

**New York City Department of Small Business Services
NYC Small Business COVID Recovery Grant Program
Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

What are we proposing?

Pursuant to Section 1301 of the New York City Charter (“the Charter”), the New York City Department of Small Business Services (“DSBS”) is proposing to create a new program to provide grants to small businesses in low to moderate income neighborhoods and for the hardest hit business sectors throughout NYC.

When and where is the hearing? DSBS will hold a public hearing on the proposed rule. The public hearing will take place on September 1, 2021 at 11AM. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, use the following link and/or meeting information:
<https://nycsbs.webex.com/nycsbs/j.php?MTID=me438f36d9e8d8d62b14c0d630d60857f>

Meeting Number: 179 776 1609
Password: pZaEmYJp864

- **Video System.** For access, dial: 1797761609@webex.com
You can also dial 173.243.2.68 and enter your meeting number.
- **Phone.** For access, dial: +1-646-992-2010
When prompted, enter Meeting ID: 179 776 1609

How do I comment on the proposed rule? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the DSBS through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@sbs.nyc.gov.
- **Mail.** You can mail written comments to Zen Baraki, New York City Department of Small Business Services, 1 Liberty Plaza, 11th Floor, New York, NY 10006.
- **Fax.** You can fax written comments to DSBS at 212-618-8865.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by internet video and audio or by telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting DSBS by phone at (212) 513-9237 or by email at zbaraki@sbs.nyc.gov.

Is there a deadline to submit written comments? The deadline for submitting written comments is September 1, 2021 at 5PM.

What if I need assistance to participate in the hearing? You must contact DSBS’s Office of Legal Affairs if you need a reasonable accommodation at the hearing because of a disability. You must tell us if you need a sign language interpreter. You can tell us by email at zbaraki@sbs.nyc.gov. You may also tell us by telephone at (212) 513-9237. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us of an accommodation request by August 23, 2021.

Can I review the comments made on the proposed rule? You can review comments submitted online by visiting <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public upon request by email at zbaraki@sbs.nyc.gov.

What authorizes DSBS to make this rule? Sections 1301 and 1043(a) of the New York City Charter authorize DSBS to make this proposed rule. This proposed rule was not included in DSBS’s regulatory agenda for this Fiscal Year because it was not evident that such a rule would be necessary at the time.

Where can I find DSBS’s rules? DSBS’s rules are in Title 66 of the Rules of the City of New York.

What rules govern the rulemaking process? DSBS must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose

DSBS is proposing 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.¹ 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.² In addition, studies have demonstrated that the Leisure and Hospitality sectors were among the hardest hit sectors in NYC and experienced a dramatic

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

² 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.”

drop in revenue of more than 90% at the start of the pandemic.³ 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 2019.⁴ Furthermore, half of the respondents saw more than a 90% decline in their average weekly sales in January 2021 compared to January 2020.⁵ 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 form of entrepreneurship in these communities.⁶ However, small businesses located in low to moderate income (“LMI”) areas received a significantly lower proportion of the federal pandemic emergency relief funds via PPP than small businesses in non-LMI income areas.⁷ Only 29% of the NYC businesses approved for PPP loans were located in LMI areas.⁸ Therefore, we are prioritizing 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 will be designed to reach businesses disproportionately affected by the COVID-19 pandemic -- namely those in the Leisure and Hospitality sectors,⁹ and those located in LMI areas. In order to reach a large number of businesses, the grants will be set at \$10,000 each. The grants will be 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, the Restaurant Revitalization Fund, or the New York State COVID-19 Pandemic

³ 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.

⁴ NYC Hospitality Alliance, “Hospitality Sales Report During COVID-19 2020/2021”, March 2021, available at https://drive.google.com/file/d/1qIHwWbq1wziDr_ZIA3z4IHT7fOqbLQc/view.

⁵ *Id.*

⁶ 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).

⁷ 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>.

⁸ 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://data.census.gov/cedsci/table?q=CB1700CBP&text=CBP%202017&g=8610000US20746&tid=ZBP2017.CB1700ZBP.

⁹ 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.

Small Business Recovery Grant Program. 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.¹⁰

“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).

¹⁰ 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”.

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, (2) Restaurant Revitalization Fund, or (3) New York State COVID-19 Pandemic Small Business Recovery Grant Program.
- h) Applicants must follow any additional, detailed application requirements outlined in the application which will be made available online at 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.

| <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); Most recent NY State Tax Form #45</u> |
| <u>Applicant operates an LMI small business</u> | <u>For businesses in LMI Census tract areas: business address</u> |
| <u>Operate 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)¹¹</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&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, (2) Restaurant Revitalization Fund, or (3) New York State COVID-19 Pandemic Small Business Recovery Grant Program</u> | <u>Signed attestation</u> |

¹¹ As per above section 17-03(a), an 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 as part of the Food Service and Accommodation and Food Services sector or the Arts, Entertainment, and Recreation sector.

| | |
|---|---------------------------|
| <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</u> <u>2</u> | <u>1</u> | <u>2</u> | |
| <u>Round</u> <u>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.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: American Rescue Plan Grants

REFERENCE NUMBER: SBS-15

RULEMAKING AGENCY: Department of Small Business Services

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Brady Hamed
Mayor's Office of Operations

July 26, 2021
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: American Rescue Plan Grants

REFERENCE NUMBER: 2021 RG 056

RULEMAKING AGENCY: Department of Small Business Services

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: July 26, 2021