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Restaurants Revitalization Fund Provides COVID Relief to Hard-Hit Industry

By [Alex Grishman](#), [Brent Beckert](#), [Rob Atras](#) and [Kate Register](#)

On March 11, 2021, President Biden signed the “[American Rescue Plan Act of 2021](#)”, a \$1.9 trillion stimulus bill aimed at curbing the economic toll of the COVID-19 pandemic. As part of a comprehensive relief package, the American Rescue Plan establishes a \$28 billion Restaurants Revitalization Fund (“**RRF**”) to provide direct grants to restaurants and other food and beverage businesses.

The RRF will provide grants to eligible businesses based on pandemic-related revenue loss, up to a maximum of \$10 million per recipient and \$5 million per physical location. The RRF has earmarked \$5 billion for small businesses—those with 2019 gross receipts of \$500,000 or less. The Small Business Administration (the “**SBA**”) will administer the remaining \$23.6 billion “in an equitable manner to eligible entities of different sizes based on annual gross receipts.” However, not all restaurants and food and beverage related businesses are eligible for RRF grants. Applicants for RRF funds must take into consideration their revenue, structure, operating history, and financial need to understand their eligibility and potential grant amount.

While we expect the SBA to publish new regulations and guidance in the coming weeks, we encourage restaurants and other prospective grantees to begin preparing their application in advance of the official program launch date, in order to maximize chances of obtaining a portion of the earmarked RRF funds.

Overview of the Restaurant Relief Fund

<p>Who is eligible for Restaurant Relief Funding?</p>	<p><u>Entities Eligible for RRF Grants (subject to criteria described below):</u></p> <ul style="list-style-type: none"> (1) Restaurants, Food Stands, Food Trucks, Food Carts or Caterers; (2) Saloons, Inns, Taverns, Bars, Lounges, Brewpubs, Tasting Rooms, Taprooms, Licensed Facilities or Premises of a Beverage Alcohol Producers where the public may taste, sample, or purchase products; and (3) Other similar places of business in which the public or patrons assemble for primary purpose of being served food or drinks. <p><u>Including:</u></p> <ul style="list-style-type: none"> (1) Eligible entities located in airport terminals or that are Tribally-owned concerns; and (2) Eligible franchisees. <p><u>Business Identifiers:</u> The American Rescue Plan requires the Small Business Administration to allow eligible entities to use their own existing business identifiers, as opposed to requiring other forms of registration/identification that may not be common to their industry.</p>
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<p>General Eligibility Requirements:</p>	<p>To be eligible for the program, an applicant must meet the following criteria:</p> <p>(1) <u>Necessity Certification</u>. It must make a good faith certification that:</p> <ul style="list-style-type: none"> (a) The uncertainty of current economic conditions makes the grant necessary to support the ongoing operations of the entity; and (b) The entity has not applied for or received a grant under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues. <p>(2) <u>No Public Ownership</u>. Applicants majority owned or controlled by a publicly traded company are not eligible.</p> <p>(3) <u>No Government Operation</u>. Applicants that are state or local government-operated businesses are not eligible.</p> <p>(4) <u>No More than 20 Locations</u>. The applicant, together with any affiliated businesses, must own or operate no more than 20 physical locations, as of March 13, 2020.</p> <ul style="list-style-type: none"> (a) The American Rescue Plan defines an “affiliated business” to mean any business that has any of the following relationships with the applicant: <ul style="list-style-type: none"> i. the applicant owns at least 50% of the equity of the business; ii. the applicant has the right to profit distributions of at least 50% iii. the applicant has contractual authority to control the direction of the business.¹ <p>(5) <u>No Shuttered Venue Grant Program Award of Application</u>. Applicants with a pending application for or that have received a grant under § 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (known as a “Shuttered Venue Operators Grant”)² are not eligible for RRF grants.</p>
<p>Grant Amount</p>	<p>The grant made to an eligible entity will be equal to the entity’s “pandemic-related revenue loss.” This generally means the entity’s 2019 gross receipts minus its 2020 gross receipts. However, an entity’s pandemic-related losses for purposes of an RRF grant will be reduced by any amounts received from a PPP First Draw and Second Draw loan. The calculation of an entity’s</p>

¹ Note that this is a more limited definition of “affiliate”, as compared to the use of such term under the Paycheck Protection Program and other SBA programs.

² Haynes and Boone’s prior alert on the Shuttered Venue Operators Grant can be found here: <https://www.haynesboone.com/alerts/congress-extends-lifeline-for-the-arts-and-entertainment-industry>

	<p>pandemic-related revenue losses may also vary based on the time period during which the entity was operational, as outlined below:</p> <ul style="list-style-type: none"> • <u>Entities that were operational for all of 2019</u>: Pandemic-related revenue losses should be calculated as the amount by which 2019 gross receipts exceed 2020 gross receipts. • <u>Entities that were not in operation for the entirety of 2019</u>: Pandemic-related revenue loss will be equal to the product obtained by multiplying the average monthly gross receipts of the entity in 2019 by 12, <i>minus</i> the average monthly gross receipts in 2020; or an amount based on a formula determined by the SBA Administrator. • <u>Entities that opened between January 1, 2020 and March 10, 2021</u>: The grant will equal the expenses described in “Use of Proceeds” below minus any gross receipts received during the time in operation, or by a formula determined by the SBA Administrator. • <u>Entities not yet opened as of the date of application for the grant, but that have incurred expenses as of March 11, 2021</u>: the grant will equal the amount of those expenses, or an amount based on a formula determined by the SBA Administrator. <p><u>Maximum Grant</u></p> <ul style="list-style-type: none"> • The maximum grant may not exceed: <ul style="list-style-type: none"> ○ \$5 million per physical location (including affiliated businesses); and ○ \$10 million in the aggregate. <p><u>Grant After Initial Period (60-days)</u></p> <ul style="list-style-type: none"> • Any funds left open 60 days after March 11, 2021 (or another time period determined by the SBA Administrator) may be granted to any eligible entity regardless of the annual gross receipts of the eligible entities.
<p>Priority and Timeline of Grant Distributions</p>	<p><u>First 21 Days of Launch:</u></p> <ul style="list-style-type: none"> • During the initial 21-day period in which they are available, RRF grant awards will be prioritized for eligible entities small business concerns that are: <ul style="list-style-type: none"> ○ owned and controlled by women; ○ owned and controlled by veterans; or ○ socially and economically disadvantaged. • For purposes of establishing priority, applicants shall submit a self-certification of eligibility for priority with the grant application.

	<p>After First 21 Days:</p> <ul style="list-style-type: none"> The SBA generally awards grants to eligible businesses in the order in which applications are received.
<p>Use of Proceeds</p>	<p>Proceeds from the grant may be used to pay the following obligations:</p> <ol style="list-style-type: none"> Payroll costs, Covered mortgage obligations (both principal and interest but no prepayment), Rent obligations (not including prepayment), Utility obligations, Maintenance expenses (including construction to accommodate outdoor seating and walls, floors, deck surfaces, fixtures and equipment, supplies (including protective equipment and cleaning material), Food and beverage expenses within the scope of normal business practices, Covered supplier costs, Operational expenses, Paid sick leave, and Any other expenses that the SBA determines to be “essential”. <p>Such obligations must have generally been incurred between February 15, 2020 and December 31, 2021 or a period determined by the SBA Administrator that is not later than 2 years after March 11, 2021.</p>

Given the fast pace of developments, businesses are encouraged to seek advice from qualified legal counsel concerning these matters.

For more information, please see the following resources:

1. Prior Haynes and Boone Guidance on the Paycheck Protection Program:

- [Congress Revises PPP Rules for Existing Borrowers; Allows Certain Borrowers to Access Second Round of Funding](#) (December 22, 2020)
- [SBA Issues Clarifying Guidance for PPP Borrowers in M&A Transactions](#) (October 7, 2020)
- [Full List of Haynes and Boone Alerts on PPP](#)

2. Prior SBA Guidance on the Paycheck Protection Program:

- [PPP Frequently Asked Questions](#) (updated March 12, 2021)
- [PPP – Frequently Asked Questions on Loan Forgiveness](#) (updated October 13, 2020)
- [Full List of SBA Guidance and Regulations](#)

3. Resources on the SBA Shuttered Venue Operators Grant Program

- a. [After Months of Deadlock, Congress Extends Lifeline for the Arts and Entertainment Industry through the Shuttered Venue Operators Grant Program](#) (Haynes and Boone Alert, December 30, 2020)
- b. [SBA Shuttered Venue Operators Grant Page](#)

4. Resources on the SBA Economic Injury Disaster Loan (EIDL) Program.

- a. [Looking for an Alternative to PPP? Taking a Second Look at the Economic Injury Disaster Loan Program](#) (Haynes and Boone Alert, May 1, 2020).
- b. [SBA's COVID-19 Disaster Loan Program](#) (Haynes and Boone Alert, March 24, 2020)
- c. [SBA EIDL Resource Page](#)

Additional Questions? Contact a member of the Haynes and Boone [Finance](#) or [Corporate Practice](#) Groups at Haynes and Boone, including the following individuals:

[Jim Markus](#)
[Javier Martinez](#)
[Alex Grishman](#)
[Brent Beckert](#)
[Rob Atras](#)
[Kate Register](#)