RESTAURANT REVITALIZATION FUND

NEWEST ADDITION TO THE LIST OF SBA STIMULUS PROGRAMS

A COVID-19 RESOURCE

Patrick
ACCOUNTING

The $1.9 trillion American Rescue Plan Act of 2021 (ARP), signed into law on March 11, 2021, includes a $28.6 billion "Restaurant Revitalization Fund" (RRF) administered by the Small Business Administration (SBA). The RRF provides economic relief to eligible restaurants. The RRF is similar to the Paycheck Protection Program (PPP), but RRF amounts are based on lost revenue rather than payroll, and the program is administered directly by the SBA rather than through bank loans guaranteed by the SBA.

RRF ELIGIBILITY

The ARP broadly defines eligible entities as "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, and other similar places where the public or patrons assemble for the primary purpose of being served food or drink." The ARP specifically includes any such entities located in an airport, or that are Tribally-owned.

However, the ARP excludes from eligibility:

1. Publicly-traded companies.
2. An entity (together with any "affiliated business") that, as of March 31, 2020, owns or operates more than 20 locations, regardless of multiple or different operating names. For this purpose, an affiliated business is one that as of March 13, 2020 **(a)** had an equity interest or right to profit distributions of 50 percent or more or **(b)** had contractual authority to control the direction of the business. The National Restaurant Association has told its members via webinars that the phrase "or has contractual authority to control the direction of the business" was not intended to preclude franchisees from receiving RRF grants so long as they have 20 or fewer locations.
3. Companies that have applied for a Shuttered Venue Operator (SVO) grant. The SVO was enacted as part of the December 2020 stimulus bill and is beyond the scope of this article. Readers can find details and eligibility of the SVO program on this SBA site. SVO grants generally equal 45 percent of the eligible applicant's 2019 gross earned revenue, with a $10 million cap. SVO grants thus are less likely than RRF grants, but, as discussed below, the RRF may run dry, and the SBA may award an RRF grant of less than the maximum amount allowed. Businesses that qualify for both need to carefully weigh the benefits and detriments of applying for each.
4. State or local government-operated business.

RRF applicants must make the same uncertainty certification required for a PPP loan: The uncertainty of current economic conditions makes necessary the grant request to support the ongoing operations. As with businesses applying for a PPP loan, we strongly recommend that RRF applicants prepare contemporaneous documentation supporting this representation. We also anticipate that the SBA may scrutinize applicants owned by well-heeled owners,

AMOUNT OF RRF GRANTS

An eligible business may receive a grant equal to the amount of its "pandemic-related revenue loss." An entity's pandemic-related revenue loss generally equals its 2019 gross receipts, less **(1)** its 2020 gross receipts and **(2)** the amount of any PPP loan the business received (both first draw and second draw). Special rules apply to entities not in operation for all of 2019 or that opened between January 1, 2020 and March 11, 2021 (the date of enactment of the ARP).

- If the business is not in operation for the entirety of 2019, the total before subtraction for PPP loans is the difference between 12 times (i) the average monthly gross receipts for 2019 and (ii) the average monthly gross receipts in 2020. Alternatively, the SBA can create its own formula.

- If the business is not in operation until 2020, it can receive a grant equal to the amount of "eligible expenses" subtracted by its gross receipts received. Alternatively, the SBA can create its own formula.

- If the business is not yet in operation as of the application date, but it has made "eligible expenses," the grant would be made equal to those expenses. Alternatively, the SBA can create its own formula.

The total grant amount for an eligible business (and any affiliated businesses) is capped at $10 million and is limited to $5 million per physical location of the business. In addition, the ARP divides the $28.6 billion allocated to the RRF into two buckets:

- $5 billion is set aside for restaurants with gross receipts of $500,000 or less during 2019 so that they compete in a different funding pool than larger restaurants.

- The SBA will award the remaining $23.6 billion "in an equitable manner to eligible entities of different sizes based on annual gross receipts." We currently do not know how the SBA will accomplish this.

Industry representatives believe that demand likely will exceed the $28.6 billion allocated to the RRF. Recognizing this, the ARP requires that, in the initial 21-day period, the SBA must prioritize grants for small business concerns owned and controlled by women, veterans, or socially and economically disadvantaged small business concerns. We will see if Congress replenishes the RRF, or creates a second round RRF, as it did with PPP loans.

USE OF RRF GRANT PROCEEDS

Businesses receiving an RRF grant must spend the money on payroll costs, as defined for PPP loan purposes; mortgage payments (both principal and interest, but not any prepayment); rent (but not a prepayment); utilities; maintenance (broadly defined); supplies, including protective equipment and cleaning materials; **food and beverage expenses** within the scope of normal business practice; "covered supplier costs," as defined for PPP loan forgiveness purposes, operational expenses, paid sick leave; and any other expenses allowed by the SBA. These allowed uses are similar to, but not identical with, expenses that result in PPP loan forgiveness. As noted above, businesses may use RRF grants for payroll costs, as defined for PPP purposes.

A business must use the RRF grant on the above-listed allowed expenses during the "covered period." For this purpose, the covered period began on February 15, 2020. The covered period ends on either December 31, 2021, or another date on or before March 11, 2023 (2 years after enactment of the ARP) selected by the SBA. The ARP specifically requires that a business that fails to use all grant proceeds or permanently ceases operations must repay any amounts not spent on allowed uses. In this regard, an RRF grant is less favorable than a PPP loan. A PPP loan recipient that does not spend all PPP proceeds on forgivable uses must repay the amount over the two-year or five-year term of the PPP loan. An RRF grant recipient, on the other hand, must return the amount, with no guidance on how quickly the RRF grant recipient must return the amount. As a practical matter, we suspect that RRF recipients will not have any problem using all proceeds for the prescribed purposes, even if it means filling the basement with wine and liquor for sale following the close of the covered period.

TIMING

We expect this priority window to open sometime in April, which means that most restaurants might not be able to apply until May.

FEDERAL TAX IMPACT

Similar to PPPs (as revised by the late December 2020 stimulus legislation), grants are tax-free to the recipient and do not reduce tax deductions for expenses paid with grant proceeds. Similar to PPP forgiveness, it is unclear how many state legislatures will follow this federal largess.