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A Seat at the Table:

Restaurants to Receive Long-Awaited Stimulus Funds under the American Rescue Plan

Affiliation Overview



Coronavirus Resource Center

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. We will continue to evaluate the CARES Act, the Consolidated Appropriations Act, 2021, related regulations and any subsequent legislation to provide our clients guidance in real time. Please visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take, and resources to help manage ongoing operations.

DISCLAIMER: This publication will be updated regularly to reflect any further changes in the key terms of the PPP resulting from any new legislation, rules, and guidance issued by the Federal government. While we have addressed the principal criteria of the program and will endeavor to add updates, it is not possible to cover all of the (ever-changing) rules and guidance published by the SBA and Treasury. THIS PUBLICATION IS INTENDED TO BE A HELPFUL RESOURCE, BUT SHOULD NOT BE VIEWED AS LEGAL ADVICE FOR ANY SPECIFIC SITUATION.

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A SEAT AT THE TABLE
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May 3, 2021

Affiliation Overview

The restaurant industry has been among the hardest hit by the COVID-19 pandemic. The National Restaurant Association reported in its 2021 State of the Restaurant Industry that, as of December 1, 2020, more than 110,000 eating and drinking places had closed for business either temporarily or permanently since the pandemic's start.ⁱ Industry-wide, restaurants saw a decline of \$240 billion in total 2020 sales relative to pre-COVID-19 pandemic forecasts and a decline in nearly 2.5 million jobs from pre-COVID-19 pandemic levels.

On March 11, 2021, President Biden signed the [American Rescue Plan Act](#) (the “ARPA”) into law. Section 5003 (Support for Restaurants) of the ARPA appropriates \$28.6 billion for a new Restaurant Revitalization Fund from which the Small Business Administration (the “SBA”) will oversee grants to eligible food service providers. This program is aimed at providing critical additional support to the nation's restaurants and other food service providers to give them a chance to survive the remainder of the pandemic. The program targets small businesses: eligibility and grant amounts are limited based upon the number of locations of the applicant and its “affiliated businesses”. This alert focuses only on how the SBA determines affiliation and number of locations, which differ from other programs. For other aspects of the program please see the SBA's [Restaurant Revitalization Fund website](#), the [SBA's webinar briefing](#) of the program and the SBA's [Restaurant Revitalization Fund Knowledge Base](#) (the “Knowledge Base”).

The application for the Restaurant Revitalization Fund Grant (the “RRF Grant”) program will open on Monday, May 3, 2021 at noon ET. The SBA's website provides information on [how to apply](#). Only applications from priority groups will be processed in the first 21 days of the RRF Grant program. Please see the SBA's website for further information about priority groups.

This alert only covers the guidance provided by the SBA and the ARPA relating to affiliated businesses and number of locations for the purposes of administering the Restaurant Revitalization Grant program. THIS ALERT IS INTENDED TO BE A HELPFUL RESOURCE, BUT SHOULD NOT BE VIEWED AS LEGAL ADVICE FOR ANY SPECIFIC SITUATION.

ARPA uses the concepts of “affiliated business” and “locations” in two key situations for purposes of issuing RRF Grants.

1. **Determining eligibility** – An entity is not eligible if, as of March 13, 2020, it, together with any *affiliated business* owned or operated *more than 20 locations*, regardless of whether those locations do business under the same or multiple names.
2. **Determining grant amount** – The aggregate amount of grants made to an eligible entity and any *affiliated businesses* of the eligible entity shall not exceed \$10 million and shall be limited to \$5 million *per physical location* of the eligible entity.

The SBA explained how to determine if another entity is an “affiliate business” in the [Knowledge Base](#).

- An “affiliated business” is a business in which the applicant entity has:
 - an **ownership interest** of not less than 50%, or
 - the **contractual authority to control the direction** of the other business, based on arrangements or agreements in place as of March 13, 2020.
- Sole proprietors and self-employed individuals must count all businesses reported on IRS Form 1040, Schedule C as affiliates.
- A holding company whose sole purpose is to hold the real estate for the applicant entity should not be counted as a location or affiliate.
 - However, if the applicant entity owns a holding company or management company that owns or manages a business other than the applicant business, these entities should be counted as separate affiliates and locations.
- When an applicant entity is filling out an RRF application, the applicant entity will be asked if it has affiliates. The applicant entity must select “yes” in the following situations:
 - If the RRF eligible applicant entity has an equity interest or a right to profit distributions of at least 50% of at least one other business entity; and/or
 - If any owner of at least 20% of the equity interests of the RRF eligible applicant entity has an equity interest or a right to profit distributions of at least 50% of at least one other business entity; and/or
 - If the applicant entity is a holding company or management company that owns or manages a business other than the applicant entity, or if the applicant entity is held or managed by a company that owns or manages other businesses, those entities must be counted as part of the affiliated business.
 - These points, taken together, mean that an applicant must include in its calculations: (i) any location the applicant owns (at least 50%) or operates; (ii) any location owned or operated by any entity in which the applicant owns at least 50% of the equity or profits interest or which it controls (through contractual arrangements); and (iii) any location owned by any entity in which any person that has at least a 20% equity interest in the applicant holds at least 50% of the equity or profits interests.

The SBA also explained how it defines “location” in the [Knowledge Base](#).

- A “location” is each place where the applicant entity or its affiliated businesses conduct sales from a permanent structure.
 - If the applicant entity or its affiliated businesses conduct sales from multiple permanent locations, each address constitutes a separate location.
 - However, a caterer or single business with multiple non-permanent food stands, trucks, or carts may only have one physical location, which is where the business is headquartered. Even if the business owns five food trucks, it will only be considered to have one location.
- The SBA includes all types of businesses for the purposes of determining how many locations an applicant entity has, even if the businesses operate under different names, different EIN numbers or are different types of business. **All locations must be counted, even if they are in a different industry and are not eligible for RRF Grants.**
- For example, if an applicant entity and its affiliated businesses own or operate five restaurants and 16 dry cleaners, the applicant entity has 21 locations, which means it is not eligible for an RRF Grant. If the combined individuals and/or entities calculated in the manner described above own or control multiple locations, each of those locations must be counted toward the 20-location maximum limit for eligibility and the \$10 million aggregate limit on RRF Grant funding.

Note that while we have focused on the aspects of “affiliation” and “locations”, there are other criteria that could affect or restrict an applicant from receiving RRF Grant funding. These are set out in detail and explained at the RRF Knowledge Base.

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¹ See National Restaurant Assoc., *State of the Restaurant Industry Report Measures Virus' Impact on Business* (Jan. 25, 2021), <https://restaurant.org/articles/news/new-report-measures-pandemics-effect-on-business>.

