

## FAQs on First and Second Draw PPP Loans, Loan Forgiveness and ERTC for Nonprofits\*

April 26, 2021

### **1. What is the latest legislation enacted by Congress with regards to the Covid relief programs, including the Payroll Protection Program (PPP), Employee Retention Tax Credit (ERTC), and Family Leave Credits?**

On March 11<sup>th</sup>, President Biden signed into law the American Rescue Plan Act of 2021 (ARP). This plan extends and expands on several COVID relief programs in the earlier CARES bills signed into law by then President Trump – the Consolidated Appropriations Act, 2021 (CAA21 on December 27, 2020) and the CARES Act (March 2020). CAA21 included significant changes to the Payroll Protection Program (PPP) as well as expansion of other lending and grant programs, such as an opportunity for eligible entities to obtain PPP Second Draw loans.

Provisions affecting PPP and other funding provisions under ARP include:

- Extended First Draw eligibility to the Paycheck Protection Program (PPP) for charities regardless of total employee size if there are not more than 500 employees at one physical location.
- Provided an additional \$7.5 billion for the PPP program, increasing the total program level to \$813.7 billion.
- Supplied an additional \$15 billion for the Targeted Economic Injury Disaster Loan (EIDL) Advance program.

The bill also extended employee retention tax credits as follows:

- Extended the employee retention tax credit, as added by the CARES Act and expanded by CAA21 through December 31, 2021. For the period beginning July 1, 2021, the credit can only be claimed against the employer's share of the Medicare tax rather than other payroll taxes. However, the credit would continue to be refundable for employers with insufficient tax liability.
- Extended the paid sick time and paid family leave credits created by the CARES Act from March 31, 2021 through September 30, 2021. It increases the amount of wages for which an employer may claim the paid family credit in a year from \$10,000 to \$12,000 per employee and increases the number of days for which self-employed individuals can claim the credit from 50 to 60.

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## **First Draw Loan Information**

### **2. If I did not receive or returned my PPP Loan from the first round of applications, can I apply for a PPP Loan now?**

Yes, existing PPP borrowers who did not receive loan forgiveness by 12/27/20 may reapply for additional First Draw funds if they previously returned some or all of their First Draw PPP Loan funds or qualify to modify their First Draw PPP Loan amount due to changes in the PPP law made by the CAA21.

The CAA21 increased the available PPP amount and extended the program through March 31, 2021. The original PPP provided \$525 billion in forgivable loans over five months before it stopped accepting applications in August 2020. CAA21 increased the funds available for PPP Loans, including \$35 billion for first-time loans and \$15 billion set aside for community financial institutions.

New borrowers will use [Form 2483](#) to apply for First Draw loans. New borrowers may use calendar year 2019 or 2020 for purposes of calculating their maximum loan amount and must have 500 or fewer employees to be eligible. The maximum loan amount is \$10 million.

### **3. If I am a seasonal employer, can I apply for an increase in my First Draw PPP Loan Amount?**

If a seasonal employer received a First Draw PPP Loan and SBA has not remitted a forgiveness payment to the Lender on that loan, the seasonal employer would be eligible for an increase if application of the methodology in Section 336 of the Economic Aid Act results in the calculation of a higher loan amount. The new method permits seasonal employers to use 2.5 times the average monthly payroll paid or incurred for any 12-week period between February 15, 2019 and February 15, 2020.

### **4. How is the maximum First Draw PPP Loan amount (up to \$10 million) calculated for eligible nonprofit organizations?)**

The following methodology should be used to calculate the maximum First Draw Loan amount that can be borrowed for eligible nonprofit organizations:

- **Step 1:** Compute 2019 payroll costs by adding the following:
  - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
    - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter,
    - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips,
    - Minus (i) any amounts paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the U.S.

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- 2019 employer group health, life, disability, vision, and dental insurance contributions (portion of IRS Form 990 Part IX line 9 attributable to those contributions)
  - 2019 employer retirement contributions (IRS Form 990 Part IX line 8); and
  - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
  - **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.
  - **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The nonprofit organization's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed IRS Form 990 Part IX or other documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date. Eligible nonprofits that file IRS Form 990-EZ should rely on that form and those that do not file an IRS Form 990 or 990-EZ, typically those with gross receipts less than \$50,000, should see the next question.

#### 5. How is the maximum First Draw PPP Loan amount calculated for eligible nonprofit religious institutions that do not file a Form 990?

The following methodology should be used to calculate the maximum First Draw Loan amount that can be borrowed for eligible nonprofit religious institutions, veterans' organizations, and tribal businesses:

- **Step 1:** Compute 2019 payroll costs by adding the following:
  - 2019 gross wages and tips paid to employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
    - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c-column 1) from each quarter,
    - Plus, any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, and
    - Minus (i) any amounts paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the United States;
  - 2019 employer group health, life, disability, vision, and dental insurance contributions;
  - 2019 employer retirement contributions; and
  - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).

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- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.
- **Step 4:** Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The entity's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

## **Second Draw Loan Information**

### **6. Who is Eligible for Second Draw PPP Loan?**

The eligibility requirements for Second Draw PPP loans are narrower than the eligibility requirements for First Draw PPP Loans. Borrowers must have or will use the full amount of a first PPP loan to be eligible to receive a Second Draw PPP Loan. Further, eligible borrowers must also meet the following qualifications:

- They must have 300 employees or fewer per location. (Additional guidance may be needed, but in general, borrowers can calculate their number of employees using data either from the date of the loan application, previous 12 months or from calendar year 2019).
- They must have had a 25% reduction in gross receipts in any calendar quarter of 2020 compared to the same quarter in 2019 (or have an annual reduction of 25 percent).
- Certify that current economic uncertainty makes the loan necessary to support the ongoing operations of the borrower.

Note that loan forgiveness rules like those for the First Draw PPP Loans (60% payroll cost minimum) apply to the Second Draw PPP Loan.

### **7. How does a nonprofit determine gross receipts?**

Gross receipts for nonprofits are defined with reference to the categories of receipts reported on IRS Form 990, Part VIII, Statement of Revenue. The four categories of revenue include: (1) contributions, gifts, grants and other similar amounts; (2) program service revenue; (3) other revenue including investment income and amounts from sales of assets; and (4) miscellaneous revenue. Revenue calculated in accordance with the borrower's accounting method. For nonprofit organizations that use IRS Form 990, take the sum of lines 6b(i), 6b(ii), 7b(i), 7b(ii), 8b, 9b, 10b, and 12 (column (A)) of Part VIII to demonstrate gross receipts. For nonprofit organizations using IRS Form 990-EZ, take the sum of lines 5b, 6c, 7b, and 9 of Part I.

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Note that any forgiveness amount from a First Draw PPP Loan or any EIDL advance is excluded in from gross receipts.

Entities that use a fiscal year to file taxes may document a reduction in gross receipts with income tax returns only if their fiscal year contains all of the second, third, and fourth quarters of the calendar year (i.e., have a fiscal year start date of February 1, March 1, or April 1).

#### **8. What documentation do I need to provide to corroborate the 25 percent reduction in gross receipts?**

The following are the primary sets of documentation borrowers can provide to substantiate their certification of a 25 percent gross receipts reduction (only one set is required):

- Quarterly financial statements for the entity. If the financial statements are not audited, the borrower must sign and date the first page of the financial statement and initial all other pages, attesting to their accuracy. If the financial statements do not specifically identify the line item(s) that constitute gross receipts, the borrower should annotate which line item(s) constitute gross receipts.
- Quarterly or monthly bank statements for the entity showing deposits from the relevant quarters. The borrower must annotate, if it is not clear, which deposits listed on the bank statement constitute gross receipts (e.g., payments for purchases of goods and services) and which do not (e.g., capital infusions).
- Annual IRS income tax filings of the entity (required if using an annual reference period). If the entity has not yet filed a tax return for 2020, the borrower should fill out the return forms, compute the relevant gross receipts amount (see FAQ# 7), and sign and date the return, attesting that the values that enter into the gross receipts computation are the same values that will be filed on the entity's tax return.

#### **9. How do I apply for a Second PPP Draw Loan and what are the terms?**

Second Draw borrowers use Form [2483-SD](#), and are generally subject to the same terms, conditions and requirements as First Draw PPP Loans.

All PPP loans have a fixed interest rate of 1% calculated on a non-compounding, non-adjustable basis. Borrowers that receive PPP Loans may also receive loans from other lenders or programs and may be able to obtain credit from other institutions. The maturity of a PPP loan is five years, with a deferral period that lasts until the loan forgiveness amount is determined. This means that until you know how much of your loan will be forgiven, you do not need to start making payments. Borrowers who fail to apply for loan forgiveness within 10 months of the end of the covered period (see FAQ #15 for definition) must start making loan payments similar to that for First Draw PPP loans.

#### **10. How is the loan amount determined for Second Draw PPP Loans?**

Borrowers for Second Draw loans may apply for 2.5 times average monthly payroll, not to exceed \$2 million. Borrowers are permitted to use payroll costs from calendar year 2019, calendar year

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2020 or the 1-year period before the date on which the Second Draw loan is made for their calculation. If a borrower uses the same lender and the same payroll timeframe as it used for its First Draw PPP loan and already submitted the required payroll documentation to the lender, no additional payroll documentation is required to be submitted with its Second Draw PPP loan application.

The maximum Second Draw PPP Loan amount calculated for eligible nonprofit organizations (up to \$2 million is calculated as follows:

- **Step 1:** Compute 2019 payroll costs by adding the following:
  - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
    - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c column 1) from each quarter,
    - Plus, any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips,
    - Minus (i) any amounts paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the United States;
  - 2019 employer group health, life, disability, vision, and dental insurance contributions (portion of IRS Form 990 Part IX line 9 attributable to those contributions);
  - 2019 employer retirement contributions (IRS Form 990 Part IX line 8); and
  - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.

The nonprofit organization's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed IRS Form 990 Part IX or other documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, are usually required to substantiate the calculated Second Draw PPP Loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 needs to be provided to establish you were in operation and had employees on that date.

For borrowers assigned a NAICS code beginning with 72 (generally food and lodging operations including overnight summer camps) at the time of disbursement, CAA21 provides that the maximum loan amount is equal to 3.5 times the average monthly payroll costs in the year prior to when the loan was received or within the calendar year.

Seasonal employers can use 2.5 times the average monthly payroll paid or incurred for any 12-week period between February 15, 2019 and February 15, 2020. See Question 4 about First Draw Recalculations.

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For a new entity that did not exist in the 1-year period before February 15, 2020, the formula calculates the average monthly payroll costs by 2.5 times for the months in 2020 the entity operated.

## **Loan Forgiveness Information**

### **11. What is included in payroll costs?**

PPP loans recipients are eligible for forgiveness on payroll spending during the Covered Period. Payroll costs are limited to \$100,000 on individual employee's compensation. Payroll costs include cash compensation, such as salary, wages, commissions, tips, paid leave and any allowance for separation or dismissal.

The limitation, however, does not apply to non-cash benefits (not capped per employee) which includes:

- employer contributions to defined-benefit or defined-contribution retirement plans,
- employee vacation, parental, family, medical, and sick leave
- 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

CAA21 also redefined "payroll costs" to specifically include group insurance payments made on group life, disability, vision, and dental insurance.

The definition of payroll costs for forgiveness purposes is the same as used to determine a borrower's maximum PPP loan amount.

Borrowers are still required to use at least 60% of the loan proceeds on payroll costs.

### **12. What payroll costs are excluded?**

Federal employment taxes paid by the employer are not included in Payroll Costs to calculate the loan forgiveness amount.

The same payroll costs may not be allocated to both PPP loan forgiveness and the Employer Retention Tax Credit (described in FAQ #20). This prohibition against "double dipping" is explained in detail below.

### **13. What expenses are included in the new definition of permitted non-payroll costs?**

The following expenses are eligible forgivable non-payroll expenses for purposes of both PPP loans. The Original Non-Payroll Permitted Expenses included:

- Mortgage Interest
- Rent on Lease, and
- Utilities, which include:
  - water & sewer
  - electricity

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- telephone (including cell phone)
- internet
- gas
- transportation

The rent or mortgage expense that is used included must be related to the borrower's space and not include any space rented, subleased, or occupied by other businesses.

New categories were added by the CAA21. These expenses expand the categories of non-payroll cost for which PPP loan proceeds borrowers may receive forgiveness (for both the First Draw and Second Draw). They include:

- Covered Supplier Cost - generally includes the costs of purchasing goods that are essential to operations and were made pursuant to a contract that was in effect prior to the Covered Period (unless for perishable goods, in which case the contract can be entered into during the Covered Period)
- Covered Worker Protection Expenditures - includes amounts paid to comply with COVID-19 guidance for employees working remotely and to facilitate the adaptation of business activities to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, the Occupational Safety and Health Administration or a state or local government, after March 1, 2020. These expenditures may include the purchase, maintenance or renovation of drive-through windows, air filtration systems, physical barriers (sneeze guards), expanded indoor or outdoor operating space, onsite or offsite health screening and other expenditures that are necessary. Note that payments on real estate and other intangible property are not covered under this category.
- Covered Operations Expenditures - includes payments for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records, and expenses.
- Covered Property Damage Costs - related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation.

#### 14. What is the timing of the forgiveness provisions?

For Second Draw PPP Loans in excess of \$150,000, the borrower must submit its loan forgiveness application for the First Draw PPP Loan before or simultaneously with the loan forgiveness application for the Second Draw PPP Loan, even if the calculated amount of forgiveness on the First Draw PPP Loan is zero.

Borrowers can eliminate their FTE reduction on or before December 31, 2020 or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period.

**Safe harbor provision:** There are certain safe harbor provisions that provide exceptions to the FTE reduction provisions. Most importantly, they apply generally for borrowers whose operations

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are closed, in whole or in part due to government order and who have not reduced the compensation of covered employees by more than 25 percent during the covered period.

PPP borrowers of \$50,000 or less are exempt from any reductions in forgiveness based on:

- Reductions in full-time-equivalent (FTE) employees; and
- Reductions in employee salary or wages.

#### **15. What Reference Period can I use when determining forgiveness?**

In general, a reduction in FTE employees during the covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees. For both First Draw PPP Loans and Second Draw PPP Loans, the borrower must first select a reference period:

- February 15, 2019 through June 30, 2019;
- January 1, 2020 through February 29, 2020; or
- In the case of a seasonal employer, either of the two preceding methods or a consecutive 12-week period between February 15, 2019 and February 15, 2020.

Note that the same period does not need to be selected for both the First and Second Draw loan forgiveness calculations.

If the average number of FTE employees during the covered period is less than during the reference period, the total eligible expenses available for forgiveness is reduced proportionally by the percentage reduction in FTE employees.

For example, if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.

Borrowers are also exempt from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period if the borrower can document in good faith:

- an inability to rehire previously terminated employees who were employees of the borrower on February 15, 2020 or restore their hours which had been reduced after an offer is made,
- employees were fired for cause,
- voluntarily resigned or requested and received a reduction of hours,
- an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020 (or, for a PPP loan made on or after December 27, 2020, not later than the last day of the loan's covered period), or was
- unable to return to the same level of business activity prior to Feb 15, 2020, due to compliance with requirements/guidance between March 1, 2020 and Dec 31, 2020 by HHS, CDC or OSHA (related to worker or customer safety requirements related to Covid-19) for the First Draw, or at the end of the covered period for the Second Draw.

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## 16. Has the covered period changed?

Yes, if you are applying for a First or Second Draw PPP loan, you may choose a covered period between 8 to 24 weeks after receiving the loan. This gives you the flexibility to choose a covered period that works best for you.

Because the CAA21 changed the loan forgiveness covered period from either an 8- or 24-week period to a covered period between 8 and 24 weeks at the election of the borrower, the SBA is eliminating the “alternative covered period” as defined in the [Interim Final Rules](#).

For expenses to be eligible for forgiveness, the expenses must be incurred or paid within the covered period. The covered period ends on the date the borrower demonstrates the proceeds of the PPP loan have been spent. Such date must be at least 8 weeks after receipt of the loan but no later than 24 weeks after receipt. The borrower may choose to spend between 60-100% of a PPP loan on permitted payroll costs (see FAQ# 11 and FAQ #13) and the remaining balance must be spent on permitted non-payroll costs to be eligible for forgiveness. The date of the latest submitted expenses will determine when the covered period ends, not to exceed 24 weeks after receiving the funds.

## 17. When must a borrower apply for loan forgiveness or start making payments on a loan?

No later than 10 months after the end of the selected covered period.

## 18. What about my EIDL advance?

The CAA21 has repealed the requirement that PPP borrowers deduct the amount of any EIDL advance from their PPP forgiveness amount. If you have already filed for forgiveness on your first PPP loan, you should notify your SBA Lender on how best to modify your processed forgiveness application.

## 19. What forgiveness application should I use?

The SBA has updated the forgiveness forms to reflect the changes that the CAA21 has made to the PPP.

CAA21 also created a simplified forgiveness process for loans of \$150,000 or less where borrowers can sign and submit to the lender a one-page certification that includes a description of the number of employees the borrower was able to retain because of the loan, the estimated total amount of the loan spent on payroll costs, and the total loan amount.

Second Draw PPP Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application.

The revised applications (as of January 19, 2020) can be found below:

- [PPP Loan Forgiveness Application Form 3508](#)
- [PPP Loan Forgiveness Application Form 3508EZ](#) (simplified form if employer has not reduced wages by more than 25% during the covered or alternative covered period)
- [PPP Loan Forgiveness Application Form 3508S](#) (simplified form if borrowed less than \$150,000)

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**Employee Retention Tax Credit (ERTC) information**

**20. What are the key features of the ERTC?**

| <b>Credit Features</b> | <b>2020 Calendar Year (CAA1)</b>   | <b>2021 Calendar Year (CAA1/ARP)</b>   |
|------------------------|--|--|
| Effective Dates:       | March 13, 2020-December 31, 2020   | January 1, 2021-December 31, 2021  |
| Credit Rate:           | 50% of wages paid during eligibility, up to wages of \$10,000 per year per employee  | 70% of wages paid in the quarter, up to \$10,000 of wages per employee per quarter   |
| Maximum Credit Amount: | \$5,000/employee annual cap  | \$28,000/employee annual cap   |
| Eligibility:           | Employers who (1) are required to fully or partially suspend operations due to a COVID-19-related order (including nonprofit employers); or (2) have gross receipts 50% less than gross receipts in the same quarter in the prior calendar year (with the credit no longer being available once gross receipts are 80% of prior year calendar quarter gross receipts). Eligible employers include tax-exempt organizations. Employers receiving Paycheck Protection Program (PPP) loans are eligible | Employers who (1) are required to fully or partially suspend operations due to a COVID-19-related order (including nonprofit employers); or (2) have gross receipts in the 2021 calendar quarter 20% less than gross receipts in the same quarter in the 2019 calendar year. It also allows a company to elect to use the gross receipts from the immediately preceding quarter and compare these prior quarter gross receipts to the same quarter in 2019, rather than the current quarter. Eligible employers include tax-exempt organizations. Employers receiving PPP loans are eligible |
| Qualified Wage Base:   | Employers with more than 500 (formally 100) full-time employees: wages paid when employee services are not provided. Qualified wages limited to the amount an employee would have been paid for working an equivalent duration during the 30 days preceding the nonservice period.<br><br>Employers with 500 or fewer full-time employees: wages paid by eligible employers are credit eligible.   | Employers with more than 500 full-time employees: wages paid when employee services are not provided.<br><br>Employers with 500 or fewer full-time employees: wages paid by eligible employers are credit-eligible   |

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## 21. What is the Employee Retention Tax Credit (ERTC)?

The Coronavirus Aid, Relief, and Economic Security (CARES) Act created a new employee retention tax credit (ERTC) for employers who are closed, partially closed, or experiencing significant revenue losses because of COVID-19. The credit was initially available for wages paid from March 13 to December 31, 2020. Under the CARES Act, an employer could not claim both a PPP loan and the ERTC. In virtually every case, the PPP was worth more for each employer.

The CAA21 extended and expanded the ERTC, both retroactively and prospectively. In addition, employers, including nonprofit organizations that received a PPP loan, can now take advantage of the CARES Act ERTC and the extended ERTC.

Under the CARES Act, the ERTC could be taken for wages paid between March 13, 2020 and December 31, 2020. Employers could claim a payroll tax credit of up to \$5,000 per employee for qualified wages paid while closed or having reduced operations due to COVID-19. For 2020, the credit is computed as 50% of up to \$10,000 in qualified wages (in total) paid to an eligible employee. Health plan expenses can be treated as qualified wages when computing the credit.

The American Rescue Plan Act of 2021 (ARP) extended the CAA21 ERTC maximum credit provisions from the first two quarters of 2021 to all four quarters in 2021, so now employers can obtain credits for wages paid throughout 2021. The 2021 credit is 70% on \$10,000 in wages per quarter (or a maximum \$28,000 per employee/quarter through December 31, 2021, and expands which employers are eligible.

Also note that Treasury [Notice 2021-20](#) and [Notice 2021-23](#) gave additional guidance that is reflected and updated in these series of FAQs below.

## 22. Who is an eligible employer for the ERTC under the CARES Act (2020 Calendar Year)?

Eligible employers are those who (1) are required to fully or partially suspend operations due to a COVID-19-related order (including nonprofit employers); or (2) have gross receipts in the 2020 calendar quarter of 50% less than gross receipts in the same calendar quarter in 2019 (with the credit no longer being available once gross receipts are 80% of the prior year calendar quarter gross receipts).

## 23. If an employer is subject to a governmental order to suspend its business operations and the order fully or partially is subsequently lifted, is the employer considered to have business operations that were suspended?

Yes, but only for periods during the calendar quarters in which the trade or business operations were fully or partially suspended. If the order was effective for a portion of the calendar quarter, then the employer is an Eligible Employer for the entire calendar quarter but can only claim a credit for wages paid during the period the order is in force. If the borrower meets the gross receipts test, then the wages for the entire quarter qualify for ERTC.

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Example: State A issued a governmental order for all non-essential businesses to close from March 10 through April 30 and the governmental order was not extended. Pursuant to the order, Employer B, which operates a non-essential business in State A, closes from March 10 through April 30. Employer B is an Eligible Employer in the first quarter (for wages paid from March 13, the effective date of section 2301 of the CARES Act, through March 31) and the second quarter (for wages paid from April 1 through April 30).

#### **24. What are “gross receipts” for a tax-exempt employer?**

“Gross receipts” for purposes of the employee retention credit, for a tax-exempt organization, has the same meaning as under Section 6033 of the Code. Under this Section gross receipts means the gross amount received by the organization from all sources without reduction for any costs or expenses including, for example, cost of goods or assets sold, cost of operations, or expenses of earning, raising, or collecting such amounts. Thus, gross receipts includes, but is not limited to, the gross amount received as contributions, gifts, grants, and similar amounts without reduction for the expenses of raising and collecting such amounts, the gross amount received as dues or assessments from members or affiliated organizations without reduction for expenses attributable to the receipt of such amounts, gross sales or receipts from business activities (including business activities unrelated to the purpose for which the organization qualifies for exemption), the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and the gross amount received as investment income, such as interest, dividends, rents, and royalties.

To determine whether there has been a significant decline in gross receipts, a tax-exempt employer computes its gross receipts received from all of its operations during the calendar quarter and compares those gross receipts to the gross receipts received for the same calendar quarter in 2019.

#### **25. What are the modifications to the gross receipts test based on Notice 2021-23?**

This Notice for 2021 ERTC determination, permits an employer to elect to use an alternative quarter to calculate gross receipts. Under this election, an employer may generally determine if the decline in gross receipts test is met for a calendar quarter in 2021 by comparing its gross receipts for the immediately preceding calendar quarter with those for the corresponding calendar quarter in 2019 (substituting 2020 for 2019 if the employer did not exist as of the beginning of that quarter in 2019).

Accordingly, for the first calendar quarter of 2021, an employer may elect to use its gross receipts for the fourth calendar quarter of 2020 compared to those for the fourth calendar quarter of 2019 to determine if the decline in gross receipts test is met. If an employer was not in existence as of the beginning of the fourth calendar quarter of 2019, then the alternative quarter election will not be available for the first calendar quarter of 2021.

For the second calendar quarter of 2021, an employer may elect to use its gross receipts for the first calendar quarter of 2021 compared to those for the first calendar quarter of 2019 to determine if the decline in gross receipts test is met. If an employer was not in existence as of the beginning of the first calendar quarter of 2019, then that employer may elect to measure the decline in gross receipts for the second calendar quarter of 2021 using its gross receipts for the first calendar quarter of 2021 compared to those for the first calendar quarter of 2020.

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## 26. What are qualified wages for purposes of the ERTC?

If the employer had more than 500 full-time employees, (defined by the IRS as an employee who works at least 30 hours a week or 130 hours per month in the 2019 calendar year) qualified wages are paid when employee service *is not provided* due to either (1) a full or partial suspension of the employer's business operations due to a governmental order, or (2) the business experienced a significant decline in gross receipts. (Qualified wages are no longer limited to the amount the employee would have been paid for working an equivalent duration during the 30 days preceding the *nonservice*.)

If the employer had 500 or fewer full-time employees, *all* employee wages paid by the eligible employer are credit eligible.

Note regardless of the number of employees, the CARES Act provides that qualified wages do not include any wages taken into account for employer-provided paid family and medical leave purposes under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA), along with payroll costs paid during the covered period that qualify for forgiveness under the PPP.

There is a **special fourth quarter rule** that provides that if an employer received a PPP loan and reported qualified wages paid in the second and/or third quarter of 2020 as payroll costs associated with its PPP loan, but the loan was not forgiven, then the employer may take those qualified wages into account for its ERTC by using Form 941-X for the previously filed Form 941.

## 27. How do I claim the ERTC in the CAA21 (2020 Calendar Year)?

The ERTC is structured as a payroll tax credit administered by the Internal Revenue Service and allows qualified employers to receive the benefit more quickly via amounts normally paid via their federal employment tax returns, [Form 941](#), which is used to report income and social security and Medicare taxes withheld by the employer from employee wages, as well as the employer's share of social security and Medicare tax. The ERTC is refundable, meaning it can be received if the credit amounts exceed payroll tax liability. Additionally, advance payment of the credit is allowed by filing [Form 7200](#), Advance Payment of Employer Credits Due to COVID-19.

Example 1: Employer A paid \$10,000 in (calendar) 2020 qualified wages (including qualified health plan expenses) and is otherwise required to deposit \$8,000 in federal employment taxes for all of its employees for wage payments made during the same quarter as the \$10,000 in qualified wages. Employer A may keep up to \$5,000<sup>1</sup> of the \$8,000 of taxes it was going to deposit and will later account for the \$5,000 it retained when it files Form 941, Employer's Quarterly Federal Tax Return, for the quarter.

In some cases, if an employer does not have sufficient federal employment taxes set aside for deposit to cover the amount of the anticipated credit, the eligible employer may request an advance payment of the credit.

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<sup>1</sup> 50% of the first \$10,000 in wages per employee

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Example 2: Employer B paid \$20,000 in qualified wages to two employees (each employee was paid \$10,000 in qualified wages), and is therefore entitled to a credit of \$10,000, and is otherwise required to deposit \$8,000 in federal employment taxes on all wages paid. Employer B can keep the entire \$8,000 of taxes that it was otherwise required to deposit as a portion of the credits it is otherwise entitled to claim on the Form 941. Employer B may file a request for an advance credit for the remaining \$2,000 by completing Form 7200.

#### **28. Describe the ERTC under the American Rescue Plan (2021 Calendar Year).**

The American Rescue Plan extended the ERTC to apply to wages paid from January 1, 2021 through December 31, 2021. The credit is renamed the “employee retention and rehiring credit” and it is increased to 70% of qualified wages. The credit is computed on up to \$10,000 in qualified wages paid to an eligible employee per calendar quarter. Thus, the maximum credit amount per quarter for 2021 is \$7,000 (up to \$28,000 in qualified wages paid over the four quarters in 2021).

#### **29. Who is an eligible employer for the ERTC under the CAA21/ARP (2021 Calendar Year)?**

For 2021, the definition of eligible employers is modified so that employers with gross receipts 20% less than gross receipts in the same calendar quarter in 2019 can qualify for the ERTC. Employers can also use the previous calendar quarter (as opposed to the same calendar quarter in the previous calendar year) to establish eligibility for the ERTC.

#### **30. What are qualified wages for the ERTC?**

Qualified wages continue to depend on the employer’s number of employees. The threshold below which an employer can claim the credit for all wages paid, as opposed to claiming it for wages paid only when services are not provided, was increased to 500 full-time employees.

Small eligible employers that employ seasonal workers may elect to determine the average quarterly wages based on the wages for the calendar quarter in 2019 which corresponds to the calendar quarter to which the election relates rather than the average quarterly wages paid in calendar year 2019. A 2021 small eligible employer that employs seasonal workers can elect to use this special rule by requesting an advance based on the amount of wages for the calendar quarter in 2019 corresponding to the calendar quarter to which the election relates.

#### **31. What about claiming both the ERTC under the CAA21/ARP and PPP loans?**

Like the amended rules for claiming the ERTC under the CARES Act, an employer cannot “double dip” and use payroll costs for both PPP loan forgiveness and the ERTC under the CAA21/ARP. The eligible employer can claim the ERTC on any qualified wages that are not counted as payroll costs in obtaining PPP loan forgiveness. Any wages that could count toward eligibility for the ERTC or PPP loan forgiveness can be applied to either of these two programs, but not both.

Payroll costs should be applied first to the ERTC before applying towards the PPP forgiveness, if possible. (For example, if your organization such as a Jewish community center who had its health and fitness operation closed based on a government order until June 30, it could apply

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the payroll wages during this period to the ERTC and then begin allocating the PPP funds to salary thereafter.

### 32. How do I claim the ERTC under the CAA21?

The IRS has released a revised draft version of [Form 7200](#) to be used to obtain a refundable payment of the employee retention credit and the qualified sick pay and family leave credit. The revisions include the Treasury guidance on how employers will claim the advance employee retention credit for 2021. The IRS indicated the draft Form 7200 should not be used to submit for the ERTC until the form is finalized.

It is expected that similar procedures will be applied so that employers will be able to reduce their Form 941 deposits by the amount of the ERTC.

### 33. What records should I maintain to substantiate eligibility for the ERTC?

All records of employment taxes should be maintained for at least four years after the date the tax becomes due or is paid, whichever comes later, and available for IRS review. Consider the following records to maintain:

- Documentation to show how the employer determined it was an eligible employer that paid qualified wages, include:
  - any governmental order to suspend the employer's business operations,
  - any records the employer relied upon to determine whether more than a nominal portion of its operations were suspended due to a governmental order or whether a governmental order had more than a nominal effect on its business operations<sup>2</sup>,
  - any records the employer used to determine it had experienced a significant decline in gross receipts,
  - any records of which employees received qualified wages and in what amounts; and
  - in the case of an employer with more than 100 employees, work records and documentation showing that wages were paid for time an employee was not providing services.
- Documentation to show how the employer determined the amount of allocable qualified health plan expenses.
- Copies of any completed Forms 7200 that the employer submitted to the IRS.
- Copies of the completed federal employment tax returns that the employer submitted to the IRS (or, for employers that use third-party payers to meet their employment tax obligations, records of information provided to the third-party payer regarding the employer's entitlement to the credit claimed on the federal employment tax return).

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<sup>2</sup> Solely for purposes of this employee retention credit, a portion of an employer's business operations will be deemed to constitute more than a nominal portion of its business operations if during a partial shutdown it meets the objective test of at least a loss of (i) 10% of total gross receipts, or (ii) 10% of the total number of hours of service performed by all employees in the employer's business during that period (both determined compared in the same calendar quarter in 2019).

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### 34. Where can I go if I need more information?

If you have any questions, please send an email to the Jewish Federations SBA Loan hotline at [SBAloans@JFNA.org](mailto:SBAloans@JFNA.org).

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