

SVOG UPDATE FOR THEATRICAL PRODUCTIONS - MARCH 3, 2021

SBA updated their FAQ's on February 28, 2021. It answered some questions, left others unanswered and, of course raised some new ones. We suggest that you carefully read the FAQ's issued, which are available on the SBA website at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/shuttered-venue-operators-grant>

Our Observations

- I. As a general update, based on information we have heard, the application process may not begin until March 31st or thereafter. March 31 is unfortunately the date that the PPP2 program is intended to close. While it is possible that there could be an extension beyond that date, it continues to put pressure on the decision of whether to apply for the PPP2 program or wait to apply for the SVOG. As a reminder, if you apply for a PPP2 you are then precluded from receiving an SVOG.
- II. It seems clearer now that for purposes of determining the priority period of applications, total revenue will include insurance proceeds. The revenue analysis comparison of April 1, 2019 - December 31, 2019, versus the same period in 2020 should include any insurance proceeds received.
- III. There has been no additional guidance for entities that were not in business during 2019 but were conducting business operations on February 29, 2020, as to the basis for the calculation of the grant amount, and/or the priority period in which they will fall. We believe you should be sure to gather information of the advance ticket sales amounts on a monthly basis, from the time that tickets were put on sale through the end period. The calculation of the grant amount for entities not in business for all of 2019 as provided in the Act, was the average monthly revenue multiplied by 6. That is why we believe it may be relevant to have the advance ticket sale information available on a monthly basis.
- IV. We are currently reviewing the SBA's terms and conditions for entities that receive grants, and believe that it is likely that you will not be able to apply grant amounts to expenditures for which you have been reimbursed. Accordingly, to the extent that you received insurance proceeds as direct reimbursement for otherwise eligible expenses, (as opposed to insurance proceeds for lost profits) those expenses which were reimbursed will not be eligible to be applied against the grant funds. We are recommending that you determine what expenses were reimbursed by insurance so that they are not doubly counted as being reimbursed by insurance, and reimbursed by grant funds. We also know that to the extent salaries were used for the Employee Retention Credit, the 50% portion for which the credit was received is not eligible to be applied against the grant. You should have this information available.
- V. Based on detail and definitions in the FAQ's, we believe that SBA may require documentation that the venue in which the theatrical production is conducted has a defined performance audience space, mixing equipment, a public address system, and a lighting rig and engages 1 or more individuals to

carry out not less than 2 of the following roles; sound engineer, booker, promoter, stage manager, security personnel or a box office manager. We recommend having documentation available to substantiate this. Perhaps the theatre license agreement, and/or booking agreements.

- VI. We are seeking clarification on any additional audit requirements which theatrical productions and/or producers may be subject to. Recipients of Federal grants in excess of \$750,000 are subject to the Single Audit Act in addition to their regular GAAP audit. This additional auditing requirement is generally applicable to not for profit entities, but there are questions as to whether for profit entities will need a GAAP and Single Act Audit and if additional audit procedures will be required.

- VII. We continue to interpret the time frame for eligible expenses to be used for the grant to end December 31, 2021. The eligible expenses must be incurred by December 31, 2021 on an accrual basis, but can be physically paid after December 31, 2021, but not more than 12 months after receipt of the grant. This will require special tracking as many of the weekly expenses are accrued amounts, which will be required to be matched to actual payments. Further, December 31, 2021 falls on a Friday, and therefore we currently believe the January 2, 2022 weekly expenses will need to be pro-rated for purposes of determining the allowable incurred expenses.

- VIII. We continue to have many unanswered questions regarding the use of funds, and are anticipating that additional guidance on this will be forthcoming, possibly even after the grant application period is opened. We believe items requiring clarity include;
 - a. Limitations on owner compensation
 - b. Independent contractors and the \$100,000 limitation per employee of the independent contractor. As 1099's are issued by the production entity to LLC's who have multiple employees, how will the limitations be determined?
 - c. Will royalties be eligible in full, or will there be any limitations? Will there be a requirement that there is intellectual property attached to a royalty agreement for it to be fully eligible for grant purposes and not subject to the \$100,000 limitation? How will producer royalties be viewed?
 - d. Will multiple bids be required for expenses of more than \$5,000 (currently a term and condition for capital expenditures under SBA rules)?
 - e. Are loan out corporations treated as employees? We believe they should not be, but are seeking additional clarification on this

As a reminder on use of funds, salaries are limited to \$100,000/year of annual compensation. This means careful tracking of payroll will need to be done to determine the proper limitations. Further, as theatre expenses include reimbursement to the theatre for salaries, we currently believe that we will need to apply the \$100,000/year limitation to these salaries as well as to those paid directly by the production company.

We are continuing in our effort to interpret the rules as it applies to eligibility and use of funds and will provide updates as they become available. Should you have any specific questions please reach out to one of our team members for further assistance.