
Restaurant Revitalization Fund to Provide Funding to Hardest Hit Industry

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On March 11, 2021, the **American Rescue Plan Act of 2021, H.R. 1319** (the "Act") was signed into law. The Act is an appropriations bill and stimulus package that provides nearly \$1.9 trillion in COVID-19 relief to businesses, individuals, and education systems. The Act follows other COVID-19 related stimulus bills, such as the CARES Act and the Consolidated Appropriations Act.

This Act provides funding for the food industry, one of the hardest hit industries during the COVID-19 pandemic, which includes **restaurants, bars, breweries, and food trucks**. Similar to the Paycheck Protection Program ("PPP") funding, the Act carves out \$28.6 billion relief for restaurants, expressly through what is known as the Restaurant Revitalization Fund ("RRF").

Recipients are not required to repay the funding, as long as the funds are used for eligible business expenses/purposes no later than March 11, 2023. Essentially, if the funds are used for a proper purpose, then the funds will be considered a grant.

The Small Business Administration ("SBA") will allow applicants to start the registration process for funding on April 30, 2021, at 9:00 am. **The SBA's portal for applications open on May 3, 2021, at noon.** All eligible restaurants will be permitted to submit applications as soon as the portal opens. It is important to note that during the first twenty-one (21) days of the launch, the SBA will prioritize its review of applications for small businesses owned by – (1) women, (2) veterans, and (3) socially and economic disadvantaged individuals (defined below). After the initial 21 day prioritization period, the SBA will fund all eligible applications on a first-come, first-serve basis, until the funds are depleted. Therefore, submit your application as soon as the portal opens!

Socially disadvantaged individuals are defined as those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are defined as those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with others in the same business area who are not socially disadvantaged.

The Act intentionally set aside \$5 billion for the smallest applicants, for example, restaurants with \$500,000.00 or less in 2019 gross receipts.

Eligibility for Funds

Which Businesses are eligible?

- The Act designates the following types of businesses that are eligible –**restaurants, food stands, food trucks, food carts, caterers, saloons, inns, taverns, bars, lounges, brewpubs, tasting rooms, taprooms, and licensed facility or premise of a beverage alcohol producer where the public taste, sample, or purchase products.**
- Bakeries, brewpubs, tasting rooms, breweries, microbreweries, wineries, and distilleries must have at least 33% of their 2019 gross receipts in on-site sales to the public to be eligible. Similar, Inns will need to provide documents showing that on-site sales of food and beverage to the public comprised of at least 33% of gross receipts for 2019.

- Franchise restaurant owners that do not own more than twenty (20) restaurants are likely eligible.
- Unlike PPP, the RRF does not limit funding based on the business' number of employees.

Which Businesses are not eligible?

- Business owners that own more than twenty (20) restaurants are **not**
- Entities that are part of publicly traded company or owned by a state or local government are **not** eligible to apply.
- Non-profit organizations
- Permanently closed businesses

How to apply

- You may either use an SBA recognized third-party point-of-sale vendor (i.e. Clover, NCR Corporation, or Square), or go directly through the SBA using their online application portal (SBA Portal)

How will the SBS determine 2019 or 2020 Gross Receipts? To determine gross receipts and eligible expense documentation, any of the following documents may be submitted:

- Business tax returns
- IRS form 1120, 1140, Schedule F.
- Partnerships IRS Form 1065, including K-1
- Bank statements
- Externally or internally prepared financial statements such as income statements or profit loss statement; and
- Point-of-sale reports, including IRS Form 1099-K
- Bakeries, brewpubs, tasting rooms, breweries, microbreweries, wineries, and distilleries can also use figures shown on Trade Bureau Forms 5130.9 or TTB. For businesses that opened in 2020, the applicant's original business model should have contemplated at 33% of gross receipts in on-site sale to the public.
- Eligible Inns will need to provide documents showing that on-site sales of food and beverage to the public comprised at least 33% of gross receipts for 2019. For businesses that opened in 2020, the applicant's original business model should have contemplated at least 33% of gross receipts in on-site sales to the public.
- *Gross receipts do not include amounts received from – (1) 1st or 2nd draw PPP loans, (2) Economic Injury Disaster Loans (EIDL), (3) EIDL Advance or Targeted EIDL Advance, (4) State or local grants, or (5) SBA Section 1112 payments.

Funding Available

- \$500 Million set aside for applicants with 2019 gross receipts of \$50,000 or less.
- \$5 Billion set aside for applicants with 2019 gross receipts of \$500,000 or less
- \$4 Billion set aside for applicants with 2019 gross receipts of \$500,000 to \$1.5 million.
- Minimum award is \$1,000.

How Funding is Calculated

- **Calculation 1.** For applicants in operation before or on January 1, 2019. 2019 gross receipts minus 2020 gross receipts, minus Paycheck Protection Program (PPP) loan amounts.
- **Calculation 2.** For applicants that began operations partially through 2019. Average 2019 monthly gross receipts times 12, minus 2020 gross receipts minus, PPP loan amounts.
- **Calculation 3.** For applicants that began operations on or between January 1, 2020, and March 10, 2021, that have not yet opened but have incurred eligible expenses: Amount spent on eligible expenses between February 15, 2020, and March 11, 2021, minus 2020 gross receipts, minus PPP loan amounts.

- *Entities that began operations partially through 2019 may elect to use either Calculation 2 or Calculation 3.

What can the funds be used for?

- Business payroll costs, which may include paid sick leave;
- Principal and interest payments on a mortgage, not including any prepayments on principal;
- Rent payments, not including prepayments;
- Business utilities;
- Business maintenance expenses including construction to accommodate outdoor seating and walls, floods, deck surfaces, furniture, fixtures, and equipment;
- Supplies including personal protective equipment and cleaning materials;
- Food and beverage expenses within the eligible entity's scope of normal business practice before the covered period, which runs from Feb. 15, 2020, through Dec. 31, 2021, or another date as determined by the SBA;
- Covered supplier costs;
- Operational expenses;
- Paid sick leave; and
- Any other expenses the SBA determines to be essential to maintaining the eligible entity

If you have any questions about the RRF, please contact Nathan Duggins at anduggins@tuggleduggins.com or (336) 271-5246, Michael Wenig at atmwenig@tuggleduggins.com or (336) 271-5216, Ross Hamilton at rhamilton@tuggleduggins.com or (336) 271-5279, or Shawn Poole at atspoole@tuggleduggins.com or (336) 271-5256. Please also follow our Twitter account @TuggleDuggins at <https://twitter.com/TuggleDuggins> for news and insights related to changes in the law related to the COVID-19 pandemic.

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