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American Rescue Plan Act of 2021

Public Law 117-2 (H.R. 1319)

Overview

The American Rescue Plan Act (ARPA) (Public Law 117-2 (H.R. 1319)) was signed into law by President Biden on March 11, authorizing an approximately $1.9 trillion emergency stimulus bill to address the economic and health impacts of the COVID-19 pandemic. The bill provides discretionary funds for hospitals, institutions of higher education, nonprofit organizations, Native American tribes, small businesses, and others. This memo provides an overview of funding opportunities available to various institutions in the American Rescue Plan Act.

McAllister & Quinn is closely monitoring agency guidance, the timing of aid delivery, and finalization of the formulas that will be used to determine aid. There are numerous questions the legislation raises for which answers are not yet available. McAllister & Quinn will pass along further updates and clarifications as they are made available by federal agencies. McAllister & Quinn will also closely monitor the possibility of additional stimulus funding and potential future opportunities for emergency relief.

Please follow up directly with your McAllister & Quinn point of contact if you have questions about the specifics of this legislation and how it impacts your organization.

Small Business Administration (SBA)

Paycheck Protection Program (PPP): This legislation allocates $7.25 billion to the Paycheck Protection Program. Additionally, PPP eligibility is expanded to:

- Nonprofits that operate multiple locations and do not employ more than 500 employees per physical location of the organization.
- Nonprofits that do not employ more than 300 employees per physical location and do not receive more than 15% of their receipts from lobbying activities; lobbying activities do not comprise more than 15% of the total activities of the organization; and the cost of lobbying activities did not exceed $1 million during the most recent tax year that ended prior to February 15, 2020.
- Additional covered nonprofit entities are eligible for second draw loans in addition to existing eligibility.

PPP application deadline is March 31, 2021, unless extended by Congress.

Economic Injury Disaster Loan (EIDL): This legislation allocates $15 billion to the Targeted EIDL Advance Program.

- $10 billion in payments will go to covered entities that have not received the full amounts to which they were entitled.
- $5 billion in payments will go to covered entities that have suffered an economic loss of greater than 50% and employ not more than 10 employees.

Shuttered Venue Operators Grant Program (SVOG): This legislation allocates an additional $1.25 billion to this grant program which provides emergency assistance for eligible venues affected by COVID-19. Eligible applicants may qualify for grants equal to 45% of their gross earned revenue, with the maximum amount available for a single grant award of $10 million. $2 billion is reserved for eligible applications with up to 50 full-time employees. See more on SVOG eligibility here.

- The prohibition on applying for funds under both the PPP and SVOG was repealed. Instead, SVOG applicants may subtract the amount of a PPP loan received in 2021 from the grant value.

Tax Provisions. In the legislation,

- The Employee Retention Tax Credit is extended through December 31, 2021.
- The refundable payroll tax credits for paid sick and family leave originally established in the Families First Coronavirus Response Act and voluntarily provided by employers is extended through September 20, 2021.
    - The amount of wages for which an employer may claim the paid family credit in a year is increased from $10,000 to $12,000 per employee.
    - Paid leave is expanded to cover employees obtaining immunizations related to COVID-19 or recovering from conditions related to those immunizations.
- Allows federal workers diagnosed with COVID-19 to establish coverage under the Federal Employees' Compensation Act (FECA). Section 4016 of the law provides that a federal employee who is diagnosed with COVID-19 and carried out duties that required contact with patients, members of the public, or co-workers, or included a risk of exposure to the novel coronavirus during a covered period of exposure prior to the diagnosis, is deemed to have an injury that is proximately caused by employment.
- The Child Tax Credit includes several changes:
    - 17-year-olds now qualify as children for the credit.
    - The tax credit amount is increased to $3,000 from $2,000 ($3,600 for children under age 6) and is fully refundable for 2021.
    - The IRS is directed to make advance payments of the child tax credit in monthly installments beginning in July.
- The Earned Income Tax Credit:
    - The range is expanded for individuals to include those age 19 to 25 and workers over the age of 65.
    - The amount of the childless earned income tax credit is increased by doubling the phase-in and phase-out percentages from 7.65% to 15.3%, increasing the earned income amount to $9,820, and increasing the phase-out amount to $11,610.
- The Child and Dependent Care Tax Credit:
    - The maximum credit amount is increased to $4,000 for one qualifying child and $8,000 for more than one qualifying child.
    - Expense limits have been increased to $8,000 for one qualifying child and $16,000 for more than one qualifying child.

Department of Education (ED)

The legislation provides $39.6 billion to higher education institutions through the Higher Education Emergency Relief Fund (HEERF). Of that $39.6 billion, the funds will be appropriated as follows:

- $36 billion to public and private nonprofit colleges (including online-only schools).
- $2.96 billion to Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), Hispanic Serving Institutions (HSIs), and certain other institutions.
- $19.8 million to institutions with the greatest unmet needs related to coronavirus, including institutions of higher education with large populations of graduate students and institutions of higher education that did not otherwise receive an allocation.

Public and private nonprofit institutions receiving new HEERF allocations will be required to spend at least 50% of such allocations on emergency financial aid grants to students, while for-profit institutions receiving allocations and institutions receiving allocations due to the enrollment of students enrolled exclusively online will have to spend 100% of such allocations on student aid. Institutions will be solely responsible for determining which students receive emergency financial aid grants. Institutions are required to use a portion of the institutional share of new allocations to implement evidence-based practices to mitigate COVID-19 and conduct outreach to students regarding the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or other changes in financial circumstances.

Allocation Formula:

The allocation formulas in the ARPA largely mimics the formulas in the Coronavirus Response and Relief Supplemental Appropriations Act, with a few notable changes.

The aforementioned $36 billion to public and private nonprofit colleges will be apportioned the same as the Coronavirus Response and Relief Supplemental Appropriations Act. The American Council on Education (ACE) has provided a simulation of how the ED might distribute the emergency funds for public and private nonprofit and proprietary institutions. The simulation may be found here.

The aforementioned $2.96 billion to HBCUs, TCUs, and HSIs will be apportioned the same as the Coronavirus Response and Relief Supplemental Appropriations Act, but the endowment language was redefined in ARPA as follows: Institutions with an endowment of less than $1,000,000 (including an institution that does not have an endowment) shall be treated by the Secretary as having a total endowment size of $1,000,000.

Application deadline: Not detailed yet by the Department of Education.

Use of Funds: An institution may use funds to:

- Defray expenses associated with coronavirus (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff training, and payroll).
- Provide financial aid grants to students (including students exclusively enrolled in distance education), which may be used for any component of the student's cost of attendance or for emergency costs that arise due to coronavirus, such as tuition, food, housing, healthcare (including mental healthcare), or childcare. In making financial aid grants to students, an institution of higher education shall prioritize grants to students with exceptional need, such as students who receive Pell Grants.
- Implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines.
- Conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances described in section 479A of the Higher Education Act of 1965.

No funds received by an institution of higher education shall be used to fund contractors for the provision of pre-enrollment recruitment activities; marketing or recruitment; endowments; capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship; senior administrator or executive salaries, benefits, bonuses, contracts, incentives, stock buybacks, shareholder dividends, capital distributions, and stock options or any other cash or other benefit for a senior administrator or executive.

The following stipulations from the Coronavirus Response and Relief Supplemental Appropriations Act 2021 were removed in APRA:

- *Use of funds.* Carry out student support activities authorized by the HEA that address needs related to coronavirus.
- *Report.* An institution receiving funds under this section shall submit a report to the Secretary, not later than six months after receiving funding provided in this Act, in such manner and with such subsequent frequency as the Secretary may require, that provides a detailed accounting of the use of funds provided under this section.
- *Reallocation*. Any funds allocated to an institution of higher education under this section on the basis of a formula described in subsections (a)(1), (a)(2), and (a)(4), but for which an institution does not apply for funding within 90 days of the publication of the notice inviting applications, shall be reallocated to eligible institutions that had submitted an application by such date in accordance with the formula described in subsection (a)(1).
- *Special Provisions*. Institutions are allowed to waive or modify allowable uses of funds for institutional grant programs (Title III, Title V, and sections of Title VII) for COVID-19 relief efforts.

- *Special Provisions*. An institution of higher education with an approved HEERF application under the CARES Act shall not be required to submit a new or revised application to receive HEERF funds under this Act.

Institute of Education Sciences

The legislation provides $100 million to carry out research related to addressing learning loss caused by the coronavirus among students.

National Science Foundation (NSF)

The legislation provides $600 million to fund or extend new and existing research grants, cooperative agreements, scholarships, fellowships, apprenticeships, and related administrative expenses to "prevent, prepare for, and respond to coronavirus."

National Institute of Standards and Technology

The legislation provides $150 million to fund "research, development, and testbeds to prevent, prepare for, and respond to coronavirus."

Department of Agriculture (USDA)

This bill provides at least $10 million for grants and loans to improve land access for socially disadvantaged farmers, ranchers, and forest landowners, as well as scholarships, outreach, financial training, and other technical assistance for Hispanic-Serving Institutions.

Rural Healthcare Grants: The ARP will provide $500 million to USDA to award grants to eligible entities, including certain rural hospitals, based on needs related to the COVID-19 pandemic. Awardees may use the grant to cover COVID-19-related expenses and lost revenue to maintain capacity, such as increasing capacity for vaccine distribution or telehealth capabilities.

- Eligible applicants can use the funds to:
  - Increase capacity for vaccine distribution.
  - Provide drugs or medical supplies to increase medical surge capacity.
  - Reimburse for COVID-19-related expenses and lost revenue to maintain capacity.
  - Increase telehealth capabilities, including underlying healthcare information systems.
  - Support staffing needs for vaccine administration or testing.
  - Engage in any other efforts determined to be critical to address the COVID-19 pandemic, including nutritional assistance to vulnerable individuals, as approved by the Secretary.

Institute of Museum and Library Services (IMLS)

The legislation provides $200 million for necessary expenses to carry out museum and library services. The Institute of Museum and Library Services will award at least 89% of funds via formula to state library administrative agencies.

National Endowment for the Humanities (NEH)

The legislation provides $135 million to be expended as follows:

- $54 million for grants and relevant administrative expenses to state humanities councils that support humanities organizations' programming and general operating expenses to cover up to 100% of the costs of the programs that the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.
- $81 million for direct grants and relevant administrative expenses that support humanities organizations' programming and general operating expenses to cover up to 100% of the costs of the programs that the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.

National Endowment for the Arts (NEA)

The legislation provides $135 million, to be expended as follows:

- $54 million for grants and relevant administrative expenses to state arts agencies and regional arts organizations that support organizations' programming and general operating expenses to cover up to 100% of the costs of the programs that the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.
- $81 million shall be for direct grants and relevant administrative expenses that support organizations' programming and general operating expenses to cover up to 100% of the costs of the programs that the grants support, to prevent, prepare for, respond to, and recover from the coronavirus.

Health and Human Services (HHS)

The legislation provides:

- $8.5 billion in new dollars for Provider Relief Fund for rural providers' COVID-19 relief.
- $15 billion for vaccine administration.
- $47 billion for COVID-19 testing and tracing.
- $2 billion for personal protective equipment and supplies.
- $10 billion for Defense Production Act supply needs.
- 100% federal subsidies for COBRA coverage.

$7.5 billion was appropriated to the Health and Human Services to respond to the pandemic in the following ways:

- Expand a nationwide COVID-19 vaccine distribution and administration program.
- Provide technical assistance and award grants or cooperative agreements to state, local, tribal, and territorial public health departments.

$6.05 billion was appropriated for research, development, manufacturing, production, and the purchase of vaccines, therapeutics, and ancillary medical products and supplies to respond to the pandemic.

$500 million was appropriated for evaluation of emerging COVID-19 variants of vaccines, therapeutics, and diagnostics.

$47.8 billion was appropriated for COVID-19 expanded testing and tracing activities:

- HHS shall award grants to or enter into cooperative agreements or contracts with state, local, and territorial public health departments to establish, expand, and sustain a public health workforce.

$1.75 billion was appropriated to carry out activities to detect, diagnose, trace, and monitor COVID-19 infections and related strategies to mitigate its spread in congregate settings.

- The term 'congregate settings' includes federal, state, local, territorial, and tribal prisons, jails, detention centers (including juvenile detention centers), and other correctional, detention, and re-entry facilities; long-term care facilities, psychiatric hospitals, and psychiatric residential treatment facilities; shared living arrangements for individuals with disabilities; intermediate care facilities; and other residential care facilities.
- Relief is to provide technical assistance, guidance, and support and award grants, contracts, or cooperative agreements to state, local, territorial, and tribal public health departments for activities to detect, diagnose, trace, monitor, and report on SARS-CoV-2 and COVID-19 infections and related strategies and activities to mitigate the spread of SARS-CoV-2 in congregate settings.

COVID-19 Emergency Medical Supplies Enhancement:

- $10 billion appropriated to carry out titles in the Defense Production Act of 1950. This money is to be allocated at the discretion of the Secretary of Health and Human Services.
    - ***Testing, PPE, vaccines, and other materials*** — Out of the amount mentioned above, the funds "shall be used for the purchase, production (including the repair and retrofitting of government-owned or private facilities as necessary), or distribution of medical supplies and equipment (including durable medical equipment) related to combating the COVID–19 pandemic," including:

        - In vitro diagnostic products, face masks and personal protective equipment, drugs, devices, and biological products for use in treating or preventing COVID-19.
        - Face masks and personal protective equipment, including face shields, nitrile gloves, N-95 filtering facepiece respirators, and any other masks or equipment.
        - Drugs and devices that are approved, cleared, licensed, or authorized under either of such Acts for use in treating or preventing COVID-19 and symptoms related to COVID-19.

$1.75 billion was appropriated for HHS to strengthen and expand activities and workforce related to genomic sequencing, analytics, and disease surveillance:

- Including awarding grants or cooperative agreements to state, local, tribal, or territorial public health departments or public health laboratories.
- Including awarding grants for the construction, alteration, or renovation of facilities to improve genomic sequencing and surveillance capabilities at the state and local levels.

$7.66 billion appropriated to expand and sustain a public health workforce:

- Including making awards to state, local, and territorial public health departments.

$7.6 billion appropriated for awarding grants and cooperative agreements under section 330 of the Public Health Service Act (42 U.S.C. 254b):

- To be awarded to Federally Qualified Health Centers.
- “An awardee may use amounts awarded pursuant to subsection (a) to cover the costs of the awardee carrying out any of the activities described in subsection (b) during the period beginning on the date of the declaration of a public health emergency by the Secretary under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to COVID-19 and ending on the date of such award.”
    - Eligible activities include:
        - Conduct activities to enhance, expand, and improve nationwide COVID-19 vaccine distribution and administration, including activities related to distribution of ancillary medical products and supplies related to vaccines; and
        - Provide technical assistance, guidance, support, and award grants or cooperative agreements to state, local, tribal, and territorial public health departments for enhancement of COVID-19 vaccine distribution and administration capabilities.

Centers for Medicare & Medicaid

The bill requires mandatory coverage of COVID-19 vaccines and administration and treatment under Medicaid until “the last day of the first calendar quarter that begins at least one year after the last day of the emergency period described in section 18 1135(g)(1)(B).”

- Temporary increase in federal payments for coverage and administration of COVID-19 vaccines.
- Temporary increased FMAP for medical assistance for coverage and administration of COVID-19 vaccines.

Elimination of Medicaid Drug Rebate Cap and Inclusion of COVID-19-Related Drugs in Medicaid Rebate: The bill would eliminate the Medicaid drug rebate cap (under current law, set at 100% of the average manufacturer price) with an effective date of January 1, 2024. The bill also would allow outpatient drugs used for COVID-19 prevention or treatment to be included in the Medicaid Drug Rebate Program.

Postpartum Coverage: The bill would give states for five years the option to extend Medicaid and Children’s Health Insurance Program (CHIP) eligibility to pregnant individuals for 12 months postpartum. States choosing this option must provide the full Medicaid benefit for pregnant and postpartum individuals during the 12-month postpartum period.

FMAP Expansion Incentive: The bill would provide an incentive for states that have not already done so to expand Medicaid by temporarily increasing the state’s Federal Medical Assistance Percentage (FMAP) for their base program by 5 percentage points for two years. The FMAP increase would be available at any point after enactment and would begin in the first calendar quarter when a new expansion state incurs spending for people in the Medicaid adult expansion groups.

The increased match does not apply to the already-enhanced matching rate for expansion populations, to federal matching rates for Medicaid Disproportionate Share Hospital (DSH) payments, or CHIP. States choosing to expand would be required to maintain coverage levels to access the FMAP increase, including the newly established requirement to cover COVID-19 vaccine and treatment.

Maintaining Medicaid DSH During PHE: The bill would require that the Centers for Medicare & Medicaid Services recalculate the annual DSH allotments for any year the temporary COVID-19-related FMAP increase applies to ensure that the total DSH payments a state would make (including federal and state shares) is equal to the DSH payment amount the state would have made in the absence of the temporary FMAP increase.

Health Resources and Services Administration (HRSA)

$330 million is appropriated to remain available until September 30, 2023, for the program of payments to teaching health centers that operate graduate medical education and for teaching health center development grants.

- Funds may be used for:
    - Making payments to new approved graduate medical residency training programs.
    - Providing an increase to the per-resident amount of $10,000.
    - Making awards under 749a of the Public Health Service Act to teaching health centers for the purpose of establishing new accredited or expanded primary care residency programs.

Economic Development Administration (EDA)

The legislation provides $3 billion to prevent, prepare for, and respond to coronavirus and for necessary expenses for responding to economic injury as a result of coronavirus.

- $60 million for federal costs to administer such assistance utilizing temporary federal personnel as may be necessary consistent with the requirements applicable to such administrative funding in fiscal year 2020 to prevent, prepare for, and respond to coronavirus and which shall remain available until September 30, 2027.
- $750 million for assistance to states and communities that have suffered economic injury as a result of job and gross domestic product losses in the travel, tourism, or outdoor recreation sectors.

Department of the Interior

Fish and Wildlife Service: The legislation provides $95M to the Fish and Wildlife Service, to be expended as follows

- $45 million in grant funding for research and extension activities to strengthen early detection, rapid response, and science-based management to address wildlife disease outbreaks before they become pandemics and strengthen capacity for wildlife health monitoring to enhance early detection of diseases that have capacity to jump the species barrier and pose a risk in the United States, including the development of a national wildlife disease database.
- $20 million in grant funding for wildlife inspections, interdictions, investigations, and related activities, and for efforts to address wildlife trafficking and
- $30 million in grant funding for the care of captive species listed under the Endangered Species Act of 1973, for the care of rescued and confiscated wildlife, and for the care of Federal trust species in facilities experiencing lost revenues due to COVID–19.

Other Emergency Appropriations and Provisions

Occupational Safety and Health Administration (OSHA): The bill provides $100 million for OSHA, of which $10 million is allocated to the Susan Harwood training grants and $5 million for enforcement activities related to COVID-19 at high-risk workplaces, including healthcare, meat and poultry processing facilities, agricultural workplaces, and correctional facilities.

Pensions: Subtitle H of ARPA, the Butch Lewis Emergency Pension Plan Relief Act of 2021, provides additional assistance to certain multiemployer defined benefit pension plans, reduces funding requirements for single-employer pension plans, with a specific provision for community newspapers, and freezes the cost-of-living indexation of the limits on contributions to pension plans. The Pension Relief Act contains the following provisions:

- Temporary Delay of Funding Zone Designation: A plan can elect to use the same funding zone status that applied in the prior plan year for either (or both) of the first two plan years beginning on or after March 1, 2020, regardless of its actual funding situation. Once this election has been made, however, it cannot be revoked without consent from the U.S. Department of the Treasury. This election is not available if a plan is certified as being in critical status in the plan year beginning on or after March 1, 2020.
- Temporary Extension of Funding Improvement and Rehabilitation Plans: For plans in endangered or critical status, trustees are required to review and update the funding improvement plan or rehabilitation plan, as applicable, each year. The Pension Relief Act suspends this annual review requirement for the first two plan years beginning on or after March 1, 2020. Moreover, such plans in endangered or critical status can elect to have the funding improvement or rehabilitation period extended by five years (for critical plans, from a 10-year period to a 15-year period; for seriously endangered plans, from a 15-year period to a 20-year period).
- Adjustments to Amortization of Experience Losses: The Pension Relief Act permits plans meeting solvency requirements as of February 29, 2020, to minimize the impact of experience losses (including investment losses and other COVID-19–related losses) by amortizing these losses for the first 2 plan years ending after February 29, 2020, over 30 years instead of 15 years in the plan’s funding standard account. Such plans may also change their asset valuation methods to smooth the difference between expected and actual investment returns for either or both of the first 2 plan years ending after February 29, 2020, over a period of up to 10 years (instead of 5 years) when determining actuarial value of assets, so long as the value of plan assets is not less than 80 percent or more than 130 percent of the fair market value of the assets. Note that such amortization of experience losses is not available to plans that receive special financial assistance (described below).
- Special Financial Assistance for Severely Underfunded Multiemployer Pension Plans: The Pension Relief Act creates a separate fund within PBGC to provide special financial assistance in amounts that the U.S. Department of the Treasury and the PBGC deem necessary.

Eligibility: A multiemployer pension plan is eligible to receive special financial assistance if it meets one of four conditions:

- the plan is in critical and declining status for a plan year beginning in 2020 through 2022;
- the plan has an approved benefit suspension under the Multiemployer Pension Reform Act of 2014 (MPRA) as of the date the Pension Relief Act is enacted;
- the plan is in critical status in any plan year beginning in 2020 through 2022, is under 40 percent funded on a current liability basis, and “has a ratio of active to inactive participants which is less than 2 to 3”; or
- the plan became insolvent after December 16, 2014 and has remained insolvent—but not terminated—as of the date the Pension Relief Act was enacted.

The Pension Relief Act provides that for the next two years, applications for special financial assistance may be filed only by the following:

- plans that are insolvent or likely to become insolvent within five years of the date of enactment of the Pension Relief Act;
- plans that have a present value financial assistance that exceeds $1 billion if special financial assistance is not provided;
- plans that received approval under MPRA to suspend benefits; or
- plans as otherwise determined by the PBGC.

Amount of Special Financial Assistance: Once determined eligible by the PBGC through a formal application process that will not start until the PBGC has issued regulations, a plan is entitled to receive the special financial assistance in the form of a single lump-sum payment. The amount of the special financial assistance will be equal to the amount necessary for the plan to pay for all accrued benefits owed to retirees, without reduction, from the date of the payment of the special financial assistance until the last day of the plan year ending in 2051, as determined based on prescribed actuarial assumptions.

Employer Contributions: The Pension Relief Act does not address employer contributions, except to state that the PBGC can issue regulations that restrict plans that receive special financial assistance from reducing future employer contributions. The legislation specifies that a plan which receives special financial assistance “shall be deemed to be in critical status … [until] the last plan year ending in 2051.”