

Client Alert: The American Rescue Plan Act of 2021 Establishes A \$28.6 Billion “Restaurant Revitalization Fund” Within the U.S. Small Business Administration

By RIW on March 17, 2021



On March 11, 2021, President Biden signed the \$1.9 trillion American Rescue Plan Act of 2021 (the “Act”) into law. The wide-ranging \$1.9 trillion stimulus bill establishes a \$28.6 Billion “Restaurant Revitalization Fund” (the “RRF”) within the U.S. Small Business Administration (the “SBA”). The RRF is the first package of its kind to target restaurants through the issuance of billions in grants. Similar to the Paycheck Protection Program, the SBA is tasked with overseeing the RRF. With the RRF restaurants with a primary purpose of serving food and drink to the public and patrons are eligible to qualify for grants. Unlike the Paycheck Protection Program, these relief dollars are grants that will not need to be repaid, except under certain circumstances.

Businesses Eligible for RRF Grants

Under the RRF, “eligible entities” are broadly defined as businesses where “the public or patrons assemble for the primary purpose of being served food or drink” and include restaurants, food stands and food trucks, caterers, saloons, inns, taverns, bars, lounges, brewpubs, tasting rooms and taprooms and licensed facilities or premises of a beverage alcohol producer where the public may taste, sample or purchase products. Eligible entities also include “affiliated businesses,” which are defined as businesses in which the eligible entity has an equity interest in or right to profit from distributions of not less than 50 percent or has the contractual right to control the business, provided such affiliations were in existence as of March 13, 2020.

Businesses Not Eligible for RRF Grants

Publicly traded companies, entities (together with any affiliated businesses) that operate more than 20 locations (whether under the same or different names) as of March 13, 2020 and any entity that has a pending application for or has received a grant under Section 324 of the Economic Aid to Hard-Hit Small Businesses, Non-profits, and Venues Act (commonly referred to as a Shuttered Venue Operators Grant) are not eligible for RRF Grants.

Determination of RRF Grant Amount

An eligible entity may receive a tax-free federal grant equal to the amount of its pandemic-related revenue loss, which is defined as one of the following:

- 2020 gross receipts subtracted from 2019 gross receipts, if the sum is greater than zero; or
- If the entity was not in business for the entirety of 2019, the difference between the product of its average monthly gross revenues in 2019 multiplied by 12, and the product

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- of its average monthly gross receipts in 2020 multiplied by 12; or
- If the entity opened during the period beginning on January 1, 2020 and ending on the day before the enactment of the Act, the amount of its payroll costs (which has the same meaning as in the Paycheck Protection Plan) less its gross receipts during that period; or
- If the entity has not yet opened as of the date of its grant application, the amount of its payroll costs incurred as of the date of the Act; or
- An amount based on a formula determined by the SBA.

The amount of an entity's "pandemic-related revenue losses" are reduced by amounts received from Paycheck Protection Program First Draw and Second Draw loans in 2020 and/or 2021.

Distribution and Prioritization of Grants

During the first 60 days after the Act becomes law (or another period of time as determined by the SBA), \$5 billion of the RRF is reserved for grants to eligible entities with gross receipts in 2019 of not more than \$500,000. The remaining \$23.6 billion is available during such period for the SBA to award in an equitable manner to eligible entities of different sizes based on annual gross receipts. After that initial 60-day period, the SBA is free to make grants to eligible entities regardless of annual gross receipts.

During the initial 21-day period in which the SBA makes grants to eligible entities (note, this period is not the same as the initial 60-day period described above that begins running on the date the Act became law), it must give grant priority to small businesses owned by women or veterans, and to socially and economically disadvantaged small businesses. After that 21-day period, the SBA is required to award grants in the order the applications are received, but "may" take steps to ensure small business applicants owned by women or veterans, and socially and economically disadvantaged small business applicants have access to RRF grants.

Cap on Grants

The aggregate amount of grants made to any eligible entity and its affiliates is capped at \$10 million and is limited to \$5 million per physical location of the entity.

Use of Grant Funds

During the period beginning February 15, 2020 and ending December 31, 2021 (the "Covered Period"), the grant funds may only be used for the following allowable expenses incurred "as direct result of, or during, the COVID-19 pandemic":

- Payroll costs (as that term is defined in the Paycheck Protection Program)
- Principal and interest payments on a mortgage (but not a prepayment of principal)
- Rent
- Utilities
- Maintenance expenses, including construction and furnishing costs for outdoor seating
- Supplies, including PPE and cleaning materials
- Food and beverage expenses that are within the normal scope of business of the eligible entity
- Certain covered supplier costs
- Operational expenses
- Paid sick leave
- Anything else determined by the SBA to be essential to maintaining the eligible entity

Return of Grant Funds

Grant funds will have to returned to the extent that (or in the event that):

- An eligible entity fails to use all grant funds on or before the last day of the Covered Period (up to the amount not used); or
- An eligible entity permanently ceases operations on or before the last day of the Covered Period; or
- Any amount of a grant to an eligible entity based on estimated receipts greater than the actual gross receipts of the eligible entity in 2020.

Required Certifications

Entities seeking grants must self-certify in good faith in their applications that:

- The uncertainty of the current economic conditions makes necessary the grant request to support ongoing operations of the eligible entity;
- The eligible entity has not applied for or received a Shuttered Venue Operators Grant
- To the extent seeking priority for the application as described above, the eligible entity is eligible for priority.

Business Identifiers

In accepting applications for grants, the SBA shall prioritize the ability of each applicant to use their existing business identifiers over requiring other forms of registration or identification that may not be common to their industry and imposing additional burdens on applicants.

There are still many open questions about the RRF, including those about when eligible entities can begin applying, what the applications will require, and whether the SBA will alter any of the criteria set forth in the Act. RIW will monitor developments and provide updates as they become available.

The full bill can be found [here](#).

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