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Shuttered Venue Operators Grant or PPP? Issues for Live Entertainment Venues

The Small Business Association (SBA) issued guidance on Jan. 27, 2021 regarding the Shuttered Venue Operators Grant (SVOG), a grant program for struggling live, in-person industries, that was established in the recent stimulus package. While the SBA is still working on creating the application portal and not yet accepting applications, eligible entities should weigh their options in determining whether to apply for the SVOG or to apply for a Paycheck Protection Program loan (PPP).

The new SBA guidance, available here, answers many questions related to SVOG eligibility, what categories of industries may qualify, use of funds, calculation of grant amount, how to calculate gross earned revenue and how subsidiaries factor into the analysis.

Importantly, the guidance addresses the interplay between the SVOG and PPP. Many entities will likely be eligible for both federal relief programs (provided they meet the size requirements for the PPP). Significantly, entities that applied for a First Draw or Second Draw PPP loan on or after Dec. 27, 2020 are **ineligible** to apply for an SVOG unless and until the PPP loan application is declined. **Entities cannot apply for a PPP loan now and decide later whether the accept the loan if it did not receive a SVOG.**

In other words, entities cannot apply for a PPP loan and SVOG at the same time and decide which one to take later. The SBA states that "entities must make an informed business decision as to which program will most benefit them and apply accordingly."

With the Second Draw PPP application portal being live for weeks and concerns mounting regarding the availability of money, the hard question is determining whether to apply for the SVOG or for the PPP loan.

There are different factors to consider that may impact your organization's decision:

- **SVOG**: The SVOG is a grant, not a loan, and thus it does not need to be repaid and you do not need to go through the application process with a lender and risk being denied forgiveness. However, entities must prove their eligibility for the grant, which may increase administrative effort and costs. Significantly, the SVOG allows for broader use of the funds; in addition to the allowable expenses under the PPP, the SVOG authorizes certain additional expenditures: scheduled debt payments that existed prior to Feb. 15, 2020; payments to independent contractors; maintenance costs; administrative costs; state and local taxes and fees; operating leases; insurance payments; and advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production. If your organization has such expenses, this is a major benefit to the SVOG.

  Timing of the receipt of the grant is an issue as well. The SVOG monies will take longer to issue than the PPP, so if your organization is in a bind for cash, the PPP may be the better option. Once the SBA starts accepting SVOG applications, the SBA will issue grants in a tiered approach, issuing the first grants to entities that are struggling the most (i.e., first priority: 90% or greater revenue loss; second priority: 70% or greater revenue loss; third priority: 25% or greater revenue loss). There is a $15 billion cap on this program ($2 billion of which is reserved for eligible applications with up to 50 full-time employees) and it is unclear how quickly the money will be granted. Thus, if your organization can only show, say, 50% revenue loss, it is unclear whether monies will still be available.

Entities may also be eligible to obtain more monies under the SVOG than the PPP. Eligible applicants may qualify for the SVOG in an amount equal to 45% of their gross earned revenue, with the maximum amount available for a single grant award of $10 million. This differs from the PPP's calculation based on 2.5 times monthly 2019 or 2020 average payroll.

- **PPP**: The PPP is a forgivable loan, and entities must work with their lenders to receive forgiveness. The monies are used primarily to cover payroll costs for employees rather than independent contracts. However, as discussed above, a major draw to the program is that entities are likely to receive monies faster than the SVOG. While it is also unclear if or when the PPP monies will be expended, rest assured that, unlike the first round of PPP funding, many entities are no longer eligible and thus the demand for such loans is far less than the first time the PPP loans were made available.

The attorneys at Bond, Schoeneck and King can help you decide whether your business should apply for the SVOG or PPP, and also assist you with the application process. Please contact Jeffrey B. Scheer or the attorney at the firm with whom you are regularly in contact.