

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Blessed Cajuns, LLC, et al.,

Plaintiffs,

v.

Isabella Casillas Guzman, et al.,

Defendants.

Case No. 4:21-cv-00677-O

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Section 5003 of the American Rescue Plan Act of 2021 appropriates \$28.6 billion to create the Restaurant Revitalization Fund, and it authorizes the Small Business Administration to distribute this money to restaurants that have been harmed by the COVID-19 pandemic. But the statute requires the Small Business Administration to “prioritize awarding grants” to businesses owned by women and racial minorities during the first 21 days of the program, which began on May 3, 2021, and the SBA’s website says that it will “only process and fund priority group applicants” during this 21-day window. *See* Exhibit 1.

On May 18, 2021, the Small Business Administration issued a press release announcing that it has already received 303,000 applications for relief, representing over \$69 billion in requested funds. *See* Exhibit 2. And so far, “nearly 38,000 applicants have been approved for more than \$6 billion.” *Id.* “Of the overall submitted applications, 57 percent came from women, veterans, and socially and economically disadvantaged business owners.” *Id.*

This raises the prospect, and perhaps makes it nearly certain, that the entire \$28.6 billion that Congress appropriated will be depleted before restaurants owned by white

men can even be considered for relief under the program. The Court should issue immediate injunctive relief to prevent this from happening.

FACTS

Section 5003 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2, provides aid to restaurants and restaurant owners that have been harmed by the COVID-19 pandemic. It appropriates \$28.6 billion to create the Restaurant Revitalization Fund, which is to be administered by the Small Business Administration. The statute provides that:

During the initial 21-day period in which the Administrator awards grants under this subsection, the Administrator shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women (as defined in section 3(n) of the Small Business Act (15 U.S.C. 632(n))), small business concerns owned and controlled by veterans (as defined in section 3(q) of such Act (15 U.S.C. 632(q))), or socially and economically disadvantaged small business concerns (as defined in section 8(a)(4)(A) of the Small Business Act (15 U.S.C. 637(a)(4)(A))). The Administrator may take such steps as necessary to ensure that eligible entities described in this subparagraph have access to grant funding under this section after the end of such 21-day period.

American Rescue Plan Act of 2021, Pub. L. No. 117-2 § 5003(c)(3)(A). This compels the SBA Administrator to confer priority upon businesses owned and controlled by “women,” “veterans,” and “socially and economically disadvantaged small business concerns.” A “socially disadvantaged individual” is defined by statute to include:

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.

15 U.S.C. § 637(a)(5). And the SBA’s regulations presume, without any analysis bearing on its use in the context of the Restaurant Revitalization Fund, that the following individuals are “socially disadvantaged”:

Black Americans; Hispanic Americans; Native Americans (Alaska Natives, Native Hawaiians, or enrolled members of a Federally or State recognized Indian Tribe); Asian Pacific Americans (persons with origins

from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA according to procedures set forth at paragraph (d) of this section.

13 C.F.R. § 124.103. An “economically disadvantaged individual,” by contrast, is defined by statute to include:

socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe’s access to capital markets.

15 U.S.C. § 637(a)(5)(B). The SBA’s website says that it will “*only* process and fund priority group applications” during the first 21 days of the program, which began on May 3, 2021, and it will only process and fund those applications if the applicant “has self-certified that it meets the eligibility requirements for a small business owned by women, veterans, or socially and economically disadvantaged individuals.” *See* Exhibit 1; *see also* <https://bit.ly/3tJ4FrT> (last visited on May 24, 2021).

None of the Plaintiffs in this case fit within any of the preferred categories described in section 5003. *See* Declaration of Jason Smith ¶¶ 4–5, 12; Declaration of Janice Smith ¶¶ 4–5, 12; Declaration of Eric Nyman ¶¶ 4–5, 12.

Mr. and Mrs. Smith are co-owners of Blessed Cajuns, LLC, and their restaurant was hit hard by the pandemic and lost over \$350,000 of gross revenue. *See* Declaration of Jason Smith ¶ 7; Declaration of Janice Smith ¶ 7. They filed an application for relief under the Restaurant Revitalization Fund on May 4, 2021, and are eligible for relief up to \$187,753.17. *See* Declaration of Jason Smith ¶ 9; Declaration of Janice Smith ¶ 9. Mr. Nyman is the owner of PSBH LLC, and his restaurant was hit hard by the pandemic and lost over \$800,000 of gross revenue. *See* Declaration of Eric Nyman ¶ 7.

On May 18, 2021, the Small Business Administration issued a press release announcing that it has already received 303,000 applications for relief, representing over \$69 billion in requested funds. *See* Exhibit 2. And so far, “nearly 38,000 applicants have been approved for more than \$6 billion.” *Id.* “Of the overall submitted applications, 57 percent came from women, veterans, and socially and economically disadvantaged business owners.” *Id.*

The SBA’s announcement of May 18, 2021, raises the prospect that the entire \$28.6 billion that Congress appropriated will be depleted before applications submitted by non-priority applicants are even eligible to be considered. Indeed, it makes it more than likely that the appropriated funds will be depleted. Plaintiffs and their restaurants respectfully seek a preliminary injunction to bring an immediate halt to these unconstitutional race and sex preferences.

THE PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION

To obtain a preliminary injunction, the plaintiffs must show: “(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of

an injunction will not disserve the public interest.” *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). All four factors support a preliminary injunction.

I. The Plaintiffs Are Likely To Succeed On The Merits Because The Race And Sex Preferences in Section 5003 Are Patently Unconstitutional

Racial classifications are antithetical to the Constitution, as the Supreme Court has recognized time and time again. *See Washington v. Davis*, 426 U.S. 229, 239 (1976) (“The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race.”); *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (footnote omitted) (“A core purpose of the Fourteenth Amendment was to do away with all governmentally imposed discrimination based on race.”); *see also Bolling v. Sharpe*, 347 U.S. 497, 500 (1954) (requiring the federal government to comply with the constitutional prohibition on racial on the same terms as the states). All government-imposed racial classifications are “presumptively invalid”¹ and “inherently suspect,”² and they will not be tolerated unless the government proves that a racial classification is “narrowly tailored” and “furthers compelling governmental interests.” *Johnson v. California*, 543 U.S. 499, 505 (2005) (citation and internal quotation marks omitted).

Government-imposed sex classifications are also presumptively invalid, and they will not be sustained unless the government demonstrates an “exceedingly persuasive justification” for its discriminatory regime. *United States v. Virginia*, 518 U.S. 515, 531 (1996) (“Parties who seek to defend gender-based government action must demonstrate an ‘exceedingly persuasive justification’ for that action.” (citation omit-

1. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 272 (1979).
2. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 223 (1995) (citation and internal quotation marks omitted).

ted)); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 152 (1994) (Kennedy, J., concurring in judgment) (“[O]ur case law does reveal a strong presumption that gender classifications are invalid.”).

There is no conceivable justification for the race and sex preferences in section 5003 that could satisfy the “strict scrutiny” standard or the “exceedingly persuasive justification” requirement. The COVID-19 pandemic has harmed restaurants owned by members of all races and sexes. It has infected nearly 33 million Americans without regard to their race or sex. And even if there were some unique vulnerabilities to infection among women or certain racial groups, that would have no effect on the economic misfortunes that befall a person’s restaurant. Restaurants lost business during the pandemic because dine-in options were unavailable or strictly limited, and the amount of revenue lost had nothing to do with the race or sex of the restaurant owner. It is not as though white men were getting special dispensations from regulatory authorities to keep their restaurants’ dining area open.

If the government thinks it can “prioritize” women and racial minorities in an effort to compensate for past discriminatory actions that have occurred in society generally, those efforts will be foreclosed by *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). *Croson* emphatically rejected the idea that amorphous claims of past discrimination can justify a present-day racial preference in the distribution of government largesse. *See id.* at 499–506; *see also Adarand*, 515 U.S. 200 (extending *Croson*’s holding to the federal government). The statute contains no findings of past discrimination that are specific enough to warrant remedial preferences in the Restaurant Revitalization Fund, and the defendants cannot point to any other specific evidence related to the industry in question that would support such remedial action. *See Croson* at 500.

This is nothing more than a naked discriminatory preference that turns a disaster-relief program into a politicized spoils system. And in all events, there is no basis in

reason or evidence to think that precluding white men from obtaining funds from the Restaurant Revitalization Program will do anything to “remedy” past societal discrimination.

II. The Plaintiffs Will Suffer Irreparable Harm Absent A Preliminary Injunction

The plaintiffs will suffer irreparable harm absent a preliminary injunction because the entire \$28.6 billion that Congress appropriated is likely to be depleted before their applications will be eligible for consideration.

On May 12, the SBA announced that it had already received more than 147,000 applications from members of the “prioritized” groups—and these prioritized applications are “requesting a total of \$29 billion in relief funds.” Exhibit 3. The SBA is therefore on track to spend the entire \$28.6 billion on these “prioritized” groups before applications submitted by white men can even be considered. And even if the SBA does not spend the entire \$28.6 billion on these “prioritized” applications, the remaining pot of money is certain to be greatly reduced when Plaintiffs applications can finally be considered on May 24, 2021.

There is no mechanism to “claw back” this money once it is dispensed, and the defendants’ sovereign immunity makes it impossible for the plaintiffs to recover damages if these unconstitutional race and sex preferences wind up excluding them from the Restaurant Revitalization Fund.

Plaintiffs are suffering additional irreparable harm because they are encountering race and sex discrimination at the hands of government officials, which inflicts irreparable harm *per se*. See *Am. Civil Liberties Union of Ky. v. McCreary Cnty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003), *aff’d sub nom., McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005) (“[I]f it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.”). This

injury cannot be remedied absent a preliminary injunction because the defendants' sovereign immunity prevents retrospective relief.

III. The Harm to The Plaintiffs Outweighs Harms That Will Arise If a Preliminary Injunction Is Granted

The harm to the plaintiffs (and others who are being excluded from the Restaurant Revitalization Fund on account of their race and sex) outweighs any "harms" that might arise from the proposed preliminary injunction. At first glance, a fight over the distribution of government funds may seem like a zero-sum game. A remedy that prevents harm to the plaintiffs by increasing their chances of obtaining these funds will inflict an equal and opposite harm on the "prioritized" individuals whose chances of obtaining those funds is now reduced. But that analysis ignores the additional harms inflicted by the defendants' unconstitutional race and sex discrimination.

A preliminary injunction will not only alleviate the financial harms that are being inflicted the plaintiffs, it will also eliminate the injury to their constitutional right to be free from race and sex discrimination at the hands of the government. The "prioritized" individuals, by contrast, will be "harmed" if they receive less money from the Restaurant Revitalization Fund, but they will not encounter or experience any discriminatory treatment if the preliminary injunction is granted. The tips the scales decisively in favor of the plaintiffs.

IV. A Preliminary Injunction Is In The Public Interest

The protection of constitutional rights is by definition in the public interest. *See Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997) ("[T]he public interest clearly favors the protection of constitutional rights."); *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) ("[U]pholding constitutional rights surely serves the public interest."); *Connection Distributing Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) ("[I]t is always in the public interest to prevent violation of a party's constitutional rights."). If the Court agrees that the

plaintiffs are likely to succeed on their claim that the race and sex preferences in section 5003 are unconstitutional, then a preliminary injunction will be in the public interest as well.

V. The Plaintiffs' Motion For a Preliminary Injunction Complies With Rule 65(a) and Rule 65(c)

The attached declarations describe the immediate and irreparable injury that will result in the absence of a preliminary injunction. *See* Declaration of Jason Smith ¶¶ 6–7, 9; Declaration of Janice Smith ¶¶ 6–7, 9; Declaration of Eric Nyman ¶¶ 6–7, 9. Counsel for the defendants has already appeared in this case and will have an opportunity to respond before the Court rules.

Finally, it is not necessary to require a bond because the federal government will not suffer costs or damages from the proposed preliminary injunction. *See* Fed. R. Civ. P. 65(c).

CONCLUSION

The motion for a preliminary injunction should be granted.

Respectfully submitted.

GENE P. HAMILTON
Virginia Bar No. 80434
Vice-President and General Counsel
America First Legal Foundation
300 Independence Avenue SE
Washington, DC 20003
(202) 964-3721
gene.hamilton@aflegal.org

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Texas Bar No. 24075463
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
(512) 686-3941 (fax)
jonathan@mitchell.law

CHARLES W. FILLMORE
H. DUSTIN FILLMORE
The Fillmore Law Firm, L.L.P.
201 Main Street, Suite 801
Fort Worth, Texas 76102
(817) 332-2351 (phone)
(817) 870-1859 (fax)

ROBERT HENNEKE
Texas Bar No. 24046058
Texas Public Policy Foundation
901 Congress Avenue
Austin, Texas 78735
(512) 472-2700 (phone)
rhenneke@texaspolicy.com

chad@fillmorefirm.com
dusty@fillmorefirm.com

Dated: May 24, 2021

*Counsel for Plaintiffs and
the Proposed Class*

CERTIFICATE OF CONFERENCE

I certify that I e-mailed Christopher D. Dodge, counsel for the defendants, at 8:57 P.M. pacific time on May 23, 2021, to ask his position on the motion, but I had not yet heard back from him at the time we filed.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Proposed Class*

CERTIFICATE OF SERVICE

I certify that on May 24, 2021, I served this document through CM/ECF upon:

CHRISTOPHER D. DODGE
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
(202) 598-5571
christopher.d.dodge@usdoj.gov

Counsel for Defendants

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
*Counsel for Plaintiffs and
the Proposed Class*



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Restaurant Revitalization Fund

This program provides emergency assistance for eligible restaurants, bars, and other qualifying businesses impacted by COVID-19.

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APPLY NOW

Applications are now open. See [How to apply](#) for more detail.

This application can be filled out in Spanish if your internet browser is set to display in Spanish. To do this, set your browser's language setting (typically found under "Advanced Settings") to Spanish. Most browsers will require a restart to display in that language.

Program details

The American Rescue Plan Act established the Restaurant Revitalization Fund (RRF) to provide funding to help restaurants and other eligible businesses keep their doors open. This program will provide restaurants with funding equal to their pandemic-related revenue loss up to \$10 million per business and no more than \$5 million per physical location. Recipients are not required to repay the funding as long as funds are used for eligible uses no later than March 11, 2023.

[Sign up to receive email alerts from SBA as additional information about the Restaurant Revitalization Fund becomes available.](#)

Supplemental documents

- [Restaurant Revitalization Fund program guide](#)
- [Restaurant Revitalization Fund sample application](#) (SBA Form 3172)

Get help with your application

Federal guidelines require that we provide the same amount of information to each applicant. Therefore, SBA staff are limited on responses we can provide to applicants, including specific questions regarding RRF eligibility, potential award amount, and other detailed information. Some key information to know:

- For detailed information about how to calculate your award amount, please consult page 7-9 of the [RRF program guide](#).
- The IRS 4506T form is signed with your application during the e-sign process. You do not need to submit an additional 4506T.
- If you are entering a state in the address section(s) use the abbreviation in capital letters (e.g., PA, TX, ME, WA, etc.).

For assistance preparing your application, you can access the following:

- [RRF knowledge base support documentation](#)
- [Application portal screenshots](#)
- Call center support: 844-279-8898

You can also watch a previously recorded webinar training to help you prepare:

- [Webinar: Special briefing on RRF with SBA and Public Private Strategies Institute](#)
- [Webinar: Learn how to apply for RRF](#)

For assistance with your submitted application:

- Submit a message using the application platform inbox (preferred)
- Call center support: 844-279-8898

Who can apply

Eligible entities who have experienced pandemic-related revenue loss include:

Restaurants

- Food stands, food trucks, food carts
- Caterers
- Bars, saloons, lounges, taverns
- Snack and nonalcoholic beverage bars
- Bakeries (onsite sales to the public comprise at least 33% of gross receipts)
- Brewpubs, tasting rooms, taprooms (onsite sales to the public comprise at least 33% of gross receipts)
- Breweries and/or microbreweries (onsite sales to the public comprise at least 33% of gross receipts)
- Wineries and distilleries (onsite sales to the public comprise at least 33% of gross receipts)
- Inns (onsite sales of food and beverage to the public comprise at least 33% of gross receipts)
- Licensed facilities or premises of a beverage alcohol producer where the public may taste, sample, or purchase products

[Cross-program eligibility on SBA COVID-19 relief options](#)

How to apply

You can apply through SBA-recognized Point of Sale (POS) vendors or directly via SBA in a forthcoming online application portal:

<https://restaurants.sba.gov>. Participating POS providers include Square, Toast, Clover, NCR Corporation (Aloha), and Oracle. If you are working with Square or Toast, you do not need to register beforehand on the <https://restaurants.sba.gov> application portal.

Registration with SAM.gov is not required. DUNS or CAGE identifiers are also not required.

If you would like to prepare your application, view the sample application form. You will be able to complete this form online. Please do not submit RRF forms to SBA at this time.

[SBA Form 3172](#)

Additional documentation required:

- Verification for Tax Information: IRS Form 4506-T, completed

and signed by Applicant. Completion of this form digitally on the SBA platform will satisfy this requirement.

- Gross Receipts Documentation: Any of the following documents demonstrating gross receipts and, if applicable, eligible expenses
 - 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

For applicants that are a brewpub, tasting room, taproom, brewery, winery, distillery, or bakery:

- Documents evidencing that onsite sales to the public comprise at least 33.00% of gross receipts for 2019, which may include Tax and Trade Bureau (TTB) Forms 5130.9 or TTB. For businesses who opened in 2020, the Applicant's original business model should have contemplated at least 33.00% of gross receipts in onsite sales to the public.

For applicants that are an inn:

- Documents evidencing that onsite sales of food and beverage to the public comprise at least 33.00% of gross receipts for 2019. For businesses who opened in 2020, the Applicant's original business model should have contemplated at least 33.00% of gross receipts in onsite sales to the public.

When to apply

Applications are now open.

Priority period	SBA will accept applications from all eligible applicants, but only process and fund priority group applications. See "Priority groups"
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Days 1 through 21

During this period, SBA will fund applications where the applicant has self-certified that it meets the eligibility requirements for a small business owned by women, veterans, or socially and economically disadvantaged individuals.

See “Set asides” below.

Open to all applicants

SBA will accept applications from all eligible applicants and process applications in the order in which they are approved by SBA.

Days 22 through funds exhaustion

Priority groups

- A small business concern that is at least 51 percent owned by one or more individuals who are:
 - Women, or
 - Veterans, or
 - Socially and economically disadvantaged (see below).
- Applicants must self-certify on the application that they meet eligibility requirements
- **Socially disadvantaged individuals** are 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 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 to others in the same business area who are not socially disadvantaged.

Set asides

1. \$5 billion is set aside for applicants with 2019 gross receipts of not more than \$500,000
2. An additional \$4 billion is set-aside for applicants with 2019 gross receipts from \$500,001 to \$1,500,000
3. An additional \$500 million is set-aside for applicants with 2019 gross receipts of not more than \$50,000

*SBA reserves the right to reallocate these funds at the discretion of the Administrator.

Funding amount

Payment calculations

For detailed information about how to calculate your award amount, please consult page 7-9 of the [RRF program guide](#).

Calculation 1: for applicants in operation prior to or on January 1, 2019:

- 2019 gross receipts minus 2020 gross receipts minus PPP loan amounts

Calculation 2: for applicants that began operations partially through 2019:

- (Average 2019 monthly gross receipts x 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 and applicants 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 2021 gross receipts (through March 11, 2021) minus PPP loan amounts

For those entities who began operations partially through 2019, you may elect (at your own discretion) to use either calculation 2 or calculation 3.

Maximum and minimum amounts

SBA may provide funding up to \$5 million per location, not to exceed \$10 million total for the applicant and any affiliated businesses. The minimum award is \$1,000.

Gross receipts

For the purposes of this program, gross receipts does not include:

- Amounts received from Paycheck Protection Program (PPP) loans (First Draw or Second Draw)
- Amounts received from Economic Injury Disaster Loans (EIDL)
- Advances on EIDL (EIDL Advance and Targeted EIDL Advance)
- State and local grants (via CARES Act or otherwise)
- SBA Section 1112 payments

Allowable use of funds

Funds may be used for specific expenses including:

- Business payroll costs (including sick leave)
- Payments on any business mortgage obligation
- Business rent payments (note: this does not include prepayment of rent)
- Business debt service (both principal and interest; note: this does not include any prepayment of principal or interest)
- Business utility payments
- Business maintenance expenses
- Construction of outdoor seating
- Business supplies (including protective equipment and cleaning materials)
- Business food and beverage expenses (including raw materials)
- Covered supplier costs
- Business operating expenses

What to expect after you have applied

- As outlined by Congress, SBA will review applications from priority applications groups first. Applicants who have submitted non-priority applications will remain in "Review" status while priority applications are processed during the first 21 days. We do not anticipate communicating with applicants in "Review" status during this period.
- Following a successful application submission, all applications will enter "IRS verification" status. This process may take up to seven days and allows the SBA to validate your application submission.

Information about RRF in other languages

RRF applications must be submitted in English or Spanish. We provide documents in additional languages to help you understand eligibility requirements, fill out applications, and answer frequently asked questions.

Español	العربية	中文简体	中文繁體	Français	Deutsch
ગુજરાતી	Kreyòl Ayisyen	हिन्दी भाषा	Italiano	日本語	한국어
Polski	Português	русский	Tagalog	Tiếng Việt	ไทย
ইউর্দু	Soomaali	Kiswahili	Lea Fakatonga	Fosun Chuuk	Kaji Maji

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Washington DC 20416

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PRESS RELEASE

Last Call: Administrator Guzman Announces Final Push for Restaurant Revitalization Fund Applications

Qualifying eating establishments should submit applications by the May 24th deadline

May 18, 2021 | Release Number 21-38

Contact U.S. Small Business Administration at Press_Office@sba.gov

WASHINGTON – Administrator Isabella Casillas Guzman announced that eligible eating establishments have until Monday, May 24, 8 p.m. ET, to submit applications to the Restaurant Revitalization Fund.

“If our nation’s food and beverage industry is going to fully recover, we must ensure as many of the hardest-hit businesses get the economic aid they need,” said Administrator Guzman. “We are committed to creating easy to navigate programs and removing barriers that have kept many of our nation’s smallest businesses from accessing these crucial economic lifelines. The SBA will continue to be as entrepreneurial as the small businesses we serve, and we will continue to work as fast as possible to deliver the relief our businesses need so urgently.”





said Tom Bene, President & CEO of the National Restaurant Association. "The funds that have already been distributed will help accelerate the recovery of thousands of restaurants and bring much-needed capital to communities across the country."

The \$28.6 billion Restaurant Revitalization Fund signed into law by President Joe Biden established an initial \$5 billion set-aside established by Congress for applicants with gross receipts not more than \$500,000. To further ensure an equitable distribution of funds, Administrator Guzman created two additional funding allocations to ensure the smallest of the small restaurants and other eating establishments have equitable access: 1) \$500 million for applicants with 2019 gross receipts not more than \$50,000, and 2) \$4 billion for applicants with 2019 gross receipts between \$500,000 and \$1,500,000. In the first two weeks of the RRF program, and after 600 targeted community outreach events in multiple languages, SBA has received from priority groups:

- **12,898 applications** from businesses with not more than \$50,000 in pre-pandemic revenue requesting \$290 million in funds
- **73,671 applications** from businesses with not more than \$500,000 in annual pre-pandemic revenue requesting \$6.1 billion in funds
- **34,010 applications** from businesses with \$500,000 - \$1,500,000 in annual pre-pandemic revenue requesting \$8.4 billion in funds

Designed to ensure the smallest of small eating establishments get the relief needed, set-asides continue a commitment to an equitable distribution of funds to hard-hit communities. Because SBA still has potential set-aside funding available for eligible establishments with 2019 annual revenue of not more than \$50,000, it will keep the application portal open until Monday, May 24, 8 p.m. ET. While all qualified restaurants may submit applications, more than \$220 million of a \$500 million set-aside remains in the Restaurant Revitalization Fund (RRF). Eligible establishments that meet this revenue standard are encouraged to apply through SBA-recognized point-of-sale vendors or directly via the SBA online application portal.

To date, the RRF program has received more than 303,000 applications representing over \$69 billion in requested funds, and nearly 38,000 applicants have been approved for more than \$6 billion. Of the overall submitted applications, 57 percent came from women, veterans, and socially and economically disadvantaged business owners. During the first two weeks of the program, SBA has received applications from:





- More than **71,000** economically and socially disadvantaged individuals

For those interested in applying to the Restaurant Revitalization Fund, visit sba.gov/restaurants.

###

About the U.S. Small Business Administration

The U.S. Small Business Administration makes the American dream of business ownership a reality. As the only go-to resource and voice for small businesses backed by the strength of the federal government, the SBA empowers entrepreneurs and small business owners with the resources and support they need to start and grow their businesses. It delivers services to people through an extensive network of SBA field offices and partnerships with public and private organizations. To learn more, visit www.sba.gov.

Related programs: [Disaster](#), [RRF](#)

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PRESS RELEASE

Recovery for the Smallest Restaurants and Bars: Administrator Guzman Announces Latest

Application Data Results for the Restaurant Revitalization Fund

May 12, 2021 | Release Number 21-36

Contact U.S. Small Business Administration at Press_Office@sba.gov

—

WASHINGTON – Administrator [Isabella Casillas Guzman](#), head of the [U.S. Small Business Administration](#), today is announcing the latest application data results for the \$28.6 billion Restaurant Revitalization Fund (RRF), passed as part of the American Rescue Plan, and signed into law by

147,000 applications from women, veterans, and socially and economically disadvantaged business owners, requesting a total of \$29 billion in relief funds.

This announcement builds on an earlier announcement of the rapid deployment of RRF funding as the SBA continues to quickly distribute relief to approved applicants on a rolling basis. To date, a total of \$2.7 billion of relief funds have been distributed to 21,000 restaurants since the Restaurant Revitalization Fund opened on May 3, 2021.

“Through the Restaurant Revitalization Fund, SBA is helping thousands of restaurants and other food and beverage businesses across the country get the help they desperately need to recover and rebuild from this pandemic,” said **Administrator Guzman**. “The numbers show that we’ve been particularly successful at reaching the smallest restaurants and underserved communities that have struggled to access relief. These businesses are the pillars of our nation’s neighborhoods and communities. We are making progress, but we have much more work to do as we continue reaching our underserved entrepreneurs.”

In addition to a \$5 billion set-aside established by Congress for applicants with gross receipts not more than \$500,000, Administrator Guzman created two additional funding allocations to ensure the smallest of the small restaurants and other eating establishments such as food trucks and carts get the aid needed: 1) \$500 million for applicants with 2019 gross receipts less than \$50,000; and 2) \$4 billion for

- 13,114 applications from businesses with under \$50,000 in pre-pandemic revenue requesting \$330 million in funds
- 100,410 applications from businesses with under \$500,000 in annual pre-pandemic revenue requesting \$8.14 billion in funds
- 61,535 applicants from businesses with \$500,000 - \$1,500,000 in annual pre-pandemic revenue requesting \$15.1 billion in funds

Because SBA still has potential funding available for eligible establishments with 2019 annual revenue of not more than \$50,000, it will keep the application portal open. Eligible establishments that meet this revenue standard are encouraged to apply through SBA-recognized point-of-sale vendors or directly via the SBA online application portal.

Overall, the RRF program has received more than 266,000 applications representing over \$65 billion in requested funds. Nearly half of the overall submitted applications came from women, veterans, and socially and economically disadvantaged business owners. During the first week of the program, SBA has received applications from:

- 76,183 women business owners
- 6,093 veteran business owners
- 42,284 economically and socially disadvantaged

Restaurants, bars, and other small businesses offering on-site food and beverages are the core of our neighborhoods and propel economic activity on our Main Streets. As among the first businesses to close and likely the last to reopen, restaurants and bars have suffered severely during the pandemic.

“Awarding grants within a week of restaurants and bars applying demonstrates SBA's steadfast commitment to getting people the help they need as quickly and efficiently as possible,” said **Erika Polmar, executive director of the Independent Restaurant Coalition**. “Restaurants and bars across the country are devastated after the last 16 months of this pandemic and, until this week, have been unable to access the meaningful relief needed to stay afloat. This is what so many businesses have been waiting for – independent restaurants and bars are grateful for the Biden Administration's efforts to quickly and carefully deliver relief to the people who need it most.”

“The Restaurant Revitalization Fund will play a crucial role in the recovery of our smallest businesses, street vendors. Street vendors come from communities in NYC and across the country that have been hit hard by the pandemic and are facing infinite challenges to recover,” said **Mohamed Attia, managing director of the Street Vendor Project of the Urban Justice Center**. “RRF offers an opportunity for many businesses and individuals who have been excluded from the past relief efforts due to the lack of documentation or immigration status by accepting

business, many of whom are street vendors. We are looking forward to seeing the impact of it on our communities' recovery.”

For more information about the Restaurant Revitalization Program, visit <https://sba.gov/restaurants>.

###

About the U.S. Small Business Administration

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Blessed Cajuns, LLC, et al.,

Plaintiffs,

v.

Isabella Casillas Guzman, et al.,

Defendants.

Case No. _____

DECLARATION OF JASON SMITH

I, Jason Smith, declare:

1. My name is Jason Smith. I am over the age of 21 and fully competent to make this declaration.

2. I have personal knowledge of all of the facts stated in this declaration.

3. I, along with my wife Janice, am a co-owner of Blessed Cajuns, LLC, a restaurant operating as a limited liability company incorporated under the laws of Texas.

4. I am a white male.

5. I am not a veteran of the U.S. Armed Forces.

6. Like many restaurant owners across the United States, COVID-19 had a direct and substantial detrimental effect on my business.

7. In 2019, my business generated revenue of \$752,393. In 2020, sales decreased to approximately \$401,667.

8. I have reviewed the eligibility criteria for the Restaurant Revitalization Fund on the Small Business Administration's website and satisfy each requirement. *See* U.S. Small Business Administration, *Restaurant Revitalization Fund*, <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund> (last visited May 20, 2021).

9. I applied for relief under the Restaurant Revitalization Fund on May 4, 2021. The application indicated that I was eligible for relief in the amount of \$187,753.17. If I received the funds, I would use them for any and all of the permissible purposes under the Restaurant Revitalization Fund.

10. The Small Business Administration's website states that it will "only process and fund priority group applicants" during the first 21 days. *Id.*

11. According to an announcement on the Small Business Administration's website, the 21-day application period opened on May 3, 2021. U.S. Small Business Administration, *Press Release, SBA Administrator Guzman Announces Application Opening for \$28.6 Billion Restaurant Revitalization Fund*, available at <https://bit.ly/2RbaP7d> (last visited May 20, 2021) (attached as Exhibit A to this declaration).

12. Because my wife and I equally own our business, I am not a member of the priority groups listed as being eligible for processing in the initial 21-day period.

13. On May 18, 2021, the Small Business Administration issued a press release announcing that it had already received 303,000 applications for relief, representing over \$69 billion in requested funds. U.S. Small Business Administration, *Press Release, Last Call: Administration Guzman Announces Final Push for Restaurant Revitalization Fund Applications*, available at <https://biturl.top/JJRjEn> (last visited May 20, 2021) (attached as Exhibit B to this declaration). That same release indicated that so far, "nearly 38,000 applicants have been approved for more than \$6 billion." *Id.*

14. When I filed my application, I believed that I would be eligible for relief. But based on the Small Business Administration's releases describing the prioritization period, I now believe that the funds will be depleted before my application can be processed.

I declare under penalty of perjury that the foregoing is true and correct.

May 21, 2021

Date

Jason Smith
Jason Smith (May 21, 2021 14:22 CDT)

Jason Smith

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Blessed Cajuns, LLC, et al.,

Plaintiffs,

v.

Isabella Casillas Guzman, et al.,

Defendants.

Case No. _____

DECLARATION OF

I, Janice Smith, declare:

1. My name is Janice Smith. I am over the age of 21 and fully competent to make this declaration.

2. I have personal knowledge of all of the facts stated in this declaration.

3. I, along with my husband Jason, am a co-owner of Blessed Cajuns, LLC, a restaurant operating as a limited liability company incorporated under the laws of Texas.

4. I am a white female.

5. I am not a veteran of the U.S. Armed Forces.

6. Like many restaurant owners across the United States, COVID-19 had a direct and substantial detrimental effect on my business.

7. In 2019, my business generated revenue of \$752,393. In 2020, sales decreased to approximately \$401,667.

8. I have reviewed the eligibility criteria for the Restaurant Revitalization Fund on the Small Business Administration's website and satisfy each requirement. *See* U.S. Small Business Administration, *Restaurant Revitalization Fund*, <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund> (last visited May 20, 2021).

9. I applied for relief under the Restaurant Revitalization Fund on May 4, 2021. The application indicated that I was eligible for relief in the amount of \$187,753.17. If I received the funds, I would use them for any and all of the permissible purposes under the Restaurant Revitalization Fund.

10. The Small Business Administration's website states that it will "only process and fund priority group applicants" during the first 21 days. *Id.*

11. According to an announcement on the Small Business Administration's website, the 21-day application period opened on May 3, 2021. U.S. Small Business Administration, *Press Release, SBA Administrator Guzman Announces Application Opening for \$28.6 Billion Restaurant Revitalization Fund*, available at <https://bit.ly/2RbaP7d> (last visited May 20, 2021) (attached as Exhibit A to this declaration).

12. Because my husband and I equally own our business, I am not a member of the priority groups listed as being eligible for processing in the initial 21-day period.

13. On May 18, 2021, the Small Business Administration issued a press release announcing that it had already received 303,000 applications for relief, representing over \$69 billion in requested funds. U.S. Small Business Administration, *Press Release, Last Call: Administration Guzman Announces Final Push for Restaurant Revitalization Fund Applications*, available at <https://biturl.top/JJRjEn> (last visited May 20, 2021) (attached as Exhibit B to this declaration). That same release indicated that so far, "nearly 38,000 applicants have been approved for more than \$6 billion." *Id.*

14. When I filed my application, I believed that I would be eligible for relief. But based on the Small Business Administration's releases describing the prioritization period, I now believe that the funds will be depleted before my application can be processed.

I declare under penalty of perjury that the foregoing is true and correct.

May 21, 2021

Date

Janice Smith
Janice Smith (May 21, 2021 14:20 CDT)

Janice Smith

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Blessed Cajuns, LLC, et al.,

Plaintiffs,

v.

Isabella Casillas Guzman, et al.,

Defendants.

Case No. _____

DECLARATION OF ERIC NYMAN

I, Eric Nyman, declare:

1. My name is Eric Nyman. I am over the age of 21 and fully competent to make this declaration.

2. I have personal knowledge of all of the facts stated in this declaration.

3. I am the owner of PSBH LLC, a limited liability company incorporated under the laws of Pennsylvania, operating under the name "Penn Hotel Sports Raw Bar."

4. I am a white male.

5. I am not a veteran of the U.S. Armed Forces.

6. Like many restaurant owners across the United States, COVID-19 had a direct and substantial detrimental effect on my business.

7. In 2019, my business generated revenue of approximately \$1,187,644. In 2020, sales decreased to approximately \$385,894.

8. I have reviewed the eligibility criteria for the Restaurant Revitalization Fund on the Small Business Administration's website and believe that I satisfy each requirement. See U.S. Small Business Administration, *Restaurant Revitalization Fund*, <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund> (last visited May 20, 2021).

9. I applied for relief on May 3, 2021. The application indicated that I was eligible for relief in the amount of \$640,424.65. If I received the funds, I would use them for any and all of the permissible purposes under the Restaurant Revitalization Fund.

10. The Small Business Administration's website states that it will "only process and fund priority group applicants" during the first 21 days. *Id.*

11. According to an announcement on the Small Business Administration's website, the 21-day application period opened on May 3, 2021. U.S. Small Business Administration, *Press Release, SBA Administrator Guzman Announces Application Opening for \$28.6 Billion Restaurant Revitalization Fund*, available at <https://bit.ly/2RbaP7d> (last visited May 20, 2021) (attached as Exhibit A to this declaration).

12. I am not a member of the priority groups listed as being eligible for processing in the initial 21-day period.

13. On May 18, 2021, the Small Business Administration issued a press release announcing that it had already received 303,000 applications for relief, representing over \$69 billion in requested funds. U.S. Small Business Administration, *Press Release, Last Call: Administration Guzman Announces Final Push for Restaurant Revitalization Fund Applications*, available at <https://biturl.top/JJRjEn> (last visited May 20, 2021) (attached as Exhibit B to this declaration). That same release indicated that so far, "nearly 38,000 applicants have been approved for more than \$6 billion." *Id.*

14. When I filed my application, I believed that I would be eligible for relief. But based on the Small Business Administration's releases describing the prioritization period, I now believe that the funds will be depleted before my application can be processed.

I declare under penalty of perjury that the foregoing is true and correct.

May 21, 2021

Date



Eric Nyman (May 21, 2021 10:00 EDT)

Eric Nyman

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

Blessed Cajuns, LLC, et al.,

Plaintiffs,

v.

Isabella Casillas Guzman, et al.,

Defendants.

Case No. 4:21-cv-00677-O

[PROPOSED] ORDER

The plaintiffs' motion for preliminary injunction is GRANTED.

The Court concludes that the plaintiffs are likely to succeed on the merits of their claim that the defendants' use of race and sex preferences in the administration of the Restaurant Revitalization Fund violates the Constitution. The Court further concludes that the plaintiffs will suffer irreparable harm absent a preliminary injunction because the plaintiffs are experiencing race and sex discrimination at the hands of government officials, and the evidence submitted by the plaintiffs indicates that the entire \$28.6 billion that Congress allocated to the Restaurant Revitalization Fund may be depleted before the plaintiffs' applications can even be considered for relief under the program. These injuries are irreparable because the plaintiffs cannot obtain damages from the defendants on account of their sovereign immunity. The Court also finds that the balance of equities favors the plaintiffs, and the public interest supports a temporary restraining order.

It is therefore ORDERED that:

1. Defendants Isabella Casillas Guzman and the United States Small Business Administration, and their officers, agents, servants, employees, attorneys, designees,

and subordinates, as well as any person acting in concert or participation with them, are ENJOINED from discriminating on account of race and sex in administering the Restaurant Revitalization Fund. This prohibition on discrimination encompasses: (a) “Prioritizing” applications according to the race or sex of the applicant; (b) Considering or using an applicant’s race or sex as a criterion in determining whether an applicants will obtain relief from the Restaurant Revitalization Fund; and (c) Allowing any application that was previously “prioritized” on account of the race or sex of the application to keep or maintain that priority over other applications.

2. Because the defendants will not suffer any financial loss on account of this preliminary injunction, there is no need for the plaintiffs to post security under Rule 65(c) of the federal rules of civil procedure.

REED O’CONNOR
UNITED STATES DISTRICT JUDGE