IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CREATION ENTERTAINMENT, INC. Plaintiff, v. SMALL BUSINESS ADMINISTRATION; and KELLY LOEFFLER, in her official capacity as Administrator of the Small Business Administration, Defendants.	Civil Action No. 22-684 (ABJ)

SECOND AMENDED COMPLAINT

Plaintiff Creation Entertainment, Inc. ("Creation"), by and through counsel, alleges and states as follows:

INTRODUCTION

1. This is an action under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking federal financial assistance unlawfully withheld by Defendants Small Business Administration ("SBA") and its Administrator, Kelly Loeffler.

2. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, as amended, 15 U.S.C. § 9009a, established the Shuttered Venue Operators Grant ("SVOG") Program to provide emergency financial assistance to eligible live entertainment businesses impacted by the global COVID-19 pandemic. The SVOG Program is administered by the SBA through its Administrator Kelly Loeffler.

3. Creation timely applied for an SVOG award and submitted information demonstrating that it satisfied the statutory eligibility requirements, including that it organized and

promoted live, in-person events featuring paid performers appearing before live audiences.

4. Over the course of more than four years, the SBA has denied Creation's application multiple times, rescinded prior "final" decisions, reopened review, and ultimately acknowledged that it has considered all information submitted by Creation during the administrative and litigation process.

5. Despite a complete administrative record and no dispute that Creation paid performers or hosted live performances, the SBA has continued to deny the application based on qualitative and subjective criteria not found in the SVOG statute or any published rules or regulations.

6. The SBA's December 18, 2025 final decision represents the culmination of a serial administrative process in which the agency has repeatedly shifted its reasoning, applied undisclosed eligibility standards, and declined to identify any additional evidence that Creation could submit to demonstrate eligibility.

7. Creation is a live performing arts organization that has produced live entertainment events for more than fifty years. Creation engages professional performers, including actors associated with well-known science fiction film and television productions, to appear in live theatrical and musical performances pursuant to licensing and performance agreements. Creation's events are ticketed and feature live performances presented on a central stage before a live audience.

8. In early 2020, the COVID-19 pandemic and resulting restrictions on live entertainment forced Creation to suspend operations, resulting in a revenue decline of approximately ninety-three percent in 2020 as compared to 2019.

9. Creation was forced to cancel all scheduled events after March 2020 and generated

no revenue from April through December 31, 2020.

10. Creation resumed live operations in early 2021 but continued to suffer severe revenue losses. During the first quarter of 2021, Creation experienced a revenue decline of approximately ninety-seven percent compared to the first quarter of 2019.

11. Creation seeks an SVOG award for the precise purpose Congress enacted the SVOG Program: to assist eligible live entertainment businesses in recovering from the severe economic disruption caused by the pandemic.

12. SVOG funds are limited. Because the SBA has repeatedly denied Creation's application, Creation faces the risk that available funds will be exhausted before the agency corrects its unlawful denial.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it presents federal questions under the Administrative Procedure Act.

14. The SBA's December 18, 2025 decision denying Creation's application constitutes final agency action for which there is no other adequate remedy.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e)(1).

16. This Court has authority to grant the relief requested pursuant to 5 U.S.C. § 706 and 28 U.S.C. §§ 2201 and 2202.

PARTIES

17. Plaintiff Creation Entertainment, Inc. is a corporation engaged in organizing, promoting, and producing live, in-person entertainment events featuring paid performers appearing before live audiences.

18. Creation's events are ticketed and feature live performances presented on a central

stage before a seated audience, with ticket pricing structured based on proximity to the stage.

19. Defendant Small Business Administration is an agency of the federal government responsible for administering the Shuttered Venue Operators Grant Program.

20. Defendant Kelly Loeffler is sued in her official capacity as Administrator of the Small Business Administration and is responsible for the SBA's administration and enforcement of the SVOG Program. Pursuant to Federal Rule of Civil Procedure 25(d), Administrator Loeffler has been substituted for her predecessor, Isabella Casillas Guzman.

BACKGROUND

A. Shuttered Venue Operators Grant Program

21. In December 2020, Congress enacted the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act to provide emergency financial assistance to businesses and organizations disproportionately impacted by the COVID-19 pandemic.

22. As part of that legislation, Congress established the Shuttered Venue Operators Grant Program, codified at 15 U.S.C. § 9009a, to provide grants to eligible entities.

23. Eligible entities under the statute include live performing arts organization operators and live venue operators, as well as promoters, theatrical producers, museum operators, motion picture theatre operators, and talent representatives. 15 U.S.C. § 9009a(a)(1)(A).

24. To qualify for an SVOG award, an entity must satisfy general eligibility criteria set forth in the statute, including that it was fully operational as of February 29, 2020, suffered a statutorily defined reduction in gross earned revenue as compared to 2019, and is not subject to one of the statute's enumerated disqualifying characteristics. 15 U.S.C. § 9009a(a)(1).

25. The statute further defines a "live venue operator or promoter, theatrical producer, or live performing arts organization operator" as an entity that, as a principal business activity, organizes, promotes, produces, manages, or hosts live events by performing artists for which performers are paid pursuant to agreement and for which a ticket or cover charge is imposed. 15 U.S.C. § 9009a(a)(3)(A)(i).

26. Congress also identified additional operational characteristics relevant to live performing arts organization operators, including the presentation of live events before live audiences, the use of defined performance and audience spaces, the engagement of personnel to support live productions, the sale of tickets or imposition of cover charges for performances, and

the marketing of events to the public. 15 U.S.C. § 9009a(a)(1)(A)(iii).

27. Congress directed the SBA to administer the SVOG Program on an expedited basis in light of the severe and prolonged shutdowns experienced by live entertainment businesses nationwide.

28. Consistent with that directive, the SBA implemented the SVOG Program through a streamlined, application-driven process designed to allow for rapid review and award of grants based primarily on applicant submissions.

29. Under that framework, the SBA implemented a simplified, application-driven review process in which applicants were required to answer basic eligibility questions and submit supporting documentation through its online portal to demonstrate compliance with the statutory criteria.

30. Under the statutory scheme enacted by Congress and implemented by the SBA, an applicant that satisfied the objective eligibility criteria set forth in 15 U.S.C. § 9009a was eligible to receive an SVOG award, subject to the availability of appropriated funds.

B. Creation's SVOG Application and the SBA's Denial

31. On April 28, 2021, Creation applied for a SVOG award of $9,699,500.00 through the SBA's online portal.

32. On July 6, 2021, Creation learned from the SBA portal that its application was denied. No reason was given for its denial.

33. On August 17, 2021, Creation submitted an administrative appeal of the denial. At the time of its appeal, Creation had not been informed of the basis for the SBA's decision.

34. On August 25, 2021, the SBA notified Creation that its appeal had been denied, again without providing any explanation for the decision.

35. On May 12, 2022, the SBA rescinded its denial and notified Creation that it would be issuing a new decision.

36. On July 7, 2022, the SBA issued a new decision denying Creation's application on the stated grounds that (i) Creation had failed to provide adequate evidence of qualifying live performances, and (ii) Creation had failed to provide evidence that its performers were paid.

37. Shortly after issuing the July 7, 2022 decision, the SBA invited Creation to submit a request for reconsideration.

38. On July 14, 2022, Creation submitted a reconsideration letter addressing the SBA's stated concerns.

39. On August 2, 2022, the SBA responded, acknowledging that Creation appeared to qualify for an SVOG award but concluding that the supporting evidence had not been timely submitted and therefore would not be considered.

40. On July 7, 2025, the SBA again rescinded its prior decision and agreed to issue a new decision. In doing so, the SBA agreed to consider all information submitted by Creation during the administrative and litigation process.

41. On December 18, 2025, after completing its reconsideration and review of the administrative record, the SBA issued a new decision again denying Creation's application.

42. In its December 18, 2025 decision, the SBA did not dispute that Creation paid performers or that live performances occurred at Creation's events.

43. Instead, the SBA concluded that Creation was ineligible based on its assessment of whether live performances constituted the principal attraction or principal feature of Creation's events.

44. In reaching that conclusion, the SBA relied on qualitative assessments not set forth

in the SVOG statute or in any published regulations or guidance governing the SVOG Program, including subjective judgments concerning the character, prominence, or perceived role of live performances within Creation's events.

45. The decision further fails to address material information in the administrative record that conflicted with the SBA's stated conclusions.

46. The SBA's assessments were not supported by any citation to the administrative record demonstrating that Creation failed to satisfy the statutory eligibility requirements, and instead rested on the agency's unexplained determination that Creation had not submitted sufficient evidence.

47. The SBA did not identify any additional information or evidence that Creation could submit to satisfy that assessment or otherwise demonstrate eligibility.

48. The SBA's Office of Inspector General reported that the SVOG Program was implemented as a streamlined review process intended to provide emergency relief quickly, with agency reviewers trained to rely on applicant submissions and certifications absent evidence of fraud or clear ineligibility.

49. In contrast to that stated review framework, the SBA subjected Creation's application to prolonged review spanning multiple years, repeatedly altered the stated bases for denial, and ultimately applied more rigid and qualitative eligibility assessments that were not disclosed in the statute, regulations, or published program guidance.

50. The SBA's December 18, 2025 decision constitutes final agency action with respect to Creation's SVOG application.

CLAIMS FOR RELIEF

COUNT I - ARBITRARY AND CAPRICIOUS AGENCY ACTION

51. Creation realleges and incorporates by reference each of the preceding paragraphs and allegations.

52. The Administrative Procedure Act requires an agency to examine the relevant data, consider the information before it, and articulate a rational connection between the facts found and the decision made.

53. The SBA's December 18, 2025 decision denying Creation's application for a SVOG award was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

54. In denying Creation's application, the SBA relied on qualitative assessments not set forth in the SVOG statute or in any published regulations or guidance governing the SVOG Program.

55. The SBA failed to identify any citation to the administrative record demonstrating that Creation failed to satisfy the statutory eligibility requirements for an SVOG award.

56. The SBA did not dispute that Creation paid performers or that live performances occurred at Creation's events, yet nevertheless concluded that Creation was ineligible without providing a reasoned explanation grounded in the statutory criteria.

57. The SBA's decision reflects a failure to apply consistent standards, a failure to provide a reasoned explanation for its conclusions, and a decision-making process that cannot be sustained under the APA.

58. The SBA's decision is further arbitrary and capricious because the agency applied evaluative criteria to Creation's application that materially departed from the review framework

the SBA implemented for the SVOG Program and documented through its Office of Inspector General, without notice to applicants or explanation in the agency's final decision.

59. The SBA's decision is also arbitrary and capricious because it is unsupported by the administrative record. The agency failed to identify evidence demonstrating that Creation did not satisfy the statutory eligibility requirements, and its conclusions run counter to the evidence before the agency.

COUNT II – UNLAWFUL WITHHOLDING OF AGENCY ACTION

60. Creation realleges and incorporates by reference each of the preceding paragraphs and allegations.

61. The SVOG statute requires the SBA to award grants to applicants that satisfy the statutory eligibility criteria, subject to the availability of appropriated funds.

62. Creation satisfied the statutory eligibility requirements for an SVOG award and submitted information demonstrating its eligibility during the administrative review process.

63. By repeatedly denying Creation's application without identifying any additional information or evidence that could demonstrate eligibility, the SBA has unlawfully withheld agency action required by law.

64. The SBA's December 18, 2025 decision represents final agency action that leaves Creation without any further administrative avenue to obtain the relief Congress intended eligible applicants to receive.

PRAYER FOR RELIEF

For the foregoing reasons, Creation respectfully requests that this Court:

65. Declare unlawful and set aside Defendants' denial of Creation's Shuttered Venue Operators Grant application pursuant to 5 U.S.C. § 706;

66. Order Defendants to award Creation a Shuttered Venues Operators Grant in the amount of $9,699,500.00;

67. Order Defendants to award Creation any supplemental Shuttered Venue Operators Grant for which Creation is statutorily eligible, not to exceed the maximum combined SVOG award of $10,000,000.00;

68. In the alternative, remand the matter to the SBA for further proceedings consistent with this Court's order and applicable law;

69. Grant equitable relief necessary to preserve Creation's ability to receive the relief ordered by the Court including injunctive relief preventing the dissipation of appropriated SVOG funds during the pendency of this action;

70. Award Plaintiff its costs and reasonable attorney fees to the extent permitted by law; and

71. Grant such other and further relief as the Court deems just and proper.

Dated: January 15, 2026

Respectfully submitted,

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