

FAQ from Inner City Law Center

The SBA issued the attached Interim Final Rule on the Paycheck Protection Program late Thursday. It adds some clarification and additional confusion to the loan process for the PPP Loan. The SBA also released a revised draft [Borrower Application Form](#). Below you will find our answers to 10 Frequently Asked Questions that we received since Thursday's presentation. Inner City Law Center remains available to answer questions and assist with these applications. Please reach out if they can be helpful.

1. What is the Status of the Loan Applications with Lending Institutions?

Some banks have begun accepting applications. Most of those that are doing so, seem to be using the newest draft of the [Borrower Application Form](#). This form allows an authorized representative to apply for the loan on behalf of the organization without a Board Resolution. Individual banks may have different requirements, and your organization may have particular internal requirements. In case it is useful, there is an attached sample board resolution that is modelled on what the SBA requires for other sorts of loans. [ICLC's bank](#) has not yet begun accepting applications. They are eagerly awaiting them doing so – especially since the SBA confirmed Thursday that this funding would be available on a “first-come, first-served” basis.

2. Did the interest rate for this loan change?

Yes. The SBA announced Thursday that the interest rate on these loans will be 1.0% rather than 0.5%.

3. Can we include 1099 consultants in our application or forgiveness amounts?

No. Per the latest SBA guidance, independent contractors should not be included as eligible expenses for calculating the loan request amount or forgiveness expenses. This is because independent contractors are eligible to apply for loans themselves.

4. What period of time should we use for calculating payroll costs for the loan amount?

The instructions in the draft application for calculating Payroll Cost conflict with the timeline in the legislation and Interim Final Rule. The application says to use 2019. The legislation and Interim Final Rule say to use “aggregate payroll costs from the last twelve months for employees who live in the United States.”

Unless your bank explicitly requires otherwise, we recommend following the standards set forth in the legislation and at pages 8-11 of the attached Interim Final Rule, rather than the application instructions. I.e., to use the most recent 12 months, rather than calendar year 2019.

For example, here is the process we intend to follow at ICLC for calculating our annual payroll costs:

- Sum Box 5 amounts for all employees for 2019.
- Subtract compensation paid to all employees in Q1 2019.
- Add compensation paid to all employees in in Q1 2020.
- Reduce the amount for any employees who have over \$100,000 in compensation to \$100,000.
- Increase the amount for any new positions hired in the last year (new positions, not new employees) to their annual pay up to \$100,000.
- For all employees with compensation under \$100,000, add the ICLC share of the 401k and medical and dental insurance for the period from 4-1-19 to 3-31-20.

5. What are some things that are not included in the payroll cost calculations?

- Workers Compensation Insurance payments are not included because that are considered a benefit for the employer, not the employee
- Employer share of Federal Payroll Taxes (FICA and Medicare) are not included.

6. How do we calculate the number of personnel for the application?

ICLC has not found any specific guidance on how to calculate the number of employees on the application form or in the legislation. The SBA’s Interim Guidance states that the organization must certify that the applicant was “in operation on February 15th and had employees . . .” Unless ICLC’s bank gives them direction otherwise, they intend to use the number of employees at ICLC on February 15, 2020.

7. What expenses can be forgiven?

Four main categories of expenses can be forgiven if incurred in the “8 weeks following the loan origination date”:

- Payroll
- Utilities at the business address
- Rent
- Mortgage Interest or interest on other debt in place on February 15, 2020

Payroll costs must be at least 75% of the costs included for forgiveness – i.e., the other three categories cannot be more than 25% of the total forgivable cost.

8. Which utilities can be included when calculating forgivable costs?

Utility costs are not relevant to how much money you can borrow. But they can be claimed as forgivable costs. The CARES Act defines a “covered utility payment” as “payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.”

9. What other documentation is required in addition to the application?

You must submit “such documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings . . .” Individual lenders are likely to have specific document requirements; e.g., our bank has said that they may require W2s or other payroll tax filings.

10. Can we access both the PPP and the Employee Retention Payroll Tax Credit?

Yes. The PPP prohibits the use of the Employee Retention Payroll Tax Credit only after the PPP funds are received. Therefore, it appears that an organization can access the Employee Retention Payroll Tax Credit until actually receiving PPP funds. After that point, the ERPTC would no longer be available.

11. Bonus Tip!

We have been advised that it is important to use your full nine-digit zip code on your application. Apparently that’s an SBA requirement!

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