



GREATER NEW ORLEANS
INC
REGIONAL ECONOMIC DEVELOPMENT

PPP, ERTC & Beyond: Impact of Federal Legislation on Businesses

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PPP, ERTC & BEYOND



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PPP, ERTC & BEYOND

The information described in this program is general in nature, and may not apply to your specific situation.

Legal advice should be sought before taking action based on the information discussed. No attorney-client relationship is formed merely by your attendance at this event.

PAYCHECK PROTECTION PROGRAM

Second Draw Eligibility - Revenue

- **Reduction** – Drop of 25% or more in all or part of 2020, compared with all or part of 2019
- **Calculation** – Compare gross receipts by quarter
- **Gross Receipts** – Includes revenue from sales, interest, dividends, rents, royalties, fees, commission; first draw PPP loans not included

PAYCHECK PROTECTION PROGRAM

Second Draw Eligibility

- Status of First PPP Loan
- Choosing a Lender
- NAICS Code 72 (Accommodation & Food Services)

PAYCHECK PROTECTION PROGRAM

First Draw Loans Timeframe

- Eligible borrowers that have not previously applied for PPP may apply for a First Draw PPP loan until March 31, 2021.
- Borrowers that previously received PPP funds that did not receive loan forgiveness by December 27, 2020 may:
 - Apply for a first draw loan if they previously returned some or all of their borrowed funds of a PPP Loan, or
 - Under limited circumstances, request to modify the amount of their first draw PPP loan if they previously chose not to accept the full amount for which they were eligible.
- Subject to availability of funds.

PAYCHECK PROTECTION PROGRAM

First Draw Loans General Eligibility

- Entity was in operation as of February 15, 2020.
- Entity paid salaries and payroll taxes for employees or independent contractors, unless it is a self-employed individual, independent contractor or sole proprietorship with no employees.
- Entities with more than 500 employees in certain industries that meet SBA's alternative size standard or SBA's size standards established by [SBA 13 C.F.R. 121. 201](#) for those particular industries can also qualify for eligibility. SBA's affiliation rules apply to determine size and number of employees except for certain exceptions.

PAYCHECK PROTECTION PROGRAM

First Draw Loans – Extended Categories

- A housing cooperative, an eligible section 501(c)(6) organization such as a social welfare organization, or an eligible destination marketing organization, that employs no more than 300 employees.
- A news organization that is majority owned or controlled by NAICS code 511110 (includes newspaper publishers) or 5151 (includes radio and television broadcasting) business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees.

PAYCHECK PROTECTION PROGRAM

First Draw Loans – Waiver of SBA Affiliation Rules

- Employs not more than 500 employees that, as of date of loan, has a NAICS code beginning with 72 (restaurants, hotels);
- Operates as franchise with franchise identifier code by the Administration;
- Receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958;
- Employs not more than 500 employees, or the size standard established by the Administrator for the NAICS code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 (includes newspaper publishers) or 5151 (includes radio and television broadcasting); and
- Any nonprofit organization assigned a NAICS code beginning with 5151.

PAYCHECK PROTECTION PROGRAM

First Draw Loans – Extended Categories of Ineligible Borrowers

- Businesses not in operation on or before February 15, 2020;
- Businesses that received a grant under the Shuttered Venue Operator Grant program;
- Businesses where the President, Vice President, head of an Executive Department, or a Member of Congress, or spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in business;
- Any business that is an issuer, the securities of which are listed on an exchange registered as national securities exchange under sec. 6 of Securities Exchange Act of 1934; or
- Any business that has been permanently closed.

PAYCHECK PROTECTION PROGRAM

First Draw Loans – Loan Forgiveness

- 1.) Selection of covered period now between 8 to 24 weeks at the election of the borrower.
- 2.) Employer-provided group insurance benefits are eligible payroll costs (e.g. vision, dental insurance premiums, group life and disability insurance premiums).
- 3.) Adds four additional categories of eligible non-payroll expenses:
 - Covered operations expenditures (business software, cloud computing);
 - Covered property damage costs, including costs related to property damage due to public disturbances in 2020 that were not covered by insurance;
 - Covered supplier costs (i.e., expenditures that a borrower made to a supplier of goods pursuant to a contract, purchase order or order for goods in effect before the borrower's applicable PPP loan disbursement that were essential to the borrower's operations at the time the expense was incurred; and
 - Covered worker protection expenditures (includes PPE)

PAYCHECK PROTECTION PROGRAM

Deductibility of Expenses Paid with PPP or EIDL Proceeds

- Under current IRS guidance (IRS Notice 2020-32), payment of PPP qualifying expenses, which would otherwise be deductible as business expenses (i.e., payroll expenses, utility expenses), are not eligible deductible expenses if the funds used to pay those expenses are proceeds from a forgivable PPP loan.
- Under the new legislation, expenses incurred for and paid by PPP or EIDL loans that would otherwise qualify as deductible business expenses are **now eligible for deductibility**.
- The new legislation applies retroactively such that businesses with PPP loans on, before or after the Economic Aid Act, including those borrowers with forgiven PPP loans, (received under the original CARES Act or the extended program) may deduct regular business expenses paid for with the loan proceeds.

PAYCHECK PROTECTION PROGRAM

Simplified Forgiveness for Loans of \$150,000 or Less

- Current borrowers with loans within the \$150,000 threshold will be able to apply for PPP loan forgiveness by submitting one-page certification to their lenders without the substantial amount of additional documentation.
- Borrowers must retain relevant employment records for four years and other records for three years after submitting a loan forgiveness application.
- A subsequent SBA IFR will address all aspects of loan forgiveness and the loan review process.

Change or Clarification	Retroactive Effect	Retroactive Application to Current Borrowers
Clarification of Eligible Payroll Expenses	Yes	Retroactive to borrowers with PPP loans on, before or after the Economic Aid Act, including those borrowers who have already had their loans forgiven.
Expanded Categories of Eligible Non-Payroll Expenses	Yes	Retroactive to borrowers with PPP loans on, before or after the Economic Aid Act, except those borrowers who have already had their loans forgiven.
Current Borrowers Eligible for Larger Loans	Yes	Retroactive to eligible borrowers with PPP loans on, before or after the Economic Aid Act, except those borrowers who have already had their loans forgiven.
Changes to Interest Rates for Current Borrowers	Potentially	May apply retroactively to PPP borrowers with loans made before December 27, 2020 upon the mutual agreement of the lender and borrower.
Tax Changes for Current Borrowers	Yes	Retroactive to the effective date of the enactment of the CARES Act.
Selection of Covered Period Under New Rules	Potentially	Retroactive application unclear.
Repeal of EIDL Advance Reduction to Forgiveness Amounts	Yes	Retroactive to borrowers with PPP loans on, before or after the Economic Aid Act, including those borrowers who have already had their loans forgiven.
Simplified Loan Forgiveness for Current Borrowers Whose Loans Are \$150,000 or Less	Yes	Retroactive to eligible borrowers with PPP loans on, before or after the Economic Aid Act, including those borrowers who have already had their loans forgiven.

PAYCHECK PROTECTION PROGRAM

First Draw Loans – How to Apply

- Apply through existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that participates
- Borrowers will be required to complete the [PPP Application Form \(SBA Form 2483\)](#).
- Applications submitted electronically via either a new online [Platform](#) hosted by the SBA or through a new technical [API](#) system, commencing on January 11, 2021 for certain Community Financial Institutions, until March 31, 2021.
- SBA has not yet addressed how current Borrowers can amend or supplement their current applications for loan forgiveness. Until the SBA issues its IFR on loan forgiveness, current Borrowers should reach out to their lenders.

EMPLOYEE RETENTION TAX CREDIT

Intent

- Created by CARES Act to incentivize employers to pay their employees (working or not)
- Unlike Paycheck Protection Program, has eligibility requirements re: closure & revenue drop

EMPLOYEE RETENTION TAX CREDIT

How it Works for 2020

- Eligible employer either (a) had operations suspended by COVID-19 orders OR (b) had significant decline (50% or more drop in gross receipts for same quarters in 2019 and 2020)
- No business size limitations
- Eligible employers receive 50% credit for first \$10,000 of compensation (max. \$5,000)

EMPLOYEE RETENTION TAX CREDIT

How it Works for 2020

- Business with < 100 average FTEs, all wages are eligible for the credit
- Business with > 100 average FTEs, only wages paid to an employee during an eligible quarter to not provide services are eligible (must be paying employee not to work because business shut down or receipts dropped significantly)
- Payroll Tax Credit with excess eligible for refunds

EMPLOYEE RETENTION TAX CREDIT

2020 Retroactive Changes

- **Compatibility of PPP and ERC** – Businesses can now use both, but not for the same payroll
- **Health Care Costs Included** – \$10,000 annual limit applies to wages paid plus health costs (i.e. health plan expenses not included in gross income can be included in qualified wages)

EMPLOYEE RETENTION TAX CREDIT

2021 Changes

- **Extension** – Extends through June 30, 2021
- **Eligibility Qualification Eased** – Gross receipts now must show gross receipts were less than 80% of same quarter of 2019
- **\$10,000 per Employee Per Quarter** – Instead of annually, \$10,000 per employee applied per quarter
- **Credit Amount Increase** – Employers receive 70% credit (instead of 50%) for first \$10,000 of compensation per quarter

EMPLOYEE RETENTION TAX CREDIT

2021 Changes

- **Change to “Small Employer”** – Increases 100-employee count to 500; these employers can now include any wages paid to an employee whether they worked or not
- **Advance Payment** – Option for 2021 ERC advance
- **Government Eligibility** – Some government entities will qualify

EMPLOYEE RETENTION TAX CREDIT

	2020 ERTC	2021 ERTC
Eligibility	Business fully or partially suspended during at least one quarter in 2020 due to orders OR gross receipts were less than 50% of receipts in same quarter in 2019	Business fully or partially suspended during at least one quarter in 2020 due to orders OR gross receipts were less than 80% of same quarter in 2019
Qualified Wages	For employers with more than 100 employees, only wages paid to those not providing services	For employers with up to 500 employees, all wages regardless of if employees provided services
Max. Credit Amount	Credit of 50% of qualified wages	Credit of 70% of qualified wages
Calculation	Capped qualified wages at \$10,000 for ALL quarters (\$5,000 per employee)	Increases qualified wages to \$10,000 for ANY quarter

This chart is for guidance only; please consult your tax professional for formal advice.

EMPLOYEE RETENTION TAX CREDIT

FAQs

How is the credit paid?

- Applied against employer portion of payroll taxes
- Employers report their total qualified wages and related credits for each quarter on their federal employment tax returns (IRS Form 941)
- *Refundable*, meaning you get a refund, even if it's more than what you owe

EMPLOYEE RETENTION TAX CREDIT

FAQs

Can I access the Employee Retention Credit for 2021 now?

Yes. Eligible employers can claim an advance credit by filling out IRS Form 7200. This is intended to be used to generate cash flow more quickly.

SHUTTERED VENUE ACT

Overview

- **Funding** – \$15 Billion to eligible “Shuttered Venue Operators”
- **Eligibility** – Includes live venue operators, promoters, museums, motion picture operators
- **Eligible Expenses**
- **Guidance** – Forthcoming from Office of Disaster Assistance

EMERGENCY CORONAVIRUS RELIEF ACT

Big Picture

Unemployment benefits (\$120b)

Pandemic programs extended + \$300 add-on through 3/14/21

Direct payments (\$166b)

\$600 for individuals phased out starting at \$75,000/income per year, \$1,200 for couples phased out starting at \$150,000 per year, \$600 for each child dependent

Small business & PPP (\$325b)

\$284b PPP, \$15b theaters/venues; \$20b EIDL Grants

Food, housing assistance (\$50b+)

\$13b for SNAP, childhood nutrition; \$13b to farmers; extension of eviction moratorium; \$25b rental assistance

Vaccines, testing, health care provider support (\$69b)

Vaccine procurement, distribution; \$22b, state & local gov. health expenses

Schools and childcare (\$92b)

Transportation (\$35b)

Left out: \$2k checks, state & local government funding, liability protection, 'mobile workforce' tax provisions

YEAR-END LEGISLATION: TAX PROVISIONS

Coronavirus tax issues	Provision
Low-income credits	Earned Income Tax Credit & Child Tax Credit based on taxpayers' 2019 income
Life insurance	Amend section 7702 interest rate assumptions for permanent life insurance contracts to qualify for tax purposes, set by statute at 4% and 6%, to be tied to a floating rate
Charitable deduction	CARES Act deduction extended through 2021, \$600 for married couples filing jointly
Meals deduction	100% for 2021-2022
Payroll tax deferral	Payback period extended through end of 2021
FSAs	Unused health, dependent care FSA benefits can be carried from 2020 into 2021
Pension transfers	Defined benefit plans with transferred excess plan assets under section 420 to cover permitted costs required to maintain funding at specified levels for 10 years following transfer; plans that fall below funding level provided additional flexibility

YEAR-END LEGISLATION

Tax Extenders

- **Provisions made Permanent include:**
 - Craft Beverage Modernization Act
 - Energy efficient commercial buildings
- **Provisions Extended through 2025 include:**
 - Work Opportunity Tax Credit
 - New Markets Tax Credit
 - Energy credit for offshore wind facilities



RESOURCES

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[GNOinc.org/coronavirus](https://gnoinc.org/coronavirus)

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