



The Shuttered Venue Operators Grant (SVOG) program is Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) signed into law on Dec. 27, 2020. Following are answers as of Jan. 27, 2021, to frequently asked questions about the program. These will be updated as new information comes available and additional program details are finalized.

Contents

- Eligibility 1
 - All Applicants 1
 - Museum Operator 3
 - Live Venue Operator or Promoter 3
- Definitions 4
- Application 5
- Use of Funds 5
- Business Size/Employees 6
- Revenue 6
- Subsidiaries 8

Eligibility

All Applicants

1. What is an “eligible entity” for an SVOG?

Eligible entities may be live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theater operators, and talent representatives, per the Economic Aid Act. Additionally, entities of these types owned by state or local governments (for example, museums or historic homes) are eligible to apply if the governmentally-owned entity also acts solely as a venue operator, museum, etc. and not also include other types of entities. For example, a city parks and recreation department that operated a bandstand in a public square along with running various nature parks would not qualify as an eligible entity for an SVOG. Finally, each subsidiary business owned by an eligible entity that also meets the eligibility requirements on its own rights will qualify as an eligible entity.

2. When does a business have to have been established to be eligible to apply for an SVOG?

The business must have been in operation as of February 29, 2020.

3. Is an entity that was not in business in 2019 but fully operational on Feb. 29, 2020 eligible to apply?

Yes, if an entity was not in business during 2019 but was fully operational on Feb. 29, 2020, it is eligible to apply if it can show the required level of revenue loss. In situations like this, the SBA will use an alternative method for demonstrating revenue loss based on the approach the Agency is using

with the PPP. Firms not in operation in 2019 may qualify for an SVOG if their gross earned revenues for the second, third, or fourth quarter of 2020 demonstrate a reduction of not less than 25% from their gross earned revenues from the first quarter of 2020.

4. Is an entity that applied for and received a Paycheck Protection Program loan in July 2020 eligible to apply for an SVOG?

Yes, if an entity applied and was approved for a PPP loan prior to Dec. 27, 2020, it is eligible to apply for an SVOG.

5. Is an entity that applied for a First Draw or Second Draw PPP loan on or after Dec. 27, 2020, eligible to apply for an SVOG?

No. Both examples would not be eligible to apply for an SVOG unless and until the PPP loan application (whether First Draw or Second Draw) is declined.

6. Can an entity apply for a PPP loan now and decide later on the loan if it did not receive an SVOG? At what stage is a PPP loan considered “received”?

No. Per the Economic Aid Act, as well as how the PPP loan system operates, entities cannot apply for a PPP loan and SVOG at the same time. Entities must make an informed business decision as to which program will most benefit them and apply accordingly. If an applicant is rejected by one program, it will then be eligible to apply for the other.

7. Is a venue with a multipurpose room with movable seating eligible to apply?

No. The Economic Aid Act specifically requires fixed seating and makes no allowance for temporary, removable, modular, convertible, or other non-fixed seating arrangements. As such, eligible entities required by the Act to have fixed seating cannot satisfy this requirement with other forms of seating.

8. Is a venue with outdoor fixed seating eligible to apply?

Yes. The Economic Aid Act does not require qualifying venues to be indoors. If the venue meets the applicable eligibility requirements, it should be eligible to apply for an SVOG.

9. Is a mobile entity with no fixed performance space eligible to apply?

No. Among other requirements, the Economic Aid Act requires a venue to have defined performance and audience spaces. If a particular venue, such as a circus, fair or entertainment business that provides talent at weddings/parties, cannot meet this requirement, it is not eligible to apply for an SVOG.

10. Is a drive-in movie theater without fixed seating eligible to apply?

No. Per the Economic Aid Act, a motion picture theatre operator must have at least one auditorium with a motion picture screen and fixed audience seating, so a drive-in movie theater is not eligible to apply for an SVOG.

11. What disqualifies an entity from SVOG eligibility?

The following types of circumstances would preclude an otherwise eligible firm from an SVOG:

- It does not have a place of business located in the United States, does not operate primarily within the U.S., and does not make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.
- It was not in operation as of Feb. 29, 2020.

- It received a PPP loan on or after Dec. 27, 2020.
- It is a publicly traded corporation, or is majority owned and controlled by a publicly traded corporation.
- It presents live performances or sells products or services of a prurient sexual nature.
- More than 10% of its 2019 gross revenue came from the federal government (not counting disaster assistance)
- It owns or operates venues, theaters, museums or talent agencies in more than one country, owns or operates venues, theaters, museums or talent agencies in more than ten states, AND it had more than 500 employees as of Feb. 29, 2020.

Museum Operator

1. Is a museum partially funded with state dollars eligible to apply?

Yes. While there are specific eligibility rules for entities owned by state or local governments, the receipt of funding from a state government does not affect its eligibility.

2. Is a museum that received CARES Act funding eligible to apply?

Yes. Per the Economic Aid Act, receipt of CARES Act funding does not disqualify an entity for SVOGs.

Live Venue Operator or Promoter

1. Is a wedding/event venue eligible to apply?

It is not likely. Per the Economic Aid Act and specific eligibility criteria applying to Live Venue Operators, it appears wedding venue operators would likely fail to meet multiple requirements (for example: sale of tickets, promotion of events to the public, defined audience and performing space, lighting rig, sound mixing equipment, employment of sound engineers, stage managers box office managers, etc.).

2. Is a sports stadium or venue used for concerts and other live, non-sport performances eligible to apply?

It is not likely. While sports are not a form of performing art, if the operator of a sports stadium or similar athletic arena can meet the statutory definition of an eligible entity under the Economic Aid Act, including the requirement that its principal business activity must be the organization, promotion, management, or hosting of live concerts, comedy shows, theatrical productions or other events by performing artists, it should be eligible to apply for an SVOG.

3. Is a restaurant that features live music eligible to apply?

No, if the principal line of business is restaurant operation rather than live venue operation, the business would not be eligible to apply.

4. Is a dinner theater eligible to apply?

It is possible. A dinner theater could qualify if its principal business activity is the organization, promotion, management, or hosting of live concerts, comedy shows, theatrical productions or other events by performing artists, rather than restaurant operations, and meets all other applicable eligibility criteria.

5. Is a performing arts center owned and operated by a government, state college (as a college department) eligible to apply?

Yes. State government-owned entities may be eligible to apply for an SVOG.

6. Is a company that uses 1099 (independent contractor) workers/talent (vs. W2) eligible to apply?

Yes. Per the Economic Aid Act, payments made to independent contractors as reported on an entity's Form-1099 are an allowable use of grant funds. As such, an entity that used independent contractors would be eligible to apply for an SVOG.

7. We hire a lot of independent contractors for our events; as a subsidiary service provider for or at live venues and events, does this fit the talent placement eligibility?

No, this does not fit the definition of a subsidiary, but rather defines a secondary service provider. The SBA does not believe a secondary service provider supplying support to qualifying venues meets any eligible entity definition.

8. Is a theatrical production management business with revenue generated by the production management eligible to apply (under the talent representative definition)?

It is possible. A theatrical producer may be eligible to apply for an SVOG even if less than 70% of its revenue came from cover charges or ticket sales. Under the Economic Aid Act, it also may be eligible to apply if, as its principal business activity, it has production tickets available for public purchase an average of not less than 60 days before the performance date.

9. Is a talent agency that books actors at live venues, but does not operate a live venue, eligible to apply?

It is possible. A talent agency may be eligible to apply if 70% of its operations is managing, booking or representing performers who appear primarily at live venues. If it is less than 70%, it is not eligible to apply for an SVOG.

Definitions

1. How is "principal business activity" being defined?

The SBA is drawing from its years of experience in ascertaining a firm's primary industry under the SBA size regulations (13 C.F.R. § 121.107) to define "principal business activity." To determine a given firm's principal business activity, the SBA will consider the distribution of an entity's receipts, employees and costs of doing business among the different lines of business activity in which its business operations occurred for the most recently completed fiscal year. The SBA may also consider other factors, such as the distribution of patents, contract awards, and assets, as appropriate.

2. How is "majority owned or controlled" being defined?

Across its various programs, the SBA defines majority ownership and control to mean that at least 51% of the ownership interests in an entity (regardless of its legal structure) are held by a single individual or entity.

3. How is "fixed seating" being defined?

Fixed seating is seating permanently fixed to the floor or ground, per the Economic Aid Act.

4. How is “regular programming” being defined?

While it may vary depending on the circumstances, generally the SBA is defining regular programming to mean 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 theater, lecture hall, or similar venue.

5. How are “cover charges” being defined?

The SBA defines “cover charges” to encompass front door entrance fees, food or beverage minimums, or other similar charges required to gain admission to a venue, whether collected via ticket sales, addition to a tab, or direct payment.

Application

1. What can an entity do to get ready to apply?

As the SBA works on building the application platform, it would be in your best interest to register for a DUNS number so you can then register in the System for Award Management (SAM.gov). Also, gather documents that demonstrate your number of employees and monthly revenues so you can calculate the average number of qualifying employees you had over the prior 12 months. Lastly, determine the extent of gross earned revenue loss you experienced between 2019 and 2020. This and additional information such as floor plans, contract copies and other evidence will be needed to apply for an SVOG.

2. Must applicants register in the System for Award Management (SAM.gov) or can they use other identifiers like ITINs or EINs to apply for an SVOG?

SVOG applicants need to register with the federal government’s SAM at www.SAM.gov to apply and cannot use an Individual Taxpayer Identification Number, Employer Identification Number, or other means of identification or registration. Interested parties are encouraged to obtain a Dun and Bradstreet (DUNS) number (a prerequisite for SAM registration) as soon as possible. With a DUNS number, interested parties then should immediately begin registering in SAM.gov, as the SAM registration may take up to two weeks once submitted.

3. When will SVOG applications open?

The SBA is working expeditiously to open SVOG applications and encourages you to stay up to date by frequently visiting www.sba.gov/coronavirusrelief for information.

Use of Funds

1. Can SVOG funds be used to refund customers still holding tickets for cancelled performances?

Yes, it appears this type of cost would qualify under the Economic Aid Act as a necessary and ordinary business expense. As such, it should be an allowable use of grant funds to make refund payments to patrons for cancelled shows.

2. Can SVOG funds be used to reimburse an owner who loaned the business money to keep employees paid and operating expenses paid?

Yes, if the loan was incurred before Feb. 15, 2020 and made on commercially reasonable terms and formally documented as a standard, ordinary debt instrument then payments made under that loan would seem to be an allowable expense of grant funds.

Business Size/Employees

1. How should an entity determine its employee count?

For employee count, the SBA is drawing on the Economic Aid Act's specific provisions re: the calculation of employees and decades of agency experience in counting employees under the SBA size regulations (13 C.F.R. § 121.106). Employees that work at least 30 hours per week are considered full-time. Employees that work between 10-29 hours per week are considered one-half of a full-time employee. Employees that work less than 10 hours per week are not considered an employee. Once the qualifying employees are determined, an entity must then calculate the average number of employees it had over the prior year by adding up the number of qualifying employees in each individual pay period and dividing that amount by the number of pay periods in that year.

For example, assume a firm paid its employees monthly and had the following number of qualifying employees each pay period:

| | |
|-------------------------------|-------------------------------|
| Jan – 7.5 full-time employees | Jul – 10 full-time employees |
| Feb – 6 full-time employees | Aug – 10 full-time employees |
| Mar – 9.5 full-time employees | Sep – 7 full-time employees |
| Apr – 8 full-time employees | Oct – 8.5 full-time employees |
| May – 9.5 full-time employees | Nov – 7 full-time employees |
| Jun – 8.5 full-time employees | Dec – 6 full-time employees |

The sum of the firm's full-time employees is 97.5. The firm would then divide 97.5 by 12 (the number of pay periods) to determine its average number of full-time employees was eight.

2. Which priority or phase is number of employees considered?

There is no priority based on number of employees in the application process. Per the Economic Aid Act, the \$2 billion small employer set-aside for those with 50 employees or less is a separate aspect of the awarding process from the priority periods.

3. Are institutions of more than 500 employees eligible to apply if they meet other eligibility criteria?

Yes, if they do not operate in either more than 10 states or another country.

Revenue

1. How are “earned revenue” and “gross earned revenue” being defined by the SBA?

As required by the Economic Aid Act, the SBA is defining earned revenue and gross earned revenue (the two terms in the law) in accordance with common principals of the accrual method of accounting. Using this, only monies organizations receive from the sale of goods or services are counted as earned revenue. This commonly accepted definition of earned revenue does not include other sources of funds that an organization may receive, such as donations, sponsorships, governmental assistance, or returns on investments. Gross earned revenue is 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.

2. Are donations / contributions included in gross earned revenue?

Only earned revenue should be included in calculations of gross earned revenue. Unearned revenue, including donations and other gratuitous contributions, such as foundation grants, corporate sponsorships and individual gifts, should not be included.

3. Are fundraising event receipts considered gross earned revenue?

In dealing with fundraising events, the SBA will follow the same general principles applied to tax deductions for donations to charities. This means that the portion of the amount an individual pays in connection with a fundraising event which represents the estimated value of the good or service they receive in exchange must be included in gross earned revenue. However, that portion of the amount such an individual pays that exceeds the estimated value of the good or service they receive will be considered a donation and is not included in gross earned revenue.

For example, if a ticket to a fundraising dinner costs \$100 per person and the estimated value of the dinner provided is \$50, then \$50 of the funds generated from the fundraising ticket would be considered gross earned revenue and the other \$50 would be considered a donation and would be excluded from gross earned revenue.

4. Does a non-profit count contributions and grants revenue?

No. Both contributions and grants revenue would be excluded from an organization's earned revenue. However, the SBA will take into account an organization's Federal grants revenue to determine whether it meets the eligibility limit of having no more than 10% of its gross earned revenue from Federal sources, not including disaster assistance.

5. Does a non-profit count membership revenue?

Yes and no; like fundraising, the portion of membership cost that represents the estimated value of the goods or services provided as a condition of membership should be included in gross earned revenue. The portion of a membership cost that exceeds the estimated value of the goods or services provided as a condition of membership is considered a contribution and excluded from gross earned revenue.

6. Our business provides talent representation and financial services for athletes and entertainers. For the SVOG would we use our total revenue for the grant amount or just the portion of our sales from talent representation services?

You would use your gross earned revenue from all sources, but you would also need to satisfy the requirement that your principal line of business is talent representation versus financial services.

7. What is included in the 10% maximum for federal grants/funding?

The 10% maximum for federal grants/funding covers everything regardless of the use of the grant/funding except disaster assistance.

8. Is rental income from tenants and income from renting the venue for private events counted as earned revenue?

Yes, rental income from longer-term tenants and from short-term rentals for event hosting should be included in earned revenue because they derive from standard commercial transactions for the paid use of facilities.

Subsidiaries

1. For entities with subsidiaries, does each entity need to meet the eligibility criteria independently?

No. For entities with multiple subsidiaries, the parent entity must meet the eligibility criteria, but each subsidiary does need to meet the criteria independently. If a subsidiary wants to apply for its own SVOG in its own name, it must meet the eligibility requirements. Each entity is looked at independently if it's a separate legal entity under a parent organization and each location would need to meet its individual requirements to be eligible to apply. Per the Economic Aid Act, subsidiary entities that qualify for an SVOG will not be treated as affiliates of their parent entity or one another.

2. How are shared expenses across affiliated organizations treated?

Assuming an entity with subsidiaries (parent) shares costs with its subsidiaries, the parent's shared costs (or allocated costs to subsidiaries) remain as such, and the parent should keep records to show that all expenses claimed under the grant served grant purposes. If a subsidiary is eligible to apply for and applies for its own grant, only the portion of the shared cost that the subsidiary pays can be paid for by the SVOG should it be received.

3. Are there limits on the number of affiliates that can receive an SVOG or the total between them?

Yes, a maximum of five business entities of an eligible entity can receive an SVOG. In addition, an eligible museum, and all other museums it operates as subsidiaries may receive no more than \$10 million combined under the program.

4. Is there any SBA guidance or information on affiliation I can use to help me understand these affiliation issues?

Yes, the SBA has a general guide to business affiliation principles that may clarify this. The guide can be found at <https://www.sba.gov/document/support-affiliation-guide-size-standards>.