

Shuttered Venue Grants – Third FAQ Released

The *2021 Consolidated Appropriations Act* (Act) included \$15 billion in shuttered venue operators grants (SVOG), which will be administered directly by the U.S. Small Business Administration¹ (SBA). As of February 16, 2021, the program is not live; for the most up-to-date information, visit the [SBA website](#). The SBA has released three sets of [frequently asked questions](#) (FAQ). This article summarizes the Act's original SVOG provisions and all subsequent SBA clarifications.

The SBA is building the application process in the System for Award Management ([SAM.gov](#)). To register in the SAM.gov system, a Data Universal Number System² (DUNS) number is required. Another prerequisite for SAM registration is the creation of a [login.gov](#) account.

As the SAM registration may take up to two weeks once submitted, the SBA recommends that potential applicants start the process as soon as possible. The FAQs also advise to start gathering documents that demonstrate the number of employees and monthly revenues and the extent of gross earned revenue loss between 2019 and 2020. Other suggested information needed for the application includes floor plans and contract copies.

PPP & SVOG Eligibility

Entities that received a Paycheck Protection Program (PPP) loan **before December 27, 2020**, are eligible to apply for an SVOG. An entity that has received a PPP loan on or **after December 27, 2020**, is ineligible for the SVOG program. If an entity submitted a PPP application (either first draw or second draw) after December 27, 2020, it can apply for an SVOG only if that PPP loan application is declined. **Entities cannot apply for a PPP loan and an SVOG at the same time. If an applicant is rejected by one program, it will then be eligible to apply for the other.** See special rules for affiliates and subsidiaries below.

Given this limitation, organizations potentially eligible for both programs should carefully review their situation to determine which program will be more beneficial. For more information on the PPP, see this [BKD Thoughtware® article](#).

General Eligibility

Eligible Person or Entity

Live venue operators or promoters, theatrical producers or live performing arts³ organization operators, motion picture theater operators, museum operators, or talent representatives must have been in operation on February 29, 2020, and had a 25 percent or greater drop in [gross earned revenue](#) during any quarter of 2020 as compared to the same quarter of 2019.

An entity not in business in 2019 but conducting business operations as of February 29, 2020, may be eligible if it can show the required earned revenue loss. Conducting business operations includes incurring costs of necessary startup and preparatory activities in the lead time before an anticipated opening date. Firms that had commenced startup operations but were unable to open as anticipated due to the pandemic would only be eligible if they had earned revenue in the first quarter of 2020 from sources such as advance ticket sales, merchandising, etc.

¹This is not strictly a small business program, but the SBA will administer the program by statute, which will affect the affiliation rules.

²If an organization does not have a DUNS number, or no one knows it, visit the Dun & Bradstreet (D&B) website or call 1.866.705.5711 to register or search for a DUNS number. A DUNS number is a unique nine-character number used to identify an organization. The federal government uses the DUNS number to track how federal money is allocated.

³Events such as musical concerts, comedy shows, theatrical productions, dance performances, or other live renderings of similarly artistic works.

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Firms that had been conducting business operations and incurring expenses in 2020 in a pre-opening capacity but had no earned revenue for the first quarter of 2020 would not be eligible to apply.

All types of entities are eligible for this relief, including for-profit, not-for-profit (NFP), government-owned, corporations, limited liability companies, partnerships, and sole proprietorships. The Act does not preclude relief eligibility for entities owned by a state or a political subdivision of a state; however, the relief is only available solely to venue operators and not any other entities of a state or political subdivision that are not venue operators.

For example, a city parks and recreation department that operated a bandstand in a public square along with running various nature parks would not qualify as an eligible entity for an SVOG.

The following items **preclude** an otherwise eligible firm from an SVOG:

- It does not have a place of business located in the U.S., does not operate primarily within the U.S., and does not make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor.
- It was not in operation as of February 29, 2020.
- It applied for and/or received a PPP loan on or after December 27, 2020.
- It is a publicly traded corporation or is majority owned and controlled by a publicly traded corporation. The SBA defines majority ownership and control to mean that at least 51 percent of the ownership interests in an entity (regardless of its legal structure) are held by a single individual or entity.
- It presents live performances or sells products or services of a prurient sexual nature.
- More than 10 percent of its 2019 gross revenue came from the federal government (not counting disaster assistance).

If a university-based entity lacks separate legal existence from its parent university, or has separate legal existence but is majority owned and controlled by the university, it will have to look to the parent university's gross revenue when determining whether it passes this 10 percent threshold. If a university owns less than a majority of an eligible entity with separate legal existence, the entity only needs to consider whether 10 percent of its own 2019 gross income came from federal funding.

- It owns or operates venues, theaters, museums, or talent agencies in more than one country; owns or operates venues, theaters, museums, or talent agencies in more than 10 states; **and** had more than 500 employees as of February 29, 2020.

Ownership Transfers

The SBA will consider the new owner of an eligible entity to have stepped into the shoes of the prior owner, and will permit the new owner to use the prior owner's revenues as its own if the transferred entity was operational as of February 29, 2020, regardless of the date of the sale.

Revenue Calculation

Gross revenue is defined by the SBA as being equivalent to receipts, "all revenue in whatever form received or accrued from whatever source." This would include contributions, donations, and grants from all sources. SVOG eligibility is based on a smaller subset of gross revenue, which the SBA refers to as **gross earned revenue**. Only monies organizations receive from the sale of goods or services are counted as earned revenue. This commonly accepted definition of earned revenue **does not** include other sources of funds that an organization may receive, such as donations, sponsorships, governmental assistance, or returns on investments. Gross earned revenue is the

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total of earned revenue from various sales of goods or services, such as admission tickets, merchandise, food and beverages, advertising sales, and contracted presentation income. School tuition would be treated as earned revenue, *e.g.*, a dance school that operates as part of a live venue. Gross earned revenue would include rental income from longer-term tenants and from short-term rentals for event hosting because they derive from standard commercial transactions for the paid use of facilities. The SBA defines earned revenue and gross earned revenue in accordance with common principles of the accrual method of accounting.

Any grants or other funding received from the *Coronavirus Aid, Relief, and Economic Security Act* are disregarded in determining the reduction in gross earned revenue.

If an entity has multiple lines of business activity, it should use its gross earned revenue across all its lines of business activities and not exclude non-SVOG revenue streams.

Gross earned revenue **does not** include unearned revenue, including donations and other gratuitous contributions such as foundation grants, corporate sponsorships, and individual gifts. For fundraising event receipts, the portion of the amount an individual pays in connection with a fundraising event that represents the estimated value of the good or service they receive in exchange must be included in gross earned revenue; the portion of the amount such an individual pays that exceeds the estimated value of the good or service they receive will be considered a donation and is not included in gross earned revenue.

The third set of FAQ notes: Currently, the SBA is only planning to take capital funds, restricted grants, or investment income into consideration for purposes of determining whether an applicant meets the requirement that no more than 10 percent of its 2019 gross revenue came from the federal government, excluding disaster assistance.

NFP Considerations

Both contributions and grants are excluded from an organization's earned revenue. However, the SBA will consider an organization's federal grants revenue to determine whether it meets the eligibility limit of having no more than 10 percent of its gross earned revenue from federal sources, not including disaster assistance. For membership revenue, the portion of membership cost that represents the estimated value of the goods or services provided as a condition of membership should be included in gross earned revenue. The portion of a membership cost that exceeds the estimated value of the goods or services provided as a condition of membership is considered a contribution and excluded from gross earned revenue.

If an entity is a hybrid NFP/governmental entity, it should apply under the NFP's name and submit documentation demonstrating the public/private partnership aspects.

If a ticket to a fundraising dinner costs \$100 per person and the estimated value of the dinner provided is \$50, then \$50 of the funds generated from the fundraising ticket would be considered gross earned revenue and the other \$50 would be considered a donation and would be excluded from gross earned revenue.

Subsidiaries

For entities with multiple subsidiaries, the parent entity must meet the eligibility criteria, but each subsidiary does not need to meet the criteria independently. However, if a subsidiary wants to apply for its own SVOG in its own name, it must meet the eligibility requirements. Each entity is looked at independently if it is a separate legal entity under a parent organization and each location would need to meet its individual requirements to be eligible to apply. **Subsidiary entities that qualify for an SVOG will not be treated as affiliates of their parent entity or one another.**

A consolidated tax return does not strip subsidiary or affiliated entities of any separate legal existence they may possess.

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If a parent company is ineligible for an SVOG, one or more of its subsidiaries can still be eligible (up to five subsidiaries) provided the subsidiary meets eligibility requirements in its own right; however, a subsidiary would not be eligible where it is majority owned and controlled by a parent entity that is either listed on the stock market or operates eligible entities in more than one country and more than 10 states and has more than 500 employees.

A maximum of five business entities of an eligible entity can receive an SVOG, *i.e.*, one parent firm and four subsidiaries. In addition, an eligible museum, and all other museums it operates as subsidiaries may receive no more than \$10 million combined under the program.

Shared Expenses

If a parent entity shares costs with its subsidiaries, the parent's shared costs (or allocated costs to subsidiaries) remain as such, and the parent should keep records to show that all expenses claimed under the grant served grant purposes. If a subsidiary is eligible to apply for and applies for its own grant, only the portion of the shared cost that the subsidiary pays can be paid for by the SVOG should it be received.

Affiliation Rules

SVOG is not strictly a small business program; the SBA is administering the program by statute. The SBA will only consider affiliation in two ways for the SVOG program:

- The Act's specific affiliation requirements:
 - Affiliated firms (including subsidiaries) may apply for an SVOG on their own if they meet all the eligibility requirements
 - No more than five affiliated firms may receive SVOGs
- [Small employer set-aside](#). This is the only definitive size limit and the SBA will administer this in the same way it does other size limits (will look to the total number of full-time employees retained by the applicant and all its affiliated entities)

Affiliation issues can be complex; the SBA has a general [guide](#) to business affiliation principles.

A parent company can submit an application that includes some or all of its subsidiaries. The member firms of a group of subsidiaries or affiliates are not obligated to all make the same choice of a PPP loan or an SVOG.

Specific Venue Criteria

Live Venue Operator/Promoter Criteria

As of the grant date, the venue is opened or intends to reopen, and one of two following criteria must be met:

- The individual's or entity's principal business activity⁴ must be to organize, promote, produce, manage, or host live concerts, comedy shows, theatrical productions, or other events by performing artists for which:
 - A cover charge through ticketing or a front door entrance fee is applied, and performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement. The use of volunteers in the production cast would not disqualify an entity, if the NFP performances are produced and managed primarily by paid employees.

⁴To determine a given firm's principal business activity, the SBA will consider the distribution of an entity's receipts, employees, and costs of doing business among the different lines of business activity in which its business operations occurred for the most recently completed fiscal year. The SBA also may consider other factors, such as the distribution of patents, contract awards, and assets, as appropriate.

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- Not less than 70 percent of the earned revenue is generated through cover charges or ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event beverages, food, or merchandise. The SBA defines “cover charges” to encompass front door entrance fees, food or beverage minimums, or other similar charges required to gain admission to a venue, whether collected via ticket sales, addition to a tab, or direct payment.
- An individual or entity that, as a principal business activity, makes available for purchase by the public an average of not less than 60 days before the date of the event tickets to live concerts, comedy shows, theatrical productions, or other events by performing artists—events for which performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement

Venue criteria for live event operators or promoters, theatrical producers, and live performing art organizations must have the following characteristics:

- A **defined** performance and audience space. The FAQ clarifies that mobile venues like a circus, fair, or entertainment business that do not have a **fixed** performance space are ineligible to apply
- Mixing equipment, a public address system, and a lighting rig
- Engages one or more individuals to carry out at least two of the following roles:
 - A sound engineer
 - A booker
 - A promoter
 - A stage manager
 - Security personnel
 - A box office manager. The use of volunteers to staff a venue’s box office does not preclude it from being eligible for the SVOG program
- There is a paid ticket or cover charge to attend most performances, and artists are paid fairly and do not play for free or solely for tips, except for fundraisers or similar charitable events
- For a venue owned or operated by an NFP that produces free events, the events are produced and managed primarily by paid employees, not by volunteers. The use of volunteers in the production cast would not disqualify an entity, if the NFP performances are produced and managed primarily by paid employees
- Performances are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media

A theatrical producer who stages performances in multiple venues is eligible to apply if other criteria are met, e.g., defined performance space, etc.

The FAQs shed light on eligibility for several common situations; see [Appendix](#).

Motion Picture Venue Criteria

- At least one auditorium that includes a motion picture screen and **fixed audience seating**. The FAQ clarifies that drive-in movie theaters are not eligible for an SVOG
- A project booth or space containing not less than one motion picture
- A paid ticket charge to attend exhibition of motion pictures
- Motion picture exhibitions are marketed through showtime listings in printed or electronic publications, on websites, by mass mail, or on social media

Museum Criteria

To qualify, a museum must be a nonprofit organization under Section 501(a) and meet the definition in §273 of the *Museum and Library Services Act*⁵. Other qualifications include:

- As of the grant date, the museum is opened or intends to reopen and has the following characteristics:
 - Serving as a museum is its principal business activity
 - Indoor exhibition spaces that were subject to pandemic-related occupancy restrictions
 - At least one auditorium, theater, or performance or lecture hall with fixed audience seating and regular programming. If a museum has more than one qualified auditorium, theater, or lecture hall, it may aggregate programming across all such places to meet the regular programming requirement

The FAQs clarify that for a museum partially funded by state dollars, the receipt of funding from a state government does not affect eligibility (subject to eligibility rules by entities owned by state or local governments noted above).

Fixed Seating

For both museums and movie theaters, fixed seating is required. The fixed seating must be permanently fixed to the floor or ground or be so heavy or cumbersome as to make removing it impractical. The FAQ clarifies there are no allowances for temporary, removable, modular, convertible, or other nonfixed seating arrangements; however, the fixed seating can be outdoors. This restriction applies only to museums and movie theaters and not any other venue types.

Regular Programming

In general, the SBA defines regular programming to mean programming provided on an ongoing and near-continuous basis of an average of at least four times a month over the course of a year in its qualifying theater, lecture hall, or similar venue. For seasonally operated venues, the same frequency is required.

A museum with an outdoor amphitheater that is open six months of the year and provides daily programming during that seasonal operation would meet the regular programming standard because it had an average of 15 events per month over the course of a year of operation (182 events per year divided by 12 months equals an average of 15 events per month).

Grant Size

Initial Grants

Initial Grants are awarded under a three-tier priority system and can be up to \$10 million. For tier one, during the first 14 days of awarding grants under this provision, the SBA is required to only award grants to those individuals or entities that had revenue between April 1, 2020, and December 31, 2020, that is not more than 10 percent of the revenue earned between April 1, 2019, and December 31, 2019, due to the COVID-19 pandemic. The second priority begins immediately following the end of the first 14-day period and runs for the next 14 days. This priority is the same qualification as priority one except 30 percent is substituted for 10 percent. At the conclusion of the

⁵The term “museum” means a public, tribal, or private nonprofit agency or institution organized on a permanent basis for essentially educational, cultural heritage, or aesthetic purposes, that uses 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. Such term includes museums that have tangible and digital collections and includes 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.

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first 28 days, all eligible individuals and entities may be awarded grants under the same terms. This continues until day 60 of the award period. Initial Grants are the lesser of:

- 45 percent of 2019 gross revenue earned, or
- \$10 million

For eligible entities that began operations after January 1, 2019, the initial grant amount is the average monthly gross revenue for each full month in operation during 2019 multiplied by six (subject to the \$10 million limit).

Supplemental Grants

A Initial Grant recipient can apply for a supplemental grant if, as of April 1, 2021, the revenues for the individual or entity for the most recent calendar quarter are not more than 30 percent of the revenues for the corresponding quarter of 2019, due to the COVID-19 pandemic. A supplemental grant is limited to 50 percent of the Initial Grant received, subject to an overall cap of \$10 million of total grants.

Small Employer Set-Aside

For the first 59 days of the SVOG application period, at least \$2 billion is set aside for entities with fewer than 50 full-time employees. This is a separate aspect of the awarding process from the priority periods. The SBA will draw upon the small employer set-aside funds throughout all stages of the initial award phase. To ensure funds are available for small employers throughout the process, the SBA may set aside more than the required \$2 billion minimum. The SBA will look to the total number of full-time employees retained by the applicant and all its affiliated entities. If this combined number is not more than 50, the applicant will qualify for the small employer set-aside.

Employee Count

For determining the 50-employee limit, any employee working 30 hours or more per week shall be considered a full-time employee and those working 10 to 29 hours per week shall be counted as one-half of a full-time employee. **Employees who worked less than 10 hours per week are not considered an employee.** To calculate the average number of employees the organization had over the prior year, it would add the number of qualifying employees in each individual pay period and divide that amount by the number of pay periods over the 12-month period from March 1, 2019, to February 29, 2020. The SBA will apply the [affiliate rules](#) above in determining the full-time employee counts.

Use of Grants

The grants may be used for expenditures allowed under the PPP, as amended by the Act and expanded to include principal payments on debt that existed on February 15, 2020. In addition, certain maintenance and administrative costs are allowed. Initial Grants must be fully spent between March 1, 2020, and December 31, 2021, and supplemental grants must be fully spent between March 1, 2020, and June 30, 2022.

The additional six months to spend SVOG funds is only available for those who receive a supplemental grant. If the SVOG program funds are expended during the initial phase and no funding remains for supplemental funding, all SVOG funds must be spent by December 31, 2021.

The grants may not be used:

- To purchase real estate
- For payments of interest or principal on loans originated after February 15, 2020
- To invest or relend funds. Use of an interest-bearing account to hold SVOG funds would not constitute an impermissible investment

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- For contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office

The FAQs clarify that the below items also would be a valid use of funds:

- Refunds to customers still holding tickets for canceled performances
- Reimbursements to an owner who loaned the business money to keep the employees and operating expenses paid, provided the loan was incurred before February 15, 2020, and made on commercially reasonable terms and formally documented as a standard, ordinary debt instrument
- Owner compensation, including distributions and dividends, to the extent the total amounts do not exceed an owner's 2019 compensation received
- Reimbursement for allowable expenses paid going back to March 1, 2020
- Payment toward debt recorded prior to February 15, 2020, even if the debt was refinanced or consolidated with other debts that existed prior to the cutoff date. Otherwise allowable debt consolidated with a debt that was not recorded prior to February 15, 2020, would cease to be an allowable expense
- Payments on lines of credit or revolving loan funds recorded prior to February 15, 2020, but not drawn down until after that date provided the amounts were not increased after February 15, 2020
- Real estate and personal property taxes levied on building and equipment **directly related** to eligible SVOG program operations. Such taxes not directly related to SVOG program operations are ineligible

Employee Retention Credits (ERC)

If an entity receives an ERC for one of its employees and that credit does not fully cover the employee's salary, SVOG funds may be used to pay the uncredited portion of the employee's salary. SVOG funds cannot be used to pay any portion of an employee's salary covered by an ERC.

Conclusion

BKD will continue to follow this developing situation. As with most topics related to COVID-19, changes are being made rapidly. Please note that this information is current as of the date of publication. Visit [BKD's COVID-19 Resource Center](#) to learn more. If you have questions about these changes, contact your **BKD Trusted Advisor**™ today.

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Appendix – SVOG Eligibility Examples from FAQs

- **Wedding/event venue.** Not likely to be eligible. Wedding venue operators would likely fail to meet multiple requirements, *e.g.*, ticket sales, public promotion, stage managers, and box office managers.
- **Sports stadium or venue used for concerts and other live, non-sport performances.** Not likely to be eligible. While sports are not a form of performing art, if the operator of a sports stadium or similar athletic arena can meet the Act’s statutory definition of an eligible entity, including the requirement that its principal business activity must be the organization, promotion, management, or hosting of live concerts, comedy shows, theatrical productions, or other events by performing artists, it should be eligible to apply for an SVOG.
- **Restaurant that features live music.** No, if the principal line of business is restaurant operation rather than live venue operation, the business would not be eligible to apply.
- **Dinner theater.** Maybe. A dinner theater could qualify if its principal business activity is the organization, promotion, management, or hosting of live concerts, comedy shows, theatrical productions, or other events by performing artists, rather than restaurant operations, and meets all other applicable eligibility criteria.
- **Performing arts center owned and operated by a government, state college (as a college department).** Yes. State, county, and municipal government-owned entities, including colleges, may be eligible to apply for an SVOG.
- **A company that uses 1099 (independent contractor) workers/talent (versus W2).** Yes. Per the Act, payments made to independent contractors as reported on an entity’s Form-1099 are an allowable use of grant funds. As such, an entity that used independent contractors would be eligible to apply for an SVOG.
- **Independent contractors used as a subsidiary service provider for or at live venues and events.** No, this does not fit the definition of a subsidiary, but rather defines a secondary service provider. The SBA does not believe a secondary service provider supplying support to qualifying venues meets any eligible entity definition.
- **Theatrical production management business with revenue generated by the production management.** Maybe. A theatrical producer may be eligible to apply for an SVOG even if less than 70 percent of its revenue came from cover charges or ticket sales. Under the Act, it also may be eligible to apply if, as its principal business activity, it has production tickets available for public purchase an average of not less than 60 days before the performance date.
- **A talent agency that books actors at live venues but does not operate a live venue.** It is possible. A talent agency may be eligible to apply if 70 percent of its operations is managing, booking, or representing performers who appear primarily at live venues. If it is less than 70 percent, it is not eligible to apply for an SVOG.
- **A motion picture theater owned by one entity and operated by a separate entity.** Yes. Both owners and operators are considered eligible entities. Each entity would base its earned revenues on its share of those payments received (space rental, ticket sales, management fees, etc.) as allocated by contract, lease, or other legal agreements. All earned revenue and claimed expenses must be tracked and accounted for separately to avoid double counting.
- **A landlord who owns a shopping center that includes a movie theater.** No. The landlord’s principal business activity would most likely be owning or operating a shopping center rather than owning or operating a motion picture theater.
- **Ticket broker or reseller.** No. Ticket brokers or resellers are viewed as principally in the business of reselling tickets and do not meet the criteria for a live venue operator or promoter.
- **Air show operator.** No. While an air show is live entertainment, it does not constitute a performing art.