SAVE OUR STAGES ACT

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INTRODUCTION
On December 28, 2020, Congress passed the “Save Our Stages Act” ("the Bill"), which will provide $15 billion in relief to music and entertainment venues and others involved in the presentation of live entertainment. The Bill was introduced by Minnesota Senator Amy Klobuchar with Texas Senator John Cornyn as its Senate co-author. Representatives Peter Welch (VT) and Roger Williams (TX) championed the bill in the United States House of Representatives. The Bill was initially introduced in July 2020 and was ultimately enacted as part of the COVID-19 stimulus bill titled the “Consolidated Appropriations Act, 2021” ("CAA" or "the Act"). The law provides for grants designed to provide six months of financial support to help music and entertainment venues cover business expenses including payroll, rent, mortgages, insurance payments, taxes, and marketing costs. The aid will be dispersed in two parts, subject to certain restrictions. The total grant amount available to a qualifying entity is capped at $10 million. The first round of grant money available will be dispersed in two priority waves as discussed below.

WHO QUALIFIES?
Grants under the Act, which do not need to be repaid, will support for-profit or non-profit independent live venue operators, promoters, presenters, producers, talent representatives, live performing arts organizations, independent movie theaters, museums, and cultural institutions that have been shuttered and pushed to the brink of insolvency by the pandemic's devastating economic impact. To qualify and apply for a grant, an applicant must be independently owned, have its own public address system, lighting, and production, have been in business on February 29, 2020, and show a decrease in revenues of at least 25 percent on a quarterly basis compared to 2019. Applicants that experienced revenue decreases between 70 to 90 percent will be given priority in grant allocation. Under the CAA, grant recipients were not allowed to receive a loan under the Paycheck Protection Program (PPP) after they had applied for grant money under the Act and receipt of (or application for) a PPP loan in 2021 would have disqualified the applicant from receiving a grant under the Act. However, due to the passing of the American Rescue Plan Act of 2021, those venues having received (or applied for) PPP loan funds in 2021 are no longer ineligible for these grants. Any PPP funds received by a venue in the short term will be subtracted from eventual Shuttered Venue Operators Grant dollars, allowing businesses to better fill gaps while awaiting aid.

Applicants can apply for grants for up to five affiliated entities. Each separate affiliated entity can obtain up to $10 million. The following applicants are not eligible to apply for relief under the Act:

- Those that are either publicly traded or controlled by a publicly traded entity;
- Applicant owners or operators who received more than 10 percent of their gross revenue from federal funding during 2019 (excluding any assistance received under the Disaster Relief and Emergency Assistance Act); and
- Entities that meet, or those owned or controlled by entities that meet, more than two of the following characteristics:
  a. Own or operate venues in more than one country;
  b. Own or operate venues in more than ten states, or employ more than 500 full-time equivalent employees as of February 29, 2020.
HOW DO APPLICANTS APPLY?
Applicants will need to submit a good faith certification that the pandemic has caused significant loss of revenue and given the uncertainty of current economic conditions, they will be asked to certify that obtaining the grant is vital to the applicant's continued, ongoing operation. The Small Business Administration ("SBA") will manage the grant program and will begin accepting applications April 8, 2021 through a designated application portal.

Those wanting to apply for a grant under this program should register their business in the System for Award Management (at SAM.gov), gather documents demonstrating the number of employees employed by the venue and monthly revenue, and determine the extent of gross revenue loss experienced between 2019-2020.

HOW DOES THE GRANT PRIORITIZE APPLICANTS?

**Priority 1:** 90% decline in revenue. The Act specifies that during the initial 14-day period of grant availability, grants will be issued to applicants whose revenues for the period from April 1, 2020, to December 31, 2020, are not more than 10 percent of the revenues for that same period in 2019.

**Priority 2:** 70% decline in revenue. During the second 14-day period of grant availability, the Act specifies that grant money must go to applicants whose revenues for the April 1 to December 31, 2020 time period are not more than 30 percent of the revenues for that same period in 2019.

Amounts received under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") will not be considered revenue for either priority tiers. The Act limits how much can be granted to priority recipients. The SBA cannot grant more than 80% of the $15 billion on priority grants. Once the two consecutive 14-day periods end, any entity deemed eligible may be awarded a grant, regardless of its percentage of lost revenue. Additionally, at least $2 billion of the available funds will be set aside to be given to small businesses employing 50 or fewer full-time employees. However, after the first 60 days of grant disbursements, any funds left from the $2 billion that was set aside will be returned to the larger fund and can be given to any recipient.
HOW CAN RECIPIENTS USE THE RELIEF?

Allowable expenditures under the Act begin with several items previously defined by the PPP. The Act also adds several very significant, additional eligible expenses. Allowable expenditures based on the PPP program are as follows:

- Payroll costs;
- Covered rent obligation;
- Covered utility payment;
- Covered mortgage obligation (interest or principal, excluding prepayments); and
- Covered worker protection expenditure.

Under the CAA, additional allowable expenditures for grants include:

- Scheduled payments of interest or principal on any indebtedness that is a liability of the eligible recipient and was incurred prior to February 15, 2020;
- Payments made to independent contractors, as reported on Form 1099, limited to $100,000 in annual compensation for any individual employee of an independent contractor; and
- Other ordinary and necessary business expenses, including:
  a. Maintenance expenses;
  b. Administrative costs, including fees and licensing costs;
  c. State and local taxes and fees;
  d. Operating leases in effect as of February 15, 2020;
  e. Payments required for insurance on any insurance policy; and
  f. Advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show (with the exception that the grant may not be used primarily for such expenditures).

The grant money cannot be used for the following:

- Purchase of real estate;
- Payments for interest or principal on loans originated after February 15, 2020;
- To invest or re-lend funds;
- For contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office; or
- For any other use as may be prohibited by the SBA.

The Act specifically requires that grant recipients retain their documents in accordance with the specified timeframes (4 years for payroll records and 3 years for other records). The Act gives the SBA the power to review or audit these grants and to handle fraud or noncompliance occurrences under the Act.
WHEN CAN THE RELIEF BE USED BY ELIGIBLE RECIPIENTS?

The Act specifies that grant monies must be used by December 31, 2021. The grants received must be used to pay qualifying costs but if the grant recipient receives a second, supplemental grant, the period during which the funds must be used will be extended to June 30, 2022. Also of note is the fact that any grant funds remaining unexpended one year after the date the grant funding was received (or 18 months for supplemental grants) must be returned to the Small Business Administration.

MINNESOTA’S FIRST AVENUE OWNER PLAYS A ROLE IN THE CREATION OF “SAVE OUR STAGES”

Dayna Frank, the owner and chief executive of First Avenue Productions in Minneapolis and recently appointed president of the National Independent Venue Association (NIVA) helped lead the effort to first introduce “Save Our Stages.” NIVA is an organization of independent music venues, independent promoters, and festivals, formed in March 2020 and based in New York. NIVA’s involvement will not stop at getting “Save Our Stages” enacted. Rather, NIVA intends to also ensure the relief is dispersed as Congress intended, and that the instructions and process to apply for grants are implemented accurately, fairly, and as expeditiously as possible. To learn about NIVA, visit its website at nivassoc.org. The Save our Stages Act will give local venues critically needed relief caused by the COVID-19 pandemic. A new organization called the Minnesota Independent Venue Alliance (MIVA) has also been recently formed which will focus on state and local policy issues facing independent entertainment venues in Minnesota. To learn more about MIVA, please visit: https://mniva.org/take-action.

If you have questions, please contact Connie Martin at connie@mendozalawoffice.com or by calling (651) 350-7836.