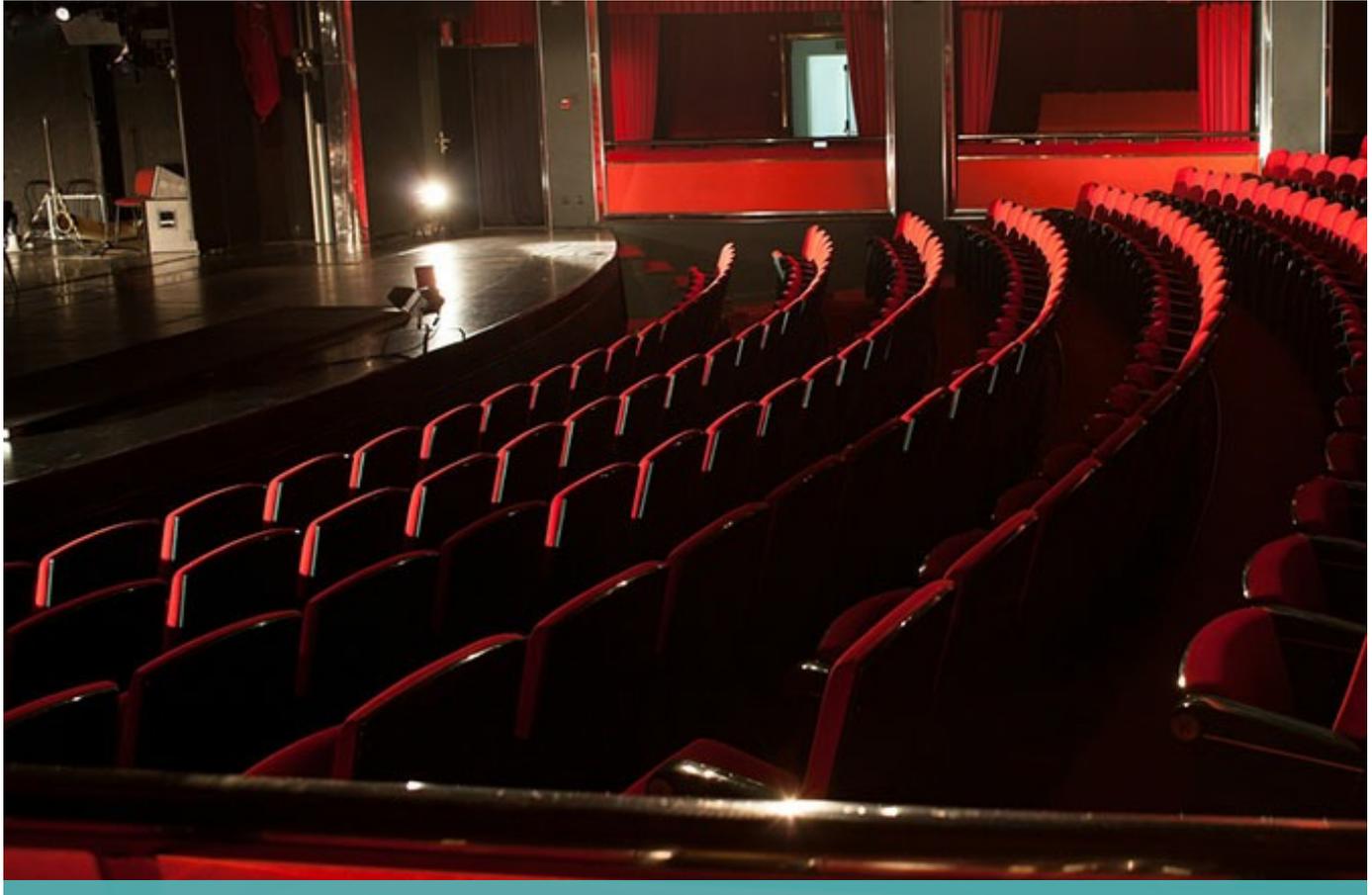


## Save Our Stages program provides lifeline to entertainment venues



Adam Grais | Friday, February 5, 2021

The Emergency Coronavirus Relief Act of 2020 enacted on December 27, 2020, includes \$15 billion to support live entertainment performances, museums and movie theaters through the Grants for Shuttered Venue Operators program more commonly known as “Save Our Stages.” The program brings welcome and needed relief to some of the businesses most hard hit by the need for social distancing in the face of the COVID-19 pandemic and the resulting government orders that closed or limited the operations of many of these businesses for most of 2020 and will keep them closed for some time.

### **How much can businesses get?**

Qualified applicants will be able to receive initial grants under the program equal to 45% of their gross earned revenue in 2019, up to a maximum of \$10 million per applicant. For businesses that first opened in 2019, the loan amount is six times the average gross monthly revenue of the business during 2019, subject to the \$10 million cap. While affiliated businesses may each receive their own grant, no more than 5 entities that are part of the same affiliated group may receive grants. Grant recipients can also qualify for a second grant, equal to 50% of the initial grant, if, as of April 1, 2021, their revenues in the prior calendar quarter have fallen 70% or more from the same quarter in 2019. Grants provide a double tax benefit in that recipients do not need to pay taxes on the grant funds received and any expenses paid for with grant money remain fully tax deductible.

However, businesses that receive these grants will not be able to obtain additional loans under the

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Paycheck Protection Program (PPP), whether a first round or second draw loan, although businesses that received a PPP loan prior to December 27, 2020 can still qualify. Furthermore, business cannot apply for both a PPP loan and a Save Our Stages grant at the same time, so businesses that are considering both programs need to decide which to apply for first and cannot apply to the other program unless and until the first application is rejected. As a result, businesses that qualify for both Save Our Stages and PPP will need to carefully analyze which program better fits their needs going forward.

### **Which businesses qualify for grants?**

Notwithstanding the name of the program, it is not only the owners and operators of shuttered venues who qualify for grants. Businesses qualified to receive Save Our Stages grants fall into four categories:

- Live performance organizations. These are businesses that organize, promote, produce, manage or host live concerts, comedy shows, theatrical performances and other events by performing artists as well as businesses that sell tickets to live performances.
- Not-for-profit museums with an indoor exhibition space that have been subject to pandemic-related occupancy restrictions and that have at least one auditorium, theater or performance or lecture hall with fixed audience seating and regular programming.
- Movie theaters open to the public that sell tickets and advertise show times, so long as the theater has at least one auditorium with a screen and fixed audience seating as well as a projection booth or other space with a movie projector. However, drive-in movie theaters do not qualify.
- Managers and agents who book musicians, comedians, actors and other performing artists for live events in venues or at festivals (Talent reps).

Business included in these categories then must meet additional tests to qualify for grants:

- The business must have been fully operational on February 29, 2020.
- Gross earned revenues during any calendar quarter of 2020 must be at least 25% less than gross earned revenues in the same calendar quarter of 2019. If the business was in operation in February 29, 2020 but was not in business in 2019, then the business meets this requirement if it had at least a 25% drop in gross revenues in the second, third or fourth quarter of 2020 as compared to the first quarter of 2020.
- For the first 3 categories, the business must be open or intend to reopen.
- Neither the business nor any party with majority ownership or control of the business either (i) is publicly traded or (ii) received more than 10% of its revenues during 2019 from the federal government.
- No more than one of the following apply to the business: (i) it has locations in more than one country, (ii) it has locations in more than 10 states or (iii) it had more than 500 employees as of February 29, 2020.
- The business does not present live performances of or receives more than a de minimis amount of gross revenue from the sale of products or depictions of a prurient sexual nature.

In addition, live performance organizations must receive at least 70% of their earned revenue from live events, cover charges or ticket sales, production fees or reimbursements, non-profits educational programs, or the sale of food, beverages or merchandise at performance. Furthermore, talent reps must be currently representing artists and receive at least 70% of their earned revenue from working with artists and entertainers.

For both live performance organizations and the clients of talent agents, performances must take place in venues with defined performance and audience spaces that include mixing equipment, a P.A. system and

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lighting system. The venues also must employ at least one or more person as sound engineer, booker, promoter, stage manager, security personnel, or box office manager, and if the venue is owned by a not-for-profit organization, then the events must be produced and managed by paid employees rather than volunteers. Finally, the venues must advertise performances and charge for admission, except for fundraisers and other charity events.

Businesses that involve live performances but derive most of their revenue from other sources may not qualify. Examples of these types of businesses are wedding/event venues, sports stadiums, and restaurants.

### **What counts as earned revenue?**

For all purposes of the grant program, only money received from the sale of goods or services is counted as earned revenue, including rental income. Donations, sponsorships, governmental assistance, or returns on investments are specifically excluded from earned revenue for purposes of the grant program. However, for non-profit organizations receiving membership revenue, only the portion of the membership cost that exceeds the estimated value of the goods and services provided to members is excluded from earned revenue.

### **What can grants be used for?**

Initial grants can be used to cover certain permitted expenses incurred between March 1, 2020 and December 31, 2021. For supplemental grants, the deadline to spend the funds is June 30, 2022. Eligible expenses include payroll costs, mortgage interest, rent, utilities and worker protection expenses just like under PPP as well as maintenance and administrative costs, state and local taxes, operating leases, insurance premiums, advertising, production, transportation and certain capital expenses. Funds can be used to repay owners of the business who loaned funds to the business before February 15, 2020 on commercially reasonable terms provided the loans are properly documented and to refund tickets to customers for cancelled performances.

Funds cannot be spent to purchase real estate, pay loans originated after February 15, 2020, for political contributions or for investments.

### **When will grants be made?**

The law does not set a date or time frame for grants to begin to be made, but when the application window opens, grants will be made during the first 14 days only to businesses with a revenue drop of 90% for the period April 1, 2020 to December 31, 2020 as compared to the same period in 2019. For the 14 days after that, grants will be made only to business with a similar 70% drop in revenue. When measuring revenue for purposes of Save Our Stages, businesses will use the accrual method of accounting and amounts received under the CARES Act are not included in revenue.

### **What's next?**

Although the Small Business Administration (SBA) released answers to frequently asked questions on January 27, 2021 ([see here](#)), it still must issue additional rules for the grant program, including a grant application form. The SBA recommends that potential applicants register for Dun and Bradstreet (DUNS) number and then register at [www.SAM.gov](http://www.SAM.gov), a pre-requisite to applying for a grant that may take up to two weeks to process, and begin collecting necessary documentation. However, the SBA has not yet announced when Save Our Stages grants will be available. Still, qualified applicants should begin

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evaluating whether a PPP loan or a Save Our Stages grant would be more beneficial in their particular circumstances and pulling together the necessary documentation and other information to be ready to apply.



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Team member bio