

SUMMERS COMPTON WELLS

LIMITED LIABILITY COMPANY

ATTORNEYS AT LAW

WWW.SUMMERSCOMPTONWELLS.COM

(314) 991-4999

Last updated April 8, 2021

The American Rescue Plan Act of 2021: How Does the Latest COVID-19 Relief Legislation Impact Businesses?

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA). The law is the latest installment of legislation in response to the COVID-19 pandemic and provides various forms of economic stimulus and relief.

Relief and Loan Programs for Businesses

The State Small Business Credit Initiative. ARPA provides \$10 billion to fund the State Small Business Credit Initiative (SSBCI) which will fund state, territory and tribal government small business credit support and investment programs for socially and economically disadvantaged individuals.¹ The program is intended to provide support to small businesses responding to and recovering from the economic effects of the COVID-19 pandemic, ensure business enterprises owned and controlled by socially and economically disadvantaged individuals have access to credit and investments, and provide technical assistance to help small businesses applying for various support programs.² Additional funds have been allocated to support "very small businesses" i.e., businesses with fewer than ten (10) employees, which may include independent contractors and sole proprietors.³ The United States Department of Treasury will administer the program and is scheduled to publish allocation amounts available to each state by April 12, 2021.⁴

Economic Injury Disaster Loans. ARPA adds \$15 billion for targeted Economic Injury Disaster Loans (EIDL) for minority owned businesses and small businesses located in low-income communities.⁵ This provides additional relief to small businesses, nonprofit organizations, and agricultural businesses with 500 or fewer employees that have suffered substantial injury as a result of the COVID-19 pandemic.⁶

The Restaurant Revitalization Fund. ARPA establishes and provides \$28.6 billion for the new Restaurant Revitalization Fund (RRF), which will provide grants to certain eligible restaurants.⁷ Grants are equal to the revenue loss of the eligible entity due to the COVID-19 pandemic and are

¹ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 3301 (2021).

² State Small Business Credit Initiative (SSBCI), U.S. Dept. of the Treasury (last visited Apr. 7, 2021), <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci>.

³ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 3301 (2021).

⁴ State Small Business Credit Initiative (SSBCI), U.S. Dept. of the Treasury (last visited Apr. 7, 2021), <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci>.

⁵ The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 5002, 6001 (2021).

⁶ 15 U.S.C. 9009(e); Public Law 116-260.

⁷ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 5003(b) (2021).

calculated by subtracting 2020 revenue from 2019 revenue.⁸ Grants shall be prioritized for eligible entities that are small business concerns owned and controlled by women (as defined in section 3(n) of the Small Business Act (15 U.S.C. 632(n))), small business concerns owned and controlled by veterans (as defined in section 3(q) of such Act (15 U.S.C. 632(q))), or socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A))).⁹

The Shuttered Venue Operators Grant Program. ARPA also appropriates additional funds to the Shuttered Venue Operators Grant (SVOG) program which provides grants to certain eligible live venue operators, promoters, theatrical producers, motion picture theater operators, talent representatives, and others eligible for the loan.¹⁰ ARPA further modified SVOG grants to be reduced by any Paycheck Protection Program loans received on or after December 27, 2020. The U.S. Small Business Administration will begin accepting SVOG applications in April of 2021.¹¹

Preserving Health Benefits for Workers and New Requirements for Employers

ARPA provides a subsidy for COBRA premiums between April 1, 2021 and September 30, 2021 for employees that were involuntarily terminated or experienced a qualifying reduction in hours.¹² Employers are required to provide notice and a new 60-day election period to individuals who may be eligible for the COBRA premium subsidy, which may include individuals whose qualifying event occurred up to 18 months prior.¹³ Employers will be responsible for the COBRA premiums during this period, however they can claim a tax credit against their Medicare tax liability for the premiums.¹⁴

Tax Provisions for Employers

The Employee Retention Tax Credit. The employee retention tax credit is extended through the end of 2021.¹⁵ The credit provides eligible employers with a credit against applicable employment taxes for each calendar quarter in an amount equal to 70 percent of the qualified wages with respect to each employee of such employer for such a calendar quarter.¹⁶ The amount of qualified wages with respect to any employee for any such employer shall not exceed \$10,000.¹⁷ In the case of an eligible employer which is a recovery startup business, the amount allowed shall not exceed \$50,000.¹⁸ An eligible employer means any employer which was carrying on a trade or business during the calendar quarter for which the operation of the trade or business of the employer is fully or partially suspended during the calendar quarter as a result of orders from governmental authorities due to the coronavirus disease.¹⁹ A recovery startup business is any employer which began to carry on any trade or business after February 15, 2020 and for which its annual gross receipts for the 3-taxable-year period

⁸ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 5003(a) (2021).

⁹ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 5003(b) (2021).

¹⁰ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 5005 (2021).

¹¹ Shuttered Venue Operators Grant, U.S. Small Bus. Admin. (last visited Apr. 7, 2021), <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/shuttered-venue-operators-grant>.

¹² The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9501 (2021).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9651 (2021).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9651 (2021).

ending with the taxable year which precedes the calendar quarter for which the credit is determined does not exceed \$1,000,000.00.²⁰

Gross Income Exclusions. The EIDL advances and RRF grants are excluded from the recipient's gross income, and such exclusion will not reduce or eliminate other tax deductions or benefits to which the recipient is otherwise entitled and shall not be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986.²¹

Compensation Deductions. Beginning after December 31, 2026, ARPA shall reduce the amount of a publicly held corporation's compensation deduction available under Revenue Code Section 162(m) by expanding the definition of "covered employee" to include a publicly held corporation's eight other highest employees in addition to such corporation's principal executive officer and principal financial officer.²²

Leave Tax Credits. The tax credits originally mandated by the Families First Coronavirus Response Act for employers who elect to provide Emergency Paid Sick Leave (EPSL) and Emergency Family Medical Leave (EFML) are extended through September 30, 2021.²³ Further, the EFML tax credit limit has been increased to \$12,000.²⁴ An employer is not eligible for the leave credits if the employer discriminates in favor of highly compensated or full-time employees or on the basis of employment tenure when providing paid leave.²⁵ ARPA allows employers who voluntarily provide 80 hours of emergency paid sick leave and 12 weeks of emergency family leave beginning after March 31, 2021 to claim the leave credits, which effectively resets the leave bank for employees.²⁶ ARPA also provides that obtaining or recovering from COVID-19 immunization is an adequate reason for leave.²⁷ For the family leave credit, reasons for eligible leave are expanded to include all qualifying reasons for taking sick leave, with only days after March 31, 2021 taken into account.²⁸ When determining whether the 10-day per tax year limit for the sick leave credit is complied with, only days after December 31, 2021, are taken into account (again, effectively restarting the count and increasing the cumulative number of eligible days).²⁹

Limitation on Excessive Business Losses. The limitation on excess business losses of noncorporate taxpayers is extended to run through 2026.³⁰

Limitation on Excessive Employee Remuneration. For taxable years beginning after December 31, 2026, the \$1 million annual cap on the deductibility of remuneration paid to certain categories of employees of publicly held corporations is expanded to include as a new category the five highest compensated employees not included in other categories.³¹

²⁰ *Id.*

²¹ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9673 (2021).

²² The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9708 (2021).

²³ The Families First Coronavirus Response Act H.R. 6201, 116 Cong. (2020); The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 9641, 9642 (2021).

²⁴ The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 9641, 9643 (2021).

²⁵ The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 9641 (2021).

²⁶ *Id.*

²⁷ *Id.*

²⁸ The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 9641, 9643 (2021).

²⁹ The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 9641, 9642 (2021).

³⁰ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9041 (2021).

³¹ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9708 (2021).

Pension Plans. ARPA relaxes IRC or ERISA rules for amortizing funding shortfalls, extends amortization for single employer plans, and extends and amends pension funding stabilization percentages.³² ARPA also changes the special rules that apply to community newspaper plans.³³

Additional Support for Businesses in the Healthcare Industry

Additional funding is provided to cover COVID-19 related expenses of the healthcare industry, including community health centers, rural healthcare facilities, and skilled nursing facilities.³⁴

Additional Support for Businesses in the Agriculture Industry

ARPA provides funding for loan modifications and payments to farmers, ranchers, and forest landowners who are members of groups that have been socially disadvantaged in U.S. Department of Agriculture (USDA) programs.³⁵ The funding is allocated as may be necessary, and can be as much as 120% of each farmer's or rancher's debt on loans the USDA made or guaranteed.³⁶ Further, ARPA allocated \$1.01 billion to the USDA for assistance and support for socially disadvantaged farmers, ranchers, and forest landowners, and operators for the provision of grants, loans, outreach, mediation, financial training, capacity building training, development training, equity commissions, as well as scholarships and programs that provide internships and pathways to Federal employment, and other technical assistance.³⁷

³² The American Rescue Plan Act, H.R. 1319, 117 Cong. §§ 9701—9706 (2021).

³³ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 9707 (2021).

³⁴ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 2601, 9401 (2021).

³⁵ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 1005 (2021).

³⁶ *Id.*

³⁷ The American Rescue Plan Act, H.R. 1319, 117 Cong. § 1006 (2021).