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SBA Restaurant Revitalization Fund Grants

The Small Business Administration's (SBA's) \$28.6 billion Restaurant Revitalization Fund Program (RRF) was authorized by P.L. 117-2, the American Rescue Plan Act of 2021. The RRF provides grants of up to \$5 million per permanent physical business location (not to exceed \$10 million per applicant and any affiliated businesses) to restaurants and other similar places of business "in which the public or patrons assemble for the primary purpose of being served food or drink" and which have experienced COVID-19-related revenue loss. Unlike most other SBA programs, there is no limit on the number of employees for businesses to qualify for a RRF grant.

This Insight summarizes the statutory provisions enacted by P.L. 117-2 and SBA-issued guidance on the RRF. For more information, see the SBA's "Restaurant Revitalization Funding Program Guide."

Eligibility Rules

RRF grants are designed to assist applicants in remaining open or reopening. Permanently closed businesses are not eligible and temporarily closed businesses must reopen soon, with eligible expenses incurred by March 11, 2021, at the latest.

To qualify for the RRF, for-profit businesses (together with their affiliated businesses) may not have owned or operated more than 20 locations as of March 13, 2020, regardless of whether those locations do business under the same or multiple names. P.L. 117-2 provides that, for the purposes of the RRF, a business is affiliated with another if it has an equity or right to profit distributions of not less than 50% or if an eligible entity has the contractual authority to control the direction of the business.

Other entities not eligible for the RRF include state or local government-operated businesses, an entity that has received or has a pending application for the SBA's Shuttered Venue Operators Grant program, nonprofit organizations, and publicly traded companies. Certain businesses that have filed for bankruptcy are also ineligible.

Although further SBA guidance could be necessary, it would appear that franchises could be eligible for the RRF as long as they meet the affiliated business limit of 20 locations and the franchises, themselves, are not publicly traded.

The SBA also requires that a RRF applicant certify that, "current economic uncertainty makes this funding request necessary to support the ongoing or anticipated operations." This certification, which was first required on applications for SBA's Paycheck Protection Program (PPP) loans, has been subject to evolving agency guidance. In the PPP

context, SBA requires that the borrower pass a "business activity assessment" and a "liquidity assessment," each of which require detailed responses on SBA Form 3059.

Grant Amounts

P.L. 117-2 requires the SBA to set aside \$5 billion for applicants with 2019 gross receipts of not more than \$500,000 and to distribute the remaining \$23.6 billion in an equitable manner to applicants of different sizes based on annual gross receipts. To meet this latter directive, the SBA is setting aside an additional \$4 billion for applicants with 2019 gross receipts from \$500,001 to \$1.5 million and an additional \$500 million for applicants with 2019 gross receipts of not more than \$50,000 "to ensure that the smallest businesses and those in underserved communities receive funding."

The SBA is also required to provide priority to small businesses owned and controlled by women, veterans, and socially and economically disadvantaged individuals and may award grants only to these prioritized groups during the initial 21 days that the program is operational. The SBA has announced that during this time period, it will accept applications from all eligible applicants, but will distribute funds only to applicants that self-certify their eligibility as a prioritized group. Thereafter, grants will be distributed in the order in which they are approved by the SBA.

An applicant's grant award is equal to the amount of COVID-19-related revenue loss (up to the program's limits) the applicant experienced, as determined by formulas. In the SBA's RRF Program Guide, these formulas vary, in part, based on the date an eligible entity began operations (e.g., the date the entity started sales). Separate formulas determine grant amounts for applicants that began operations on or before January 1, 2019; partially through 2019; on or between January 1, 2020, and March 10, 2021; or have not yet opened for sales but, as of March 11, 2021, have incurred eligible expenses. The SBA's RRF Program Guide contains step-by-step calculation instructions.

For example, entities that began operations on or before January 1, 2019, may receive the difference between their gross receipts as reported on their 2019 and 2020 federal income tax returns, excluding any amounts received from a list of specified sources (this includes the SBA's PPP, Economic Injury Disaster Loan (EIDL) Program, EIDL Advance Payment Program, Targeted EIDL Program, and debt relief payments). If the applicant received a PPP loan or EIDL, those amounts will be subtracted from the RRF grant amount.

Eligible Expenses

Grant proceeds may be used for

- business payroll costs (including sick leave);
- business mortgage obligation payments or rent payments (not including prepayment of mortgage principal or rent);
- business debt service (not including any prepayment of principal or interest);
- business utility payments;
- business maintenance expenses;
- outdoor seating construction;
- business supplies (including protective equipment and cleaning materials);
- business food and beverage expenses (including raw materials);
- covered supplier costs; and
- business operating expenses.

RRF funds must be used by March 11, 2023, on eligible expenses incurred beginning on February 15, 2020, and ending on March 11, 2023. Any unused funds must be returned to the SBA.

RRF recipients are required to report their spending (whether complete or not) by December 31, 2021, and certify that the proceeds have been used on eligible expenses. More information on this certification process will likely be detailed in future SBA regulations and guidance.

Applications Exceed \$76 Billion

The SBA completed a 7-day pilot test period for the RRF application portal to identify and address any technical issues prior to the portal's opening, which took place at noon on May 3, 2021. Participants in the pilot were randomly selected from existing PPP borrowers in priority groups for the RRF. These participants did not receive RRF funds until the application portal was opened to the public.

RRF applications may be submitted through a recognized SBA Restaurant Partner (SBA-specified technology companies that serve the restaurant industry) or directly on the SBA website. Applicants needing assistance preparing their applications may contact their local SBA district office or call the SBA's call center support number at 1-844-279-8898.

On May 12, 2021, the SBA announced that it had received more than 266,000 applications requesting over \$65 billion in funds, far greater than its \$28.6 billion authorized amount. Nearly half of the applications were submitted by women, veterans, and socially and economically

disadvantaged business owners. The SBA received requests for \$330 million from businesses with not more than \$50,000 in revenue (the set-aside for this group is at least \$500 million), \$8.14 billion from businesses with revenue of not more than \$500,000 (the set-aside for this group is at least \$5 billion), and \$15.1 billion from businesses with revenue of \$500,001 to \$1.5 million (the set-aside for this group is at least an additional \$4 billion). Because the demand from applicants exceeds the RRF's budgetary authority, the SBA closed the application portal to most applicants. Applications were accepted until May 24 from applicants with revenue up to \$50,000 because the budget authority set aside for these applicants had not yet been exhausted.

Between May 3, 2021, and May 24, 2021, the SBA processed applications from priority groups and held applications from non-priority applicants, but retained their place in the processing queue based on the order in which the application was filed. On May 25, 2021, the SBA began processing all non-priority applications with FY2019 gross revenue less than \$50,000. On May 27, 2021, the SBA began processing non-priority applicants on a first-come, first-served basis.

As of May 26, 2021, the SBA had received more than 372,000 applications requesting over \$76 billion in funds and had distributed about \$16 billion to more than 63,000 applicants.

Legal Challenges

After the SBA launched the RRF, three lawsuits were filed challenging the constitutionality of the RRF's 21-day priority application period. Federal courts, including a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit, ruled against the SBA in each of these lawsuits. The courts held that the SBA's prioritization of RRF funds on the basis of social disadvantage because of race and gender was unconstitutional under the Equal Protection Clause. The court ordered the SBA to fund the plaintiffs' grant applications, if approved, before all later-filed applications, without regard to processing time or the applicants' race or gender. The court decisions did not affect the SBA's prioritization for veteran-owned businesses in accordance with the law.

In response to these court rulings, the SBA sent letters to 2,965 priority RRF applicants who had been notified that their applications had been approved, but had not yet received their grant funds, informing them that the agency "will not be able to disburse your Restaurant Revitalization Fund award." Instead, those approvals will only be paid once the SBA completes processing all previously filed non-priority applications, and only if the RRF is not first exhausted.

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