Payroll Protection Program (PPP) Loan Guidance

(Per SBA Interim Final Rule published late April 2, 2020 & FAQs April 13, and May 6, 2020)

The **Paycheck Protection Program ("PPP")** authorizes up to $349 billion in forgivable* loans to small businesses **to pay their employees for 8 weeks** during the COVID-19 crisis. Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act the program is specifically designed to provide **quick relief for payroll costs** and some rent and utility costs.

The loan amounts will be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8-week period after the loan is made; and
- Employee and overall total compensation levels are maintained; and
- Not more than 25% of the forgiven amount may be for non-payroll costs.

INTEREST RATE – 1.0% (part 2i)

TERM – Two (2) years (part 2j)

MAXIMUM LOAN AMOUNT - $10,000,000 (part 2d)

PAYMENTS – Deferred for (six) months. (Interest continues to accrue.) (part 2n)

COLLATERAL - No collateral or personal guarantees required (part 4a)

however all 20%+ owners must be identified and initial the application form

Note that the SBA "credit elsewhere test" is NOT used in the PPP application

ELIGIBLE BUSINESSES (part 2a) (must be in operation on February 15, 2020)

- A small business with fewer than 500 employees (unlike EIDL, includes Farms & Ag Businesses)
- A small business that otherwise meets the SBA's size standard https://www.sba.gov/federal-contracting/contracting-guide/size-standards
- A 501(c)(3) not-for-profit charitable organization with fewer than 500 employees (4/3/20 clarification that Faith-Based Organizations are eligible)
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on any trade or business
- A Tribal business concern that meets the SBA size standard
- A 501(c) (19) Veterans Organization that meets the SBA size standard
- If you are in the accommodation and food services sector (NAICS 72), the 500-employee rule is applied on a per physical location basis rather than the normal SBA size table
- If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company, the normal affiliation rules do not apply

INELIGIBLE BUSINESSES (part 2b)

- Businesses engaged in illegal activity under federal, state or local law. (*Cannabis warning*)
- A household employer (you have a nanny, staff, etc.)
- A 20%+ owner is incarcerated, on probation, convicted of felony w/in last 5 years
- Any previous defaults on a federal loan in last 7 year

WHERE DO I APPLY? Through participating SBA lenders (most federally insured depository institution, federally insured credit union, Farm Credit System institution and other regulated lenders. Start by consulting with your local lender/bank as to whether it is participating. Enrolled SBA lenders can be found by zip code at: https://www.sba.gov/paycheckprotection/find .

* 'forgiven' only if proper documentation of appropriate disbursements made in 8 week period

This fact sheet prepared by **Hawaii Small Business Development Centers**

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WHAT LENDERS WILL NEED – (part 2q)

A. SBA FORM 2483 - https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf

B. PAYROLL DOCUMENTS – (part 2a) supports calculated average monthly payroll costs for 2019

- These can be IRS 941 quarterly returns, payroll processor records, payroll tax filings, or Form 1099MISC, or income and expenses from a sole proprietorship.
- For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

C. GOOD FAITH CERTIFICATION THAT - (part 2t) self-certify as checkboxes on Application

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
3. Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for here
4. From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan)

DETERMING LOAN AMOUNT: (part 2e)

Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.

Step 2: Subtract any compensation paid to an employee in excess of an annual salary of $100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of $100,000 per year.

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan (because it does not have to be repaid).

DETERMINING PAYROLL COSTS: (part 2f)

The sum of payments of any compensation with respect to employees that is a:

- salary, wage, commission, or similar compensation;
- payment of cash tip or equivalent;
- payment for vacation, parental, family, medical, or sick leave
- allowance for dismissal or separation
- payments for provision of group health care benefits, including insurance premiums
- payment of any retirement benefit
- payment of state or local tax assessed on the compensation of the employee

EXCLUDED PAYROLL COSTS (part 2g) (continued on next page...)

EXCLUDED PAYROLL COSTS (part 2g)

- Compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the period February 15, to June 30, 2020
- Payroll taxes, railroad retirement taxes, and income taxes
- Any compensation of an employee whose principal place of residence is outside of the United States
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116– 5 127); or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act
- ***DO NOT COUNT INDEPENDENT CONTRACTORS*** *(part 2h) they can apply for their own loans*

USE OF PROCEEDS (part 2r)

- Payroll costs, costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums.
- Mortgage interest payments (not mortgage prepayments or principal payments), Rent, Utilities
- Interest payments on any other debt obligations incurred before February 15, 2020
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

If a borrower received an EIDL loan between 1/1/20 and 4/3/2 they may apply for a PPP loan. If the EIDL was not used for payroll costs, it does not affect their eligibility for a PPP loan. If the EIDL loan was used for payroll costs, the PPP loan must be used to refinance your EIDL loan. Any advance on the EIDL will be deducted from the loan forgiveness amount on the PPP loan.

75% Rule (part 2r)
At least 75 percent of PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness.

LOAN FORGIVENESS (part 2o)
The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest depending on the application for forgiveness and proper documentation showing appropriate disbursements in the eight-week period beginning on the date the lender makes the first disbursement of the PPP loan to the borrower. The borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for "forgivable" purposes and employee and compensation levels are maintained. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan.
Not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.

Frequently asked questions: (incl borrowers notes of SBA-PPP-FAQ April 13, 2020)

Q: Is Paycheck Protection Program (PPP) helpful for my business?

NOT directly... this program is designed to help employees receive pay. There can be benefit for businesses in retaining a loyal and already trained staff member so if the business wants forgiveness instead of a straight LOAN, the money must primarily only be used on Payroll and only in the eight weeks from when you receive the money. If you have actual tasks that need to be done by employees for eight weeks, -great. **Basic survival during COVID-19 is how to either pivot your business model or hibernate your business because you have no sales income**. If you want to spend the money on other debt to keep the business alive then it is possible, but it'll be a straight loan (debt) but at very good terms. Bottom line, know/plan how you are going to use the money BEFORE looking to the PPP.

Q: When can I apply?

- ~~Starting **April 3, 2020**, small businesses and sole proprietorships with employees can apply for and receive loans to cover their payroll and other certain expenses.~~
- ~~Starting **April 10, 2020**, independent contractors under their own company and self-employed individuals can apply for and receive loans to cover their own payroll/draws and other certain expenses.~~
- The application period for PPP ends June 30, 2020... However, from the date you receive the loan funds, the eight week spending period starts and in any event must be completed by program end at June 30, 2020. This effectively means (by counting back eight weeks from June 30 that you must have applied and received your money by May 5, 2020.)
- Apply as soon as possible. This program will be oversubscribed (the money will run out before applications do). Applications are processed nationwide on a first come, first served basis.
- ~~**UPDATED 4/15/2020**: As predicted, due to federal funding constraints, the SBA's Paycheck Protection Program (PPP) is no longer accepting new loan applications. Applications confirmed by the Lending Bank as already submitted to or approved by the SBA, will continue to be reviewed. Contact your Lending bank for PPP application status.~~
- **UPDATED 4/24/2020:** Additional $310B allocated via 3rd Relief Package. SBA announces Bank application portal ETrans will reopen Mon, Apr 27 at 10:30AM EDT. Each Lending institution will submit queued applications its been holding and individually announce when they will start accepting new PPP applications.

Q: In Hawaii can I apply online with a local bank?

The largest banks in Hawaii all have PPP loans portals with instructions for PPP application. Because of high demand, most banks are giving preference to their existing bank customers:

- **Central Pacific Bank**: https://www.cpb.bank/ppp
  -(complete application process online).
- **Bank of Hawaii**: https://www.boh.com/ppp
- **First Hawaiian Bank**:.. https://sba.fhb.com/
  -(complete application process online).

- **American Savings Bank**: https://www.asbhawaii.com/business/sba-ppp
- **Hawaii USA Federal Credit Union**: https://www.hawaiiusafcu.com/Loans/Business/Small-Business-Relief-PPP
- **HomeStreet Bank:** https://www.homestreet.com/business/small-business/sba-loans/sba-relief-funding

Q: I'm self-employed and only take an owner's draw do I have a payroll?

YES. Under the PPP, businesses run by self-employed individuals, gig-economy workers and 1099 contractors can apply under their businesses and claim themselves as their employee. There is a separate starting date for applications (April 10) but the application is the same, there needs to be a calculation of average monthly payroll cost and you'll get 2.5 that as a loan amount. To be clear, a company cannot count contractors in their payroll costs, they apply separately as an "employee" of their own company.

The wage portion of a self-employed "payroll cost" calculation is ***"The sum of payments of any compensation or income of a sole proprietor that is a wage, commission, income, net earnings from self-employment, or similar compensation and is in an amount that is not more than $100,000 in 1 year, as prorated for the covered period."***

Documented by IRS Form 1040 Schedule C or certified Income Statement from an accounting professional. Monthly "payroll costs" would be Line 31 (net profit) divided by 12. Also "payroll costs" could include 1/12th of Line 14 -Employee Benefits and Line 19 -Pension/Retirement

Q: Do I need to first look for other funds before applying to this program?

No. For the PPP the usual SBA requirement that you try to obtain some or all of the loan funds from other sources (i.e., easily liquidate assets, the SBA Credit Elsewhere test) is WAIVED.

Q: How many loans can I take out under this program? Only one PPP during Feb 15 – Dec 31, 2020. It is permissible to apply for both a PPP Loan and an Economic Injury Disaster Loan (EIDL). You must take precautions not to double pay any particular bill with funds from each loan, no "double dipping".

Q: How do I decide between this or the Economic Injury Disaster Loan? Disaster Loans, such as the **EIDL**, cover a broader variety of operational costs, including inventory and other costs of good. The EIDL has an "Advance" feature to provide quick money "up-to-$10,000" that essentially is a grant, until the rest of the loan is approved and processed. The **Paycheck Protection Loans** must be spent to maintain payroll for eight weeks. Up to 25% of the money can go to rent and utilities. There is a loan forgiveness incentive in the PPP that must be applied for after the eight weeks (see questions below...) Applying for both is allowed as long as you don't "double-dip", pay the same bill with both loan's funds.

Q: How do I request loan forgiveness? You submit a request to the original lender (that you applied to) that is servicing the loan. The request will include documentation that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage interest, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. Your lender makes the decision on the amount of forgiveness within 60 days.

Q: How much of my loan will be forgiven? You must apply for forgiveness with documentation of how you used the loan. You will continue to owe the money of the loan if you did not maintain your staff and payroll for the 8 weeks that began on the date the lender makes the first disbursement of the PPP loan to the borrower. And you will continue to owe on the loan for any amounts spent on other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. It is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs:

- Number of Staff: Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019.
- Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

Q: The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value (in calculation payroll cost)**?**

NO. During the computation of average monthly payroll costs during application, the exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

Q: Do PPP loans cover paid sick leave?

Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit: https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs.

Q: My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business's operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?

In evaluating a borrower's eligibility, a lender may consider whether a seasonal borrower was in operation on February 15, 2020 or for an 8-week period between February 15, 2019 and June 30, 2019. The concept and intent is that you were still in business, maybe temporarily closed due to season or COVID-19 mandate but still not out of business.

Q: What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

If any company staff is from a PEO (leased or handling the HR/payroll services) they should contact their PEO to obtain the excel form that shows the calculations for the staff, they can claim on their PPP calculations and the affidavit. The PEOs are familiar with this process including the excel form and affidavit form that the business can provide to the lender since they will not have a 941 for these staff. Do not use figures from your PEO invoice since that amount includes ineligible costs such as Workman's Comp and TDI, etc.

ProService Hawaii, a leading PEO in the state has an **Employer's Guide to COVID-19**: https://www.proservice.com/employers-guide-coronavirus/ as well as opened their assistance to all employers (client or not):

- Provide your questions in this form. Proservice Hawaii will get back to you within 1 business day
- Email your questions to covid19help@proservice.com
- Or, call us at (808) 369-9960 Monday - Friday from 8 am - 5 pm

Q: What time period should borrowers use to determine their number of employees and payroll costs to calculate their maximum loan amounts?

The statue states: ***"the average total monthly payments by the applicant for patrol costs incurred during the 1-year period before the date on which the loan is made."*** If you anticipate getting the loan on April 1, then you use April 1, 2019 to March 31,2020. In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019.

Borrowers use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

For seasonal businesses, the applicant may use average monthly payroll for the 12-week period beginning February 15, 2019, -or- the period March 1, 2019 and June 30, 2019.

An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

And remember that "payroll costs" are more than just wages but includes payments for medical benefits, severance benefits, retirement benefits, etc (see "Determining Payroll Costs" section on the second page of this PPP Guidance).

Q: Where do I show my rent, mortgage interest and utilities in my Application?

You don't at the application stage. There are two separate concepts to this loan; how much can I get (application stage) and what can I spend it on (forgiveness request). In the **application stage, you are only concerned with calculating average monthly payroll costs and the FTE employee count**. Upon getting the loan you must primarily use the funds covering the payroll costs you indicated and **at the END of eight weeks** (beginning on the day you receive funds from the bank)**, you apply for forgiveness** with documentation for how you spent the money which can include up to 25% on those other permitted costs.

Q: Are Forgiven PPP proceeds Taxable?

Under federal law, loan forgiveness generally counts as taxable income, and states almost invariably incorporate this provision into their own codes. The Coronavirus Aid, Relief, and Economic Security **(CARES) Act, however, expressly excludes the forgiveness of small business loans under the Paycheck Protection Program (PPP) from this provision**. Since states generally follow federal treatment of debt discharge, they would be expected to incorporate this exception as well—but only if they conform to the most recent version of the Internal Revenue Code (IRC), which includes the exception. We are still awaiting a decision on Hawaii Dept of Taxation.

Additional Note on taxes: Since PPP forgiven Loan Amounts are NOT taxed... IRS and the State of Hawaii **disallows any otherwise allowable deduction for expenses paid for by forgiven funds**. The IRS concludes that this treatment prevents a double tax benefit.

See next page for **Tax Table Summarizing Hawaii Tax Treatment of Federal COVID-19 Programs**

Hawaii State Summary Refer to May 4, 2020 TAX INFORMATION RELEASE NO. 2020-02 (REVISED) RE: **Hawaii Tax Treatment of Various Federal COVID-19 Relief Programs and Payment**
https://files.hawaii.gov/tax/legal/tir/tir20-02_rev.pdf

Summary of State and Federal Tax Treatment of CARES Act Funds

Description		Federal Income Tax	State Income Tax	State GE Tax
INDIVIDUAL INCOME PROGRAMS				
Economic Impact Payment	Payments made to qualifying individual taxpayers of up to $2,400, depending on adjusted gross income and filing status. Qualifying taxpayers may also receive $500 per qualifying child.	No	No	No
Pandemic Unemployment Assistance (PUA)	Provides up to $648 per week for those who ordinarily may not be eligible for unemployment benefits, such as business owners, self-employed persons, independent contractors, and others, that are out of business or whose services are significantly reduced as a direct result of the COVID-19 pandemic.	Yes	Yes	No
Federal Pandemic Unemployment Compensation (FPUC)	Additional $600 per week of unemployment compensation for employees who are eligible for unemployment benefits.	Yes	Yes	No
SMALL BUSINESS PROGRAMS				
Paycheck Protection Program (PPP)	Forgivable loans to small businesses.	No	No*	No
Economic Injury Disaster Loan Emergency Advances (EIDL Grant)	Loan advances of up to $10,000 made to small businesses, which does not need to be repaid.	Yes	Yes	No
Economic Injury Disaster Loans (EIDL)	Loans up to $2,000,000.	No	No	No

DOTAX intended recommendation to Hawaii State Legislature.

Q: Will a borrower's PPP loan forgiveness amount be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer? (question#40 of May 3 and published in PPP FAQs of May 6th)

No. SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. To qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. *Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.*