

CARES ACT SEC. 1102 PAYCHECK PROTECTION PROGRAM AND SEC. 1106 LOAN FORGIVENESS

The paycheck protection program allows for small businesses to apply for a loan with an approved SBA 7A lender that has the potential to be 100% forgiven. The forgiveness of these loans will not be taxable to the borrower. The loan application process and forgiveness application process are largely based on payroll costs of the business.

NOTE: THIS INFORMATION IS FOR CLIENT CONSULTATION AND GUIDANCE ONLY, LOAN APPROVAL CAN ONLY BE GRANTED BY AN SBA 7A LENDER

Sec. 1102 - Paycheck Protection Program

1. The covered period is defined as February 15, 2020 through June 30, 2020.
2. Payroll cost include the following:
 - a. Salary, wages, commission and similar compensation including cash tips.
 - b. Payments for vacation leave.
 - c. Payments for parental, family, medical or sick leave.
 - d. Payments for dismissal or separation.
 - e. Payment of any retirement benefits.
 - f. Group health care benefits, including insurance premiums.
 - g. State and local payroll taxes assessed on the compensation of employees.
 - h. The sum of payments to (or income of) a sole-proprietor or independent contractor that is in an amount not more than \$100k in 1 year, prorated for the covered period.
3. Payroll cost should not include the following:
 - a. The compensation of an individual employee in excess of an annual salary over \$100,000, prorated for the covered period.
 - b. Taxed imposed or withheld under chapters 21, 22 or 24 of IRC (i.e. federal payroll taxes).
 - c. Compensation of employees whose principal residence is outside of the United States.
 - d. Any qualified sick or family leave wages for which a credit is allowed under 7001 or 7003 of FFCRA (payroll credit for paid sick or family leave).
4. Qualified Business
 - a. Businesses and entities must have been in operation on February 15, 2020.
 - b. Small business concerns, as well as any business concern, a 501(c)(3) nonprofit organization, a 501(c)(19) veterans organization, or Tribal business concern described in section 31(b)(2)(C) that has fewer than 500 employees (see attached affiliation rules link), or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by SBA, if higher (see attached size standards link).
 - c. Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals.
 - d. Any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72, for which the affiliation rules are waived.
 - e. Affiliation rules are also waived for any business concern operating as a franchise that is assigned a franchise identifier code by the Administration, and company that receives funding through a Small Business Investment Company.

CARES ACT SEC. 1102 PAYCHECK PROTECTION PROGRAM AND SEC. 1106 LOAN FORGIVENESS

5. Maximum Loan Amount
 - a. The lesser of
 - i. Average monthly payroll cost (as defined above) incurred within the one-year period prior to the loan date (exception for seasonal and new businesses).
 1. Seasonal Employer – average total monthly payments for the 12-week period beginning 2/15/19 or 3/1/19 (borrower election).
 2. New Employer - average total monthly payments for the period beginning 01/01/2020 through 2/29/2020.
 - ii. Times 2.5
 - iii. Plus the outstanding amount of EIDL taken out after January 31, 2020 and before the date on which PPP loans are made available to be refinanced,
 - iv. Or 10 Million
6. Allowable use of funds
 - a. Payroll cost (defined above).
 - b. Continuation of group health care benefits under family, medical or sick leave, including premiums.
 - c. Employee wages.
 - d. Interest on mortgage (which does not include prepayments) – incurred prior to covered period.
 - e. Rent (including rent under a lease agreement).
 - f. Interest on other debt obligations – incurred prior to covered period.
 - g. Utilities (defined below).
7. Other loan considerations
 - a. Applicant shall make a good faith certification of uncertainty of the current economic conditions which make the loan request necessary to support the ongoing operations.
 - b. Business was in operation on February 15, 2020.
 - c. Business paid payroll expenses and payroll taxes or independent contractors.
8. Maximum maturity of Loan after Forgiveness application
 - a. 10 years
9. Interest rate
 - a. Not to exceed 4%
10. Deferral of payment (principal, interest and fees)
 - a. At least 6 months, but no more than a year.

Situation 1

John applies for a paycheck protection loan on May 1, 2020 for his lawn care business. The business had \$600,000 of payroll cost from the period of May 1, 2019 through May 1, 2020. The average monthly cost of payroll is \$50,000. John does not have any employees that live outside the U.S. and all salaries were less than \$100,000. John's maximum loan would be \$125,000 (the lesser of \$50,000 times 2.5 and \$10 million).

CARES ACT SEC. 1102 PAYCHECK PROTECTION PROGRAM AND SEC. 1106 LOAN FORGIVENESS

Sec. 1106 - Loan Forgiveness

1. Covered period is 8 weeks beginning on the loan origination date.
2. Covered rent obligation
 - a. Rent under defined lease agreement enforced before February 15, 2020.
3. Covered mortgage obligation
 - a. Debt instrument incurred in the ordinary course of business before February 15, 2020 on real or personal property.
4. Covered utility payment for services that began before February 15, 2020
 - a. Electricity
 - b. Gas
 - c. Water
 - d. Transportation
 - e. Telephone
 - f. Internet
5. Calculated forgiveness amount
 - a. Payroll cost (as defined in 1102 above)
 - b. Interest on covered mortgage obligation (as defined above) – no prepayments
 - c. Covered utilities (as defined above)
 - d. Covered rent obligation (as defined above)
6. Limitation of Forgiveness amount
 - a. May not exceed principal amount
 - b. Are not taxable to borrower
 - c. Reductions will apply if:
 - i. Number of employees was reduced during covered period
 1. Average FTE's per month during the covered period divided by:
 - a. FTE's per month from 2/15/19 – 6/30/19, or
 - b. FTE's per month from 1/1/20 – 2/29/20 (borrower election)
 2. Seasonal employer: #1 above is divided by FTE's from 2/15/19 – 6/30/19
 - ii. Employees rate was decreased during covered period by > 25% from the most recent full quarter for which the employee was employed prior to covered period (employees over \$100k exempt from this calculation).
 - iii. Reductions in employment of wages occurring between February 15, 2020 and ending 30 days after the enactment of the CARES Act (April 26, 2020) shall not reduce the amount of loan forgiveness if the borrower eliminates the reduction by June 30, 2020.

Situation 2

John's loan for \$125,000 was approved and originated on May 1, 2020. During the eight-week period John paid for \$100,000 of eligible payroll, \$10,000 of interest, \$5,000 of rent payments and \$1,000 of utility payments. There was no decrease in employees or employee rates during the eight-week period. \$116,000 of the \$125,000 of the loan would be eligible for forgiveness.

CARES ACT SEC. 1102 PAYCHECK PROTECTION PROGRAM AND SEC. 1106 LOAN FORGIVENESS

Additional Resources

FAQs from the Senate Committee on Small Business & Entrepreneurship

https://www.sbc.senate.gov/public/_cache/files/9/7/97ac840c-28b7-4e49-b872-d30a995d8dae/F2CF1DD78E6D6C8C8C3BF58C6D1DDB2B.small-business-owner-s-guide-to-the-cares-act-final-.pdf

SBA Affiliation Overview

https://www.sba.gov/sites/default/files/affiliation_discussion_0.pdf

SBA Size Standards

https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf