Congress Provides Relief to “Shuttered” Theaters, Venues, Museums and Others

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Some very welcome help for theaters, music venues, museums and similar "shuttered venues" and promoters is buried in the $900 billion COVID-19 relief bill recently passed by Congress and signed by the President (the "Act").[1] This assistance, which originally began as the "Save our Stages Act," authorizes the Small Business Administration (the "SBA") to make up to $15 billion in grants to help this badly struggling segment of the economy.

Who is eligible?

An "eligible person or entity" — including a live venue operator or promoter, theatrical producer, live performing arts organization operator, a relevant museum operator, a motion picture theatre operator or a talent representative — should soon be able to apply to the SBA for relief (as of today, the SBA has not begun accepting applications).

To be eligible, grantees must meet several criteria generally including, among others, that (i) they were fully operational on February 29, 2020; (ii) they had "gross earned revenue" during a quarter of 2020 that was at least 25 percent lower than it was during the same quarter of 2019; (iii) they intend to continue or resume operations; and (iv) they are not, or are not majority owned or controlled by, an entity that issues securities on a national securities exchange or that received more than 10 percent of its revenue in 2019 from Federal funding (other than disaster relief). Nonprofit venues may qualify even if they host free events, but the events must be produced and managed by paid employees rather than volunteers.

In addition, to be eligible, the person or entity (or an entity that owns or controls the entity) must NOT have more than two of the following characteristics: (i) relevant operations or assets in more than one country; (ii) relevant operations or assets in more than 10 states; (iii) employed more than 500 employees as of February 29, 2020 (determined on a full-time equivalent basis, as provided in the Act).

Critically, eligible grantees also cannot have received a "second draw" Paycheck Protection Program (PPP) loan made on or after the effective date of the Act (December 27, 2020). If available, the grants for shuttered venues will likely be more attractive than a second draw PPP loan because, not only are the grants truly grants rather than potentially forgivable loans, the maximum amount of relief ($10,000,000) is higher than

the maximum PPP second draw loan ($2,000,000).

The Act gives specific definitions to each category of eligible person or entity ("a live venue operator or promoter, theatrical producer, live performing arts organization operator, a relevant museum operator, a motion picture theatre operator or a talent representative"). Potential applicants should review these definitions carefully. In general, the definitions appear to be intended to ensure that the eligible persons or entities are bona fide businesses or nonprofits that conduct significant arts and theater activities that the Act intends to support.

For example, a "relevant museum" must be a nonprofit, have professional staff and exhibit tangible objects to the public on a regular basis. The "relevant museum" must also have exhibition spaces that are a component of its principal business activity and which have been subjected to pandemic-related occupancy restrictions. In addition, it must have "at least 1 auditorium, theater, or performance or lecture hall with fixed audience seating and regular programming."

Priority will be given to the most severely impacted

The Act directs the SBA to award grants during the first 14 days of the program only to an eligible person or entity with revenue that, due to COVID-19, was 90 percent lower during April 1, 2020 through December 31, 2020, than the person's or entity's revenue during the same period of 2019. During the following 14 days, grants will be available to eligible persons or entities who have experienced a 70 percent revenue drop due to the COVID-19 pandemic. After these two periods, grants may be awarded to other eligible persons or entities (including those who had less than a 70 percent revenue drop). The reduced revenue test could be an issue for some larger nonprofit institutions who receive large revenues or donations from charitable contributions, which may not have fallen off as sharply due to the pandemic.

As an additional nod to small organizations, $2 billion of the $15 billion made available under the Act is set aside for eligible persons or entities with fewer than 50 full-time employees.

How much relief is available?

The amount of relief available to an eligible recipient is determined by how long the recipient has been in business. For eligible recipients that were in operation on January 1, 2019, initial grants made by the SBA under the Act will be the lesser of (a) 45% of gross earned revenue during 2019 or (b) $10,000,000. For eligible recipients that began operating after January 1, 2019, initial grants will be the lesser of (a) average monthly gross earned revenue in 2019 multiplied by 6 or (b) 10,000,000. Eligible recipients who meet certain criteria, may qualify for an additional "supplemental" grant, provided that the eligible recipient does not receive, in the aggregate, more than the $10,000,000 maximum.

Again, please note that, if an entity receives a grant under the Act, it is ineligible to receive a new PPP loan in addition to the grant. Interested entities should compare their eligibility for a maximum grant under the Act to what they may receive from a forgivable PPP loan, restrictions on how each program may limit use of the funds, and then decide the course of their application.

What can the relief be used for?

Recipients must use the grants to pay qualifying costs incurred during the 22-month period from March 1, 2020 through December 31, 2021. For those eligible recipients who receive a supplemental grant under the Act, the period of use for the combined grant funding received is extended to June 30, 2022. Grant funds may be used for several of the items outlined in the Paycheck Protection Program, including payroll costs, certain rent obligations, utility payments and mortgage obligations. The funds may also be used for ordinary and necessary business expenses such as maintenance expenses, administrative costs, state and local taxes, insurance payments and advertising, production transportation and other capital expenditures related to the production of a performing arts production. Grant funds ***may not*** be used for the purchase of real estate, repaying loans issued after February 15, investing or for political parties/candidates.

What happens next?

The Act directs the SBA to get the program up and running within 21 days, but more time may be needed to fill in many critical details and to create a new application form and verification process. Please contract a Lathrop GPM attorney for help navigating the developing details of the Save our Stages Act or the "second draw" Paycheck Protection Program.

[1] *See* Section 324 of Division N (Additional Coronavirus Response and Relief) of the Consolidated Appropriations Act, 2021, H.R. 133 (enrolled bill), P.L. 116-260, available here.