



American Federation of Musicians of the United States and Canada

AFL-CIO/CLC#Affiliated#

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RESIDUALS FOR HIGH BUDGET SVOD PROGRAMS

AFM HANDBOOK

May 1, 2024 – April 30, 2027

This handbook is intended to be a public guide to the policies and procedures that govern the AFM's administration of the residual compensation structure bargained into the AFM Basic Television Motion Picture Agreement's Side Letter Re: Productions Made for New Media for High Budget SVOD Programs in 2024.

Overview

In the 2024 Agreements between the American Federation of Musicians of the United States and Canada ("AFM") and the Alliance of Motion Picture and Television Producers ("AMPTP"), the parties agreed to a new structure governing the payment of residuals for High Budget SVOD Programs.

While similar to structures already bargained by other unions and guilds, such as SAG-AFTRA and the Writers' Guild of America, there are significant deviations from those structures as well. That, combined with the fact that the residual is so new in the first place, calls for the development of this handbook, such that employers, producers, payroll companies, AFM Locals, and working musicians may all understand how the residual works, how it is calculated, how it is invoiced, how it is allocated, and how it is distributed.

The Residual, In Concept

In concept, the residual is simple: When an eligible Program remains available on a Subscription Video-on-Demand Consumer Pay Platform beyond an initial free-exhibition window, a residual payment obligation is triggered to Covered Musicians who performed services in the production of that Program. Subsequent payments are then made annually if the Program remains available. The AFM will invoice the Producer for this residual on an annual basis.

What is an “Eligible Program”?

To be eligible for the residual, a Program must first be defined as a “High Budget SVOD Program,” a term which was originally defined in the 2020 Agreements. These programs are those “original and derivative dramatic new media productions made for initial exhibition on a subscription video-on-demand consumer pay platform which meet the following “high budget” criteria:

Length of Program as Initially Exhibited*

20-35 Minutes

36-65 Minutes

66 Minutes or More

* Programs less than 20 minutes are not considered “high budget” for the purpose of this Side Letter, regardless of their budgets.”¹

“High Budget” Threshold

\$1,300,000 and above

\$2,500,000 and above

\$3,000,000 and above

All such High Budget SVOD Programs are eligible for the residual, provided that “the initial date of recording music sound track is on or after June 1, 2024,” which was 60 days after the business day on which the AMPTP received notice of ratification of the 2024 Agreements from the AFM, for a one-time Program (as in a feature length motion picture), a pilot or the first episode of a season for a High Budget SVOD series, or a multi-part program.

Any High Budget SVOD Program that does not pass that test shall continue to be governed by the residual terms and conditions in the 2020 Agreement.²

What is the “Initial Free-Exhibition Window”?

The Producer has the right to use a Program, episode of a series, or part of a multi-part program on “all subscription video-on-demand consumer pay platforms worldwide for a **twenty-six (26) consecutive week period**, commencing with the first day that the ... program, episode, or part is made available” **without payment of any residual.**³

How is the payment obligation calculated?

Once a one-time Program, episode of a series, or part of a multi-part program has been exhibited beyond the 26-week window, the Producer must make a residual payment.⁴

Like the structure of this residual payment to other unions and guilds, the residual is calculated by determining a “Base” payment, subject to an “Applicable Cap,” that is then modified by a sliding scale payment depending on the “Exhibition Year” being triggered and by the “Subscriber Factor” for the platform on which the Program is being exhibited. Covered Musicians shall also receive a health and welfare contribution for each Exhibition Year. Discussion of this calculation starts on the following page.

¹ Side Letter Re: Productions Made for New Media (hereafter “MFNM Side Letter”), Paragraph F. (2)

² MFNM Side Letter, Paragraph G. (2) (a) (i), Page 6 of the 2024 MOU

³ MFNM Side Letter, Paragraph G. (2) (a) (ii), Pages 6-7 of the 2024 MOU

⁴ MFNM Side Letter, Paragraph G. (2) (a) (iii), Pages 7-8 of the 2024 MOU

Report Form Collection

Procedure

For the AFM to compile invoices for these residuals, the Federation needs a complete accounting of all work done by Covered Musicians for an eligible Program. However, as a matter of course, initial session paperwork (B-7 Report Forms) for scoring, sideling, and music preparation is filed at the Local, not the International Office. This means it is incumbent on Locals doing the processing of this paperwork to forward copies of the Report Forms to the Federation as soon as they have been processed.

As a failsafe, the Federation also works with payroll companies, Producers, and the Film Musicians' Secondary Markets Fund to ensure that the paperwork is complete before invoices are generated.

As "Step Zero" in the process, the Federation will send the Producer, with the payroll company on copy, a list of the reports it has in its possession prior to doing the below residual calculations. Any missing paperwork must be rectified before calculations take place; since the residual is split by all Musicians who performed covered work for a program, late arriving paperwork would alter the calculations, perhaps drastically.

Residual Base Calculation and the Pool Grid

Residual Base

When a Covered Musician works on an episode of an eligible Program, a base payment of \$350 is generated into a pool of money tied to that specific episode, called the "Per Episode Residual Base." If the eligible Program is a one-time Program, then there is only one pool of money for the Program.⁵

There are some caveats to this, however. A Musician cannot have payment generated into the same episode pool more than once, nor can that Musician generate more than one payment into separate pools from the same recording session.⁶

For example, if a Sideline Musician films a scene for episode one of a season for an eligible Program, then later performs on a recording session in which cues are recorded for episodes one and two of that season, the sideling session generates a \$350 payment into the episode pool for episode one, but no additional payment for the episode one pool is generated by the recording session. However, since the Musician also recorded for episode two in that session, a \$350 payment is generated for that episode's pool.

The above caveats only apply to sessions for the recording of music soundtrack; they do not apply to music preparation personnel, who should be credited for \$350 for all episodes for which they performed covered services.

In producing invoices for billing, these calculations are displayed in a grid. To work around the caveats, all sessions for recording and sideling are denoted with a letter of the alphabet. In the above example, if these were the only sessions covered, the sideling session would be Session A and the recording session would be Session B.

In the grid, the application of a \$350 payment into an episode's pool is marked by the Session Letter which generated it. Again, from the example above, episode one would be marked for that Musician with an A and episode two would be marked with a B. This way, **no letter can appear more than once in the same Musician's row and no individual cell can contain more than one letter.**

⁵ MFNM Side Letter, Paragraph G. (2) (a) (iii) (A), Pages 7-8 of the 2024 MOU

⁶ MFNM Side Letter, Paragraph G. (2) (a) (iii) (A) (1), Page 8 of the 2024 MOU

Because music preparation personnel are not hindered by the caveats, their work is denoted using the original invoice numbers of their services.

Applicable Cap

The total residual base for an episode of a series, part of a multi-part program or for a one-time Program is subject to a cap, which depends on the length of that episode, part, or Program:

<u>Length</u>	<u>Applicable Cap</u>
20-35 minutes	\$13,500
36-65 minutes	\$25,000
66-95 minutes	\$37,500
96 minutes or more	\$50,000

Further, the Applicable Cap for a one-time Program that is 85 minutes or longer, budgeted at \$30 million or more, and made for a platform with more than 20 million subscribers in the United States and Canada shall be \$60,000.

If such a one-time Program is 96 minutes or longer, budgeted at \$45 million or more, and made for a platform with more than 20 million subscribers in the United States and Canada, the Applicable Cap shall be \$80,000.⁷

Season Residual Base

Even though the initial calculations are done per episode, the residual for a series is paid out for a season on the aggregate, called the “Season Residual Base.” This total is simply the sum of the Per Episode Residual Bases. To do this, the grid takes all the cells in which data (a Session Letter or Music Prep Invoice Number) appears and allocates \$350 to the base for each. The calculation is first done per episode, to produce a single episode total, then each episode’s total is aggregated to form the Season Residual Base. This is the pool of money that is then split each year by the Covered Musicians who worked on the season.⁸

The calculation of this split is covered below under the heading “Allocation of Distribution.”

Sliding Scale Factor for Exhibition Year

Once the initial free-streaming window has ended and an eligible Program continues to be made available, the first Exhibition Year is triggered. Note that this would be on a different date for each individual episode of a series. Since the residual needs to be based on the Season Residual Base, invoicing is done only after all episodes in the season have reached the first Exhibition Year.

As covered on page 2, the actual residual takes the Season Residual Base and applies two modifications. The first is the sliding scale factor for Exhibition Year. As content continues to be available on streaming platforms in subsequent years, each following year’s payout is paid at a sliding scale against the original amount. That sliding scale is as follows:

⁷ MFNM Side Letter, Paragraph G. (2) (a) (iii) (A) (3), Page 9 of the 2024 MOU

⁸ MFNM Side Letter, Paragraph G. (2) (a) (iii) (A), Page 7 of the 2024 MOU

Exhibition Year	Factor
Year 1	45%
Year 2	40%
Year 3	35%
Year 4	25%
Year 5	20%
Year 6	15%
Years 7-9	10% each
Years 10-12	5% each
Each year onward	1.5% each ⁹

Subscriber Factor

The total is then modified by a second factor, the Subscriber Factor, which depends on the number of subscribers within the United States and Canada the SVOD platform has.

Tier	Subscribers	Factor
1	Under 1 million	20%*
2	1 million to 5 million	40%
3	5 million to 20 million	65%
4	20 million to 45 million	100%
5	Over 45 million	150%

* In the case of an eligible Program produced for initial exhibition on a Tier 1 platform, no residual is owed for the first Exhibition Year.¹⁰

For example, if a Program's grid has yielded a calculation of a Season Residual Base of \$35,000 (which would be equivalent to 100 \$350 payment allocations) and that Program was first made available on a Tier 5 platform with over 45 million subscribers, the total residual payment owed for the first Exhibition Year would be:

\$35,000 Season Residual Base x 45% Exhibition Year Factor x 150% Subscriber Factor = \$23,625.

Allocation of Distribution and the Unit Grid

For a One-Time Program

The allocation of the pool for a one-time Program is straightforward: all Covered Musicians who performed covered work for the Program shall be assigned one (1) unit, except that any Musician who performed the services of Orchestrator, Contractor, or were paid at the electronic multi-tracking rate shall be assigned two (2) units.

A Musician's individual share of the total residual owed is then calculated by dividing the number of units assigned to that Musician by the total number of units assigned to all Covered Musicians for the Program.¹¹

⁹ MFNM Side Letter, Paragraph G. (2) (a) (iii) (B), Page 10 of the 2024 MOU

¹⁰ MFNM Side Letter, Paragraph G. (2) (a) (iii) (C), Page 11 of the 2024 MOU

¹¹ MFNM Side Letter, Paragraph G. (2) (a) (iii) (E) (1), Page 11 of the 2024 MOU

For a Series or Multi-Part Program

For a season or series, the unit assignments work the same way, except that each Musician is assigned either one (1) or two (2) units for each episode or part **on which they were employed**. The individual share is calculated in the same way.

The specification that it is for each episode on which they were employed is highlighted because this is not the same as the number of episodes which generated money into the pool in the first place.¹²

If a Musician scores ten (10) episodes of a season of a series over five (5) recording sessions, the pool of money would only generate five \$350 payments, but the Musician is still allocated ten (10) units, not five (5). When invoicing, these calculations are done in a separate grid.

Taking our example from the last page, let's say a season which contains 10 episodes has a total payout of \$23,625 in the first year. Let us further say that the total of employed Musicians generates a total of 220 units. (Even though only 100 \$350 payments were generated, this may still be the case if multiple episodes were scored from the same recording session.)

In this example, an orchestrator who worked on all 10 episodes would have an individual share of 20 units. That would entitle the orchestrator to a residual equal to 20/220 of the total pool of money, or 9.09% of the \$23,625. This orchestrator's residual for the first year would be \$2,147.73.

In addition to this wage, each Musician is also entitled to a health and welfare contribution on the basis of twelve (12) hours worked (currently \$48.54) for each Exhibition Year. This amount is the same contribution paid to a scoring musician at an individual session. There is no pension contribution required.¹³

Invoicing

Once the obligation to pay a residual for a given Program in a given Exhibition Year has been triggered and once the allocation for that Exhibition Year has been determined, the AFM will send an invoice to the Producer for payment.

To "show our work," the invoice sent to a Producer comes in six parts:

1. A cover sheet, outlining the payments required by the invoice.
2. A listing of the individual episodes covered by the invoice, including their date of release and dates in which their Exhibition Year is triggered. Again, since series are billed by the season in the aggregate, an invoice will not be sent until all episodes have had their Exhibition Year triggered.
3. The invoice itself, outlining the payments owed to each Covered Musician.
4. Documentation of the session reports included in generating the invoice, including the application of Session Letters, as covered on page 3 above.
5. The grid of Session Letters (the "Pool Grid") used to determine the Per Episode Residual Base and Season Residual Base.
6. The grid of unit calculations (the "Unit Grid") used to determine each individual Musician's allocation of the Season Residual Base.

The MFNM Side Letter contains a listing of information required to be included in the invoice; all this information is included somewhere in the paperwork above, largely within the invoice itself.¹⁴

¹² MFNM Side Letter, Paragraph G. (2) (a) (iii) (E) (1), Page 12 of the 2024 MOU

¹³ MFNM Side Letter, Paragraph G. (2) (a) (iii) (D), Page 11 of the 2024 MOU

¹⁴ MFNM Side Letter, Paragraph G. (2) (a) (iii) (E) (2), Pages 12-13 of the 2024 MOU

Payout Procedures

Due Date

Payment for each Exhibition Year is due either sixty (60) days after the Federation has submitted the invoice to the Producer, or sixty (60) days after the end of the calendar quarter in which the Exhibition Year was triggered (using the last episode in the case of a series, since the season must be billed in the aggregate), whichever is later.¹⁵

Payment

At the Producer's election, the Producer may either pay the Musicians via direct deposit or by forwarding the payment in a lump-sum to the Federation. In either case, it is the Producer's obligation to pay applicable employer payroll taxes.¹⁶

Like the original work for the original sessions, the residual is subject to Work Dues at the Local rate prescribed for scale wage payments under the AFM Basic Television Motion Picture Agreement.

Performance-Metric Bonus

If an eligible Program triggers a "Performance-Metric Bonus," (where the metric is 20% or higher), with such metric being defined as the ratio of total domestic views divided by total domestic subscribers, the Producer shall pay a bonus of an additional 50% of the applicable residual. This metric is tracked over a measuring period defined as the first ninety (90) days after each episode of a series is made available.¹⁷

Payment of the bonus is due sixty (60) days after the end of the calendar quarter in which the 90-day measuring period for domestic views is complete.¹⁸

¹⁵ MFNM Side Letter, Paragraph G. (2) (a) (iii) (E) (3), Page 13 of the 2024 MOU

¹⁶ MFNM Side Letter, Paragraph G. (2) (a) (iii) (E) (4), Page 14 of the 2024 MOU

¹⁷ MFNM Side Letter, Paragraph G. (2) (d), Pages 15-19 of the 2024 MOU

¹⁸ MFNM Side Letter, Paragraph G. (2) (d) (iv), Page 17 of the 2024 MOU