The U.S. Small Business Administration’s (SBA) $16 billion shuttered venue operators grant (SVOG) program has accelerated its review process and as of July 19, 2021, the SBA has decided on 95 percent of applications received. There is still approximately $4.1 billion available. The SBA will issue decisions (award or decline) for all 14,591 applications that arrived within 60 days of the application portal opening before beginning any supplemental awards. See Appendix for additional award details. For the most up-to-date information, visit the SBA website.

On July 22, 2021, the SBA issued a revised frequently asked questions (FAQ) document. The most significant updates include:

- Appeals and process for denied applications
- Reconsideration process if an award is at least $100 less than the application’s proposed grant amount
- A single disbursement for approved grants. Any supplemental awards will be paid as a second award in another lump sum. Grantees will have one year from the SVOG award issue date to spend funds, unless an extension is received following the issuance of a supplemental award
- Fewer restrictions on shared employer identification numbers (EIN)
- New supplemental grant details

### Declined Applications

The FAQ updated the possible reasons for an application denial. The SBA will reject an SVOG application when all available SVOG funding has run out, or where an entity:

- Submits materially false or fraudulent documentation or there are other indications of fraud
- Fails to meet the definition of an eligible entity
- Lacks the required level of revenue loss
- Possesses one or more of the disqualifying conditions identified in the Economic Aid Act
- Is part of a group of affiliated museums that has already received $10 million in SVOG funding
- Is part of a group of affiliated entities that currently has five active SVOG applications still pending, or which has already received five SVOG awards
- One of its principals appears on the Excluded Parties List on the System for Award Management (sam.gov)

### Appeals Process

The SBA has reversed its earlier position that award decisions are final. The SBA now acknowledges the SVOG’s eligibility requirements were complex and that a lack of familiarity with the federal grants process may have resulted in some applicants submitting incorrect or insufficient information to prove their eligibility. All applicants who have been declined are eligible to submit an appeal and will receive an email notification that they are eligible to submit an appeal through the portal. In the portal, after the applicant selects the type of entity it would like to apply as, the application will display a list of documents that may be uploaded to support eligibility.

From the date that the invitation to appeal is distributed, applicants will have two weeks to submit an appeal. During the initial two-week appeals window, funding for appeals will be preserved. Although applicants may appeal after the two-week window, there is no guarantee that funding will remain available.

Applicants who appeal will be asked to review the Eligibility Matrix and upload a signed statement indicating their grounds for appeal, as well as any supporting documents from the Application Checklist or any documents previously requested.
New SVOG Appeal Process – $4 Billion Still Available

Applicants can participate in both the appeals process and then the reconsideration process. If an applicant’s appeal is approved but their award amount is at least $100 less than the amount requested, the applicant may then seek reconsideration. Applicants are encouraged to review the Application Checklist and upload the documentation to substantiate their reported revenue. In addition to the documents listed in the checklist, applicants may submit:

- State tax returns
- Updated externally or internally prepared and signed financial statements such as Income Statement or Profit and Loss Statement with revenue line items to calculate the 70 percent of revenue from eligible activities
- Third-party ticket system or third-party merchant accounts
- CPA comfort letters or CPA firm attestations (not required, but may help applicants successfully advance through the review process in combination with one of the above)

If an applicant’s application for reconsideration is approved and the applicant is eligible for a supplemental award, its supplemental award amount will be based on its modified award. If an applicant’s application for reconsideration is not approved, any supplemental award amount will be based on the original award. If the reconsideration approval comes after the supplemental award, SBA will true-up the supplemental award accordingly.

There will be no secondary appeals process—determinations on appeal are final.

Reconsideration

Applicants who received an award amount at least $100 less than their application’s proposed grant amount (including appropriate deduction of Paycheck Protection Program loans approved after December 27, 2020) are eligible for a reconsideration process. Organizations will receive an email notification inviting them to opt-in to reconsideration through the portal—the notification also will be available in the SVOG portal. From the date that the invitation for reconsideration is distributed, applicants will have two weeks to submit a request. For requests within the initial two-week appeals window, funding for reconsideration will be preserved. Although applicants may request reconsideration after the two-week window, there is no guarantee that funding will remain available. Applicants will be asked to upload a signed statement explaining why their initial award does not reflect their actual total revenue loss. Applicants also should upload any new financial documents from the Application Checklist, as well as any of the following to substantiate their actual total revenue loss:

- State tax returns
- Updated externally or internally prepared and signed financial statements such as Income Statement or Profit and Loss Statement with revenue line items to calculate the 70 percent of revenue from eligible activities
- Third-party ticket system or third-party merchant accounts
- CPA comfort letters or CPA firm attestations (not required, but may help applicants successfully advance through the review process in combination with one of the above)

Other FAQ Updates

Eligibility

- Agricultural fairs and entertainment cruises. The April 23 FAQ noted these entities were not eligible. The July 22 FAQ response is a maybe. To be eligible, an agricultural fair or entertainment cruise must show that its principal business activity is presenting live performing arts events that also include other secondary activities such as agricultural shows or boat tours. Its principal business activity must be acting as one of the statute’s eligible entity types.
Restaurants with live music. The April 23 FAQ noted these entities were not eligible. The July 22 FAQ response is a maybe. If the provision of food and drink is incidental to regular live performing arts activities, such as a jazz or comedy club, the entity may be eligible to apply. However, if the principal line of business is restaurant operation rather than live venue operation, the business would not be eligible to apply for an SVOG.

Live theater with bulk of revenue from educational programs. To be eligible, the entity must satisfy the eligibility requirements for a performing arts organization operator: “A performing arts organization operator is any entity (including a theatrical management business) whose principal business activity is to create, produce, perform, and/or present live performances for audiences in qualifying venues, including amphitheaters, concert halls, auditoriums, theatres, clubs, festivals, and schools.” The previous FAQ noted such organizations would have to meet the earned revenue percentage or advance ticket sales eligibility requirements.

Sixty-day advanced tickets requirement. Where such requirement applies, the entity must either offer tickets for purchase by the public on average at least 60 days in advance of performing arts events or show that at least 70 percent of its earned revenue comes from cover charges, ticket sales, production fees or reimbursements, nonprofit educational initiatives, or sales of food, beverages, or merchandise derived from performing arts events.

Allowable Expenses

Budget comparison. Grantees may move costs between allowable categories. However, all grantees will need to submit a final budget upon grant close-out. The previous FAQ was more restrictive: “Budgetary changes that shift funds among approved cost categories more than 10%, or that shift costs to a category not included in the approved budget, require prior approval.”

Credit card payments. Individual credit card charges that relate to allowable expenses such as utility payments, worker protection expenditures, or other ordinary and necessary business expenses and which were incurred between March 1, 2020, and December 21, 2021, (or June 30, 2022, if the entity receives a supplemental SVOG award) are payable or reimbursable from grant funds.

Alcohol. Alcohol sales often form a substantial portion—if not the majority—of the earned revenues for many SVOG grantees, especially venue operators and motion picture theatre operators. Accordingly, purchasing alcohol as a supply or inventory is an ordinary and necessary business expense for such grantees. However, using SVOG funding to purchase alcohol for use as entertainment or personal expense is unallowable.

Other Clarifications

Shared EINs

- The SBA will examine the principal business activity of the applying entity and not more broadly consider the operations of its parent company, even where the entity uses the parent company’s EIN.
- Two affiliated eligible entities can both use the parent’s EIN to apply for their own SVOG, e.g., a concert hall and a movie theater owned by the same parent entity can each use that parent entity’s EIN to apply.

Attendance fee or charged definition. The July FAQ adds the following definition: “any payment required to attend a performing arts event, including ticket charges, door fees, food and/or beverage minimums, or any similar cost associated with gaining admission to a place of performance.”
New SVOG Appeal Process – $4 Billion Still Available

Supplemental Grants

To be eligible, an applicant cannot have made material business changes and must meet both of the following:

- Received an initial SVOG of less than $10 million
- Applicants whose first quarter 2021 earned revenue was no more than 30 percent of their first quarter 2019 earned revenue. For applicants that were not in operation in first quarter 2019, their first quarter earned revenues will be used instead

Supplemental grants eligibility also includes any applications that meet the two above criteria after a successful appeal.

Eligible applicants will receive an email notifying them that they can apply for a supplemental award—the invitation also will be in the SVOG portal. Applicants may apply for a supplemental award by responding to this invitation through the portal. There will be a two-week window to apply for a supplemental award. Applicants who apply any time in the initial two-week window will be considered for a supplemental award. Should additional funding remain available after supplemental awards are granted to all eligible entities that applied in the initial two-week window, the SBA may open a subsequent award window.

Supplemental award amounts will be 50 percent of an applicant’s initial award, not to exceed a combined total of $10 million in initial award and supplemental award for a single entity. Groups of affiliated museums may not exceed $10 million in total funding as a group. Should not enough funding be available to grant a supplemental award to all eligible applicants who apply within the initial two-week window, SBA will give priority to applicants with the greatest revenue loss in first quarter 2021 relative to first quarter 2019 (or their first quarter of earned revenue for those businesses not in operation in first quarter 2019).

If an applicant’s appeal is granted and the applicant is eligible for a supplemental award, the applicant will receive an email notifying them that they are eligible to apply for a supplemental award.

Conclusion

BKD will continue to follow SVOG updates. 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 this program, contact your BKD Trusted Advisor™ today.

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New SVOG Appeal Process – $4 Billion Still Available

Appendix

The SBA is required to provide weekly status updates. The most recent report highlighted an improvement in the approval rates and distribution of funds.

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