

PUBLICATION

New Grant Opportunity for Venue Operators Impacted by the Pandemic

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After much anticipation, the Consolidated Appropriations Act of 2021 was signed into law on December 27, 2020. While funding for vaccination support, the fate of stimulus checks to individuals, and support (or lack thereof) for state and local governments garnered a great deal of attention, there are many different programs and funding streams included within the 5,593-page package. One such new and notable program will provide \$15 billion in funding to eligible "shuttered venue operators" in the form of grants administered through the U.S. Small Business Administration (SBA).

Eligible Entities

The new program is included within Title III, the **Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act**, and will provide aid to eligible live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives that meet the applicable definitions. Generally, eligible applicants will be required to demonstrate:

- **Legitimate and Organized Enterprise** – must meet the stated criteria for each type of eligible entity;
- **Operational Status** – must have been in operation as of February 29, 2020;
- **Impact of Pandemic** – must demonstrate not less than a 25 percent reduction in gross earned revenue in 2020 as compared to the same quarters in 2019;
- **Benefit of Grant** – must remain in continued operation or show an intent to resume operations;
- **Public Entity Ownership/Affiliation** – eligible entities can include those owned by a state or political subdivision of a state, in which case, the eligibility rules will be evaluated based on characteristics of the specific entity, not the respective political entity; and
- **Certification** – eligible entities must submit a good faith certification that the uncertainty of current economic conditions justifies the grant to support ongoing operations.

Ineligible Entities

The following characteristics may render an entity ineligible:

- **Public Issuer** – or is majority owned or controlled by a publicly traded entity listed on a national securities exchange;
- **Federally Funded** – at a level of more than 10 percent of gross revenue excluding certain disaster relief funding received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- **Large Operator** – if it is owned or controlled by another entity with **two** or more of the following qualities:
 - owns or operates locations in more than one country;
 - owns or operates locations in more than ten states; and/or
 - employs more than 500 full-time employees as of February 29, 2020.

- **PPP Borrower** – on or after December 27, 2020 (whether under a standard or second draw PPP loan); or
- **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/services of a prurient sexual nature.

Grant Administration

The Act directs the Associate Administrator for the Office of Disaster Assistance to formulate policies for administration of the grants, so entities potentially eligible should monitor the SBA's site for more details. Information should be released soon as the grants will be administered based on 14-day increments and according to greatest impact; first priority will be those entities that have experienced a gross revenue decline of 90 percent or more, the next priority will be entities with a decline of 70 percent or more, and so on. Grant amounts will be based on the lesser of 45 percent of the gross earned revenue during 2019; or for a business that began operations after January 1, 2019, the amount equal to the average monthly gross revenue for each full month the business was in operation during 2019, multiplied by 6; or \$10 million. If all funds are not exhausted during the first phase of awards, the Administrator may issue supplemental awards of up to 50 percent of an entity's initial award and subject to a per entity total maximum of \$10 million. Grant funds must be used for eligible expenses incurred March 1, 2020 through June 30, 2022.

For more information, please contact [Wendy Huff Ellard](#) or any member of [Baker Donelson's Disaster Recovery and Government Services Team](#).