Client Alert: SBA Issues Guidance for Restaurant Revitalization Fund Program

By RIW on April 21, 2021



On April 17, 2021, the Small Business Administration ("SBA") quietly rolled out a new website for the much-anticipated Restaurant Revitalization Fund ("RRF") program. The website includes, among other things, a sample Application and Program Guide. A copy of the Program Guide can be found **here** and a copy of the of the sample Application can be found **here**.

The RRF was established as part of the $1.9 trillion American Rescue Plan Act of 2021, signed into law by President Biden on March 11, 2021, which allocated $28.6 Billion for the SBA to distribute to qualifying restaurants, bars, and similar food and beverage business that suffered revenue losses as a result of COVID-19 and the federal, state, and, local rules and regulations that followed in its wake.

Specifics relative to the RRF are provided below:

General Details

- **Applications**
  - Applications will be made directly through the SBA or an SBA Restaurant Partner / SBA Point-of-Sale Restaurant Partner.
- **Grant Funds**
  - Awardees will not be required to repay funds received under the RRF so long as all funds are used for authorized purposes.
- **Funding**
  - SBA will issue funds directly into an Applicant's business operating account. Commercial operating accounts are required.
  - Sole proprietors without a commercial account will be required to submit supporting documentation that the account is used for restaurant purposes.
    - Accounts with less than 3 months history or with unrelated ownership to Applicant will not be permitted.
- **Required Certifications**
  - 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.

Timing

- **Priority of Applications**
  - The SBA is prioritizing Applicants at least 51% owned and controlled by women, veterans, and/or socially and economically disadvantaged individuals (or any

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combination thereof) for the first 21 days of the program.
    - Certifications will be required for priority Applicants.
  - All Applicants may apply as soon as the SBA begins accepting Applications.
- **Use of Funds**
  - Applicants will have until March 11, 2023, to utilize all funds for eligible uses.
  - All funds not used by March 11, 2023, will need to be returned to the Treasury Department.
  - Applicants will be required to complete "annual reporting submissions" evidencing the amount of RRF funds used for each eligible use category.

Eligibility

- **Eligible Business Types**
  - Restaurants
  - Food stands / carts/ trucks
  - Caterers
  - Bars, saloons, lounges, taverns
  - Snack and nonalcoholic beverage bars
  - Bakeries (additional terms apply, see Application)
  - Brewpubs, tasting/tap rooms (additional terms apply, see Application)
  - Breweries, wineries, distilleries (additional terms apply, see Application)
  - Inns (additional terms apply, see Application)
- **Eligible Entity Types**
  - Corporations (types C and S)
  - Partnerships
  - Limited Liability Companies
  - Sole Proprietors
  - Independent Contractors
  - Tribal businesses
- **Ineligible Applicants**
  - State or local government operated businesses.
  - Non-profit businesses.
  - Publicly traded businesses.
  - Permanently closed businesses.
  - Applicants having filed for Chapter 7 bankruptcy or having filed or Chapter 11, 12, or 13 bankruptcy and not operating under an approved plan of reorganization.
  - Applicants owning or operating 20+ locations as of March 13, 2020 (individually or with affiliated businesses).
  - Applicants having received a Shuttered Venue Operators Grant or with a pending Shuttered Venue Operators Grant application.
  - Applicants seeking less than $1,000.

Funding Amounts

- **Minimum Amount**
  - Applications must be for at least $1,000 (see Funding Calculations below).
- **Maximum Amount**
  - Applicants may not apply for more than $5 Million per location or $10 Million in aggregate for the Applicant and affiliated businesses.
- **Funding Calculations**
  - Applicants in operation on or prior to January 1, 2019:
    - 2019 gross receipts minus 2020 gross receipts minus PPP loan amounts
  - Applicants that commenced operation during 2019:
    - (Average 2019 monthly gross receipts x 12) minus 2020 gross receipts minus PPP loan amounts.
  - Applicants that (i) commenced operations between January 1, 2020, and March 10, 2021, or (ii) did not commence operations as of March 11, 2021, but incurred eligible

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

Permitted Expenses

- Business payroll costs.
- Payments on any business mortgage obligation (principal and interest), but no prepayment.
- Business rent payments, including rent under a lease agreement, but no prepayment.
- Business debt service (principal and interest), but no prepayment.
- Business utility payments (e.g., electricity, gas, water, telephone, internet access) for which service began before March 11, 2021.
- Business maintenance expenses (e.g., maintenance on walls, floors, deck surfaces, furniture, fixtures, and equipment).
- Construction of outdoor seating.
- Business supplies, including protective equipment and cleaning materials.
- Business food and beverage expenses, including raw materials for beer, wine, or spirits.
- Covered supplier costs, which are expenditures made by the Applicant to a supplier of goods for goods that:
  - Are essential to the operations of the entity at the time at which the expenditure is made; and
  - Are made pursuant to a contract, order, or purchase order in effect at any time before the receipt of RRF funds; or
  - With respect to perishable goods, a contract, order, or purchase order in effect between February 15, 2020 and March 11, 2023 (subject to additional terms, if applicable).

This article is not intended to be a comprehensive overview of the RRF, nor is it intended to provide anything more than a brief summary of those rules available at the time this article is published.

RIW will continue to provide **updates relative to COVID-19** relief programs, including the Restaurant Relief Fund, and related legislation as additional guidance becomes available.

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