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### After Months of Deadlock, Congress Extends Lifeline for the Arts and Entertainment Industry through the Shuttered Venue Operators Grant Program

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On December 27, 2020, President Trump signed the “[Consolidated Appropriations Act, 2021](#)” (the “**Omnibus Bill**”). Title III of Division M of the Omnibus Bill, titled the “Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act” (“**Title III**”) contains not only important enhancements for existing and potential borrowers in the Paycheck Protection Program (“**PPP**”),<sup>1</sup> but it has also added new relief programs. Among these new programs, the Grants for Shuttered Venue Operators program (the “**Shuttered Venue Grant Program**”) was created pursuant to Section 324 of Title III.

Originally introduced as part of the stand-alone [Save Our Stages Act](#) by Senators John Cornyn (R-TX) and Amy Klobuchar (D-MN) in July 2020, the legislation was expanded in the Omnibus Bill from a narrow focus on concert and theatrical venues to also include other entities including museums, zoos, and movie theatres. As finalized, the \$15 billion set-aside for the Shuttered Venue Grant Program aims to fund live venues, independent movie theaters, museums, cultural institutions, and talent representatives that have been disproportionately impacted by COVID-19. Importantly, the program is not available for entities that obtain a new PPP loan (either a first-draw or second-draw) after December 27, 2020.

While we expect new regulations and guidance to be published by the Small Business Administration in the coming weeks, below is an overview of the Shuttered Venue Grant Program based on the Title III statute:

#### Overview of the Shuttered Venue Operator Grant Program

<p><b>Who is eligible for the Shuttered Venue Operator Grant Program?</b></p>	<p>The following persons and entities are eligible for the Shuttered Venue Grant Program (as outlined in further detail below):</p> <ul style="list-style-type: none"> <li>(1) Live Venue Operators or Promoters, Theatrical Producers, or Live Performing Arts Organization Operators;</li> <li>(2) Motion Picture Theatre Operators;</li> <li>(3) Relevant Museum Operators; and</li> <li>(4) Talent Representatives.</li> </ul>
<p><b>Definitions of Eligible Grantees</b></p>	<p><b>Live Venue Operators or Promoters, Theatrical Producers, or Live Performing Arts Organization Operators</b> are individuals or entities (including for-profit, non-profit and government-owned businesses) that:</p> <ul style="list-style-type: none"> <li>(1) As their principal business activity, organize, promote, produce, manage, or host live concerts, comedy shows, theatrical productions, or other events by performing artists for which (a) there is a cover charge; and (b) performers are paid; and</li> </ul>

<sup>1</sup> Haynes and Boone’s prior alert on the impact of the Omnibus Bill on PPP can be found here: <https://www.haynesboone.com/alerts/congress-revises-ppp-rules-for-existing-borrowers>

<p><b>Definitions of Eligible Grantees</b></p>	<p>(2) Either (a) generate 70% or more of their earned revenue through cover charges or ticket sales, production fees or reimbursements, non-profit educational initiatives or the sale of event beverages, food or merchandise; or (b) make available event tickets to the public, on average 60 days or more in advance, for an event.</p> <p><b>Motion Picture Theatre Operators</b> are individuals or entities (including for-profit, non-profit, and government-owned businesses) that, as their principal business activity, own or operate at least one place of public accommodation for motion picture exhibition for a fee.</p> <p><b>Relevant Museums</b> are public, tribal, or private nonprofit agencies or institutions organized on a permanent basis for essentially educational, cultural heritage, or aesthetic purposes, that utilize a professional staff, own or utilize tangible objects, care for the tangible objects, and exhibit the tangible objects to the public on a regular basis.<sup>2</sup> For-profit museums are specifically excluded from the Shuttered Venue Grant Program.</p> <p><b>Talent Representatives</b> are agents or managers (including for-profit, non-profit, and government-owned businesses): (a) for whom 70% or more of operations are engaged in representing or managing artists and entertainers; (b) who book or represent musicians, comedians or similar performing artists primarily for live events and festivals; and (c) who represent artists and entertainers that are paid based on tickets sold or a similar basis.</p>
<p><b>General Eligibility Requirements:</b></p>	<p>To be eligible for the program, an applicant must meet the following criteria:</p> <p>(1) <u>Operations Date</u>. It must have been fully operational on February 29, 2020.</p> <p>(2) <u>Necessity Requirement</u>. It must demonstrate a reduction in gross earned revenue of at least 25% for any 2020 quarter as compared to the corresponding 2019 quarter<sup>3</sup>.</p> <p>(3) <u>Planned Operations</u>. It must resume or intend to resume operations as a live event venue or open or intend to reopen in the case of a motion picture theatre operator or museum.</p> <p>(4) <u>Space Requirements</u>.</p> <p>(a) The venues at which <b>Live Venue Operators or Promoters, Theatrical Producers, or Live Performing Arts Organization Operators</b> promote, produce, manage, or host events, or in which the artists and entertainers represented or managed by <b>Talent Representatives</b> perform, must meet the following requirements: (a) a defined performance and audience space; (b) mixing equipment, public address system, and lighting rig; (c) employ one or more individuals to carry out not less than two of certain typical</p>

<sup>2</sup> As further defined in 20 U.S.C. 9172, such term includes museums that have tangible and digital collections and includes 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.

<sup>3</sup> Fourth quarter comparisons are permitted only if application is submitted on or after January 1, 2021.

**General Eligibility Requirements:**

venue roles<sup>4</sup>; (d) paid ticket or coverage charge to attend most performances; (e) its performing artists are fairly paid, and such artists cannot be solely paid in tips (except for fundraisers or similar charitable events); and (f) performances are marketed through listings (print or electronic), on websites, by mass email or on social media. Additionally, if the venue is owned or operated by a non-profit entity that produces free events, the events must be primarily produced and managed by paid employees and not volunteers.

- (b) **Motion Picture Theatre Operators** must have the following features in their theatres: (a) at least 1 auditorium with a motion picture screen and fixed audience seating; (b) a projection booth with not less than 1 motion picture projector; (c) paid ticket charge; and (d) motion picture exhibitions must be marketed through showtime listings (print or electronic), on websites, by mass email or on social media.
- (c) **Relevant Museum Operators** must have the following features in their museums: (a) principal business activity is to serve as a museum; (b) indoor exhibition spaces that serve as museum have been subjected to pandemic-related occupancy restrictions; and (c) at least 1 auditorium, theater, performance or lecture hall with fixed audience seating and regular programming.

- (5) **No Public Ownership.** The applicant may not be majority owned or controlled by a public company.
- (6) **Limited Federal Funding.** The grantee may not derive more than 10% of its 2019 revenue from federal funding (excluding amounts received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act).
- (7) **Size Standard.** The entity may not be majority owned or controlled by an entity with more than 2 of the following characteristics:
  - (a) Owns or operates venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than **one country**;
  - (b) Owns or operates venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than **ten States**; and
  - (c) Employs more than **500 employees** as of February 29, 2020 on a full-time basis<sup>5</sup>.
- (8) **No Subsequent PPP Loans.** The applicant cannot receive a PPP loan (whether first-draw or second-draw) on or after December 27, 2020.

<sup>4</sup> Roles include: Sound engineer, Booker, promoter, stage manager, security personnel, and box office manager.

<sup>5</sup> Full-time equivalent employees include any employee working 30 or more hours per week and employees working between 10 to 30 hours per week count as one-half of a full-time employee.

<p><b>Ineligible Applicants &amp; Restrictions</b></p>	<p><b>Exclusions for Grantees of Sexual Nature.</b> Live venue operators or promoters, theatrical producers, live performing arts organization operators, relevant museum operators, motion picture theatre operators, and talent representatives are ineligible for the Shuttered Venue Grant Program if they (a) present live performances that are of prurient sexual nature; or (b) derive, directly or indirectly, more than “de minimis” revenue through sales of products or services of a prurient sexual nature.</p> <p><b>Limits on Grants to Affiliates.</b> No more than 5 affiliates (determined per <a href="#">SBA affiliation rules</a>) of an eligible person or entity may receive grants pursuant to the Shuttered Venue Grant Program.</p> <p><b>Additional Cap for Relevant Museum Operators.</b> A Relevant Museum Operator cannot receive more than \$10 million in total grants for all relevant museums under such operator’s control.</p>
<p><b>Necessity Certification</b></p>	<p>An eligible applicant must certify in good faith that the “uncertainty of current economic conditions makes necessary the grant to support ongoing operations” of such applicant.</p>
<p><b>Grant Amount</b></p>	<p>The initial grant (“<b>Initial Grant</b>”) amount for an eligible applicant is the <u>lesser</u> of: (a) 45% of the applicant’s 2019 gross earned revenue<sup>6</sup>; or (b) \$10 million.</p> <p>A second grant (a “<b>Supplemental Grant</b>”) equal to 50% of the Initial Grant is also available if, as of April 1, 2021, the revenues of the grantee for the most recent calendar quarter are less than 30% of the revenues in the same calendar quarter during 2019.</p> <p>The total of both initial and supplemental grants received by any applicant cannot exceed \$10,000,000.</p>
<p><b>Priority and Timeline of Grant Distributions</b></p>	<p><b>First Priority (First 14-days of the program).</b></p> <p>Grants will only be awarded to eligible persons or entities with that have experienced 90% or greater revenue loss between April 1, 2020 through December 31, 2020 as compared to April 1, 2019 through December 31, 2019.</p> <p><b>Second Priority (Subsequent 14 days following First Priority).</b></p> <p>Grants will be only awarded to eligible persons or entities that have faced 70% or greater revenue loss between April 1, 2020 through December 31, 2020 as compared to April 1, 2019 through December 31, 2019.</p> <p>In determining revenue for the above purposes:</p> <ol style="list-style-type: none"> <li>(1) Amounts received pursuant to the CARES Act will not be counted.</li> <li>(2) The accrual method of accounting will be used.</li> <li>(3) Alternative revenue methods may be used for seasonal employers.</li> </ol>

<sup>6</sup> For applicants that began operations after January 1, 2019, the amount is calculated by multiplying the average monthly gross earned revenue of the applicant (for each full month during which the applicant was in operation) by a factor of 6.

<p><b>Priority and Timeline of Grant Distributions</b></p>	<p>No more than \$12 billion (80% of the grants) will be dedicated towards First Priority and Second Priority applicants. After the initial 28-days of the program, grants will be open to all eligible applicants.</p> <p>For the first 60days of the program, at least \$2 billion will be set aside for eligible applicants that employ 50 or less full-time employees, after which any remaining amount may be awarded to any eligible applicant.</p>
<p><b>Use of Proceeds</b></p>	<p>Proceeds from the grant may be used to pay the following obligations:</p> <ol style="list-style-type: none"> <li>(1) Payroll costs, covered mortgage obligations (both principal and interest but no prepayment), covered rent and utility obligations, scheduled payments of interest or principal on debt incurred prior to February 15, 2020, and covered worker protection expenditures expenses, in each case, as such terms are defined in U.S.C. 636(a)(36)(A) (as amended by the Omnibus Bill) and used in the Paycheck Protection Program;</li> <li>(2) Payments to independent contractors (not to exceed \$100,000 annual compensation per person); and</li> <li>(3) Other “ordinary and necessary business expenses”, including maintenance costs, licensing costs, insurance premiums, advertising, theatrical production costs, and state and local taxes.<sup>7</sup></li> </ol> <p>Such obligations must have generally been incurred between March 1, 2020 through December 31, 2021. Proceeds from the supplemental grant can be used for costs incurred up to June 30, 2022.</p> <p>Proceeds from the grant may not be used (a) to purchase real estate; (b) to pay interest or principal on loans originated after February 15, 2020; (c) to invest or re-lend funds; (d) for contributions or expenditures to, or on behalf of, any political party; or (e) for any use prohibited by the SBA.</p> <p>All unused amounts must be returned on or before one year after the date of the grant disbursement (and in the case of supplemental grants, 18 months from such disbursement date).</p>
<p><b>Tax Impact</b></p>	<p>The Omnibus Bill provides that any grant received under the Shuttered Venue Grant Program is tax-exempt income, and expenditures made by the applicant using such funds remain tax-deductible.</p>

<sup>7</sup> Though permissible, grants may not be used “primarily” for such expenditures.

Given the fast pace of developments, businesses are encouraged to seek advice from qualified legal counsel concerning these matters.

For more information, please see the following resources:

**1. Prior Haynes and Boone Guidance on the Paycheck Protection Program:**

- a. [Congress Revises PPP Rules for Existing Borrowers; Allows Certain Borrowers to Access Second Round of Funding](#) (December 22, 2020)
- b. [SBA Issues Clarifying Guidance for PPP Borrowers in M&A Transactions](#) (October 7, 2020)
- c. [Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program](#) (updated June 8, 2020)
- d. [Full List of Haynes and Boone Alerts on PPP](#)

**2. Prior SBA Guidance on the Paycheck Protection Program:**

- a. [PPP Frequently Asked Questions](#) (updated December 9, 2020)
- b. [PPP – Frequently Asked Questions on Loan Forgiveness](#) (updated October 13, 2020)
- c. [Full List of SBA Guidance and Regulations](#)

**3. Resources on the SBA Economic Injury Disaster Loan (EIDL) Program.**

- a. [Looking for an Alternative to PPP? Taking a Second Look at the Economic Injury Disaster Loan Program](#) (Haynes and Boone Alert, May 1, 2020).
- b. [SBA's COVID-19 Disaster Loan Program](#) (Haynes and Boone Alert, March 24, 2020)
- c. [SBA EIDL Resource Page](#)

***Additional Questions? Contact a member of the Haynes and Boone [Finance](#) or [Corporate Practice Groups](#) at Haynes and Boone, including the following individuals:***

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