

# Shuttered Venue Operators are Thrown a Lifeline as the Show Must Go On

## *Save Our Stages Act: \$15 Billion in Grants to Shuttered Venue Operators*

By Garrett M. Higgins, CPA, Partner and Eva Mruk, CPA, EA, Partner

Described as a lifeline, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Hard-Hit Act) introduced a new \$15 billion grant program that provides aid to the arts and entertainment industry. Administered by the U.S. Small Business Administration (SBA) Office of Disaster Relief, the Save Our Stages Act (SOS Act) established the new grant program known as the Shuttered Venue Operator (SVO) Grants program.

Recognizing the unprecedented situation live venues, independent movie theaters, arts and cultural institutions are facing amid the COVID-19 pandemic, including little to zero revenue and significant overhead costs, the SVO Grants program provides a lifeline toward the hope of recovery (to say the least) for shuttered venue operators.

The SVO Grants program offers critical and vital financial support to struggling live venue operators and related businesses, including performing arts venues, movie theaters, and museums. More importantly, the SVO Grants differ from the Paycheck Protection Program (PPP) as it offers nontaxable grants of up to \$10 million to eligible organizations rather than the loan structure under the PPP.

### Eligible Organizations

To be eligible to receive an SVO grant, an entity or an individual must be in one of the four categories which follow and meet the specific requirements outlined.

- **Live Venue Operator or Promoter, Theatrical Producer or Live Performing Arts Organization Operator** – A live venue operator or promoter, theatrical producer, or live performing arts organization operator (Eligible Organizations) may be organized as a for-profit entity, a nonprofit organization, a government-owned entity, or a business operated as a sole proprietorship. [Note: Any entity that is recognized as a tax-exempt organization under Section 501(a) of the Internal Revenue Code qualifies as a nonprofit organization for purposes of the SVO Grant program.]

The individual or entity must meet one of following criteria:

1. have a principal business activity of organizing, promoting, producing, managing or hosting live concerts, comedy shows, or theatrical productions or other events by performing artists for which (1) a cover charge is applied through ticketing or front door entrance fee, (2) performers are paid in an amount that is based on a percentage of sales, a guarantee (or another mutually beneficial formal agreement, and (3) derives at least 70 percent of its earned revenue through ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event food, beverages or merchandise; **or**
2. have a principal business activity of making tickets available for purchase by the public at least 60 days in advance of live concerts, comedy shows, theatrical productions, or other qualifying

Empty spaces, what are we living for?  
Abandoned places, I guess we know the score, on and on  
Does anybody know what we are looking for?  
Another hero, another mindless crime  
Behind the curtain, in the pantomime  
Hold the line  
Does anybody want to take it anymore?  
The show must go on  
- Queen, *Innuendo*, Queen Music Ltd., 1991

events for which performers are paid in an amount that is based on a percentage of sales, a guarantee or another mutually beneficial formal agreement.

- **Motion Picture Theatre Operator** – For an individual or entity to qualify as a motion picture theatre operator, it must have as its principal business activity the ownership or operation of at least one place of public accommodation for the purpose of motion picture exhibition for a fee. A motion picture theatre operator may be organized as a for-profit entity, a nonprofit organization, a government-owned entity, or a business operated as a sole proprietorship.
- **Relevant Museum Operator** – For an individual or entity to qualify as a relevant museum operator, it must operate a public, tribal or private nonprofit agency or institution organized on a permanent basis for essentially educational, cultural heritage, or aesthetic purposes that utilizes a professional staff, owns or utilizes tangible objects, cares for the tangible objects, and exhibits the tangible objects to the public on a regular basis. A relevant museum operator includes the following: aquariums, arboretums, botanical gardens, art museums, children’s museums, general museums, historic houses and sites, history museums, nature centers, natural history and anthropology museums, planetariums, science and technology centers, specialized museums, and zoological parks.
- **Talent Representative** – A talent representative may be organized as a for-profit entity, a nonprofit organization, a government-owned entity or a business operated as a sole proprietorship. For a person or entity that is an agent or manager to qualify as a talent representative the following criteria apply:
  1. 70 percent of its operations must involve representing or managing artists and entertainers;
  2. Must book or represent musicians, comedians, actors or similar performing artists primarily at live events in venues or at festivals; and
  3. Such performers must be paid in an amount that is based on the number of tickets sold, or a similar basis such as entrance fees.

## Eligibility Requirements

To qualify for a SVO Grant, an individual or organization must satisfy the following eligibility requirements:

- **Fully Operational** – Must have been “fully operational” as of February 29, 2020;
- **Gross Revenue Reduction** – The eligible individual or entity must have experienced a reduction of **at least 25%** in gross earned revenue during at least one quarter of 2020 as compared to the corresponding quarter of 2019. Important to note, for purposes of calculating revenue, an applicant’s revenue excludes amounts received under the CARES Act (for example, PPP loans or other funding) and the accrual method of accounting should be used in determining revenue; **and**
- **Resumption of Operations** – As of the date of its receiving an SVO Grant, the eligible individual or entity must:
  1. for **live venue operators, promoters, theatrical producers or live performing arts organization operators** – have resumed or intends to resume organizing, promoting, managing or hosting future live events, comedy shows, theatrical productions, or other events by performing artists
  2. for **motion picture theatre operators** – have reopened or intend to reopen for the primary purpose of publicly showing motion pictures;
  3. for **relevant museum operators** – be open or intend to reopen; and
  4. for **talent representatives** – be representing or managing artists and entertainers.
- **Venue Requirements** – The venues at which such operator, promoter or producer promotes, produces, manages, or hosts the live events of the kind described in the preceding bullet point, or at which the artists and entertainers represented or managed by the talent representative perform have the following characteristics:

1. **Live venue operators, promoters, theatrical producers or live performing arts organization operators:** The venues at which/for which events are promoted, produced, managed or hosted events, and for **talent representatives**, the venues at which the artists/entertainers represented or managed perform must contain a defined performance and audience space; mixing equipment, a public address system and a lighting rig; and hire at least one individual to carry out at least **two** of the following roles: (1) sound engineer; (2) booker; (3) promoter; (4) stage manager; (5) security personnel; (6) box office manager.

The venue must have paid tickets or cover charges to attend most performances; and the artists must be paid fairly (artists do not play solely for free or for tips). The performances must be marketed in print, online, mass media or on social media. In addition, nonprofit venues that produce free events must be produced and managed primarily by paid employees – not by volunteers.

2. **Motion picture theatre operators:** A motion picture theatre must have the following characteristics: (1) at least one auditorium that includes a motion picture screen and fixed audience seating; (2) a projection booth or other space with at least one motion picture projector; (3) paid ticketing to attend exhibition of motion pictures; and (4) motion picture exhibitions marketed through show time listings in print, online, mass media or on social media.
3. **Relevant museum operators:** A relevant museum must have the following characteristics: (1) serving as a relevant museum as its principal business activity; (2) indoor exhibition spaces that are a component of the principal business activity and which have been subject to pandemic-related occupancy restrictions; and (3) at least one auditorium, theatre, performance or lecture hall with fixed audience seating and regular programming.

### Size of SVO Grants

The total amount of SVO Grants that an eligible person or entity may receive (combined initial and supplemental SVO Grants) is capped at **\$10 million**. Each business entity of an eligible applicant shall be treated as an independent, non-affiliated entity. However, under the broad affiliation rules, not more than five business entities of an eligible person or entity that would be considered affiliates may receive an SVO Grant.

- **Initial Grants** – Subject to a \$10 million limitation, initial SVO Grants are (1) for an eligible person or entity that was in operation **on** January 1, 2019 equal to **45%** of the gross earned revenue of the eligible person or entity during 2019 and (2) for an eligible person or entity that began operations **after** January 1, 2019 may receive a grant equal to 6x the average monthly gross earned revenue for each full month of 2019 that the eligible person or entity was in operation.
- **Supplemental Grants** – Beginning on the 60<sup>th</sup> day following the commencement of the initial 14-day grant making period discussed below, individuals or entities that receive an initial SVO Grant may receive a supplemental grant if, as of April 1, 2021, such person's or entity's revenue for the first quarter of 2021 is not more than **30 percent** of the revenue for the first quarter of 2019. A supplemental SVO Grant will be capped at **50 percent** of the grantee's initial SVO Grant.

### Prioritization of Grant Disbursements

The SBA is in the process of setting up the grant program and when applications will be accepted. SVO Grants will be awarded to eligible recipients in order of priority. Those that endured the greatest economic loss will have their applications processed first. Grant awards totaling up to \$12 billion from the SVO Grant program's \$15 billion of appropriated funds shall be awarded in two consecutive 14-day periods, as outlined below.

- **First Priority Period** – During the initial 14-day period of the SVO Grant program, the SBA shall award grants to eligible applicants with total revenue for the period from April 1, 2020 through December 31, 2020 that is **not more than 10%** of such applicant's gross revenue during the same corresponding period of 2019 (April 1, 2019 through December 31, 2019).

- **Second Priority Period** – During the subsequent 14-day period (days 15–28) of the SVO program, the SBA shall award grants to eligible applicants with total revenue for the period from April 1, 2020 through December 31, 2020 that is **not more than 30%** of such applicant's gross revenue during the same corresponding period of 2019 (April 1, 2019 through December 31, 2019).
- **Third Priority Period** – Beginning 28 days after the First and Second Priority Awards, the SBA shall award grants to eligible applicants that suffered a 25% or greater revenue loss between one quarter of 2019 and the corresponding quarter of 2020.
- **Supplemental Funding** (Available after First & Second Priority) – Recipients of First and Second Priority round who suffered a 70% or greater revenue loss for the most recent calendar quarter (as of April 1, 2021 or later) will be eligible for a supplemental grant.

On January 20, 2021, the SBA updated the proposed plan for issuing Shuttered Venue Operators Grants during the first and second priority periods which clarifies that priority awardees will not need to satisfy the small employer set-aside. During the first 59 days of opening the SVO Grants, the SBA will reserve no less than \$2 billion of program funding for grants to entities that have no more than 50 employees.

### Permitted and Prohibited Use of Funds

Initial SVO Grants may be used for costs incurred between March 1, 2020 and December 31, 2021, and supplemental grants may be used for costs through June 30, 2022. Any initial grant proceeds not spent on allowable expenses within one year and any supplemental grant proceeds not spent within 18 months of disbursement must be returned to the SBA.

SVO Grant proceeds are permitted to be used for any of the following purposes:

- payroll costs including salary, wages, commissions, or similar compensation (capped at an annualized amount of \$100,000 per employee) including vacation, parental, family, medical, and sick leave; payments due to separation or dismissal; health, life disability, vision, or dental insurance; and retirement plan benefit payments;
- rent payments for a lease in effect before February 15, 2020;
- utility payments, including electricity, gas, water, transportation, telephone, or internet for service agreements that began before February 15, 2020;
- interest or principal payments (*not including prepayment of principal*) on mortgages/debts incurred before February 15, 2020;
- debt payments (*not including prepayment of principal*) on any indebtedness incurred in the ordinary course of business prior to February 15, 2020;
- covered worker protection expenditures;
- payments to a sole proprietor or independent contractors (*not to exceed \$100,000 in annual compensation per contractor*); and
- other ordinary and necessary business expenses, including maintenance costs, administrative costs, state and local taxes and fees, operating leases in effect as of February 15, 2020, insurance payments, and advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show (except that an SVO Grant may not be used primarily for such production-related expenditures).

SVO Grant funds **cannot** be used to purchase real estate, pay interest on loans that originated after February 15, 2020, to invest or re-lend, or to contribute to any political party or candidate.

### Ineligible Entities and Persons

The following categories of individuals or entities are **ineligible** to receive an SVO Grant:

1. **Public Issuer** – If it is a public issuer *or* is majority-owned or controlled by another entity that is an issuer of securities which are listed on a national securities exchange;

2. **10 Percent of Gross Revenue from Federal Funding** – If it received *or* is majority-owned or controlled by another entity that received more than 10% of gross revenue from federal funding during 2019. [**Note:** Certain disaster relief funding received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act should be excluded.]
3. **Large Operator** – If it is owned or controlled by another entity with **two** or more of the following qualities:
  - owns or operates locations in more than one country;
  - owns or operates locations in more than ten States; and/or
  - employed more than 500 full-time employees as of February 29, 2020.
4. **PPP Borrower** – If it received a PPP Loan (whether under a standard or second draw PPP loan) after December 27, 2020; or
5. **Prurient Sexual Nature** – If it presents live performances of a prurient sexual nature, or derives more than *de minimis* gross revenue through sale of products/services of a prurient sexual nature.

### Authority and Oversight: Certification of Need

Applicants will be required to submit a good-faith certification that “uncertainty of current economic conditions makes necessary the grant to support the ongoing operations of the eligible person or entity.” This Certificate of Need is similar to the certification required for a loan under the PPP. Applicants seeking an SVO Grant should formulate a thorough and detailed record that demonstrates how necessity was determined and its inability in obtaining funds from other sources. Additional guidance by the SBA is expected to be released soon.

The SBA shall provide increased oversight of eligible persons and entities receiving SVO Grants. Grantees will be required to retain documents that demonstrate compliance with the grant requirements for (1) four years for employment records and (2) three years for all other records. Grants may be subject to an audit and, in the event of fraud, the grantee will be required to repay any misspent funds or result in a legal action case.

### Planning Ahead

Eligible applicants should begin to assess and make critical decisions now as to whether the SVO Grant or the PPP loan is more favorable. During this decision process, an applicant should carefully consider these important points:

- A recipient of a PPP loan after December 27, 2020, the date of enactment of the Act, is ineligible to receive an SVO Grant, and the reverse holds true.
- The PPP loan program as reauthorized by the Economic Aid Act for the borrowing of new PPP loans (maximum \$2 million loan) expires March 31, 2021.
- Under the SVO Grant program, grant recipients will be able to use the proceeds of a grant for permitted expenses incurred retroactively to March 1, 2020, while proceeds under a PPP loan may only be used toward expenses prospectively – as of the date of the loan.
- Under the SVO Grant program, a broader range of uses are available while the PPP loan program focuses more so on employee wages.

The SBA is not yet accepting applications for the SVO Grant program and the grant guidelines will be publicly announced. In the meantime, eligible applicants should begin to gather the necessary documents, including earnings from both 2019 and 2020 and a list of permissible expenses if awarded.

Please visit the SBA’s [website](#) for the most current updates.

### Contact Us

PKF O’Connor Davies, LLP is here to help your organization catch its lifeline as we plan, respond to and address this grant opportunity with you. If you have questions regarding the Shuttered Venue Operator Grant program or need assistance in determining your eligibility and apply for a grant, please contact

Garrett M. Higgins, CPA, Partner at [ghiggins@pkfod.com](mailto:ghiggins@pkfod.com) at PKF O'Connor Davies, LLP. Please visit our [webpage](#) for more information.

[www.pkfod.com](http://www.pkfod.com)

### **About PKF O'Connor Davies**

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, fourteen offices in New York, New Jersey, Florida, Connecticut, Maryland and Rhode Island, and more than 900 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked 27th on *Accounting Today's* 2020 "Top 100 Firms" list. It is also ranked among the top 20 best accounting employers to work for in North America by *Vault*.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.