January 26, 2021

Tami Perriello  
Acting Administrator  
U.S. Small Business Administration  
Washington, D.C.

Via electronic communication

Dear Administrator Perriello,

As the U.S. Small Business Administration (SBA) rapidly addresses implementation of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, including re-opening the Paycheck Protection Program, and administering new Shuttered Venue Operators Grants (SVOG), we are grateful for the opportunity to share initial considerations on behalf of nonprofit performing arts organizations.

National nonprofit performing arts organizations have been collaborating to advance access to COVID-19 relief resources throughout the pandemic. Our organizations—Alliance of Artists Communities, Alternate ROOTS, American Composers Forum, Association of Performing Arts Professionals (APAP), Chamber Music America, Chorus America, Dance/USA, Early Music America, Folk Alliance International, The International Association of Blacks in Dance, League of American Orchestras, National Alliance for Musical Theatre, National Performance Network, Network of Ensemble Theaters, OPERA America, Performing Arts Alliance, and Theatre Communications Group—stand ready to be a resource regarding the unique application of PPP and Grants for Shuttered Venue Operators to the nonprofit performing arts sector, as our national networks and partners help local organizations and individuals navigate federal relief opportunities.

The support made available by the Shuttered Venue Operator Grants is extremely urgently needed, and we urge the SBA to make these resources – and clear guidance – rapidly available. For the very near-term, we would like to introduce the following top-line considerations and request the opportunity to meet with SBA representatives regarding further detailed implementation considerations.

1. While it is clear that applicants may only receive either a PPP loan or Shuttered Venue Operator Grant in 2021, one question frequently raised as the PPP program is open for applications is whether applicants may set in motion applications for both PPP and Shuttered Venue Operators Grants (SVOG) programs and accept only one, for fear of missing out on opportunities to access either resource, given limited available funding.

The timing of access to interim final rules for the PPP second draw and Shuttered Venue Operator Grants is challenging, as applicants need to make a fully-informed choice among the two, and much will hinge on the fine print of eligibility. As guidelines have not been issued for the SVOG program, while PPP is fully operational, entities that initiate PPP loan applications in the near-term should not be prevented from subsequently choosing to instead pursue and receive only a Shuttered Venue Operator Grant (SVOG).
We understand that the SBA is considering issuing guidance to establish that the act of applying for a PPP loan in 2021 will disqualify entities from applying for SVOG. Forcing arts organizations to choose between PPP and SVOG under these circumstances at the very least delays critical support for organizations and individuals who are struggling. At its worst, this rule could result in organizations forgoing PPP only to find out that they are ineligible for SVOG or that, by the time they can apply, SVOG funds are exhausted. We ask that SBA institute a mechanism by which organizations that have applied for PPP may rescind their applications and/or re-pay loan amounts if SVOG guidance reveals the program to be a more appropriate form of federal assistance for an entity. At minimum, SBA should create a safe harbor, allowing any entity that initiated a PPP application prior to the date on which a new SBA policy is announced may rescind their application without being made ineligible for future pursuit of the SVOG program. This may be particularly important for organizations of color that applied early according to the Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns.

2. **The PPP second draw revenue decline definition of nonprofit “gross receipts” may make many nonprofit arts organizations ineligible for PPP, leaving the SVOG program as the only possible form of support. This PPP definition could be improved under further rulemaking.**

PPP second draw forgivable loans of up to $2 million will be available to employers with a workforce that does not exceed 300 employees and that can demonstrate at least a 25% gross receipts decline in any quarter of 2020, compared to 2019. For nonprofits, gross receipts are defined as under the terms of the Form 990.

The “gross receipts” definition in the Treasury Regulations under Section 6033 (Treas. Reg. 1.6033-2(g)(4)) is problematic primarily because of 6033 (iv) the gross amount received from the sale of assets without reduction for cost or other basis and expenses of sale, and (v) the gross amount received as investment income, such as interest, dividends, rents, and royalties.

This seems to pull in investment portfolio (unrealized gains) and other non-operating (capital) activity that will arbitrarily exclude nonprofits if they happen to shift investments, receive unusual capital contributions, etc. during the year, even though these “receipts” are not accessible to the organization as operating revenue. This is not a realistic picture of the actual revenue available to sustain operations and workforces during the COVID-19 crisis.

A focus on revenue declines for the PPP would have been far preferable than “receipts.” For purposes of calculating revenue declines during the COVID-19 crisis within PPP, a more accurate reflection of available resources would be to consider gross receipts within the meaning of section 6033 of the Internal Revenue Code of 1986, excluding 6033 (iv) and (v). This clarification could be addressed during the PPP second draw rulemaking process.

3. **The Shuttered Venue Operator Grants legislative language specifically references the more favorable term of “revenue,” rather than receipts. Under Shuttered Venue Operator Grants administration, careful consideration should be given to the definition of “gross earned revenue”—which applies to the threshold 25%**
earned revenue decline general eligibility requirement, and also when calculating the maximum eligible grant amount—to ensure it accurately and clearly captures nonprofit earned revenue available to support operations.

The Form 990 outlines various areas of gross revenue in Part VIII of the Form. For “gross earned revenue,” we would recommend including total program service revenue, royalties, gross rents, and gross sales of inventory less returns and allowances, as defined on the Form 990, Part VIII. We recommend excluding contributions, investment income, income from investment of tax-exempt bond proceeds, gross amounts from sales of assets other than inventory, and gross income from fundraising events.

We recommend defining “earned revenue” as the included items in Gross Earned Revenue, less any expenses/costs that are deducted directly on Form 990, Part VIII to achieve net totals.

4. It is unclear how SBA will define “gross revenue” and “revenue.” The “revenue” decline requirements will apply to the two priority application periods for Shuttered Venue Operator Grants. This definition will be critical to determining whether nonprofit performing arts organizations qualify for these two priority periods.

Before the onset of the COVID-19 pandemic, nonprofit performing arts organizations typically relied on private contributions for roughly 30-40% of total revenue. As the duration of the pandemic continues, charitable contributions are vulnerable for many performing arts nonprofits, and most have lost all, or nearly all, earned revenue. However, charitable contributions have not yet dried up completely. Many nonprofits are facing dramatic reductions in gross revenue for at least 12 to 18 months—a completely unsustainable collapse of income, with deep and lasting structural financial damage to organizations, their workers, and their families—but likely not enough of a reduction to qualify for the exclusion periods, if applied to gross revenue.

While we are pleased that 20% non-priority reserve has been established, we are deeply concerned about the availability of funding for nonprofits among all other applicants at the end of a potentially month-long exclusion. We simultaneously understand the intent of creating the priority period, and recognize the importance of preserving businesses that are in imminent danger of closing their doors permanently due to extreme revenue reductions.

The bill language presents ambiguity as to whether income from contributions would be included under the term “revenue.” Should charitable contributions be included in this calculation, it is essential that restricted contributions and unrealized gains on investment not be considered revenue. As the priority periods are meant to provide access to those most in need of support, only revenue available to support operations and workforces during the COVID-19 crisis should be taken into consideration.

5. We would like to acknowledge that arts organizations of color had a more difficult time accessing PPP in 2020, and that SBA has provided Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns for the PPP program. We urge SBA to offer specific public engagement, technical
assistance, and awareness efforts for minority-led and underserved performing arts entities as SBA rolls out the Shuttered Venues Program. These entities need this guidance as early in the process as possible.

Nonprofit performing arts organizations consulted SMU DataArts National Center for Arts Research to assess the potential scope of need accessed under SOS. That analysis follows here. Note that the $2.3 billion estimate is an outside figure, assuming all existing organizations successfully apply for and receive Shuttered Venue Operator Grants funding. We do not have comparable data for the full array of eligible entities and are sharing this data to provide some nonprofit performing arts context.

Again, thank you for the opportunity to share here some initial considerations that we hope may receive attention as guidelines are produced. Our national organizations represent a unique network that can partner with SBA to communicate information to the nonprofit performing arts stakeholders intended to be served by the Shuttered Venue Operators Grants program, as well sharing back to the SBA the experiences of those stakeholders. To schedule a meeting with nonprofit performing arts service organization representatives, please feel welcome to contact Heather Noonan for coordination, hnoonan@americanorchestras.org.

Sincerely,

Alliance of Artists Communities
Alternate ROOTS
American Composers Forum
Association of Performing Arts Professionals (APAP)
Chamber Music America
Chorus America
Dance/USA
Early Music America
Folk Alliance International
The International Association of Blacks in Dance
League of American Orchestras
National Alliance for Musical Theatre
National Performance Network
Network of Ensemble Theaters
OPERA America
Performing Arts Alliance
Theatre Communications Group

SMU | DataArts: National Center for Arts Research
Created by Daniel F Fonner, Associate Director for Research, SMU DataArts, Southern Methodist University.

This analysis explores the level of earned revenue, gross revenue, and expenses of nonprofit performing arts organizations in the United States. The data and calculations should provide information to inform lawmakers currently negotiating the Save Our Stages component of the Heroes Small Business Lifeline Act, which aims to provide funding to performing arts venues that have had to close due to COVID-19, and thus cutting off some revenue streams.
To provide transparent and reproducible results, this analysis identifies financial measures related to nonprofit performing arts organizations defined by those organizations that 1) have filed a 990 or 990EZ form in the past three years, and 2) is coded as a performing arts entity identified by one of the following criteria:


All 990 and 990EZ data is available from the IRS ([https://www.irs.gov/statistics/soi-tax-stats-annual-extract-of-tax-exempt-organization-financial-data](https://www.irs.gov/statistics/soi-tax-stats-annual-extract-of-tax-exempt-organization-financial-data)), and NAICS classifications are available via the IRS Business Master File maintained by the Urban Institute’s National Center for Charitable Statistics ([https://nccs-data.urban.org/data.php?ds=bmf](https://nccs-data.urban.org/data.php?ds=bmf)). This analysis combines all 990 and 990EZ data processed in 2017, 2018, and 2019 keeping the most recent 990 data for each organization based on EIN. This ensures that all current/active nonprofit performing arts organizations are accounted for since organizations have a 3-year filing window before their tax-exempt status is revoked.

Analysis
Of all active nonprofit entities in the United States that have filed a 990 or 990ez in the past three years, 14,597 are classified as performing arts with aggregate expenses of over $11.6 billion. Average Earned Revenue accounts for 39% of Gross Revenue (47% of Total Revenue).

The current provision plans to provide maximum support to any one organization totaling no more than 45% of Earned Revenue with a cap of $10 million per organization. If all organizations analyzed here received the maximum allowed, that would cost $2.3 billion to fund (organizations would receive on average: $158k, median:$17k).

About SMU DataArts
SMU DataArts, the National Center for Arts Research, is a joint project of the Meadows School of the Arts and Cox School of Business at Southern Methodist University. SMU DataArts compiles and analyzes data on arts organizations and their communities nationwide and develops reports on important issues in arts management and patronage. Its findings are available free of charge to arts leaders, funders, policymakers, researchers and the general public. The vision of SMU DataArts is to build a national culture of data-driven decision-making for those who want to see the arts and culture sector thrive. Its mission is to empower arts and cultural leaders with high-quality data and evidence-based resources and insights that help them to overcome challenges and increase impact. Publications include white papers on culturally specific arts organizations, the egalitarian nature of the arts in America, gender equity in art museum directorships, protecting organizations through downturns, and more. SMU DataArts also publishes reports on the health of the U.S. arts and cultural sector and the annual Arts Vibrancy Index, which highlights the 40 most arts-vibrant communities around the country. For more information, visit [http://www.culturaldata.org/](http://www.culturaldata.org/).