

LEGAL ALERT

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Performing Arts Venues, Movie Theaters, and Museums Shuttered by COVID-19 May Soon Apply for Federal Grants

BY IVAN GOLDEN AND KATIE STEINER
HAHN LOESER & PARKS LLP

Playhouses, music venues, movie theaters, museums, and other live performance spaces that have been largely shuttered for nearly a year as a result of COVID-19 will soon be eligible to apply for grants of up to \$10 million from the U.S. Small Business Administration (“SBA”).

The Consolidated Appropriations Act, 2021 (“CAA”), enacted on December 27, 2020, appropriated \$15 billion for Shuttered Venue Operators Grants. The purpose of the grants is to extend relief to performing arts venues that were effectively, if unintentionally, excluded from earlier economic relief measures, such as the Paycheck Protection Program (“PPP”).

PPP loan recipients must, among other things, maintain staff and salary levels throughout an 8–24 week period. For movie theaters and live performance venues, whose operations have been largely, if not entirely, suspended due to restrictions on in-person gatherings, maintaining staffing and salaries during the pandemic has proven nearly impossible. Congress therefore designed the grant program to provide targeted relief to such businesses, regardless of whether they continued to employ or pay employees during the pandemic. And unlike the PPP, which is structured as a forgivable loan program, Shuttered Venue Operator Grants are true grants, although recipients may only use the funds for specified purposes.

The SBA has not yet begun accepting applications for grants. But the SBA has issued guidance on eligibility and usage requirements, allowing potential applicants to evaluate their participation and prepare accordingly.

ELIGIBILITY

Shuttered Venue Operator Grants are available to the following businesses, so long as they were in operation on or before February 29, 2020:

- Live venue operators or promoters;
- Theatrical producers;
- Live performing arts organizations;
- Museums, zoos, and aquariums that meet certain criteria;
- Motion picture theater operators; and
- Talent representatives.

In general, an applicant's principal business activity must center on the organization, promotion, management, or hosting of live concerts, theatrical productions, or other events by performing artists. Consequently, many similar businesses that have been affected by COVID-19, such as sports venues and restaurants, are ineligible for grants, unless such businesses can demonstrate that their primary activity centers on the performing arts.

Specific requirements apply to each applicant category. In the case of museums, for example, the museum must operate a dedicated performance space with fixed seating and regular programming. In addition, applicants must demonstrate that their gross earned revenue declined by at least 25 percent during at least one quarter of 2020, in comparison to the same quarter in 2019. Applicants cannot be publicly traded corporations or majority-owned and controlled by such corporations. No more than 10 percent of an applicant's 2019 gross revenue may have come from the federal government (with disaster assistance excepted). Additionally, larger businesses, such as those operating in more than 10 states with more than 500 employees, are ineligible for grants. This provision will likely exclude large movie theater chains, among others.

Applicants that previously received a PPP loan may be eligible to apply for grants. If an applicant took advantage of the first round of the PPP, which closed on June 30, 2020, then that applicant—if otherwise eligible—may also seek a Shuttered Venue Operator Grant. But otherwise eligible businesses that applied for or received a PPP loan on or after December 27, 2020, may not apply for a grant. In effect, this rule prevents applicants from hedging their bets by applying for both a PPP loan and a Shuttered Venue Operators Grant; applicants must choose one program or the other.

GRANT AMOUNT AND ALLOWABLE USE OF FUNDS

Applicants that were in operation on or before January 1, 2019, may request grants equal to the lesser of 45 percent of the applicant's 2019 gross earned revenue, or \$10 million. Applicants that began operating after January 1, 2019, may request grants equal to the lesser of six times their 2019 average monthly gross revenue, or \$10 million. All applicants must certify that the grant is necessary to support their ongoing operations in the current economic climate.

Applicants that receive a grant may use the funds for costs incurred between March 1, 2020, and December 31, 2021, for the following expenses:

- Payroll costs;
- Rent;

- Utilities;
- Interest or principal payments on mortgage obligations (but not prepayments);
- Worker protection expenses;
- Independent contractor payments; and
- Other ordinary and necessary business expenses, including maintenance, licensing fees, state and local taxes, insurance, and advertising.

Grant funds may not be used to purchase real estate, make payments on loans that originated after February 2, 2020, make investments or loans, or make payments to political parties or candidates.

APPLICATION PRIORITIES AND RECOMMENDED PREPARATIONS

When the SBA begins accepting grant applications, it will do so on a rolling basis, giving priority to the hardest hit businesses. In the first phase, the SBA will consider requests from applicants that suffered a 90-percent or greater revenue decline between April and December 2020 due to COVID-19; in the second and third phases, applicants must have suffered a 70-percent or greater and a 25-percent or greater decline in revenue, respectively. Thereafter, grant recipients may apply for additional funding, so long as they suffered a revenue decline of at least 70 percent for the most recent quarter.

In preparation for the application launch date, the SBA recommends that applicants register for a System for Award Management (“SAM”) account on SAM.gov, which will administer the application process. Registration on SAM requires a Dun and Bradstreet number (“DUNS”), rather than a Taxpayer Identification Number. The SBA therefore recommends that potential applicants obtain a DUNS and register on SAM as soon as possible, as registrations may take up to two weeks to process. Applicants should also be aware that grant recipients must document their compliance with and eligibility for the program and maintain documents following their receipt of a grant for as many as four years. Additional guidance from the SBA regarding the commencement of the grant program is expected imminently.

AUTHORS:



IVAN GOLDEN, PARTNER

igolden@hahnlaw.com

312.456.7890



KATIE STEINER, ASSOCIATE

ksteiner@hahnlaw.com

216.297.4171

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