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When there is *no business* in show business: Government support steps in to help struggling venue operators

By David Kaufman, Eric Paley, and James Hatem

Perhaps few industries have been as negatively affected by the ongoing pandemic as the performing/visual arts sector. As part of the massive COVID-19 relief bill recently passed by Congress and signed into law on Sunday night, Dec. 27, the U.S. government is providing \$15 billion in support to entities that qualify as a “live venue operator or promoter, theatrical producer, or live performing arts organization operator[;] a relevant museum operator[;] a motion picture theatre operator[;] or a talent representative.”

The Small Business Administration (SBA) will run the Grants for Shuttered Venue Operators program, and importantly, unlike the SBA’s Paycheck Protection Program (PPP), the available funds are outright grants as opposed to forgivable loans. Including the funds to support live venues was particularly important to Senate Minority Leader Chuck Schumer (D-NY). After the bill’s passage, Schumer stated in a Senate address, “These venues are so important to my state and so many other states across the country. They are the lifeblood of our communities. They were the first to close and will be the last to open. This bill gives them a fighting chance.”

Since the program involves a grant and not a loan, entities seeking support will apply directly to the SBA, not a bank. The SBA is still working out the details of that application process. However, the law does provide eligibility requirements, a process for allocating funds, a formula for grant calculation, and a list of permissible fund uses. According to the legislation, the SBA is to prioritize support for small operators (i.e., those with fewer than 50 employees), as well as those entities that saw the greatest drop in revenue. The law first opens the program up to operators who saw a 90% drop in revenue in 2020 compared to 2019. Fourteen days later, the SBA will award funds (for an additional 14 days) to those organizations that have seen at least a 70% drop in revenue. The program dedicates two billion dollars of funding to those small operators with fewer than 50 employees.

After the priority funds have been allocated, the general program will provide support for operators that have seen at least a 25% drop in revenue.

All applicants can seek support constituting 45% of their 2019 revenue up to \$10 million. Operators must have been in business on February 29, 2020, and commit to being open again if currently closed.

The law provides very detailed criteria to be used to determine whether operators qualify for the grants. For example, requirements for some grant categories mandate an operator having “[m]ixing equipment, a public address system, and a lighting rig.” There are also several exclusions, including disqualifying an operator who “presents live performances of a prurient sexual nature.”

As the SBA prepares the application process, additional details are likely to be revealed by the agency that may have an impact on eligibility, funding, permitted uses, and other aspects of the program. Nixon Peabody will be monitoring this process and providing guidance as operators consider their options under the program.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- David Kaufman, Director of Global Strategies, 415-984-8241, dkaufman@nixonpeabody.com
 - Eric Paley, 585-263-1012, epaley@nixonpeabody.com
 - James Hatem, 603-628-4062, jhatem@nixonpeabody.com
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