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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 provided 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 that had experienced COVID-19-related revenue loss. Unlike most other SBA programs, there was 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 were designed to assist applicants in remaining open or reopening. Permanently closed businesses were not eligible, and temporarily closed businesses were required to 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 provided 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 included state or local government-operated businesses, an entity that had received or had a pending application for the SBA's Shuttered Venue Operators Grant program, nonprofit organizations, and publicly traded companies. Certain businesses that had filed for bankruptcy also were ineligible.

The SBA also required RRF applicants to certify that "current economic uncertainty [made] 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 required 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 set 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 also was required to provide priority to small businesses owned and controlled by women, veterans, and socially and economically disadvantaged individuals and to award grants only to these prioritized groups during the initial 21 days that the program was operational. The SBA announced that during this period, it would accept applications from all eligible applicants but would distribute funds only to applicants that self-certified their eligibility as a prioritized group. Thereafter, the SBA would distribute grants in the order in which they were approved.

An applicant's grant award was 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 varied, in part, based on the date an eligible entity began operations (e.g., the date it started sales). Separate formulas determined 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 applicants that had not yet opened for sales but, as of March 11, 2021, had 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, could receive the difference between their gross receipts as reported on 2019 and 2020 federal income tax returns, excluding any amounts received from a list of specified sources (including 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 were subtracted from the RRF grant amount.

Eligible Expenses

Grant proceeds may be used for

- business payroll costs (including sick leave);
- business utility payments;
- business debt service (not including any prepayment of principal or interest);

- 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 February 15, 2020, and ending March 11, 2023. 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 were used on eligible expenses. More information on this certification process likely will be detailed in future SBA regulations and guidance.

Applications Exceed \$76 Billion

The SBA completed a seven-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 were 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 were directed to 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 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 was at least \$500 million), \$8.14 billion from businesses with revenue of not more than \$500,000 (the set-aside for this group was 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 was at least an additional \$4 billion).

Because the demand from applicants exceeded 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 applications were 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.

On July 2, 2021, the SBA announced the RRF's closure. The RRF application portal remained open until July 14, 2021, to allow applicants to check their status, address payment corrections, or ask questions. The SBA also announced that, as of June 30, 2021, it had received more than 278,000 eligible applications requesting over \$72.2 billion in grants and had provided grants to approximately 101,000 applicants. Underserved populations received approximately \$18 billion of the \$28.6 billion in grant awards, including about \$7 billion to women-owned businesses, \$6.7 billion to businesses owned by socially and economically disadvantaged individuals, \$2.8 billion to businesses owned by representatives of multiple underserved populations, and \$1 billion to veteran-owned businesses.

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 be paid only once the SBA completes processing all previously filed non-priority applications and only if the RRF is not first exhausted.

Legislation

Legislation has been introduced (H.R. 3807, S. 2091, and S. 2675) to provide the RRF additional funding.

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