



SBA Announces May 3rd Opening of Restaurant Revitalization Fund Application Portal and Provides Guidance for Grant Applicants

More than seven weeks after the American Rescue Plan Act (ARPA) was signed into law authorizing the \$28.6 billion Restaurant Revitalization Fund (RRF), access to this much-anticipated grant program is now within sight. The U.S. Small Business Administration's (SBA) RRF [Application Portal](#) is set to open for account registration on Friday, April 30, 2021 at 9:00 AM EDT. Subsequently, on Monday, May 3, 2021 at 12:00 PM EDT, the SBA will begin accepting RRF applications, with the [SBA administering the RRF program](#). With only \$28.6 billion appropriated for RRF and demand for the grants expected to soar well in excess of this amount, it appears the Monday mid-day opening will be a sprint to get applications submitted, especially for businesses not included in one of the priority period groups or "set aside" applicants with 2019 gross receipts of \$1.5 million or less.

In advance of the Application Portal rollout, the SBA has recently made available several resources on the RRF that provide guidance and clarifications regarding eligibility, calculation of grant amounts, application documentation and other pre-award guidance:

- SBA [RRF web landing page](#) including email alert sign-up
- 21 page [RRF Program Guide](#) (Guidance)
- Sample RRF grant application [SBA Form 3172](#) (Application)
- [Restaurant Revitalization Fund Knowledge Base](#) (Knowledge Base) containing 95 program questions and answers, and 37 technical help articles. These are being updated daily.

While we countdown the days for this federal funding to become available, eligible businesses should be preparing immediately to submit their applications on Monday. This includes becoming familiar with RRF eligibility, SBA guidance, assembling required application information and engaging with advisors regarding the same. Up to \$5 million in nontaxable grants per physical location-not to exceed \$10 million total per applicant and any affiliated businesses-are up for grabs for those who qualify. What follows is a summary of RRF eligibility and the SBA's guidance as it relates to applications.

Eligibility

The RRF was specifically designed for restaurants and other similar businesses that serve food or drinks to replace revenue lost during the pandemic. Guidance provides that Eligible Entities are **"businesses that are not permanently closed and include businesses where the public or patrons assemble for the primary purpose of being served food or drink"** including:

- Restaurants
- Food stands, food trucks, food carts
- Caterers

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- Bars, saloons, lounges, taverns
- Licensed facilities or premises of a beverage alcohol producer where the public may taste, sample, or purchase products
- Other similar places of business in which the public or patrons assemble for the primary purpose of being served food or drink
- Snack and nonalcoholic beverage bars
- Bakeries, brewpubs, tasting rooms, taprooms, breweries and/or microbreweries, wineries and distilleries ¹
- Inns ²
- Any of the above entities located in an airport terminal or that operate independently (i.e. has its own federal tax identification number) inside another business (e.g. a restaurant that operates independently inside a hotel or conference center) or that are a Tribally-owned concern.

Note: The SBA presumes restaurants and bars satisfy the primary purpose requirement of On-site Sales ³ to the public and do not require additional application documentation. For bakeries, brewpubs, tasting rooms, taprooms, breweries and/or microbreweries, wineries and distilleries and inns to be eligible, the SBA Guidance has imposed a 2019 gross receipts standard of “at least 33%” concerning satisfaction of the primary purpose. For these types of applicants that did not have 2019 gross receipts, an original business model or business plan should have contemplated the ‘at least 33%’ gross receipts primary purpose standard. The Knowledge Base Program Questions concerning this standard simply repeat what is provided in the Guidance requiring the additional documentation. However, the Knowledge Base Program Questions do leave a somewhat confusing conclusion when addressing multi-business entities and hotels or motels with a restaurant and/or bar:

Q: I own a nursing home with a restaurant in it and both use the same EIN. Am I eligible?

A: No. Residential facilities do not satisfy the requirement for "other places of business in which the public assemble for the primary purpose of being served food or drink."

Q: I own a dry cleaner and a restaurant under the same EIN. How do I calculate my RRF?

¹ In order for these businesses to be eligible, documentation must be provided with the application that on-site sales to the public comprised at least 33% of gross receipts in 2019. For businesses who opened in 2020 or that have not yet opened, the applicant’s original business model should have contemplated at least 33% of gross receipts in on-site sales to the public.

² To be eligible, these businesses must provide documentation with their application that on-site sales of food and beverage to the public comprised at least 33% of gross receipts in 2019. For businesses who opened in 2020 or that have not yet opened, the applicant’s original business model should have contemplated at least 33% of gross receipts in on-site food and beverage sales to the public.

³ See Guidance definition of On-site Sales.



A: You may only include gross receipts from the entity that is eligible for RRF. In your example, you would only use gross receipts from your restaurant to calculate your RRF fund request.

This second answer here is favorable and simply bifurcates the non-eligible business from the eligible restaurant. Why not then, could the restaurant inside the nursing home be provided the same bifurcation treatment and be eligible for the RRF? Adding to the confusion:

Q: Are hotels and motels eligible as an "Inn"?

A: No. Hotels and motels are not considered "Inns" for the purpose of the RRF program.

What is perplexing is that the answer is a direct "No" without comments or explanation on the bifurcation applied to the dual dry cleaner and restaurant business or the 'at least 33%' rule offered to an Inn. Why the seemingly arbitrary distinction of an Inn versus and Hotel or Motel? Does that mean if my hotel has on-site food or beverage sales to the public and hotel patrons comprising of at least 33% of overall gross receipts, it is not eligible for RRF? Notwithstanding the 'at least 33%' standard for Inns, could the hotel or motel bifurcate restaurant and bar gross receipts to be eligible?

Other Eligibility Requirements per SBA Guidance

	Eligible	Ineligible
Form of Organization	<ul style="list-style-type: none"> - C Corporations - S Corporations - Partnerships - Limited Liability Companies - Sole proprietors - Self-employed individuals - Independent contractors - Tribal businesses 	<ul style="list-style-type: none"> - All other forms of organization - Any state or local government-operated businesses - All non-profit organizations - All publicly traded companies - Private clubs, casinos and other "sin" businesses
Businesses Tax Identification Number	<ul style="list-style-type: none"> - Valid EIN, SSN or ITIN 	<ul style="list-style-type: none"> - Lack of or expired EIN, SSN or ITIN
Operating Status	<ul style="list-style-type: none"> - Open - Temporarily closed - Opening soon, with expenses incurred as of March 11, 2021 	<ul style="list-style-type: none"> - Permanently closed
Bankruptcy Status	<ul style="list-style-type: none"> - Have not filed for bankruptcy - Operating under an approved (confirmed) plan of reorganization under a 	<ul style="list-style-type: none"> - Permanently closed - Filed a Chapter 7 bankruptcy - Filed a Chapter 11, 12, 13 bankruptcy but is not operating under an approved



	Chapter 11, Chapter 12 or Chapter 13 bankruptcy	(confirmed) plan or reorganization
Registration in SAM.gov and DUNS Number	- Not required	- N/A
Number of Locations	- As of March 13, 2020 , own or operate (together with any affiliated business) 20 or fewer locations, regardless of name or type of business at those locations	- As of March 13, 2020 , own or operate (together with any affiliated business) more than 20 locations , regardless of name or type of business at those locations

RRF Eligibility and Application Interaction with Other COVID-19 Relief Programs

	Paycheck Protection Program (PPP)	Shuttered Venue Operators Grant (SVOG)	Economic Injury Disaster Loan or Advance (EIDL)	Employee Retention Credit (ERC)
Restaurant Revitalization Fund (RRF)	<p>PPP loans received by the RRF applicant will decrease the RRF funding amount.</p> <p>RRF applicants apply in the same manner and EIN as performed for PPP (e.g. application for multiple locations under a single EIN, or separate applications under each location EIN).</p> <p>Pending PPP applications (but</p>	<p>Entities that have a pending application for or received a SVOG, are not eligible to apply for RRF.</p>	<p>May apply for EIDL and RRF.</p>	<p>Wages used to claim ERC can't be used as eligible payroll costs for RRF.</p>



	not approved) must be withdrawn through the lender on or before the RRF application is made.			
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Affiliations

Determination of an applicant’s affiliates must be made for purposes of the 20 location limitation and maximum RRF grant award of \$10 million. Defined in the Guidance, an affiliated business or affiliate is a business in which an eligible entity has an equity interest or right to profit distributions of not less than 50%, 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. Addressing affiliation, a Knowledge Base Program Question comprehensively provides the following guidance:

Q: How do I count my locations - and - Who are my affiliates?

A: You must count all locations owned or operating under your applicant business's EIN and your applicant business's affiliates, even those that are not eligible for RRF.

COUNTING LOCATIONS:

Any entity that together with its affiliates [as of March 13, 2020] owns or operates more than 20 locations, regardless whether the businesses operate under different names or are different types of business, is not eligible for RRF. For example, if your business and its affiliates own 16 dry cleaners and 5 restaurants, your business has 21 locations, which means your business is not eligible for RRF.

Each place where the applicant or affiliates conduct sales from a permanent structure is counted as a location. If the applicant or affiliates conduct sales from multiple permanent locations, each address is a separate location. For a caterer or a single business with multiple food stands, trucks or carts, the physical location is where the business is headquartered (i.e., a business with one permanent structure and five food trucks will have one location; a caterer will have one location).

CORPORATE GROUPS:

To preserve the limited resources available to the RRF program:



1. Locations owned or operated by a single corporate group will count toward the 20 location maximum limit for eligibility and the \$10 million aggregate limit on RRF funding. Businesses that are part of a single corporate group that in the aggregate own or operate more than 20 locations are not eligible for RRF funds.
2. When individuals or entities directly or indirectly own or control multiple locations, all locations must be counted toward the 20 location maximum limit for eligibility and the \$10 million aggregate limit on RRF funding. This includes any locations that operate under separate tax identification numbers or names, and applies whether or not ownership or control is through an individual, management or holding companies or other entities. All locations must be counted, even if they are not eligible entities for RRF. For the RRF program, SBA considers common stock owners and/or operators to be a de facto corporate group. This applies even to LLCs that are disregarded entities.

For example: An individual owns or controls 16 restaurants, each with separate tax identification numbers (e.g. EIN/SSN/ITIN) and 5 gas stations. Since all of these businesses (restaurants and gas stations) must be counted, none of the restaurants are eligible for RRF funds.

IDENTIFYING AFFILIATES:

RRF funding requests are limited to \$5 million per location and \$10 million in the aggregate for the applicant, any affiliated businesses, and within a single corporate group.

An affiliate business is a business in which the *eligible applicant business* has an ownership interest of not less than 50%, or in which the *eligible applicant business* has the contractual authority to control the direction of the other business, based on arrangements or agreements in place as of March 13, 2020.

Sole proprietors (and self-employed individuals) must count as affiliates all businesses reported on IRS Form 1040, Schedule C.

A holding company (which is a company that owns real estate for the benefit of an operating business) whose sole purpose is to hold the real estate for the eligible applicant business should not be counted as a location or affiliate.

However, if applicant business owns a holding company or management company that owns or manages a business other than the applicant business, you must count these entities as separate affiliates and locations.

Franchise business applicants must also consider the specific franchise affiliation rules. If the applicant is operating under a franchise or similar agreement that meets the Federal Trade Commission definition of a franchise in [16 CFR 436](#), the franchise must be listed on the SBA Franchise Directory with a franchise identifier code to ensure the franchise is eligible under SBA's other eligibility criteria. The SBA Franchise Directory is located [here](#). For brands not listed



in the Directory (including brands that have previously been denied listing on the Directory because of affiliation issues), the franchisor must submit the Franchise Disclosure Document (or other agreement) and all other documents a franchisee is required to sign to franchise@sba.gov for review of SBA's other eligibility criteria.

Attestation and Good Faith Certification

In parity with the Paycheck Protection Program (PPP), the SBA is administering the RRF program and is subject to legislative oversight and scrutiny. All applicants awarded RRF funds may be audited by the SBA. All applicants must attest in the application to the following "The applicant is eligible to receive funding under the rules in effect at the time this application is submitted."

Additionally, the applicant must make a good faith certification on the RRF application that:

- Current economic uncertainty makes this funding request necessary to support the ongoing or anticipated operations of the applicant.
- The applicant does not have a pending application for and has not received a Shuttered Venue Operator grant from SBA.

Note: Concerning the 'economic uncertainty' certification, this is the same necessity requirement as with the Paycheck Protection Program (PPP). This certification should be carefully evaluated with advisors and legal counsel.

Calculation of Funding Amount

RRF funding provides up to \$5 million per location (not to exceed \$10 million total for the applicant and any affiliated businesses) for applicants that meet the eligibility requirements. 3 separate calculation methods are provided to applicants depending on when the eligible business was in operation. "In operation" means the day the entity started making sales.

Calculation 1 (Table 1 from Application): For eligible entities in operation prior to or on January 1, 2019:

- 2019 gross receipts reported on the eligible entity's 2019 federal income tax return minus 2020 gross receipts minus PPP loan amounts.

Calculation 2 (Table 2 from Application): For eligible entities that began operations partially through 2019. The applicant may elect (at their own discretion) to use either calculation 2 or calculation 3.



- Average 2019 monthly gross receipts (reported on the eligible entity's 2019 federal income tax return) x 12 ⁴ minus 2020 gross receipts minus PPP loan amounts.

Calculation 3 (Table 3 from Application): For eligible entities that began operations on or between January 1, 2020 and March 10, 2021 and, eligible entities not yet opened but have incurred eligible expenses:

- Amount spent on eligible expenses between February 15, 2020 and March 11, 2021 minus 2020 gross receipts minus 2021 gross receipts (through March 11, 2021) minus PPP loan amounts.

In determining an eligible entity's 2020 gross receipts for these calculations, refer to the Guidance definition of gross receipts concerning amounts reported (or to be reported) on the eligible entity's 2020 federal income tax return and applications to be made through certain SBA designated POS systems. Additionally, for the purpose of the RRF, gross receipts do not include:

- Amounts received from PPP loans (1st Draw or 2nd Draw)
- Amounts received from Economic Injury Disaster Loans or Advances (EIDLs)
- State and local grants (via CARES Act or otherwise)
- SBA Section 1112 payments

Eligible Expenses

For purposes of Calculation 3 (and post award eligible uses of funds), the SBA has provided the following expenses as Eligible Expenses:

1. Business payroll costs ⁵, including sick leave and costs related to the continuation of group health care, life, disability, vision, or dental benefits during periods of paid sick, medical, or family leave, and group health care, life, disability, vision or dental insurance premiums;
2. Payments on any business mortgage obligation (both principal and interest; note: this does not include any prepayment of principal on a mortgage obligation);
3. Business rent payments, including rent under a lease agreement (note: this does not include any prepayment of rent);
4. Business debt service (both principal and interest; note: this does not include any prepayment of principal or interest);

⁴ For example, if an eligible entity opened its doors and made its first sale on July 1, 2019 (in operation for 6 months) and the total 2019 gross receipts reported on the 2019 federal income tax return was \$360,000: Divide \$360,000 by 6 for a 2019 average monthly gross receipts calculation of \$60,000. Then multiply the \$60,000 by 12 to result in \$720,000.

⁵ See Guidance definition of Payroll Costs for further details.



5. Business utility payments for the distribution of electricity, gas, water, telephone or internet access, or any other utility that is used in the ordinary course of business for which service began before March 11, 2021.
6. Business maintenance expenses including maintenance on walls, floors, deck surfaces, furniture, fixtures and equipment;
7. Construction of outdoor seating;
8. Business supplies, including protective equipment and cleaning materials;
9. Business food and beverage expenses, including raw materials for beer, wine or spirits;
10. Covered supplier costs, which is an expenditure made by the eligible entity to a supplier of goods for the supply of goods that:
 - a. Are essential to the operations of the entity at the time at which the expenditure is made; and
 - b. Is made pursuant to a contract, order or purchase order in effect at any time before the receipt of Restaurant Revitalization funds; or
 - c. With respect to perishable goods, a contract, order or purchase order in effect before or at any time during the covered period ⁶;
11. Business operating expenses, which is defined as business expenses incurred through normal business operations that are necessary and mandatory for the business (e.g. rent, equipment, supplies, inventory, accounting, training, legal, marketing, insurance, licenses, fees). Business operating expenses do not include expenses that occur outside of a company's day-to-day activities. A Knowledge Base Q&A also indicates depreciation is an eligible operating expense "if depreciation appears on the tax returns and/or financial statements provided with the application documentation".

The Guidance and Knowledge Base Q&A indicate that past-due expenses are eligible if they were incurred beginning on February 15, 2020 and ending on March 11, 2023. This includes a limited amount of owner compensation.

Application Documentation Required

The SBA has provided that the following additional application documentation is required:

- **Verification of Tax Information:** IRS Form 4506-T, completed and signed by applicant. Completion of this form digitally on the SBA platform will satisfy this requirement.
- **Gross Receipts Documentation:** Any of the following documents demonstrating gross receipts and, if applicable for Table 3 applicants, eligible expenses
 - Business tax returns (IRS Form 1120 or IRS 1120-S)
 - IRS Forms 1040 Schedule C; IRS Forms 1040 Schedule F
 - For a partnership: partnership's IRS Form 1065 (including K-1s)
 - Bank statements (past 3 months)

⁶ Generally, February 15, 2020 - March 11, 2023, see Guidance definition of Covered Period for further details.



- Externally or internally prepared financial statements such as Income Statements or Profit and Loss Statements
 - Point of sale report(s), including IRS Form 1099-K
- For applicants that are a brewpub, tasting room, taproom, brewery, winery, distillery or bakery:
 - Documents evidencing that onsite sales to the public comprise at least 33.00% of gross receipts for 2019, which may include Tax and Trade Bureau (TTB) Forms 5130.9 or TTB. For businesses who opened in 2020, the applicant’s original business model should have contemplated at least 33.00% of gross receipts in onsite sales to the public.
- For applicants that are an inn:
 - Documents evidencing that onsite sales of food and beverage to the public comprise at least 33.00% of gross receipts for 2019. For businesses who opened in 2020, the applicant’s original business model should have contemplated at least 33.00% of gross receipts in onsite sales to the public.

Note: In determining RRF award amounts for Calculation 1 and 2 applicants, the SBA is requiring submission of 2019 federal income tax returns to verify 2019 gross receipts. 2020 federal income tax returns are also being requested, but only to the extent available and other “certified” financial records or third-party POS reports are adequate. However, the SBA has also indicated that RRF applicants that received PPP loans, should apply for RRF in the same manner and using the same eligible entity EIN. For businesses with multiple locations, this could mean PPP loans were applied for under a single EIN, or separate PPP loans were applied for under each location’s EIN. In many cases, this may mean that the gross receipts represented on the RRF application do not squarely align with the income tax return due to the myriad of business legal structures and the sometimes nuanced federal income tax reporting that follows. This is amplified with the use of LLCs that are “hybrid” entities and taxed differently based on ownership and elective classification. For this reason, it is likely RRF applicants that also received a PPP loan, will need to reconcile gross receipts on the RRF application to the gross receipts reported on the federal income tax return(s). Moreover, with regard to 2020 gross receipts verification for RRF applicants not applying through a designated SBA POS restaurant partner and have not yet filed the eligible entity’s 2020 income tax return(s), an applicant may need to reconcile its financial statements, POS reports or 1099-K gross receipts submitted with their application to the gross receipts that are “to be reported on the eligible entity’s 2020 Federal tax return”.⁷

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⁷ See Guidance definition of Gross receipts indicating term and definition is as used and reported on IRS tax return forms.



Now that RRF application guidance has been issued and the SBA has set a date to open the RRF Application Portal, eligible businesses should be vigorously preparing internally and evaluating their application readiness with advisors. RRF applicants are encouraged to apply immediately, as come Monday May 3rd at 12:00 PM, it is anticipated the appropriated funds will go fast with the “first come, first served” application timestamp process. Washington lawmakers have indicated the RRF funds will be replenished when they run out, however, this is not guaranteed.

To see if your business qualifies for the RRF or for further questions or guidance, contact [Cory Bennett](#) or [Tim Watt](#) by calling 770.396.2200.