The Bankler Report

March 16, 2021

INTRODUCTION

On March 11, 2021 President Biden signed the $1.9 trillion American Rescue Plan Act of 2021 (ARPA). Some of the major business provisions include:

A. **Restaurant Revitalization Fund:** This law allocates $28.6 billion to a Restaurant Revitalization Fund, which will be administered by the Small Business Administration (SBA). The SBA will need to establish application, approval, and other new documentation requirements for administering this new program. Some details we do know:

1. **Grants Are Available to Eligible Businesses** –These include restaurant, food stand, food truck, food cart, caterer, saloon, inn, tavern, bar, lounge, brewpub, tasting room, taproom, licensed facility, or premises of a beverage alcohol producer where the public may taste, sample, or purchase products, or other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink.

2. **Ineligible Businesses Include:**
    a. State or local government-operated businesses
    b. Starting March 13, 2020, any entity that 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.
    c. Any entity that has a pending application for or has received a shuttered venue operators grant (SVOG) under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.
    d. Publicly traded companies

3. **Pandemic-Related Revenue Loss** Definition - The ARPA defines the pandemic-related revenue loss as an entity's gross receipts (to be defined by the SBA) during 2020 subtracted from the entity's 2019 gross receipts, if the difference is greater than zero. The resulting amount is reduced by any PPP loan amount received. Further verification documentation requirements will be determined by the SBA. Alternate calculations are provided for the following entities not in business for part of this period:
    a. **An entity not in operation for the entirety of 2019** – The pandemic-related revenue loss would be the difference between 12 times the entity's 2019 average monthly gross receipts and 12 times the entity's 2020 average monthly gross receipts, or an amount based on a formula to be determined by the SBA.
    b. **An entity opened between January 1, 2020, and the day before the ARPA's enactment date (March 11, 2021)** – The pandemic-related revenue loss would be the allowable expenses (defined below) incurred minus any gross receipts received or an amount based on a formula to be determined by the SBA.
    c. **An entity has not yet opened as of the grant application date but has incurred allowable expenses as of the ARPA's enactment date –** The pandemic-related revenue loss would be the amount of the allowable expenses or an amount based on a formula to be determined by the SBA.

4. **Determination of Grants** – The grants made will be equal to an entity's pandemic-related revenue loss with a maximum grant size of $10 million per eligible entity and any affiliated businesses and a cap of $5 million per physical location. The funds can be used to cover allowable costs for the period from February 15, 2020, to December 31, 2021, or another date to be determined by the SBA that is not later than two years after the ARPA's enactment.

a. There will be a 21-day priority period for entities that are small business concerns owned and controlled by women and veterans, and socially and economically disadvantaged small business concerns (this group will continue to have access after the priority period as well). Applicants will submit a self-certification of eligibility for priority access.
b. Awards will be approved in the order applications are received by the SBA.

5. **Allowable Uses of Grants** – These funds may be used for any of the following:

a. Payroll costs (except for qualified wages used to receive an employee retention credit, and for premiums taken into account for purposes of the new continuation coverage premium assistance credit, which is a new credit made available under the ARPA)
b. Payments of principal or interest on any mortgage obligation. Principal prepayment is prohibited
c. Rent payments, including rent under a lease agreement. Prepayment of rent is prohibited.
d. Utilities
e. Maintenance expenses, including:

   1. Construction to accommodate outdoor seating
   2. Walls, floors, deck surfaces, furniture, fixtures, and equipment

f. Supplies, including protective equipment and cleaning materials
g. Food and beverage expenses that are within the scope of the normal business practice of the eligible entity before the covered period
h. Covered supplier costs (as defined for purposes of PPP loan forgiveness)
i. Operational expenses
j. Paid sick leave
k. Any other expenses that the SBA determines to be essential to maintaining the eligible entity

Any funds not used for allowable expenses during the covered period—or if the entity has unused funds when it permanently ceases operation on or before the last day of the covered period—**must be returned to the Treasury.**

B. Enhancement of the Employee Retention Credit (ERC): The ARPA extends the availability of the ERC through December 31, 2021 (previously, the ERC was set to expire on June 30, 2021). This means an employer eligible for the ERC in all four quarters could receive up to $28,000 in credits per employee in 2021 (70% of the $10,000 quarterly wage cap for four quarters).

1. **Severely financially distressed employers -** This is a new category established by the ARPA. These are companies which experienced more than 90% gross receipts reduction compared to the same quarter in 2019 OR, by election, the immediately preceding calendar quarter. A severely financially distressed employer who meets this test would be able to treat all wages paid to employees during the applicable quarter as qualified wages, even if it exceeds the 500 full-time employee threshold.

Steven Bankler, CPA, Ltd. 9901 IH 10 W, Suite 670 San Antonio, TX. 78230 (210) 691-3133
steven@bankler.com www.bankler.com Fax (210) 691-3233

2. **Recovery startup business -** This is another new category established by the ARPA. This is defined as an employer who began carrying on a trade or business after February 15, 2020, with annual gross receipts of up to $1 million, and who otherwise does not meet the ERC eligibility tests. The startup ERC is capped at $50,000 per quarter, per employer.

C. **FFCRA Qualified Paid Sick/Family Leave Credits -** The ARPA extends and expands the qualified paid sick and family leave tax credits that were created in the Families First Coronavirus Response Act of 2020 (FFCRA). The law also modifies the rules for wages paid between April 1, 2021, and September 30, 2021. It restarts the 10-day period on April 1, 2021, allowing for an additional 10 days of qualified sick leave from April 1, 2021, through September 30, 2021. It also increases the amount of eligible wages from $10,000 per employee to $12,000 per employee. Last, the ARPA expands the type of qualifying leave to include leave relating to recovery from a vaccination.

This report only discusses specific provisions that we consider to be of general interest to business owners and is not a complete discussion of the law's contents. As with any changes in the tax laws, there are new planning opportunities to be considered. Please feel free to contact us with your specific questions.

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steven@bankler.com www.bankler.com Fax (210) 691-3233