

**New York City Department of Small Business Services**  
**Notice of Adoption of Rule**

Pursuant to the authority vested in the New York City Department of Small Business Services (DSBS) in accordance with Sections 1043 and 1301 of the New York City Charter, DSBS is adopting the addition of a new Chapter 17 to Title 66 of the Rules of the City of New York to implement DSBS' COVID-19 grant program.

DSBS published a proposed version of this rule in the City Record on July 30, 2021. DSBS held a public hearing for such proposed rule on September 1, 2021. DSBS received one comment concerning this rule.

**Statement of Basis and Purpose**

DSBS is implementing a grant program that will utilize federal funds to assist small businesses in New York City (“NYC” or “the City”) that were especially hard-hit by the pandemic. The federal American Rescue Plan Act of 2021 makes funds available to state and local governments to address the continued impact of the COVID-19 pandemic.<sup>1</sup> The American Rescue Plan Act Interim Final Rule specifically cites tourism, travel, and hospitality as sectors that would be appropriate targets for loans and grants.<sup>2</sup> In addition, studies have demonstrated that the Leisure and Hospitality sectors were among the hardest hit sectors in NYC and experienced a dramatic drop in revenue of more than 90% at the start of the pandemic.<sup>3</sup> According to a survey by the NYC Hospitality Alliance, 75% of foodservice businesses saw more than a 50% decline in sales in 2020 compared to 2019.<sup>4</sup> Furthermore, half of the respondents saw more than a 90% decline in their average weekly sales in January 2021 compared to January 2020.<sup>5</sup> Pandemic restrictions that made travel, dining out, and many forms of recreation difficult or impossible to undertake for over a year were bound to have a significant financial impact on businesses in these sectors. Therefore, there is a significant need for the City to provide direct financial assistance quickly, in the form of grants, to these businesses.

While the COVID-19 pandemic has affected businesses and entrepreneurs across the City, some segments of the economy have been disproportionately impacted – especially small businesses. Low to moderate income areas are dominated by small businesses, which are the predominant

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<sup>1</sup> H.R.1319 - American Rescue Plan Act of 2021, available at <https://www.congress.gov/bill/117th-congress/house-bill/1319>.

<sup>2</sup> Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule, p. 10, available at <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>. “Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID-19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.”

<sup>3</sup> Percent Change in Small Business Revenue, New York City Metropolitan Area, Leisure & Hospitality Industry. Data accessed June, 18 2021, <https://tracktherecovery.org/> for the time period from March 2020-April 2020.

<sup>4</sup> NYC Hospitality Alliance, “Hospitality Sales Report During COVID-19 2020/2021”, March 2021, available at [https://drive.google.com/file/d/1qIHwWbq1wziDr\\_ZIA3z4IHT7fOqbLQc/view](https://drive.google.com/file/d/1qIHwWbq1wziDr_ZIA3z4IHT7fOqbLQc/view).

<sup>5</sup> *Id.*

form of entrepreneurship in these communities.<sup>6</sup> However, small businesses located in low to moderate income (“LMI”) areas received a significantly lower proportion of the federal pandemic emergency relief funds via the Paycheck Protection Program (“PPP”) than small businesses in non-LMI income areas.<sup>7</sup> Only 29% of the NYC businesses approved for PPP loans were located in LMI areas.<sup>8</sup> Therefore, we have prioritized small businesses in LMI areas for this grant program, to ensure that the City’s most vulnerable communities are not left out of the City’s post-pandemic economic recovery.

This grant program is designed to reach businesses disproportionately affected by the COVID-19 pandemic -- namely those in the Leisure and Hospitality sectors,<sup>9</sup> and those located in LMI areas. In order to reach a large number of businesses, the grants are set at \$10,000 each. The grants are available to these NYC small businesses that can also demonstrate at least a 25% decrease in revenue or gross receipts due to the pandemic. Grants will not be available to businesses that have already received a grant from the Shuttered Venues Operators Grant Program or the Restaurant Revitalization Fund. The purpose of the grant is to offset operational expenses in order to mitigate economic hardships as outlined above; examples of appropriate uses for a grant include supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs.<sup>10</sup>

DSBS amended the proposed rule by making the following changes:

- (1) Section 17-03(g) and 17-04(a): removed the New York State COVID-19 Pandemic Small Business Recovery Grant from the list of grants that receipt of which make a business ineligible for this grant. The reason for this is to expand the number of businesses eligible for this grant.
- (2) Section 17-04(a): expanded the types of documents DSBS will consider when evaluating whether a business is eligible for the grant. The reason for this is to

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<sup>6</sup> As per US Census data accessed July 2021 from the Federal Financial Institutions Examination Council’s Geocoding tool, available at <https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx> (showing LMI areas) and the United States Census Bureau <https://cbb.census.gov/rae/#> (showing business ownership).

<sup>7</sup> Federal Reserve Bank of Cleveland, “How Well Did PPP Loans Reach Low- and Moderate-Income Communities?”, May 27, 2021, available at <https://www.clevelandfed.org/en/newsroom-and-events/publications/economic-commentary/2021-economic-commentaries/ec-202113-reach-of-ppp-loans-in-lmi-communities.aspx>, “PPP...

did not reach LMI communities to the same extent that it reached higher-income communities”; Raw data the federal Small Business Administration used for analysis can be accessed here: <https://data.sba.gov/dataset/ppp-foia>.

<sup>8</sup> Even though 45% of the businesses in NYC are in LMI areas, only 20% of the dollars in NYC PPP and 29% of the NYC PPP awards went to businesses in LMI areas; Manhattan Chamber of Commerce, “The Impact of PPP on New York City”, March 2021, available at [https://www.nycindicators.com/ppp-impact. Data on businesses located in LMI areas is available at “ZIP Code Business Patterns by Employment Size Class for 5-digit zipcode level: 2017”](https://www.nycindicators.com/ppp-impact>Data on businesses located in LMI areas is available at “ZIP Code Business Patterns by Employment Size Class for 5-digit zipcode level: 2017”), <https://data.census.gov/cedsci/table?q=CB1700CBP&text=CBP%202017&g=8610000US20746&tid=ZBP2017.CB1700ZBP>.

<sup>9</sup> Leisure and Hospitality includes two sectors per the North American Industry Classification System (NAICS): Arts, Entertainment, and Recreation (NAICS 71) and Accommodation and Food Services (NAICS 72), [https://www.bls.gov/iag/tgs/iag\\_index\\_naics.htm](https://www.bls.gov/iag/tgs/iag_index_naics.htm).

<sup>10</sup> Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds, Interim Final Rule, p. 34, available at <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>, “Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs”.

account for businesses who may be eligible for the grant but may not possess each specific document listed in this section.

- (3) Section 17-06: added a requirement that grant recipients retain documents evidencing compliance with the requirement of subdivision (i) of section 17-03 and present such documents to DSBS upon request. The reason for this additional requirement is to ensure compliance and the ability of the City to verify expenditures, if necessary.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 66 of the Rules of the City of New York is amended by adding a new chapter 17 to read as follows:

CHAPTER 17 NYC SMALL BUSINESS COVID RECOVERY GRANT PROGRAM

§ 17-01: Purpose.

The objective of the NYC Small Business COVID Recovery Grant Program (“Grant Program”) is to provide immediate funding to small businesses in LMI areas, and small businesses in the Arts, Entertainment, and Recreation sector and small businesses in the Accommodation and Food Services sector.

§ 17-02: Definitions.

As used in this chapter, the following terms have the following meanings:

**Applicant.** "Applicant" means a commercial business that is applying for this grant.

**Application.** "Application" means a written request in a form satisfactory to DSBS, supplemented by all requested supporting documents, made by an applicant to DSBS to determine the eligibility of an applicant for a grant.

**City.** "City" means the City of New York.

**Business.** "Business" means a sole proprietorship, partnership, corporation, or other legal entity involved in the sale of goods or services directly to the public from a physical location in the City.

**LMI Small Business.** “LMI small business” means a small business that physically operates from a census tract determined to be low-to-moderate income by the United States Department of Housing and Urban Development (HUD).

**DSBS.** “DSBS” means the Department of Small Business Services or its successor.

**Grant.** “Grant” means one or more disbursements from the NYC Small Business COVID Recovery Grant Program to an applicant.

**Small Business.** “Small business” means a business concern or other organization that: (1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the federal Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and (2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

### § 17-03: Eligibility Requirements.

Eligible Recipients. To be eligible for a grant, an applicant must satisfy all of the following criteria:

- a) Applicant must operate a small business in which at least 50% of its revenue is generated from activities that are defined by the North American Industry Classification System (NAICS) as part of the Accommodation and Food Services sector, or the Arts, Entertainment, and Recreation sector; or operate an LMI small business.
- b) Applicant must be in operation at the time of submission of the application.
- c) Applicant must demonstrate annual revenue or gross receipts. Documentation may include, but need not be limited to: signed Federal or State tax return(s); State sales tax returns.
- d) Applicant must demonstrate at least a 25% reduction in gross receipts or revenue in either: 1) comparable quarters in 2019 and 2020; or 2) the 12-month calendar year 2019 and the 12-month calendar year 2020.
- e) Applicant must be in substantial compliance with applicable Federal, State, and local laws, rules and other legal requirements.
- f) Applicant must be current or in repayment on all Federal, State or City taxes (including delinquency repayment, prior to December 31, 2019).
- g) Applicant must not have received a grant from any of the following programs: (1) Shuttered Venues Operators Grant Program, or (2) Restaurant Revitalization Fund.
- h) Applicants must follow any additional, detailed application requirements outlined in the application which will be made available online at [www.nyc.gov/sbs](http://www.nyc.gov/sbs) or by directly contacting DSBS.
- i) Applicant must use the grant to mitigate economic hardships that occurred as a result of the COVID-19 pandemic by using the grant funds to offset operational expenses for the small business that is the basis for the applicant’s eligibility for the grant. Examples of appropriate uses for a grant include the following costs: payroll and benefits, mortgage, rent, utilities, and other operating costs.

§ 17-04: Selection Criteria.

- a) DSBS will use the following processes & documents to determine whether a business meets the eligibility criteria in § 17-03 of this chapter. The documentation types listed below are illustrative and not exhaustive.

<u>CATEGORY</u>	<u>DOCUMENTATION TYPE</u>
<u>Applicant is a small business and has no more than 500 employees</u>	<u>Most recent tax return filed and signed Form 1120 -- Line 1(a) (Gross receipts or sales), or other comparable tax form;</u> <u>Most recent NY State Tax Form #45</u>
<u>Applicant operates an LMI small business</u>	<u>For businesses in LMI Census tract areas:</u> <u>business address</u>
<u>Applicant operates a business with a North American Industry Classification System (NAICS) code that begins with 71 (Arts, Entertainment, and Recreation) or 72 (Accommodation and Food Services)</u>	<u>Signed attestation</u>
<u>Applicant must demonstrate at least a 25% reduction in gross receipts or revenues</u>	<u>Tax forms, financial statements (P&amp;L), bank statements</u>
<u>Applicant must be in substantial compliance with applicable Federal, State, and local laws, rules, and other legal requirements</u>	<u>Signed attestation</u>
<u>Applicant must be current or in repayment on all Federal, State or City taxes (incl. delinquency repayment, prior to December 31, 2019)</u>	<u>Signed attestation</u>
<u>Applicant did not receive a grant from any of the following programs: (1) Shuttered Venues Operator Grant Program, or (2) Restaurant Revitalization Fund</u>	<u>Signed attestation</u>
<u>Applicant intends to use grant funds to cover operating costs such as payroll, rent or utilities</u>	<u>Signed attestation</u>

b) Funding Priority:

Funding will be released in rounds, with all eligible applicants funded in order of prioritization within each round. If there is insufficient funding available for all applicants in a given round, funding will be provided according to prioritization level and on a first-come, first-served basis within each prioritization level, based on the order in which applicants have submitted a complete application.

	<u>First priority:</u> <u>LMI small businesses in any sector with up to \$1M in revenue*</u>  <u>OR</u> <u>Non-LMI small businesses in the following sectors: Arts, Recreation, Entertainment, Food Service, or Accommodation with up to \$1M in revenue*</u>	<u>Second priority:</u> <u>LMI small businesses in any sector with between \$1M - \$3M in revenue*</u>  <u>OR</u> <u>Non-LMI small businesses in the following sectors: Arts, Recreation, Entertainment, Food Service, or Accommodation with between \$1M-\$3M in revenue*</u>	<u>Third priority:</u> <u>LMI small businesses in any sector with more than \$3M+ in revenue*</u>  <u>OR</u> <u>Non-LMI small businesses in the following sectors: Arts, Recreation, Entertainment, Food Service, or Accommodation with more than \$3M+ in revenue*</u>
<u>Round 1</u>	<u>1</u>		
<u>Round 2</u>	<u>1</u>	<u>2</u>	
<u>Round 3</u>	<u>1</u>	<u>2</u>	<u>3</u>

\* In calendar year 2019

§ 17-05: Award.

Once eligibility has been determined based on an applicant's ability to meet the requirements set forth in §17-03, DSBS will provide a fixed grant amount of \$10,000 per eligible applicant, distributed to eligible businesses on the basis of the priorities listed in in §17-04 and subject to funding appropriations thereof.

§ 17-06: Compliance.

Applicants must submit an application and comply with the terms and conditions set forth in the application. Should an applicant fail to comply with the terms and conditions set forth in the application, DSBS reserves the right to recover the full grant amount distributed to the applicant. The applicant must retain documentation sufficient to demonstrate that the grant was used in a manner consistent with the requirement in subdivision i of section 17-03 and must make such documentation available for inspection by DSBS upon request, consistent with applicable law.

