

American Rescue Plan Expands Employee Retention Credits and Provides Relief for Restaurants

By [Russell Stein](#) and [David DiSegna](#)

On Thursday March 11th President Biden signed into law the American Rescue Plan Act of 2021 ("ARPA"). The law contains provisions to help businesses and individuals recover from economic hardships due to Covid-19. This Client Alert provides a brief overview of the changes to the Employee Retention Credit and introduces the Restaurant Revitalization Grant program that is part of ARPA.

Employee Retention Credits

ARPA extended the Employee Retention Credit ("ERC") program through the end of 2021. The ERC generally allows eligible business to take a credit of up to \$5,000 per employee (for 2020) and \$7,000 per employee per quarter (for 2021) against certain payroll taxes. ARPA extended the credit for all quarters in 2021.

A business is generally eligible for an ERC if it has been subject to a full or partial shut-down or has experienced a decline in gross receipts (50% for 2020 ERC and 20% for 2021 ERC) when compared to its 2019 activities.

ARPA also adds a third category of eligibility for the ERC for "recovery startup businesses", those businesses that started up after February 15, 2020, had less than \$1 million in average gross receipts over a specified period, was not subject to a shutdown order and did not have a decrease in gross receipts. The ERC is limited to \$50,000 for a recovery startup business.

Restaurant Revitalization Grants

Section 5003 of ARPA establishes the Restaurant Revitalization Fund to provide \$28.6 billion in grants to eligible entities. Of that amount, \$5 billion is set aside specifically for small eligible entities, those entities with gross receipts of not more than \$500,000 in 2019. The set-aside for small eligible entities is only available for the first sixty days after the enactment of ARPA. After that time the remaining amounts in the small business set-aside will be available to all eligible entities.

Under ARPA, the SBA is directed to award grants to eligible entities in the order in which the SBA receives the grant applications. Unlike the Paycheck Protection Program loans, eligible entities will apply directly to the SBA for the loans.

Generally, businesses in which the public assembles for the primary purpose of being served food or drinks (like restaurants and bars) are "eligible entities" under the program provided the business had no more than 20 locations, did not apply for an "SOS Grant" (shuttered venue operator grant), and is not a publicly traded company.

An eligible entity may apply to the SBA to receive a grant in the amount of its "pandemic-related revenue loss". "Pandemic-related revenue loss" is generally the amount of the business's 2019 gross receipts that are in excess of the business's 2020 gross receipts. If a business received a Paycheck Protection Program ("PPP") loan, the pandemic-related revenue loss is reduced by the amount of the PPP loan received by the entity.

The grant is limited to \$10 million to an eligible entity and its affiliates, but no more than \$5 million per physical location of such entity.

Grant amounts received may only be used during the covered period (February 15, 2020 through December

31, 2021) for the certain expenses, including payroll costs, rent or mortgage expenses, utilities, maintenance, supplies, and normal food and beverage expenses. If the eligible entity ceases operations before December 31, 2021, or fails to use all of the grant, any amounts not used for eligible expenses must be returned.

In order to receive the grant an eligible entity must make a good faith certification that “(i) the uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations of the eligible entity; and (ii) the eligible entity has not applied for or received [an SOS Grant]” from the SBA.

For the first 21-day period in which the SBA awards grants priority will be given to small eligible entities and businesses owned and controlled by women or veterans, and socially and economically disadvantaged small business concerns.

The SBA has not yet announced when applications for the grant will be available.

Partridge Snow & Hahn attorneys [Russell Stein](#) and [David DiSegna](#) are ready to answer further questions and to advise your business regarding these and other provisions of the American Rescue Plan Act of 2021.

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