



## **Restaurant Owners to Benefit from The American Rescue Plan Act of 2021**

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (ARPA) which contains specific provisions for the benefit of restaurant owners. Section 5003 of the ARPA establishes the Restaurant Revitalization Fund (RRF) to include \$28.6 billion earmarked for nontaxable grants to eligible restaurant entities. \$5 billion of this total amount will be designated for restaurants with 2019 gross receipts of \$500,000 or less.

### **What Restaurants are Eligible?**

The ARPA defines an “eligible entity” as:

1. A business that 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, and;
2. As of March 13, 2020, owns or operates 20 or fewer locations, when grouped together with any affiliated businesses.

An eligible entity includes the above restaurants and other specified food or beverage businesses that are located in an airport terminal or that are a tribally owned business. It does not include, however, an entity that is a state or local government operated business or a publicly traded company. Additionally, restaurants must certify they have not applied for nor received a Shuttered Venue Operator grant under Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

### **How Much Grant Money is a Restaurant Eligible For?**

The amount of a grant is determined by calculating a restaurant’s “pandemic-related revenue loss” then, subtracting any Paycheck Protection Program (PPP) loans received during 2020 or 2021. For restaurants in operation as of January 1, 2019, the ‘pandemic-related revenue loss’ is the reduction in gross receipts from 2019 to 2020. For restaurants that opened during 2019, the ‘pandemic-related revenue loss’ is the average of 2019 monthly revenues multiplied by 12, minus the average of 2020 monthly revenues multiplied by 12.

Grants are also available for restaurants which opened their doors during 2020 and 2021. Restaurants that opened between January 1, 2020 and March 10, 2021 are eligible to receive funding equal to their “eligible payroll costs” minus any gross receipts and first-draw and second-draw PPP loans received. Restaurants that were not open prior to March 11, 2021 are also eligible and can receive funding equal to “eligible payroll costs” incurred before the March 11, 2021. The ARPA states that for entities not opened prior to January 1, 2020, the SBA may determine additional formulas for these grant calculations.

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The maximum RRF grant is \$5 million per physical location, or \$10 million per affiliated restaurant group. For purposes of the RRF, the ARPA defines 'Affiliated Business' as a business in which an eligible entity has an equity or right to profit distribution of not less than 50% (i.e. 50% or more), or in which an eligible entity has the contractual authority to control the direction of the business [emphasis added], determined as of any arrangements or agreements in existence as of March 13, 2020.

### **How Can the Grant Award Be Used?**

RRF grant funds may be used to pay the following eligible expenses incurred through December 31, 2021 as a direct result of, or during, the COVID-19 pandemic:

- Payroll costs
- 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 (i) construction to accommodate outdoor seating; and (ii) walls, floors, deck surfaces, furniture, fixtures and equipment.
- Supplies, including protective equipment 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, as defined in section 7A(a) of the Small Business Act, as redesignated, transferred, and amended by section 304(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act ([Public Law 116-260](#)).
- Operational expenses
- Paid sick leave
- Any other expenses that the Administrator determines to be essential to maintaining the eligible entity.

If an eligible entity receives a grant and fails to use all grant funds or permanently ceases operations on or before December 31, 2021, the eligible entity shall return to the Treasury any unused funds which were not used for allowable expenses.

### **How to Apply**

Applications for RRF grants will be administered by the U.S. Small Business Administration (SBA). It is expected the SBA will begin accepting applications within weeks. Grant awards to eligible entities are to be provided in the order in which applications are received. However, notwithstanding application receipt order, the ARPA has provided two priority periods for certain applicants.



During the initial 21-day period in which the SBA awards grants, priority will be given to self-certifying small businesses majority-owned and controlled by women, veterans, or socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A) of the Small Business Act).

Additionally, during the 60 days through May 10, 2021, priority of grant award applications will be given to eligible entities with 2019 gross receipts of not more than \$500,000 from the appropriated \$5 billion, and equitably to eligible entities of different sizes based on annual gross receipts from the residual appropriated \$23.6 billion. The SBA has discretion to make adjustments to the distribution priority of the \$23.6 billion of appropriated funds based on demand and relative local costs in the market in which eligible entities operate.

In parity with PPP loans, an eligible entity must make a good faith certification that the uncertainty of current economic conditions make the grant request necessary to support the ongoing operations of the eligible entity. This necessity requirement should be carefully evaluated with advisors and counsel.

#### **Examples of Cashflow from Restaurant Revitalization Fund**

For example, ABC Restaurant is an eligible entity for an RRF grant with a single restaurant location. ABC Restaurant's 2019 gross receipts were \$2 million and 2020 gross receipts were \$1 million. ABC Restaurant also received a total of \$400,000 of PPP funds in 2020 and 2021. The pandemic-related revenue loss of \$1 million (\$2 million of 2019 receipts less \$1 million of 2020 receipts) less PPP funds received of \$400,000 is the maximum grant ABC Restaurant is eligible to receive. Therefore, ABC Restaurant would qualify for an RRF grant of \$600,000.

As a larger business example, XYZ Restaurants has 15 locations as an affiliated group, and each location is an eligible entity for an RRF grant. Aggregate 2019 gross receipts for the group was \$30 million and aggregate 2020 gross receipts were \$15 million. XYZ Restaurants also received PPP loan proceeds as an affiliated group of \$4 million in total for 2020 and 2021. The pandemic-related revenue loss of \$15 million (\$30 million of 2019 receipts less \$15 million of 2020 receipts) less PPP funds received of \$4 million is the maximum grant which XYZ Restaurants could qualify. However, XYZ Restaurants would be capped at the maximum \$10 million of RRF grant per affiliated group.

#### **Tax Treatment of RRF Grants**

The ARPA provides in Section 9673, that RRF grant amounts are excluded from gross income for purposes of the Internal Revenue Code. Also, consistent with the tax treatment of PPP loans, the exclusion from taxable income does not result in a loss of deductions or reduction in tax attributes or passthrough owner basis.



### **Contact Us**

The RRF grant program has created an opportunity for restaurants to reclaim some economic footing. With funds available up to \$5 million per qualifying restaurant and \$10 million for a qualifying restaurant affiliated group, the RRF grants are another welcome source of tax-free capital funding for a struggling industry during the ongoing COVID-19 pandemic.

For further questions or guidance, contact Michael Stong, Cory Bennett or Tim Watt by calling 770.396.2200.