

# \$16 Billion Shuttered Venue Grant Program to Go Live on April 8, 2021

The *Consolidated Appropriations Act, 2021* (CAA) initially funded \$15 billion for shuttered venue operators grants (SVOG) supplemented with an additional \$1.25 billion in funding from the *American Rescue Plan Act of 2021* (ARPA). The program will be administered directly by the U.S. Small Business Administration (SBA).

As initially proposed, entities would not be eligible for both a Paycheck Protection Program (PPP) loan after December 27, 2020, and an SVOG award forcing eligible entities to choose between the two relief programs. The ARPA eliminates the restriction for applying for an SVOG and a PPP loan after December 27, 2020, but will require any post-December 27, 2020, PPP proceeds to be deducted from any SVOG award. **The full amount of a post-December 27, 2020, PPP loan will be deducted from the SVOG, not just the forgiven portion of the loan. An entity will be ineligible for a PPP loan after it receives an SVOG.**

**SVOG recipients are not eligible for assistance under the Restaurant Revitalization Fund (see BKD article "[\\$28.6 Billion in Stimulus Relief for Restaurants](#)").**

The SBA has announced plans to open the SVOG application process on April 8, 2021. A [draft application](#) has been posted to the Office of Management and Budget website. For the most up-to-date information, visit the [SBA website](#).

## Highlights of recent clarifications:

- **The SBA expects that demand for SVOG grants will exceed funding and encourages entities to review and calculate employee counts and revenue loss requirements (noted below) for eligibility to a priority application window.**
- **Applications for each priority period will be processed in the order received on a first-come, first-served basis.**
- **Names and amounts of SVOG grant recipients will be publicly available.**
- **SVOG grants will not need to be reported to the IRS as taxable income.**
- **If a for-profit SVOG grantee received more than \$750,000 in federal funding in one fiscal year, it will have the option of providing a Single Audit Act audit or submitting an audited financial statement.**

*To avoid unnecessary delays once the program opens, applicants should begin the process of accumulating the documents outlined in the [Preliminary Application Checklist](#).*

The SBA has released seven sets of frequently asked questions (FAQ). This article summarizes the CAA's original SVOG provisions and all subsequent SBA clarifications. **Bolded text indicates recent FAQ updates.**

The SBA also released several resources to assist applicants:

- [Preliminary Application Checklist](#) – **Only signed and dated copies of federal tax returns will be required (not state filings). Audited financial statements are not required to apply for an SVOG.**
- [Eligibility Requirements Overview](#)
- Video tutorials
  - [Shuttered Venue Operators Grant Overview](#)
  - [SAM.gov Entity Registration Training](#)
  - [Eligibility for Live Venue Operators or Promoters](#)
  - [Eligibility for Talent Representatives](#)
  - [Eligibility for Museum Operators](#)
  - [Eligibility for Motion Picture Theater Operators](#)
- Webinar March 30, 2021 – [registration required](#)

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The SBA is building the application process in the System for Award Management ([SAM.gov](https://sam.gov)). To register in the SAM.gov system, a Data Universal Number System<sup>1</sup> (DUNS) number is required. Another prerequisite for SAM registration is the creation of a [login.gov](https://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 SBA will deny an SVOG application for any of the following reasons:

- Incomplete application submitted
- Fraud against the federal government
- Applicant fails to meet the definition of an eligible entity
- Applicant lacks the required revenue loss
- Applicant possesses one or more of the disqualifying conditions or is part of a group of affiliated entities that currently has five active SVOG applications still pending
- SVOG funding is exhausted

If an entity submits an honest, good faith SVOG application but is denied funding for failure to meet one or more eligibility requirements, there would be no penalty and it would be free to apply for other programs it may qualify for. If, however, an entity makes material misrepresentations on its application as part of a fraudulent effort to obtain SVOG funding, it will have committed an act of perjury and be subject to various civil and criminal penalties, as well as potentially being debarred from doing business with the federal government.

The SBA will not have an appeal process for denied SVOG applicants; the SBA expects that demand for SVOG grants will exceed funding.

### I. COVID-19 Relief & SVOG Eligibility

Entities that received a PPP loan before December 27, 2020, are eligible to apply for an SVOG. Under the ARPA, an eligible entity may apply for both the PPP and an SVOG; however, any PPP loan proceeds after December 27, 2020, will reduce the amount of the SVOG award.

Pandemic-related or other assistance from state or local governments does not disqualify an entity from the SVOG program; however, an entity cannot claim any costs or expenses under its SVOG that it has already received reimbursement or other payment for under another award or program.

### II. General Eligibility

#### Eligible Person or Entity

Live venue operators or promoters, theatrical producers or live performing arts<sup>2</sup> 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 is any of the 50 states as well as the District of Columbia, Puerto Rico, and any other territory or possession of the United States (Guam, American Samoa, U.S. Virgin Islands) and is eligible to apply for an SVOG.**

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<sup>1</sup>If 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.

<sup>2</sup>Events such as musical concerts, comedy shows, theatrical productions, dance performances, or other live renderings of similarly artistic works.

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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. Firms not in operation in 2019 may qualify for an SVOG if their gross earned revenues for the second, third, or fourth quarter of 2020 demonstrate a reduction of not less than 25 percent from their gross earned revenues for the first quarter of 2020. 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.

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 CAA 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. **This is the only control requirement. A live venue operator with a minority investor (less than 51 percent ownership) that has more than 500 employees, locations in 11 or more states, and locations in two or more countries would be SVOG eligible.**
- 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). See below for additional insight on this limitation.
- 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.
- **Five other firms with which it is affiliated have already received SVOG awards.**
- **It is a museum and other museums with which it is affiliated have already received \$10 million in SVOG funding.**

### Bankruptcy

Eligible entities undergoing a reorganization form of bankruptcy (such as Chapter 11 or Chapter 13) may apply for an SVOG **if they entered bankruptcy after February 29, 2020**. Entities undergoing a liquidation form of bankruptcy (such as Chapter 7) are not eligible. SVOGs made to entities undergoing reorganization bankruptcy may, in SBA's discretion, be subject to special restrictions or requirements designed to reduce the risk of loss of taxpayer funds.

## 10 Percent Cap on Federal Funding

This criterion was a significant focus of a number of FAQs.

- Entities owned by state or local governments are not subject to the 10 percent cap. The CAA establishes an alternate eligibility restriction for state-owned entities. Under that restriction, state-owned entities cannot contain any other state-owned entities apart from the live venue operator or promoter, live performing arts organization operator, museum operator, movie theater operator, or talent representative.
- Public university-based eligible entities are not subject to the 10 percent cap on the federal share of their gross revenue. If a private 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 private 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.
- Pell grants would be included in the amount of federal funding provided to college- and university-owned entities that do not have separate legal existence.

## Ownership Transfers & Legal Status Changes

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.

A person or entity must have been an eligible entity as of February 29, 2020, to qualify for an SVOG.

*The FAQ provides the following examples:*

*A movie theater operator with multiple theaters operating under the same employer identification number (EIN) as of February 29, 2020, subsequently receives separate EINs for each theater after February 29, 2020. Those entities would not be SVOG eligible because these movie theaters were not eligible entities on their own on or before February 29, 2020. Legal status changes after that deadline cannot be treated the same as ownership changes of eligible entities made after February 29, 2020.*

*A new theater owner/operator previously owned/operated by a non-SVOG eligible company, e.g., a company listed on a stock exchange. The new owner is eligible for an SVOG assuming the sale of the theaters to the new owner/operator was executed on or before February 29, 2020. Sales finalized after February 29, 2020, would not qualify because the underlying theaters were not eligible entities as of the deadline.*

## Subsidiaries

For SVOG grant purposes, a subsidiary business is defined as an entity that is either wholly or majority owned and controlled by another entity. 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. If both legal entities have their own separate legal existence and each meets the eligibility criteria, either could apply for an SVOG.*

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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 parent/subsidiary entities) provided they can meet eligibility requirements in their 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 related via affiliation, *i.e.*, one parent firm and four subsidiaries, can receive an SVOG. In addition, an eligible museum and all other museums it operates as subsidiaries may receive no more than \$10 million combined under the program.

Any applications received above the five affiliate limit will be rejected without being considered; however, if an application is evaluated and declined, another eligible affiliate could then apply.

### Shared Revenues & Expenses

Separate legal entities that consolidate revenues and have never separately allocated between the consolidated entities and meet all other eligibility requirements can apply a reasonable method of dividing the revenue between entities to apply for separate SVOGs. Entities should consider the roles and responsibilities of each entity and the effort and other resources each contributed to the consolidated operations and ensure that any allocation is reasonable and well documented.

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 & Common Ownership

SVOG is not strictly a small business program; the SBA is administering the program by statute. **Consistent with the size regulations for disaster financial assistance programs, the SBA will only consider two firms to be affiliated for purposes of the SVOG program where one firm owns more than 50 percent of the other or a single person or entity owns more than 50 percent of both. While affiliates may apply for the SVOG program in their own name assuming they meet the eligibility requirements or may be included in an application submitted by their ultimate parent entity, they cannot team up together on an application unless one of the firms owns more than 50 percent of the other.**

*For example, if Company A owns 100 percent of Company B, which owns 100 percent of Company C, then Company C could apply in its own name or be included in either A or B's application. Conversely, if Companies B and C are both 100 percent owned by Company A, then they could each apply in their own name or be included in A's application, but B and C could not pair up together to submit an SVOG application.*

The SBA will only consider affiliation in two ways for the SVOG program:

- The CAA'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. Each affiliate should apply using its own SAM registration. **This rule does not apply for entities owned by state or local governments**
- [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)

Only one SVOG application and award will be allowed per EIN. If a parent entity's EIN is used, the parent must meet the statutory definition of an eligible entity rather than its subsidiaries or internal divisions. **If an entity is**

**applying under one EIN for multiple theater locations, the application documentation requirements should be provided for each location.**

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.*

### III. 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 (the 25 percent reduction in gross earned revenue qualification) 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. Earned revenue does not include donations, sponsorships, governmental assistance, or investment returns. Gross earned revenue is the 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.

**The SBA will categorize a partner’s standard, nonpassive revenue (reported on IRS Schedule K-1) as both gross revenue and earned revenue. If an entity is refunding all its revenue due to COVID-19 closures, it may include refunded amounts in both gross revenue and earned revenue.**

Any grants or other funding received from the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) are disregarded in determining the reduction in gross earned revenue. Disaster assistance funds from a state government also are excluded from an entity’s gross revenues.

*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 donations and other gratuitous contributions such as foundation grants 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.

Taxes collected for and remitted to a taxing authority, returns, and post-sale discounts may be deducted from earned revenues.

Corporate sponsorship treatment will depend on whether an entity is an NFP. Sponsorship payments (such as naming rights) received by for-profit entities will be considered earned revenue. For NFPs, sponsorship payments received will be considered part earned revenue and part gross revenue, similar to the treatment of memberships and fundraising noted below. The sponsorship payment amount an NFP receives that represents a fair market value for services in exchange, *i.e.*, promotion, free admission, or use of facilities, will be deemed earned revenue and the portion of the sponsorship payment that exceeds that amount will be deemed a contribution and thus gross revenue.

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*Capital funds, restricted grants, or investment income will be considered for determining an entity's gross revenue in determining qualification for a priority window and 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.*

### Foundations

An NFP foundation that exists solely to receive donations for a museum or live venue operator is not eligible for an SVOG even if it has no economic or business activity apart from receiving and passing along donations. The foundation's principal business activity would be serving as a fiscal agent rather than acting as a museum operator or live venue operator or promoter as is required by the CAA.

### Single Audits

A nonprofit or governmental organization with federal expenditures in excess of \$750,000 is required by law to have a Single Audit performed, which includes an audit of both the financial statements and the federal awards. The Single Audit reviews how the grant was managed and ensures any applicable rules were followed. All SVOG grants will count toward an entity's \$750,000 threshold for compliance with the Single Audit Act.

*With the influx of federal funding related to the CARES Act and other COVID-19 legislation, many entities will undergo their first Single Audit this year. If you are not sure if your organization is subject to the Single Audit requirements, or if you want more information, contact your **BKD Trusted Advisor**<sup>™</sup>.*

## IV. Operator/ Promoter/Talent Representative 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 activity 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

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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

### Principal Business Activity

To 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. An entity’s principal business activity will be the one in which it has the greatest combined amount of revenues, expenses, employees and work hours, assets, contracts, and other business activity as compared to all its other lines of business. For example, although an agricultural fair or entertainment cruise may include live performing arts events, its principal business activity is something other than serving as one of the eligible entity types in the statute. **Where an eligible entity has multiple lines of business that are essentially tied regarding their share of the entity’s overall business activity, they will all be deemed its principal business activities.**

The SBA also may consider other factors, such as the distribution of patents, contract awards, and assets, as appropriate.

SVOGs are not available for service providers that support eligible entities, *i.e.*, companies that provide stages, lighting, sound, cast, and other support for live performing arts or which showcase performers or pre-packaged productions to potential buyers.

**A live venue operator, promoter, theatrical producer, live performing arts organization, or talent representative must use qualifying venues (noted below) for the majority of the events it stages or books clients into, and nonqualifying venues also may be used.**

### Talent Representative Criteria

**A talent representative is an agent or manager for whom no less than 70 percent of their business operations (as measured with reference to their overall revenues, costs, devotion of time, contracts, and other indicia of business activity) involves the representation or management of two or more artists or entertainers. These operations must involve booking or representing musicians, comedians, actors, or similar performing artists primarily at live events staged in venues or at festivals in exchange for compensation founded on the number of tickets sold or a similar basis.**

**A talent representative must provide a list of performing artists they booked or managed in 2019 that includes the venues for which they were contracted to perform, the city and state of the venues, and the performance dates. They also must submit a current roster of performing artists which they book or manage that primarily work in live venues or festivals. This roster also must appear on the applicant’s website and be published in print or online in an industry-recognized trade publication registry. A talent representative applicant must provide fully executed contractual service agreements between the talent representative and two artists, or signed statements from two artists certifying the applicant represented them for live performances in 2019 and 2020. A talent representative also must provide fully executed contracts for live performances that took place in a venue or at a festival in 2019 and 2020 for two artists the applicant managed or booked.**

## V. Specific Venue Criteria

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. A defined performance space is the distinct physical space reserved solely for the presentation of a performance, such as drama, music, dance, comedy, or other live performing arts activity. The defined audience space is the distinct physical area in which the audience experiences the performance for qualifying venues that host live performing arts events (not including museums and movie theaters). A mobile<sup>3</sup>, portable, or touring facility could be eligible if all the other space-related requirements are met, *e.g.*, lighting, etc.
- Mixing equipment, a public address system, and a lighting rig
  - Mixing equipment is a sound mixer that mixes two or more audio signals together, provides one or more output signals, allows adjustment of levels and enhancement of sound with equalization and effects, and creates monitor feeds
  - A public address system is an electronic system with at least one microphone, amplifier, and loudspeaker that increases the volume of a human voice, musical instrument, or other acoustic sound source or recorded sound or music
  - A lighting rig is a structure that holds lights in place for illuminating a stage or other defined performance space

**Venues have a variety of setups. Some venues may have permanent infrastructure for hanging sound and lights versus owning in-house systems because some artists have their own equipment hung for every show. For acts without their own gear, the venues rent equipment. Some venues may have sound systems permanently installed but do not have the receipts or the itemized insurance statements showing insurance coverage. The FAQ notes the SBA would accept the following alternate types of evidence as adequate proof for the sound system requirements—rental receipts, photographs, tech specification sheets, and production reimbursement receipts.**

- Engages one or more individuals to carry out at least two of the following roles:
  - A sound engineer – A sound engineer is an individual who helps to produce a live performance by managing or enhancing source levels of sound, including by equalization and audio effects, mixing, reproduction, and reinforcement of sound
  - A booker – A booker is an individual, *e.g.*, a talent buyer, who books bands or other performing artists for venues and fields inquiries from performing artists and their agents or representatives
  - A promoter
  - A stage manager – A stage manager is an individual who supervises the performance space and physical aspects of a production and oversees the performance space while a production is in progress
  - Security personnel – Security personnel are individuals hired for a live event to provide protection and aid for attendees, performers, and venue employees. Duties of security personnel may include monitoring the event, maintaining order, escorting attendees out of events, and suppressing disturbances
  - A box office manager – A box office manager is an individual who is responsible for overseeing the sale of all tickets or receipt of admission fees and may include the task of ensuring the security of payments exchanged. The use of volunteers to staff a venue’s box office does not preclude it from being eligible for the SVOG program

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<sup>3</sup>The third FAQ noted that mobile venues like a circus, fair, or entertainment business that do not have a fixed performance space are ineligible to apply; however, the fourth FAQ eliminated this comment.

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- 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. Being paid fairly means that event performers are paid in an amount based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement. Venues also may compensate performers by sharing an agreed-upon portion of revenues received through door fees along with drink or meal tickets that may fall below 1099 reporting requirements

**Smaller venues may lack box office reports and will be allowed to present other types of evidence that they host shows regularly, such as agreements with outside promoters.**

- 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. While a promoter/producer/talent representative must use qualifying venues for the majority of the events it stages or books clients into, nonqualifying venues also may be used.*

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)<sup>4</sup>. 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

<sup>4</sup>The 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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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. Any cumbersome seating that is not easily or regularly removed from a theater will be considered fixed, *e.g.*, a heavy bleacher pushed back against the wall when not in use but never removed from a theater. The FAQ clarifies there are no allowances for temporary, removable, modular, convertible, or other nonfixed seating arrangements; however, the fixed seating can be outdoors.

### 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. Events held in a museum's theater or lecture hall do not need to be ticketed or open to all museum attendees. For seasonally operated venues, the same frequency is required.

### *Example*

*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).*

## VI. Grant Size & Distribution

**The SBA will permit applicants to use either 2019 fiscal year or calendar year gross earned revenue in determining both initial and supplemental grant amounts. The option selected will be used for both award phases.**

**Depending on the size of the award and other risk factors, some SVOGs will be disbursed in the form of a single lump sum while others will be spread out over multiple payments. In general, most SVOGs under \$1 million are deemed to pose a low risk and will be disbursed in one or two installments. Awards for larger amounts are deemed to be a higher risk and will be disbursed in two to four installments. Where payment is made via installments, the schedule of payments will depend on the grantee's submission of documentation of an SVOG recipient's use of the initial fund disbursement and their 2020 federal tax return. The SBA understands not all entities will file a 2020 federal tax return at the same time and will collect documents accordingly. In every case, installment payments will not be made according to a specified calendar or a set amount of time. A grantee's disbursement will depend on how quickly it can provide the required documentation.**

**The full amount of each SVOG will be obligated when an award is issued, regardless of whether it will be disbursed in installments. This will ensure that each SVOG is fully funded.**

### 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 **gross** revenue (not earned revenue) between April 1, 2020, and December 31, 2020, that is not more than 10 percent of the **gross** revenue 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.

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At the conclusion of the 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 earned revenue, or
- \$10 million

**The accrual method of accounting is only required when determining whether an entity qualifies for one of the priority periods. For all other purposes, an entity may rely on either the accrual or cash method of accounting.**

For eligible entities that began operations after January 1, 2019, the initial grant amount is the average monthly gross earned revenue for each full month in operation during 2019 multiplied by six (subject to the \$10 million limit). **The SBA will award an SVOG applicant that began business operations in January or February 2020 the lesser of the average monthly earned revenue for each full month it was in business in 2020 multiplied by six up to a maximum of \$10 million.**

### Supplemental Grants

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

**The SBA will finish the initial round of awards before proceeding to the supplemental phase and the criteria and calculations for issuing supplemental awards are dependent on the outcome of initial round. Supplemental grants will be awarded pursuant to a separate application process after the initial phase.**

### 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.

**The SVOG application requires a list of current employees. Current is defined in the FAQ as “the date of grant application submission.” However, if the applicant furloughed everyone because it is shuttered, then the most recent employee list prior to the venue being shuttered will be adequate.**

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.

The FAQs provided the following two examples:

***When the date range does not match the payroll schedule, e.g., biweekly***

*An entity's average number of full-time employees will be determined with reference to each pay period that falls, either in whole or in part, within the 12-month time frame. If an entity's biweekly pay period ran from February 18, 2019, to March 3, 2019, that pay period would have to be considered when determining the entity's number of full-time employees, even though only three days of that pay period fell within the 12-month time frame. The entity should average the employee's weekly hours for that pay period (considering the days that fell outside the 12-month time frame) to determine if they were a full-time employee in the first covered pay period. If the employee worked 40 hours from February 18 to 24, 2019, and 30 hours from February 25 to March 3, 2019, their weekly average for that pay period would be 35 hours and they would be counted as a full-time employee for the first pay period. If the final covered pay period partly falls outside the 12-month time frame, the entity will look to the weekly average for the entire pay period when determining whether individuals were full-time employees for that final pay period.*

***Variable hours in a biweekly payroll schedule***

*When calculating their number of full-time employees, entities will use a weekly average of the employees' total hours over that pay period. If an entity has a biweekly pay period and an employee worked 10 hours the first week and 30 hours the second week, the employee would have worked an average of 20 hours per week during that pay period and would be considered half a full-time employee for that pay period. While the CAA defines full-time employees in terms of how many hours they work per week, for the small employer set-aside, the SBA will look to the average number of full-time employees an entity has per pay period over the course of a set 12-month period.*

## VII. Use of Grants

Initial grants must be fully spent one year from the grant's disbursement date **for costs incurred between March 1, 2020, and December 31, 2021**. Supplemental grants will have 18 months from the date their initial grant was disbursed to expend all combined grant funds (both initial and supplemental). **A supplemental grant can only be used for allowable costs incurred between March 1, 2020, and June 30, 2022. If all SVOG funding is expended during the program's initial phase (or funds run out before the SBA can make fully funded supplemental awards to all eligible entities), the SBA intends to issue zero dollar "placeholder" supplemental awards that could subsequently be modified to add funds in the event Congress appropriates additional funding. An entity that received a zero-dollar placeholder grant would still be entitled to the six-month extension afforded to recipients of supplemental phase awards.**

The grants may be used for expenditures allowed under the PPP, as amended by the CAA and expanded to include principal payments on debt that existed on February 15, 2020. In addition, certain maintenance and administrative costs are allowed. For SVOG grants, the SBA will default to the IRS definition, "an ordinary expense is one that is common and accepted in your trade or business. A necessary expense is one that is helpful and appropriate for your trade or business. An expense does not have to be indispensable to be considered necessary." Other permissible uses of SVOG funds include:

- Depreciation in accordance with the principles outlined in 2 C.F.R. §200.436
- Audit costs for SVOG recipients covered by the Single Audit Act for a reasonably proportionate share of the audit costs required by, and performed in accordance with, the Single Audit Act to its SVOG. For SVOG recipients not covered by the Single Audit Act, audit expenses will not generally be considered an allowable grant expense
- Artist deposits and guarantees
- Refunds to customers still holding tickets for canceled performances

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- **Reimbursements to an owner for personal funds contributed to keep an entity in operation between March 1, 2020, and December 31, 2021, (or June 30, 2022, for a supplemental award) with sufficient documentation of the transfer and expenditure of funds. Without documentation, claimed owner reimbursement will be treated as compensation subject to the cap noted in the next item**
- 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. **Any otherwise allowable debt consolidated with a debt that was not recorded prior to February 15, 2020, would continue to be an allowable expense only to the extent of the original qualifying debt. Any additional amount of indebtedness following the consolidation that is attributable to the nonqualifying loan would not 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 would be an allowable expense. Where an existing line of credit or revolving loan fund was increased after February 15, 2020, only the pre-February 15, 2020, amount would represent an allowable expense. SVOG funds could not be used to make payments on any increase in the indebtedness**
- **Payments on SBA-backed loans**
- 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

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
- For contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office
- **To make employees whole for temporary reductions in pay. SVOG funds may only be used to pay the actual incurred expenses of a grant recipient. An employer cannot use SVOG funds to pay for costs it did not actually incur**

### 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. For more information on the ERC, see this recent [BKD Thoughtware®](#) article.

### VIII. 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 CAA’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 CAA, 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 CAA, 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.

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- **Mobile, portable, or touring facility.** Yes, if all the other space-related requirements are met, *e.g.*, defined performance and audience spaces, lighting, etc.
- **Cruise ship. Maybe.** A cruise ship may serve as a qualifying venue for the business activities of eligible entities if it meets all the CAA's venue requirements (defined performance and audience spaces, lighting rig, mixing equipment, etc.), but a cruise ship would not be eligible for an SVOG itself.
- **Free music festivals. No.** A free music festival that earns revenue through sales of merchandise and concessions but does not charge admission does not meet SVOG venue operator requirements for a cover charge through ticketing or front door entrance fee or advanced ticket sales. In addition, to serve as a qualifying venue, a location must impose a paid ticket or cover charge to attend most performances.