/31/20). | 20% | 20% |
| Eligibility due to government order | Credit is calculated based on the effective dates of the government ordered partial or full suspension of operations | NO CHANGE | NO CHANGE |
| Employee threshold to treat wages paid to employees who were working as eligible for the | < 100 employees<br>• wages paid to working employees are eligible for the credit<br>>100 employees<br>• wages paid to non-working employees are eligible for the credit | < 500 employees<br>• wages paid to working employees are eligible for the credit<br>>500 employees<br>• wages paid to non-working employees are eligible for the credit | • Same as CAA 2021, but expands types of “qualified wages” that are eligible.<br>• employers with more >500 employees experiencing a gross receipts reduction of >90% compared to the same calendar quarter in 2019 (“severely financially distressed” employers) may now claim ERCs on qualified wages paid to both working and non-working employees. |

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# Excluded Wages

**Related Party Wages**

IRS FAQs explicitly exclude certain wages paid to relatives of owners and controlling shareholders.

**Excluded relationships include:**

- A child or a descendant of a child;
- A brother, sister, stepbrother, or stepsister;
- The father or mother, or an ancestor of either;
- A stepfather or stepmother;
- A niece or nephew;
- An aunt or uncle;
- A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

*NOTE: Spouse is not included in the list of excluded wages.*

**Owner Wages** - Major area of disagreement among accountants if owner wages are captured by constructive ownership under 267c.  AICPA has requested clarity, but IRS has yet to respond.

- Owner is disqualified because constructive ownership deems his brother/child/father etc. a constructive owner and deems the owner excluded due to the related parties mentioned above.

**Qualified Wages paid for the Increasing Research Credit, Indian Employment Credit, FFCRA Paid leave, Empowerment Zone Employment Credit**

Wages considered as payroll

- PPP Loan;
- SVO Grant program;
- Restaurant Revitalization Fund.

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# Other COVID19 Lending Updates - EIDL

- Economic Injury Disaster Loan
  - Starting the week of April 6, 2021, the SBA is raising the loan limit for the COVID-19 EIDL program from 6-months of economic injury with a maximum loan amount of $150,000 to up to 24-months of economic injury with a maximum loan amount of $500,000.
- Businesses that receive a loan subject to the current limits do not need to submit a request for an increase at this time.
  - SBA will reach out directly via email and provide more details about how businesses can request an increase closer to the April 6 implementation date.
  - Any new loan applications and any loans in process when the new loan limits are implemented will automatically be considered for loans covering 24 months of economic injury up to a maximum of $500,000.
- This announcement builds on the announcement earlier this month that the agency would extend deferment periods for all disaster loans, including COVID-19 EIDLs, until 2022 to offer more time for businesses to build back.
  - Extends the first payment due date for disaster loans made in 2020 to 24-months from the date of the note and to 18-months from the date of the note for all loans made in the calendar year 2021.

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# QUESTIONS?

Please email cares@brinkersimpson.com if you do not get your questions answered - our team will respond there.

Visit www.brinkersimpsoncares.com for the most up to date information and / or email questions to cares@brinkersimpson.com.

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