

How the American Rescue Plan Act Could Impact Businesses and Nonprofits

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The American Rescue Plan Act is the latest legislation which contains provisions designed to assist the business community recover from the economic impact of the COVID-19 pandemic.

This client alert highlights provisions of the Act which we anticipate would be of the most interest to businesses and nonprofit organizations.

Agriculture

In the agricultural area, the Act supplements earlier legislation to support the food supply chain and provide specific relief for the industry.

- Specifically, the Act includes the following provisions:
- \$300 million to monitor and survey susceptible animals for incidents of COVID; and
- \$100 million to reduce the amount of overtime inspection costs of federally inspected small establishments engaged in meat, poultry and egg processing.
- The Act also includes grants designed to support rural health care by providing \$500 million to establish an emergency pilot program within 150 days after the enactment of Act to:
- It also provides the Community Credit Corporation with \$800 million to support the Food for Peace Act related to the purchase and distribution of agricultural commodities.
- The Act provides certain debt relief and support to "socially disadvantaged" farmers and ranchers, as defined in the 1990 Fair and Accurate Credit Transactions Act.
- Finally, the Act includes \$47.5 million of funds not otherwise earmarked for the support of COVID-19 relief for the agricultural industry generally.

Higher Education

The Act appropriates \$39.6 billion to expand the [Higher Education Emergency Relief Fund](#), and extends the availability of the funds until September 30, 2023. Approximately \$36 million of the total amount appropriated is dedicated to public or nonprofit colleges and universities, including community colleges.

At least 50% of the funding received by higher education institutions must be allocated towards providing emergency financial aid grants to students negatively impacted by the pandemic for such purposes as tuition assistance, food, housing, health care, or child care. The remaining funds may be used in the same manner

as those received under the Cares Act, such as covering costs associated with COVID-19, including lost revenue. All funds allocated solely for online students must be used for emergency financial aid grants.

The bill also directs institutions to use a portion of the funding received under the Act to implement practices to monitor and suppress coronavirus in accordance with public health guidelines.

Shuttered Venues and Restaurants

The Act includes \$1.25 billion in additional funds for the Shuttered Venue Operators Grant Program (the "SVOG" - also known as the Save our Stages Act) originally established in December of 2020. The Small Business Administration has yet to commence making grants under the SVOG. The Act also allows eligible applicants to access both the PPP and the SVOG to address the delay in the implementation of the SVOG.

In the restaurant area, the Act includes a grant program similar to the SVOG. The Restaurant Revitalization Fund appropriates \$28.6 billion for grants to be administered by the SBA.

Eligible restaurants must certify that the uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations of the restaurant.

"Eligible entities" include:

- restaurants;
- food stands and food trucks;
- caterers;
- saloons;
- inns;
- taverns;
- bars;
- lounges;
- brew pubs;
- tasting rooms;
- tap rooms; and
- licensed premises of a beverage alcohol producer.

Entertainment venues that incidentally serve food and beverages may not be included, but might seek relief under the SVOG. Businesses having no less than 50% control by an "eligible entity" may also be eligible.

The bill prohibits eligibility of a restaurant that:

- is a state or local government operated business;
- owns or operates more than 20 locations as of March 13, 2020;
- has a pending application for or has received a grant under SVOG; or

- is a publicly traded company.

The maximum grant amount is \$10 million per eligible entity and any affiliated businesses and \$5 million per physical location of the eligible entity.

Grants may be used for a variety of expenses, including payroll, supplies, rent, mortgage payments and other expenses.

Paycheck Protection Program

The Act appropriates an additional \$7.25 billion to the Paycheck Protection Program (PPP) to further assist small businesses impacted by the pandemic. The PPP will remain available until March 31, 2021 or until the funds are exhausted.

Eligibility for PPP loans has been expanded to include a variety of tax-exempt, nonprofit organizations. Similar to other PPP participants, eligible nonprofit organizations must employ less than 500 employees.

Repayment

Note that some of the grant programs in the Act include repayment obligations if the recipient fails to meet the grant requirements. Also note that, much like prior COVID relief laws, the SBA will have rule-making authority, which may lead to some unexpected outcomes.

Tax Provisions

Employee Retention Credit: The Act [extends the Employee Retention Credit through December 31](#) and also expands eligibility for the credit to "recovery startup businesses," meaning any employer "which began carrying on any trade or business after February 15, 2020," with gross receipts averaging less than \$1 million. The Act also increases the availability and value of the credit to "severely financially **distressed** employers", namely employers whose gross receipts for a calendar quarter in 2021 are less than 10% of the corresponding calendar quarter for 2019 and allowing such employers to take into account all wages paid to employees as "qualified wages," not just wages to employees for which they provide no services. These changes are effective beginning with the third quarter of 2021.

Expanded limit on compensation for public companies: A public company's compensation deduction is limited to \$1 million per year for compensation paid to any "covered employee," currently the principal executive officer, principal financial officer and the three next highest paid employees. Under the new law, for tax years that begin after December 31, 2026, the definition of "covered employees" includes the corporation's principal executive officer, principal financial officer, and the eight other highest-paid employees.

Extension of limitation on excess business losses: Non-corporate taxpayers are currently subject to a limit on excess business losses of \$250,000 (\$500,000 for a married joint-filing couple). These limits are adjusted annually for inflation. Losses that are disallowed under this rule are carried forward to later tax years, when they can be deducted under the rules that apply to net operating losses. Previously, the CARES Act temporarily suspended the excess business loss rule for losses arising in tax years from 2018 through 2020. This limitation was to apply again for 2021 and was scheduled to expire at the end of 2025. However, the Act delays the expiration date by one year to the end of 2026.

Exclusions from income: Eligible small businesses that receive economic injury disaster loans or businesses that receive restaurant revitalization grants from the SBA may exclude amounts received from gross income for federal tax purposes.

The American Rescue Plan Act is a complex document. This alert does not address all of the provisions of the Act. The provisions described above require additional analysis and, if you have questions about how the Act may affect your business, please contact [Paul Mattaini](#), [Tim Malloy](#), [EmmaRose Boyle](#), [Eric Ondo](#) or any member of the [Barley Snyder Business Practice Group](#).

DISCLAIMER: The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

The views expressed in this alert are those of the individual author and do not necessarily reflect the views of the firm or the firm's clients. The response to the COVID-19 pandemic is particularly challenging, evolving and, in many cases, can be controversial. Any views expressed in this alert are not intended to advocate for or endorse a particular governmental response to the pandemic.

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