

March 30, 2021

Legal Alert: Provisions of the American Rescue Plan Act of 2021 Relevant to Nonprofit Organizations

On Thursday, March 11, the federal government passed a \$1.9 trillion COVID-19 economic relief package, known as the American Rescue Plan Act of 2021 (the Rescue Plan). The Rescue Plan built on programs and provisions contained in several economic relief laws enacted earlier in the pandemic, including the Coronavirus Aid, Relief, and Economic Security Act (as amended, the CARES Act) and the Consolidated Appropriations Act of 2021 (the CAA). The Rescue Plan includes much-needed additional relief of direct payments of \$1,400 to qualifying individuals, but the law also contains provisions relevant to nonprofits, as well as the extension of unemployment benefits, related federal income tax exemptions, and increases for various tax credits.

The SBA released an [Interim Final Rule - Paycheck Protection Program](#) which outlines the key provisions of the PPP related to eligibility of applicants for PPP loans, which lenders are authorized to make PPP loans, the process for making PPP loans, loan increases, and loan forgiveness. The SBA separately published an [Interim Final Rule - Business Loan Program](#) establishing the rules for second draws. The SBA has now issued an [Interim Final Rule - Loan Forgiveness and Loan Review Procedures](#) to provide a single point of reference governing all aspects of loan forgiveness and loan review.

For information on the earlier federal relief packages, see our prior Legal Alerts:

For information relevant to nonprofits on relief provided under the Consolidated Appropriations Act of 2021, please see our Legal Alert:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/Provisions_of_the_Consolidated_Appropriations_Act_of_2021_Relevant_to_Nonprofits_Legal_Alert_January_27_2021.pdf.

For information regarding factors to be considered in applying for forgiveness of existing PPP loans, please see our Legal Alert:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/New_Loans_and_Loan_Forgiveness_under_the_Paycheck_Protection_Program_January_27_2021_Legal_Alert.pdf.

For general information about the original PPP under the CARES Act (as amended), please see the Legal Alert that Lawyers Alliance released on March 31, 2020:

https://lawyersalliance.org/userFiles/uploads/legal_alerts/Paycheck_Protection_Program_CARES_Act_Legal_Alert_March_2020.pdf.

This Legal Alert provides a brief overview of the provisions of the Rescue Plan that are relevant for nonprofits. Further clarification with respect to the provisions of the Rescue Plan is likely to be forthcoming. Please stay tuned and get in touch with any questions (as indicated at the end of this alert).

Enhancement of the Paycheck Protection Program (PPP)

- Includes \$7.25 billion in new PPP funding to the U.S. Small Business Administration (the SBA) and expands upon the PPP. PPP loan applications are being accepted through March 31, 2021,

although President Biden is expected to sign an extension of the first and second draw loan application period to May 31, 2021.

- The application format is determined by the participating lender selected by a borrower and therefore borrowers are advised to contact a participating lender and request their form. The relevant SBA forms for first and second draw loans can be found at: <https://home.treasury.gov/system/files/136/PPP-Borrower-Application-Form.pdf> and <https://home.treasury.gov/system/files/136/PPP-Second-Draw-Borrower-Application-Form.pdf>.
- Expands eligibility to nonprofits with more than 500 employees that operate at multiple locations as long as no more than 500 employees work at any one location.
- Allows for performing arts nonprofits to apply for funds under both the PPP and Shuttered Venue Operators Grants (SVOG) program, although a SVOG grant would have to be reduced by the amount of any PPP loan.

There were no changes to the PPP Second Draw Loan Program from the CAA other than the anticipated extension of the application period. As a reminder, this program is for hard-hit small businesses that have used or will use the full amount of their first PPP loan, can demonstrate a reduction in gross receipts of at least 25% from a selected quarter in 2020 over the same quarter in 2019, and employ 300 or fewer people. Loans may be up to \$2 million per eligible borrower, and the program sets aside \$25 billion for loans restricted to qualifying organizations that employ 10 or fewer employees.

For purposes of calculating the revenue reduction for a Second Draw PPP loan, a borrower must compare its quarterly gross receipts for one quarter in 2020 with its gross receipts for the corresponding quarter of 2019. A borrower in operation in all four quarters of 2019 is deemed to have experienced the required revenue reduction if annual tax forms substantiate a 25% or greater revenue reduction in 2020 compared to 2019. "Gross receipts" is defined consistently with the definition of SBA's size regulations in 13 C.F.R. § 121.104, as "all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances." Any forgiveness amount of a prior PPP loan is excluded from gross receipts. To aid borrowers, the SBA has issued [guidance on Second Draw PPP Loans](#), which explains how to calculate these revenue reductions, amongst other things.

Economic Injury Disaster Loan (EIDL) Advance grants

- Includes \$15 billion for new EIDL Advance grants.
- Instructs the SBA to spend \$10 billion in payments to covered entities that did not receive full amounts that they were entitled to.
- \$5 billion will go to covered entities that have suffered an economic loss of at least 50% and have 10 or fewer employees.

Shuttered Venue Operators Grant Program (SVOG)

- Includes an additional \$1.25 billion in funding.
- Repeals the prohibition on applying for funds under both the PPP and SVOG – SVOG applicants may now reduce the grant value by the amount of a PPP loan received in 2021.
- As a reminder, this program is for live venue operators or promoters, theatrical producers, or live performing arts organization operators, talent representatives, movie theatres, and "relevant" museums. They may apply for grants of up to \$10 million to support six months of

salaries and other costs, including rent, utilities, and maintenance, if they were “fully operational” as of February 29, 2020; if they have seen a reduction of at least 25% in gross earned revenue during at least one quarter of 2020; and if they have opened or intend to open.

Tax Credits

- Extends the Employee Retention Tax Credit (ERTC) through December 31, 2021.
- Paid Leave Tax Credits for Employers
 - Extends through September 30, 2021 the refundable payroll tax credits for paid sick and family leave established in the Families First Coronavirus Response Act and voluntarily provided by employers.
 - Increases the amount of wages that an employer may claim the paid family credit in a year from \$10,000 to \$12,000 per employee.
 - Expands leave to cover obtaining vaccinations and any resulting injury or illness.
- Individual and Family Tax Credits
 - Child Tax Credit (CTC): Increases the basic CTC from \$2,000 to \$3,000 per child and provides an additional \$600 for children under age 6; includes 17-year-olds in the CTC for the first time; and directs the IRS to make advance payments of the CTC in monthly installments beginning in July. Makes the child tax credit fully refundable for 2021.
 - Earned Income Tax Credit (EITC): Almost triples the maximum EITC benefit for childless single workers and expands the eligible age range to claim the EITC to older workers (age 65 and over) and younger workers (to age 19 from 25).
 - Child and Dependent Care Tax Credit: Expands the credit to allow families to receive up to \$4,000 for the childcare expenses of one child and up to \$8,000 for two or more children.

Charitable giving incentives

- No expansion of incentives in the Rescue Plan.
- However, on Tuesday, March 9, Senators and Representatives introduced the Universal Giving Pandemic Response and Recovery Act, which, if enacted, would allow taxpayers who claim the standard deduction on their tax returns to take a deduction for charitable giving valued at up to one-third of the standard deduction (around \$4,000 for an individual filer and \$8,000 for married joint filers).

Unemployment

- Unemployment insurance and self-insured employers
 - Extends the 50% federal coverage of the costs of self-insured “reimbursable” employers through March 31, 2021.
 - Federal coverage from April 1 through September 6, 2021 is 75%.

Childcare and Education

- \$39 billion has been allocated for childcare providers. The amount a provider receives will be based on operating expenses. Funds will be available to pay employees and rent, to purchase PPE and other supplies.

- \$2.75 billion is being allocated to private schools. 20% of that funding is to be used to cover learning loss by providing extended days or summer school. \$125 billion is being allocated to public K-12 schools to help students return to the classroom. Schools will be allowed to use the money to update ventilation systems, reduce class size to implement social distancing, buy PPE and hire support staff.

Housing and Homeowner Assistance

- \$27.4 billion in housing aid is being provided to the states and local governments to provide emergency rental assistance to low-income households at risk of homelessness.
- \$10 billion will be used to help homeowners avoid foreclosure and to help with utilities and property taxes.
- \$5 billion is committed to help provide safe housing for those at risk of homelessness.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert, please email CAA@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

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