

COVID-19: Restaurant Revitalization Fund

MARCH 16, 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021, which provides an additional \$1.9 trillion in new COVID relief funds, including, among other things, funding of a \$28.6 billion Restaurant Revitalization Fund (the “RRF”). The RRF will provide grants (“RRF Grants”) to eligible restaurants to help offset revenue losses. Additional detail and further guidance are expected to be provided by the SBA. Please see below for a brief summary of the main provisions relating to the RRF.

Who is eligible for RRF Grants?

Subject to the disqualifications set forth below, 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.

How much can an RRF Grant recipient receive?

A business that is eligible for an RRF Grant (an “Eligible Entity”) may receive an amount equal to its “pandemic-related revenue loss,” subject to a cap of \$5,000,000 per physical location and an aggregate cap of \$10,000,000 on RRF Grants to an Eligible Entity and its Affiliated Businesses.

An Eligible Entity’s “pandemic-related revenue loss” means:

- For most Eligible Entities, 2019 gross receipts minus 2020 gross receipts;
- For an Eligible Entity that was not in operation for the entirety of 2019, (a) 12 times its average monthly gross receipts in 2019, minus (b) 12 times its average monthly gross receipts in 2020;
- For an Eligible Entity that opened between January 1, 2020, and March 10, 2021 (unless and until SBA establishes another formula), (a) its payroll costs (generally as defined for PPP) minus (b) its gross receipts; or
- For an Eligible Entity that has not yet opened as of the date of application for a RRF Grant but has incurred payroll costs (generally as defined for PPP) as of March 10, 2021 (unless and until SBA establishes another formula), the amount of those expenses.

How do PPP Loans affect the amount of a RRF Grant?

In determining the amount of the RRF Grants, pandemic-related revenue losses for an Eligible Entity are reduced by any amounts received from First Draw PPP Loans and Second Draw PPP Loans.

What certifications must an Eligible Entity make when applying for a RRF Grant?

An Eligible Entity must certify in good faith that (i) the uncertainty of current economic conditions makes necessary the grant request to support its ongoing operations; and (ii) it has not applied for or received a grant under SBA’s Shuttered Venue Operators Grant Program.

Is there priority in awarding RRF Grants?

Yes – during the initial 21-day period, applications from Eligible Entities owned and controlled by women, veterans, or socially and economically disadvantaged individuals will receive priority. For purposes of establishing priority, an applicant shall submit a self-certification of eligibility for priority with the grant application.

Additionally, for the first 60 days after enactment, \$5 billion of the \$28.6 billion will be set aside for Eligible Entities whose gross revenue in 2019 did not exceed \$500,000, and thereafter, the remaining funds will be open to any Eligible Entity regardless of the annual gross receipts of the Eligible Entity.

How can RRF Grant proceeds be used?

An Eligible Entity that receives an RRF Grant must generally use the proceeds during the covered period between February 15, 2020 and December 31, 2021, 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.
- Suppliers, 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 an Eligible Entity that receives a RRF Grant fails to use all grant funds for allowable expenses set forth above or permanently ceases operations on or before December 31, 2021, it must return any funds that the Eligible Entity did not use for the allowable expenses.

Any amount of a RRF Grant to an Eligible Entity based on estimated receipts that is greater than the actual gross receipts of the Eligible Entity in 2020 must be returned.

If I'm interested in a RRF Grant, what do I do?

SBA will develop regulations and forms to implement the RRF Grant program. It is generally expected that Eligible Entities will eventually be able to apply for RRF Grants via the SBA website.

For further information, please contact Alan Roth, Chris Douglass, or your Winston relationship attorney.

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