



## Alerts

### Restaurant Revitalization Grant Program Provides Grants to a Wide Range of Eligible Entities

April 28, 2021

*Hinshaw Alert*

President Biden [signed into law](#) the American Rescue Plan Act of 2021 (ARP Act) on March 11, 2021. The \$1.9 trillion economic recovery package revised the Paycheck Protection Program (PPP) and the Shuttered Venue Operator Grant Program (SVOG), and also created the Restaurant Revitalization Grant Program (RRG Program).

This client alert reviews the RRG Program, as well as the Restaurant Revitalization Funding Program Guide (Program Guide) issued by the Small Business Administration (SBA) on April 17, 2021. It also examines the SBA Restaurant Revitalization Fund Knowledge Base (RRFK Base) set forth on the SBA's website.

### Restaurant Revitalization Grants

The RRG Program is authorized to issue up to \$28.6 billion in grants to eligible entities (RRG Program Funds).

To ensure that the smallest businesses and those in underserved communities receive funding awards, the SBA has set aside funds available only for certain applicants.

1. \$5 billion is set aside for applicants with 2019 gross receipts of not more than \$500,000.
2. An additional \$4 billion is set aside for applicants with 2019 gross receipts from \$500,001 to \$1.5 million.
3. An additional \$500 million is set aside for applicants with 2019 gross receipts of not more than \$50,000.

During the initial 21-day RRG Program awards period, the SBA is instructed to prioritize eligible entities (Priority Group) that are small business concerns owned and controlled by women, veterans, or socially and economically disadvantaged individuals ([see Priority in Awarding Funding](#)).

The SBA is advising all applicants to file their RRG Program applications as soon as the SBA starts accepting them. A sample of the application is available on the SBA's website.

#### Attorneys

Timothy M. Sullivan

#### Service Areas

Business & Commercial  
Transactions



Suppose an applicant applies during the priority period and it is not an eligible member of the Priority Group. In that case, the SBA will hold the application and process it after the priority period is over.

## Eligibility

Eligible entities are businesses that have not permanently closed and include businesses where the public or patrons assemble for the primary purpose of being served food or drink, including:

- restaurants
- food stands, food trucks, and food carts
- caterers
- bars, saloons, lounges, and taverns
- licensed facilities or premises of a beverage alcohol producer where the public may taste, sample, or purchase products
- other similar places of business in which the public or patrons assemble for the primary purpose of being served food or drink
- snack and nonalcoholic beverage bars
- bakeries
- brewpubs, tasting rooms, and taprooms
- breweries and microbreweries
- wineries and distilleries
- inns

To satisfy the catch-all requirement to qualify as a "place of business in which the public or patrons assemble for the primary purpose of being served food or drink," at least 33% of an entity's 2019 sales must have consisted of on-site sales to the public.

For eligible entities that opened in 2020 or that have not yet opened, the original business model of such an entity should have contemplated that at least 33% of its gross receipts would consist of on-site sales to the public.

Entities without additional documentation requirements, such as restaurants and bars, are presumed to have made on-site sales to the public comprising at least 33% of gross receipts in 2019.

Bakeries, brewpubs, tasting rooms, taprooms, breweries, microbreweries, wineries, and distilleries must provide documentation with their applications demonstrating that on-site sales to the public comprised at least 33% of their gross receipts in 2019.

For such an entity that opened in 2020 or that has not yet opened, the applicant's original business model should have contemplated at least 33% of gross receipts would consist of on-site sales to the public.

Inns must include documentation with their applications demonstrating that on-site sales of food and beverage to the public comprised at least 33% of gross receipts in 2019. For businesses that opened in 2020 or that have not yet opened, the applicant's original business model should have contemplated that at least 33% of gross receipts would consist of on-site food and beverage sales to the public.

If any of the above listed entities are located in an airport terminal or operate independently (i.e. has its own tax identification number (TIN)) inside another business (e.g. a restaurant that operates independently inside a hotel or conference center) or that is a Tribally-owned concern, it is eligible to participate in the RRG Program.



## Motels and Hotels

Motels and hotels do not qualify as inns under the SBA's rules.

The following are ineligible entities:

- state or local government-operated businesses;
- an entity that, as of March 13, 2020, owns or operates—together with any affiliated business—more than 20 locations, regardless of whether those locations do business under the same or multiple names;
- an entity that has a pending application for or received an SVOG; and
- publicly traded companies.

## Cannabis-Related Businesses

Businesses that offer cannabis products are not eligible. Per the RRFK Base, all business operations, products, and sales must be legal under all federal, state, and local laws. Tetrahydrocannabinol (THC) is an illegal substance under federal laws.

## Locations

Each place where an applicant or affiliates conduct sales from a permanent structure is counted as a location. If the applicant or affiliates conduct sales from multiple permanent locations, each address is a separate location. For a caterer or a single business with multiple food stands, trucks, or carts, the physical location is where the business is headquartered—i.e., a business with one permanent structure and five food trucks will have one location, and a caterer will have one location.

## RRG Amounts

Grants available to most eligible entities are expected to be equal to the difference between 2019 and 2020 gross receipts for each location.

There are special rules to calculate the amount that an applicant may receive if it was not in business for all of 2019 or opened after January 1, 2020, and before March 11, 2021, the effective date of the ARP Act.

Sample calculations for entities that did not operate in 2019 and entities in operation in 2019 are included in the Program Guide.

Maximum grant amounts are capped at \$10 million for an affiliated group and \$5 million per physical location. The minimum funding amount will be \$1,000.

An affiliated business is defined as a business in which an eligible entity has an equity or right to profit distributions of not less than 50% or has contractual authority to control the direction of the business. This affiliation must have existed as of March 13, 2020.

RRG Program awards will be reduced by the amount of any First or Second Draw PPP loan received by an applicant.

## Gross Receipts

Gross receipts generally consist of all revenue in whatever form received or accrued (in accordance with the entity's accounting method, i.e., accrual or cash) from whatever source. This includes sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances but excluding net capital gains and losses. These terms use the definitions reported on IRS tax return forms. Tips are not gross receipts.



The amounts required to calculate gross receipts varies by the entity tax return type:

- for self-employed individuals (IRS Form 1040 Schedule C): line 3 (If the applicant files multiple Schedule C forms on the same Form 1040, the applicant must add all of them);
- for partnerships (IRS Form 1065): line 1c;
- for S-Corporations (IRS Form 1120-SD): line 1c;
- for C-Corporations (IRS Form 1120): line 1c;
- limited liability companies: Use one of the above; and
- B Corporations: Use line 1c from either IRS Form 1120 or 1120S.

The Program Guide identifies several sources of gross revenue that must be subtracted from gross receipts when determining the amount of the award.

## Priority in Awarding Funds

Priority will be given to small businesses where at least 51% of the entity is owned and controlled by individuals who are women, veterans, or socially and economically disadvantaged individuals. Applicants in one of these categories operating under an approved plan of reorganization under either a Chapter 11, 12, or 13 bankruptcy and do not have a trustee exercising day-to-day control are eligible for funding under this program.

Applicants must certify that they meet eligibility requirements for a small business concern owned by women, small business concern owned by veterans, or small business concern owned by socially and economically disadvantaged individuals. The Program Guide provides further descriptions of these categories.

An applicant that is a small business—and at least 51% owned by one or more individuals who are women, veterans, or socially and economically disadvantaged—will be eligible for an award, provided the management and daily business operations of the applicant are controlled by one or more women, veterans, or socially and economically disadvantaged individual. The Program Guide and the RRFK Base provide the following examples:

- An applicant has five owners who each own 20%. Two owners are veterans, and one owner is a socially and economically disadvantaged individual. The SBA will consider this applicant to meet the requirement that at least 51% of the applicant is owned by a priority group.
  - If an individual meets the requirements of more than one priority group category, that individual counts only once.
- An applicant has five owners who each own 20%. One of the owners is a woman veteran who is a socially and economically disadvantaged individual. None of the remaining four owners are a woman, veteran, or socially and economically disadvantaged individual. This applicant is not eligible to apply as a priority group applicant. However, this applicant may still apply as a non-priority applicant.
- An applicant is 3% owned by a woman and 48% owned by a socially and economically disadvantaged individual. The SBA will consider this applicant to meet the requirement that at least 51% of the applicant is owned by a priority group.
- A husband and wife jointly own 40% of a restaurant. The SBA will **not** subdivide this joint ownership to count this as 20% owned by a woman.
- A restaurant is owned by another entity that is veteran-owned. The SBA will count the veteran's ownership toward the 51% threshold.

## RRG Uses

Eligible entities will be required to spend the award on certain eligible expenses as indicated below. Eligible expenses are those incurred from February 15, 2020, to March 23, 2023. If the business permanently closes, the covered period will end when the business permanently closes or on March 11, 2023, whichever occurs sooner.



- Business payroll costs, including sick leave and costs related to the continuation of group health care, life, disability, vision, or dental benefits during periods of paid sick, medical, or family leave, and group health care, life, disability, vision, or dental insurance premiums. The Program Guide describes a number of items that cannot be included in payroll costs;
- RRG Program Funds may be used for owner wages such as W-2 income and regular and expected guaranteed payments. Additionally, if the owner has accrued unpaid wages for W-2 income or regular and expected guaranteed payments, RRG Program Funds may be used to bring those unpaid wages current. All forms of owner wages (W-2 income and regular and expected guaranteed payments), in the aggregate, must be less than or equal to \$100,000 on a pro-rated annual basis. Owner draw based on profits is not an eligible expense;
- Payments on any business mortgage obligation (both principal and interest; but this does not include any prepayment of principal on a mortgage obligation);
- Business rent payments, including rent under a lease agreement (but this does not include any prepayment of rent);
- Business debt service (both principal and interest; but this does not include any prepayment of principal or interest);
- Business utility payments for the distribution of electricity, gas, water, telephone, internet access, or any other utility used in the ordinary course of business for which service began before March 11, 2021.
- Credit card expenses used to pay for eligible expenses.
- If depreciation appears on the applicant's tax return and/or financial statements provided with the application documentation, it may be counted as an eligible expense;
- Business maintenance expenses, including maintenance on walls, floors, deck surfaces, furniture, fixtures, and equipment;
- Construction of outdoor seating. RRG Program Funds may not be used to expand a business;
- Business supplies, including protective equipment and cleaning materials;
- Business food and beverage expenses, including raw materials for beer, wine, or spirits;
- Covered supplier costs, which are expenditures made by the eligible entity to a supplier of goods for the supply of goods that:
  - are essential to the operations of the entity at the time at which the expenditure is made; and
  - are made pursuant to a contract, order, or purchase order in effect at any time before the receipt of RRG Program Funds; or
  - with respect to perishable goods, a contract, order, or purchase order in effect before or at any time during the covered period;
- Business licenses and fees;
- Business operating expenses, which are defined as business expenses incurred through normal business operations that are necessary and mandatory for the business—e.g. rent, equipment, supplies, inventory, accounting, training, legal, marketing, insurance, licenses, and fees. They do not include expenses that occur outside of a company's day-to-day activities; and
- An applicant may use RRG Program Funds to pay past due eligible expenses incurred between February 15, 2020, and March 11, 2023.

Suppose a business obligation with a related party is documented—for example, on the applicant's balance sheet as a note payable with interest payments requested on the applicant's profit and loss statements or tax returns. In that case, payments can be made in accordance with the agreed upon terms.

Entities that do not use all of their RRG Program monies or use them for unallowable expenses must return the funds to the U.S. Department of Treasury (Treasury).



## Use of Funds Validation

All applicants have until March 11, 2023, to use the awarded funds. Applicants are required to report through the application portal how much of their award has been used against each eligible use category by December 31, 2021. If the applicant fully expends their funds prior to this date, it will be asked to certify in the application portal that proceeds have been used on eligible expenses.

All applicants that do not fully expend award funds prior to this date will be required to complete annual reporting submissions until they fully expend the award funding or the period of performance expires. The SBA reserves the right to request supplemental documentation needed to validate the certification.

## RRG Program Self Certification

As set out in the RRG Program sample application (SBA Form 3172) posted on the SBA's website, an applicant must submit a good faith certification that:

- The applicant's business has not permanently closed.
- Current economic uncertainty makes the funding grant necessary to support the ongoing or anticipated operations of the applicant.
- The applicant understands that its business must use all funds only on eligible expenses within the covered period, beginning on February 15, 2020, and ending on March 11, 2023. If the business permanently closes, the covered period will end when the business permanently closes or on March 11, 2023, whichever occurs sooner. Awardees who cannot use all of the funds received on eligible expenses by the end of the covered period must return any unused funds to the Treasury.
- By signing this application and accepting RRG Program Funds, the applicant is agreeing that no later than the end of the covered period, it will certify to the SBA that the applicant used all funds only on eligible uses within the covered period.
- The applicant, together with its affiliates, does not own or operate more than 20 locations, regardless of whether those locations do business under the same or different names.
- The applicant has not applied for nor received an SVOG.
- The applicant is not a publicly traded company.
- The information provided in the application and all supporting documents and forms is true and accurate in all material respects.
- The applicant understands that knowingly making a false statement to obtain a grant from the SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than 30 years and/or a fine of not more than \$1 million.
- If the applicant or any owner is listed on a Treasury Do Not Pay (DNP) list, the SBA will provide the applicant with notice and an opportunity to resolve the issue. If the applicant is unable to resolve the issue, the SBA may decline the application.
- By submitting this funding application, any pending PPP application or future PPP application by the applicant, will be declined by the SBA to ensure proper reduction of the amount.
- The applicant acknowledges that the SBA will confirm applicant's eligibility for funding under the RRG Program and that the SBA may select the applicant's application for audit or review. The applicant acknowledges that it must provide the SBA with requested documentation and that the IRS can share any tax information that the applicant has provided with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with all applicable program requirements, regulations, and laws.
- The applicant is eligible to receive funding under the rules in effect when this application is submitted.



- The applicant is not engaged in any activity that is illegal under federal, state, or local law.
- To the extent feasible, the applicant will purchase only American-made equipment and products.
- The applicant has read the statements included in this form, including the Statements Required by Law and Executive Orders, and understands them.

## RRG Program Taxes

The ARP Act states that RRG Program Funds will not be included in the gross income of the entity that received funding. Further, no deduction will be denied, no tax attribute will be reduced, and no basis increase will be denied, because of the exclusion from gross income.

In the case of a partnership or S-Corporation—except as otherwise provided by the Secretary of the Treasury (or the Secretary's delegate)—any amount excluded from income by reason of the above will be treated as tax-exempt income for purposes of Sections 705 and 1366 of the Internal Revenue Code, and the Secretary of the Treasury (or the Secretary's delegate) shall prescribe rules for determining a partner's distributive share of any amount described above for purposes of Section 705 of the Internal Revenue Code.

Applicants should be aware that state and local governments may have their own laws regarding taxation at the local level.

## Application Process

The Program Guide sets out procedures for an applicant to follow to file directly with the SBA.

As discussed in the Program Guide, the SBA has developed partnerships with multiple recognized technology companies that provide software, hardware, and payments services to the restaurant industry to help ensure wide and equitable distribution of relief. These partners are referred to as the SBA's Restaurant Partners or the SBA's Point-of-Sale Restaurant Partners.

If an applicant currently uses one of the SBA's Restaurant Partners, it can apply for funding through its website or secure portal.

The SBA is working to add additional partnerships.

## Receiving Funds

The SBA will directly disburse proceeds to an applicant's operating account.

The SBA requires that funds be placed into the applicant's commercial business account. In cases of sole proprietors operating without a commercial account, the SBA will require supporting documentation to demonstrate that the account is used for restaurant operations and that the sole proprietor owns it.

The SBA will not allow fund accounts with limited (less than three months') history or unrelated ownership to the applicant.

## Application Information

### Applicant

The applicant must be the entity applying for RRG Program Funds.

A restaurant with multiple locations under the same Employer Identification Number (EIN) must apply for all locations in one single application.





Applicants may not apply on behalf of other entities, such as affiliates or subsidiaries.

## Owners and TINs

The applicant must provide the TINs for the applicant business and all equity owners of 20% or more of the business. TINs may be EINs, Social Security Numbers (SSNs), or Individual TINs assigned by the IRS.

The total equity reported across the owners of 20% or more of the equity does not have to total 100% of all outstanding equity, as long as all 20% or more owners are listed in the application.

If no owner has at least 20% ownership of the applicant, the applicant must list enough owners whose combined equity represents at least 20% of the ownership of the applicant.

The parties listed below are considered owners of an applicant:

- for a sole proprietorship, the sole proprietor;
- for a partnership, all general partners, and all limited partners;
- for a corporation, all owners of the corporation;
- for limited liability companies, all members owning the company; and
- any trustor (if the applicant is owned by a trust).

If the applicant is a sole proprietor without employees, the applicant must apply using the owner's SSN or Individual TIN assigned to the individual by the IRS or an entity EIN assigned to the entity by the IRS.

All other applicants, including sole proprietors with employees, must use the entity's EIN assigned to the entity by the IRS.

If a sole proprietor without employees does not have an SSN, ITIN, or EIN, or if any other entity does not have an EIN, the applicant is not eligible.

If an owner of 20% or more of the business does not have an SSN or ITIN, the business is not eligible.

## Documentation Required

Applicants that were in operation before or on January 1, 2019, must supply at the time of application documentation of gross receipts for 2019 and 2020.

Applicants that began operations partially through 2019 and use Calculation 2 in the Program Guide must supply at the time of application documentation of gross receipts for 2019 and 2020. Applicants that began operations partially through 2019 and use Calculation 3 in the Program Guide must supply documentation of 2020 gross receipts at the time of the application.

Applicants that began operations on or between January 1, 2020, and ending on March 10, 2021, and applicants that have not yet opened as of March 11, 2021, but have incurred eligible expenses, must supply at the time of application documentation of gross receipts and eligible expenses for the length of time in operation.

Applicants must file the following documents (as applicable):

- SBA Form 3172, completed, initialed, and signed. Completion of this form digitally on the SBA Platform will satisfy this requirement.
- IRS Form 4506-T, completed and signed by applicant. Completion of this form digitally on the SBA Platform will satisfy this requirement.
- any of the following documents demonstrating gross receipts and, if applicable, eligible expenses:





- business tax returns (IRS Form 1120 or IRS Form 1120-S);
- IRS Form 1040 Schedule C; IRS Form 1040 Schedule F;
- for a partnership: partnerships IRS Form 1065 (including K-1s);
- bank statements;
- externally or internally prepared financial statements such as income statements or profit and loss statements; or
- point of sale report(s), including IRS Form 1099-K.

## For Applicants that are a Brewpub, Tasting Room, Taproom, Brewery, Winery, Distillery, or Bakery

In addition to the documents listed above, documents evidencing that on-site sales to the public comprise at least 33% of gross receipts for 2019. These may include 2019 Tax and Trade Bureau Forms filed, state or local government forms filed, or internally created reports from inventory management, sales reporting, or accounting software.

## For Applicants that are an Inn

In addition to the documents listed above, documents evidencing that on-site sales of food and beverage to the public comprise at least 33% of gross receipts for 2019. These may include internally created revenue reports or accounting reports.