

Overview

On March 11, 2021, President Joe Biden signed the “American Rescue Plan Act of 2021” (the “Act”) into law.¹ The Act provides \$1.9 trillion in funding, program changes, and tax policies aimed at mitigating the continuing effects of the COVID-19 pandemic. Unlike past COVID-related stimulus packages, the Act focuses particularly on funding state and local governments, schools, and individuals, though it also contains relief for private companies, especially small businesses. A link to the full legislative text can be found [HERE](#); key portions of the Act are summarized below.

Key Business Provisions

Deductions for Executive Compensation: The Act extends rules limiting executive compensation deductions to publicly-traded companies. It amends Section 162(m) of the IRS Code, for years after 2026, to add a corporation’s five highest-compensated employees, besides the employees already covered by the section, to the list of individuals subject to the \$1 million cap on deductible compensation. Thus, the amount that an employer may deduct for compensation paid to individuals who are highly paid but are not officers will now be limited by Section 162(m).

Corporate Interest Allocations: The Act repeals a provision that gave multinational companies more flexibility in deciding how to account for their interest expenses in their taxes by repealing the election under Section 864(f) of the IRS Code that allows corporations to allocate and apportion their combined interest expense on a worldwide basis among their members.

Extension of Excess Business Loss Limitations: The Act also focuses on how owners of unincorporated businesses account for their losses. The Tax Cuts and Jobs Act imposed an annual limitation on the deductibility of business losses by owners of partnerships and S corporations that began in 2018 and was set to expire at the end of 2025. The CARES Act deferred the limitation until 2021 (retroactively allowing for loss utilization in 2018, 2019, and 2020). While not altering the start date, this Act extends the expiration date by one year, to December 31, 2026.

Employee Retention Credit: The Act extends the employee retention credit established by the CARES Act through December 31, 2021. It also expands eligibility for the credit to new startups that were established after February 15, 2020 and companies if their revenue declined by 90% compared to the same calendar quarter of the previous year. The employee retention credit is capped at \$50,000 per calendar quarter for startups.

¹ On February 27, 2021, the House passed H.R. 1319, or the Act, by a vote of 219 to 212. It was then modified and approved by the Senate in a 50 to 49 vote on Saturday, March 6, 2021, requiring House approval once more. The House approved the final Act in a 220 to 211 vote on March 10, 2021.

Paid Leave Credits: The Act extends tax credits for employer-provided paid sick and family leave established under the Families First Coronavirus Response Act through September 30, 2021. The Act makes several changes to the credits for wages paid between April 1, 2021 and September 30, 2021, including increasing the wages covered by the paid family leave credit to \$12,000 per worker, expanding types of leave to include vaccination, and covering as many as 60 days of paid family leave for self-employed individuals. The Act also bars employers from receiving credits if their paid leave favors highly compensated employees, full-time workers, or employees based on tenure.

Aviation Sector

The Act provides \$8 billion to airports and airport concession holders and contractors. Grant recipients must retain at least 90% of personnel employed as of March 27, 2020 through September 30, 2020. The Department of Transportation may issue a waiver if the airport is experiencing significant economic hardship or if the requirement has negative impacts on aviation safety or security. These funds are to be used mostly for operations, maintaining personnel, cleaning, sanitization, and debt service payments. These funds will remain available until September 30, 2024. Additionally, the Act provides \$15 billion to eligible airlines and contractors to extend the payment of wages, salaries, and benefits; \$14 billion for airlines; and \$1 billion for contractors.

The Act creates a payroll support program specifically for certain aviation manufacturing companies that, among other things: (i)(A) are organized in the United States, or (B) have significant operations in, and have a majority of employees engaged in aviation manufacturing activities and services in, the United States; and (ii)(A) involuntarily furloughed or laid off at least 10% of their workforce in 2020 as compared to 2019, or (B) have experienced at least a 15% decline in 2020 revenues as compared to 2019. Under the program, which is available only to certain “eligible employee groups,” the Treasury may enter into an agreement, for a term of no longer than 6 months, to provide 50% of such group’s total compensation level (as of April 1, 2020), with the recipient company providing the remaining 50%.

Transportation

Transit: The Act provides nearly \$30.5 billion to the Federal Transit Administration to provide grants to transit agencies for operating expenses, including for payroll and personal protective equipment. Of that sum, \$26.1 billion is for urbanized area formula grants to aid transit services in urban areas; \$2.21 billion is for grants to urban and rural areas to maintain operations over and above the aid that has been provided; \$1.68 billion is for qualifying projects in the Capital Investment Grants program; \$317.2 million is for operating assistance formula grants to support rural transit; \$50 million is to aid in the mobility for seniors and persons with disabilities, and \$100 million is for intercity bus operators.

Railways: The Act provides \$1.7 billion to Amtrak, which includes \$970 million to support the Northeast Corridor and \$730 million for National Network grants.

Agriculture

The Act provides \$4 billion to the U.S. Department of Agriculture to support the food supply chain, provide grants and loans to smaller processors and producers, and aid in payments for expenses related to crop losses. \$1.01 billion is dedicated to grants and loans to improve land access for socially disadvantaged farmers, ranchers, and forest landowners. The Act also appropriates funds as may be necessary for loan modifications and payments to farmers and ranchers who have been socially disadvantaged in U.S. Department of Agriculture programs. The Department could pay as much as 120% of each farmer’s or rancher’s debt on loans it made or guaranteed.

Hospitality & Entertainment

Restaurant Grants: The Act provides \$28.6 billion for a new grant program, the Restaurant Revitalization Fund, allowing up to \$5 million per physical location and up to \$10 million per restaurant group or chain. The grants are calculated by subtracting 2020 revenue from 2019 revenue. \$5 billion is set aside for businesses with less than \$500,000 in revenue in 2019, and the rest is otherwise accessible to eligible entities of different sizes based on annual gross receipts. Some businesses are specifically excluded from this program, including state and local government-operated businesses, publicly traded companies, businesses with more than 20 locations, and businesses that have previously received aid under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act. The Small Business Administration will be administering the program and determining the grant application window; however, once grant applications are open, the Act provides for a 21-day period to prioritize grants to eligible entities that are owned and controlled by women, veterans, or socially and economically disadvantaged individuals.

Music and Event Venue Grants: The Act provides \$1.25 billion in grant money for shuttered venue operators.

Small Business Loans

Paycheck Protection Program (“PPP”): The Act provides \$7.25 billion in additional funding for the PPP for small businesses. It does not extend the current PPP application period, which is scheduled to close on March 31, 2021.² The Act allows more nonprofits to apply, including those nonprofits listed in Section 501(c) of the Internal Revenue Code other than Sections 501(c)(3), 501(c)(4), 501(c)(6), and 501(c)(19) (entities under 501(c)(3) and (c)(6) are already eligible for PPP funding) so long as the nonprofit does not employ more than 300 employees, the cost of its lobbying activities does not exceed \$1 million during the most recent tax year, its lobbying activities may not comprise more than 15% of total activities, and it does not receive more than 15% of its receipts from lobbying activities. The Act also permits larger nonprofits to apply for PPP loans, including 501(c)(3) organizations and veterans’ organizations that employ not more than 500 employees per physical location as well as larger 501(c)(6) organizations, domestic marketing organizations, and other nonprofits that employ not more than 300 employees per physical location.

Economic Injury Disaster Loan (“EIDL”) Advance Payments: The Act provides \$15 billion to fund advance payments for the Small Business Administration’s EIDL program. Of that, \$10 billion will be used for entities that did not receive their full eligible advance payment under the prior COVID-19 relief package, and \$5 billion will be set aside to make new advance payments of \$5,000 to covered entities with 10 or fewer employees that had economic losses of more than 50% during the covered period.

State and Local Governments

The Act provides \$350 billion to help states, counties, cities and tribal governments cover increased expenditures, replenish lost revenue and mitigate economic harm from the COVID-19 pandemic. Of that sum, \$25.5 billion will be equally divided among the states and the District of Columbia, and \$169 billion will be divided based on the states’ share of unemployed workers from October to December 2020. \$130.2 billion will be provided to local governments – \$65.1 billion for counties; \$45.6 billion for cities; \$19.5 billion for towns with fewer than 50,000 people. In addition, the Act provides \$4.5 billion to U.S. territories, \$20 billion to tribal governments, and \$10 billion for an infrastructure program to aid local governments in continuing crucial capital projects.

Education

The Act provides over \$128 billion in grants to state educational agencies, 90% of which are allocated to local educational agencies. The Act provides \$39 billion in grants to higher education institutions. Further, nearly \$15 billion is provided to the Child Care and Development Block Grant program to support child care facilities, particularly in high-need areas. The Act sets aside \$1.25 billion for summer enrichment programs, \$1.25 billion for after-school programs, and \$3 billion for education technology. Additionally, the Act makes any student loan forgiveness passed between December 31, 2020 and January 1, 2026 tax-free as opposed to having the forgiven debt included in taxable income.

Individuals & Families

Stimulus Checks: The Act provides that individuals earning up to \$75,000 per year and couples earning up to \$150,000 will receive \$1,400-per-person stimulus checks. This benefit phases out for individuals earning more than \$80,000 per year and couples earning more than \$160,000. Individuals will also receive an additional \$1,400 payment for each dependent claimed on their tax return.

Unemployment Benefits: The Act extends through September 6, 2021 the existing \$300 weekly unemployment benefit that was set to expire in mid-March. The Act makes the first \$10,200 in unemployment payments nontaxable for households with incomes under \$150,000. The Act also extends other benefits through September 6, 2021, like the CARES Act provisions that provided a 75% subsidy for costs incurred by employers who provide unemployment benefits on a reimbursable basis rather than via tax contributions as well as the Federal Pandemic Unemployment Compensation benefit. The Act appropriates \$2 billion to the Department of Labor to support timely access to benefits.

Low-Income Support: The Act provides \$1.4 billion in funding for programs authorized under the Older Americans Act, including support for nutrition programs, community-based support programs and the National Family Caregiver Support Program. The Act also provides \$37 million to the Commodity Supplemental Food Program for low-income seniors and \$25 billion for emergency rental assistance, including \$5 billion for emergency housing vouchers for people experiencing homelessness, survivors of domestic violence and victims of human trafficking.

Energy and Environment: The Act provides \$4.5 billion for the Low-Income Home Energy Assistance Program to assist eligible low-income households with heating and cooling energy costs. The Act provides \$500 million to cover payments for drinking water and wastewater expenses; \$100 million for the Environmental Protection Agency to provide grants to address disproportionate environmental harms to minority and low-income populations; and \$95 million to the Fish and Wildlife Service for wildlife inspections, care of captive endangered species, and research related to wildlife disease outbreaks.

Earned Income Tax Credit (“EITC”): The Act raises the maximum EITC for adults without children from \$543 to \$1,502. The Act lowers the age eligibility for the childless EITC from 25 to 19 and eliminates the upper age limit. The Act allows individuals who are separated from their spouses to claim the EITC on a separate return if they live with their child for more than half of the year.

Child Tax Credit: The Act provides that most individuals receive \$3,000 a year for each child ages 6 to 17 and \$3,600 for each child under 6. This amount is gradually reduced for couples earning over \$150,000 and individuals earning over \$75,000 per year. The payments would last a year and be distributed on a periodic basis.

Dependent Care: The Act makes the child and dependent care tax credit refundable, increases the maximum allowable expenses to \$8,000 for one dependent and \$16,000 for two or more, and allows the credit to cover 50% of expenses.

Pandemic Response

The Act provides \$7.5 billion to the Centers for Disease Control and Prevention to aid in the tracking, administration, and distribution of COVID-19 vaccines. The Act provides \$46 billion to aid in the diagnosing and tracing of coronavirus infections and \$2 billion to aid in the purchase and distribution of testing supplies and personal protective equipment. Additionally, the Act provides \$50 billion to the Federal Emergency Management Agency's Disaster Relief Fund to reimburse state and local governments for COVID-19-related costs, as well as other presidentially-declared disasters and emergencies, with the funding to remain available through 2025.

For additional insights related to business and legal implications of the COVID-19 pandemic and the government response, please visit our [Knowledge Center](#).

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