

# FARRIS BOBANGO

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ATTORNEYS AT LAW

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) expands the availability of loans under section 7(a) of the Small Business Act to include the Paycheck Protection Program (“PPP”). A PPP loan has the ability to have all or a portion of the PPP loan converted, effectively making the PPP loan a grant. Section 1106 of the CARES Act allows for loan forgiveness equivalent to the amount spent on covered expenses during the 8-week period beginning from the date the loan was originated. The forgiveness amount, however, will be reduced based on a reduction in the number of employees and a reduction in the salary and wages. Businesses that re-hire employees previously laid off will not be penalized for having a reduced payroll at the beginning of the period. The portion of the PPP loan that is forgiven will not be included in the business’s taxable income.

Section 1106: Loan Forgiveness	
<b>Loan Forgiveness Amount</b>	<p>Sum of costs incurred and payments made during the covered period:</p> <ul style="list-style-type: none"> <li>• Payroll costs</li> <li>• Interest payments on any covered mortgage obligation</li> <li>• Covered rent obligations</li> <li>• Covered utility payments</li> </ul> <p>NOTE: For businesses with tipped employees<sup>1</sup>, the additional wages paid to those employees can be included in the calculation of the forgiveness amount</p>
<b>Covered Period Defined</b>	8-week period beginning on the date of the origination of the PPP loan
<b>Payroll Costs Defined</b>	<p>The sum of compensation to employees that is:</p> <ul style="list-style-type: none"> <li>• Salary, wage, or similar compensation</li> <li>• Cash tips</li> <li>• Payment for vacation, parental, family, medical, or sick leave</li> <li>• Allowance for dismissal or separation</li> <li>• Healthcare benefits, including insurance premiums</li> <li>• Payment of retirement benefits</li> <li>• Payment of state and local tax on the compensation of employees</li> </ul> <p>Costs that are NOT eligible as payroll costs:</p> <ul style="list-style-type: none"> <li>• Employee compensation in excess of \$100,000</li> <li>• Taxes imposed under Internal Revenue Code 21 (Federal Insurance Contribution Act), 22 (Railroad Tax), and 23 (Federal Unemployment Tax)</li> <li>• Any compensation of an employee whose principal place of residence is outside of the United States</li> <li>• Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act</li> </ul>

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<sup>1</sup> “Tipped Employees” are defined in section 3(m)(2)(A) of the Fair Labor Standards Act of 1983 (28 U.S.C. 203(m)(2)(A))

<b>Covered Mortgage Obligation Defined</b>	Any indebtedness or debt instrument incurred in the ordinary course of business that: <ol style="list-style-type: none"> <li>1. Is a liability of the borrower;</li> <li>2. Is a mortgage on real or personal property; and</li> <li>3. Was incurred before February 15, 2020.</li> </ol>
<b>Covered Rent Defined</b>	Rent obligated under a leasing agreement in force before February 15, 2020
<b>Covered Utility Payments Defined</b>	Payment for a service for electricity, gas, water, transportation, telephone, or internet access which began before February 15, 2020
<b>Taxability</b>	The forgivable amount of the PPP loan <b>is excluded</b> from the taxable income of the business
<b>Limitations on Forgiveness Amount</b>	<ul style="list-style-type: none"> <li>• Forgiveness amount cannot exceed the principal of the PPP loan</li> <li>• Reduction in number of employees</li> <li>• Reduction in salary and wages</li> </ul>
<b>Reduction in Number of Employees</b>	<p>The loan forgiveness amount will be reduced, but not increased, by multiplying the available forgiveness amount by the quotient of:</p> <ul style="list-style-type: none"> <li>○ Average number of FTEs<sup>2</sup> per month employed during the 8-week period beginning on the date of the origination of the PPP loan;</li> <li>○ Divided by either: <ol style="list-style-type: none"> <li>a) Average number of FTEs per month employed from February 15, 2019 to June 30, 2019, or</li> <li>b) Average number of FTEs per month employed from January 1, 2020 to February 29, 2020</li> </ol> </li> </ul> <p>NOTE: the business can decide whether to divide by (a) or (b)</p> <p>For seasonal businesses (as determined by the SBA), the loan forgiveness amount will be reduced, but not increased, by multiplying the available forgiveness amount by the quotient of:</p> <ul style="list-style-type: none"> <li>○ Average number of FTEs per month employed during the 8-week period beginning on the date of the origination of the PPP loan;</li> <li>○ Divided by the average number of FTEs per month employed from February 15, 2019 to June 30, 2019</li> </ul>
<b>Reduction in Salary and Wages</b>	<p>The loan forgiveness amount will be reduced by the amount of any reduction in an employee’s salary or wages that is greater than 25% compared to the most recent full quarter</p> <p>Employees who made more than an annualized rate of \$100,000 during any pay period during 2019 are excluded from this calculation. Only employees who made less than \$100,000 are factored in to the reduction amount in salary and wages.</p>

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<sup>2</sup> The average number of Full-time Equivalent Employees (“FTEs”) used when determining the reduction in number of employees is calculated by the average number of FTEs for each pay period falling within a month.

<b>Exemptions for Re-hires</b>	<p>The loan forgiveness amount will be determined without regard to a reduction in the number of FTEs or reduction in salary of 1 or more employees from February 15, 2020 to 30 days after March 27, 2020 if:</p> <ol style="list-style-type: none"> <li>1. From February 15, 2020 to 30 days after March 27, 2020, there is a reduction, as compared to February 15, 2020, a reduction in the number of FTEs; and not later than June 30, 2020, the employer eliminated the reduction in number of FTEs</li> <li>2. From February 15, 2020 to 30 days after March 27, 2020, there is a reduction, as compared to February 15, 2020, a reduction in salary or wages of 1 or more employees; and not later than June 30, 2020, the employer eliminated the reduction</li> </ol>
<b>Loan Forgiveness Application</b>	<p>A business seeking loan forgiveness must submit an application to the lender servicing the PPP loan. The application needs to include:</p> <ul style="list-style-type: none"> <li>• Documentation verifying the number of FTEs on payroll and pay rates for the time periods used to determine reductions in the number of employees and salary, including: <ul style="list-style-type: none"> <li>○ Payroll tax filings reported to IRS</li> <li>○ State income, payroll, and unemployment insurance filings</li> </ul> </li> <li>• 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</li> <li>• Certification from the business that (a) the documentation provided is true and correct, and (b) the forgiveness amount 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</li> <li>• Any other documentation the SBA deems necessary</li> </ul>
<b>Documentation Requirement</b>	No business can receive forgiveness without submitting to the lender servicing the PPP loan the required documentation
<b>Loan Forgiveness Decision</b>	The lender must issue a decision regarding the loan forgiveness within 60 days after receiving the business' application for loan forgiveness
<b>SBA Guidance on Loan Forgiveness</b>	The SBA has 30 days after March 27, 2020 to issue guidance and regulations implementing the loan forgiveness of PPP loans

**For More Information, Contact:**

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