

Support Holds for Congressional Action on ERC

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By Caitlin Mullaney

The application deadline for the pandemic-era employee retention credit is set to end in 2025, and policy groups continue to highlight the benefits of applying additional limitations to credit claims.

With a major tax debate right around the corner in 2025, Rachel Snyderman of the Bipartisan Policy Center said that tax policy observers can look at the ERC “as a good model of a program that served its use at a particular time.”

“That time has now come past due, and it is time for lawmakers to make adequate changes to ensure that we are being good stewards of taxpayer dollars,” Snyderman told *Tax Notes*.

The ERC — created by the [Coronavirus Aid, Relief, and Economic Security Act](#) to help businesses pay their employees during the COVID-19 pandemic — has seen legislative efforts in both the [House](#) and the [Senate](#) that would apply a retroactive filing deadline for ERC claims and increase penalties for fraud related to claims.

Adopting an early application deadline “would be a sensible policy decision to both reduce the likelihood of continued fraud attempts with the credit and constrain the growing revenue cost of a program intended for pandemic relief years ago,” Garrett Watson of the Tax Foundation argued.

However, other observers, like Casey Clark of the National Association of Professional Employer Organizations, think such actions “would be catastrophic for a lot of companies.” He argued that businesses need certainty and with deadlines having been a moving target, “further pulling the rug out” from under them is bad policy.

The Joint Committee on Taxation originally [estimated the cost](#) of the ERC at \$55 billion but increased its estimate to \$78 billion with extensions of the credit. In January 2024 the Committee for a Responsible Federal Budget [projected](#) that the ERC may end up costing over \$550 billion.

Snyderman said that when evaluating the true cost of a policy against its projected cost, not only should demand be considered but also “the unintended consequences and perverse incentives that this policy incited.”

The ERC garnered significant interest from firms that became [aggressive promoters](#) of the credit, which the IRS maintains contributed to a widespread fraud involving improper claims and delays by the agency in paying out improper claims.

“The IRS has resumed processing of claims and has done a good job of trying to mitigate a spate of fraudulent claims, but nothing substitutes for proactive policy changes from Congress here,” Watson said.

IRS Commissioner Daniel Werfel has [touted the progress](#) the agency has made with closing out ERC claims, indicating that the agency is set to approve between 500,000 and 600,000 claims in 2025 and close the chapter on the ERC.

However, the IRS approach to handling the ERC could see a potential impact by President-elect Trump's choice to lead the IRS, former Rep. Billy Long, who has spent recent years working with two different firms [promoting the ERC](#).

Ahead of the potential nomination, Senate Finance Committee Chair Ron Wyden, D-Ore., and committee member Catherine Cortez Masto, D-Nev., [sent letters](#) to two firms that Long said he worked with — Lifetime Advisors and Commerce Terrace Consulting — requesting details regarding Long's involvement with promoting the ERC.

Lame-Duck Option

Watson said that while the ideal time for congressional action was likely during 2024 bipartisan bill negotiations, the lame-duck session or early 2025 wouldn't be too late to move up the date and change the limitations for fraudulent claims in this program.

"It may also set a positive precedent for situations like this in the future," Watson added.

Snyderman agreed that there's still a window of opportunity during the lame-duck period in which "we could see some reforms to ensure that the future of the ERC is wound down and fiscally responsible way."

View From the Hill

Senate Finance Committee member Thom Tillis, R-N.C., told *Tax Notes* that ERC reform is a conversation he is going to press during reconciliation in 2025.

"It's a patently wasteful, abuse, fraud, rampant policy. It was well-intended and poorly executed, and a lot of the people who absolutely gamed the system should go to prison and return a check to the U.S. government," Tillis said.

Tillis wants Congress to cancel the program, claw back the money, and repurpose the credit, saying that there could be a use for an ERC in disaster-declared areas. "But let's have it be [a program] that doesn't have as much or more money being lost to fraud or invalid claims as it is to what we were originally intending to do," he added.

In December 2024, a group of Senate and House Democrats [wrote to Werfel](#), urging the IRS to expedite the processing of legitimate ERC claims and provide greater transparency on existing claims.

"We're glad to see additional support coming from Congress to implore the IRS to process those legitimate claims as quickly as they can," Clark said regarding 2025 action on the ERC.

Clark highlighted the significant challenges that his group has seen small businesses endure while waiting on their ERC claims for long periods. He said they've had to make "tough business decisions about not making investments, about laying off people, about taking on additional debt in the form of high interest loans to help offset the resources they thought they would have at their disposal because of this program."

Cady Stanton contributed to this article.