

(Pub. L. 116-260, div. N, title III, §324, Dec. 27, 2020, 134 Stat. 2022; Pub. L. 117-2, title V, §5005(b), Mar. 11, 2021, 135 Stat. 92.)

Editorial Notes

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (a)(1)(A)(vi)(I)(bb), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

Subparagraph (A) of section 636(a)(36) of this title, as amended by this Act, referred to in subsec. (a)(8), probably means subpar. (A) of section 636(a)(36) of this title, as amended by title III of div. N of Pub. L. 116-260.

The CARES Act, referred to in subsec. (b)(2)(B)(iii)(I), also known as the Coronavirus Aid, Relief, and Economic Security Act, is Pub. L. 116-136, Mar. 27, 2020, 134 Stat. 281, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

Section 323(d)(1)(H) of this Act, referred to in subsecs. (b)(2)(B)(iv) and (f)(2), is section 323(d)(1)(H) of title III of div. N of Pub. L. 116-260, Dec. 27, 2020, 134 Stat. 2021, which is not classified to the Code.

Section 636m(a) of this title, as redesignated, transferred, and amended by this Act, referred to in subsec. (d)(2)(A)(i), probably means section 636m(a) of this title, as redesignated, transferred, and amended by title III of div. N of Pub. L. 116-260.

CODIFICATION

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and not as part of the CARES Act which in part comprises this chapter.

AMENDMENTS

2021—Subsec. (a)(1)(A)(vi)(III), (IV). Pub. L. 117-2, §5005(b)(1), redesignated subcl. (IV) as (III), substituted “subclauses (I) and (II)” for “subclauses (I), (II), and (III)”, and struck out former subcl. (III) which read as follows: “The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative has not received, on or after December 27, 2020, a loan guaranteed under paragraph (36) or (37) of section 636(a) of this title, as amended and added by this division.”

Subsec. (c)(1)(A). Pub. L. 117-2, §5005(b)(2)(A), substituted “Subject to subparagraphs (B) and (C), a grant” for “A grant” in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 117-2, §5005(b)(2)(B), added subpar. (C).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116-260, set out as an Effective Date of 2020 Amendment note under section 636 of this title.

CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE

Grant made under this section not included in gross income of recipient, see section 278 of div. N of Pub. L. 116-260, set out as a note under section 9008 of this title.

DEFINITIONS

“Administration” and “Administrator” mean the Small Business Administration and Administrator of

the Small Business Administration, see section 302 of div. N of Pub. L. 116-260, set out as a note under section 9001 of this title.

§ 9009b. Targeted EIDL advance for small business continuity, adaptation, and resiliency

(a) Definitions

In this section:

(1) Agricultural enterprise

The term “agricultural enterprise” has the meaning given the term in section 647(b) of this title.

(2) Covered entity

The term “covered entity”—

(A) means an eligible entity that—

(i) applies for a loan under section 636(b)(2) of this title during the covered period, including before December 27, 2020;

(ii) is located in a low-income community;

(iii) has suffered an economic loss of greater than 30 percent; and

(iv) employs not more than 300 employees; and

(B) except with respect to an entity included under section 123.300(c) of title 13, Code of Federal Regulations, or any successor regulation, does not include an agricultural enterprise.

(3) Covered period

The term “covered period” has the meaning given the term in section 9009(a)(1) of this title, as amended by section 332 of this Act.

(4) Economic loss

The term “economic loss” means, with respect to a covered entity—

(A) the amount by which the gross receipts of the covered entity declined during an 8-week period between March 2, 2020, and December 31, 2021, relative to a comparable 8-week period immediately preceding March 2, 2020, or during 2019; or

(B) if the covered entity is a seasonal business concern, such other amount determined appropriate by the Administrator.

(5) Eligible entity

The term “eligible entity” means an entity that, during the covered period, is eligible for a loan made under section 636(b)(2) of this title, as described in section 9009(b) of this title.

(6) Low-income community

The term “low-income community” has the meaning given the term in section 45D(e) of title 26.

(b) Entitlement to full amount

(1) In general

Subject to paragraph (2), a covered entity, after submitting a request to the Administrator that the Administrator verifies under subsection (c), shall receive a total of \$10,000 under section 9009(e) of this title, without regard to whether—

(A) the applicable loan for which the covered entity applies or applied under section 636(b)(2) of this title is or was approved;

(B) the covered entity accepts or accepted the offer of the Administrator with respect to an approved loan described in subparagraph (A); or

(C) the covered entity has previously received a loan under section 636(a)(36) of this title.

(2) Effect of previously received amounts

(A) In general

With respect to a covered entity that received an emergency grant under section 9009(e) of this title before December 27, 2020, the amount of the payment that the covered entity shall receive under this subsection (after satisfaction of the procedures required under subparagraph (B)) shall be the difference between \$10,000 and the amount of that previously received grant.

(B) Procedures

If the Administrator receives a request under paragraph (1) from a covered entity described in subparagraph (A) of this paragraph, the Administrator shall, not later than 21 days after the date on which the Administrator receives the request—

(i) perform the verification required under subsection (c);

(ii) if the Administrator, under subsection (c), verifies that the entity is a covered entity, provide to the covered entity a payment in the amount described in subparagraph (A); and

(iii) with respect to a covered entity that the Administrator determines is not entitled to a payment under this section, provide the covered entity with a notification explaining why the Administrator reached that determination.

(C) Rule of construction

Nothing in this paragraph may be construed to require any entity that received an emergency grant under section 9009(e) of this title before December 27, 2020, to repay any amount of that grant.

(c) Verification

In carrying out this section, the Administrator shall require any information, including any tax records, from an entity submitting a request under subsection (b) that the Administrator determines to be necessary to verify that the entity is a covered entity, without regard to whether the entity has previously submitted such information to the Administrator.

(d) Order of processing

The Administrator shall process and approve requests for payments under subsection (b) in the order that the Administrator receives the requests, except that the Administrator shall give—

(1) first priority to covered entities described in subsection (b)(2)(A); and

(2) second priority to covered entities that have not received emergency grants under section 9009(e) of this title, as of the date on which the Administrator receives such a request, because of the unavailability of funding to carry out such section 9009(e).

(e) Applicability

In addition to any other restriction imposed under this section, any eligibility restriction applicable to a loan made under section 636(b)(2) of this title, including any restriction under section 123.300 or 123.301 of title 13, Code of Federal Regulations, or any successor regulation, shall apply with respect to funding provided under this section.

(f) Notification required

The Administrator shall provide notice to each of the following entities stating that the entity may be eligible for a payment under this section if the entity satisfies the requirements under clauses (ii), (iii), and (iv) of subsection (a)(2)(A):

(1) Each entity that received an emergency grant under section 9009(e) of this title before December 27, 2020.

(2) Each entity that, before December 27, 2020—

(A) applied for a loan under section 636(b)(2) of this title; and

(B) did not receive an emergency grant under section 9009(e) of this title because of the unavailability of funding to carry out such section 9009(e).

(g) Administration

In carrying out this section, the Administrator may rely on loan officers and other personnel of the Office of Disaster Assistance of the Administration and other resources of the Administration, including contractors of the Administration.

(h) Authorization of appropriations

There are authorized to be appropriated to the Administrator \$20,000,000,000 to carry out this section—

(1) which shall remain available through December 31, 2021; and

(2) of which \$20,000,000 is authorized to be appropriated to the Inspector General of the Administration to prevent waste, fraud, and abuse with respect to funding provided under this section.

(Pub. L. 116-260, div. N, title III, §331, Dec. 27, 2020, 134 Stat. 2043.)

Editorial Notes

REFERENCES IN TEXT

Section 332 of this Act, referred to in subsec. (a)(3), is section 332 of div. N of Pub. L. 116-260.

CODIFICATION

Section was enacted as part of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, and not as part of the CARES Act which in part comprises this chapter.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on Dec. 27, 2020, and applicable to loans and grants made on or after Dec. 27, 2020, see section 348 of Pub. L. 116-260, set out as an Effective Date of 2020 Amendment note under section 636 of this title.

TAX TREATMENT OF TARGETED EIDL ADVANCES

Pub. L. 117-2, title IX, §9672, Mar. 11, 2021, 135 Stat. 184, provided that: “For purposes of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.]—

“(1) amounts received from the Administrator of the Small Business Administration in the form of a targeted EIDL advance under section 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (title III of division N of Public Law 116-260) [15 U.S.C. 9009b] shall not be included in the gross income of the person that receives such amounts,

“(2) no deduction shall be denied, no tax attribute shall be reduced, and no basis increase shall be denied, by reason of the exclusion from gross income provided by paragraph (1), and

“(3) in the case of a partnership or S corporation that receives such amounts—

“(A) any amount excluded from income by reason of paragraph (1) shall be treated as tax exempt income for purposes of sections 705 and 1366 of the Internal Revenue Code of 1986 [26 U.S.C. 705, 1366], and

“(B) the Secretary of the Treasury (or the Secretary’s delegate) shall prescribe rules for determining a partner’s distributive share of any amount described in subparagraph (A) for purposes of section 705 of the Internal Revenue Code of 1986.”

CLARIFICATION OF TAX TREATMENT OF CERTAIN LOAN FORGIVENESS AND OTHER BUSINESS FINANCIAL ASSISTANCE

Funding under this section not included in gross income of recipient, see section 278 of div. N of Pub. L. 116-260, set out as a note under section 9008 of this title.

DEFINITIONS

“Administration” and “Administrator” mean the Small Business Administration and Administrator of the Small Business Administration, see section 302 of div. N of Pub. L. 116-260, set out as a note under section 9001 of this title.

§ 9009c. Support for restaurants

(a) Definitions

In this section:

(1) Administrator

The term “Administrator” means the Administrator of the Small Business Administration.

(2) Affiliated business

The term “affiliated business” means a business in which an eligible entity has an equity or right to profit distributions of not less than 50 percent, or in which an eligible entity has the contractual authority to control the direction of the business, provided that such affiliation shall be determined as of any arrangements or agreements in existence as of March 13, 2020.

(3) Covered period

The term “covered period” means the period—

(A) beginning on February 15, 2020; and

(B) ending on December 31, 2021, or a date to be determined by the Administrator that is not later than 2 years after March 11, 2021.

(4) Eligible entity

The term “eligible entity”—

(A) means 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;

(B) includes an entity described in subparagraph (A) that is located in an airport terminal or that is a Tribally-owned concern; and

(C) does not include—

(i) an entity described in subparagraph (A) 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 those locations do business under the same or multiple names; or

(III) has a pending application for or has received a grant under section 9009a of this title; or

(ii) a publicly-traded company.

(5) Exchange; issuer; security

The terms “exchange”, “issuer”, and “security” have the meanings given those terms in section 78c(a) of this title.

(6) Fund

The term “Fund” means the Restaurant Revitalization Fund established under subsection (b).

(7) Pandemic-related revenue loss

The term “pandemic-related revenue loss” means, with respect to an eligible entity—

(A) except as provided in subparagraphs (B), (C), and (D), the gross receipts, as established using such verification documentation as the Administrator may require, of the eligible entity during 2020 subtracted from the gross receipts of the eligible entity in 2019, if such sum is greater than zero;

(B) if the eligible entity was not in operation for the entirety of 2019—

(i) the difference between—

(I) the product obtained by multiplying the average monthly gross receipts of the eligible entity in 2019 by 12; and

(II) the product obtained by multiplying the average monthly gross receipts of the eligible entity in 2020 by 12; or

(ii) an amount based on a formula determined by the Administrator;

(C) if the eligible entity opened during the period beginning on January 1, 2020, and ending on the day before March 11, 2021—

(i) the expenses described in subsection (c)(5)(A) that were incurred by the eligible entity minus any gross receipts received; or

(ii) an amount based on a formula determined by the Administrator; or

(D) if the eligible entity has not yet opened as of the date of application for a grant under subsection (c), but has incurred expenses described in subsection (c)(5)(A) as of March 11, 2021—

(i) the amount of those expenses; or

(ii) an amount based on a formula determined by the Administrator.