

PPP Loans – The Employee Retention Credit

In response to recent SBA guidance regarding eligibility for PPP loans, many companies are following the SBA's advice to reevaluate the certifications on their PPP loan application. The SBA has given companies until May 14, 2020, to utilize a "safe harbor" and return PPP funds or otherwise withdraw their application. The SBA has now issued guidance, in the form of FAQ 45, to clarify that an alternative source of relief remains for companies that elect to utilize this safe harbor.

What is FAQ 45?

On May 6, 2020, the SBA supplemented its existing FAQs to add the following:

45. Question: Is an employer that repays its PPP loan by the safe harbor deadline (May 14, 2020) eligible for the Employee Retention Credit?

Answer: Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

For companies that have been evaluating their options following the SBA's issuance of [FAQs 31, 37 and 39](#), the Employee Retention Credit should be carefully considered as an alternative to PPP funding. Importantly, companies are not eligible for both PPP loans and the Employee Retention Credit.

What is the Employee Retention Credit?

The Employee Retention Credit is a **fully refundable** tax credit for employers equal to 50 percent of qualified wages (including allocable qualified health plan expenses) that Eligible Employers pay their employees. This Employee Retention Credit applies to qualified wages paid after March 12, 2020, and before January 1, 2021. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for an Eligible Employer for qualified wages paid to any employee is \$5,000.

The Employee Retention Credit is available to Eligible Employers. For purposes of the Employee Retention Credit, an Eligible Employer is an employer that carries on a trade or business during calendar year 2020, including a tax-exempt organization, that either:

- Fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
- Experiences a significant decline in gross receipts during the calendar quarter.

While the Employee Retention Credit may be a smaller benefit to most companies when compared to a PPP loan, the Employee Retention Credit may be a safer alternative for some companies in light of recent confusing and ambiguous guidance from the SBA. Additional details regarding the Employee Retention Credit are available and need to be carefully considered as part of any company's analysis of its options.

If you have questions about this information, please contact your Bodman attorney or Darren Burmania at (616) 205-3313 or dburmania@bodmanlaw.com. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.