



Alerts

American Rescue Plan Revises Paycheck Protection Program and Shuttered Venue Operator Grant Program, Establishes Restaurant Revitalization Grant Program

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Hinshaw Alert

On March 11, 2021, President Joseph Biden signed into law the American Rescue Plan Act of 2021 (ARP Act), a \$1.9 trillion economic recovery package. This follows the recent adoption of the Consolidated Appropriations Act of 2021 (CA Act), which also included COVID-19-related economic relief provisions.

This client alert reviews changes made by the ARP Act to the Paycheck Protection Program (PPP) and Shuttered Venue Operator Grant Program (SVOG). It also discusses the Restaurant Revitalization Grant Program (RRG) created by the ARP Act.

Changes to the PPP Program

The ARP Act expands eligibility for PPP loans to several types of non-profit, tax-exempt organizations (each an additional covered non-profit entity), and adds \$7.5 billion in funding to the PPP. These additional covered non-profit entities will be eligible to receive PPP loans. All entities (1) described in Internal Revenue Code Section 501(c) (except those described in Sections 501(c)(3), (4), (6), and (19)), and (2) exempt from taxation under Internal Revenue Code Section 501(a), will be treated as additional covered non-profit entities.

This expansion also includes internet publishing organizations assigned an NAICS code of 519130 that have 500 or fewer employees per physical location.

Section 501(c)(4) entities (social welfare organizations) are not eligible to participate in the PPP. Section 501(c)(3), (c), and (19) organizations have separate PPP eligibility requirements.

Newly eligible additional covered non-profit entities include labor unions, benefit plans, agricultural organizations, and recreational clubs.

An additional covered non-profit entity applying for a PPP loan must meet the following requirements:

- the applicant must not receive more than 15% of its receipts from lobbying activities;

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- lobbying activities must not comprise more than 15% of the applicant's total activities;
- the cost of the entity's lobbying activities cannot exceed \$1 million during the most recent tax year that ended before February 15, 2020; and
- the applicant must not employ more than 300 employees at a single location.

It is anticipated that the current deadline to apply for a PPP loan (March 31, 2021) will be extended. However, additional covered non-profit entities should begin working with their lenders as soon as possible.

The U.S. House of Representatives voted on March 18, 2020, to extend the PPP application deadline to May 31, 2021. The legislation since has been sent to the U.S. Senate.

These newly eligible additional covered non-profit entities, like existing eligible entities, must affirm during the application process that the "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

For labor organizations and benefit plans, there are two additional items to consider as part of assessing eligibility:

- In some cases, payroll costs are allocated among one or more entities. The only entity that can consider applying for a PPP loan is the one under whose EIN payroll is paid and the related payroll tax forms are filed (e.g., 941s).
- The Small Business Administration's (SBA's) affiliation rules apply and, where applicable, the aggregation rules must be considered when assessing eligibility (e.g., employee counts, lobbying activities, etc.)

As indicated above, Section 501(c)(3) and 501(c)(19) non-profit entities were already eligible to participate in the PPP. The ARP Act expands the number of employees for these entities to no more than the greater of 500 employees or, if applicable, the size and number of employees established by the SBA in 13 C.F.R. 121.201. In addition, Section 501(c)(3) entities with no more than 500 employees per physical location may participate in the PPP.

Shuttered Venue Operator Grant Program

The CA Act established the Shuttered Venue Operator Grant (SVOG) program to assist live venue operators or promoters, theatrical productions or live performing arts organization operators, motion picture theater operators, museum operators, and talent representatives in operation on February 29, 2020, that have suffered a 25% or greater drop in gross revenue during any quarter of 2020 as compared to the same quarter in 2019. The SVOG program has gotten off to a very slow start. It is anticipated that the SBA will begin accepting applications in early April.

The ARP Act adds \$1.5 billion to the \$15 billion set aside for SVOGs, which funds the SBA is to distribute. The ARP Act removes the requirements under the CA Act that prohibited an entity from both receiving both a PPP loan after December 27, 2020, and being eligible for a SVOG. An eligible applicant can receive a PPP loan and an SVOG. However, the amount of an SVOG will be reduced by the amount of the PPP loan received after December 27, 2020.

As an example, assume that an eligible applicant receives a First Draw PPP loan for \$100,000 on March 30, 2021. Thereafter, the same eligible applicant applies for an SVOG and calculates its potential grant amount to be \$200,000. Rather than receiving the full \$200,000 grant, the entity will only receive \$100,000.

Restaurant Revitalization Grants

The ARP Act established the RRG program, which is authorized to issue up to \$28.6 billion in grants to eligible entities. Of these funds, \$5 billion is earmarked for eligible entities with 2019 gross receipts of \$500,000 or less.

During the initial 21-day RRG program awards period, the SBA is instructed to prioritize eligible entities that are small business concerns owned and controlled by women, veterans, or socially and economically disadvantaged individuals.



The SBA is expected to issue guidance and open the program shortly.

Eligibility

The ARP Act includes a list of specific entities eligible to receive an RRG:

- food stands, carts and trucks;
- caterers;
- inns;
- bars, lounges, and taverns;
- brewpubs;
- tasting rooms and taprooms;
- other licensed facilities or premises of an alcoholic beverage producer where the public may taste, sample, or purchase products; and
- other similar places of business in which the public or patrons assemble for the primary purpose of serving food or drink.

The following are ineligible entities:

- state or local government-operated businesses;
- an entity that, as of March 13, 2020, owns or operates (together with any affiliated business) more than 20 locations, regardless of whether those locations do business under the same or multiple names;
- an entity that has a pending application for or received a SVOG; and
- publicly-traded companies.

RRG Amounts

Grants that will be available to most eligible entities are expected to be equal to the difference between 2019 and 2020 gross receipts for each location.

Maximum grant amounts are capped at \$10 million for an affiliated group and \$5 million per physical location.

An affiliated business is defined as a business in which an eligible entity has an equity or right to profit distributions of not less than 50%, or in which an eligible entity has the contractual authority to control the direction of the business. This affiliation must have existed as of March 13, 2020.

There are special rules to calculate the amount that an applicant may receive if it was not in business for all of 2019, or if it was opened after January 1, 2020, and before the ARP Act's effective date.

The RRG awards will be reduced by the amount of any First or Second Draw PPP loan received by the applicant.

The SBA can adjust awards based on demand and "relative local costs" in the markets where RRG businesses operate.

RRG Uses

Eligible entities will be required to spend the grant money on certain eligible expenses such as payroll costs, maintenance expenses (including construction expenses to create outdoor seating), covered supplier costs (including protective equipment and cleaning materials), operational expenses (including normal food and beverage expenses), paid sick leave, utilities, principal and interest on mortgage obligations, rent, and any other expenses approved by the SBA as essential to maintaining operations.



Entities that do not use all of their RRG monies or that use them for unallowable expenses must return the funds to the U.S. Department of Treasury.

Eligible expenses are those incurred from February 15, 2020, to December 31, 2021, or a date determined by the SBA that cannot be after March 11, 2023 (two years after the ARP Act's effective date).

RRG Certification

An eligible entity must submit a good faith certification that:

- Uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations of the applicant.
- The applicant has not applied for nor received an SVOG.

RRG Taxes

Grants are not taxed like income, and all normal federal tax deductions are protected.

Funding for COVID-19 Relief-Related Activities

The ARP Act contained additional provisions designed to provide COVID-19-related financial relief.

- Approximately \$415 billion has been allocated for increased funding for a national vaccination program, COVID-19 testing, contact tracing, scientific research and development, and manufacturing of pandemic-related medical supplies.
- Approximately \$360 billion will be used to fund economic relief to state, local, and territorial governments, and \$20 billion to fund public transit systems. State and local recipients can use the funds to provide: (1) aid to households, small businesses, nonprofits, and industries such as tourism and hospitality; (2) premium pay to essential employees or grants to their employers; (3) funds to government services affected by a revenue reduction during the pandemic; and (4) funds to be used for investments in water, sewer, and broadband infrastructure. Funds can be used to cover costs incurred through the end of 2024.
- Approximately \$170 billion has been dedicated to education, with funds being used to assist K-12 schools in reopening by hiring more staff and putting in place new testing protocols. Forty billion dollars of such funds are to be provided to higher education institutions.
- Funds will be directed toward cybersecurity efforts (including modernization of federal information technology and networks), and to assist with the COVID-19 vaccine distribution process.

Aid to Individuals

- Stimulus checks will be issued in amounts up to: (1) \$1,400 for an individual, (2) \$2,800 for joint filers, and (3) \$1,400 for each qualifying dependent. These amounts phase out after an income threshold of \$75,000 for single filers and \$150,000 for joint filers, with a complete phase-out for single filers with income exceeding \$80,000 and for joint filers with income exceeding \$160,000. Eligible qualifying dependents under the ARP Act include full-time students under the age of 24, and adult dependents.
- The ARP Act provides that unemployment benefits will be available in an amount equal to \$300 per week, in addition to any existing state benefits, through September 6, 2021. The first \$10,200 in unemployment benefits for households with an income threshold of up to \$150,000 will not be taxable.
- The ARP Act temporarily expands and otherwise modifies certain tax credits (including the child tax credit, earned income tax credit, and dependent care credit) by increasing the credit percentages and phaseout thresholds. The maximum child tax credit is temporarily set at \$3,600 for each child younger than six years old, and \$3,000 for other qualifying children. It begins phasing out for individual parents earning more than \$75,000 and couples making more than \$150,000. The child tax credit will be fully refundable; low-income households will get the full benefit of the credit,



no matter how little they earn.

- Premium assistance will be available for certain health insurance coverage, including COBRA, through the end of September 2021, for those who lose employer-sponsored health insurance.
- Under the ARP Act, additional funding will be provided for agriculture and nutrition programs, including the Supplemental Nutrition Assistance Program, which will continue to be increased by 15% through the end of September of 2021.
- The ARP Act provides funds for programs for older Americans and their families.
- Mental health and substance-use disorder services will receive ARP Act funding.
- The ARP Act extends emergency rental assistance, homeowner assistance, and other housing programs by providing over \$30 billion for these programs.
- Any student loan debt forgiven between December 30, 2020, and January 1, 2026, will not be taxable.
- The ARP Act sets aside \$40 billion for the Child Care and Development Block Grant Program, including funds for Head Start (\$1 billion).

Aid to Businesses

- With certain changes, the ARP Act continues to make available, to eligible employers through September 30, 2021, paid sick and family leave credits that have been available under the CARES Act and the CA Act. For compensation paid between April 1, 2021, and September 30, 2021, changes include increasing eligible wages to \$12,000 per employee (up from \$10,000 in 2020), expanding qualifying leave, and covering up to 60 days of paid family leave for self-employed individuals (instead of 50 days under previous law).
- The ARP Act adds \$15 billion to the Economic Injury Disaster Loan (EIDL) program. One third of such funds are to be targeted for businesses that suffered a revenue loss of greater than 50%, are located in low income census tract areas, and employ 10 or fewer people.
- The CA Act-expanded Employee Retention Credit (ERC) provisions are continued under the ARP Act for eligible employers through December 31, 2021. In addition, startup businesses established after February 15, 2020, with annual gross receipts of up to \$1 million and that otherwise do not meet the ERC eligibility tests, will now be eligible to receive an ERC. The startup ERC is capped at \$50,000 per quarter, per employer. The credit will be computed under regular ERC rules.
- The ERC rules (as revised by the ARP Act) include a new provision for "severely financially distressed employers," which is defined as an employer that experienced a gross receipts reduction of more than 90% as compared to the same quarter in 2019. If an employer meets this definition, it may treat all wages paid to employees as qualified wages, regardless of the number of full-time employees.
- The ARP Act provides \$86 billion to support approximately 185 failing multi-employer pension plans.
- The ARP Act sets aside \$10.4 billion to support agriculture, including supply chain monitoring and surveillance, debt relief, grants, training, education, and other forms of assistance aimed at acquiring land.