



DEPARTMENT OF THE ATTORNEY GENERAL

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Hawaii Attorney General Opposes Rule Governing Paycheck Protection Program Loan Appeals

HONOLULU – Hawaii Attorney General Clare E. Connors today joined a coalition of 18 attorneys general led by Illinois Attorney General Kwame Raoul in opposing a proposed Small Business Administration (SBA) rule governing the appeals process for Paycheck Protection Program (PPP) loans. The proposed rule would govern all SBA determinations considering PPP loans – including borrowers' eligibility, loan amounts and the use of proceeds, and loan forgiveness.

Created as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the PPP establishes loans intended to provide a direct incentive for small businesses to keep their workers on the payroll during the COVID-19 pandemic. It gives the SBA authority to guarantee up to 100 percent of qualifying loans and to forgive up to the full principal amount. In today's comment, the coalition argues that the proposed rule governing the appeals process for PPP loans is unfair and has numerous shortcomings that are detrimental to borrowers' rights, violate due process, and do not comply with the Administrative Procedures Act.

"The PPP loans are a lifeline for Hawaii's small businesses," said Attorney General Connors. "As such, they need to be fair, easy to understand and most importantly, conform to existing laws."

The coalition asserts that, for many businesses suffering during the COVID-19 pandemic, a PPP loan is the only way to stay in business. However, not all small businesses have the resources to defend their PPP loan in response to a SBA investigation, and, as a result, rely heavily on appealing adverse loan decisions. The attorneys general argue that the appeals procedure established by the proposed rule is confusing and puts borrowers at a disadvantage.

In the comment, the coalition urges the SBA to afford borrowers a fair opportunity to maintain a PPP loan by amending the proposed rule to:

- **Include procedures for final PPP loan review decisions by the SBA.** Although the rule provides some procedures for appeals of final PPP loan review decisions, the SBA has failed to provide any guidance on how it evaluates PPP loan in its investigations. This means that while filing an appeal, the borrower does not know what facts or law the SBA considered in its loan review decision. Additionally, the lack of procedures leaves borrowers' confidential information unprotected from disclosure.
- **Hold loan forgiveness applications in abeyance to ensure the deferral period continues during an administrative appeal.** The coalition argues that the proposed rule raises due process concerns because it forces borrowers to make payments on a loan while their appeal of denial of forgiveness of that loan is still pending.
- **Ensure independent and neutral decision-makers conduct appeals of PPP loan decisions.** Without independent and neutral decision-makers, the proposed rule denies borrowers due process and violates the Administrative Procedures Act. The proposed rule authorizes the same individual who made the initial decision regarding the loan to review an appeal of their own decision. The attorneys general assert that the SBA should establish an appeals process for PPP loan decisions in which each level of review is independent and neutral to ensure that decision-makers are not involved in appeals of their own decisions.
- **Provide borrowers with fair procedures on appeal.** The rule currently allows borrowers to file only one brief in their appeal, denying them the opportunity to file a reply brief to respond to the SBA's arguments. Borrowers also do not have access to the administrative record – upon which their appeal depends -- before they must file their brief. Additionally, the rule unfairly offers discovery only upon SBA's request and denies borrowers discovery rights, limiting their advocacy on appeal.

Joining Attorney General Raoul and Attorney General Connors in the comment are the Attorneys General of California, Connecticut, Delaware, District of Columbia, Iowa, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, Rhode Island, Oregon, Virginia, Vermont, and Washington.

Copy of the comment can be found [here](#).

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