

BURR ALERT

What Are Your Options for Relief from the Coronavirus Crisis?

By George Morrison and Jennifer Leaphart

March 2020

In addition to the pre-existing Small Business Administration (“SBA”) loans and grants, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) created a new loan program and expanded relief available under various SBA programs for small businesses. The below information is a primer to provide guidance on relief that may be available to your business in the wake of the CARES Act’s passage.

Paycheck Protection Program Loans

These loans are a new SBA Section 7(a) loan program created by the CARES Act. They are only available from February 15, 2020 until June 30, 2020. The key terms of these loans include:

- 100% guaranteed by the SBA
- Generally, businesses with 500 or fewer employees are eligible. Special rules apply for those businesses in industries with more specific SBA employee size standards, and businesses that are in the restaurant and hospitality industries, are franchises or receive financial assistance from small business investment companies.
- From February 15, 2020 to June 30, 2020, it is not required that an eligible business be unable to obtain credit elsewhere to qualify for a loan under this program. The requirements for personal guarantees or collateral are waived for these loans.
- Loan amount is capped at the lesser of \$10,000,000 or, in general, about 2.5 times the average monthly payroll payments of the business during the 1-year period preceding the date the loan is made.
- Loan may be deferred for at least 6 months and up to 1 year.
- Loan amounts generally must be used to cover payroll costs, rents, mortgages and utilities.
- Amounts used to fund certain expenses, generally payroll costs, rents, mortgages and utilities, may be forgiven.
- Amounts eligible for forgiveness are subject to reduction based on reductions in employee workforce or reduction in salaries.

- Balance of the loan remaining after forgiveness is due within 10 years from the date the business applied for forgiveness of the loan.

Subsidization of Various SBA Loan Programs

Under the CARES Act, the SBA will pay all principal, interest and fees with respect to loans under the SBA loan programs listed below for a 6-month period. The start and end of the 6-month period depends upon whether the loan is in deferment and whether the loan was extended prior to or within the 6-months after the enactment of the CARES Act.

- SBA Section 7(a) loans, other than Paycheck Protection Program loans
- Loans made to certain development companies under 15 U.S.C. 695 et seq.
- SBA Section 7(m) Microloan Program loans

Express Loans

An Express Loan is a special type of SBA Section 7(a) loan, which typically is capped at \$350,000. The SBA will generally respond to applications for Express Loans within 36 hours of application. Under the CARES Act, this cap is increased to \$1,000,000. This increase is set to expire on January 1, 2021.

Economic Injury Disaster Loans

The SBA may extend economic injury disaster loans under 15 U.S.C. 636(b)(2). The CARES Act extends access to these disaster loans to a greater number of businesses and also provides for quick relief in the form of grants.

- From January 1, 2020 to December 31, 2020, any small business concerns, private non-profit organization, small agricultural cooperatives or any “eligible entities” (as described below) are eligible for these disaster loans.
- For purposes of these disaster loans, eligible entities include: (i) businesses with no more than 500 employees, (ii) individuals operating as sole proprietorships or as independent contractors, (iii) cooperatives with no more than 500 employees, (iv) ESOPS with no more than 500 employees, or (v) Tribal small business concerns with no more than 500 employees.
- Disaster loans are subject to an aggregate cap of \$2,000,000.
- From January 1, 2020 to December 31, 2020, the SBA will relax requirements for these disaster loans:
 - Waive personal guarantee for loans of \$200,000 or less
 - Waive requirement that your organization have been in business for at least one year, provided that your business must have been in operation as of January 31, 2020
 - Waive requirement that an applicant be unable to obtain credit elsewhere

- The CARES Act contemplates that the SBA may determine an applicant is eligible based upon credit score alone, without tax returns, or whatever relevant criteria the SBA decides will determine an applicant's ability to repay.
- An applicant for a disaster loan may seek an emergency grant of \$10,000, to be received by the applicant within 3 days after the SBA's receipt of its application.
 - Even if the applicant is denied a disaster loan, this grant is not subject to repayment.
 - A grant hereunder will reduce loan forgiveness for an applicant under the Paycheck Protection Program if an applicant chooses to refinance a disaster loan into that program or is approved for a Paycheck Protection Program loan.
 - SBA's authority to make these grants terminates on December 31, 2020.
- Coordination with Paycheck Protection Program:
 - These disaster loans may be refinanced into Paycheck Protection Program loans.
 - If your business has received a disaster loan from January 31, 2020 until June 30, 2020, you are eligible for a Paycheck Protection Program loan so long as that disaster loan is for a purpose other than paying payroll costs, mortgages, rents and utilities.

Additional guidance should be forthcoming with regard to accessing relief under these various programs.

To discuss this further, please contact:

[George Morrison](mailto:gmorrison@burr.com) at gmorrison@burr.com or (843) 973 6862, [Jennifer Leaphart](mailto:jleaphart@burr.com) at jleaphart@burr.com or (803) 753 3252 or the Burr & Forman attorney with whom you normally consult.

Burr & Forman publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm. If legal advice is sought, no representation is made about the quality of the legal services to be performed or the expertise of the lawyers performing such service.