

Highlights of the American Rescue Plan Act of 2021: Updates to the Paycheck Protection Program, Additional Support for the Restaurant and Airline Industries



By: [Neil M. Barofsky](#), [Erin R. Schrantz](#), [Michael W. Ross](#), [Ali M. Arain](#), and [David J. Clark](#)

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (the Rescue Plan), the first stimulus legislation of the Biden Administration. Chief among the \$1.9 trillion stimulus act is support for individuals, including \$1,400 checks to many Americans, extended unemployment benefits, and expanded tax credits; \$360 billion to state and local governments; and the biggest changes to the Affordable Care Act since its passage. Like past stimulus legislation, the Rescue Plan also provides support for businesses struggling as a result of the pandemic. Among other things, it provides a modest increase to the Paycheck Protection Program and expands the program's eligibility to more non-profits and news organizations, creates a new grant program for restaurants that have suffered pandemic-related losses, and again extends payroll support for the airline industry.

In this alert, we build on our prior alerts concerning the CARES Act and related programs (available [here](#)) by providing a short overview of the key provisions of the Rescue Plan that relate to small business relief and airlines. This alert is not intended to provide a comprehensive overview of the Rescue Plan. Additional alerts concerning topics such as higher education^[1] and employee benefits^[2] have been published separately. We encourage you to reach out with particular questions or to obtain additional information about the topics covered in this alert or otherwise.

A. Paycheck Protection Program

First enacted as part of the historic CARES Act last year, the Paycheck Protection Program (PPP) has remained one of the most high-profile government relief programs of the pandemic period. We have previously issued alerts on the original provisions of the CARES Act and on the numerous updates that have followed.

Through March 14, 2021, the SBA had approved close to \$704 billion in PPP loans, with roughly \$103 billion in funding remaining.^[3] The Rescue Plan makes a modest additional injection, appropriating another \$7.25 billion in additional funds for the PPP. Notably, the Act does not extend the program's March 31, 2021, end date for borrowers to submit applications and for the SBA to approve loans. Neither Congress nor the SBA has clarified whether the SBA can continue to process a pending PPP application after the March 31 deadline for approvals has passed. In the lead-up to the Rescue Plan's passage, several groups raised concerns about the number of loan applications that may be held up in the system and unresolved through March 31, and some lenders have already stopped processing new applications in light of growing backlogs and the amount of time it takes to get SBA approval.^[4] Lawmakers appear to have struck a separate deal to extend the program—the House passed a measure to extend the PPP's application deadline to May 31, 2021, and to give the SBA authority to continue processing pending

applications as of that date until June 30, 2021, and the Senate is expected to take up the legislation soon.⁵¹

The Rescue Plan also expands PPP eligibility to include more types of non-profits. As discussed in prior alerts, to date PPP loans have been available for only certain types of 501(c)(3) charities; 501(c)(6) business leagues, chambers of commerce, and real estate boards; and 501(c)(19) veterans' organizations. The PPP has now been expanded to include most other types of 501(c) non-profit organizations (excluding 501(c)(4) entities), provided they employ not more than 300 employees per physical location, meet certain non-lobbying requirements, and otherwise meet the eligibility requirements of the PPP. PPP eligibility has also been expanded to now include larger charitable non-profits that employ not more than 500 employees per physical location.

Additionally, the Rescue Plan expands eligibility to previously ineligible Internet-only news and periodical publishers (NAICS Code 519130), putting them on the same eligibility terms as traditional news organizations, including a requirement that the organization certify that the loan will be used to support local or regional news.

B. Restaurant Revitalization Fund

The restaurant and hospitality industry has been among the hardest hit industries during the pandemic period, and restaurant groups have long-lobbied for government support. The Rescue Plan takes steps to help this industry, creating a \$28.6 billion Restaurant Revitalization Fund, a grant program to be run by the SBA. Of the \$28.6 billion, \$5 billion is earmarked for eligible entities with gross receipts of \$500,000 or less in 2019, and the remaining amount is to be awarded "in an equitable manner to eligible entities of different sizes based on annual gross receipts."

Eligibility. An eligible entity is a "restaurant, food stand, food truck, food cart, caterer, saloon, inn, tavern, bar, lounge, brewpub, tasting room, taproom, licensed facility or premise 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." Excluded businesses are those that are operated by state or local governments; those with more than 20 locations; those that have a pending application for or received a grant for shuttered venue operators under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (passed as part of the Consolidated Appropriations Act, 2021), and those businesses that are publicly traded.

Grant Size. The amount of a grant made to an eligible entity "shall be equal to the pandemic-related revenue loss of the eligible entity," with a maximum of \$10 million in the aggregate, and not more than \$5 million per physical location. An entity's pandemic-related revenue loss is calculated by subtracting the business's gross receipts of 2020 from its gross receipts of 2019. If the entity was open for only part of 2019, then average monthly gross revenues are used. If the entity opened in 2020, then it may receive the amount of its eligible expenses minus any gross receipts. The amount of the grant is reduced by any PPP funds the business received in 2020 or 2021.

Use of Funds. Like the PPP, the RRF comes with use restrictions. First, the grants must be used on expenses incurred between February 15, 2020 and December 31, 2021 (or a later date that still might be determined by the SBA once it issues its implementing rules). Second, the following expenses incurred "as a direct result of, or during," the pandemic are eligible: payroll costs, mortgage payments (principal or interest), rent payments, utilities, maintenance expenses, supplies (including protective equipment and cleaning materials), food and beverage expenses, covered supplier costs, operational expenses, sick leave, and other expenses that the SBA "determines to be essential to maintaining the eligible entity." The Rescue Plan does not explain the requirement for an expense to be incurred "as a direct result of, or during" the pandemic, and the SBA will likely issue guidance addressing this issue.

Application. In order to apply, an eligible entity must make the same economic-need certification as under the PPP, that "the uncertainty of current economic conditions makes necessary the grant request

to support the ongoing operations of the eligible entity.” This certification was the subject of much debate and controversy for PPP applicants,^[6] with the SBA eventually issuing guidance that borrowers who received a PPP loan for less than \$2 million would be deemed to have made the required certification in good faith (aside from certain Schedule C filers), while those with larger loans would have their certification subject to review.^[7] RRF applicants must also certify that they have not applied for or received a grant for shuttered venue operators, as described above. The Rescue Plan provides that, for the first 21 days grants are awarded, the SBA shall prioritize businesses owned by women or veterans, as well as those that are socially or economically disadvantaged. After that period, the SBA is to award grants generally in the order in which applications are received. The Rescue Plan provides that the SBA will prioritize the ability of applicants to use existing business identifiers rather than requiring other forms of registration or identification that may not be common to the industry, and additional guidance from the SBA on application procedures and requirements is expected. Until that guidance is released, business organizations have counseled restaurants to prepare to apply by registering for a Dun & Bradstreet (DUNS) number, using that number to register with the federal System of Award Management, and gathering documentation showing gross receipts in 2020 and 2019.^[8]

Tax Treatment. Any amounts received under the RRF is not included in a recipient’s gross income, and no tax deductions will be denied, no tax attribute reduced, and no basis increase denied by reason of the exclusion from gross income.

C. Airlines

As described in prior alerts, a major component of the CARES Act was support for the airline industry. Among other things, it established the Payroll Support Program, which provided up to \$32 billion in federal aid to maintain employment in the airline industry. This support was intended to keep front-line airline workers on the job through the end of September 2020, which was then thought to be sufficient time for the industry to recover from the impacts of the pandemic. However, the airline industry was still struggling as the program expired, leading to mass furloughs. The payroll support program was eventually extended and infused with an additional \$16 billion as part of the Supplemental Stimulus Act,^[9] and this support was set to expire at the end of March 2021. In the face of another round of furlough notices, the Rescue Plan again extends payroll support to airlines, providing another \$15 billion to keep workers on the job through the end of September 2021.^[10] An entity must have received financial assistance under the Supplemental Stimulus Act to be eligible under this extension.

This funding has the same terms as in prior extensions, including requiring recipients to recall all employees involuntarily furloughed between the expiration of the prior extension (March 31, 2021) and the date the carrier or contractor enters an agreement with Treasury with respect to the federal assistance, and a prohibition on recipients furloughing employees until September 30, 2021. Air carriers are entitled to receive the same proportion of funds that they received under the Supplemental Stimulus Act (e.g., a carrier that received \$3 billion of the \$15 billion available in the Supplemental Stimulus Act, which is 20%, would be eligible to receive \$2.8 billion under the Rescue Plan, as that is 20% of the \$14 billion available for carriers). Contractors are entitled to receive the same amount they received under the Supplemental Stimulus Act.

The Rescue Plan also creates a \$3 billion cost-sharing program between the federal government and certain manufacturers in the aviation industry, which is intended to incentivize the retention, rehire, and recall of certain employees. Under this program, the federal government and eligible manufacturers each contribute 50% of the funding necessary to continue employee compensation and retain, rehire, or recall employees who were laid off. The funds must be used exclusively for those purposes, and the cost-sharing agreements are temporary, lasting up to six months. The funds must be directed to an employee group that comprises not more than 25% of the entity’s workforce, in which the employees make \$200,000 or less and are engaged in aviation manufacturing or maintenance, repair, and overhaul activities.

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

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Contact Us



Neil M. Barofsky

nbarofsky@jenner.com | [Download V-Card](#)



Erin R. Schrantz

eschrantz@jenner.com | [Download V-Card](#)



Michael W. Ross

mross@jenner.com | [Download V-Card](#)



Ali M. Arain

aarain@jenner.com | [Download V-Card](#)



David J. Clark

dclark@jenner.com | [Download V-Card](#)

[1] An alert on what colleges and universities can expect from the Rescue Plan is available [here](#).

[2] An alert on compensation and benefits considerations in the Rescue Plan is available [here](#).

[3] US Small Bus. Admin., Paycheck Protection Program (PPP) Report: Approvals through 03/14/2021, https://www.sba.gov/sites/default/files/2021-03/PPP_Report_Public_210314-508.pdf; Thomas Wade,

Tracker: Paycheck Protection Program Loans, American Action Forum (Mar. 17, 2021), <https://www.americanactionforum.org/research/tracker-paycheck-protection-program-loans/>.

[4] Zachary Warmbrodt, *Biden Pressed by Banks to Extend Loan Program as Expiration Looms*, Politico (Mar. 9, 2021), <https://www.politico.com/news/2021/03/09/biden-banks-ppp-loans-474871>.

[5] Andrew Duehren, *House Votes to Extend PPP Application Deadline*, Wall St. J. (Mar. 16, 2021), <https://www.wsj.com/articles/house-votes-to-extend-ppp-application-deadline-11615944497>.

[6] Ruth Simon & Peter Rudegear, *PPP Changes Trip Up Small Businesses*, Wall St. J. (May 12, 2020), <https://www.wsj.com/articles/paycheck-protection-program-changes-trip-up-small-businesses-11589288403>.

[7] US Small Bus. Admin., *Paycheck Protection Program Loans: Frequently Asked Questions (FAQs) #46* (Mar. 12, 2021), https://www.sba.gov/sites/default/files/2021-03/PPP_FAQs_3.12.21_FINAL-508.pdf.

[8] Sean Ludwig, *Small Business Update: American Rescue Plan Act*, US Chamber of Com. (Mar. 12, 2021), <https://www.uschamber.com/co/events/small-business-update-town-hall/small-business-update-american-rescue-plan-act>.

[9] Like in our prior [alert](#), “the Supplemental Stimulus Act” as used here refers generally to the stimulus-related provisions of the Consolidated Appropriations Act, 2021, most of which appear in Division M (Coronavirus Response and Relief Supplemental Appropriations Act, 2021) and Division N (Additional Coronavirus Response and Relief) of the legislation.

[10] Lori Aratani, *Airlines, Public Transit Agencies Say \$1.9 Trillion Relief Plan Would Prevent Deep Cuts, Job Losses*, Wash. Post (Mar. 8, 2021), https://www.washingtonpost.com/local/trafficandcommuting/stimulus-transportation/2021/03/08/dceb4e00-802b-11eb-81db-b02f0398f49a_story.html.

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