

LEGAL ALERT

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SBA TO PROVIDE RELIEF TO RESTAURANTS THAT SUFFERED DURING COVID-19

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Restaurants, bars, caterers, food trucks and many other food and beverage businesses that suffered a loss in revenue due to COVID-19 will soon be able to apply for federal grants designed to help them remain in business.

The grants are part of the Restaurant Revitalization Fund, a \$28.6 billion fund that was established last month as part of the American Rescue Plan Act of 2021. The U.S. Small Business Administration, which will administer the fund, is expected to provide additional information shortly and begin making grants within a couple months.

WHO IS ELIGIBLE FOR A GRANT?

Businesses eligible for Restaurant Revitalization Fund grants include restaurants, food stands, food trucks and carts, saloons, inns, taverns, bars, lounges, brewpubs, tasting rooms (including, for example, those attached to a winery or other alcoholic beverage manufacturer), taprooms and any “other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink.”

In order to limit relief to small businesses and private companies, and to prevent double-dipping, certain businesses are ineligible for grants, including businesses operated by state or local governments; businesses that are owned or controlled by publicly traded companies or are part of an affiliated group with more than 20 locations; or businesses that have applied for a Shuttered Venue Operators Grant (which are intended for performing arts venues and museums). Entities that received a Paycheck Protection Program (PPP) loan may apply for a grant, but, if approved, they must deduct the PPP loan amount from the grant total. All entities seeking a grant must certify that the grant is necessary in light of current, uncertain economic conditions.

HOW LARGE ARE THE GRANTS?

Eligible businesses are entitled to grants of up to \$5 million per location or up to \$10 million per restaurant group. In general, a grant is equal to an eligible entity's "pandemic-related revenue loss," which is equal to the entity's 2019 revenue, less its 2020 revenue (if greater than zero).

Grants are also available to restaurants, bars, and similar businesses that opened in 2019 or 2020 — or even to businesses that have yet to open — but the formula for calculating the maximum grant amount is somewhat different. If the entity opened in 2020 or has yet to open, for example, the maximum grant amount is based on expenses rather than revenues.

As noted above, in all instances an applicant must reduce the grant by the amount of any First or Second Draw PPP loan received by the applicant. An applicant's receipt of an Economic Injury Disaster Loan or an Employee Retention Credit does not, however, impact the grant amount available under the Restaurant Revitalization Fund program.

HOW CAN AN ELIGIBLE ENTITY USE A GRANT?

Restaurant Revitalization Fund grants may be used to pay the following expenses:

- Payroll costs;
- Payments of principal or interest on any mortgage obligation (but not prepayment);
- Rent (but not prepayment);
- Utilities;
- Maintenance expenses (including construction to accommodate outdoor seating, PPE, and cleaning supplies);
- Food and beverage expenses within the scope of normal business practices;
- Supplier costs;
- Operational expenses;
- Paid sick leave; and
- Any other expenses that the SBA determines are "essential" to the recipient.

Eligible expenses include those incurred by the applicant between February 15, 2020, and December 31, 2021, or an alternative end date determined by the SBA that is not later than March 11, 2023.

Grant recipients may not use grant funds to open a new location. If a recipient does not use the full grant on eligible expenses before December 31, 2021 (or a different end date determined by SBA), then the recipient must return the funds.

WHO WILL RECEIVE PRIORITY IN APPLYING FOR GRANTS?

Businesses owned and controlled by women, veterans, or socially or economically disadvantaged groups will be prioritized during the first 21 days of the application period. To claim such priority treatment, an applicant must submit a self-certification with its grant application. In addition, during the first 60 days of the application period, \$5 billion of the program's available \$28.6 billion will be reserved for restaurants that earned less than \$500,000 in 2019 gross receipts.

HOW ARE GRANTS TREATED FOR TAX PURPOSES?

The American Rescue Plan Act of 2021 provides that Restaurant Revitalization Fund grants are not included in the recipient's taxable gross income. This provision offers a potential benefit to grant recipients, who would have been taxed on the revenues (or at least their earnings) had they actually earned the money in 2020.

WHAT STEPS SHOULD A POTENTIAL APPLICANT TAKE TO PREPARE?

Entities interested in applying for a Restaurant Revitalization Fund grant should begin gathering records establishing their 2019 and 2020 revenues or, in the case of recently established entities, records of eligible incurred expenses.

Potential applicants should also create an account on Login.gov, obtain a Data Universal Number System (DUNS) number and register with the System for Award Management using their Login.gov account information and DUNS number. Hahn Loeser attorneys are available to address additional questions before and after the grant program launch.

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