

PUBLICATION

SBA Releases Application and Guidelines for \$28.6 Billion Restaurant Revitalization Fund

Authors: Joel Buckberg, Blake Harper

April 20, 2021

The American Rescue Plan Act of 2021 (ARPA) includes a \$28.6 billion subsidy for eligible restaurants. Termed the Restaurant Revitalization Fund (RRF), these funds are intended to help eligible restaurants offset revenue losses due to COVID-19. On April 19, 2021, the Small Business Administration (SBA) released the application and guidelines for this grant program. This release indicates that the SBA is on track to roll out the grant program by late April or early May. Since funds will presumably be distributed on a first-come-first-served basis, eligible business owners should review this draft application, complete the calculation of funding amount, and accumulate the required documentation to ensure that they are ready to submit their application when allowed.

Grant Overview

RRF allows an eligible business to receive a tax-free federal grant equal to the amount of its "pandemic-related revenue loss" subject to a cap of \$5 million per physical location and an aggregate cap of \$10 million (RRF Grant). For most businesses, the loss is calculated by subtracting its 2020 gross receipts from its 2019 gross receipts. For businesses that were open for only part of 2019 or 2020, the SBA has provided formulas that either use a monthly average to calculate the revenue loss figure or provide for reimbursement of eligible expenses. Any funds the business received from the Paycheck Protection Program (PPP) will be subtracted from the pandemic-related revenue loss, and businesses that have a pending application for or received a grant under SBA's Shuttered Venue Operators Grant Program are not eligible for an RRF Grant.

Eligibility

A business is eligible for an RRF Grant if it 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.

A business that is otherwise eligible for an RRF Grant will be deemed disqualified from obtaining an RRF Grant if it:

- is operated by a state or local government;
- as of March 13, 2020, owns or operates (together with any "Affiliated Business") more than 20 locations, regardless of whether those locations do business under the same or multiple names;
- has a pending application for or has received a grant under SBA's Shuttered Venue Operators Grant Program; or
- is, or is majority owned or controlled by, a publicly traded company.

For purposes of determining eligibility, an "affiliated business" is a business in which an eligible entity has an equity or right to profit distributions of not less than 50 percent, or in which an eligible entity has the contractual authority to control the direction of the business, provided that such affiliation shall be determined as of any arrangements or agreements in existence as of March 13, 2020. This language is confusing, but it effectively

limits eligibility to single unit operators and multi-unit operators with no more than 20 units of any brand or independent branding in the control group.

Franchisees of franchise systems with more than 20 units are eligible if the franchises are listed on the [SBA Franchise Directory](#).

Priority Application Period for Certain Businesses

During the initial 21-day period, applications from eligible businesses owned and controlled by women, veterans, or socially and economically disadvantaged individuals will receive priority. Priority status is determined as of the date of the application, so a business could presumably restructure its ownership now to meet the requirements for obtaining priority prior to application.

NOTE THAT ALL ELIGIBLE APPLICANTS MAY AND SHOULD APPLY DURING THE PRIORITY PERIOD, but that the SBA will only process and fund priority group applications during that period. In a first-to-file distribution scheme, it is critical for non-priority applicants to submit their applications as soon as allowed in order to maximize their chance at receiving these funds.

Permissible Uses of Funds

A business that receives an RRF Grant must generally use the proceeds during the covered period between February 15, 2020 and March 11, 2023, for the following:

- **Payroll costs** (excluding (i) qualified wages (as defined in subsection (c)(3) of section 2301 of the CARES Act) taken into account in determining the credit allowed under such section 2301; or (ii) premiums taken into account in determining the credit allowed under section 6432 of the Internal Revenue Code of 1986).
- Payments of principal or interest on any **mortgage obligation** (which shall not include any prepayment of principal on a mortgage obligation).
- **Rent** payments, including rent under a lease agreement (which shall not include any prepayment of rent).
- **Utilities.**
- **Maintenance expenses**, including construction to accommodate outdoor seating and walls, floors, deck surfaces, furniture, fixtures, and equipment.
- **Supplies**, including protective equipment (PPE) and cleaning materials.
- **Food and beverage** expenses that are within the scope of the normal business practice of the eligible entity before the covered period.
- **Covered supplier costs.**
- **Operational expenses.**
- **Paid sick leave.**
- Other operational costs deemed to be essential to operations.

If a business that receives an RRF Grant fails to use all grant funds for allowable expenses or permanently ceases operations on or before March 11, 2023, it must return any funds that it did not use for the allowable expenses.

What Can Eligible Businesses Do Now?

The administration of RRF seems likely to follow a course similar to PPP in terms of rapid exhaustion of available funds. Under the first iteration of PPP, the \$349 billion earmarked for small businesses was fully claimed by those small businesses in the first two weeks of the application period. Many eligible businesses were unable to obtain funds because the program simply ran out of money. Although the RRF is exclusive to restaurants, there are only \$28.6 billion in available funds under the program for one of the industries hit

hardest by the pandemic. If you operate an RRF eligible business, early preparation and submission of your application is critical to ensuring the best chance of receiving funding from the program. If you have any questions regarding the RRF or completion of your application, please contact [Joel Buckberg](#), [Blake Harper](#), or your Baker Donelson attorney.