

## Finance, Restructuring, and Bankruptcy



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# Summary of the Shuttered Venue Operators Grant Program under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

The Shuttered Venue Operators Grant (“SVO Grant”) program was established under Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the “Economic Aid Act”), enacted on December 27, 2020. The program initially appropriates \$15 billion in grants to support eligible shuttered venues impacted by the COVID-19 pandemic as part of the Consolidated Appropriations Act of 2021.<sup>1</sup> Affiliated entities of an eligible entity can receive a combined total of up to \$50 million in funding. The United States Small Business Administration (the “SBA”), the federal agency administering this program, is currently developing the application, which is expected to be available in early February.<sup>2</sup> Once the application is available, applicants who suffered the greatest economic loss will be given priority.

Since the funds allocated to the program are finite, applicants are encouraged to carefully review the eligibility requirements, restrictions, and priority periods to maximize their grant awards and should be prepared to submit their applications as soon as possible. Below are some of the key aspects of the requirements and procedures for the SVO Grant program.

### ELIGIBILITY REQUIREMENTS

Applicants seeking funding under the SVO Grant program must meet several eligibility criteria. First, the applicant must qualify as an “eligible person or entity,” which includes the following categories:

1. live venue operator or promoter;
2. theatrical producer;
3. live performing arts organization operator;
4. motion picture theatre operator;
5. museum operator; or
6. talent representative

Eligible entities must also have been fully operational as of February 29, 2020, experienced at least a 25 percent gross earned revenue reduction between any quarter in 2019 and the corresponding quarter in 2020, and either currently be open or intend to re-open.

### Live Venue Operators or Promoters, Theatrical Producers, or Live Performing Arts Organization Operators

The large majority of applicants are expected to be in this categories:

- principal business activity is organizing, promoting, producing, managing, or hosting live concerts, comedy shows, theatrical productions, or other events by performing artists;
- requires a cover charge or ticket fee;
- offers paid performances; and
- generates at least 70 percent of revenue through live performances.

1. Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, §§ 323(d)(i)(H), 324 (2021).

2. Applicants must first register with the federal government’s System for Award Management (“SAM”) if they have not already done so. The SAM registration can take up to two weeks once submitted, so it is highly recommended to register as soon as possible. Interested applicants must receive a Dun and Bradstreet (“DUNS”) number as a prerequisite to SAM registration.

In addition, the venues at which these eligible persons or entities operate or promote must also:

- maintain a defined performance space;
- employ at least one individual who performs at least two of the following functions: sound engineer, booker, promoter, stage manager, security personnel, or box office manager;
- require paid tickets or cover charges; and
- have print or electronic promotion and marketing materials

### Motion Picture Theatre Operator

An eligible motion picture theatre operator, in addition to satisfying the general eligibility criteria above must:

- maintain at least one auditorium with a motion picture screen and fixed seating;
- have a projection booth;
- require paid tickets; and
- have print or electronic promotion and marketing materials.

### Museum Operator

An eligible museum operator, in addition to satisfying the general eligibility criteria above must:

- maintain a principle business activity of operating as a museum;
- operate indoor exhibition spaces, subject to pandemic-related occupancy restrictions; and
- have at least one auditorium with fixed seating.

### Talent Representative

An eligible talent representative, in addition to satisfying the general eligibility criteria above must:

- have at least 70 percent of operations involve representing or managing artists and entertainers;<sup>3</sup> and
- book or represent paid musicians, comedians, actors, or similar performing artists primarily for live performances.

### Restrictions

In addition to meeting all relevant eligibility requirements noted above, an applicant must not:

- be a publicly traded corporation, or majority-owned and controlled by a publicly traded corporation; or
- have received more than 10 percent of its 2019 gross revenue from the federal government.

Lastly, an applicant is ineligible for funding if it satisfies all of the following:

- owns or operates a venue in a country other than the United States;
- owns or operates venues in more than ten states; and
- employs more than 500 employees<sup>4</sup> as of February 29, 2020.<sup>5</sup>

Regarding the relationship between loan forgiveness under the Paycheck Protection Program (“PPP”)<sup>6</sup> and the SVO Grant program, applicants that received proceeds of a PPP loan prior to December 27, 2020, may participate in the SVO Grant program. However, applicants awarded proceeds of a PPP loan after December 27, 2020, are ineligible to apply for an SVO Grant. Additionally, applicants cannot apply for both programs at the same time. Rather, if an applicant has a pending application under the PPP, that applicant must be denied funding under the PPP before applying for funding under the SVO Grant program. Thus, applicants must carefully review the requirements under both programs to properly assess which program best fits their economic needs in making any applications after enactment of the Economic Aid Act.

### FUNDING DETAILS

The SVO Grant program provides several funding priorities focusing on entities suffering the greatest economic loss and entities with 50 or less full-time employees. The program also provides for additional funding for affiliated entities as well as future supplemental grant opportunities for entities continuing to suffer economic loss.

### Priority Funding

During the first 14-day period that grants are awarded, the program will give priority to entities that suffered a 90 percent or greater revenue loss between April 2020 through December 2020. During the following 14-day period that grants are awarded, the program will give priority to entities that suffered a 70 percent or greater revenue loss between April 2020 through December 2020. Up to 80 percent of appropriated funds may be awarded during this 28-day priority period, so it is crucial that qualifying applicants prepare now to promptly submit their applications. Lastly, the program will set aside two billion dollars for up to the first 60 days of the grant awarding process for eligible entities that have 50 or less full-time employees.<sup>7</sup>

3. For example, the SBA’s Shuttered Venue Operators Grants Frequently Asked Questions (“SVO Grant FAQs”) released on January 27, 2021, state it is possible for a talent agency that does not operate a live venue to be eligible to apply for funding so long as 70 percent of its operations is managing, booking, or representing performers who perform primarily at live venues.

4. Section 324 calculates the number of employees an entity has as follows: employees who work at least 30 hours are full-time and employees who work between 10-29 hours are considered one-half of a full-time employee. To calculate the total number of employees, find the average number of employees over the prior year by adding up all qualifying employees in each pay period and dividing by the total number of pay periods.

5. Note this set of geographic and size restrictions is a conjunctive test in which **all** must apply to be barred from funding.

6. The Paycheck Protection Program was enacted pursuant to The Coronavirus Aid, Relief, and Economic Security Act (as amended, the “CARES Act”) and added as Section 7(a)(36) to the Small Business Act of 1953, as amended (the “Small Business Act”). 15 U.S.C. § 636(a).

7. Determined by the calculation set forth in footnote 4.

## Maximum Grant Amounts

Initial SVO Grant awards depend on when an eligible entity began operating. For eligible entities in operation **on or before January 1, 2019**, initial grant awards will be an amount equal to the lesser of (a) 45 percent of their 2019 gross earned revenue or (b) \$10 million. For eligible entities beginning operation **after January 1, 2019**, initial grant awards will be for the lesser of (a) average monthly gross revenue for each month in operation during 2019 multiplied by six or (b) \$10 million. Additionally, affiliated entities of an eligible entity may receive additional grants up to a total of \$50 million in funding.

## Supplemental Grants

After an entity receives an initial grant award, that entity may apply for a supplemental grant if the entity suffered a 70 percent or greater revenue loss for the most recent calendar quarter, as of April 1, 2021. The supplemental award is 50 percent of the initial grant award, provided that the supplemental grant and initial grant together do not exceed \$10 million. Supplemental grant applications will not be considered until all initial grant applications submitted within the first 60 days have been processed.

## USE OF GRANT FUNDS

The SVO Grant program allows recipients to use awards for a wide range of expenses incurred between March 1, 2020 through December 31, 2021. Eligible entities who receive a supplemental grant may use those additional funds for expenses incurred through June 30, 2022. Additionally, funds must be expended within 12 months following the grant disbursement date, and eligible entities who receive a

supplemental grant have 18 months to expend all funds. Any funds not used within these timeframes must be returned to the SBA. Allowable expenses include:<sup>8</sup>

1. payroll;
2. rent;
3. utilities;
4. mortgage principal or interest payments;
5. debt principal or interest payments (incurred prior to February 15, 2020);
6. worker protection expenditures;
7. independent contractors (a maximum of \$100,000 annual compensation per individual); and
9. other ordinary and necessary business expenses, including:
  - administrative costs;
  - taxes and fees;
  - operating leases (in effect as of February 15, 2020);
  - insurance;
  - advertising, production, transportation, or capital expenditures related to a performance; and
  - refunds for cancelled shows.

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8. This list is not exhaustive. Responses from the SVO Grant FAQs suggest “ordinary and necessary business expenses” will be broadly defined by the SBA.