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FY21 Omnibus Appropriation and COVID Relief Act (Public Law No. 116-260)

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Division N - ADDITIONAL CORONAVIRUS RESPONSE AND RELIEF

.....

Title III - Continuing the Paycheck Protection Program and Other Small Business Support (aka the Economic Aid Act)

.....

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SEC. 324. GRANTS FOR SHUTTERED VENUE OPERATORS.

(a) **DEFINITIONS.**—In this section:

(1) **ELIGIBLE PERSON OR ENTITY.**—

(A) **IN GENERAL.**—The term “*eligible person or entity*” means 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 that meets the following requirements:

(i) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative—

(I) was fully operational 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 on February 29, 2020; and

(II) has gross earned revenue during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrates not less than a 25 percent reduction from the gross earned revenue of the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative during the same quarter in 2019.

(ii) As of the date of the grant under this section—

(I) the live venue operator or promoter, theatrical producer, or live performing arts organization operator is or intends to resume organizing, promoting, producing, managing, or hosting future live events described in paragraph (3)(A)(i);

(II) the motion picture theatre operator is open or intends to reopen for the primary purpose of public exhibition of motion pictures;

(III) the relevant museum operator is open or intends to reopen; or

(IV) the talent representative is representing or managing artists and entertainers.

(iii) The venues at which the live venue operator or promoter, theatrical producer, or live performing arts organization operator promotes, produces, manages, or hosts events described in paragraph (3)(A)(i) or the artists and entertainers represented or managed by the talent representative perform have the following characteristics:

(I) A defined performance and audience space.

(II) Mixing equipment, a public address system, and a lighting rig.

(III) Engages 1 or more individuals to carry out not less than 2 of the following roles:

(aa) A sound engineer.

(bb) A booker.

(cc) A promoter.

(dd) A stage manager.

(ee) Security personnel.

(ff) A box office manager.

(IV) There is a paid ticket or cover charge to attend most performances and artists are paid fairly and do not play for free or solely for tips, except for fundraisers or similar charitable events.

(V) For a venue owned or operated by a nonprofit entity that produces free events, the events are produced and managed primarily by paid employees, not by volunteers.

(VI) Performances are marketed through listings in printed or electronic publications, on websites, by mass email, or on social media.

(iv) A motion picture theatre or motion picture theatres operated by the motion picture theatre operator have the following characteristics:

- (I) At least 1 auditorium that includes a motion picture screen and fixed audience seating.
 - (II) A projection booth or space containing not less than 1 motion picture projector.
 - (III) A paid ticket charge to attend exhibition of motion pictures.
 - (IV) Motion picture exhibitions are marketed through showtime listings in printed or electronic publications, on websites, by mass mail, or on social media.
- (v) The relevant museum or relevant museums for which the relevant museum operator is seeking a grant under this section have the following characteristics:
- (I) Serving as a relevant museum as its principal business activity.
 - (II) Indoor exhibition spaces that are a component of the principal business activity and which have been subjected to pandemic-related occupancy restrictions.
 - (III) At least 1 auditorium, theater, or performance or lecture hall with fixed audience seating and regular programming.
- (vi)(I) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative does not have, or is not majority owned or controlled by an entity with, any of the following characteristics:
- (aa) Being an issuer, the securities of which are listed on a national securities exchange.
 - (bb) Receiving more than 10 percent of gross revenue from Federal funding during 2019, excluding amounts received by the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5121 et seq.](#)).
- (II) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative does not have, or is not majority owned or controlled by an entity with, more than 2 of the following characteristics:

(aa) Owning or operating venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than 1 country.

(bb) Owning or operating venues, relevant museums, motion picture theatres, or talent agencies or talent management companies in more than 10 States.

(cc) Employing more than 500 employees as of February 29, 2020, determined on a full-time equivalent basis in accordance with subparagraph (C).

(III) The live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative has not received, on or after the date of enactment of this Act, a loan guaranteed under paragraph (36) or (37) of section 7(a) of the Small Business Act ([15 U.S.C. 636\(a\)](#)), as amended and added by this division.

(IV) For purposes of applying the characteristics described in subclauses (I), (II), and (III) to an entity owned by a State or a political subdivision of a State, the relevant entity—

(aa) shall be the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative; and

(bb) shall not include entities of the State or political subdivision other than the live venue operator or promoter, theatrical producer, or live performing arts organization operator, the relevant museum operator, the motion picture theatre operator, or the talent representative.

(B) EXCLUSION.—The term “*eligible person or entity*” shall not include 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 that—

(i) presents live performances of a prurient sexual nature; or

(ii) derives, directly or indirectly, more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature.

(C) **CALCULATION OF FULL-TIME EMPLOYEES.**—For purposes of determining the number of full-time equivalent employees under subparagraph (A)(vi)(II)(cc) of this paragraph and under paragraph (2)(E)—

(i) any employee working not fewer than 30 hours per week shall be considered a full-time employee; and

(ii) any employee working not fewer than 10 hours and fewer than 30 hours per week shall be counted as one-half of a full-time employee.

(D) **MULTIPLE BUSINESS ENTITIES.**—Each business entity of an eligible person or entity that also meets the requirements under subparagraph (A) and that is not described in subparagraph (B) shall be treated by the Administrator as an independent, non-affiliated entity for the purposes of this section.

(2) **EXCHANGE; ISSUER; SECURITY.**—The terms “*exchange*”, “*issuer*”, and “*security*” have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 ([15 U.S.C. 78c\(a\)](#)).

(3) **LIVE VENUE OPERATOR OR PROMOTER, THEATRICAL PRODUCER, OR LIVE PERFORMING ARTS ORGANIZATION OPERATOR.**—The term “*live venue operator or promoter, theatrical producer, or live performing arts organization operator*”—

(A) means—

(i) an individual or entity—

(I) that, as a principal business activity, organizes, promotes, produces, manages, or hosts live concerts, comedy shows, theatrical productions, or other events by performing artists for which—

(aa) a cover charge through ticketing or front door entrance fee is applied; and

(bb) performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement; and

(II) for which not less than 70 percent of the earned revenue of the individual or entity is generated through, to the extent related to a live event described in subclause (I), cover charges or ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event beverages, food, or merchandise; or

(ii) an individual or entity that, as a principal business activity, makes available for purchase by the public an average of not less than 60 days before the date of the event tickets to events—

(I) described in clause (i)(I); and

(II) for which performers are paid in an amount that is based on a percentage of sales, a guarantee (in writing or standard contract), or another mutually beneficial formal agreement; and

(B) includes an individual or entity described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

(4) MOTION PICTURE THEATRE OPERATOR.—The term “*motion picture theatre operator*” means an individual or entity that—

(A) as the principal business activity of the individual or entity, owns or operates at least 1 place of public accommodation for the purpose of motion picture exhibition for a fee; and

(B) includes an individual or entity described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

(5) NATIONAL SECURITIES EXCHANGE.—The term “*national securities exchange*” means an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 ([15 U.S.C. 78f](#)).

(6) **NONPROFIT.**—The term “*nonprofit*”, with respect to an organization, means that the organization is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(7) **RELEVANT MUSEUM.**—The term “*relevant museum*” —

(A) has the meaning given the term “*museum*” in section 273 of the Museum and Library Services Act ([20 U.S.C. 9172](#)); and

(B) shall not include any entity that is organized as a for-profit entity.

(8) **SEASONAL EMPLOYER.**—The term “*seasonal employer*” has the meaning given that term in subparagraph (A) of section 7(a)(36) of the Small Business Act ([15 U.S.C. 636\(a\)](#)), as amended by this Act.

(9) **STATE.**—The term “*State*” means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; and

(D) any other territory or possession of the United States.

(10) **TALENT REPRESENTATIVE.**—The term “*talent representative*” —

(A) means an agent or manager that—

(i) as not less than 70 percent of the operations of the agent or manager, is engaged in 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

(iii) represents performers described in clause (ii) that are paid in an amount that is based on the number of tickets sold, or a similar basis; and (B) includes an agent or manager described in subparagraph (A) that—

(i) operates for profit;

(ii) is a nonprofit organization;

(iii) is government-owned; or

(iv) is a corporation, limited liability company, or partnership or operated as a sole proprietorship.

(b) AUTHORITY.—

(1) IN GENERAL.—

(A) ADMINISTRATION.—The Associate Administrator for the Office of Disaster Assistance of the Administration shall coordinate and formulate policies relating to the administration of grants made under this section.

(B) CERTIFICATION OF NEED.—An eligible person or entity applying for a grant under this section shall 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.

(2) INITIAL GRANTS.—

(A) IN GENERAL.—The Administrator may make initial grants to eligible persons or entities in accordance with this section.

(B) INITIAL PRIORITIES FOR AWARDING GRANTS.—

(i) FIRST PRIORITY IN AWARDING GRANTS.—During the initial 14-day period during which the Administrator awards grants under this paragraph, the Administrator shall only award grants to an eligible person or entity with revenue, during the period beginning on April 1, 2020 and ending on December 31, 2020, that is not more than 10 percent of the revenue of the eligible person or entity during the period beginning on April 1, 2019 and ending on December 31, 2019, due to the COVID-19 pandemic.

(ii) SECOND PRIORITY IN AWARDING GRANTS.—During the 14-day period immediately following the 14-day period described in clause (i), the Administrator shall only award grants to an eligible person or entity with revenue, during the period beginning on April 1, 2020 and ending on December 31, 2020, that is not more than 30 percent of the revenue of the eligible person or entity during the period beginning on April 1, 2019 and ending on December 31, 2019, due to the COVID-19 pandemic.

(iii) DETERMINATION OF REVENUE.—For purposes of clauses (i) and (ii)—

(I) any amounts received by an eligible person or entity under the CARES Act ([Public Law 116-136; 134 Stat. 281](#)) or an amendment made by the CARES Act shall not be counted as revenue of an eligible person or entity;

(II) the Administrator shall use an accrual method of accounting for determining revenue; and

(III) the Administrator may use alternative methods to establish revenue losses for an eligible person or entity that is a seasonal employer and that would be adversely impacted if January, February, and March are excluded from the calculation of year-over-year revenues.

(iv) **LIMIT ON USE OF AMOUNTS FOR PRIORITY APPLICANTS.**—The Administrator may use not more than 80 percent of the amounts appropriated under section 323(d)(1)(H) of this Act to carry out this section to make initial grants under this paragraph to eligible persons or entities described in clause (i) or (ii) of this subparagraph that apply for a grant under this paragraph during the initial 28-day period during which the Administrator awards grants under this paragraph.

(C) **GRANTS AFTER PRIORITY PERIODS.**—After the end of the initial 28-day period during which the Administrator awards grants under this paragraph, the Administrator may award an initial grant to any eligible person or entity.

(D) **LIMITS ON NUMBER OF INITIAL GRANTS TO AFFILIATES.**—Not more than 5 business entities of an eligible person or entity that would be considered affiliates under the affiliation rules of the Administration may receive a grant under this paragraph.

(E) **SET-ASIDE FOR SMALL EMPLOYERS.**—

(i) **IN GENERAL.**—Subject to clause (ii), not less than \$2,000,000,000 of the total amount of grants made available under this paragraph shall be awarded to eligible persons or entities which employ not more than 50 full-time employees, determined in accordance with subsection (a)(1)(C).

(ii) **TIME LIMIT.**—Clause (i) shall not apply on and after the date that is 60 days after the Administrator begins awarding grants under this section and, on and after such date, amounts available for grants under this section may be used for grants under this section to any eligible person or entity.

(3) **SUPPLEMENTAL GRANTS.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), the Administrator may make a supplemental grant in accordance with this section to an eligible person or entity that receives a grant under paragraph (2) if, as of April 1, 2021, the revenues of the eligible

person or entity for the most recent calendar quarter are not more than 30 percent of the revenues of the eligible person or entity for the corresponding calendar quarter during 2019 due to the COVID-19 pandemic.

(B) PROCESSING TIMELY INITIAL GRANT APPLICATIONS FIRST.—The Administrator may not award a supplemental grant under subparagraph (A) until the Administrator has completed processing (including determining whether to award a grant) each application for an initial grant under paragraph (2) that is submitted by an eligible person or entity on or before the date that is 60 days after the date on which the Administrator begins accepting such applications.

(4) CERTIFICATION.—An eligible person or entity applying for a grant under this section that is an eligible business described in the matter preceding subclause (I) of section 4003(c)(3)(D)(i) of the CARES Act ([15 U.S.C. 9042\(c\)\(3\)\(D\)\(i\)](#)), shall make a good-faith certification described in subclauses (IX) and (X) of such section.

(c) AMOUNT.—

(1) INITIAL GRANTS.—

(A) IN GENERAL.—A grant under subsection (b)(2) shall be in the amount equal to the lesser of—

(i)(I) for an eligible person or entity that was in operation on January 1, 2019, the amount equal to 45 percent of the gross earned revenue of the eligible person or entity during 2019; or

(II) for an eligible person or entity that began operations after January 1, 2019, the amount equal to the product obtained by multiplying—

(aa) the average monthly gross earned revenue for each full month during which the eligible person or entity was in operation during 2019; by

(bb) 6; or

(ii) \$10,000,000.

(B) APPLICATION TO RELEVANT MUSEUM OPERATORS.—A relevant museum operator may not receive grants under subsection (b)(2) in a total amount that is more than \$10,000,000 with respect to all relevant museums operated by the relevant museum operator.

(2) **SUPPLEMENTAL GRANTS.**—A grant under subsection (b)(3) shall be in the amount equal to 50 percent of the grant received by the eligible person or entity under subsection (b)(2).

(3) **OVERALL MAXIMUMS.**—The total amount of grants received under paragraphs (2) and (3) of subsection (b) by an eligible person or entity shall be not more than \$10,000,000.

(d) **USE OF FUNDS.**—

(1) **TIMING.**—

(A) **EXPENSES INCURRED.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), amounts received under a grant under this section may be used for costs incurred during the period beginning on March 1, 2020, and ending on December 31, 2021.

(ii) **EXTENSION FOR SUPPLEMENTAL GRANTS.**—If an eligible person or entity receives a grant under subsection (b)(3), amounts received under either grant under this section may be used for costs incurred during the period beginning on March 1, 2020, and ending on June 30, 2022.

(B) **EXPENDITURE.**—

(i) **IN GENERAL.**—Except as provided in clause (ii), an eligible person or entity shall return to the Administrator any amounts received under a grant under this section that are not expended on or before the date that is 1 year after the date of disbursement of the grant.

(ii) **EXTENSION FOR SUPPLEMENTAL GRANTS.**—If an eligible person or entity receives a grant under subsection (b)(3), the eligible person or entity shall return to the Administrator any amounts received under either grant under this section that are not expended on or before the date that is 18 months after the date of disbursement to the eligible person or entity of the grant under subsection (b)(2).

(2) **ALLOWABLE EXPENSES.**—

(A) **DEFINITIONS.**—In this paragraph—

(i) the terms “*covered mortgage obligation*”, “*covered rent obligation*”, “*covered utility payment*”, and “*covered worker protection expenditure*” have the meanings given those terms in [section 7A\(a\)](#) of the Small Business Act, as redesignated, transferred, and amended by this Act; and

(ii) the term “*payroll costs*” has the meaning given that term in section 7(a)(36)(A) of the Small Business Act [\(15 U.S.C. 636\(a\)\(36\)\(A\)\)](#).

(B) **EXPENSES.**—An eligible person or entity may use amounts received under a grant under this section for—

(i) payroll costs;

(ii) payments on any covered rent obligation;

(iii) any covered utility payment;

(iv) scheduled payments of interest or principal on any covered mortgage obligation (which shall not include any prepayment of principal on a covered mortgage obligation);

(v) scheduled payments of interest or principal on any indebtedness or debt instrument (which shall not include any prepayment of principal) incurred in the ordinary course of business that is a liability of the eligible person or entity and was incurred prior to February 15, 2020;

(vi) covered worker protection expenditures;

(vii) payments made to independent contractors, as reported on Form-1099 MISC, not to exceed a total of \$100,000 in annual compensation for any individual employee of an independent contractor; and

(viii) other ordinary and necessary business expenses, including—

(I) maintenance expenses;

(II) administrative costs, including fees and licensing costs;

(III) State and local taxes and fees;

(IV) operating leases in effect as of February 15, 2020;

(V) payments required for insurance on any insurance policy; and

(VI) advertising, production transportation, and capital expenditures related to producing a theatrical or live performing arts production, concert, exhibition, or comedy show, except that a grant under this section may not be used primarily for such expenditures.

(3) **PROHIBITED EXPENSES.**—An eligible person or entity may not use amounts received under a grant under this section—

- (A) to purchase real estate;
- (B) for payments of interest or principal on loans originated after February 15, 2020;
- (C) to invest or re-lend funds;
- (D) for contributions or expenditures to, or on behalf of, any political party, party committee, or candidate for elective office; or
- (E) for any other use as may be prohibited by the Administrator.

(e) **INCREASED OVERSIGHT OF SHUTTERED VENUE OPERATOR GRANTS.**—The Administrator shall increase oversight of eligible persons and entities receiving grants under this section, which may include the following:

(1) **DOCUMENTATION.**—Additional documentation requirements that are consistent with the eligibility and other requirements under this section, including requiring an eligible person or entity that receives a grant under this section to retain records that document compliance with the requirements for grants under this section—

(A) with respect to employment records, for the 4-year period following receipt of the grant; and

(B) with respect to other records, for the 3-year period following receipt of the grant.

(2) **REVIEWS OF USE.**—Reviews of the use of the grant proceeds by an eligible person or entity to ensure compliance with requirements established under this section and by the Administrator, including that the Administrator may—

(A) review and audit grants under this section; and

(B) in the case of fraud or other material noncompliance with respect to a grant under this section—

(i) require repayment of misspent funds; or

(ii) pursue legal action to collect funds.

(f) **SHUTTERED VENUE OVERSIGHT AND AUDIT PLAN.**—

(1) **IN GENERAL.**—Not later than 45 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives an audit plan that details—

(A) the policies and procedures of the Administrator for conducting oversight and audits of grants under this section; and

(B) the metrics that the Administrator shall use to determine which grants under this section will be audited pursuant to subsection (e).

(2) **REPORTS.**—Not later than 60 days after the date of enactment of this Act, and each month thereafter until the date that is 1 year after the date on which all amounts made available under section 323(d)(1)(H) of this Act have been expended, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the oversight and audit activities of the Administrator under this subsection, which shall include—

(A) the total number of initial grants approved and disbursed;

(B) the total amount of grants received by each eligible person or entity, including any supplemental grants;

(C) the number of active investigations and audits of grants under this section;

(D) the number of completed reviews and audits of grants under this section, including a description of any findings of fraud or other material noncompliance.

(E) any substantial changes made to the oversight and audit plan submitted under paragraph (1).