Legislative Wins for the Live Events Industry
COVID Relief Package, Passed December 21, 2020

Key Highlights

- **Extension and expansion of the Paycheck Protection Program (PPP); businesses can take a second draw. Eligibility requirements and favorable terms of PPP loans expanded.**
- **Extension of Unemployment benefits for an additional $300 per week.**
- **Direct stimulus payments of $600 for eligible individuals.**
- **New $15 billion grant program for shuttered live event venue operations (SOS).**
- **Additional targeted funds for certain eligible entities under the EIDL Advance program.**
- **Extension and expansion of the Employee Retention Tax Credit (ERTC).**
- **Expansion of business meal tax credit deduction and other individual tax credits.**

Paycheck Protection Program

• PPP has been re-ignited and extended. Businesses who used this relief measure when it was introduced in the original CARES act are allowed to take a second draw. It will be limited to businesses with under 300 employees. Businesses with multiple locations that are eligible entities under the initial PPP requirements may employ no more than 300 employees per physical location.

• Eligible entities must be businesses, certain non-profit organizations, housing cooperatives, veterans' organizations, tribal businesses, self-employed individuals, sole proprietors, independent contractors, and small agricultural co-operatives.

• Destination Marketing Organizations are now eligible, if:
- The organization does not receive more than 15% of receipts from lobbying
- The lobbying activities do not comprise more than 15% of activities
- The organization has 300 or fewer employees
- That destination marketing organization is registered as a 501(c) organization, a quasi-government entity, or a political subdivision of a state or local government.

• Entities that receive a grant under the Shuttered Venue Operator Grant program (better known as "Save Our Stages" or "SOS") will not be eligible for a second PPP loan.

• Entities must demonstrate at least a 25 percent reduction in gross receipts in the first, second, or third quarter of 2020 relative to the same 2019 quarter. Applications submitted on or after January 1, 2021 are eligible to utilize the gross receipts from the fourth quarter of 2020. There are also applicable timelines for businesses that were not in operation in Q1, Q2, and Q3, and Q4 of 2019.

• In general, borrowers may receive a loan amount of up to 2.5x the average monthly payroll costs in the one year prior to the loan or the calendar year.

• No loan can be greater than $2 million, as opposed to $10 million in the first round.

• Entities may receive loans of up to 2.5x the sum of average monthly payroll costs.

• Seasonal employers may calculate their maximum loan amount based on a 12-week period beginning on any date between February 15, 2019 through February 15, 2020. A seasonal employer is defined as an eligible recipient which: (1) operates for no more than seven months in a year, or (2) earned no more than 1/3 of its receipts in any six months in the prior calendar year.

• Entities in industries assigned to NAICS code 72 (Accommodation and Food Services) may receive loans of up to 3.5x average monthly payroll costs.

• An eligible entity may only receive one PPP second-draw loan.

• The borrower can elect a covered period ending at the point of the borrower's choosing between 8 and 24 weeks after loan origination.

• Borrowers of a PPP second-draw loan will be eligible for loan forgiveness equal to the sum of their payroll costs, as well as covered mortgage, rent, and utility payments, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures incurred during the covered period. The 60/40 cost allocation between payroll and non-payroll costs in order to receive full forgiveness will continue to apply.

• Employer-provided group insurance benefits can now be included in payroll costs. This includes group life, disability, vision, or dental insurance. Applies to loans made before, on, or after the date of enactment, including the forgiveness of the loan.

• Allowable and forgivable non-payroll uses of Paycheck Protection Program funds are:
  - Mortgage interest—as long as the mortgage was signed before February 15, 2020.
  - Rent—as long as the lease agreement was in effect before February 15, 2020. Examples:
    * A warehouse where you store business equipment
    * A vehicle you use to perform your business
    * An office space or building
    * A storefront or kiosk
  - Utilities—as long as service began before February 15, 2020.
  - Payment for any software, cloud computing, and other human resources and accounting needs.
  - Costs related to property damage due to public disturbances that occurred during 2020 that are not covered by insurance.
  - Covered supplier costs pursuant to a contract, purchase order, or order for goods in effect prior to taking out the loan that are essential to the recipient's operations at the time at which the expenditure was made. Supplier costs of perishable goods can be made before or during the life of the loan.
  - Personal protective equipment and adaptive investments to help a loan recipient comply with federal health and safety guidelines or any equivalent State and local guidance related to COVID-19 during the period between March 1, 2020, and the end of the national emergency declaration.

• Loans made under PPP before, on, or after the enactment of this act will be eligible to utilize the expanded forgivable expenses above, except for borrowers who have already had their loans forgiven.

• For loans of not more than $150,000, the entity may submit a certification attesting that the entity meets the revenue loss requirements on or before the date the entity submits their loan forgiveness application.

• Applications for the PPP program will be accepted through March 31, 2021.

• Entities that received PPP loans will be allowed to deduct the expenses paid by those loans on their tax returns, as this new legislation overturns the IRS position that the expenses were not deductible.

• For purposes of tax reporting, gross income does not include any amount that would otherwise arise from the forgiveness of a PPP loan, retroactive through first draw PPP loans as well.

• Allows more flexibility for the Administration to accept documentation beyond what was required in the CARES Act to determine eligibility for sole proprietors and self-employed people.

• The authorization level for PPP is set at $806.5 billion. Direct appropriations with this bill total $284.45 billion for PPP, including the following set-asides:

- $15 billion for PPP loans (initial and second-draw) issued by community financial institutions, including community development financial institutions (CDFIs) and minority depository institutions (MDIs).
- $15 billion for PPP loans (initial and second draw) issued by certain small depository institutions.
- $35 billion for first-time borrowers.
- $15 billion for smaller, first-time borrowers with 10 or fewer employees, or loans less than $250,000 in low-income areas.
- $25 billion for second draw PPP loans for smaller borrowers with 10 or fewer employees, or loans less than $250,000 in low-income areas.

Unemployment Benefits

• Provides unemployed individuals an additional $300 per week for 10 weeks from December 26, 2020 through March 14, 2021 under the program called Federal Pandemic Unemployment Compensation ("FPUC").

• Extension then phase-out of Pandemic Unemployment Assistance ("PUA"), which benefits contractors and other non-employees who normally would not qualify for unemployment insurance benefits, through the week ending March 14th (after which no new applicants), with a phase-out period running through April 5, 2021.

- This averts another "cliff" by allowing people who are getting benefits as of March 14 to stay on for 3 additional weeks before their benefits are cut off.
- It also increases the number of weeks available in PUA from 39 to 50, to cover people who have almost used up all their benefits – however all benefits end April 5, 2021.

• Extension and phase-out of Pandemic Emergency Unemployment Compensation ("PEUC"), which provides additional weeks of assistance for claimants when state unemployment runs out, to March 14 (after which no new applications), with a phase-out period running through April 5, 2021.

- This averts another "cliff" by allowing people who are getting benefits as of March 14 to stay on 3 additional weeks before their benefits are cut off.
- It also increases the number of weeks available in PEUC from 13 to 24, to cover people who have almost used up all their benefits – however all benefits end April 5, 2021.

Stimulus Payments

• Individual adults with adjusted gross income on their 2019 tax returns of up to $75,000 a year will receive a $600 payment, and heads of households making up to $112,500 or a couple (or someone whose spouse died in 2020) earning up to $150,000 a year will receive $1,200. If you have dependent children, you will also receive an additional $600 for each child.

• People with incomes just above these levels will receive a partial payment that declines by $5 for every $100 in income.

<u>Grants for Shuttered Venue Operators (“SVOG,” formerly “SOS”)</u>

• Authorizes $15 billion for the SBA to make grants to eligible live performance venue operators or promoters, theatrical producers, live performing arts organization operators, museum operators, motion picture theatre operators, or talent representatives who demonstrate a 25% reduction in revenues.

• The term ‘‘live venue operator or promoter, theatrical producer, or live performing arts organization operator’’ means:

- An individual or entity 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—
    * A cover charge through ticketing or front door entrance is applied; and
    * 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
- Not less than 70 percent of the earned revenue of the individual or entity is generated through cover charges or ticket sales, production fees or production reimbursements, nonprofit educational initiatives, or the sale of event beverages, food, or merchandise.

• Venues must have the following characteristics:

- A defined performance and audience space.
- Mixing equipment, a public address system, and a lighting rig.
- Engages 1 or more individuals to carry out not less than 2 of the following roles:
    * A sound engineer
    * A booker
    * A promoter
    * A stage manager
    * Security personnel
    * A box office manager
- 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.

• The live venue operator or promoter, theatrical producer, or live performing arts organization operator must now be, or intend to resume organizing, promoting, producing, managing, or hosting future live events.

• An eligible person or entity applying for a grant under this section must 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.

• There is a set-aside of $2 billion for eligible entities that employ not more than 50 full-time employees, and any amounts from this set-aside remaining after sixty days from the date of implementation of this program shall become available to all eligible applicants under this section.

• Grants are capped at $10 million to an eligible person or entity.

• Grant amounts will be:

- For an eligible person or entity that was in operation on January 1, 2019:
    * 45% of the gross earned revenue of the eligible person or entity during 2019.
- For an eligible person or entity that began operations after January 1, 2019, the lesser of:
    * 6 times the average monthly gross earned revenue for each full month during which the eligible person or entity was in operation during 2019, or;
    * $10,000,000.

• In the initial 14-day period of implementation of the program, grants will only be awarded to eligible entities that have faced 90% or greater revenue loss. In the 14-day period following this initial period, grants will only be awarded to eligible entities that have faced 70% or greater revenue loss. After these two periods, grants shall be awarded to all other eligible entities.

• Supplemental Grants:

   - A second supplemental grant may be made in accordance with this section to an eligible person or entity 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.
   - A supplemental grant will be made in the amount equal to 50 percent of the initial grant received by the eligible person or entity.

• Grants to be used for specified expenses such as payroll costs, rent, utilities, and personal protective equipment.

• The SBA is required to conduct increased oversight of eligible persons and entities receiving these grants.

• There is a set aside of $2 million for entities which employ 50 or fewer full-time employees.

• Entities that receive a grant under the Shuttered Venue Operator Grant program will not be eligible for a second PPP loan.

Targeted EIDL Advance for Small Business

• Provides additional targeted funding for eligible entities located in low-income communities through the EIDL Advance program from Section 1110 of the CARES Act.

• Makes entities in low-income communities that received an EIDL Advance under Section 1110 of the CARES Act eligible to receive an amount equal to the difference of what the entity received under the CARES Act, and $10,000.

•Provides $10,000 grants to eligible applicants in low-income communities that did not secure grants because funding had run out.

Repeal of EIDL Advance Deduction

• Repeals the portion of the CARES Act which requires PPP borrowers to deduct the amount of their EIDL advance (grant) from their PPP forgiveness amount.

• Establishes the Sense of Congress that EIDL advance borrowers should be made whole without regard to whether those borrowers are eligible for PPP forgiveness.

• The SBA will issue rules that ensure borrowers are made whole if they received forgiveness and their EIDL advance was deducted from that amount.

Employee Retention Tax Credit

• Extends the CARES Act employee retention tax credit (ERTC) through June 30, 2021. It also expands the ERTC and contains technical corrections. The expansions of the credit include:

   - An increase in the credit rate from 50% to 70% of qualified wages.
   - An increase in the limit on per employee creditable wages from $10,000 for the year to $10,000 for each quarter.
   - A reduction in the required year-over-year gross receipts decline from 50% to 20%.

- A safe harbor allowing employers to use prior-quarter gross receipts to determine eligibility.
- A provision to allow certain governmental employers to claim the credit.
- An increase from 100 to 500 in the number of employees counted when determining the relevant qualified wage base.
- Rules allowing new employers who were not in existence for all or part of 2019 to be able to claim the credit.
- Group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with IRS guidance.

Other Business Provisions

• 100% business meal deduction will be allowed as long as the expense is provided by a restaurant and incurred after December 31, 2020 and expires December 31, 2022.

• If your income was far less in 2020 than in 2019, thus making you eligible for this newest round of stimulus: When you file your 2020 return, there will be a way for you to claim this money in the form of a refundable tax credit.