

Grants Available for Shuttered Venue Operators

Title III of Division N of the [Consolidated Appropriations Act, 2021](#) appropriates \$15 billion in grants for “Shuttered Venue Operators.” The Small Business Administration (SBA) is tasked with providing grants (Hard Hit Grants) under the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Hard Hit Act) to help keep afloat live venue facilities, performance art organizations, movie theaters, and museums significantly impacted by the year-long pandemic and related governmental restrictions.

Eligible Businesses

Eligibility for Hard Hit Grants are limited to persons or entities who are: (i) a live venue operator or promoter, theatrical producer or live performing arts organization operator; (ii) a relevant museum operator; (iii) a motion picture theater operator; or (iv) a talent representative. Eligible entities may be for-profit, nonprofit, or government-owned, and may be a corporation, LLC, partnership, or sole proprietorship, except that a museum may not include any for-profit entities. Within these four classifications, a business must also meet the following criteria:

- A live venue operator or promoter, theatrical producer or live performing arts organization operator must either have: a principal business activity of organizing, promoting, producing, managing or hosting live concerts, comedy shows, or theatrical productions or other events by performing artists for which (i) a cover charge is applied (through ticketing or front door entrance fee) and (ii) performers are paid in an amount that is based on a percentage of sales, a guarantee or another mutually beneficial formal agreement, **and** generate at least 70% of revenue through ticket sales, production fees/reimbursements, nonprofit educational initiatives or the sale of event food, beverages or merchandise; **or** a principal business activity of making tickets available for purchase by the public at least 60 days in advance of live concerts, comedy shows, theatrical productions, or other qualifying events for which performers are paid in an amount that is based on a percentage of sales, a guarantee or another mutually beneficial formal agreement.
- A motion picture theatre operator is one whose principal business activity is to own or operate at least one place of public accommodation for the purpose of showing movies for a fee. Additional venue requirements apply to the spaces that qualify as a motion picture theatre (described below).
- A relevant museum operator must operate a public, tribal or private nonprofit agency or institution organized on a permanent basis for essentially educational, cultural heritage, or aesthetic purposes. Additional venue requirements apply to the spaces that qualify as a relevant museum (described below).
- A talent representative is one that: (i) has 70% of its operations derived from representing or managing artists and entertainers; (ii) books or represents musicians, comedians, actors, or similar performing artists primarily at live events in venues or at festivals; and (c) such performers must be paid in an amount that is based on the number of tickets sold, or a similar basis.

Specific Eligibility Requirements and Prohibitions

To be eligible, a business seeking a Hard Hit Grant must also satisfy the following specific requirements:

Fully Operational: Must have been “fully operational” as of February 29, 2020;

Gross Revenue Reduction: Must have a reduction of at least 25% in gross earned revenue during (at least) one quarter of 2020 as compared to the corresponding quarter of 2019; and

Resume Operations: Must as of the date of its receiving a Hard Hit Grant resumed or intend to resume operations for its primary purpose.

Venue Requirements: Applicants or the venue applicable to an applicant must satisfy certain venue-specific requirements:

- Live venue operators, promoters, theatrical producers or live performing arts organization operators, the venues at which events are promoted, produced, managed, or hosted events, and for talent representatives, the venues at which the artists/entertainers represented or managed perform must:
 - contain a defined performance and audience space, mixing equipment, a public address system, and a lighting rig;
 - hire at least one individual to do at least two of the following activities: (i) sound engineer; (ii) booker; (iii) promoter; (iv) stage manager; (v) security personnel; (vi) box office manager;
 - have paid tickets or cover charges to attend most performances;
 - pay artists “fairly” (e., artists do not play solely for free or for tips);
 - market performances (in print, online, mass media, or on social media); and
 - solely for nonprofit venues that produce free events, produce events managed primarily by paid employees and not volunteers.
- Motion picture theatre operators: a motion picture theatre must: (i) have at least one auditorium that includes a movie screen and fixed audience seating; (ii) have a projection booth (or other space) with at least one projector; (iii) have paid ticketing; and (iv) market movies (in print, online, mass media or on social media).
- Relevant museum operators: a relevant museum must have: (i) been serving as a relevant museum as its principal business activity; (ii) indoor exhibition space that is a component of the principal business activity and which has been subject to pandemic-related occupancy restrictions; and (iii) at least one auditorium, theatre, performance or lecture hall with fixed audience seating and regular programming.

Certification of Need: An applicant must submit a good faith certification that "the uncertainty of current economic conditions makes necessary the grant to support the ongoing operations of the eligible person or entity." Many applicants will have experience with this type of certification under the Paycheck Protection Program (PPP) and detailed records should be kept on how the applicant evaluated the economic need.

Ineligible Businesses: the following are ineligible to receive a Hard Hit Grant:

- Public Issuer – if it is or is majority-owned or controlled by another entity that is an issuer, securities of which are listed on a national securities exchange;
- 10% of Gross Revenue from Federal Funding – if it received or is majority-owned or controlled by another entity that received more than 10% of gross revenue from federal funding during 2019 (excluding certain disaster relief funding received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act);
- Large Operator – if it is owned or controlled by another entity with two or more of the following qualities:
- owns or operates locations in more than one country;

- owns or operates locations in more than ten States; and/or
- employed more than 500 full-time employees as of February 29, 2020.

PPP Borrower: An applicant cannot have received a PPP loan after December 27, 2020.

Total Amount of Grant Funds

The total amount of Hard Hit Grants that any individual applicant may receive is capped at \$10 million.

Initial Grants: Subject to a \$10 million cap per applicant, initial Hard Hit Grants are (i) for an eligible person that was in operation on January 1, 2019, equal to 45% of the gross earned revenue of the entity during 2019 and (ii) for an eligible person that began operations after January 1, 2019, may receive a grant equal to 6x the average monthly gross earned revenue for each full month of 2019 that the eligible person was in operation.

Supplemental Grants: Individuals or entities that receive an initial Hard Hit Grant may receive a supplemental grant if, as of April 1, 2021, such person's revenue for the first quarter of 2021 is not more than 30% of the revenue for the first quarter of 2019. A supplemental grant will be equal to 50% of an initial grant subject to the total \$10 million cap per applicant.

Priority Periods for Applications

Up to 80% or \$12 billion of the funds may be allocated to initial grants made to applicants eligible to receive grants in the two 14-day priority periods described below.

First Priority Period: During the first 14 days of the program, the SBA may only award grants to eligible applicants with revenue for the period from 4/1/2020 through 12/31/2020 that is not more than 10% of such applicant's revenue during the same period of 2019 due to the COVID-19 pandemic.

Second Priority Period: During the next 14 days of the program, the SBA may only award grants to eligible applicants with revenue for the period from 4/1/2020 through 12/31/2020 that is not more than 30% of such applicant's revenue during the same period of 2019 due to the COVID-19 pandemic.

After these priority periods, any remaining funds will be made to all other eligible applicants.

For purposes of calculating revenue, an applicant's revenue does not include amounts received under the CARES Act (as amended) and the SBA is to use the accrual method of accounting for determining revenue. In addition to these priority periods, there is an added overlay of \$2 billion of appropriated funds for the first 60 days of the program for grants to eligible persons or entities with 50 or fewer full-time employees. For such purposes, a "full-time" employee works at least 30 hours per week, and any employee working 10–30 hours per week counts as one-half (0.5) of a full-time employee.

Use of Funds

Grants may be used for costs incurred between March 1, 2020, and through (i) December 31, 2021, for initial grants; and (ii) June 30, 2022, for supplemental grants. Any initial grant proceeds not spent on allowable expenses within one year and any supplemental grant proceeds not spent within 18 months of disbursement must be returned to the SBA. Hard Hit Grant funds may be used for the following allowable expenses:

- payroll costs as defined in the PPP;

- Mortgage obligations, rent obligations, utility payments, and worker protection expenditures, as defined under the PPP and amended by the new Act.
- Payments of principal or interest on any debt instrument incurred prior to February 15, 2020 (but excluding pre-payment of principal).
- Payments to independent contractors that do not exceed \$100,000 for any individual employee of an independent contractor.
- Other ordinary and necessary business expenses, such as maintenance, administrative costs, licensing fees, state and local taxes, leases, insurance policy payments, advertising, production transportation, and capital expenditures related to production (except that a grant may not be used primarily for such advertising, production transportation, and capital expenditures)

Entities may not use funds to purchase real estate, pay interest on loans originated after February 15, 2020, to invest or re-lend, political contributions, or other use prohibited by the SBA Administrator.

Affiliation Rules

Each business entity of an eligible applicant is treated as an independent, non-affiliated entity. However, not more than five business entities of an eligible person or entity that would be considered its affiliates under the SBA's affiliation rules may receive Hard Hit Grants.

Contact Us

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