

The Paycheck Protection Program (PPP) and Employee Retention Credit (ERC) - Is Your Business Fully Utilizing These Relief Programs?

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Paycheck Protection Program
Borrower Application Form

☐ C-Corp ☐ S-Corp ☐ LLC
☐ sole self-employed individual
☐ (9) veterans organization
☐ of Small Business Act) ☐ Other

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A close-up, angled photograph of a 'Paycheck Protection Program Borrower Application Form'. The form is light blue with black text. It features several checkboxes for business types: 'C-Corp', 'S-Corp', 'LLC', and 'Other'. The text 'self-employed individual' and 'organization' is also visible. The title 'Paycheck Protection Program Borrower Application Form' is printed diagonally across the top.

Introduction

- PPP Loans First Draw and Second Draw
- PPP Loan Forgiveness
- Employee Retention Credit (ERC)
- Interplay of PPP and ERC

First and Second Draw Loans Eligibility

Key Provisions	First Draw Loan	Second Draw Loan
Max Loan Cap	\$10 Million	\$2 Million
Loan Cap for Corporate Group	\$20 Million	\$4 Million
Max # of Employees (including Affiliates)	500 Employees ^[1]	300 Employees
Caps for Hotels, Restaurants & News Organizations ^[2]	500 Employees per location	300 Employees per location
In Operation on 2/15/20	Yes	Yes
Subject to 25% Reduction in Gross Receipts Test	N/A	Yes ^[3]

^[1] Also eligible if considered a small business concern under the applicable revenue-based size standard established by SBA in 13 C.F.R. 121.201 or under the SBA alternative size standard (max tangible net worth of \$15 million and max average net income after federal income taxes for two years of \$5 million).

^[2] Employee caps based on per location are permitted for Hotels and Restaurants (NAICS Code starting with 72) and entities classified as news organizations (NAICS code starting with 5151 or 511110).

^[3] A Borrower must meet the 25% or greater reduction of gross receipts when comparing any quarter in 2020 to the same quarter in 2019. Gross receipts of a Borrower's affiliates are included in the calculation (domestic and foreign).

PPP Loan Application and Loan Amount

- **Application date:** Extended to May 31, 2021. As of April 18, 2021, \$44 billion in PPP funding is available.
- **Loan applications:** Form 2483 (First Draw), 2483-C (Sch C filers), 2483-SD (Second Draw), or 2483-SD-C
- **Calculating Loan Amount:** Based on 2019 or 2020 annual Payroll Costs (as defined). Wages are subject to caps.
 - **Employee Caps:** \$20,833 per employee (i.e., up to \$100,000 of gross wages per employee on an annualized basis $\$100,000 \times 2.5 \text{ months} / 12 \text{ months} = \$20,833$).
 - **Owner's Compensation:** Capped at \$20,833 and subject to special limitations (see next slide). Schedule C filers can now use either Line 31 or Line 7 less lines 14, 19, and 26.
- **First Draw Loan:** Lesser of 2.5 months of average monthly Payroll Costs (2019 or 2020) plus Outstanding EIDL loan (1/31/20-4/3/20) that you seek to refinance, or \$10 million.
- **Second Draw Loan:** Lesser of 2.5 months of average monthly Payroll Costs (2019 or 2020), or \$2 million (or 3.5 months for NAICS code 72).

First and Second Draw Loan Terms

- **Interest Rate:** 1% per year on a non-compounding basis
- **Term for loans drawn before June 5, 2020:** 2-years
- **Term for loans drawn after June 5, 2020:** 5-years
- SBA Guarantees 100% of the loan
- No collateral required
- No personal guarantees required
- Payments of interest and principal are not required until 10 months after the end of your Covered Period.



PPP Loan Forgiveness – Overview



Forgiveness application is filed with your lender on the lender's portal



PPP Loan Forgiveness Application Forms: Form 3508, 3508EZ or 3508S



Forgiveness Calculation based on eligible costs paid or incurred (and paid within the next billing cycle) during the Covered Period



The calculation includes payroll and nonpayroll costs with potential adjustments for FTEs and an adjustment for 25% wage reduction for employees who made \$100,000 or less in 2019 (compares Covered Period to Q1 2020).



Covered Period starts on the date funds become available and can cover anywhere from 8 to 24 weeks



Alternative Covered Payroll Period is no longer available

Payroll Costs

- **Payroll Costs** are comprised of compensation to employees in the form of:
 - Salaries and hourly wages
 - Bonuses and severance
 - Commissions
 - Cash Tips and vacation pay
 - Employer contributions for group health insurance (health, dental, vision, life and disability) and employee retirement plans
 - Employer State and Local payroll taxes (e.g., SUI)
- For forgiveness calculations: Gross Pay for employees is capped at \$100,000 prorated for the Covered Period (i.e., cap of \$15,385 for 8 weeks and up to \$46,154 for 24 weeks)
- For owners, compensation is capped at \$15,385 for 8 weeks up to \$20,833 for 11 to 24 weeks (see next slide)
- Payroll costs must comprise at least 60% of total costs

Owner - Limitations on Eligible Costs

Category	S-Corp	C-Corp	Self-Employed Sch C (Or Sch F)	General Partners
Cash Compensation Caps: ^{[1], [2]}				
Less than 5% ownership	Treat as employee		Cap ranges from: \$15,385 (8-weeks) to \$20,833 (11 to 24-weeks) and 2.5/12 of 2019 net profits (Line 31) or gross income (line 7 minus lines 14, 19 and 26)	Cap ranges from: \$15,385 (8-weeks) to \$20,833 (11 to 24-weeks) and 2.5/12 of 2019 net earnings from self- employment x 92.35%
5% or more ownership	Cap ranges from: \$15,385 (8-weeks) to \$19,231 (10-weeks) and \$20,833 (11 to 24-weeks) <u>and</u> 2.5/12 of 2019 compensation			
Other Payroll Costs Paid by Borrower:				
Employer State and Local payroll taxes (e.g., SUI)	Include	Include	Not Included	Not Included
Health Insurance (includes health, dental, vision, life and disability)	Include only for owner- employees with less than 2% ownership	Include	Not Included	Not Included
Retirement Costs	Capped at 2.5/12 of 2019 employer retirement contribution	Capped at 2.5/12 of 2019 employer retirement contribution	Not Included	Not Included

^[1] LLC owners must follow their business tax filings

Nonpayroll Costs – For Forgiveness

- **Nonpayroll Costs** are comprised of:
 - **Rent** - for real or personal property (special rule for rent paid to related party)^[1]
 - **Mortgage Interest** - for real or personal property (excludes prepayments of interest)^[1]
 - **Utilities** (includes gas, electricity, water, telephone, transportation and internet access)^[1]
 - **Covered worker protection expenditures** – includes gloves, face masks, sanitizer and safety partitions
 - **Covered supplier costs** – ordered before the covered period and paid during
 - **Covered operations expenditures** - includes software and cloud computing services that facilitates business operations
 - **Property damage costs** - includes costs related to property damage due to public disturbances that occurred during 2020 that were not covered by insurance or other compensation

[1] In service prior to February 15, 2020

Full-Time Equivalent (FTE) Employees

- **FTE** is a full-time equivalent based on 40 hours per week
 - FTEs are calculated separately for each employee, rounded to the nearest tenth and summed for a particular period or date.
 - Form 3508 – FTEs calculated for Covered Period and Reference Period (Feb 15 –Jun 30, 2019 or Jan - Feb 2020)
 - **FTE Reduction Quotient** = Covered Period / Reference Period – capped at 100%.
 - There are overall safe harbors and individual exceptions.
 - Form 3508EZ – If check 2nd requirement, calculate FTEs as of January 1, 2020 and end of Covered Period.
- FTE Calculation for each employee:
 - Sum hours paid for a period (e.g., hours paid during a 24-week period)
 - Divide by the number of weeks (e.g., 24 weeks), then divide by 40 hours
 - Each employee capped at 1.0 FTE, or rounded to nearest tenth if < 1.0
- Simplified method:
 - Must be applied to all periods being calculated.
 - If an employee works on average at least 40 hours per week (F/T), then = 1.0 FTE.
 - If employee works on average less than 40 hours (P/T), then = 0.5 FTE

PPP FAQs

Can I report more payroll and non payroll costs than the actual PPP loan?

- Yes, you can report costs that are in excess of the loan as long as they were paid or incurred during the Covered Period.

Can I report just payroll (i.e., only wages) costs on the PPP loan forgiveness application?

- Yes, this is permitted. As long as payroll costs are 60% or more of total costs, you can report whichever other costs you decide.

First Draw and Second Draw Loans - Taxability

- CARES Act
 - Excluded Loan Forgiveness from Taxable Income
- IRS
 - Disagreed with the CARES Act
- Consolidated Appropriations Act (CAA)
 - Federal Taxes
 - Deductions are allowed for taxes, nothing is taxable
 - State Taxes
 - Most states conform to the federal rules, New York and New Jersey follow federal rules.
 - In some states the deduction is not allowed

Employee Retention Credit

- Employee Retention Credit
 - The credit was originally introduced in the CARES Act
 - The CARES Act stated that the ERC is not available if you have a PPP
 - Consolidated Appropriations Act
 - Changed the law to be available for taxpayers who received the PPP, but you cannot “Double Dip”
 - Use the Qualified wages for PPP Forgiveness and ERC
 - Extended the ERC for 2021
- ERC
 - A Payroll Credit
 - The ERC is taxable
 - Not the wages used for the calculation but the credit amount

ERC for the 2020 Tax Year

- Qualify for Credit if:
 - You experienced a full or partial government shutdown
 - 50% Reduction of quarterly Gross Receipts compared to the same quarter of 2019
- Credit Amount
 - 50% Credit up to \$10,000 Qualified Wages Annually
 - Maximum \$5,000 per employee per year
- Employee Test
 - 100 Employees
 - If over 100 employees on wages paid for workers not to work qualify

ERC for the 2021 Tax Year

- Qualify for Credit if:
 - You experienced a full or partial government shutdown
 - 20% Reduction of quarterly Gross Receipts compared to the same quarter of 2019
- Credit Amount
 - 70% Credit up to \$10,000 Qualified Wages Quarterly
 - Maximum \$28,000 per employee per year
 - \$7,000 per quarter
- Employee Test
 - 500 Employees
 - If over 500 employees on wages paid for workers not to work qualify

Average Employee Calculation

Small eligible employer

- Average is under 100 monthly employees in 2019 for 2020 ERC
- Average is under 500 monthly employees for 2021 ERC
- Test is based on 2019 employees
- Monthly average 30 hours per week or 130 hours per month



Gross Receipts Calculation

- What do you use for Gross Receipts Calculation?
- Section 2301(c)(2)(B)(i) of the CARES Act provides that the period during which an employer experiences a significant decline in gross receipts begins with the first calendar quarter beginning after December 31, 2019, for which gross receipts (within the meaning of section 448(c) of the Code)
- In other words
 - Tax Method Gross Receipts
 - For example, if you were a cash basis taxpayer, that is what you will use for the calculation.

Qualified Period and Lookback Rule

- If you qualify for one period, you automatically qualify for the next period
 - Taxpayer qualifies till the quarter after you have 80% gross receipts
 - Example for 2021
 - 40% reduction in Q1 30% reduction in Q2 15% reduction in Q3
 - Qualifies for the 1st, 2nd and 3rd quarter
- Lookback provision for 2021
 - 4th quarter 2020 might not qualify for the ERC in 2020 but may qualify for 2021
 - 4th quarter 2020 to qualify for the 1st quarter of 2021

Aggregation Rules

- Treated as a single employer
 - The whole group uses all members of the group to calculate
 - Gross Receipts
 - Employees
 - Shutdown
- Example
 - Company A, B and C are commonly owned companies (same ownership for at least 50%)
 - 2019 Gross Receipts Quarter 3
 - A: 100,000 B: 200,000 C: 300,000 Total of \$600,000
 - 2020 Gross Receipts Quarter 3
 - A: \$25,000 B: \$150,000 C: \$140,000 Total of \$315,000
 - The group does not qualify even though C and A meet the greater than 50% test

Government Shutdown

- Business was shut down by “government order”
 - Only wages paid in the shutdown period qualify
 - If essential business is not shutdown but experiences nominal decreases, it could qualify
 - Nominal decreases
 - 10% reduction in
 - Receipts
 - Employee hours / payroll
 - Example
 - A supplier was shutdown and not able to deliver materials to an essential business causing nominal decreases.
 - Part of the business may be shut down.

New Business

- Recovery Start up Business
 - Started after 2/15/20
 - Under \$1 million gross receipts test
 - Doesn't meet the other ERC test
- Started in the middle of 2019
 - How do you calculate gross receipts test to a quarter in 2019 if you were not in existence?
- An employer that started its business in the second quarter of 2019 should use that quarter as the base period to determine whether it experienced a significant decline in gross receipts for the first two quarters in 2020 and should use the third and fourth quarters of 2019 for comparison to the third and fourth quarters of 2020, respectively, to determine whether it experienced a significant decline in gross receipts for those quarters.

Form 7200

- Form 7200
 - Request advance payment of the employee retention credit
 - If an employer is entitled to an employee retention credit of \$10,000 and was required to deposit \$8,000 in employment taxes, the employer could retain the entire \$8,000 of taxes as a portion of the refundable tax credit it is entitled to and file a request for an advance payment for the remaining \$2,000, subject to the limitations described in the next paragraph, using Form 7200.
- Only small employers may file Form 7200.
 - For the ERC, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 limits advance payments of the employee retention credit for 2021 to small employers that averaged 500 or fewer full-time employees in 2019.
- Amount of advance is limited.
- For the ERC, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provides that the amount of the advance may not exceed 70% of the average quarterly wages paid by the employer in calendar year 2019.

PPP vs ERC Considerations – Some FAQs

- **Q: Can I be eligible for both a PPP loan and ERC for 2020 or 2021?**
 - **A:** Yes, as long as you meet the individual program requirements.
- **Q: Are there any issues I need to consider if I take a PPP loan in one year (e.g., 2020) and apply for an ERC credit in the following year (e.g., 2021) or visa versa**
 - **A:** No, there is no issue as long as you meet the individual program requirements. PPP loan taken during one year should have no impact on ERC for a different year.

PPP vs ERC Considerations – Some FAQs

- **Q: Can I deduct expenses on my corporate tax return if I use these expenses for PPP loan forgiveness? What about ERC, is payroll deductible that is used for the ERC**
 - **A:** For PPP, yes, for federal tax purposes, these costs are deductible. For ERC, payroll costs must be reduced by an amount equal to the credit taken.
- **Q: I filed a PPP loan forgiveness application for a 2020 PPP loan. Can I use the same payroll I reported on my loan forgiveness application for my 2020 ERC?**
 - **A:** No, you cannot double dip. But, before you give up on payroll costs reported on your PPP forgiveness application, it also depends on how much payroll and nonpayroll costs you reported relative to the loan. See following Q & A

PPP vs ERC Considerations – Some FAQs

- **Q: I have not yet filed for PPP loan forgiveness or for my 2020 ERC? Which program should I apply for first?**
 - **A:** Typically, it is beneficial to file the PPP loan forgiveness first because it is fully deductible, whereas payroll used for ERC is not tax deductible. However, every circumstance is unique and needs to consider various factors.
- **Q: I know I am eligible for the ERC for 2020. When filing for PPP loan forgiveness for my first draw loan for 2020, should I report all of my nonpayroll costs to decrease the amount of payroll needed for PPP and increase payroll eligible for ERC?**
 - **A:** It depends. Reporting nonpayroll costs will increase the payroll dollars available for ERC. However, if your payroll costs are large enough, it may not make a difference or be necessary.

PPP vs ERC Considerations – Some FAQs

- **Q: I already filed for my ERC for 2020. What do I need to consider when filing my first draw PPP loan forgiveness from 2020?**
 - **A:** For PPP loans, your Covered Period will be the same regardless of ERC. So, the Covered Period begins on the date you received your PPP loan.
 - As noted, you cannot use wages (or medical costs) for PPP forgiveness that were used for ERC. Wages applied to ERC must be excluded from the wages reported during the Covered Period for forgiveness.
 - The FTE calculation should still be based on hours paid during the Covered Period regardless of ERC

PPP vs ERC Considerations – Example #1

- **Q: I filed my PPP loan application for my first draw loan and reported payroll costs in excess of my loan. Do I lose the ability to use payroll costs for the ERC that are in excess of the PPP loan?**
 - **A:** No. You only have to use the Payroll costs that are required to meet 100% forgiveness. Any remainder can be used for ERC. See below

Fact Pattern #1

- **Covered Period** May 1, 2020 to October 15, 2020
- **Total PPP loan:** \$1,000,000
- **Payroll costs reported Form 3508:** \$1,200,000
- **Nonpayroll Costs reported:** \$0
- **FTE Reduction Quotient:** 100%
- **Eligible for ERC:** Q2, Q3 and Q4 2020

Commentary: Company can use \$200,000 (\$1,200,000 – \$1,000,000) of the payroll costs that were reported on the PPP loan forgiveness application for ERC purposes.

For ERC, employer can use wages paid from April 1, 2020 to April 30, 2020 as well as wages paid after last payroll used for Covered Period.

PPP vs ERC Considerations – Example #2

- **Q: I filed my PPP first draw loan application and reported payroll costs and nonpayroll costs that in the aggregate are in excess of my loan. How do I determine how much payroll costs can be used for ERC?**
 - **A:** First use as much nonpayroll costs up to 40% of total costs necessary for 100% forgiveness. The remaining 60% or more will be allocated to payroll. Any remaining payroll costs can be used for ERC. See below

Fact Pattern #2

- **Covered Period** May 1, 2020 to October 15, 2020
- **Total PPP loan:** \$1,000,000
- **Payroll costs reported Form 3508:** \$900,000
- **Nonpayroll Costs reported:** \$600,000
- **FTE Reduction Quotient:** 100%
- **Eligible for ERC:** Q2, Q3 and Q4 2020

Commentary: Company can apply \$400,000 of nonpayroll costs (40% limit x \$1,000,000) to forgiveness.

Therefore, the Company can use \$600,000 of payroll costs for PPP (\$1,000,000 - \$400,000).

Accordingly, Company can use \$300,000 (\$900,000 - \$600,000) of the payroll costs reported on the forgiveness application for ERC purposes.

For ERC, Company can also use wages paid from April 1, 2020 to April 30, 2020 as well as wages paid after last payroll used for Covered Period

PPP vs ERC Considerations – Example #3

Example: Allocation of Payroll by Employee for an Entity that has already filed for PPP forgiveness

PPP Loan			\$ 70,000				
Payroll Reported for PPP Forgiveness Application			\$ 121,154				
Excess Payroll			\$ 51,154				
	Qualified Wages Paid Q2 and Q3 2020	Payroll During Covered Period PPP	Eligible for ERC	Qualified ERC Wages - \$10k Cap	Additional Max Wages Needed for ERC	Extra PPP Funds Available to Allocate to ERC	Total ERC Funds After Additional Allocation
Employee	A	B	A-B=C	D (C capped at 10k)	\$10,000 - D = E	F (Lesser of B or E)	D + F = G
Vedder, Ethan	\$ 22,000	\$ 19,000	\$ 3,000	\$ 3,000	\$ 7,000	\$ 7,000	\$ 10,000
Hamilton, Alex	8,000	8,000	-	-	10,000	8,000	8,000
Banks, Ernest	38,000	27,000	11,000	10,000	-	-	10,000
Ross, Betty	49,000	46,154	2,846	2,846	7,154	7,154	10,000
Franklin, Abbe	28,000	21,000	7,000	7,000	3,000	3,000	10,000
Total	\$ 145,000	\$ 121,154	\$ 23,846	\$ 22,846	\$ 27,154	\$ 25,154	\$ 48,000

Commentary: For each employee, calculate how much payroll is available for ERC starting with amount reported for PPP.

Max needed for ERC is \$10,000 for 2020. Total used for ERC (e.g., \$48,000) cannot exceed the excess of PPP loan vs payroll reported for PPP (e.g., \$51,154).

PPP Loan Forgiveness Application Forms and Instructions

Please visit:

<https://www.anchin.com/news/how-does-covid-19-impact-you>

and click on “Additional COVID-19 Resources.”

Questions?

The **Anchin COVID-19 Update Center** is available to simplify your access to critical financial information.

It is updated regularly to supplement your communications with your Anchin Relationship Partner.

Email us at COVID19@anchin.com



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