

Shuttered Venue Operators Grants – FAQ 2.12.2021

2.18.2021 - Copied from <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/shuttered-venue-operators-grant>

First Priority - 1st 14 days of grant awards	Entities that suffered a 90% or greater revenue loss between April 2020 through December 2020 due to the COVID-19 pandemic.
Second Priority -Next 14 days of grant awards	Entities that suffered a 70% or greater revenue loss between April 2020 through December 2020 due to the COVID-19 pandemic.
Third Priority -Beginning 28 days after First & Second Priority Awards are made	Entities that suffered a 25% or greater revenue loss between one quarter of 2019 and the corresponding quarter of 2020.
Supplemental Funding - Available after all Priority Periods have passed	Recipients of First, Second, and Third Priority round awards who suffered a 70% or greater revenue loss for the most recent calendar quarter (as of 04-01-21 or later)

Allowable use of funds

Funds may be used for specific expenses, which include:

- Payroll costs
- Rent payments
- Utility payments
- Scheduled mortgage payments (not including prepayment of principal)
- Scheduled debt payments (not including prepayment of principal) on any indebtedness incurred in the ordinary course of business prior to 02-15-20)
- Worker protection expenditures
- Payments to independent contractors (not to exceed \$100K in annual compensation per contractor)
- Other ordinary and necessary business expenses, including maintenance costs
- Administrative costs (incl. fees and licensing)
- State and local taxes and fees
- Operating leases in effect as of 02-15-20
- Insurance payments
- Advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production. (May not be primary use of funds.)

Grantees may not use award funds to:

- Buy real estate
- Make payments on loans originated after 02-15-20
- Make investments or loans
- Make contributions or other payments to, or on behalf of, political parties, political committees, or candidates for election
- Any other use prohibited by the Administrator

Grantee Recordkeeping

Grantees will be required to maintain documentation demonstrating their compliance with the eligibility and other requirements of the SVO Grant program. They must retain employment records for four years following their receipt of a grant and retain all other records for three years.

Application and additional guidelines will be posted when available.

For more information - For additional information, email SVOGrant@sba.gov. All emails regarding SVO Grants will be sent using an official government email address ending in @sba.gov.



The Shuttered Venue Operators Grant (SVOG) program is Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) signed into law on Dec. 27, 2020. Following are answers as of Feb. 12, 2021 (those marked with * are new and/or updated from the Feb. 5, 2021, version), to frequently asked questions about the program. These will be updated as new information comes available and additional program details are finalized.

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Eligibility

All Applicants

1. What is an “eligible entity” for an SVOG?

Eligible entities may be live venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, and talent representatives, per the Economic Aid Act. Additionally, entities of these types owned by state or local governments (for example, museums or historic homes) are eligible to apply if the governmentally-owned entity also acts solely as a venue operator, museum, etc. and not also include other types of entities. For example, a city parks and recreation department that operated a bandstand in a public square along with running various nature parks would not qualify as an eligible entity for an SVOG. Finally, each subsidiary business owned by an eligible entity that also meets the eligibility requirements on its own rights will qualify as an eligible entity.

2. When does a business have to have been established to be eligible to apply for an SVOG?

The business must have been in operation as of February 29, 2020.

3. Is an entity not in business in 2019 but conducting business operations on Feb. 29, 2020 eligible to apply for an SVOG?

Yes, if an entity was not in business during 2019 but was conducting business operations on Feb. 29,

2020, including incurring costs of necessary start-up, preparatory activities in the lead time before an anticipated opening date, it is eligible to apply if it can show the required earned revenue loss. In situations like this, the SBA will use an alternative method for demonstrating revenue loss based on the approach the Agency is using with the PPP. Firms not in operation in 2019 may qualify for an SVOG if their gross earned revenues for the second, third, or fourth quarter of 2020 demonstrate a reduction of not less than 25% from their gross earned revenue for the first quarter of 2020. For firms that had commenced start-up operations but were unable to open as anticipated due to the pandemic, they would only be eligible under this alternate method if they had earned revenue in the first quarter of 2020 from sources such as advance ticket sales, merchandising, etc. Firms which had been conducting business operations and incurring expenses in 2020 in a pre-opening capacity but which had no earned revenue for the first quarter of 2020 would not be eligible to apply.

4. Is an entity that applied for and received a Paycheck Protection Program loan in July 2020 eligible to apply for an SVOG?

Yes, if an entity applied and was approved for a PPP loan prior to Dec. 27, 2020, it is eligible to apply for an SVOG.

5. Is an entity that applied for a First Draw or Second Draw PPP loan on or after Dec. 27, 2020, eligible to apply for an SVOG?

No. Both examples would not be eligible to apply for an SVOG unless and until the PPP loan application (whether First Draw or Second Draw) is declined.

6. Can an entity apply for a PPP loan now and decide later on the loan if it did not receive an SVOG? At what stage is a PPP loan considered “received”?

No. Per the Economic Aid Act, as well as how the PPP loan system operates, entities cannot apply for a PPP loan and SVOG at the same time. Entities must make an informed business decision as to which program will most benefit them and apply accordingly. If an applicant is rejected by one program, it will then be eligible to apply for the other.

7. Is a mobile entity with no fixed performance space eligible to apply?

No. Among other requirements, the Economic Aid Act requires a venue to have defined performance and audience spaces. If a particular venue, such as a circus, fair or entertainment business that provides talent at weddings/parties, cannot meet this requirement, it is not eligible to apply for an SVOG.

8. What disqualifies an entity from SVOG eligibility?

The following types of circumstances would preclude an otherwise eligible firm from an SVOG:

- It does not have a place of business located in the United States, does not operate primarily within the U.S., and does not make a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.
- It was not in operation as of Feb. 29, 2020.
- It applied and/or received for a PPP loan on or after Dec. 27, 2020.
- It is a publicly traded corporation, or is majority owned and controlled by a publicly traded corporation.
- It presents live performances or sells products or services of a prurient sexual nature.
- More than 10% of its 2019 gross revenue came from the federal government (not counting

disaster assistance)

- It owns or operates venues, theatres, museums or talent agencies in more than one country, owns or operates venues, theatres, museums or talent agencies in more than ten states, AND it had more than 500 employees as of Feb. 29, 2020.

9. ***If an entity is part of a university, how will the SBA apply the SVOG eligibility barrier that prohibits organizations which received more than 10% of their 2019 gross revenue from Federal funding?**

If a university-based eligible entity lacks separate legal existence from its parent university, or has separate legal existence but is majority owned and controlled by the university, it will have to look to the gross revenue of its parent university when determining whether it passes the barrier against having more than 10% of its 2019 gross revenue come from Federal sources (excluding disaster assistance). If a university owns less than a majority of an eligible entity with separate legal existence, the entity only needs to consider whether more than 10% of its own 2019 gross revenue came from Federal funding.

Museum or Movie Theatre Operator

1. **Is a museum or movie theatre with a multipurpose room with movable seating eligible to apply?**

No. The Economic Aid Act specifically requires fixed seating for qualifying amphitheatres of museums and motion picture theatre operators and makes no allowance for temporary, removable, modular, convertible, or other non-fixed seating arrangements. As such, museums and motion picture theatre operators cannot satisfy this requirement with other forms of seating. NOTE: There is no fixed seating requirement for other types of eligible entities.

2. **Is a museum or movie theatre with outdoor fixed seating eligible to apply?**

Yes. The Economic Aid Act does not require qualifying venues to be indoors. If the venue meets the applicable eligibility requirements, it should be eligible to apply for an SVOG.

3. **Is a museum partially funded with state dollars eligible to apply?**

Yes. While there are specific eligibility rules for entities owned by state or local governments, the receipt of funding from a state government does not affect its eligibility.

4. **Is a museum that received CARES Act funding eligible to apply?**

Yes. Per the Economic Aid Act, receipt of CARES Act funding does not disqualify an entity for SVOGs.

5. **Is a drive-in movie theatre without fixed seating eligible to apply?**

No. Per the Economic Aid Act, a motion picture theatre operator must have at least one auditorium with a motion picture screen and fixed audience seating, so a drive-in movie theatre is not eligible to apply for an SVOG.

6. ***Will the SBA consider programming in museums' seasonally-operated outdoor amphitheatres provided regularly during when outdoor amphitheatres are open to be regular programming?**

Yes. If a seasonally-operated outdoor amphitheater meets the standard of hosting an average of 4 events per month over the course of a year, the SBA may consider the museum to have provided regular programming. For example, a museum with an outdoor amphitheater that is open 6 months of the year and provides daily programming during that seasonal operation would meet the regular programming standard because it had an average of 15 events per month over the course of a year of

operation (182 events per year divided by 12 months equals an average of 15 events per month).

7. *If a museum has more than one qualified auditorium, theater, or lecture hall, does regular programming need to occur in each, or is it sufficient to have regular programming across all the qualifying presentation spaces?

A museum may aggregate programming across all such spaces for purposes of meeting the regular programming requirement rather than looking at each qualifying presentation space individually if a museum has multiple qualifying presentation spaces (auditoriums, theaters, or performance or lecture halls).

8. *What happens if a motion picture theatre is owned by one entity, but operated (managed) by a separate entity? Are both entities eligible for an SVOG in such a case? If so, what will the earned revenues of the two companies be based upon?

Yes. Under the Economic Aid Act, **owners and operators of motion picture theatres** are considered eligible entities. In cases where both the owner and the operator of a qualifying motion picture theatre are awarded SVOGs, each will base its earned revenues upon its share of those payments received as a condition of its ownership or operation of the motion picture theatre (e.g., space rental, ticket sales, management fees, digital projection reimbursements, and other non-gratuitous payments or transfers) as allocated by contract, lease, or other formal legal agreement. In such cases, all earned revenues and claimed grant expenses must be tracked and accounted for separately to avoid any overlap or double-counting.

9. *Is a landlord who owns a shopping center that includes a movie theater eligible to apply for an SVOG given they 'own or operate' an eligible motion picture theatre?

No. Because a shopping center owner's principal business activity would most likely be owning or operating a shopping center rather than owning or operating a motion picture theatre, it is doubtful it would be eligible for an SVOG.

Live Venue Operator or Promoter

1. Is a wedding/event venue eligible to apply?

It is not likely. Per the Economic Aid Act and specific eligibility criteria applying to Live Venue Operators, it appears wedding venue operators would likely fail to meet multiple requirements (for example: sale of tickets, promotion of events to the public, defined audience and performing space, lighting rig, sound mixing equipment, employment of sound engineers, stage managers box office managers, etc.).

2. Is a sports stadium or venue used for concerts and other live, non-sport performances eligible to apply?

It is not likely. While sports are not a form of performing art, if the operator of a sports stadium or similar athletic arena can meet the statutory definition of an eligible entity under the Economic Aid Act, including the requirement that its principal business activity must be the organization, promotion, management, or hosting of live concerts, comedy shows, theatrical productions or other events by performing artists, it should be eligible to apply for an SVOG.

3. Is a restaurant that features live music eligible to apply?

No, if the principal line of business is restaurant operation rather than live venue operation, the business would not be eligible to apply for an SVOG.

4. Is a dinner theatre eligible to apply?

It is possible. A dinner theatre could qualify if its principal business activity is the organization, promotion, management, or hosting of live concerts, comedy shows, theatrical productions or other events by performing artists, rather than restaurant operations, and meets all other applicable eligibility criteria.

5. Is a performing arts center owned and operated by a government, state college (as a college department) eligible to apply?

Yes. State, county, and municipal government-owned entities, including colleges, may be eligible to apply for an SVOG.

6. Is a company that uses 1099 (independent contractor) workers/talent (vs. W2) eligible to apply?

Yes. Per the Economic Aid Act, payments made to independent contractors as reported on an entity's Form-1099 are an allowable use of grant funds. As such, an entity that used independent contractors would be eligible to apply for an SVOG.

7. We hire a lot of independent contractors for events; as a subsidiary service provider for or at live venues and events, does this fit the talent placement eligibility?

No, this does not fit the definition of a subsidiary, but rather defines a secondary service provider. The SBA does not believe a secondary service provider supplying support to qualifying venues meets any eligible entity definition.

8. Is a theatrical production management business with revenue generated by the production management eligible to apply (under the talent representative definition)?

It is possible. A theatrical producer may be eligible to apply for an SVOG even if less than 70% of its revenue came from cover charges or ticket sales. Under the Economic Aid Act, it also may be eligible to apply if, as its principal business activity, it has production tickets available for public purchase an average of not less than 60 days before the performance date.

9. Is a talent agency that books actors at live venues, but does not operate a live venue, eligible to apply?

It is possible. A talent agency may be eligible to apply if 70% of its operations is managing, booking or representing performers who appear primarily at live venues. If it is less than 70%, it is not eligible to apply for an SVOG.

10. *Does a ticket broker or reseller qualify as a live venue operator or promoter?

No. The Economic Aid Act's live venue operator or promoter definition requires an entity to have as its principal business activity either: (1) Organizing, promoting, producing, managing, or hosting events by performing artists for which admission fees are charged and performers are paid based on a percentage of sales, a guarantee, or other mutually beneficial formal arrangement; or (2) Publicly selling tickets on average 60 days in advance of performing arts events for which performers are paid based on a percentage of sales, a guarantee, or other mutually beneficial formal arrangement. While ticket brokers or resellers do deal in tickets to performing arts events and may do so 60 days in advance, performers are not paid from these transactions as the SBA reads the second prong of the live venue operator or promoter definition to require. Further, as one of their commonly used names implies and because they operate in the aftermarket, ticket brokers or resellers may be viewed not as

being principally in the business of selling tickets, but instead as being principally in the business of reselling them. As such, ticket brokers or resellers do not meet the criteria found in the definition of live venue operator or promoter.

11. *What criteria will the SBA apply when determining whether a particular form of live entertainment constitutes a performing arts event for an SVOG?

The SBA believes performing arts as related to the SVOG program means events such as musical concerts, comedy shows, theatrical productions, dance performances, or other live renderings of similarly artistic works. This is based on review of the Economic Aid Act text, SBA's consultation with other Federal agencies with area expertise and examination of definitions of what constitutes the performing arts under Federal law.

12. *Is an air show operator eligible to apply?

No. The live venue operator or promoter definition under the Economic Aid Act requires an entity to either put on performing arts events at qualifying venues or sell advance tickets to performing arts events at qualifying venues. While an air show is a form of live entertainment, in SBA's opinion it does not constitute a performing art. As such, air show operators do not qualify as live venue operators or promoters.

13. *If a venue's box office is staffed by volunteers is it eligible to apply?

Yes. Among the criteria included in the live venue operator or promoter definition is a requirement that a qualifying venue must engage at least one individual to perform at least two of the following roles: sound engineer, booker, promoter, stage manager security personnel, and box office manager. The Economic Aid Act does not reference any hired box office staff other than a box office manager and does not absolutely require even that position. As such, the use of volunteers to staff a venue's box office would not preclude it from being eligible to apply for an SVOG.

14. *Is a theatrical producer that stages performances in multiple venues eligible to apply?

Yes. Provided the venues a theatrical producer uses meet the qualifications listed in the Economic Aid Act (e.g., defined performance and audience spaces, sound mixing equipment, a lighting rig, etc.) there is no limit upon the number of venues at which a producer may host events.

15. *The Economic Aid Act specifies artists performing at qualifying venues must be paid fairly and not "play for free or solely for tips, except for fundraisers or similar charitable events." Would nonprofit organizations that host performances which include volunteer choruses and/or student performers be able to meet this requirement?

Yes. Provided the events a nonprofit live performing arts organization stages are produced and managed primarily by paid employees, the use of volunteers in the production casts would not disqualify it.

Definitions

1. How is "principal business activity" being defined?

The SBA is drawing from its years of experience in ascertaining a firm's primary industry under the SBA size regulations (13 C.F.R. § 121.107) to define "principal business activity." To determine a given firm's principal business activity, the SBA will consider the distribution of an entity's receipts, employees and costs of doing business among the different lines of business activity in which its business operations occurred for the most recently completed fiscal year. The SBA may also consider

other factors, such as the distribution of patents, contract awards, and assets, as appropriate.

2. How is “majority owned or controlled” being defined?

Across its various programs, the SBA defines majority ownership and control to mean that at least 51% of the ownership interests in an entity (regardless of its legal structure) are held by a single individual or entity.

3. *How is “fixed seating” being defined as a requirement for museums and movie theatre operators?

Fixed seating is seating permanently fixed to the floor or ground or which is so heavy or cumbersome as to make removing it impractical, per the Economic Aid Act. Where fixed seating is required for a museum auditorium or movie theatre, a majority of the seating provided in that space must meet the definition of fixed seating.

4. How is “regular programming” being defined?

While it may vary depending on the circumstances, generally the SBA is defining regular programming to mean programming provided on an ongoing and near-continuous basis of an average of at least four times a month over the course of a year in its qualifying theatre, lecture hall, or similar venue.

5. How are “cover charges” being defined?

The SBA defines “cover charges” to encompass front door entrance fees, food or beverage minimums, or other similar charges required to gain admission to a venue, whether collected via ticket sales, addition to a tab, or direct payment.

Application

1. What can an entity do to get ready to apply?

As the SBA works on building the application platform, it would be in your best interest to register for a DUNS number so you can then register in the System for Award Management (SAM.gov). Also, gather documents that demonstrate your number of employees and monthly revenues so you can calculate the average number of qualifying employees you had over the prior 12 months. Lastly, determine the extent of gross earned revenue loss you experienced between 2019 and 2020. This and additional information such as floor plans, contract copies and other evidence will be needed to apply for an SVOG.

2. Must applicants register in the System for Award Management (SAM.gov) or can they use other identifiers like ITINs or EINs to apply for an SVOG?

SVOG applicants need to register with the federal government’s SAM at www.SAM.gov to apply and cannot use an Individual Taxpayer Identification Number, Employer Identification Number, or other means of identification or registration. Interested parties are encouraged to obtain a Dun and Bradstreet (DUNS) number (a prerequisite for SAM registration) as soon as possible. With a DUNS number, interested parties then should immediately begin registering in SAM.gov, as the SAM registration may take up to two weeks once submitted.

3. *When will SVOG applications open?

The SBA is working expeditiously to open SVOG applications and encourages you to stay up to date by frequently visiting www.sba.gov/svogrants for information.

4. *If an eligible entity is a hybrid nonprofit/governmental entity, should it apply under the nonprofit's name and submit documentation demonstrating the public/private partnership aspect of its structure?

Yes. The SBA agrees that would appear to be the best approach to take under such circumstances.

5. *If all SVOG program funds are expended during the initial phase and no funding remains available for supplemental phases, will the SBA allow firms that would otherwise have received supplemental awards to take advantage of the extension of time to expend their initial grant funds they would have gotten as a condition of their supplemental award?

No. Under the express language of the Economic Aid Act, only those eligible entities that 'receive' supplemental awards are afforded an additional six months to expend their grant funds, including those from their initial award. The statute does not provide this extension to entities eligible for supplemental awards, but only to those that receive such awards. If the SBA is unable to make supplemental awards to eligible entities, the Agency would have no legal authority to allow those entities an additional six months to expend their existing grant funding. However, the SBA is currently examining the possibility of issuing zero dollar 'placeholder' supplemental awards that could subsequently be modified should additional funding become available. Under such an approach, an eligible entity that receives a zero-dollar placeholder grant would be entitled to the six-month extension afforded to recipients of supplemental phase awards.

6. *How will capital funds, restricted grants, or investment income affect an entity's SVOG application?

Currently, the SBA is only planning to take such financial resources into consideration for purposes of determining whether an applicant meets the requirement that no more than 10% of its 2019 gross revenue came from the Federal government, excluding disaster assistance.

7. *What will be the timeline of distribution for the funds the SBA reserves for the small employer set-aside? Will the SBA fund small employer awards only during the non-priority period of the Initial Award Phase?

To ensure the SBA can carry out Congress' intent that at least \$2 billion worth of SVOGs go to small employers, the SBA will draw upon the small employer set-aside funds throughout all stages of the Initial Award Phase. For example, where an eligible entity qualifies for the First Priority Period also qualifies as a small employer, the SBA will fund that grant using monies drawn from the small employer set-aside. To better facilitate the SVOG funding to small employers throughout all stages of the Initial Award Phase, the SBA is considering using its authority under the Economic Aid Act to set-aside more than the \$2 billion minimum that must be reserved for such purposes.

8. *If ownership of an eligible entity was transferred prior to Feb. 29, 2020, could the new owners apply for an SVOG and use the revenues reported by the former owner? What about ownership transfers that occurred AFTER Feb. 29, 2020 if the entity had been operational on Feb. 29, 2020?

Yes. Except where the new owner has any of the disqualifying characteristics specifically enumerated in the Economic Aid Act (either being itself or being majority owned and controlled by a firm listed on the stock market, that had more than 10% of its 2019 gross revenue come from Federal funding, that owns or operates eligible entities in more than 1 country and more than 10 states and that employs more than 500 people, or which presents sexually prurient live performances or derives more than de minimis gross revenue from the sale of sexually prurient material), the SBA will consider the new

owner of an eligible entity to have stepped into the shoes of the prior owner for purposes of qualifying for the SVOG program. In the event of such a transfer, SBA will permit the new owner to use the prior owner's revenues as its own if the transferred entity was operational on Feb. 29, 2020, regardless of the date of the sale.

Use of Funds

1. Can SVOG funds be used to refund customers still holding tickets for cancelled performances?

Yes, it appears this type of cost would qualify under the Economic Aid Act as a necessary and ordinary business expense. As such, it should be an allowable use of grant funds to make refund payments to patrons for cancelled shows.

2. Can SVOG funds be used to reimburse an owner who loaned the business money to keep employees paid and operating expenses paid?

Yes, if the loan was incurred before Feb. 15, 2020 and made on commercially reasonable terms and formally documented as a standard, ordinary debt instrument then payments made under that loan would seem to be an allowable expense of grant funds.

3. *How is owner compensation treated under the program?

Owner compensation, including distributions and dividends, will be treated as an ordinary business expense by the SBA and thus payable using SVOG funds to the extent that the total amounts involved do not exceed what an owner received in compensation in 2019.

4. *Can grantees use SVOG funds to reimburse themselves for allowable expenses they already paid going back as far as March 1, 2020?

Yes. The SBA believes this would be permissible under the Economic Aid Act.

5. *Is debt refinanced or consolidated under a new lender, but existed prior to Feb. 15, 2020 considered an eligible expense? What about a line of credit or revolving loan that existed prior to Feb. 15, 2020, but was drawn down after that date?

Yes. Payments toward debts recorded prior to Feb. 15, 2020 represent an allowable expense even if the debt was refinanced or consolidated with other debts that existed prior to that cutoff date. Any otherwise allowable debt consolidated with a debt that was not recorded prior to Feb. 15, 2020 would cease to be an allowable expense. Additionally, payments on lines of credit or revolving loan funds recorded prior to Feb. 15, 2020 but not drawn down until after that date would also be an allowable expense, provided the amounts of these lines of credit or revolving loan funds were not increased after Feb. 15, 2020.

6. *Do 'state and local taxes' identified as allowable expenses include real estate taxes and personal property taxes on buildings and equipment?

Yes. Where real estate taxes and personal property taxes are levied on buildings and equipment directly related to eligible SVOG program operations they may be paid using grant funds. Taxes on property and equipment owned by an eligible entity not directly related to its SVOG program operations are not an allowable expense.

7. *Do interest-bearing bank accounts fall into the category of investing funds?

No. Use of an interest-bearing bank account to hold SVOG funds would not constitute an impermissible investment.

8. *Can a grantee include the uncredited portion of an individual’s salary for whom it has received an employee retention tax credit (ERTC) as an allowable expense under an SVOG?

Yes. Where an eligible entity receives an ERTC for one of its employees and that credit does not fully cover the employee’s salary, SVOG funds may be used to pay the uncredited portion of the employee’s salary. SVOG funds cannot be used to pay any portion of an employee’s salary covered by an ERTC.

Business Size/Employees

1. *How should an entity determine its employee count?

For employee count, the SBA is drawing on the Economic Aid Act’s specific provisions re: the calculation of employees and decades of agency experience in counting employees under the SBA size regulations (13 C.F.R. § 121.106). Employees that work at least 30 hours per week are considered full-time. Employees that work between 10-29 hours per week are considered one-half of a full-time employee. Employees that work less than 10 hours per week are not considered an employee. Once the qualifying employees are determined, an entity must then calculate the average number of employees it had over the prior year by adding up the number of qualifying employees in each individual pay period and dividing that amount by the number of pay periods over the 12-month period from Mar. 1, 2019 to Feb. 29, 2020.

For example, assume a firm paid its employees monthly and had the following number of qualifying employees each pay period:

Mar 2019 – 9.5 full-time employees
Apr 2019 – 8 full-time employees
May 2019 – 9.5 full-time employees
Jun 2019 – 8.5 full-time employees
Jul 2019 – 10 full-time employees
Aug 2019 – 10 full-time employees
Sep 2019 – 7 full-time employees
Oct 2019 – 8.5 full-time employees
Nov 2019 – 7 full-time employees
Dec 2019 – 6 full-time employees
Jan 2020 – 7.5 full-time employees
Feb 2020 – 6 full-time employees

The sum of the firm’s full-time employees is 97.5. The firm would then divide 97.5 by 12 (the number of pay periods) to determine its average number of full-time employees was eight.

2. Which priority or phase is number of employees considered?

There is no priority based on number of employees in the application process. Per the Economic Aid Act, the \$2 billion small employer set-aside for those with 50 employees or less is a separate aspect of the awarding process from the priority periods.

3. Are institutions of more than 500 employees eligible to apply for an SVOG if they meet other eligibility criteria?

Yes, if they do not operate in either more than 10 states or another country.

Revenue

1. How are “earned revenue” and “gross earned revenue” being defined by the SBA?

As required by the Economic Aid Act, the SBA is defining earned revenue and gross earned revenue (the two terms in the law) in accordance with common principals of the accrual method of accounting. Using this, only monies organizations receive from the sale of goods or services are counted as earned revenue. This commonly accepted definition of earned revenue does not include other sources of funds that an organization may receive, such as donations, sponsorships, governmental assistance, or returns on investments. Gross earned revenue is the total of earned revenue from various sales of goods or services, such as admission tickets, merchandise, food and beverages, advertising sales and contracted presentation income.

2. *How is “gross revenue” being defined by the SBA?

In applying those provisions of the Economic Aid Act that refer to the gross revenues of SVOG applicants rather than to earned revenues or gross earned revenues, the SBA will construe the term as being functionally equivalent to ‘receipts,’ which the SBA has defined under 13 C.F.R. § 120.104 as meaning “all revenue in whatever form received or accrued from whatever source.” This will include contributions, donations, and grants from any and all sources.

3. Are donations / contributions included in gross earned revenue?

Only earned revenue should be included in calculations of gross earned revenue. Unearned revenue, including donations and other gratuitous contributions, such as foundation grants, corporate sponsorships and individual gifts, should not be included.

4. Are fundraising event receipts considered gross earned revenue?

In dealing with fundraising events, the SBA will follow the same general principles applied to tax deductions for donations to charities. This means that the portion of the amount an individual pays in connection with a fundraising event which represents the estimated value of the good or service they receive in exchange must be included in gross earned revenue. However, that portion of the amount such an individual pays that exceeds the estimated value of the good or service they receive will be considered a donation and is not included in gross earned revenue.

For example, if a ticket to a fundraising dinner costs \$100 per person and the estimated value of the dinner provided is \$50, then \$50 of the funds generated from the fundraising ticket would be considered gross earned revenue and the other \$50 would be considered a donation and would be excluded from gross earned revenue.

5. Does a non-profit count contributions and grants revenue?

No. Both contributions and grants revenue would be excluded from an organization’s earned revenue. However, the SBA will take into account an organization’s Federal grants revenue to determine whether it meets the eligibility limit of having no more than 10% of its gross revenue from Federal sources, not including disaster assistance.

6. Does a non-profit count membership revenue?

Yes and no; like fundraising, the portion of membership cost that represents the estimated value of the goods or services provided as a condition of membership should be included in gross earned revenue. The portion of a membership cost that exceeds the estimated value of the goods or services

provided as a condition of membership is considered a contribution and excluded from gross earned revenue.

7. If a business provides talent representation and financial services for athletes and entertainers, would it use total revenue or just the portion of sales from talent representation services?

The business would use gross earned revenue from all sources. It would also need to satisfy the requirement that the principal line of business is talent representation versus financial services.

8. What is included in the 10% maximum for federal grants/funding?

The 10% maximum for federal grants/funding covers everything regardless of the use of the grant/funding except disaster assistance.

9. Is rental income from tenants and income from renting the venue for private events counted as earned revenue?

Yes, rental income from longer-term tenants and from short-term rentals for event hosting should be included in earned revenue because they derive from standard commercial transactions for the paid use of facilities.

10. *If an eligible entity has multiple lines of business activity, including a line(s) not covered by the SVOG program, should it include earned revenue derived from those business lines?

Yes. If an applicant's primary business activity places them within one of the categories of an eligible entity under the Economic Aid Act, then they should use their gross earned revenue across all their business activities and not exclude any non-SVOG revenue streams.

11. *Is school tuition (e.g., charged by a dance school that operates a live venue) considered earned revenue?

Yes. Tuition payments will be treated as earned revenue.

12. *Will the SBA treat funds raised via capital campaigns differently than other types of fundraising proceeds?

Yes. Given the unique nature and objective of capital campaigns conducted by nonprofits, the SBA will exclude all funds raised via capital campaigns from calculations of earned revenue.

Subsidiaries & Affiliates

1. *For entities with subsidiaries, does each entity need to meet the eligibility criteria independently?

No. For entities with multiple subsidiaries, the parent entity must meet the eligibility criteria, but each subsidiary does not need to meet the criteria independently. However, if a subsidiary wants to apply for its own SVOG in its own name, it must meet the eligibility requirements. Each entity is looked at independently if it's a separate legal entity under a parent organization and each location would need to meet its individual requirements to be eligible to apply. Per the Economic Aid Act, subsidiary entities that qualify for an SVOG will not be treated as affiliates of their parent entity or one another.

2. How are shared expenses across affiliated organizations treated?

Assuming an entity with subsidiaries (parent) shares costs with its subsidiaries, the parent's shared costs (or allocated costs to subsidiaries) remain as such, and the parent should keep records to show

that all expenses claimed under the grant served grant purposes. If a subsidiary is eligible to apply for and applies for its own grant, only the portion of the shared cost that the subsidiary pays can be paid for by the SVOG should it be received.

3. Are there limits on the number of affiliates that can receive an SVOG or the total between them?

Yes, a maximum of five business entities related via affiliation (for example, one parent firm and four subsidiaries) can receive an SVOG. In addition, an eligible museum, and all other museums it operates as subsidiaries may receive no more than \$10 million combined under the program.

4. *If a parent company is ineligible for an SVOG, can one of its subsidiaries still be eligible?

In general, yes. The Economic Aid Act specifically allows up to five firms with a subsidiary/parent relationship to apply for an SVOG providing they can meet the eligibility requirements in their own right, and the fact that one of them is ineligible generally should not preclude the others eligibility. However, a subsidiary would not be eligible where it is majority owned and controlled by a parent entity that is either listed on the stock market or owns or operates eligible entities in more than 1 country and more than 10 states and has more than 500 employees. In either of those cases, the Economic Aid Act mandates that a subsidiary entity is ineligible for an SVOG even if it meets all the other requirements.

5. *May a parent company include its subsidiaries in an SVOG application, or do separate applications need to be submitted for a parent and each subsidiary?

Yes. While subsidiaries can apply for SVOGs on their own, they are not required to do so. A parent company can submit an application that includes some or all its subsidiaries if it wishes to.

6. *What does it mean for two or more entities to be affiliated?

Affiliation occurs where one firm has the power to control another firm, or a single person or entity has the power to control both. Affiliation typically arises due to common ownership, management, or through contractual or other legal arrangements. The SBA uses the principle of affiliation to help it determine if an entity is eligible for some government program or benefit reserved for small businesses. Where firms are found to be affiliated with one another, the SBA will combine their revenues and number of employees and compare those aggregated amounts to the relevant size limit for the program or benefit one of the firms is seeking. In this way, the SBA ensures that a firm which appears to be small but is actually controlled by a large corporation does not take a benefit meant only for small firms. The rules regarding affiliation in the context of SBA's financial assistance programs may be found at 13 C.F.R. §121.301(f).

7. *How will the SBA apply the principle of affiliation to the SVOG program?

In administering the SVOG program, the SBA will take into account the principle of affiliation in the following contexts: (1) In applying those provisions of the Economic Aid Act that specifically reference affiliation; and (2) In determining whether an applicant qualifies for the small employer set-aside. Given the SVOG program's statutory design and the fact that it is not strictly a small business program, the SBA will not consider affiliation in any other context, including general eligibility. The Economic Aid Act mentions affiliation in two ways. First, it says affiliated firms (including subsidiaries) may apply for SVOGs on their own if they meet all the eligibility requirements. Second, it says that no more than five affiliated firms may receive SVOGs. In applying these two provisions, the SBA will rely upon the general principles of 13 C.F.R. § 121.301(f) to determine when firms are affiliated. Regarding the small employer set-aside, it requires the SBA to reserve no less than \$2 billion in SVOG program

funding for awards to eligible entities with no more than 50 full-time employees. The small employer set-aside is the only definitive size limit in the Economic Aid Act and the SBA will administer it in the same way it does other size limits. When calculating how many full-time employees an SVOG applicant has for purposes of determining whether it qualifies for the small employer set-aside, the SBA will look to the total number of full-time employees retained by the applicant and all of its affiliated entities. If this combined number is not more than 50, the applicant will qualify for the small employer set-aside.

8. *Can some members of a group of subsidiary or affiliated companies apply for the PPP while other group members apply for an SVOG?

Yes. Under the Economic Aid Act, up to five subsidiary or affiliated companies that have separate legal existence (e.g., their own employer identification number or EIN) and which independently meet the SVOG eligibility criteria can apply for grants. Those qualifying subsidiaries or affiliates that elect not to apply for a PPP loan may apply for SVOGs. The member firms of a group of subsidiaries or affiliates are not obligated to all make the same choice of a PPP loan or an SVOG.

9. *If a theater circuit has five theaters, each a separate legal entity, but filed with a consolidated tax return, are they considered five entities or one entity?

Five entities. Consolidating tax returns does not strip subsidiary or affiliated entities of any separate legal existence they may possess.