

Practice Update

Lights! Camera! Action! Shuttered Venue Operators Grants Take Center Stage on April 8

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On April 8, The Small Business Administration (SBA) finally opens its Shuttered Venue Operators Grant (SVOG) program, which was established by the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, as part of the Consolidated Appropriations Act, signed into law on December 27, 2020, and as amended by the American Rescue Plan Act on March 11, 2021.

The program includes over \$15 billion in grants to shuttered venues that experienced financial hardship and will be administered by the SBA's Office of Disaster Assistance.

In general, eligible applicants may qualify for SVOG equal to **45 percent of their gross earned revenue**, with the maximum amount available for a single grant award of \$10 million. **The SBA is reserving \$2 billion for eligible applicants that have no more than 50 full-time employees.**

Eligible entities include:

- Live venue operators or promoters
- Theatrical producers
- Live performing arts organization operators

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- Relevant museum operators, zoos and aquariums who meet specific criteria
- Motion picture theater operators
- Talent representatives, and
- Each business entity owned by an eligible entity that also meets the eligibility requirements

“Eligible entities” are further defined in the law and FAQs. It is critical to determine if an entity meets such program definitions, and then, it must separately clear any disqualifying circumstances. Notably, eligible entities must have been in operation as of February 29, 2020.

Like other programs, the SBA issued detailed SVOG FAQs, which it periodically updates and can be found here.

Importantly, the SBA announced that an entity that received a Paycheck Protection Program (PPP) loan prior to December 27, 2020 *is eligible to apply for an SVOG*. Additionally, The American Rescue Plan Act now allows for an entity to take a PPP loan after December 27, 2020 (first or second draw) and apply for an SVOG, but the SVOG will be reduced by the amount of any PPP loan received after that date. If an entity receives an SVOG before it receives a PPP loan, it is ineligible for the PPP loan.

SBA published that grant amounts will be either:

- For an eligible entity in operation on January 1, 2019, grants will be the *lesser of*:
 - an amount equal to 45 percent of their 2019 gross earned revenue, or
 - \$10 million.
- For an eligible entity that began operation after January 1, 2019, grants will be the *lesser of*:

- the average monthly gross revenue for each full month you were in operation during 2019 multiplied by six, or
- \$10 million.

The SBA has set up a system to prioritize applications by periods. Within each priority period, and during the non-priority period, the SBA will process applications in the order in which they were received. Priority of Grants currently anticipated are:

- **First Priority** (first 14 days of Grant Awards):
 - Entities that suffered a **90 percent or greater** revenue loss between April 2020 through December 2020 due to the COVID-19 pandemic.
- **Second Priority** (next 14 days of Grant Awards):
 - Entities that suffered a **70 percent or greater** revenue loss between April 2020 through December 2020 due to the COVID-19 pandemic.
- **Third Priority** (beginning 28 days after First and Second Priority Awards):
 - Entities that suffered a **25 percent or greater** revenue loss between April 2020 through December 2020 due to the COVID-19 pandemic.
- **Supplemental Funding**
 - Recipients of First and Second Priority round who suffered a 70 percent or greater revenue loss for the most recent calendar quarter (*as of 04-01-21 or later*)

If awarded an SVOG, funds may only be used for specific expenses, which include:

- Payroll costs
- Rent payments

- Utility payments
- Scheduled mortgage payments (*not including prepayment of principal*)
- Scheduled debt payments (*not including prepayment of principal*) on any indebtedness incurred in the ordinary course of business prior to 02-15-20)
- Defined “covered worker protection expenditures”
- Payments to independent contractors (not to exceed \$100K in annual compensation per contractor)
- Other ordinary and necessary business expenses, including maintenance costs
- Certain administrative costs
- State and local taxes and fees
- Operating leases in effect as of Feb. 15, 2020
- Insurance payments
- Advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production. (However, this may not be primary use of funds.)

Grant funds may not be used to:

- Buy real estate
- Make payments on loans originated after Feb. 15, 2020
- Make investments or loans
- Make contributions or other payments to, or on behalf of, political parties, political committees, or candidates for election
- Any other use prohibited by the Administrator

In addition to the publication of its FAQs, the SBA offers other resources to help applicants prepare for its application. Of note, applicants must register in

SAM.gov in order to apply for the SVOG. Each applicant must be prepared to provide supporting documentation that differs depending on what type of eligible applicant it is. In other words, supporting documentation is applicant specific. But all applicants must make certifications as to need among other certifications.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.