

Employee Retention Tax Credit Update

Information as of: February 2, 2021

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In addition, ERTC guidance is still currently changing and subject to change. This information is based on our best understanding as of February 2, 2021 5pm Central.

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A Brief History

Mar. 2020

CARES Act

- Created ERTC
- Those with PPP were precluded from taking ERTC

Consolidated Appropriation Act

- Expanded ERTC to allow those with PPP to take ERTC
- And expanded ERTC to Q1 and Q2 of 2021

Dec. 2020

Calculation Mechanics

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2020 vs. 2021 Calculations

	Calendar 2020 ERTC Calculation	Calendar 2021 ERTC Calculation
Max Benefit	\$5,000 per full time employee (defined as over average 30 hours per week)	\$14,000 per full time employee (defined as over average 30 hours per week)
Basics of Calculation	50% of qualified wages (includes health insurance) up to \$10,000 during year when eligible (starting 3/12/20)	70% of qualified wages (includes health insurance) up to \$10,000 per Quarter for Q1 and Q2 2021 when eligible
Eligibility (size)	<100 full time employees – eligible on all qualified wages >100 full time employees – eligible only on wages when employees are not providing a service	<500 full time employees – eligible on all qualified wages (must include affiliates with more than 50% common ownership) >500 full time employees – eligible only on wages when employees are not providing a service
Eligibility (operations)	Full or partial shut down per government order OR If quarter over quarter gross receipts are <50% of what they were in 2019 in 2020, but stop calculating when recover to 80% of quarter over quarter	Full or partial shut down per government order OR If quarter over quarter gross receipts are <80% of what they were in 2019 in 2021 (or election to compare to immediately preceding quarter i.e. Q4 2020 or Q1 2021)

Some Tricky Parts

- If qualifying on government orders, can only calculate for periods when the orders are in effect
- No double dipping for wages claimed for PPP forgiveness
- Must exclude wages related to Family First (FFCRA) Sick and Medical Leave Credits
- Watch out for interplay on wages included in R&D credit and certain other credits as some wages may be able to count for R&D and some may be disallowed
- Can take the employee portion of health insurance if it comes out pre-tax (IRS FAQ #31 pre-Consolidated Appropriations Act)
- Watch for rules on disallowances/limitations of pay rate increases
- NEW: Advances available for 70% of 2019 quarterly wages

Planning Considerations

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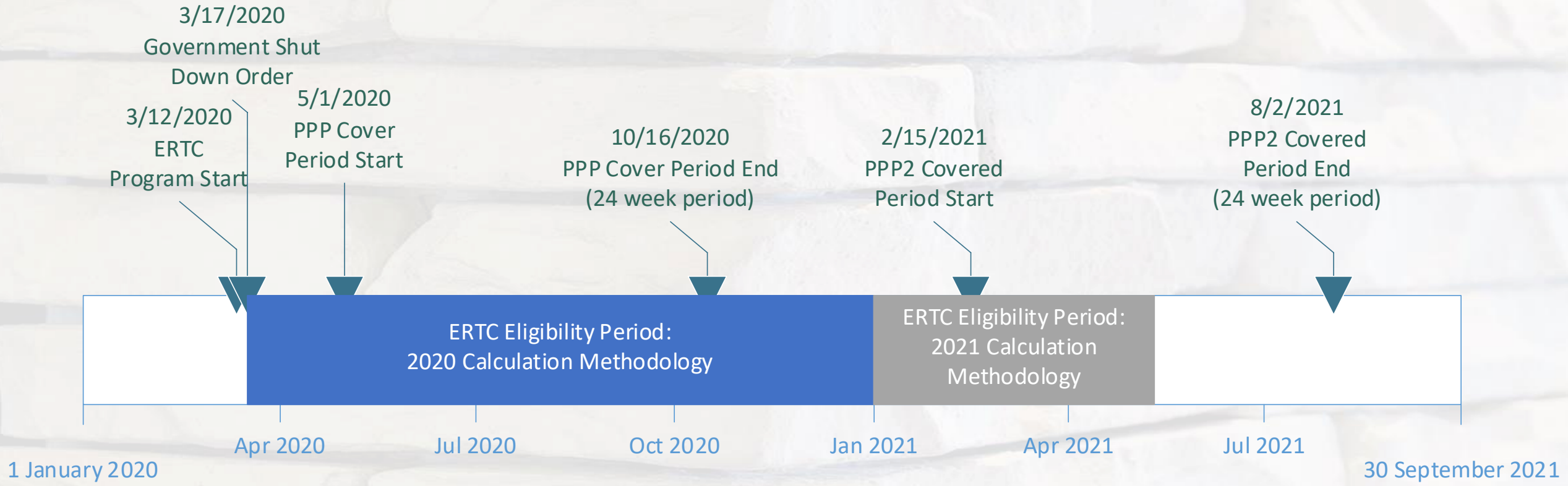
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PPP vs. ERTC Interplay

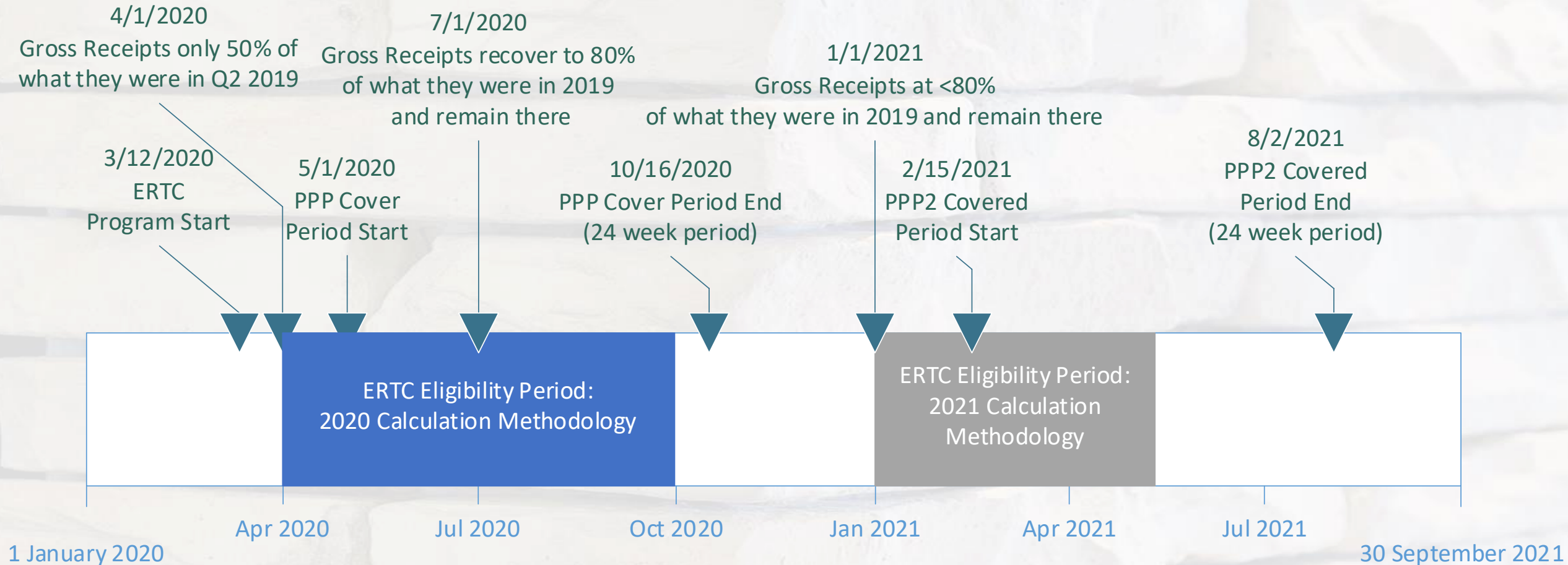
- No need to wait to apply for PPP forgiveness if you need to apply
- But don't be hasty in your calculation work if you are eligible for ERTC

- Potential strategies
 1. Target 60/40 payroll /non-payroll costs split (don't forget about new non-payroll cost options)
 2. Remove \$10k of payroll costs for each employee to be used as needed for qualified wages on ERTC
 3. Elect longer covered periods option
 4. Strategically segment PPP covered period to align with ERTC eligibility and not take payroll costs during such periods

Example: Under Seating Capacity % Restrictions



Example: Revenues Drop



When are ERTC forms Due?



No hard due date

(at this time)



Can put on your quarterly 941, but always have 3 years to file a 941x

But don't forget you may need to amend a tax return to remove deductions



The new 70% Advances will be on Form 7200

(but waiting on revisions)

What are we waiting for?

- Revised/updated/new IRS FAQs
 - Including specific instructions for if a taxpayer already completed a PPP forgiveness application with all payroll (or even excess payroll)
- Revised/updated/new Form 7200

Resources

- IRS Notice for PPP Declined Forgiveness

<https://www.irs.gov/forms-pubs/didnt-get-requested-ppp-loan-forgiveness-you-can-claim-the-employee-retention-credit-for-2020-on-the-4th-quarter-form-941>

- AICPA Letter on Interplay of PPP Forgiveness Applications and ERTC

<https://www.journalofaccountancy.com/content/dam/jofa/news/aicpa-comments-ppp-erc.pdf>

- IRS ERTC FAQs (not updated yet for Consolidated Appropriations Act)

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

- Treasury Website on PPP Rules and Forms

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>