



COVID-19 Relief Bill An Update Focused on PPP and ERC

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Introduction



The COVID-19 relief bill being debated since July in Congress was finally signed into law on December 27, 2020 as part of a broader Consolidated Appropriations Act, 2021. The new relief package (\$900 billion) is intended to extend and modify certain provisions in the CARES Act (\$2.2 trillion) enacted in March 2020. Together with the provisions in the CARES Act, this relief package is the largest provided by the US government in its history (e.g., the fiscal stimulus for the 2008 financial crisis was \$700 billion) and is aimed largely at assisting US businesses and workers still suffering from the COVID-19 led economic hardship. The relief package is expected to stimulate the US economy during the first half of 2021.

Major Provisions for Businesses	Major Provisions for Individuals
<ul style="list-style-type: none">• Revisions and additional funding for PPP• Additional funding for EIDL• Extension of the Employee Retention Tax Credit• Employer-side social security payroll tax credits	<ul style="list-style-type: none">• \$600 per person stimulus checks• Additional \$300 weekly unemployment benefits until March 14, 2021

Among various provisions included in the new legislation, perhaps the most beneficial to many small and mid-sized businesses are the availability of second draw Paycheck Protection Program (PPP) loans and the extension and expansion of the Employee Retention Credit (ERC.) PPP recipients are now able to receive the ERC, which certainly gives the much-needed financial relief. This document provides an overview of updates to the PPP and ERC based on the information available as of the day this document was prepared. Since the Treasury, the SBA, and the IRS are expected to issue additional guidance and FAQs in the future, please refer to the latest information when applying for these programs. If you have any questions, please contact an HLS professional.

Revisions to the Paycheck Protection Program



Important changes to the PPP are summarized below:

- PPP has been re-opened between January 11th and March 31st for first-time program recipients (first draw) as well as for second time borrowers (second draw.) Businesses that previously received a first draw PPP loan can now apply for a second draw if they meet certain eligibility requirements.
- PPP recipients are no longer prohibited from claiming the Employee Retention Credit (ERC.)
- Expenses paid with a forgiven PPP loan are now tax deductible.
- Forgivable expenses have been expanded and includes the following:
 - Covered operations expenditures: payment for any business software or cloud computing services for business operations and administrative functions (e.g., accounting, HR, etc.);
 - Covered property damage costs: costs related to property damage due to public disturbances that occurred during 2020 not covered by insurance or other compensation.
 - Covered supplier costs: costs paid to suppliers for goods pursuant to a contract, order, or purchase order;
 - Covered worker protection expenditures: operating or capital expenditures to comply with requirement/guidance issued by government entities; and
 - Group insurance payments: now includes group life, disability, vision, and dental insurance payments.

These expenses can be included as forgivable expenses for loan forgiveness applications that have not yet been submitted. This change is indeed good news for borrowers who could not previously reach full forgiveness. SBA is expected to issue further guidance soon.

- EIDL advances (\$10,000 max) will no longer be deducted from the PPP forgiveness amount. This will apply retroactively to those who have already submitted forgiveness applications. SBA, through the lender/bank, will return the amount with interest.

PPP Second Draw



Terms	Details
Eligibility	<p>A business concern, independent contractor, eligible self-employed individual, sole proprietor, non-profit organization eligible for a first draw PPP loan and meet the following conditions:</p> <ul style="list-style-type: none">• met eligibility criteria and received first draw PPP loan,• will or has used the full amount only for authorized uses,• Employs not more than 300 employees*, with an exception for business concerns with NAICS codes beginning with 72 (e.g., restaurants and hotels.) Such business may still qualify if there are 300 or fewer employees per physical location.• At least 25% reduction in gross receipts for either 2020 Q1, Q2, Q3, or Q4 compared to the same quarter in 2019. <p>* Number of employees here include employees of domestic and foreign affiliates.</p>
Amount	<ul style="list-style-type: none">• Lower of 2.5 times the average monthly payroll costs (2019 or 2020) or \$2 million. (Capped at \$4 million for group companies.)• Businesses classified under NAICS codes starting with 72 can borrow up to 3.5 times the average monthly payroll costs.
Terms	<ul style="list-style-type: none">• 5 years
Interest	<ul style="list-style-type: none">• 1%
Forgiveness	<ul style="list-style-type: none">• Same as first draw. At least 60% of the PPP loan must be used on payroll expenses and the remaining on qualified expenses. Reduction in employees or reduction by more than 25% in wages will reduce the forgiveness amount.

Changes to the Employee Retention Credit



The Employee Retention Credit (ERC) is a refundable tax credit against certain payroll taxes. The new legislation significantly expanded the ERC to include applicable wages paid between January 1 and June 30, 2021. Eligibility requirements have been changed and the maximum credit amount has been increased. Following are some of the notable changes:

- An employer is eligible for the ERC if gross receipts for Q1 or Q2 of 2021 is less than 80% of the same quarter of 2019 or if business activities are limited by COVID-19 government orders.
- Allows employers with 500 or fewer employees to take the credit in 2021 on all employees regardless of whether they performed services.
- Maximum ERC is expanded from 50% to 70% of qualified wages. Qualified wages increased from \$10,000 per year to \$10,000 per quarter. This means that the maximum credit amount for 2021 is \$14,000 per employee (70% of \$10,000 x 2 quarters) compared to \$5,000 per employee in 2020.

These changes may allow employers, such as essential businesses, who did not originally qualify for the ERC under the CARES Act to take advantage of this credit.

PPP recipients who were previously ineligible may now retroactively qualify for the ERC based on the new legislation.

In addition, the legislation reaffirms an FAQ previously announced by the IRS that employers may include health plan expenses even when no wages are paid to that employee.

ERC Extension and Expansion Summary



	Before	After
Terms	March 13, 2020 through December 31, 2020	January 1, 2021 through June 30, 2021
Credit Amount	50% of qualified wages, which is capped at \$10,000 per employee per year. 2020 max credit per employee is $\$10,000 \times 50\% = \$5,000$	70% of qualified wages, which is capped at \$10,000 per employee for each quarter. 2021 max credit per employee is now $\$10,000 \times 70\% \times 2 \text{ quarters} = \$14,000$
Eligibility Test	Must meet at least one of the following: 1) Gross receipts test Gross receipts in 2020 (any quarter) declined at least 50% compared 2019 same quarter. ✖(1) 2) Government order test (see P9)	Must meet at least one of the following: 1) Gross receipts test Gross receipts in 2021 (Q1 and Q2) declined at least 20% compared to 2019 same quarter. (can elect to use Q4 2020 and Q1 2021 instead.) 2) Government order test (no change)
Limitations on Large Corporations	Credit for employers with more than 100 employees is limited only to wages paid for time not providing services. ✖(2)	Threshold raised to more than 500 employees.
PPP Coordination	PPP loan recipients were ineligible to receive this credit.	PPP loan recipients are eligible retroactively for this credit. (Both 2020 and 2021 ERC are available to eligible PPP recipients.)

*(1): Gross receipts here means the aggregated group-wide gross receipts including domestic and foreign affiliates.

*(2): Employee count here must include all employees group-wide, but only the hours spent working in the United States.

Points to Consider and Steps to Take



Points to Consider

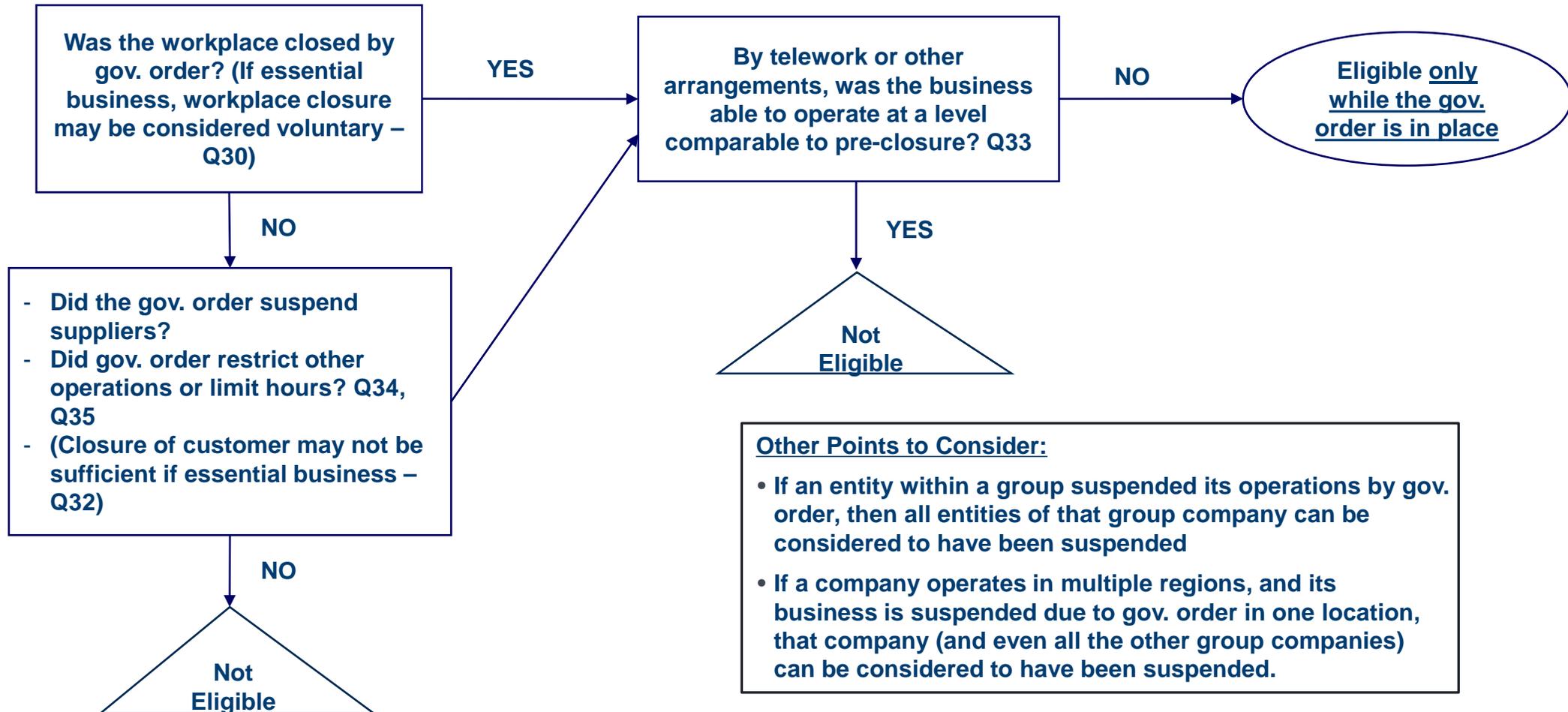
- Since the gross receipts test was relaxed under the new legislation, essential businesses that previously didn't qualify for the ERC may now qualify for this credit. Depending on the sales trend of 2021 1Q (or 2020 4Q) and 2Q, we recommend revisiting your ERC eligibility. However, please note that gross receipts in this context include the total gross receipts of domestic and feign affiliates.
- First-draw PPP recipients may consider claiming the ERC for wages paid right after the lock down through the PPP disbursement date. Employers applying for the second-draw PPP may need to consider the timing of the loan and the approach of the loan forgiveness in order to maximize the combined benefit of the PPP and the ERC.
- Health insurance expenses paid for furloughed employees may be included even if no wages are paid to that employee.

Steps to Claim ERC

1. Check if you meet the gross receipts test or the government order test to see if you are eligible. Make sure to document the test results.
2. Employers with more than 500 employees can only include wages paid to employees for the time the employee was not providing services. If this information is not already in the payroll system, a survey may be necessary to determine the appropriate hours to claim for the ERC. A method to track these hours going forward may need to be established as well.
3. Discuss with your payroll company about setting up a way to track ERC qualified wages in the payroll system. If ERC cannot be calculated by the system, coordinate with your payroll company how to obtain necessary payroll data in Excel. Also prepare necessary data for group health plan expenses and appropriately allocate them to the payroll data.
4. Based on the above, calculate the ERC amount and report to your payroll company.
5. Report 2021 Q1 and Q2 ERC using Form 941 or From 941-X.

ERC Eligibility Requirements

The IRS issued a series of FAQs on April 29th that clarified the conditions related to government order (“Gov. Order Test”). The FAQ was further updated on May 7th.



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