



Order Up! Restaurant Revitalization Fund to Provide Billions in Restaurant Relief

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Background

On March 6, 2021, the Senate passed President Joe Biden's \$1.9 trillion COVID-19 relief package, known as the American Rescue Plan (the "ARP"). The ARP includes a \$28.6 billion fund to aid restaurants, also known as the Restaurant Revitalization Fund (the "Fund"). The House of Representatives voted to approve the Senate's amendments to the ARP on March 10, 2021. The ARP was then sent to President Joe Biden's desk and officially signed into law on March 11, 2021.

Eligible Entities

An eligible entity must be classified as one of the following: a restaurant, food stand, food truck, food cart, caterer, saloon, inn, tavern, bar, lounge, brewpub, tasting room, taproom, licensed facility or premise of a beverage alcohol producer where the public may taste, sample, or purchase products, or other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink. Eligible entities are also defined as any of the previously listed businesses that are located in an airport terminal or are a Tribally-owned concern.

However, eligible entities do not include an entity described by the previous paragraph that (i) is a State or local government-operated business; (ii) as of March 13, 2020, owns or operates (together with any affiliated business) more than 20 locations, regardless of whether the locations do business under the same name or

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different names; and (iii) has a pending application for or has received a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act. Eligible entities also do not include any entity that is a publicly-traded company, which means the entity is majority owned or controlled by an entity that is an issuer, the securities of which are listed on a national securities exchange.

Availability and Prioritization of the Fund

The Fund provides \$28.6 billion of debt-free relief available to certain eligible restaurants. Of the total amount available in the Fund, \$5 billion will be available to eligible entities with gross receipts of not more than \$500,000 during 2019. In addition, \$20 billion will be available to the Administrator of the Small Business Administration (the “Administrator”) to award grants in an equitable manner to eligible entities of different sizes, based on annual gross receipts.

During the first 21 days in which the Administrator is awarding grants, the Administrator must prioritize eligible entities which are owned and controlled by women, veterans, and socially and economically disadvantaged people. On or after 60 days after the date of the ARP’s enactment, or another period determined by the Administrator, the Administrator may make grants from the Fund to any eligible entity, regardless of its annual gross receipts.

How Much a Restaurant May Receive

An eligible entity may not receive an aggregate amount of grants exceeding \$10 million for itself and any of its affiliated businesses. Further, an eligible entity will be limited to \$5 million per physical location. The amount of funds an eligible entity may receive is dependent on its need and when it opened its doors. Generally, grant amount will equal the pandemic-related revenue loss of the eligible entity. However, the ARP defines pandemic-related revenue loss differently depending on how long an eligible entity has been in business.

If the eligible entity has been in operation since before 2019, its pandemic-related revenue loss is equal to its gross receipts during 2020 subtracted from the gross receipts of the eligible entity in 2019, if the sum is greater than zero. If an eligible entity opened during 2019, its pandemic-related revenue loss is the difference between (a) its average monthly gross receipts in 2019 multiplied by 12 and (b) its average monthly gross receipts in 2020 multiplied by 12. Eligible entities that opened anytime between January 1, 2020 and the day before the enactment of the ARP have a pandemic-related revenue loss equal to any expenses incurred from the permitted uses of the Fund’s grants minus any gross receipts received.

Eligible entities that are not yet open on the date of their application for a grant under the Fund have a pandemic-related revenue loss equal to any incurred expenses related to the permitted uses. The Administrator is also given discretion to determine a different pandemic-related revenue loss formula for the eligible entities that opened either during or after 2019. If any eligible entity who receives a grant has also received a PPP loan, the amount of the PPP loan will be subtracted from the eligible grant total the entity will receive from the Fund. Further, any amount of a grant made to an eligible entity based on

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estimated receipts that is greater than the actual gross receipts of such entity in 2020 shall be returned to the Treasury.

Restriction of Restaurant Spending

Eligible entities are restricted to only spending their grant money on permitted uses until the end of the covered period. The ARP defines the covered period as beginning on February 15, 2020 and ending on December 31, 2021, or a date to be determined by the Administrator that is not later than two years after the enactment of the ARP.

Permitted uses include the following expenses incurred as a direct result of, or during the COVID-19 pandemic: (i) payroll costs (which shall not exceed \$100,000 a year per employee); (ii) payments of principal or interest on any mortgage obligation (which shall not include any prepayment of principal on a mortgage obligation); (iii) rent payments, including rent under a lease agreement (which shall not include any prepayment of rent); (iv) utilities; (v) maintenance expenses, including (a) construction to accommodate outdoor seating and (b) walls, floors, deck surfaces, furniture, fixtures, and equipment; (vi) supplies, including protective equipment and cleaning materials, (vii) food and beverage expenses that are within the scope of the normal business practice of the eligible entity before the covered period; (viii) covered supplier costs, as defined in section 7A(a) of the Small Business Act; (ix) operational expenses; (x) paid sick leave; and (xi) any other expenses that the Administrator determines to be essential to maintaining the eligible entity.

If an eligible entity fails to use all grant funds or permanently ceases operations on or before the last day of the covered period, that entity must return to the Treasury any funds that it did not spend on the Permitted uses.

TAKE ACTION

The passage of the ARP and the Fund provides a huge opportunity for restaurants that were hit hard by the COVID-19 pandemic. The Fund will provide \$28.6 billion worth of relief to restaurants based on their size and need, among other factors. Eligible entities will soon be able to apply for the relief they have been seeking for nearly a year.