American Rescue Plan Provides $28.6 Billion in Relief for Restaurants via the Restaurant Revitalization Grant

March 15, 2021

Introduction

On March 11, 2021, President Biden signed into law the $1.9 trillion coronavirus relief bill entitled American Rescue Plan Act of 2021 ("ARP"), which includes a $28.6 billion grant program under Section 5003, *Support for Restaurants*. The focus of this Alert is on the key clauses of the Restaurant Revitalization Grant pursuant to the ARP. We expect the Small Business Administration ("SBA") to issue additional formal guidance in the next few weeks.

Entities that are Eligible for the Grant

An eligible entity includes a place of business in which the public or patrons assemble for the primary purpose of being served food or drinks. Eligible businesses include the following:

- Restaurants
- Food Stands, Trucks or Carts

- Bars, Taverns, Inns, Lounges, Saloons, Taprooms or Brew Pubs
- Caterers
- Tasting Rooms
- Licensed facilities or premises of a beverage alcohol producers where the public may taste, sample, or purchase products
- Any of the above that is located in an airport terminal or that is Tribally-owned

Entities that are Not Eligible for the Grant

An entity described above is not eligible for this grant if it:

- Is a state or local government-operated business
- As of March 13, 2020, owns or operates (together with any affiliated business) **more than 20 locations**
- Has a pending application for, or has received, a grant under Section 324 of the Economic Aid to Hard-Hit Businesses, Nonprofits and Venues Act ("Shuttered Venues Grant Program")
- Is a publicly-traded company

Calculating the Grant

An eligible entity calculates its "Pandemic-Related Revenue Loss" (i.e., Restaurant Revitalization Grant) by subtracting its 2020 gross receipts from its 2019 gross receipts. If the entity was not in operation for all of 2019, the entity takes the difference between the 2019 annualized monthly gross receipts and its 2020 annualized monthly gross receipts.

If the entity opened during 2020, the entity would subtract Payroll Costs (similar to Payroll Costs as defined for Paycheck Protection Program/PPP loans) from gross receipts. If an entity has not yet opened as of the date of application for a grant, but has incurred qualified expenses, the grant will be based on the amount of those expenses.

The ARP also provides that the SBA may develop another methodology for determining the grant for all situations listed above. In addition, the computed grant amount shall be reduced by any amounts received from a covered loan made under paragraphs 36 or 37 of section 7 (a) of the Small Business Act in 2020 or 2021 (this includes PPP loans).

Maximum Grant Amount

The aggregate amount of grants made to an eligible entity and any affiliated businesses of the eligible entity shall not exceed $10,000,000 and shall be limited to $5,000,000 per physical location of the eligible entity.

Timing of Grants

The ARP provides that the first $5 billion in grants shall be made available to entities with 2019 gross receipts of not more than $500,000. Thereafter, the remaining funds shall be distributed by the SBA in an equitable manner to eligible entities of different sizes based on annual gross receipts. During the initial 21-day period, the SBA shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women, small business concerns owned and controlled by veterans, or socially and economically disadvantaged small business concerns.

Use of Grant Funds

The Covered Period for the grant is from February 15, 2020 through December 31, 2021 or a date to be determined by the SBA that is not later than 2 years after the date of enactment of this grant. The ARP permits eligible entities to use the grant during the Covered Period (including retroactive application) for the following expenses incurred as a direct result of or during the COVID-19 pandemic:

A. Payroll costs

B. Payments of principal or interest on any mortgage obligation (which shall not include any prepayment of principal on a mortgage obligation)

C. Rent payments, including rent under a lease agreement (which shall not include any prepayment of rent)

D. Utilities

E. Maintenance expenses, including:

i. construction to accommodate outdoor seating; and

ii. walls, floors, deck surfaces, furniture, fixtures, and equipment.

F. Supplies, including protective equipment and cleaning materials

G. Food and beverage expenses that are within the scope of the normal business practice of the eligible entity before the Covered Period

H. Covered supplier costs, as defined in section 7A(a) of the Small Business Act (as redesignated, transferred, and amended by section 304(b) of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Public Law 116–260))

I. Operational expenses

J. Paid sick leave

K. Any other expenses that the Administrator determines to be essential to maintaining the eligible entity

Returning Grant Funds

If an eligible entity that receives a grant fails to use all grant funds or permanently ceases operations on or before the last day of the Covered Period, the eligible entity shall return to the Treasury any funds that the eligible entity did not use for the allowable expenses.

Required Certifications

An eligible entity applying for a grant shall make a good faith certification that:

i. **the uncertainty of current economic conditions** makes necessary the grant request to support the ongoing operations of the eligible entity; and

ii. the eligible entity has not applied for or received a grant under section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

Tax Treatment of these Grants

Pursuant to Section 9673 of the ARP, Restaurant Revitalization Grants received from the SBA shall not be included in the gross income of the entity that receives such amounts.

Key members of our COVID-19 Resource Team, Greg Wank, Anthony Bracco and David Beckman, continue to monitor ongoing updates to the PPP Program and other relief programs such as the Restaurant Revitalization Grant. To better understand how the changes impact your unique situation, please contact the individuals listed above, your Anchin Relationship Partner or our Anchin COVID-19 Resource Team at COVID19@anchin.com.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.