



Grants for Shuttered Venue Operators

A recently passed relief bill will provide \$15 billion in federal funding toward grants for “shuttered venue operators,” making funding available to an industry that has been particularly impacted during the COVID-19 pandemic.

The U.S. Congress passed on December 22, 2020 an omnibus spending bill (the December relief bill) that included significant revisions and additions to the Paycheck Protection Program (PPP) established by the Coronavirus Aid, Relief and Economic Security Act (CARES Act), and previously amended by the Paycheck Protection Program Flexibility Act (PPP Flexibility Act). President Trump signed the bill on December 27, 2020.

The December relief bill makes grants available to live venue operators and promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives that meet certain criteria. Grants may be used for specific costs such as payroll, leases, utilities, and other ordinary business expenses. The following bulletin outlines eligibility guidelines and grant availability.

Who is eligible to receive a grant?

The December relief bill categorizes potentially eligible persons or entities as follows:

- **Live venue operator and promoter, theatrical producer or live performing arts organization operator** means a person or entity that (i) as a principal business, organizes, promotes, produces, manages, or hosts live concerts, comedy shows, theatrical productions, or other events by performing artists for which (A) a cover charge through ticketing or front door entrance fee is applied and (B) performers are paid an amount that is based on a percentage of sales, guarantee, or other mutually beneficial agreement and (ii) for which not less than 70% of the earned revenue is generated from such live events. Additionally, an entity will qualify if it 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 for which performers are paid an amount that is based

on a percentage of sales, a guarantee, or another mutually beneficial agreement.

- **Museum Operators** means a “museum” as defined in Section 273 of the Museum and Library Services Act, and may not be a for-profit entity.
- **Motion picture theater operator** means a person or entity that, as its principal business, owns or operates at least one movie theater and charges a fee to customers thereof.
- **Talent representative** means an agent or representative that derives at least 70% of its revenue from representing artists, musicians, comedians, or actors that perform primarily at live events.

To receive grants, a potentially eligible person or entity must:

1. Have been fully operational on or before February 29, 2020;
2. Have had gross earned revenue during the first, second, third, or fourth quarter (so long as the application is submitted after January 1, 2021) that was 25% less than the same quarter in 2019; and
3. Be in operation or intend to resume operation.

The December relief bill requires that the venues at which events are held meet certain minimum criteria, including having a defined performance and audience space and certain types of equipment and staff, and must pay performers, except for charitable events, fairly.

Are there entities that are excluded from receiving grants?

Yes, certain types of entities are excluded from receiving grants. First, an entity is not eligible if it is listed, or is majority owned or controlled by an entity that is listed, on a national securities exchange. Second, any entity that received more than 10% of gross revenues from federal funding in 2019 (excepting funds received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act) is not eligible. Finally, any entity with two or more of the following characteristics is excluded: (i) owning or operating venues, museums, motion picture theatres,

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or talent agencies or talent management companies in more than one country; (ii) owning or operating venues, museums, motion picture theatres, or talent agencies or talent management companies in more than 10 states; (iii) employing more than 500 employees as of February 29, 2020 (on a full-time equivalent basis); (iv) receiving a PPP loan on or after December 27, 2020.

Do applicants for grants need to certify as to need? Are there other document or administrative requirements?

Yes, an applicant must submit a good-faith certification that the uncertainty of current economic conditions makes it necessary for the grant to support the ongoing operations of such applicant.

Yes, the Small Business Administration (SBA), which will administer the grant program, is required by the law to increase oversight of those that receive grants, including the requirement to retain employment and other compliance records. Furthermore, there is a requirement that the SBA set forth a plan for auditing recipients.

What are the sizes of grants available?

An applicant can apply for two grants, an initial grant and a supplemental grant. The amount of initial grant for each recipient is limited to the lesser of (i) 45% of the gross revenue earned during 2019 (if an entity was not in operation on January 1, 2019, there is a formula to determine amount) or (ii) \$10 million. The total amount of grants may not exceed \$10 million.

More Information:

Benesch attorneys are able to assist clients in assessing funding available via grants to shuttered venue operators. We continue to proactively monitor regulations related to the CARES act, PPP Flexibility Act, and the December relief bill, and are available to discuss these developments and their impacts on our clients' businesses. For additional information, please contact:



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