

RESTAURANT REVITALIZATION FUND APPLICATIONS

Hodgson Russ Food and Beverage Alert
April 30, 2021

President Biden signed the American Rescue Plan Act of 2021 (ARPA) into law on March 11, 2021, establishing the \$28.6 billion Restaurant Revitalization Fund (RRF) to provide broad-based financial relief to a U.S. food service industry devastated by the COVID-19 pandemic. The U.S. Small Business Administration (SBA) will award funds to eligible applicants until the RRF allocation is expended.

Applications may be submitted starting at 12:00 p.m. EDT on Monday, May 3, 2021. The SBA urges applicants to submit applications, including all required supporting documentation, as early as possible, because the allocated funds are anticipated to run out due to strong demand. RRF awards will be made on a first-come, first-served basis to eligible applicants, subject to a 21-day priority window during which the SBA will fund applications submitted by businesses owned and controlled by women, veterans, and socially and economically disadvantaged persons. The SBA will directly disburse award proceeds to applicants' existing (not new) commercial business accounts.

The SBA may award funding based on an eligible applicant's pandemic-related revenue loss up to \$5 million per physical location, not to exceed \$10 million in the aggregate for the applicant and any affiliated businesses. As of March 13, 2020, applicants must own or operate (together with any affiliated businesses) 20 or fewer locations, regardless of name. Physical locations of affiliated businesses in different industries can count towards cap limitations. The minimum award will be \$1,000, net of required reductions (such as PPP loan amounts). Recipients who utilize funds for eligible uses no later than March 11, 2023 will not be required to repay the funding.

RRF proceeds may be used for certain expenses incurred during the covered period, which is February 15, 2020 through March 11, 2023, to support the ongoing operations of the business. If the business permanently closes before March 11, 2023, the covered period will end as of the closure date. Eligible expenses include: payroll costs (including sick leave); payment (but not prepayment) of business mortgage obligations and debt; business rent (but not prepayment); ordinary course business utility payments; business food and beverage expenses (including raw materials); business maintenance expenses; business supplies (including protective equipment and cleaning materials); ordinary course business operating expenses (such as

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insurance, marketing, licenses, fees, and POS equipment); and payment for the construction of outdoor seating (but not other expansion costs). Unused funds must be returned to the government.

Eligibility

Eligible entities are businesses where the public or patrons assemble for the primary purpose of being served food or drink. These include restaurants, food stands, food trucks, food carts, caterers, saloons, taverns, bars, lounges, certain snack bars, nonalcoholic beverage bars (such as coffee shops and ice cream shops), brewpubs, tasting rooms, taprooms, and similar businesses. Eligible entities also include any of the above entities located in an airport terminal or that operate independently (i.e., under its own EIN) inside another business (such as a hotel or conference center), or that are a Tribally-owned concern. Permanently closed establishments are ineligible.

Brewpubs, tasting rooms, taprooms, breweries, microbreweries, wineries, distilleries, and bakeries must show that on-site sales to the public comprised at least 33% of 2019 gross receipts. These applicants whose businesses opened in 2020 or that have not yet opened must show their original business model projected at least 33% of gross receipts would be generated from on-site sales to the public. Inns must demonstrate that on-site sales of food and beverages to the public comprised at least 33% of 2019 gross receipts. Inns that opened in 2020 or that have not yet opened must show their original business model projected at least 33% of gross receipts would be generated from on-site sales of food and beverages to the public.

For businesses with multiple locations under the same EIN, the number of applications is dictated by their tax filings. If there are separate tax filings for each location, each must file its own RRF application. If there is only one tax filing for all of the locations, only one RRF application should be filed.

Applicants which received a COVID-19 EIDL (Economic Injury Disaster Loan) are eligible to apply for RRF funds. Applicants which received PPP loans, regardless of whether loans were received in the first or second draw, are eligible to apply for RRF funds. However, PPP loans will affect the funding calculation. Applicants with pending applications for, or which received funding from, the Shuttered Venue Operators Grant (SVOG) are not eligible for RRF funds. If, however, an applicant's SVOG application was denied, it is eligible to apply for RRF funds.

Franchises which operate under a franchise agreement meeting the FTC's definition of a franchise are eligible to apply for RRF funds. The franchise must also be listed on the [SBA's Franchise Directory](#) with a franchise identifier code or must meet certain additional requirements (including submitting to the SBA the Franchise Disclosure Document and all other documents a franchisee is required to sign).

Priority

Although applications from all eligible applicants will be accepted commencing at 12:00 p.m. EDT on Monday, May 3, 2021, \$5 billion of the RRF allocation will be awarded to applicants in certain priority groups for 21 days before awards are granted to other applicants. This funding is prioritized to small business concerns that are at least 51% owned and controlled by individuals who are women, veterans, or socially and economically disadvantaged individuals, as defined by the SBA. If an individual meets more than one priority group category, their percentage is only counted once. If the applicant has multiple owners who each fall under a priority group, their ownership percentages will be combined to determine whether they meet the 51% threshold. Additionally, the SBA has set-aside a portion of the RRF funds for certain

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small businesses based on their 2019 gross receipts, although those grants will not be awarded within the initial 21-day window.

How to Apply

Applicants have three options to submit applications: (1) directly through the SBA's website at restaurants.sba.gov; (2) through a recognized SBA Restaurant Partner; or (3) telephonically through the SBA.

Applicants do not need a DUNS number or a SAM.gov account. Online applicants simply create an account, complete a questionnaire, upload the necessary documents, and electronically sign the application. The SBA estimates that online applications will take approximately 25 minutes to complete. Applications will be processed in the order in which they are received.

The SBA has partnered with point-of-sale service providers Clover, NCR Corporation, Square, and Toast to expedite the application process. Applicants may work directly with these partner organizations to apply for RRF funds. This collaboration facilitates applicants' ability to calculate the appropriate fund request by using the service providers' existing data. Applicants utilizing Square or Toast do not apply through the SBA's website; rather, they would apply through Square's or Toast's portal. NCR and Clover have application packets that can be directly uploaded to the SBA's website.

Businesses applying by phone should call the SBA at (844) 279-8898 when the application period opens. This is also the SBA's assistance hotline, open Monday through Friday from 8:00 a.m. through 8:00 p.m. EDT.

Requirements for the Application

All applicants must submit the following documentation and, if applicable, eligible expenses:

- The application, SBA Form 3172, completed, initialed, and signed by applicant
- IRS Form 4506-T, completed and signed by applicant
- Any of the following documents demonstrating gross receipts:
 - business tax returns (IRS Form 1120 or IRS Form 1120-S);
 - IRS Form 1040 Schedule C; IRS Form 1040 Schedule F;
 - for partnerships: IRS Form 1065 and K-1s;
 - bank statements for the previous three months;
 - financial statements, internally or externally prepared, such as Income Statements or Profit and Loss Statements;
 - point-of-sale reports, including IRS Form 1099-K

Certain applicants must provide additional documents:

- Applicants in operation prior to 2019 or partially in operation during 2019 must supply documentation of gross receipts for 2019 and 2020

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- Applicants that began operations between January 1, 2020 through March 10, 2020, and applicants that had not opened as of March 11, 2021 but had incurred eligible expenses, must supply documentation of gross receipts and eligible expenses for any length of time in operation
- Brewpubs, tasting rooms, taprooms, breweries, microbreweries, wineries, distilleries, bakeries, and inns must provide documentation showing that gross receipts from food and beverages meet the applicable eligibility standard (e.g., 2019 TTB Forms filed, state or local government forms filed, or internally created reports from inventory management, sales reporting, or accounting software)

There are different calculations for potential fund awards:

- Calculation 1 is for applicants in operation (i.e., making sales) prior to or on January 1, 2019
- Calculation 2 or Calculation 3 may be selected by applicants that began operations partially in 2019 (although Calculation 3 may require longer processing times)
- Calculation 3 is for applicants that began operations on or between January 1, 2020 and March 10, 2021 and for applicants that have not opened for sales but incurred eligible expenses as of March 11, 2021
- Calculation 4 is for applicants that operate multiple locations using different Calculations

Preparing to Apply

Businesses who plan to apply for funding should review in advance the SBA's [Program Guide](#) and [RRF webpage](#) (which includes a helpful "Knowledge Base" of FAQs), and prepare a [sample application](#). [Registration for the SBA application portal](#) opened at 9:00 a.m. ET on Friday, April 30, 2021. Applicants are encouraged to register in advance, to create a user name and unique password in order to be ready to apply when the portal opens for applications. Advance registration on the SBA site is not necessary for businesses who will apply through Toast or Square.

Applicants should gather all supporting documentation in advance, including the information necessary to determine grant eligibility and calculate requested award amounts. The required supporting documents must be included with the application. Finally, the individual who completes the application must be able to sign it on behalf of the applicant.

Applicants should carefully review application information for accuracy as it is being prepared, because correcting an application after submission would return it to the end of the SBA's queue. No corrections can be made after an award has been paid.

Guidance for this new program is being continually updated, and the SBA is expected to issue post-award guidelines in the future. By December 31, 2021, and thereafter until all proceeds have been expended or the period of performance expires, applicants will be required to certify their use of funds for each eligible use category.

If you have questions about the Restaurant Revitalization Fund, please contact [Christine Bonaguide](#) (716.848.1325) or any other member of the Hodgson Russ [Food & Beverage](#) practice.