

COMPARISON CHART: PPP AND ERC

WITH KEY TERMS FOR PPP LOANS AND EMPLOYEE RETENTION CREDIT (ERC) - UPDATED MARCH 29, 2021



	PPP LOAN		EMPLOYEE RETENTION CREDIT	
	FIRST DRAW	SECOND DRAW	2020	2021
Number of Employees	≤ 500 Employees (a)	≤ 300 Employees (a)	≤ 100 Employees (b)	≤ 500 Employee (c)
Employee Count - How Determined	Headcount - FT and PT	Headcount - FT and PT	Average Monthly FTEs (d)	Average Monthly FTEs (d)
Employee Count - When Determined	Loan Application Date (Uncertain)	Loan Application Date (Uncertain)	2019	2019
Affiliations - Employee Count	Yes	Yes	Yes	Yes
Affiliations Determination	SBA guidelines (k)	SBA guidelines (k)	IRS guidelines (§§414, 51)	IRS guidelines (§§414, 51)
Eligible Organizations	Business Concerns, Sole Proprietors and Non-Profits (m)	Business Concerns, Sole Proprietors and Non-Profits (m)	Trade or Business, which can include a Non-Profit (n)	Trade or Business, which can include a Non-Profit (n)
Gross Receipts Test	No Gross Receipts Test	≥ 25% Reduction in G/R	> 50% Reduction in G/R	> 20% Reduction in G/R
Gross Receipts Measurement Period	N/A	By Quarters - 2020 vs. 2019 (h)	By Quarters - 2020 vs. 2019	By Quarters - 2021 vs. 2019 (e)
Gross Receipts Definition	N/A	SBA guidelines (k)	IRS guidelines (\$448)	IRS guidelines (\$448)
Gross Receipts - Affiliations	N/A	SBA guidelines (k)	IRS guidelines	IRS guidelines
Payroll - Application (l)	2.5 Months - 2019 Payroll	2.5 Months - 2019 or 2020 Payroll (f)	Qualified Wages and Health Insurance	Qualified Wages and Health Insurance
Payroll - Determination	Average Monthly Payroll	Average Monthly Payroll	By Quarters for G/R; Dates for Shutdown (g)	By Quarters for G/R; Dates for Shutdown
Payroll - Affiliations	Exclude wages of foreign affiliates	Exclude wages of foreign affiliates	Exclude wages of foreign affiliates	Exclude wages of foreign affiliates
Related Party Wages	Permitted	Permitted	Excluded	Excluded
Eligible Wages (l)	\$100,000/employee annualized Cap	\$100,000/employee annualized Cap	\$10,000 per year	\$10,000 per quarter
Available for Non-payroll Costs?	Yes	Yes	No	No
Eligible Non-payroll Costs	Rent, Interest, Utilities, PPE costs (j)	Rent, Interest, Utilities, PPE costs (j)	N/A	N/A
Limit on Non-payroll Costs	40% of total costs	40% of total costs	N/A	N/A
Full or Partial Shutdown Required	No	No	Yes (unless meet drop in G/R Test)	Yes (unless meet drop in G/R Test)
Effective Date of Provision	March 27, 2020	December 27, 2020	March 13, 2020	January 1, 2021
Ending Date of Provision	May 31, 2021	May 31, 2021	December 31, 2020 (i)	December 31, 2021 (i)
Maximum Loan or Incentive	\$10,000,000	\$2,000,000	No limit	No limit
How Incentive Obtained	Apply with Bank (& SBA Review)	Apply with Bank (& SBA Review)	Tax Filing	Tax Filing
Forms to File	No IRS Forms; but SBA Form 3508 Series	No IRS Forms; but SBA Form 3508 Series	Form 941 Series (941, 941X, 7200)	Form 941 Series (941, 941X, 7200)
Government Oversight	Yes - SBA	Yes - SBA	Yes - IRS	Yes - IRS

Footnotes:

- (a) - Exceptions: (1) SBA size standards could result in higher employee count; (2) Employee count for NAICS Code 72 (Hospitality) is per location.
- (b) - 100 or less employees, all employee wages are qualified whether employee working or not. If over 100, then only eligible if paid for NOT WORKING.
- (c) - 500 or less employees, all employee wages are qualified whether employee working or not. If over 500, then only eligible if paid for NOT WORKING.
- (d) - FTEs determined with 30 hours per week as full time, or 130 hours per month. Determined under §4980H.
- (e) - Special rule for 2021. Option to also use most recent quarter instead of current quarter's gross receipts in 2021. This special rule is elective.
- (f) - If under NAICS Code 72, then 3.5 months of salary can be used in PPP Loan Application.
- (g) - Quarterly wages included through quarter the gross receipts are > 80% of comparative quarter.
- (h) - As an alternative, the entire gross receipts for 2020 can be compared with 2019. Annual tax filing forms can be used.
- (i) - Eligible ERC wages paid through these dates are entitled to the ERC, but claims can be filed after these dates to obtain ERC (amended returns).

- (j) - Other costs include: Worker Protection – operating or capital expenditures; Property Damage - caused by vandalism not covered by insurance; Supplier Costs – essential to operations; Operation Expenses – business software, etc.
- (k) - See below detailed descriptions.
- (l) - Payroll costs and qualified wages include health insurance provided by the employer. See IRS Notice 2021-20.
- (m) - A Non-Profit organization for PPP loan purposes includes: a non-profit organization under Section 501(c)(3); veterans organization under §501(c)(19); Tribal business concern; housing cooperatives, small agricultural cooperative; eligible §501(c)(6) organization; destination marketing organization; or an eligible non-profit news organization. A new category added called "additional covered non-profit entities" applies to non-profits under Section 501(c) other than 501(c)(3); 501(c)(4); 501(c)(6); or 501(c)(19), and exempt under 501(a).
- (n) - For purposes of the ERC, a tax-exempt organization described in Section 501(c) that is exempt from tax under Section 501(a) is deemed to be engaged in a "trade or business" with respect to all operations of the organization.

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DEFINITIONS OF KEY PROVISIONS WITH PPP LOAN AND EMPLOYEE RETENTION CREDIT (ERC)



1. Gross Receipts for PPP Loan Purposes:

Gross Receipts for PPP Loans (Second Draw) are defined as follows by the SBA in Interim Final Rule (IFR): "Subsection (c)(2) of the IFR generally defines gross receipts to include all revenue in whatever form received or accrued (in accordance with the entity's accounting method) from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered 'total income' or in the case of a sole proprietorship, independent contractor, or self-employed individual 'gross income' plus 'cost of goods sold,' and excludes net capital gains or losses as these terms are defined and reported on IRS tax return forms.

"Gross receipts do not include the following: Taxes collected for and remitted to a taxing authority if included in gross or total income (such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees); proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes a customer's request, investment income, and employee-based costs such as payroll taxes, may not be excluded from gross receipts. Subsection (c)(2) also adapts the methodology for calculating affiliate receipts from 13 CFR 121.104."

2. Affiliations Rules with PPP Loans:

Affiliations rules are similar for PPP First Draw and Second Draw loans. "As with First Draw PPP Loans, in most cases, a borrower is considered together with its affiliates to determine eligibility for the PPP."

SBA definition for affiliates is as follows:

Paragraph 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv), as added by the CARES Act and amended by the Economic Aid Act, waived the affiliation rules contained in § 121.103 for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a NAICS code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by SBA; (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); and (4)(a) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in 13 CFR 121.105, or any successor thereto) that 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 51110 or 5151; or (b) any nonprofit organization that is assigned a NAICS code beginning with 5151.

3. "Gross Receipts" for ERC for an Employer Other Than a Tax-Exempt Organization:

The gross receipts definition for ERC is from the IRS's FAQs on its website as follows:

Gross receipts for purposes of the Employee Retention Credit for an employer other than a tax-exempt organization has the same meaning as when used under Section 448(c) of the Internal Revenue Code (the "Code"). Under the Section 448(c) regulations, "gross receipts" means gross receipts of the taxable year and generally includes total sales (net of returns and allowances) and all amounts received for services. In addition, gross receipts include any income from investments, and from incidental or outside sources. For example, gross receipts include interest (including original issue discount and tax-exempt interest within the meaning of Section 103 of the Code), dividends, rents, royalties, and annuities, regardless of whether such amounts are derived in the ordinary course of the taxpayer's trade or business. Gross receipts are generally not reduced by cost of goods sold, but are generally reduced by the taxpayer's adjusted basis in capital assets sold. Gross receipts do not include the repayment of a loan, or amounts received with respect to sales tax if the tax is legally imposed on the purchaser of the good or service, and the taxpayer merely collects and remits the sales tax to the taxing authority.

4. Affiliations Rules with Employee Retention Credit (ERC):

The affiliations rules for ERC is from the IRS's FAQs on its website as follows:

Which related employers are aggregated and treated as a single employer for purposes of the Employee Retention Credit? For purposes of determining an employer's eligibility for and the amount of the Employee Retention Credit, all entities that are treated as a single employer under Section 52(a) or (b) of the Internal Revenue Code (the "Code") or Section 414(m) or (o) of the Code are considered one employer for purposes of the Employee Retention Credit. The Section 52(a) and (b) aggregation rules generally apply to determine when related entities are treated as a single employer for purposes of the application of tax credits available to an employer under Section 51 of the Code, as well as for other Code provisions. The Section 414(m) and (o) rules generally apply to determine when related entities, including affiliated service groups, are treated as a single employer for purposes of retirement and other employee benefit rules under the Code, as well as for other Code provisions.

Under the Section 52 rules, corporate taxpayers may be required to aggregate as a parent-subsidiary controlled group, a brother-sister controlled group, or a combined group of corporations. Section 52(a) of the Code describes a parent-subsidiary controlled group of corporations, generally, as one or more chains of corporations where the common parent corporation owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the value of all classes of stock of each corporation. A brother-sister controlled group of corporations, generally, is two or more corporations where: (1) five or fewer persons who are individuals, estates, or trusts own at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or the total value of shares of all classes of stock of each corporation; and (2) the same five or fewer persons, taking into account ownership only to the extent that it is identical with respect to each corporation, own more than 50 percent of the total voting power of all classes of stock entitled to vote, or total value of shares of all classes of stock of each corporation. A combined group of corporations is three or more corporations, each of which is a member of either a parent-subsidiary or a brother-sister controlled group, and at least one of which is both the common parent of a parent-subsidiary controlled group and also a member of a brother-sister controlled group.

The Section 52(b) aggregation rules apply to partnerships, trusts, estates, or sole proprietorships in trades or businesses under common control. Under this rule, entities are considered a single employer if they are under common control applying rules similar to the parent-subsidiary or brother-sister controlled group rules or the rules for a combined group of corporations.

Under Section 414(m) of the Code, an "affiliated service group" is treated as a single employer based on rules related to the performance of services by one entity for another or by one entity in association with another for third parties, even if the entity does not have sufficient ownership or control of the other entity to form a controlled group.