

RESTAURANT REVITALIZATION GRANTS

BACKGROUND

On March 11, the American Rescue Plan Act of 2021 created the \$28.6 billion Restaurant Revitalization Fund to provide grants for restaurants sustaining financial losses due to the COVID-19 pandemic.

The U.S. Small Business Administration (SBA) is administering the program, and will be issuing the necessary federal rules, regulations, and applications before grant funds are distributed.

This frequently asked questions (FAQ) resource will be updated as the SBA releases information on the Restaurant Revitalization Fund Grant (RRFG) Program.

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ELIGIBILITY

1. Who is an “eligible entity” for Restaurant Revitalization Fund Grants (RRFG)?

Entities that own a place of business where the public or patrons assemble for the primary purpose of being served food or drink, including a:

- Restaurant, Food Stand, Food Truck, Food Cart;
- Snack and Nonalcoholic Beverage Bar;
- Caterer;
- Bar, Lounge, Saloon, Tavern;
- An Inn;
- Brewery, Brewpub, Microbrewery, Taproom, Tasting room;*
- Bakery;*
- Winery;*
- Distillery;*
- A licensed facility or premise of a beverage alcohol producer where the public may taste, sample, or purchase products;
- Other similar place of business in which the public or patrons assemble for the primary purpose of being served food or alcohol.

***Eligibility may be limited for the following entities:**

✓ Inn

- Eligibility may be limited to entities that have onsite sales of food and beverage to the public of at least 33% of gross receipts.
- When applying, entities may need to share evidence of onsite sales.

✓ Brewery; Brewpub; Microbrewery; Taproom; Tasting room

- Eligibility may be limited to entities that have onsite sales to the public of at least 33% of gross receipts.
- When applying, entities may need to share filed Tax and Trade Bureau reports for the gross receipts reporting period.

✓ Bakery

- Eligibility may be limited to entities that have onsite sales to the public of at least 33% of gross receipts.
- When applying, entities may need to share filed Tax and Trade Bureau reports for the gross receipts reporting period.

✓ Winery

- Eligibility may be limited to entities that have onsite sales to the public of at least 33% of gross receipts.
- When applying, entities may need to share filed Tax and Trade Bureau reports for the gross receipts reporting period.

✓ Distillery

- Eligibility may be limited to entities that have onsite sales to the public of at least 33% of gross receipts.
- When applying, entities may need to share filed Tax and Trade Bureau reports for the gross receipts reporting period.

2. What disqualifies an entity from RRFG eligibility?

The following circumstances would preclude an otherwise eligible entity from receiving an RRFG:

- As of March 13, 2020, the entity 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.
- The entity has received a Shuttered Venues Operations Grant (SVOG) or has a pending SVOG application.
- The entity is a publicly traded corporation or is majority owned and controlled by a publicly traded corporation.
- The entity does not have a place of business located in the U.S., does not operate primarily within the U.S., and does not make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.
- The entity is a state- or local government-owned or operated business.
- The entity is permanently closed.
- The entity filed for bankruptcy under Chapter 7 or is liquidating under Chapter 11.
- The entity has filed for bankruptcy under Chapter 11, 12, or 13 but does not have an approved plan for reorganization.

3. When does an eligible entity have to have been established to receive an RRFG?

There is no requirement for an entity to have been open before a particular date.

If an entity was not open prior to January 1, 2020, it is still eligible for RRFG. Even if an entity has not opened by the date of the application, it can apply for eligible expenses incurred in preparing to open. For entities opened or that were planning to open after January 1, 2020, the grant fund eligibility generally follows a formula similar to:

$$\text{[Eligible Expenses Incurred]} - \text{[Gross Receipts]} - \text{[PPP Loans]} = \text{Grant Fund}$$

4. What is the minimum and/or maximum amount an entity can receive?

The SBA might create a minimum grant amount of \$1,000 for eligible entities. The maximum grant amount is \$5M per location and \$10M total for the eligible entity.

5. Can a nonprofit organization which owns an eligible entity apply for an RRFG?

The National Restaurant Association is actively seeking this clarity in federal regulations, but current indications are that they may not be eligible.

6. Is an entity that applied for and received a 1st draw and a 2nd draw Paycheck Protection Program (PPP) loan eligible to apply for an RRFG?

Yes. However, the RRFG will be reduced by the total amount of PPP Loans.

7. Are franchisees considered eligible entities?

Yes, as long as they meet the other eligibility criteria. Similar to the requirements for SBA financial assistance programs, the restraints imposed on a franchisee or licensee by its franchise or license agreement generally should not be considered in determining whether the franchisor or licensor is an “affiliated business” with an applicant franchisee or licensee provided the applicant franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.

8. What is the definition of an “affiliated business”?

An “affiliated business” is a business that is itself an eligible entity and has an equity or right to profit distributions of not less than 50% in the RRFG applicant or the contractual authority to control the direction of the RRFG applicant as of March 13, 2020.

9. Do the SBA “Affiliation Rules” apply?

No. The statute included a definition for “affiliated business,” so the SBA Affiliation Rules found at 13 C.F.R. 121.301 for financial assistance do not apply.

10. If I own a franchise, does my entity have to be on the SBA Franchise List to be eligible for an RRFG?

The National Restaurant Association opposes this potential requirement and is actively seeking clarity on this issue.

11. My franchise restaurant is an eligible entity under the RRFG rules but my franchisor is a publicly traded company. Am I still eligible?

Yes, as long as the RRFG applicant otherwise qualifies and the publicly traded company is not an “affiliated business” (i.e., does not have an equity or right to profit distributions of not less than 50% or the contractual authority to control the direction of the business as of March 13, 2020).

APPLICATION

12. What documents might an eligible entity need to prepare to apply for a RRFG?

 **An application form and the IRS Form 4506-T, as well as gross receipts documentation.**

- Applicants in operation before January 1, 2019 must supply gross receipts for 2019 and 2020;
- Applicants in operation through part of 2019 must supply gross receipts for 2019 and 2020;
- Applicants that began operations on or between January 1, 2020 and March 10, 2021 and applicants that have not yet opened as of March 11, 2021, but have incurred eligible expenses, must supply documentation of gross receipts and eligible expenses for the length of time in operation.

✓ Allowable documents to show gross receipts and, if applicable, eligible expenses, include:

- Business tax returns (IRS Form 1120 or IRS 1120-S)
- IRS Forms 1040 Schedule C; IRS Forms 1040 Schedule F
- For a partnership: partnership's IRS Form 1065 (including K-1s)
- Bank statements
- Externally or internally prepared financial statements such as Income Statements or Profit and Loss Statements
- Point of sale report(s), including IRS Form 1099-K

13. Do restaurants need to receive a DUNS number and register at www.SAM.gov in order to apply for a RRFG?

No. On March 30, the [SBA](http://www.SBA.gov) clarified this in order to streamline and simplify the application process for eligible entities.

14. As the SBA plans to award grants “in the order in which applications are received,” is that order based on the entities of different sizes based on annual gross receipts? For example, the order in which applications are received based on each tranche of company size?

Entities that can certify that they meet the definition of a woman-owned small business, veteran-owned small business, or socially and economically disadvantaged small business will be given priority for award if their application is filed with SBA within the first 21 days the application is open for submissions. Additional access may be defined in segments according to an entity's annual gross receipts in 2019.

15. Will banks, local lenders, or community development financial institutions be involved in RRFG?

No. The RRFG program is administered through the SBA.

16. How will I receive my RRFG?

It is anticipated that SBA will deposit the funds directly to the bank account identified in the application.

17. Do I have to provide ownership information?

The SBA might require disclosure of all owners with a combined equity of greater than 20%.

ELIGIBLE RRFG AMOUNT

18. How much can an eligible entity receive?

An entity can receive a tax-free federal grant equal to the amount of its pandemic-related revenue loss, subtracted by the total amount it received in all PPP loans.

- **For entities opened before 2019:**

[Gross receipts of 2019] – [Gross receipts of 2020] – [Total amount received in PPP loans (1st and 2nd Draw)]
= Restaurant Revitalization Fund Grant

- **For entities opened during 2019:**

[Average monthly gross receipts of 2019 multiplied by 12] – [Average monthly gross receipts of 2020 multiplied by 12] – [Total amount received in PPP loans (1st and 2nd Draw)]
= Restaurant Revitalization Fund Grant

- **For entities opened during 2020-2021:**

[Eligible expenses] – [Gross receipts received] – [Total amount received in PPP loans (1st and 2nd Draw)]
= Restaurant Revitalization Fund Grant

Aggregate grants made to an eligible entity, and any affiliated businesses of the eligible entity, are limited to \$5M per physical location and \$10M total for the eligible entity.

19. How does the SBA calculate gross receipts?

Gross receipts mean all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. Generally, receipts are considered “total income” (or in the case of a sole proprietorship “gross income”) plus “cost of goods sold” as these terms are defined and reported on IRS tax return forms—this includes Form 1120 for corporations; Form 1120-S for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 for partnerships; Form 1040, Schedule C for other sole proprietorships.

Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker.

Subcontractor costs, reimbursements for purchases a contractor makes at a customer’s request, investment income, and employee-based costs such as payroll taxes are not excluded from receipts.

20. Are PPP loans, Economic Injury Disaster Loans (EIDL), advance grants from EIDL, SBA Section 1112 debt relief payments, targeted advance grants, and/or state and local small business grants (via CARES Act or otherwise) included within gross receipts for 2020?

It is unlikely these emergency funds will be included in gross receipts calculations for RRFG. The National Restaurant Association is actively seeking to exclude these funds.

INTERACTION WITH OTHER FEDERAL COVID-19 RELIEF PROGRAMS

21. If I returned my 1st Draw PPP loan in whole before the applicable safe harbor deadline on May 18, 2020, is it deducted from my eligible grant amount?

No. If an entity returned a PPP loan during the Safe Harbor period, it is not deducted from the RRFG amount.

22. Is an EIDL deducted from eligible RRFG amounts?

No.

23. Is an EIDL advance grant or target advance grant deducted from eligible RRFG amounts?

No.

24. Are COVID-19 Employee Retention Tax Credits (ERTC) taken in 2020 and/or 2021 deducted from eligible RRFG amounts?

No. However, an entity is restricted from collecting ERTC for any “eligible wages” paid with RRFG funds.

PRIORITIZATION

25. How is a small business concern “owned and controlled by women” defined?

An eligible small business concern owned and controlled by women must (1) meet the [SBA's Size Standard requirements for a small business concern](#); (2) be at least 51% owned by one or more women; and (3) have the management and daily business operations controlled by one or more women. The concern must also qualify as small under the SBA Size Standards corresponding to the 6-digit North American Industry Classification System (NAICS) code. Eligible applicants might need to self-certify to meet all elements of this definition and follow other criteria established by SBA.

26. How is a small business concern “owned and controlled by veterans” defined?

An eligible small business concern owned and controlled by veterans must (1) meet the [SBA's Size Standard requirements for a small business concern](#); (2) be at least 51% owned by one or more veterans; and (3) have the management and daily business operations controlled by one or more veterans. The concern must also qualify as small under the SBA Size Standards per the 6-digit NAICS code. Eligible applicants might need to self-certify to meet all elements of this definition and follow other criteria established by SBA.

27. How is a small business concern “owned and controlled by socially and economically disadvantaged individuals” defined?

An eligible small business concern owned and controlled by socially and economically disadvantaged individuals must be at least 51% unconditionally owned by one or more socially and economically disadvantaged individuals. While this is not yet defined in regulations, both prongs of social and economic disadvantage are necessary under this statute. The concern must also qualify as small under the SBA Size Standards corresponding to the 6-digit NAICS code. We expect the SBA to follow the general regulatory requirements for socially disadvantaged individuals by requiring a self-certification that the individual(s) have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group

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without regard to their individual qualities. Individuals who are members of the following groups are normally presumed to be socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (including Alaska Natives and Native Hawaiians); Asian Pacific Americans; or Subcontinent Asian Americans. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared with others in the same business area who are not socially disadvantaged. Eligible applicants might need to self-certify to meet all elements of this definition and follow other criteria established by SBA.

ELIGIBLE EXPENSES

28. What are the eligible expenses for RRFG?

Payroll; payments of principal or interest on any mortgage obligation (excludes prepayment of principal on a mortgage obligation); rent (excludes prepayment of rent); utilities; maintenance expenses such as construction to accommodate outdoor seating AND walls, floors, deck surfaces, furniture, fixtures, and equipment; supplies such as protective equipment and cleaning materials; food and beverage expenses that are within the scope of the normal business practice of the eligible entity before the covered period; covered supplier costs; operational expenses; paid sick leave; any other expenses that the SBA determines to be essential.

29. What is the time frame for when these eligible expenses can be—or could have been—incurred?

An eligible entity can use grant funds for eligible expenses incurred from February 15, 2020 until December 31, 2021. The SBA may extend this covered period an additional 14 months, until March 11, 2023, and has the authority to extend it up to 2 years after enactment of the RRFG program.

30. What happens if the entity does not spend all of the grant funds by the end of the covered period?

If an entity cannot use all grant funds or permanently ceases operations on or before the December 31, 2021 (or a date extended by SBA), the entity must return the unused funds to the U.S. Department of Treasury.

31. Do food and beverage expenses—within the normal business practice of the entity—include alcohol?

The National Restaurant Association is actively seeking clarity on this in federal regulations.

32. Entities who met eligible expenses might have put them on a personal- or business-line of credit—can the entity pay the credit card bill to satisfy the eligible expense? If so, is the interest on this transaction included as an eligible expense?

It is likely that debt services will be an eligible expense for RRFG, but the National Restaurant Association is actively seeking clarity on this in federal regulations.

33. Is the repayment of SBA 7(a) loans, PPP loans or EIDLs an eligible expense?

It is likely that debt services will be an eligible expense for RRFG, but the National Restaurant Association is actively seeking clarity on this in federal regulations.

PUBLIC DISCLOSURE

34. Will RRFG applicants be made public?

This is uncertain and will need to be clarified in federal guidance.

35. Will RRFG recipients be made public? If so, how long after they accept the funds?

While the American Rescue Plan did not specify a public reporting process or mechanism for grant recipients and/or grant amounts, it is a reasonable expectation that federal grants would be subject to transparency requirements, including the Freedom of Information Act. For example, some PPP loan recipients were originally released by company name and by category of funding in June 2020. Subsequently, a federal court ordered the SBA under the Freedom of Information Act to release all PPP loan recipients by business names and loan amounts.

TAXABILITY

36. Will the RRFG be taxed as federal gross income?

Grants will not be included as federal taxable gross income by the IRS

37. Will entities be able to deduct federal tax expenses paid with RRFG funds?

Yes, the law states that “no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income.”

38. Can a state tax RRFG funds or disallow standard and necessary tax deductions on expenses paid with RRFG funds?

A state may be able to increase an eligible entity’s state tax liability associated with its acceptance of a federal RRFG. It will be important for an entity to be aware of its state’s tax conformity with the federal code and how its state plans to treat the RRFG funds. Many states automatically accept changes to the federal tax code, which protect the tax status of RRFG.

39. How are different organizations situated for RRFG?

Non-taxable income on the grant is added to the basis for S Corp shareholders and the partner’s basis in a partnership.

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