

CORONAVIRUS INFORMATION & UPDATES

March 25, 2021

American Rescue Plan Act of 2021– Summary of Key Provisions

On March 11, 2021, President Joe Biden signed the American Rescue Plan Act of 2021 (the “Act”) into law. The Act provides \$1.9 trillion in funding, program changes, and tax policies aimed at mitigating the continuing effects of the COVID-19 pandemic. The Act, which focuses particularly on funding state and local governments, schools, and individuals, contains key provisions addressing:

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- Additional funding for the Paycheck Protection Program (“PPP”) as well as expansions allowing more nonprofits to apply for PPP funding.
- A number of tax issues (see separate client alert), including extensions of the employee retention credit established by the CARES Act and employer-provided paid sick and family leave established under the Families First Coronavirus Response Act. Additionally, the Act extends rules limiting executive compensation deductions to publicly traded companies and repeals a provision that gave multinational companies flexibility in deciding how to account for interest expenses in their taxes.
- Additional grants for Shuttered Venue Operators such as certain live venue operators, theatrical producers, live performing arts operators, museums, motion picture theater operators, and talent representatives.
- Aid to restaurants through the Restaurant Revitalization Fund, a new grant program providing for \$28.6 billion particularly targeting hard-hit small businesses.

Paycheck Protection Program

Additional Funding

While not extending the March 31, 2021 deadline, the Act provides an additional \$7.25 billion to the U.S. Small Business Administration for the PPP. On March 16, 2021, the House of Representatives passed legislation to extend the PPP application deadline to May 31, 2021 by a vote of 415-3, and the Senate passed the extension legislation on March 25, 2021 by a vote of 92-7. President Biden is expected to sign the legislation.

Expanded Eligibility

Nonprofits

The Act expands PPP eligibility to include any tax-exempt nonprofits in section 501(c) of the Internal Revenue Code of 1986 other than those under 501(c)(3), (4), (6), or (19), and 501(a). These additional covered nonprofits:

- must not employ more than 300 employees per physical location of the organization;
- must not receive more than 15 % of their receipts from lobbying activities;

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- iii. cannot have lobbying activities that comprise more than 15 % of the total activities of the organization; and
- iv. cannot have more than \$1 million in lobbying activity costs in the tax year ending prior to February 15, 2020.

The Act also expands eligibility for certain larger nonprofits that employ no more than 500 employees per physical location of organization, including 501(c)(3) and 501(c)(6) organizations and veterans' organizations. The application period ends on March 31, 2021.

Digital Media

The Act expands PPP eligibility to those internet publishers that were not previously eligible to participate in the PPP, so long as (a) they do not employ more than 500 employees per physical location, and (b) the business makes a good faith certification that PPP funds will be used to support expenses related to local or regional news.

Tax Deductibility

Employee Retention Credit

The Act extends the employee retention credit created by the CARES Act through December 31, 2021, allowing for any eligible employer to receive a 70% credit against applicable employment taxes, up to a maximum of (i) \$10,000, or (ii) \$50,000 (for those businesses beginning to trade after February 15, 2020, among other criteria) per quarter. This allows employers who are severely financially distressed to claim the credit for a larger share of employee wages. The Act also expands the credit to include newly formed businesses that began trading after February 15, 2020, and have annual gross receipts of less than \$1 million.

Employer-Provided Sick and Family Leave

The Act extends the availability of paid sick and family leave tax credits formed under the Families First Coronavirus Response Act through September 30, 2021, and expands types of leave to include vaccination related to COVID-19. The Act raises the cap on the value of tax credits to \$12,000, up from the previous \$10,000. The Act also expands eligibility to state and local governments and increases the existing cap on paid family leave for self-employed individuals, who are now eligible for up to 60 days of paid family leave.

Rule Limiting Executive Compensation Deductions to Publicly Traded Companies:

The Act extends the limitations of executive compensation deductions to publicly-traded companies through the expansion of Section 162(m) of the Internal Revenue Code to include those employees paid in excess of \$1 million. The current limitation only applies to the CEO, CFO, or the next three highest compensated officers. The expansion of the covered group will begin after December 31, 2026.

Multinational Companies Flexibility in Deciding How to Account for Interest Expenses in Taxes

The Act repeals a provision that gave multinational companies flexibility in deciding how to account for interest expenses in corporate taxes by repealing Section 864(f) of the Internal Revenue Code of 1986.

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Student Loan Forgiveness

While student loan forgiveness itself was not included in the Act, the Act provides that any student loan forgiveness granted between December 31, 2020, and January 1, 2026 will not result in cancellation of indebtedness income. This provision has been seen as supporting the call of certain members of the Democratic Party for President Biden to forgive student loans by executive order.

Other Small Business Support

Additional Funding for Shuttered Venues

The Act provides an additional \$1.25 billion in grant money under the same conditions established by the Shuttered Venue Operators program. \$500,000 of the newly granted money will be used to provide technical assistance to help applicants access the grant system.

Eligibility to receive funds under this program is determined by Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act. For a comprehensive discussion of the eligibility criteria, please see the “Bipartisan Proposal for Extension and Revision of Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – Summary of Key Provisions,” alert.

Aid to Restaurants

The Act creates a new grant program called the Restaurant Revitalization Fund. The program is funded by a \$28.6 billion commitment, allowing up to \$5 million per physical location and up to \$10 million per restaurant group or chain. \$5 billion of the total grant amount is set aside for businesses with less than \$500,000 in revenue in 2019.

Grant amounts awarded under the program are calculated based on 2020 revenue compared to 2019 revenue. Additionally, the Act provides flexibility for newly opened businesses and businesses that do not otherwise have 2020 and 2019 revenues. Grant amounts to these types of businesses will be either based on truncated revenue period comparisons or otherwise based on a formula devised by the Administrator of the Small Business Administration.

The Act specifically excludes certain types of businesses from receiving funds under the grant program. Businesses operated by state and local governments, publicly traded companies, businesses with more than twenty locations, and businesses that have previously received aid under the Economic Aid to Hard-Hit Businesses, Nonprofits, and Venues Act are excluded from the grant program.

Other Provisions

Unemployment Benefits

The Act extends the \$300 per week supplemental unemployment benefits through Labor Day of 2021. The Act also provides that the first \$10,200 of unemployment benefits received in 2020 will not be taxable for households with income below \$150,000.

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Direct Payments

Direct payments of \$1,400 were made to individuals (subject to phase-out for high-income taxpayers).

Aid to State and Local Governments

The Act provides for \$350 billion for state, local and tribal governments.

Education Funding

The Act provides for \$130 billion for K-12 education and another \$40 billion for colleges and universities.