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Updated FAQs on employee retention credit and PPP repayments

The U.S. Treasury Department and the IRS today each updated separate lists of “frequently asked questions” (FAQs) concerning the employee retention credit and the Paycheck Protection Program (PPP) enacted as part of the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) (Pub. L. No. 116-136).

The IRS posted an updated version of [FAQ #79](#) (updated May 26, 2020) to clarify that employers that received a loan under the PPP, but opted to repay the loan by May 18, 2020, may claim the employee retention credit after repaying the PPP loan. Originally, the deadline for PPP repayments was May 7, 2020; and then the deadline was changed to May 14, 2020; and ultimately the deadline was changed to May 18, 2020. Text of updated FAQ #79 is provided below.

The Treasury Department updated FAQ #45 in the other set of [FAQs](#) [PDF 120 KB] (updated May 27, 2020) concerning PPP repayments. Revised FAQ #45 reflects a PPP repayment date of May 18, 2020, as the “safe harbor” deadline to be eligible to claim the employee retention credit. Text of revised FAQ #45 is provided below.

Text of FAQ #45 (revised May 27, 2020)

45. Question: *Is an employer that repays its PPP loan by the safe harbor deadline (May 18, 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 18, 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.¹⁹*

¹⁹ Question 45 published May 6, 2020; revised May 27, 2020 to change the date from “(May 14, 2020)” to “(May 18, 2020).”

The following is current text of FAQ #79 (updated May 26, 2020):

79. Is an employer that repays its Paycheck Protection Program (PPP) loan by May 18, 2020, eligible for the Employee Retention Credit? (updated May 26, 2020)

A. Yes. An employer that applied for a PPP loan, received payment, and repays the loan by May 18, 2020 (originally May 7, 2020, as provided by the Limited Safe Harbor With Respect to Certification Concerning Need for PPP Loan Request in the Interim Final Rules issued by the Small Business Administration (SBA) effective on April 28, 2020, but extended by FAQs 43 and 47 in the SBA's PPP FAQs updated on May 5, 2020 and May 13, 2020, respectively), 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 more information, see [Business Loan Program Temporary Changes: Paycheck Protection Program—Requirements—Promissory Notes, Authorizations, Affiliation, and Eligibility \(PDF\)](#) and [SBA's PPP Loans FAQs \(PDF\)](#).

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