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# Front and Center: SVO Grants through the SBA



# Coronavirus Resource Center

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. We will continue to evaluate the CARES Act, the Consolidated Appropriations Act, 2021, related rules and regulations and any subsequent legislation to provide our clients guidance in real time. Please visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

**DISCLAIMER:** This publication will be updated regularly to reflect any further changes in the key terms of the PPP resulting from any new legislation, rules, and guidance issued by the Federal government. While we have addressed the principal criteria of the program and will endeavor to add updates, it is not possible to cover all of the (ever-changing) rules and guidance published by the SBA and Treasury. THIS PUBLICATION IS INTENDED TO BE A HELPFUL RESOURCE, BUT SHOULD NOT BE VIEWED AS LEGAL ADVICE FOR ANY SPECIFIC SITUATION.

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## Front and Center: SVO Grants through the SBA

Updated as of August 16, 2021

The [Consolidated Appropriations Act, 2021](#) (the “CAA”), which provides \$900 billion in new COVID-19 relief funding, was signed into law on December 27, 2020. Section 324 of Title III of the CAA, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (the “Economic Aid Act”), as amended by Title V, Section 5005 of the [American Rescue Plan Act of 2021](#) (the “American Rescue Plan Act”) signed into law on March 11, 2021, introduces a new \$16.25 billion grant program through which the U.S. Small Business Administration (the “SBA”) will provide aid to struggling live venue operators and certain related businesses. This program offers a critical lifeline from the Federal government for the nation’s performing arts venues, movie theatres and museums. Grants made to these “shuttered venue operators” under this program are referred to by the SBA and in this publication as “SVO Grants”.

This article details the key terms of the SVO Grant program and incorporates further guidance issued by the SBA in response to certain [Frequently Asked Questions](#) (the “FAQs”), which were most recently updated on July 22, 2021 (the “7/22/21 FAQs”). For information about the changes implemented to the Paycheck Protection Program (the “PPP”) under the Economic Aid Act, see our article [[Where Are We Now? An Up-To-Date Guide to the Paycheck Protection Program](#)].

**[UPDATE]** The SBA announced that the [SVO Grant application](#) will close on Friday, August 20, 2021 at 11:59pm Pacific Time. Please refer to the [SVO Grant page on the SBA’s website](#) for the latest information about this grant program.

**[UPDATE]** The SBA has implemented an appeals process for applicants initially denied SVO Grants and a reconsideration process for applicants who received an award amount at least \$100 less than the Proposed Grant Amount on their SVO Grant application. Please see page 36 of this alert for more information about the appeals and reconsideration processes.

The SBA releases [weekly program reports](#) detailing the number of grants awarded and the types of entities that received those grants.

### **I. What Persons, Entities or Organizations are Eligible for an SVO Grant?**

To be eligible to receive an SVO Grant, an entity or an individual must be (i) a live venue operator or promoter, theatrical producer or live performing arts organization operator; (ii) a motion picture theatre operator; (iii) a “relevant museum operator” or (iv) a talent representative. There are specific requirements for whether an individual or entity fits within one of these categories:

- ***Live venue operator or promoter, theatrical producer or live performing arts organization operator*** – For an individual or an entity, which may be for-profit, nonprofit, or government-owned, to qualify as a live venue operator or promoter, theatrical producer or live performing arts organization operator, it must either:

- (i) have a principal business activity of organizing, promoting, producing, managing or hosting live concerts, comedy shows or theatrical productions or other events by performing artists (1) for which a cover charge is applied; (2) for which performers are paid in an amount that is based on a percentage of sales, a guarantee or another mutually beneficial formal agreement; and (3) which generate at least 70% of earned revenue through ticket sales, production fees/reimbursements, nonprofit educational initiatives or the sale of event food, beverages or merchandise; or
  - In the FAQs [Definitions #6], the SBA defined “cover charges” to include front door entrance fees, food or beverage minimums or other similar charges required for admission whether collected via ticket sales, addition to a tab or direct payment.
  - In the FAQs [Definitions #31a], the SBA defined both “earned revenue” and “gross earned revenue” in accordance with common principles of the accrual method of accounting, with “earned revenue” as only monies that organizations receive from the sale of goods or services and “gross earned revenue” as “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.”
    - In the FAQs [Definitions #31a, Revenue #183], the SBA clarified that earned revenue does not include other sources of funds, such as donations, governmental assistance, returns on investments, foundation grants, individual gifts, in-kind gifts and other gratuitous contributions. In [Revenue #7], the SBA clarified that rental income from short-term rentals for event hosting and longer-term tenants is included in earned revenue.
    - In the FAQs [Revenue #184, 186], the SBA explained how entities should calculate gross earned revenue with respect to fundraising events and memberships. According to the SBA, the same general principles apply to tax deductions for donations to charity. The amount an individual pays in connection with a fundraising event or membership that reflects the estimated value of the goods or services received in exchange must be included in gross earned revenue. Any amount that exceeds that estimated value is considered a donation and not included in gross earned revenue.
    - In the FAQs [Revenue #196], the SBA said that if an entity is for-profit, sponsorship payments (such as naming rights) shall be considered earned revenue because the sponsorships represent payments made in exchange for a service. For a non-profit entity, sponsorship payments shall be considered part earned revenue and part gross revenue, like fundraising events and memberships. The portion of the sponsorship payment received by the non-profit that

represents a fair market value for services in exchange will be deemed earned revenue, and the remainder will be deemed a contribution and thus gross revenue.

- In the FAQs [Revenue #191], the SBA clarified that funds raised by nonprofits via capital campaigns should not be included in earned revenue.
- In the FAQs [Revenue #185], the SBA stated that contributions and grants revenue are excluded from a nonprofit organization's earned revenue, but noted that any Federal grants will be taken into account to determine whether the nonprofit meets the eligibility limit of having no more than 10% of its gross revenue from Federal sources.
- In the FAQs [Revenue #9], the SBA clarified that school tuition payments should be treated as earned revenue. The SBA provided the example of school tuition payments made to a dance school that operates a live venue.
- In the FAQs [Revenue #193], the SBA clarified that amounts that represent the costs of taxes collected for and remitted to a taxing authority, refunds or returns and post-sale discounts may be deducted from earned revenues.
- In the FAQs [Revenue #198], the SBA said where all revenue of an applicant that commenced business operations and incurred costs in 2020 was refunded due to closures and cancellations as a result of the COVID-19 pandemic, the applicant may include the refunded amounts in its calculation of both gross revenue and earned revenue. It is not clear if this only applies where "all" revenue has been refunded or if it would also apply if only a portion of revenue was refunded.
- In the FAQs [Revenue #203], the SBA stated that commission funds from a concessions firm hired to sell food and beverages constitute food and beverage sales.
- In the FAQs [Revenue #204], the SBA stated that music recordings produced via a record label in an entity's spaces, on tour and online are considered merchandise sales.
- In the FAQs [Definitions #31b, Revenue #194], the SBA stated that when the term "gross revenue" is used in the Economic Aid Act, it will be construed as functionally equivalent to "receipts," which are defined in 13 CFR Sec. 120.104 as "all revenue in whatever form received or accrued from whatever source." This definition includes contributions, donations and grants from any and all sources, excluding any disaster assistance

funding, whether that disaster assistance funding is directly from the Federal government or indirectly through a state government.

- In the FAQs [Definitions #9, Revenue #195], the SBA defined “disaster assistance” to mean Federal assistance originating from funding provided under the Stafford Act (41 USC 5121 et seq.) or the CARES Act (Pub. L. No. 116-136), even if the funding is delivered by a Tribal, state or local government. Funding from other sources, including stimulus checks, loan forgiveness, etc., must be included in gross revenue but not earned revenue.
  - In the FAQs [Eligibility – All Applicants #20, #31], the SBA clarified that the only form of Tribally-owned entity that is eligible for an SVO Grant is a Tribally-owned museum.
- In the FAQs [Eligibility – Live Venue Operator or Promoter #65-66], the SBA said an entity that has a performance group that goes on tour and earns performance fees for such tour can apply those performance fees toward the entity’s earned revenues to meet the 70% minimum of earned revenue which must come from ticket sales, production fees/reimbursements, nonprofit educational initiatives or the sale of event food, beverages or merchandise. The SBA also said food and beverage and merchandise sales derived from free events will count toward the 70% minimum if paid tickets or cover charges are required to attend most of the events staged by the entity.
- (ii) have a principal business activity of making tickets available for purchase by the public at least 60 days in advance of live concerts, comedy shows, theatrical productions or other qualifying events for which a cover charge is charged and performers are paid in an amount that is based on a percentage of sales, a guarantee or another mutually beneficial formal agreement.
- In the FAQs [Eligibility – Live Venue Operator or Promoter #58, #52], the SBA clarified that “performing arts” for purposes of the SVO Grant program means events such as musical concerts, comedy shows, theatrical productions, dance performances or other live renderings of similarly artistic works. The SBA stated that an air show is not a performing art, so an air show operator would not qualify as a live venue operator or promoter for this program.
- In the FAQs [Definitions #27], the SBA defined a “promoter” as “an entity or individual that organizes live events by performing artists and carries out tasks (other than as a vendor or service provider) such as renting a performance site, contracting with artists or a production company for the performance, marketing events, and collecting gate receipts. A promoter must have: (1) a profit (net income or loss) interest in the live event’s presentation; and (2) sole or joint rights to control the financial terms of the live event’s presentation, use of the venue, and/or marketing of the event. Promoters may own and/or operate live venues or contract

for space and may include festival promoters or the promotion of live performing arts events at outdoor, festival spaces that have all the required characteristics of a qualifying venue.”

- In the FAQs [Definitions #38], the SBA defined a “theatrical producer” as “an eligible individual or entity (including the entity that employs the performers in a theatrical production) which has the responsibility for creating, producing, or operating live theatrical productions and that have either a non-passive profit (net income or loss) interest in a theatrical production (other than as a vendor or service provider) or sole or joint rights to control a theatrical production. Theatrical producers are responsible for functions such as negotiating debt or equity financing with lenders or investors, financial and tax reporting, and closing the production. The term ‘theatrical producer’ does not include individuals or entities that provide financial support for a theatrical production without either a non-passive profit (net income or loss) interest or the control described above.”
- In the FAQs [Eligibility – All Applicants #33], the SBA clarified that performing arts groups like choirs and dance companies are eligible for SVO Grants if they meet the definition of a performing arts organization operator and all relevant eligibility criteria.
- ***Motion Picture Theatre Operator*** – For an individual or entity, which may be for-profit, nonprofit, or government-owned, to qualify as a motion picture theatre operator, it must have as its principal business activity the ownership or operation of at least one place of public accommodation for the purpose of showing movies for a fee. Additional venue requirements apply to the spaces that qualify as a motion picture theatre (described below).
  - In the FAQs [Eligibility – Museum or Movie Theater Operator #1], the SBA clarified that owners of motion picture theatres are also able to apply under this category of eligible entity.
- ***Relevant Museum Operator*** – [FAQs – Definition #19] For an individual or entity to qualify as a relevant museum operator, it must meet the definition of a museum under Section 273 of the Museum and Library Services Act (20 U.S.C. 9172). Under Section 273, a “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 utilizes 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. Relevant museums can have tangible and digital collections and include 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. Additional venue requirements apply to the spaces that qualify as a relevant museum operator (described below).
- ***Talent Representative*** – For a person or entity that is an agent or manager, which may be for-profit, nonprofit or government-owned, to qualify as a talent representative: (i) 70%

of its operations must involve representing or managing artists and entertainers; (ii) it must book or represent musicians, comedians, actors or similar performing artists primarily at live events in venues or at festivals; and (iii) such performers must be paid in an amount that is based on the number of tickets sold, or a similar basis (*e.g.*, entrance fees).

- In the FAQs [Definitions #37], the SBA defined “talent representative” as “an agent or manager for whom no less than 70% 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 (including flat fee guarantees).”
- In the FAQs [Revenue #207], the SBA said gross and earned revenues of a talent representative are based on commissions that the talent representative earned from an artist’s fee and any retainers paid. Payments passed through to the artists the talent representative represents should not be included.
- In the FAQs [Definitions #26], the SBA described that it will ascertain “principal business activity” under the existing SBA size regulations [13 CFR Sec. 121.107]. The SBA will consider an entity’s receipts, employees and costs of doing business across the different lines of business activity for the most recently completed fiscal year, and that 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.
  - In the FAQs [Eligibility – Application #133], the SBA stated that if an eligible entity has two or more business activities with the same level of combined revenues, expenses, etc., each of those business activities will be deemed a principal business activity.
  - In the FAQs [Eligibility – All Applicants #28], the SBA stated that if an entity qualifies under two different categories of eligible entities, the SBA recommends that entity pick the entity type that gives it the strongest case for eligibility or that best represents how the entity perceives itself.
  - In the FAQs [Application #47], the SBA said it may draw upon an applicant’s NAICS code to determine the applicant’s principal business activity, but an applicant’s NAICS code is not a determining factor for SVO Grant eligibility.
- In the FAQs [Eligibility – All Applicants #21], the SBA clarified that service providers that support eligible entities are not eligible for SVO Grants. “Service providers” includes service and support companies that provide stages, lighting, sound, casts, and other support for live performing arts events or which showcase performers or pre-packaged productions to potential buyers.



- In the FAQs [Eligibility – All Applicants #2, Live Venue Operator or Promoter #51], the SBA made clear that entities of the type that are eligible that are owned by state, county and municipal governments (such as state college performing arts centers, museums or historic homes) are eligible to apply if the governmentally owned entity also acts solely as a venue operator, museum, etc., and does not also include other types of entities. As an example, the SBA stated that a city parks and recreation department that operates a bandstand and separately operates various nature parks could apply as an eligible entity for the bandstand, but could not include the nature parks..
  - In the FAQs [Eligibility – All Applicants #32], the SBA said it will examine the principal business activity of a government-owned eligible entity itself and not solely consider the operations of its owner, even when the entity uses the Employer Identification Number (“EIN”) of its government-owner or parent company.
  - In the FAQs [Eligibility – All Applicants #17-18], the SBA stated that eligible entities owned by public universities will be subject to the same restrictions and exceptions as other government-owned entities. The SBA also stated that if a public university owns and operates two eligible entities that are not separate legal entities from the university but are separately managed and each have their own budget lines and staffing, each of those entities may apply for an SVO Grant if it meets all of the other criteria. If a *private* university owns and operates multiple eligible entities, it will be required to combine those entities into a single application submitted under the university’s EIN because multiple applications may not be submitted under a single EIN.
- In the FAQs [Eligibility – All Applicants #14], the SBA clarified that an eligible entity based at a *private* university that lacks separate legal existence from the parent university and/or is “majority owned or controlled” by the university, it will have to use the gross revenue of the parent university to determine whether the entity meets the requirement that no more than 10% of its 2019 gross revenue come from Federal sources (excluding disaster assistance). If a *private* university owns less than a majority of the eligible entity, then the entity only needs to determine whether more than 10% of its own 2019 gross revenue came from Federal sources. The SBA also noted that public university-based eligible entities are not subject to the 10% cap on Federal funding because they are owned by state or local governments.
  - In the FAQs [Eligibility – All Applicants #15], the SBA stated that a non-profit foundation with a principal business activity of soliciting donations to a university-owned museum or live venue operator or promoter that is a sub-unit of a university without separate legal existence is not eligible for an SVO Grant because the foundation’s principal business activity would be serving as a fiscal agent, not acting as a museum operator or live venue operator or promoter as required by the Economic Aid Act.
- In the FAQs [Business Size/Employees #175], the SBA clarified that there is no cap on the number of employees an eligible business may have if it meets the other criteria and does not operate in *either* more than 10 states *or* another country.

Persons or entities that might otherwise satisfy the above criteria may nonetheless be ineligible (see **Ineligible Entities and Persons** below). Note that any entity that is a federally tax exempt organization under Section 501(a) of the Internal Revenue Code qualifies as a nonprofit for purposes of the SVO Grant program.

## **II. What Are the Eligibility Requirements?**

In the FAQs [Eligibility – All Applicants #35], the SBA stated that it will determine SVO Grant eligibility as of the date an entity submits its application. The fact that a venue or other entity was previously owned or operated by an ineligible entity will *not* affect an applicant’s eligibility for an SVO Grant.

To receive an SVO Grant a live venue operator or promoter, theatrical producer or live performing arts organization operator, relevant museum operator, motion picture theatre operator or a talent representative must satisfy certain eligibility requirements. To be eligible, such a person or entity seeking an SVO Grant:

- ***Fully Operational*** – must have been “fully operational” as of February 29, 2020;
  - In the FAQs, the SBA did not define “fully operational,” but in [Eligibility – All Applicants #2] the SBA simply stated that the entity must have been “in operation” (without the “fully” qualifier) as of February 29, 2020.
  - In the FAQs [Eligibility – All Applicants #4; Application #88], the SBA stated that an entity that did not have revenue in 2019 but was “conducting business operations” on February 29, 2020, including incurring start-up costs in the time leading up to an anticipated opening date, is eligible for an SVO Grant *if* it had earned revenue in the first quarter of 2020 from sources such as advanced ticket sales or merchandising. The SBA clarified that entities which conducted business operations and incurred expenses but had no earned revenue in the first quarter of 2020 are not eligible for an SVO Grant. This means that a theatrical production that had not yet begun performances but had earned revenue from advanced ticket sales or merchandise in the first quarter of 2020 would be eligible for an SVO Grant, but a theatrical production that had not yet begun performances and had not sold any advance tickets or merchandise would not be eligible.
- ***Gross Earned Revenue Reduction*** – must have a reduction of **at least 25%** in gross earned revenue during (at least) one quarter of 2020 as compared to the corresponding quarter of 2019, or, as clarified in the FAQs [Eligibility – Application #88], if the entity was not in business in 2019, the test may be satisfied by comparing any of the second, third or fourth quarter of 2020 to the first quarter of 2020.
  - In the FAQs [Revenue #189], the SBA clarified that if an applicant’s primary business activity places it within one of the categories of an eligible entity under the Economic Aid Act, but the applicant has multiple lines of business activity, including a line or lines of business activity not covered by the SVO Grant program, the applicant should use its gross earned revenue across all business activities and not exclude any non-SVO Grant revenue streams.

- **Resumption of Operations** – as of the date of its receiving an SVO Grant, must:
  - for **live venue operators, promoters, theatrical producers or live performing arts organization operators**, have resumed or intend to resume organizing, promoting, managing or hosting future live events;
    - In the FAQs [Eligibility – Live Venue Operator or Promoter #64], the SBA said it will consider venues who are currently only presenting live online shows as currently in business if the entity met the eligibility criteria for business operations as of February 29, 2020.
  - for **motion picture theatre operators**, have reopened or intend to reopen for the primary purpose of publicly showing motion pictures;
  - for **relevant museum operators**, be open or intend to reopen; and
  - for **talent representatives**, be representing or managing artists and entertainers.
  - In the FAQs [Definitions #21], the SBA clarified that this requirement is intended to establish whether an applicant is currently in operation to the extent it can be or that it plans to reopen or be in operation when possible. Applicants that are currently not open to the public due to local orders are not ineligible for an SVO Grant if they intend to resume operations going forward.
- **Venue Requirements** – must satisfy (or the venue applicable to an applicant must satisfy) certain venue-specific requirements:
  - for **live venue operators, promoters, theatrical producers or live performing arts organization operators**, the venues at which/for which events are promoted, produced, managed or hosted, and for **talent representatives**, the venues at which the artists/entertainers represented or managed perform must:
    - contain a defined performance and audience space, mixing equipment, a public address system and a lighting rig;
      - In the FAQs, the SBA defined “defined performance space,” “defined audience space,” “mixing equipment,” “public address system” and “lighting rig”:
      - [Definitions #9] “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.”
      - [Definitions #8] “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 theatres).”

- [Definitions #18] “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.”
- [Definitions #28] “A public address system is an electronic system with at least one microphone, amplifies, and loudspeaker which increases the volume of a human voice, musical instrument, or other acoustic sound source or recorded sound or music.”
- [Definitions #16] “A lighting rig is a structure that holds lights in place for illuminating a stage or other defined performance space.”
- hire at least one individual to do at least **two** of the following activities: (i) sound engineer; (ii) booker; (iii) promoter; (iv) stage manager; (v) security personnel; and (vi) box office manager;
  - In the FAQs, the SBA defined “sound engineer,” “booker,” “promoter,” “stage manager” and “box office manager”:
    - [Definitions #34] “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.”
    - [Definitions #3] “A booker is an individual (e.g. a talent buyer) who books bands or other performing artists or venues and fields inquiries from performing artists and performing [venues] and their agents or representatives.”
    - [Definitions #35] “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.”
    - [Definitions #33] “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.”
    - [Definitions #4] “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.”

- have paid tickets or cover charges to attend most performances;
  - In the FAQs [Eligibility – Live Venue Operator or Promoter #63], the SBA clarified that with the exception of non-profit live venue operators, if an applicant mostly presents free events, they will not meet these requirements.
- pay artists “fairly” (*e.g.*, artists do not play solely for free or for tips);
  - In the FAQs [Eligibility – Live Venue Operator or Promoter #61], the SBA clarified that a nonprofit that uses volunteers, including volunteer choruses or student performers, in its production casts is still eligible for an SVO Grant if the events staged are produced and managed primarily by paid employees.
  - In the FAQs [Definitions #23], the SBA stated that “being paid fairly means that event performers are paid in an amount based on a percentage of sales, a guarantee, or another mutually beneficial formal agreement. Venues may also 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.”
- market performances (in print, online, mass media or on social media); and
- solely for nonprofit venues that produce free events, produce events managed primarily by paid employees and not volunteers.
- In the FAQs [Eligibility – All Applicants #10-11], the SBA specified that mobile entities without defined performance and audience spaces are not eligible to apply, but a mobile, portable or touring facility that *does* meet all the space-related requirements of the Economic Aid Act (*e.g.*, defined performance and audience spaces, lighting rig, etc.) will be eligible. In the FAQs [Eligibility – Live Venue Operator or Promoter #47], the SBA also said a wedding or event venue would likely be ineligible because it would likely fail to meet multiple requirements, including defined performance and audience spaces, sale of tickets, marketing of events to the public, lighting rig, mixing equipment and employment of sound engineers, stage managers, box office managers, etc.
- **[UPDATE – 7/22/21 FAQs]** In the FAQs [Eligibility – Live Venue Operator or Promoter #48-50; Eligibility – All Applicants #22], the SBA stated that venues whose broader business operations include hosting live performing arts events or concerts, such as sports stadiums or venues, restaurants that feature live music, agricultural fairs, party boats or pleasure

cruises, may be eligible to apply for an SVO Grant if the venue can show its principal business activity is presenting live performing arts events that also include other secondary activities. While most restaurants are not eligible, a dinner theatre may be eligible to apply for an SVO Grant if its principal business activity is the organization, management or hosting of live concerts, comedy shows, theatrical productions or other events by performing artists. If a dinner theatre's principal business activity is a restaurant, it may be eligible to apply for the SBA's Restaurant Revitalization Fund.

- In the FAQs [Eligibility – Live Venue Operator or Promoter #53], the SBA confirmed that a company that uses independent contractors instead of employees is eligible to apply (and that payments made to independent contractors (as reported on an entity's Form-1099) are an allowable use of grant funds).
- **[UPDATE – 7/22/21 FAQs]** In the FAQs [Eligibility – Live Venue Operator or Promoter #54], the SBA stated that a “theatrical production management business” may be eligible to apply for an SVO Grant if 70% of its revenue came from production fees and reimbursements if, as its principal business activity, it has production tickets available for public purchase an average of at least 60 days before the performance date.
- In the FAQs [Eligibility – Live Venue Operator or Promoter #56], the SBA clarified that a talent agency that books actors at live venues, but does not operate a live venue, is eligible to apply if 70% of its operations is managing, booking or representing performers who appear primarily at live venues.
- In the FAQs [Eligibility – Museum or Movie Theatre Operator #38], the SBA clarified that the “fixed seating” requirement for museums and motion picture theatre operators does not apply to other types of eligible entities.
- In the FAQs [Eligibility – Live Venue Operator or Promoter #57], the SBA clarified that a ticket broker or reseller does not qualify as a live venue operator or promoter. The SBA said that while a ticket broker or reseller may sell tickets to performing arts events 60 days in advance, performers are not paid from such transactions. Further, the SBA says that ticket brokers or resellers are in the business of reselling tickets, not selling tickets, as required by the Economic Aid Act.
- In the FAQs [Eligibility – Live Venue Operator or Promoter #59], the SBA clarified that a venue with a box office staffed by volunteers is not precluded from applying for an SVO Grant if it meets all of the eligibility requirements.

- In the FAQs [Eligibility – All Applicants #26], the SBA said a cruise ship can serve as a qualifying venue for the business activities of an eligible entity if the ship meets the venue requirements, but the cruise ship would not be eligible for an SVO Grant itself.
  - In the FAQs [Eligibility – Live Venue Operator or Promoter #70], the SBA said annual, single-even venue owner/operators, promoters, producers and arts organization operators are able to apply for an SVO Grant if they meet all the applicable eligibility requirements.
  - In the FAQs [Eligibility – Live Venue Operator or Promoter #71], the SBA clarified that if a live venue owner or operator owns and/or operates multiple venues which it includes in its SVO Grant application, each individual venue included must meet the eligibility criteria.
  - In the FAQs [Eligibility – All Applicants #27; Eligibility – Live Venue Operator or Promoter #60; Eligibility – Talent Representative #2], the SBA clarified that there is no limit to how many venues a promoter, theatrical producer, live performing arts organization or talent representative may stage performances in or book clients into, but the *majority* of those venues must be qualifying venues. The SBA acknowledged that requiring these types of eligible entities to exclusively use qualifying venues would fail to recognize the reality of the live performing arts industry.
- for **motion picture theatre operators**, a motion picture theatre must: (i) have at least one auditorium that includes a movie screen and fixed audience seating; (ii) have a projection booth (or other space) with at least one projector; (iii) have paid ticketing; and (iv) market movies (in print, online, mass media or on social media).
    - In the FAQs [Definitions #12; Eligibility – Museum or Movie Theatre Operator #38], the SBA defined “fixed audience seating,” a requirement for both museums and motion picture theatres, per the Economic Aid Act, as seating permanently fixed to the floor or ground or which is so heavy or cumbersome as to make removing it impractical. This would include heavy bleachers pushed back against a wall when not in use but never removed from a theatre because the bleachers are cumbersome and not easily or regularly removed from the theatre. The SBA specifically stated that a museum or motion picture theatre must have at least one room with fixed audience seating to be eligible. An entity with solely a multipurpose room with movable seating is not eligible to apply for an SVO Grant because the Economic Aid Act specifically requires fixed seating and does not allow for temporary, removable, modular, convertible or other non-fixed seating arrangements.
    - In the FAQs [Eligibility – Museum or Movie Theatre Operator #39, 41], the SBA clarified that a museum or motion picture theatre with outdoor fixed seating is eligible to apply for an SVO Grant as long as it meets all other

eligibility requirements, but a drive-in motion picture theatre with no fixed audience seating is not eligible.

- In the FAQs [Eligibility – Museum or Movie Theatre Operator #43; Subsidiaries & Affiliates #216], the SBA clarified that if a motion picture theatre is owned by one entity but operated or managed by another, both the owner and the operator are considered eligible for SVO Grants. In cases where both the owner and the operator separately apply for SVO Grants, each should base its calculation of earned revenue upon its share of payments received in its ownership or operation of the motion picture theatre as allocated by contract, lease or other formal agreement. To avoid overlap or double-counting, all earned revenues and claimed grant expenses must be tracked and accounted for separately. If the owner and operator’s revenues have never been separately allocated, then the separate entities should come up with a reasonable and well-documented method of dividing revenue between the two entities.
- In the FAQs [Eligibility – Museum or Movie Theatre Operator #44], the SBA clarified that a landlord who owns a shopping center that includes a motion picture theatre is most likely not eligible to apply for an SVO Grant because a shopping center owner’s principal business activity is most likely operating a shopping center, not owning or operating a motion picture theatre.
- In the FAQs [Eligibility – Museum or Movie Theatre Operator #46], the SBA clarified that if a motion picture theatre operator owns and/or operates multiple theatres which it includes in its SVO Grant application, each individual theatre included must meet the eligibility criteria.
- for **relevant museum operators**, a relevant museum operator must have: (i) been serving as a relevant museum operator as its principal business activity; (ii) indoor exhibition space that is a component of the principal business activity and which has been subject to pandemic-related occupancy restrictions; and (iii) at least one auditorium, theatre, performance or lecture hall with fixed audience seating and regular programming.
  - In the FAQs [Definitions #29], the SBA stated that the definition of “regular programming” may vary depending on the circumstances, but it is generally defining “regular programming” as 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 theatre, lecture hall or similar venue.
    - In the FAQs [Eligibility – Museum or Movie Theatre Operator #42], the SBA clarified that a museum with multiple qualified auditoriums, theatres, lecture halls or outdoor amphitheatres may aggregate programming across all such spaces for purposes of meeting the regular programming requirement. That is, the museum



as a whole, not each qualified space within the museum, must host an average of at least four events per month over the course of a year.

- In the FAQs [Eligibility – Museum or Movie Theatre Operator #45], the SBA clarified that events held in a museum’s theatre or lecture hall do not need to be ticketed or open to all museum attendees to qualify as regular programming.
- In the FAQs [Eligibility – Museum or Movie Theatre Operator #40], the SBA confirmed that the receipt of funding from a non-Federal government entity, such as a state, does not affect a museum’s eligibility for SVO Grants.
- In the FAQs [Eligibility – All Applicants #34], the SBA clarified that an entity with no staff or payroll may still be eligible for an SVO Grant. For example, an entity such as a promoter or talent representative that operates as a sole proprietorship or single member LLC with no employees could be eligible. In those cases, the entity would use any SVO Grant funding for non-payroll costs such as the payment of rent, utilities, scheduled debts, etc.
- **Certification of Need** – must make a certification that the uncertainty of current economic conditions makes necessary the SVO Grant to support ongoing operations. A similar certification is required for PPP loan applicants, and the SBA has published guidance as to how to evaluate “necessity” in the context of that program. Persons seeking an SVO Grant should take care to create a thoughtful and detailed record demonstrating how necessity was determined and the lack of availability (or difficulty in obtaining) funds from other sources. (See our publication [Paycheck Protection Program, Where Are We Now](#) for a discussion of the necessity certification in that context.)
  - In the FAQs [Application #104], the SBA said there is no set format for a Statement of Need because each entity’s circumstances are different, but the SBA provided a model statement:

*Due to the uncertainty of current economic conditions, a grant is necessary to support the ongoing operations of [name of entity]. [Name of entity] started in business on [date], but was forced to close its doors on [date] due to the pandemic. If it receives a grant, [name of entity] intends to reopen on [date] or sooner, as conditions and restrictions permit.*

- Section 324(b)(4) of Title III of the Economic Aid Act states that an eligible mid-sized business (defined as having between 500 and 10,000 employees) applying for an SVO Grant shall make a good-faith certification that the recipient of that grant (i) “will not abrogate existing collective bargaining agreements for the term of the loan and for two years after completing repayment of the loan” and (ii) “will remain neutral in an union organizing effort for the term of the loan.” These requirements, cross-referenced from the CARES Act, Title IV, are confusing because SVO Grants are not loans, so they do not have

a “term.” The FAQs issued by the SBA do not provide guidance about how to interpret these requirements.

- In the FAQs [Eligibility – All Applicants #24], the SBA confirmed that entities located in any state, the District of Columbia, the Commonwealth of Puerto Rico and any other territory or possession of the United States (e.g., Guam, American Samoa, the U.S. Virgin Islands) may apply for an SVO Grant.

### **III. Affiliation.**

Recognizing the manner in which separate venues or productions may be organized, the Economic Aid Act specifically acknowledges that each business entity of an (otherwise eligible) applicant shall be treated as an independent, non-affiliated entity for purposes of this program. In the FAQs [Subsidiaries & Affiliates #211], the SBA clarified that a maximum of five business entities (for example, one parent firm and four subsidiaries) related via affiliation under the SBA’s (very broad) affiliation rules may receive SVO Grants. (See our publication [Paycheck Protection Program, Where Are We Now](#) for a description of those affiliation rules). This means that an eligible person or entity, together with four of its affiliates (as defined under the SBA affiliation rules), may receive a total of five SVO Grants. It is not expressly stated whether initial grants and supplemental grants are counted as a single “grant” for purposes of such affiliation rules, but the structure of the program suggests that to be the case.

- In the FAQs [Subsidiaries & Affiliates #217], the SBA clarified that only five affiliated eligible entities may have active SVO Grant applications pending before the SBA at any one time to reduce the potential for erroneous SVO Grant awards. Any applications received above the limit of five affiliated entities will be rejected without being evaluated. However, if one affiliate’s application is rejected, another affiliated eligible entity could apply.
- In the FAQs [Subsidiaries & Affiliates #222], the SBA said the SBA’s affiliation principles do not apply to governments, so the SBA will not limit Tribal, state or local governments to having no more than five pending SVO Grant applications or to receiving no more than five SVO Grants.
- In the FAQs [Subsidiaries & Affiliates #208], the SBA provided more guidance on affiliation. The SBA relied on the principles of 13 CFR Sec. 121.301(f) to determine affiliation and said affiliation occurs when one firm has the power to control another firm, or a single person or entity has the power to control both and typically arises due to common ownership, management or legal arrangement.
  - In the FAQs [Subsidiaries & Affiliates #219], the SBA stated that it will only consider two entities with common ownership to be affiliated for purposes of the SVO Grant program where one firm owns more than 50% of the other or a single person or entity owns more than 50% of both. It is not clear if by issuing this FAQ the SBA was signaling that all other manners of affiliation (which do not require a majority ownership) were excluded.

- In the FAQs [Definitions #36], the SBA defined “subsidiary business” as an entity that is either wholly or majority-owned and controlled by another entity.
- According to the FAQs [Subsidiaries & Affiliates #209], the SBA will consider affiliation in two ways in administering the SVO Grant program:
  - (1) when applying provisions of the Economic Aid Act that specifically reference affiliation. The two provisions referencing affiliation are (i) the provision stating that affiliates may apply for their own SVO Grants if they meet eligibility requirements and (ii) the limit on five affiliates (including subsidiaries) that may receive SVO Grants; and
  - (2) to determine if an entity is eligible for the \$2 billion in SVO Grants set-aside for small employers or is subject to the certification regarding protecting labor rights. To determine how many employees an entity has, the SBA will look at the total number of full-time employees of the entity *and all of its affiliates* to determine whether the entity qualifies for the small employer set-aside. If the total number of full-time employees across all affiliates exceeds 50, then the entity is not eligible for the small employer set-aside. This is to ensure that a firm which appears small but is actually controlled by a large firm does not benefit from the money set aside program for small businesses.
- In the FAQs [Subsidiaries & Affiliates #212], the SBA stated that subsidiaries of an eligible parent entity do not need to meet the eligibility criteria independently unless the subsidiary wants to apply for an SVO Grant in its own name. The SBA also stated that per the Economic Aid Act, for purposes of meeting eligibility criteria (i.e., calculating loss of revenues or employee numbers), a subsidiary entity that qualifies for an SVO Grant will not be treated as an affiliate of its parent entity or other subsidiary entities of such parent entity. This does not appear to affect the rule that grants can only be provided to a maximum of five affiliated entities.
- In the FAQs [Subsidiaries & Affiliates #210], the SBA explained that an entity that shares costs with its subsidiaries should keep records to show that all expenses claimed under the SVO Grant served grant purposes. If a subsidiary is eligible for and applies for its own SVO Grant, only the portion of the shared cost that the subsidiary pays can be paid for by the SVO Grant.
- In the FAQs [Subsidiaries & Affiliates #213], the SBA clarified that even if a parent company is ineligible for an SVO Grant, one or more of its subsidiaries could still be eligible if they meet the eligibility requirements in their own right. The SBA noted that a subsidiary is not eligible where it is “majority owned or controlled” by a parent entity that is (i) listed on the stock market or (ii) owns or operates eligible in (1) more than one country, (2) more than ten states *and* (3) has more than 500 employees.
- In the FAQs [Subsidiaries & Affiliates #214], the SBA clarified that a parent company may submit an application that includes some or all of its subsidiaries because subsidiaries may apply for SVO Grants on their own but are not required to do so.

- In the FAQs [Subsidiaries & Affiliates #215], the SBA stated that a theatre circuit with five theatres, each a separate legal entity, but filed with a consolidated tax return should be considered five entities.
- In the FAQs [Subsidiaries & Affiliates #218], the SBA clarified that two affiliated entities may not both use the EIN of their parent company, except that multiple government-owned and Tribally-owned entities may apply with the same EIN. Only one SVO Grant application and award will be allowed per EIN. Further, where a parent entity's EIN is used, the parent entity must meet the statutory definition of an eligible entity, rather than its subsidiaries.
- In the FAQs [Subsidiaries & Affiliates #220], the SBA stated that two entities affiliated due to common ownership may not jointly apply for an SVO Grant. The SBA provided the following example: “[If] Company A owns 100% of Company B, which owns 100% 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% 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.”
  - **[UPDATE – 7/22/21 FAQs]** In the FAQs [Eligibility – Live Venue Operator or Promoter #69], the SBA clarified that two or more entities can only be included in one SVOG award if one of them owns more than 50% of the others OR if a single entity or individual owns more than 50% of all of them.

#### **IV. Ineligible Entities and Persons.**

The American Rescue Plan Act changes the requirement for PPP loan applicants and recipients. Entities that have applied for or received a PPP loan on or after December 27, 2020, are no longer ineligible to receive an SVO Grant.

The following categories of individuals or entities are ineligible to receive an SVO Grant:

- **Public Issuer** – if it is *or* is “majority owned or controlled” by another entity that is an issuer, securities of which are listed on a national securities exchange;
- **10% of Gross Revenue from Federal Funding** – if it received *or* is “majority owned or controlled” by another entity that received more than 10% of gross revenue from Federal funding during 2019 (excluding certain disaster relief funding received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act);
  - In the FAQs [Revenue #187], the SBA clarified that the 10% maximum includes all Federal grants and funding regardless of the use, excluding disaster assistance.
  - In the FAQs [Application #82], the SBA clarified that it will use capital funds, restricted grants and investment income to determine whether an applicant meets the requirement that no more than 10% of its 2019 gross revenue came from Federal funding, excluding disaster assistance, or to determine whether it can demonstrate

sufficient gross revenue loss to qualify for a priority period, but that currently such financial resources would not otherwise affect an application.

- In the FAQs [Eligibility – All Applicants #20], the SBA stated that the 10% of gross revenue from Federal funding limit does not apply to eligible entities owned by Tribal, state or local governments, including entities owned by public colleges and universities. Instead, the Economic Aid Act establishes an alternate eligibility restriction for government-owned entities, which is that government-owned entities cannot contain any other government-owned entities apart from the live venue operator or promoter, live performing arts organization operator, museum operator, movie theatre operator or talent representative.
- In the FAQs [Eligibility – All Applicants #16], the SBA clarified that the 10% Federal funding barrier includes financial aid, such as Pell grants, awarded to students.
- In the FAQs [Eligibility – All Applicants #30], the SBA clarified that if an entity receives state funding that originated from the Federal government, that funding counts toward this 10% eligibility threshold.
- **Large Operator** – if it *or* if it is “majority owned or controlled” by another entity with each of the following qualities:
  - owns or operates locations in more than one country;
  - owns or operates locations in more than ten States; and
  - employed more than 500 full-time employees as of February 29, 2020.
  - In the FAQs [Eligibility – Live Venue Operator or Promoter #62], the SBA clarified that an otherwise eligible entity with a *minority* investor that meets the “large operator” criteria is still eligible for an SVO Grant.
    - **NOTE: The SBA’s answer to this FAQ indicates that having a minority investor with control that has all three of the qualities listed above would not disqualify an otherwise eligible entity. This ignores the new 4/23/21 FAQs in which FAQ – Definitions #5 and #17 define “control” and “majority owned” separately, unlike in previous iterations of the FAQs.**
- **Foreign Entity** – if it does not have a place of business in the United States, does not operate primarily in the United States, and does not make a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor. The standard to make a “significant contribution” to the U.S. economy is not set forth;

- **Prurient Sexual Nature** – if it presents live performances of a prurient sexual nature, or derives more than *de minimis* gross revenue through sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
  - In the FAQs [Eligibility – All Applicants #29], the SBA clarified that *de minimis* gross revenue in this context means 5% or less.
- **Bankruptcy** – [Eligibility – All Applicants #23] an entity undergoing a *liquidation* form of bankruptcy (such as Chapter 7) is not eligible. However, an otherwise eligible entity undergoing a *reorganization* form of bankruptcy (such as Chapter 11 or Chapter 13) may apply for an SVO Grant if they entered bankruptcy after February 29, 2020, but, in SBA’s discretion, any SVO Grant may be subject to additional documentation requirements designed to reduce the risk of loss of taxpayer funds; or
- In the FAQs [Definitions #17, #5], the SBA defined “majority owned” to mean more than 50% of the ownership interests in an entity (regardless of its legal structure) are held by a single individual or entity, and the SBA defined “control” to mean both the strategic policy setting exercised by boards of directors or similar organizational governance bodies and the day-to-day management and administration of business operations as overseen by principals.
  - **NOTE: In the 4/23/21 FAQs, the SBA defined “control” in a separate question from “majority owned” and included separate links to those definitions, which implies that an entity could be controlled without being majority owned. This is inconsistent with the SBA’s earlier versions of the FAQs where it defined “majority owned or controlled” in one definition as meaning at least 51% of the ownership interests in an entity are held by a single individual or entity and with FAQ #16 which states that a live venue operator may have a minority investor which is ineligible for an SVO Grant because minority investors are not covered by ownership conditions, and there are no other control requirements in the statute.**
- **Entity does business in Cuba, North Korea, Iran or Syria** – [Eligibility – All Applicants #36] the Economic Aid Act states that SVO Grant funds may not be obligated or expended to finance directly any assistance or reparations for the governments of Cuba, North Korea, Iran or Syria. The United States has also imposed sanctions on these four nations through the Department of the Treasury’s Office of Foreign Assets Control.

## **V. Size of SVO Grants.**

The total amount of SVO Grants that any individual applicant may receive (whether solely in the initial grant or taking together the initial and any supplemental grant) is capped at **\$10 million**. Further, for relevant museum operators specifically, a relevant museum operator may not receive total grants in excess of \$10 million for all relevant museums operated by the operator. Applying the affiliation rules (described above), an applicant, together with its affiliates

that receive grants, cannot collectively receive more than **\$50 million** (see “Affiliation” above) in SVO Grants.

**In the FAQs [Revenue #182], the SBA clarified that SVO Grant award amounts will be based on earned revenue.**

- ***Initial Grants*** – Subject to the \$10 million cap noted above, initial SVO Grants are (i) for an eligible person that was in operation *on* January 1, 2019, equal to **45%** of the gross earned revenue of the entity during 2019 and (ii) for an eligible person that began operations *after* January 1, 2019, equal to 6x the average monthly gross earned revenue for each full month of 2019 that the eligible person was in operation.
  - In the FAQs [Application #89], the SBA said an award for an entity that has no 2019 revenues will be calculated by multiplying the average monthly earned revenue for each full month it was in business in 2020 multiplied by 6, up to the maximum grant amount of \$10 million. Based on the language of the Economic Aid Act, the SBA might have meant to say “average monthly gross earned revenue” in its response to this FAQ, but it is not clear.
- **[UPDATE – 7/22/21 FAQs] *Supplemental Grants*** – [FAQs – Supplemental Phase #243-246] Applicants that received an initial SVO Grant may receive a supplemental grant if, as of April 1, 2021, the applicant has made no material changes to its business and such applicant’s revenue for the first quarter of 2021 is not more than **30%** of the revenue for the first quarter of 2019. A supplemental grant will be equal to **50%** of an initial grant (subject to the total \$10 million cap on all SVO Grants received by the recipient and the \$10 million cap on groups of affiliated museums). Eligible applicants will receive an email notifying them that they are eligible to apply for a supplemental grant. There will be a two-week window in which applicants can apply for a supplemental grant.
  - **[UPDATE – 7/22/21 FAQs]** In the FAQs [Supplemental Phase #237-238], the SBA clarified that all SVO Grant funds will not be expended during the program’s initial phase. If there is not enough funding available to grant a supplemental award to all eligible applicants who apply within the initial two-week window, the SBA will give priority to applicants with the greatest revenue loss in Q1 2021 relative to Q1 2019 (or their first quarter of earned revenue for those businesses that did not have revenue in Q1 2019).
  - In the FAQs [Supplemental Phase #239], the SBA stated that a seasonal entity may compare its second quarter earnings in 2021 to its second quarter earnings in 2019 to demonstrate whether it has experienced the 70% earned revenue loss required for a supplemental grant. The Economic Aid Act refers to a 70% reduction in revenue, not earned revenue, so the SBA might have meant revenue, not earned revenue in answering this FAQ.
  - In the FAQs [Supplemental Phase #240], the SBA clarified that supplemental grants will be awarded pursuant to a separate application process, which will be

conducted after the initial phase because the criteria and calculations for issuing supplemental grants will be dependent on the outcome of the initial round.

- **[UPDATE – 7/22/21 FAQs]** In the FAQs [Supplemental Phase #242], the SBA stated that for initial grant recipients who had PPP awards subtracted from their initial SVO Grants, the supplemental grant amount will be based on the initial grant amount before subtracting PPP.
- **[UPDATE – 7/22/21 FAQs]** In the FAQs [Appeals #232], the SBA clarified that if an applicant’s request for reconsideration is approved, that applicant will be eligible for a supplemental award based on the modified award amount. If the reconsideration approval comes after the supplemental award is issued, the SBA will true-up the supplemental award accordingly.
- **Entities that Received PPP Loans** – Per the American Rescue Plan Act, the size of SVO Grant for which a person or entity is eligible will be reduced by the total amount of loans received by that person or entity through the PPP loan program on or after December 27, 2020. If a person or entity received a PPP loan before December 27, 2020, that PPP loan amount will not be deducted from any subsequent SVO Grant.
  - In the FAQs [Eligibility – All Applicants #8], the SBA gave an example of an SVO Grant reduction for an entity that received a PPP loan after December 27, 2020. If a jazz club received a PPP loan for \$10,000 on February 1, 2021, and then applied for and received an SVO Grant which, based on the amount of its earned revenue loss, would have been \$100,000, the jazz club’s SVO Grant will be reduced by \$10,000 and the club will receive a \$90,000 SVO Grant.
  - In the FAQs [Eligibility – All Applicants #9], the SBA clarified that the full amount of any PPP loan received on or after December 27, 2020, will be deducted from an entity’s SVO Grant, even if only a portion of that PPP loan was forgiven.
  - In the FAQs [Eligibility – All Applicants #6; Application #95], the SBA clarified that while a PPP loan recipient may later receive an SVO Grant, any entity that receives an SVO Grant shall be ineligible for a PPP loan *after* it has received an SVO Grant. In addition, recipients of SVO Grants are ineligible to apply for assistance under the Restaurant Revitalization Fund.
    - In the FAQs [Application #102], the SBA clarified that if a 2021 PPP loan applicant is approved for an SVO Grant *before* the SBA has issued a loan number for the PPP loan, the applicant is ineligible for the PPP loan.
  - In the FAQs [Eligibility – All Applicants #7], the SBA clarified that an entity is still eligible for an SVO Grant even if the entity applied for a PPP loan when the PPP application included a certification saying the entity would not apply for an SVO Grant.
- In the FAQs [Revenue #189], the SBA stated that a business that provides talent representation and financial services for athletes and entertainers should use its total



revenue from *all* sources to calculate the amount of the SVO Grant for which it may apply, but the business would still need to satisfy the requirement that its principal line of business is talent representation, not financial services. This suggests that if an entity is eligible, it can count all its revenues, not just those that come from the principal line of business.

- In the FAQs [Revenue #192], the SBA stated that it will use an entity’s calendar year 2019 revenues to determine award amounts.

The SBA is authorized to establish alternative methods to calculate revenue losses for seasonal employers that would be adversely impacted if January, February and March are excluded from the calculation of year-over-year gross earned revenue.

- In the FAQs [Definitions #34], the SBA defined “seasonal entity or employer” to mean an “entity that does not operate for more than 7 months in any calendar year; or during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33% of the gross receipts of the employer for the other 6 months of that year. (Section 7(a)(36)(A)(xiii) of the Small Business Act, 15 USC 636(a)(36)(A)(xiii).”

**[UPDATE – 7/22/21 FAQs]** In the FAQs [Use of Funds #160], the SBA explained that SVO Grants will be disbursed in one lump sum. Any supplemental awards will be paid as a second award in another lump-sum disbursement.

## **VI. Priority of Disbursement of SVO Grants.**

SVO Grants are to be allocated in an order of priority laid out in the Economic Aid Act. Up to **80% (approx. \$13 billion)** of the funds appropriated for the SVO Grant program may be allocated to initial grants made to applicants eligible to receive grants in the 28-day priority period described below.

In the FAQs [Application – Prioritization #142], the SBA clarified that government-owned entities are not eligible to receive SVO Grants during the first and second priority periods.

- ***First Priority Period*** – During the **first 14 days** of the program, the SBA may only award grants to (otherwise eligible) applicants with revenue for the period from 4/1/2020 through 12/31/2020 that is **not more than 10%** of such applicant’s revenue during the same period of 2019 due to the COVID-19 pandemic, or, for entities that were not “in business” in 2019, for any of the second, third or fourth quarter of 2020, not more than 10% of such applicant’s revenue during the first quarter of 2020.
- ***Second Priority Period*** – During the **next 14 days** of the program, the SBA may only award grants to (otherwise eligible) applicants with revenue for the period from 4/1/2020 through 12/31/2020 that is **not more than 30%** of such applicant’s revenue during the same period of 2019 due to the COVID-19 pandemic, or, for entities that were not “in business” in 2019, for any of the second, third or fourth quarter of 2020, not more than 30% of such applicant’s revenue during the first quarter of 2020.

- In the 3/30/21 Webinar, the SBA noted that entities that are eligible for the First Priority Period will continue to have priority in the Second Priority Period if their applications were not processed during the First Priority Period.
- Thereafter, initial grants of any remaining funds can be made to all other eligible applicants.
- In the FAQs [Application #115], the SBA clarified that all entities may apply beginning on when the application portal first opens to establish their position in the queue, as awards will be made on a first come, first served basis, but during each priority period, the SBA will start with the first application submitted that qualifies for that priority and work its way through the applications in the order in which they were received.

For purposes of calculating revenue to determine whether an applicant is eligible for a priority period, an applicant’s revenue does not include amounts received under the CARES Act (as amended) (*i.e.*, PPP loans or other funding) and the SBA is to use the accrual method of accounting for determining revenue. For all other purposes, an entity may rely upon either the accrual or cash method of accounting.

In addition to these priority periods, there is an added overlay of \$2 billion of appropriated funds for the first 60 days of the program for grants to eligible persons or entities with 50 or fewer full-time employees. For such purposes, a “full-time” employee works at least 30 hours per week, and any employee working 10–30 hours per week counts as one-half (0.5) of a full-time employee. It appears that for these calculations, employees working fewer than 10 hours per week are not counted.

- In the FAQs [Business Size/Employees #174, #176], the SBA clarified that it is using the Economic Aid Act’s specific provisions regarding the calculation of employees and SBA size regulations (13 CFR Sec. 121.106). A firm must calculate its average number of full-time employees for the prior year by calculating the number of full-time employees it had in each individual pay period, adding those numbers together and dividing the total by the number of pay periods over the 12-month period from **March 1, 2019**, to **February 29, 2020**. If an entity’s payroll schedule doesn’t match neatly with the date range, the entity’s number of full-time employees will be determined with reference to each pay period that falls in whole *or in part* within the 12-month timeframe stipulated by the Economic Aid Act.
  - In the FAQs [Business Size/Employees #179], the SBA said it will consider totality of the circumstances, including criteria used by the IRS, to determine whether individuals are employees or independent contractors. If an independent contractor, that individual will not be counted as an employee of the eligible entity for any purpose.
- In the FAQs [Business Size/Employees #177], the SBA clarified that when calculating the number of full-time employees, entities will use a weekly average of the employees’ total hours over each pay period. For example, if an entity has a biweekly pay period, and an

employee works 10 hours the first week and 30 hours the second week, that employee's average number of hours is 20 hours per week.

- In the FAQs [Application – Prioritization #138], the SBA clarified that there is no priority based on number of employees in the application process. The \$2 billion of appropriate funds for small employers is a separate aspect of the awarding process than the priority periods.
- In the FAQs [Application #83], the SBA clarified that it will allocate funds set aside for small employers throughout all stages of the Initial Grant phase. For example, when an eligible entity qualifies for the First Priority Period and qualifies as a small employer, the SBA will fund that entity's grant with money drawn from the \$2 billion set aside for small employers. The SBA also said that it is considering using its authority under the Economic Aid Act to set aside more than the \$2 billion minimum for small employers.
- In the FAQs [Application – Prioritization #139-140], the SBA clarified that Congress intended "revenue" and not "earned revenue" be used for determining eligibility for priority periods. The SBA will use gross revenues to determine whether or not an entity qualifies for one of the priority periods.
- In the FAQs [Business Size/Employees #181], the SBA clarified that a Tribal, state or local government can qualify for the small employer set-aside.

## **VII. Permitted Uses of SVO Grant Funds.**

In the FAQs [Use of Funds #158, #161], the SBA clarified that the time period in which SVO Grant recipients may incur allowable costs is different from the time period in which they must expend their awards. Initial grants may be used for costs *incurred* between **March 1, 2020** and **December 31, 2021**, and supplemental grants may be used for costs *incurred* through **June 30, 2022**. However, an SVO Grant recipient has **one year** from disbursement to *expend* (on allowable expenses) any initial grant proceeds and **18 months** from disbursement to *expend* any supplemental grant proceeds. Any grant proceeds not spent within the allowed time period must be returned to the SBA. Note that this is different than a PPP loan where all expenses paid or incurred during the relevant period are counted for forgiveness purposes.

- In the 3/30/21 Webinar, the SBA clarified that if an SVO Grant is paid out in multiple disbursements, the SVO Grant recipient will have one year to expend initial grant proceeds and 18 months to expend supplemental grant proceeds from the first disbursement.

SVO Grant funds may be used for any of the following:

- **payroll costs** (as defined in the PPP, limited to the following and solely with respect to employees who have a principal residence in the United States) (note that the definition follows that the definition included in the PPP rules, but we understand that rather than prorating, an SVO Grant would just cover any payroll costs incurred during the relevant period)

- salary, wages, commissions, similar compensation and payment of cash tips or the equivalent up to a \$100,000 cap per employee on an annualized basis of cash compensation;
  - In the FAQs [Use of Funds #154], the SBA clarified that an eligible entity that received an employee retention tax credit (ERTC) may use SVO Grant funds to pay the *uncredited* portion of the employee’s salary. SVO Grant funds cannot be used to pay the portion of an employee’s salary covered by an ERTC.
  - In the FAQs [Use of Funds #163], the SBA clarified that SVO Grant funds *may* be used to make employees whole for temporary reductions in pay during the pandemic.
- payment for vacation, parental, family, medical and sick leave;
- allowance for dismissal or separation;
- payment required for the provisions of group health care or group life, disability, vision or dental insurance benefits, including insurance premiums;
- payment of any retirement benefit;
- payment of State or local tax assessed on the compensation of employees; and
- the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment or similar compensation up to a cap of \$100,000 on an annualized basis;
  - Payroll costs exclude (i) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered applicable period; (ii) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or (iii) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127).
  - In the FAQs [Use of Funds #168], the SBA said talent representatives or other entities acting as fiscal transfer agents on behalf of multiple artists will not be considered independent contractors for purposes of the \$100,000 payment limit. In these cases, the SBA will consider the relevant independent contractor to be the individual artist represented by the talent agent or manager.
- **covered rent obligations** (as defined in the PPP, any rent obligation under an agreement in effect before February 15, 2020);
- **covered utility payment** (as defined in the PPP, payment for electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020);

- **covered worker protection expenditures** (as defined in the PPP, operating or capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government beginning on March 1, 2020, such as ventilation systems, physical barriers, or an expansion of indoor, outdoor or combined business space);
  - In the FAQs [Definitions #39; Use of Funds #166], the SBA defined “worker protection expenditures” to mean operating or capital expenditures which help an entity adapt its business activities to comply with guidance or requirements issued by Federal, state or local health authorities related to the maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to the COVID-19 pandemic. These expenditures must be incurred between March 1, 2020 and the date on which the COVID-19 national emergency declared by the President expires. These expenditures may include purchase, maintenance or renovation of items such as drive-through windows, air filtration systems, physical barriers and personal protective equipment.
- **scheduled payments of principal or interest on mortgages incurred prior to February 15, 2020** (but no prepayment of principal);
- **scheduled payments of principal or interest on any indebtedness or debt instrument incurred in the ordinary course of business that is a liability of the SVO Grant recipient and was incurred prior to February 15, 2020** (but no prepayment of principal);
  - In the FAQs [Use of Funds #151], the SBA stated that payments toward debts recorded before February 15, 2020, represent an allowable expense even if the debt was refinanced or consolidated with other debts that existed *prior to* February 15, 2020. Any otherwise allowable debt consolidated with a debt that was *not* recorded prior to February 15, 2020, would be an allowable expense only to the extent of the original qualifying debt, and any additional amount of indebtedness following the consolidation that is attributable to the nonqualifying loan would not be an allowable expense. The SBA also stated that payments on lines of credit or revolving loan funds recorded prior to February 15, 2020, would be an allowable expense even if not drawn until after that date, provided that the amount of the line of credit or revolving loan fund was not increased after February 15, 2020.
  - In the FAQs [Use of Funds #162], the SBA clarified that this category of allowable expenses includes payments on other SBA-backed loans, so long as those loans began prior to February 15, 2020.
- **payments to independent contractors** (capped at) \$100,000 in annual compensation for any individual employee of an independent contractor); and
- **other ordinary and necessary business expenses**, including:
  - maintenance expenses;

- administrative costs, including fees and licensing costs;
- [Use of Funds #159] payments of artist deposits and guarantees;
- State and local taxes and fees;
  - In the FAQs [Use of Funds #152], the SBA clarified that “state and local taxes” includes real estate taxes and personal property taxes on buildings and equipment where such buildings and equipment are directly related to eligible SVO Grant program operations. An eligible entity may not use the SVO Grant to pay taxes on property and equipment not directly related to its SVO Grant program operations.
- operating leases in effect as of February 15, 2020;
- [Use of Funds #147] customer refunds from 2020 due to cancellations;
- required payments under any insurance policy; and
- advertising, production, transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition or comedy show, **except** that an SVO Grant **cannot be** primarily for such production-related expenditures.
  - In the FAQs [Application #119], the SBA said it interprets the restriction against SVO Grant recipients primarily using grant funds to pay for these production-related expenses as referring to costs for a venue in general rather than those relating to one specific production or show.
- In the FAQs [Use of Funds #146], the SBA stated that SVO Grant funds may be used to refund customers still holding tickets for cancelled performances, as a necessary and ordinary business expense. Such expenses should be listed under the “other” category.
- In the FAQs [Use of Funds #149], the SBA stated that owner compensation, including distributions and dividends, should also be considered an ordinary business expense payable using SVO Grant funds to the extent that the total amounts involved do not exceed what an owner received in compensation in 2019.
- In the FAQs [Use of Funds #150], the SBA stated that it believes a grantee may use SVO Grant funds to reimburse itself for allowable expenses already paid dating back to March 1, 2020.
- **[UPDATE – 7/22/21 FAQs]** In the FAQs [Use of Funds #173], the SBA stated that alcohol may be considered an “ordinary and necessary business expense” if the alcohol is purchased as a supply or inventory in the ordinary course of business. SVO Grant funding may not be used to purchase alcohol for use as an entertainment or personal expense.

- In the FAQs [Definitions #22], the SBA defined “ordinary and necessary expenses” using 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.”
- In the FAQs [Use of Funds #157], the SBA said depreciation is an allowable expense under the Economic Aid Act.
- Entities may not use funds to purchase real estate, to pay interest or principal on loans originated after February 15, 2020, to invest or re-lend, for political contributions, or for another use prohibited by the program administrator.
- In the FAQs [Use of Funds #148], the SBA said SVO Grant funds may be used to reimburse an owner who used personal funds to keep an entity in operation between March 1, 2020, and December 31, 2021 (or June 30, 2022, if the entity receives a supplemental phase award), if there is sufficient documentation of the transfer and expenditure of such funds. Without sufficient documentation, reimbursements claimed by the owner will be treated as compensation or distribution of profits, subject to a cap of what that owner received in compensation in 2019.
- In the FAQs [Use of Funds #153], the SBA clarified that using an interest-bearing bank account to hold SVO Grant funds would be proper and would not constitute an impermissible investment, but the limit on interest earned on grant fund deposits is \$500 per year, as per 2 CFR 200.305.
- In the FAQs [Use of Funds #155-156], the SBA clarified that SVO Grant awards will count toward an entity’s requirement to comply with the Single Audit Act if that entity receives \$750,000 or more in Federal grant funding during a fiscal year. If an SVO Grant recipient is covered by the Single Audit Act, it may charge a reasonably proportionate share of the costs of audits required by the Single Audit Act to its SVO Grant. Audit expenses will generally not be considered an allowable grant expense for SVO Grant recipients not covered by the Single Audit Act.
- In the FAQs [Eligibility – All Applicants #19], the SBA stated that an eligible entity must ensure it does not claim any costs or expenses under its SVO Grant that it has already received reimbursement or payment for under another grant, loan, or funding from a state or local government pandemic-relief program.

### **VIII. Application.**

**[UPDATE]** The SBA opened the SVO Grant application at [www.sba.gov/svogrant](http://www.sba.gov/svogrant) on April 26, 2021 at 12:00pm Eastern Time and will close the application on August 20, 2021 at 11:59 Pacific Time.

- In the FAQs [Application #75], the SBA stated to get ready to apply, entities can:

- Register for a DUNS number so you can then register in the System for Award Management (SAM.gov).
- Gather necessary documents.
- Review the FAQs.
- Review the Applicant User Guide.
- Connect with an SBA resource partner, including a [SCORE business mentor](#), [Small Business Development Center](#), [Women’s Business Center](#) or [Veterans Business Outreach Center](#).

### **Obtain a DUNS Number and Register with SAM**

- In the FAQs [Application #78], the SBA provided instructions for obtaining a DUNS number. An applicant should go to <https://fedgov.dnb.com/webform/> and then follow on-screen instructions.
  - In the FAQs [Subsidiaries & Affiliates #221; Application #127], the SBA clarified that if an entity does not have DUNS numbers for non-SVO Grant eligible affiliates, the entity does not need to obtain DUNS numbers for those affiliates.
- The SBA published a [video on its YouTube channel](#) which provides step by step guidance on registering entities in the System for Award Management (SAM.gov). In the video, the SBA notes that it can take 7-10 days for new registrations to process, so, as noted below, SVO Grant applicants should begin this process as soon as possible.
- In the FAQs [Subsidiaries & Affiliates #223], the SBA clarified that, with the exception of Tribal, state or local government-owned entities, affiliated entities may not use the same SAM registration to apply for up to five SVO Grants. Each eligible entity applying for an SVO Grant should use its own SAM registration.
- In the FAQs [Use of Funds #171], the SBA said as part of the SAM.gov registration process, entities will submit bank information, and upon confirming the grant award, the SBA will deliver funds to the entity’s bank.
- In the FAQs [Application #76-77], the SBA said SVO Grant applicants must register at [www.SAM.gov](http://www.SAM.gov) to apply and cannot use an Individual Taxpayer Identification Number, Employer Identification Number or other means of identification or registration. Once an applicant has a DUNS number, they should immediately register in SAM.gov because the SAM registration takes an average of 7-10 business days to process but can take 30+ business days during periods of peak volume.
  - In the FAQs [Application #79-80], the SBA clarified that an entity may apply for an SVO Grant if it has submitted its SAM.gov registration but the registration is



not yet officially activated. To check the status of its SAM.gov registration, an entity should 1) go to <https://www.sam.gov>, 2) select “Log In,” 3) Select the “Check Status” tab in the main navigation, 4) enter its DUNS number and 5) select “Search” to view status.

## **Review Draft of SVO Grant Application Form**

[Click here for the 4/22/21 version of the SVO Grant Application Form.](#)

- On April 23, 2021, the SBA uploaded the [Applicant User Guide](#) to its website to further assist applicants.

## **Gather Required Documentation**

The SBA published a [Preliminary Application Checklist](#) (the “Checklist”) to assist applicants in preparing their applications. The Checklist includes:

- ***Background documents*** – including a written statement of need and a list of all full- and part-time employees with job titles and employee status.
  - In the FAQs [Application #98], the SBA clarified that the list of employees should reflect the applicant’s employees as of the date of SVO Grant application submission; however, if the applicant has furloughed all employees because the entity is shuttered, then the applicant should submit the most recent employee list prior to the entity being shuttered.
- ***Financial documents*** – including tax return(s), a Single Audit Act audit or an audited financial statement for that fiscal year if the entity expended \$750,000 or more in Federal grant funds in one fiscal year, and an indirect cost rate agreement (if applicable).
  - If an entity has an indirect cost rate agreement, it should submit the approved rate with its application. If an entity has never negotiated an indirect cost rate agreement, a 10% de minimis rate shall be used.
  - In the FAQs [Application #90], the SBA clarified that audited financial statements are not required to apply for an SVO Grant, but if entities had a Single Audit or audited financial statements in 2019, they should provide those as supporting documents.
  - In the 3/30/21 Webinar, the SBA said an entity that receives \$750,000 or more through the SVO Grant program will have to provide an external audit following receipt of the funding. Nonprofit entities that receive \$750,000 or more in SVO Grant funding must complete a Single Audit, and for-profit entities that receive \$750,000 or more in SVO Grant funding will be able to select between a Single Audit or audited financial statements.
    - In the FAQs [Application #90], the SBA clarified that the SBA will direct grantees to submit their Single Audit or audited financial statement during

the post-award auditing phase conducted after SVO Grant awards have been issued.

- In the FAQs [Application #101], the SBA clarified that only Federal tax returns are required.
- In the FAQs [Application #106], the SBA stated that a nonprofit may use its 2018 tax return if it uses a fiscal year to file annual Form 990 tax returns and has not yet filed its 2019 return because the extended due date has not yet transpired.
- **Standard forms** – the Checklist provides links to the four standard government forms that applicants will need to complete and submit with their application.
  - The Standard Form 424B requires applicants to certify that they will have sufficient funds to pay the non-Federal share of project costs to ensure the project is completed and that applicants “will initiate and complete the work within the applicable time frame.” The definition of “complete the work” is not clear from this Form 424B.
    - In the FAQs [Application #117], the SBA said an entity does not need to fill out a separate SF-424B because SAM.gov will collect standard financial assistance certifications and representations during registration.
  - In the FAQs [Taxes and 4506-T #135-136], the SBA said applicants can refer to the PDF version of [Form 4506-T published on the IRS website](#) for assistance completing the 4506-T document. The SBA also noted SVO Grant applicants should use the unique 4506-T document posted at [www.sba.gov/svogrant](http://www.sba.gov/svogrant) and refer to the Applicant User Guide for additional direction.
- **Applicant-specific documents** – each applicant will need to provide specific documents to prove it meets the specific eligibility criteria.
  - The SBA provided further details about some applicant-specific documents in the FAQs:
    - [Application #96] Venues that lack box office reports to submit with their applications will be allowed to present other types of evidence that they regularly host events, such as agreements with outside promoters.
    - [Application #97] Venues may satisfy requirements for fixtures like mixing equipment and a lighting rig by providing proof of rental receipts or photographs if the fixtures are not permanently installed.
    - [Eligibility – All Applicants #3] Talent representatives should provide:
      - a list of performing artists they booked or managed in 2019 that includes the venues at which the artists were contracted to perform, the city and state of the venue and the performance dates;

- a current roster of performing artists that the talent representative books or manages that primarily work in live venues or festivals. This roster must also be available on the applicant’s website and be published in print or online in an industry-recognized trade publication registry;
  - fully executed contractual service agreements (excluding rider provisions) between the talent representative and two artists, or signed statements from two artists certifying that the talent representative represented them for live performances in 2019 and 2020; and
  - fully executed contracts for live performances that took place in a venue or at a festival in 2019 or 2020 for two artists that the applicant managed or booked.
- In the FAQs [Application #108], the SBA said the application system will accept files that end in .pdf, .jpg, .jpeg, .doc, .docx, .xls and .xlsx with a maximum file size of 35 MB per file. The application system will not accept compressed, zip or password protected files.
  - In the FAQs [Application #112], the SBA stated that an entity doesn’t have to submit all of its marketing materials. Eligible entities must submit a sample size of 10 contracts, show/event listings, and marketing materials for performances they staged, promoted or booked clients for over the course of 2019-2020. Entities subject to the regular programming requirement must upload 10 attachments that demonstrate they meet that requirement. In addition, all applicants may submit a single document, such as a spreadsheet, that contains URLs linking to online copies of marketing materials, rather than submitting each material as an attachment.
  - In the FAQs [Application #129], the SBA said in response to Question 28 of Form 3515, a motion picture theatre operator only needs to provide a floor plan of a venue, venue layout, or other evidence of a projector and fixed audience seating for one screen with fixed seating at each covered location.
  - In the FAQs [Application #125], the SBA noted said that even though it is inconvenient, applicants should upload the same documents multiple times if the same documentation is asked for in multiple questions.

### **Gather Receipts and Prepare a Proposed Budget**

- *Gross Revenues*
  - The SVO Grant application requires applicants to provide monthly gross revenues *and* monthly earned revenues for each month in 2019, 2020, and 2021.

- In the 3/30/21 Webinar, the SBA stated that based on the financial information entered by the applicant, a proposed award amount will be automatically calculated. The SBA is not bound by the proposed award and will not blindly accept the proposed award amount without verification. The applicant may reduce the proposed amount, if desired, in the proposed budget.
- In the FAQs [Revenue #205], the SBA clarified that no SVO Grant applicant should include revenues also included on another SVO Grant application, no matter the individual circumstances of the entities involved.
- *Proposed Budget*
  - The proposed budget should show how the applicant intends to use SVO Grant funds, not the applicant's full budget. Applicants should delineate how they intend to expend grant funds across the allowable categories, and in any event, the proposed budget cannot exceed the proposed award amount. If an applicant received a PPP loan on or after December 27, 2020, the applicant should deduct the 2021 PPP loan amount from the budget being prepared.
  - In the FAQs [Application #103], the SBA stated that an entity must fill out the entire proposed budget section in order to advance to the next step of the application.
  - In the FAQs [Application #118], the SBA said the proposed budget should set forth the proposed use of SVO Grant funds for a 12-month period that will begin on the date the applicant is awarded an SVO Grant. During that 12-month period, the recipient may use the funds to pay or reimburse allowable costs incurred on or after March 1, 2020.
  - In the FAQs [Application #110], the SBA clarified that entities should only include costs actually incurred by the entity and not any costs incurred by the entity's contractors.
  - **[UPDATE – 7/22/21 FAQs]** In the FAQs [Use of Funds #167], the SBA said after an SVO Grant is received, the grantee may move costs between allowable categories, but all grantees will be required to submit a final budget upon grant close-out. It is not clear how this fits in with the prior guidance that strict adherence to the budget will be expected. It is also not clear whether “mov[ing] costs” means moving costs between proposed budget items or between allowable categories without taking the proposed budget into account.

### **Additional Notes on the Application Process**

- In the FAQs [Application – Prioritization #143], the SBA confirmed that applications within each priority period and the non-priority period will be processed in the order in which they are received.

- In the FAQs [Application #81], the SBA stated that an eligible entity that is a hybrid nonprofit/governmental entity should apply under the nonprofit's name and submit documentation demonstrating the public/private partnership aspect of its structure.
- In the FAQs [Application #84], the SBA stated that when the ownership of an eligible entity was transferred, the SBA will consider the new owner to have stepped into the shoes of the prior owner for purposes of qualifying for an SVO Grant as long as the transferred entity was operational on February 29, 2020.
- In the FAQs [Subsidiaries & Affiliates #224], the SBA stated that if an entity is disregarded for tax purposes and doesn't file its own tax returns, either that entity or the entity that files tax returns may apply for the SVO Grant, assuming both entities have their own separate legal existence and each meets the eligibility requirements.
- In the FAQs [Application #86], the SBA clarified that an entity which submits an honest, good faith application but is denied funding for failure to meet one or more of the eligibility requirements will face no penalty and will be free to apply for other programs for which it is eligible. However, if an entity knowingly makes material misrepresentations in its application for an SVO Grant, the entity will have committed an act of perjury and be subject to various civil and criminal penalties.
- In the FAQs [Application #87], the SBA stated that an application will be rejected when all available SVO Grant funding runs out or where an entity:
  - is attempting to commit fraud against the Federal government or submits materially false or fraudulent documentation;
  - fails to meet the definition of an eligible entity;
  - lacks the required level of revenue loss;
  - possesses one or more of the disqualifying conditions;
  - is part of a group of affiliated museums that has already received \$10 million in SVO Grant funding;
  - is part of a group of affiliated entities that currently has 5 active SVO Grant applications pending; or
  - or one of its principals appears on the Excluded Parties List on the System for Award Management (sam.gov).
- In the FAQs [Application #93], the SBA stated that it will exclude any personally identifiable information about applicants (including Social Security Numbers) or confidential business information about applicants or their firms (such as financial data) from disclosure under the Freedom of Information Act. However, such information may be shared with SBA's Office of Inspector General, the Government Accountability Office, and/or members of Congress in response to a proper and official request. For recipients of

SVO Grants, the SBA will report the award amount along with the entity's name and address in the publicly searchable database at [USASpending.gov](https://USASpending.gov). The SBA recommends that applicants mark any documents that include confidential business information with the phrase "Confidential Business Information" or including "Contains Confidential Business Information" in the file name so such information is properly excluded from the publicly searchable database.

- In the FAQs [Application #94], the SBA clarified that SVO Grants will not be included in the gross income of the person receiving such grant so will not have to be reported to the IRS as taxable income.
- In the 3/30/21 Webinar, the SBA said an applicant's status will say "submitted" if the application is submitted successfully. Applicants will be notified when there is a subsequent change in status and will have to log in to see what the new status is.
  - an application is placed on hold because the applicant is on the Federal Do Not Pay List, the applicant will have 30 days to clear their name. The SBA will not follow up with the applicant, so applicants should check their application status whenever they receive a notification that there has been a status change.

[The City of New York announced a free application assistance program](#) ("Curtains Up NYC") for New York City business and nonprofits connected to live performance. The Curtains Up NYC program will offer free webinars and one-on-one counseling to NYC entities applying for SVO Grants.

### **[UPDATE – 7/22/21 FAQs] IX. Appeals and Reconsideration.**

The SBA created an appeals process for applicants initially denied SVO Grants and a reconsideration process for applicants who received an award amount at least \$100 less than the Proposed Grant Amount on their SVO Grant application.

#### **Appeals**

- *Eligibility*
  - In the FAQs [Appeals #226-227], the SBA stated that all applicants who were denied SVO Grant funding are eligible to submit an appeal. The SBA anticipates that reversals of prior decisions will be rare.
  - In the FAQs [Appeals #233], the SBA stated that determinations on appeal are final agency decisions and that there will not be a secondary appeals process.
- *Process*
  - In the FAQs [Appeals #228-229], the SBA said Applicants whose applications were denied will receive an email notification that says they are eligible to submit an appeal through the portal, and the applicants have two weeks from receipt of that email to submit an appeal. During those two weeks, funding will be preserved.

Applicants may submit appeals after the two-week window, but there is no guarantee funding will remain.

- *Application*
  - In the FAQs [Appeals #230], the SBA stated that applicants will have to review the [Eligibility Matrix](#) and upload a signed statement indicating their grounds for appeal. Applicants will also have to provide supporting documents from the Application Checklist and any other requested documents.

## **Reconsideration**

- *Eligibility*
  - In the FAQs [Reconsideration #234], the SBA said applicants who received an award amount at least \$100 less than the Proposed Grant Amount on their SVO Grant application (including deduction of PPP loans, where appropriate) are eligible for reconsideration.
- *Process*
  - In the FAQs [Reconsideration #235-236], the SBA said Applicants who are eligible for reconsideration will receive an email notification inviting them to submit a request for reconsideration. The applicants have two weeks from receipt of that email to request reconsideration. During those two weeks, funding will be preserved. Applicants may submit requests for reconsideration after the two-week window, but there is no guarantee funding will remain.
- *Application*
  - In the FAQs [Reconsideration #237], the SBA stated that applicants will have to upload a signed statement explaining why their initial award does not reflect their actual revenue loss. Applicants should also upload any new financial documents from the Application Checklist as well as any of the following that could help the applicant substantiate their actual revenue loss:
    - State tax returns;
    - Updated externally or internally prepared and signed financial statements;
    - Third-party ticket system or third-party merchant accounts; or
    - CPA comfort letters or CPA firm attestations (not required).

## **X. Authority and Oversight.**

The Associate Administrator for the SBA Office of Disaster Assistance will coordinate and formulate policies for the administration of these grants. Accordingly, while we anticipate that the

Office of Disaster Assistance will implement an application process (perhaps akin to the [disaster loan assistance page](#) that exists for Economic Injury Disaster Loans), in the interim the SBA's disaster assistance customer service center can be reached at 1-800-659-2955 or by e-mail at [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).

The SBA will provide increased oversight of eligible persons/entities receiving SVO Grants. Those receiving grants must retain records that document compliance with grant requirements for (i) four years for employment records and (ii) three years for all other records. SVO Grants may be audited, and in the case of fraud, will require repayment of misspent funds or result in legal action to collect.

\* \* \* \* \*

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. We will continue to evaluate the CARES Act, the Consolidated Appropriations Act, 2021, the American Rescue Plan Act, related rules and regulations and any subsequent legislation to provide our clients guidance in real time. Please visit our [Coronavirus Resource Center](#) for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.



