

## Chapter 15: New York City 'Made In New York Marketing Credit Program'

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### § 15-01 Purpose and general description.

(a) The "Made in New York Marketing Credit Program" ("the Program"), established and administered by the Mayor's Office of Media and Entertainment ("MOME"), offers "Made in New York" film and television productions a number of opportunities to promote their project in major media markets that are City-Owned assets or are privately owned and operated media outlets with which the City has established relationships. Qualified "Made in New York" productions that apply and are approved for this Program will be provided media outlets including, but not limited to, bus shelters, subway cars, and broadcasts on New York City Media group television stations. The amount of media advertising offered will be determined by certain production costs as defined in this rule. In exchange for the marketing credits, recipients will be required to make a monetary contribution to a New York City cultural institution approved by the New York City Department of Cultural Affairs or a non-profit organization with proposals for program funding on a Participatory Budgeting New York City ballot. The "Made in NY" logo must be included in all media advertising.

(b) The purpose of this rule is to outline the application process for the Program. These procedures govern the allocation of marketing credits, including the application process, standards for assessing evaluations, and other provisions necessary and appropriate for fulfilling the purposes of the Program.

(c) In order to receive the marketing credit, a marketing credit recipient must donate a Community Benefit to a New York City cultural institution or non-profit organization within thirty (30) days of completion of the authorized applicant's media campaign.

(Amended City Record 3/30/2018, eff. 4/29/2018)

### § 15-02 Definitions.

As used in this rule, the following terms have the following meanings:

(a) **Application form.** "Application form" means the document created by the Office that is submitted by an authorized applicant to receive "Made in New York Marketing Credit Program" credit after it has completed production of a qualified film. The application form will include a list of non-profit cultural institutions and community organizations approved by the New York City Department of Cultural Affairs and Participatory Budgeting New York City, respectively, as eligible for Program donations.

(b) **Authorized applicant.** "Authorized applicant" means a qualified film/television production and/or distribution company that is distributing a qualified film.

(c) **Certificate of marketing credit.** "Certificate of marketing credit" means a certificate issued by the Office which establishes the amount of media assets for which the approved applicant has qualified, based on the Office's analysis according to the provisions of this chapter. The certificate will include such information as name and address of the authorized applicant; name of the qualified film in connection with which the credit applies; the amount of media assets to be received by the approved applicant; and a disclaimer stating that actual receipt of the marketing credit is subject to availability of media assets for the Program.

(d) **Completion of the application.** "Completion of the application" means that all questions on an application have been fully addressed by an authorized applicant and that any additional supporting documents requested by the Office have been provided in a manner sufficient to allow the Office to properly evaluate the application.

(e) **Commissioner.** "Commissioner" means the Commissioner of the New York City Office of Media and Entertainment.

(f) **Community Benefit.** "Community Benefit" means a monetary contribution to a New York City cultural institution or community organization of (1) a minimum of \$10,000 (ten thousand dollars) for any qualified film with qualified production costs equal to \$10,000,000 (ten million dollars) or more, or (2) 0.1% (one-tenth per cent) of the qualified production costs for any qualified film having qualified production costs less than \$10,000,000 (ten million dollars).

(g) **Effective date.** "Effective date" means the date of the first usage of the marketing credit, i.e., when media assets are first utilized. The effective date is determined by the authorized applicant based on media asset availability provided by

the Office.

- (h) **End credit requirements.** "End credit requirements" means those acknowledgements that an authorized applicant agrees to include in each qualified film as a condition for participation in the Program. Each qualified film must include in the end credits: (1) the "Made in NY" logo; and (2) the phrase "The 'Made in NY' logo is a trademark of the City of New York and is used with the City's permission."
- (i) **Feature-length film.** "Feature-length film" means a production intended for commercial distribution to a motion picture theater or directly to the public that is sixty (60) minutes or longer in length.
- (j) **Marketing credit.** "Marketing credit" means an allocation of media assets available free of charge to a qualified film.
- (k) **Media asset.** "Media asset" means available advertising media including, but not limited to, bus shelters, subway cars, taxi TV, and broadcasts on New York City Media group television stations that the Office makes available for this purpose.
- (l) **New York City cultural institution or community organization.** "New York City cultural institution or non-profit community organization" means an Internal Revenue Code § 501(c)(3) non-profit organization identified by the New York City Department of Cultural Affairs or through Participatory Budgeting New York City as an organization which supports and strengthens New York City's creative community or neighborhoods.
- (m) **Office or MOME.** "Office" or "MOME" means the New York City Mayor's Office of Media and Entertainment.
- (n) **Priority number.** "Priority number" means the number assigned by the Office to determine allocation of the marketing credit. "Priority number" will be based on the date an authorized applicant has submitted a completed application; provided, however, that in the event that there is more than one application with the same date, priority will be given to the authorized applicant having the earliest anticipated date of release of the qualified film.
- (o) **Production costs.** "Production costs" means any costs for tangible property used and services performed directly and predominantly (including pre-production and post-production) in the production of a qualified film. "Production costs" do not include (1) costs for a story, script or scenario to be used for a qualified film or (2) wages, salaries or other compensation for writers, directors (including music directors), producers, actors and performers (other than background actors or other performers with no scripted lines). "Production costs" generally include below-the-line costs, as defined by industry standards, including but not limited to technical and crew production costs, such as expenditures for film production facilities props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing and meals.
- (p) **Qualified film.** "Qualified film" means a feature-length film, television film, television special, and/or television series, regardless of the medium by means of which it is created or conveyed, of which: (1) 75% of its total shooting days take place in New York City, or (2) 75% of its production costs are "qualified production costs." A "qualified film" must have production costs of at least \$400,000 and must have completed production no earlier than twenty-four (24) months prior to the date of application to the Program. A "qualified film", if distributed exclusively over the Internet, must be distributed through a paid subscription-based streaming service or advertiser supported streaming service. "Qualified film" does not include a production for which records are required under § 2257 of Title 18, United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).
- (q) **Qualified film/television production and or distribution company.** "Qualified film/television production and or distribution company" means a corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the distribution of a qualified film, controls the qualified film during release, and is responsible for payment of the cultural component.
- (r) **Qualified production costs.** "Qualified production costs" means the below-the-line production costs only to the extent such costs are incurred directly in New York City and are attributable to the use of tangible property or the performance of services within New York City directly and predominantly in the production (including pre-production and post-production) of a qualified film.
- (s) **Release of a qualified film.** "Release of a qualified film" means that the post-production work in connection with a qualified film has been finished and a cut negative, video master or other final locked form of the qualified film is ready for broadcast or delivery to a distributor.
- (t) **Television film.** "Television film", also known as "movie-of-the-week," "MOW," "made for television movie," or "mini-series," means a production intended for distribution on television, whether free or through a subscription-based service, or on the Internet through a subscription-based service, that has a running time of at least sixty (60) minutes in length (exclusive of commercial advertisement and interstitial programming).

(u) **Television special.** "Television special" means a production intended for distribution on television, whether free or through a subscription-based service, or on the Internet through a subscription-based service, that has a running time of at least twenty (20) minutes in length (exclusive of commercial advertisement and interstitial programming). "Television special" includes, but is not limited to, an awards show and a telethon.

(v) **Television series.** "Television series" means a regularly occurring production on television, whether free or through a subscription-based service, or on the Internet through a subscription-based service, that has a running time of at least twenty (20) minutes in length per episode (exclusive of commercial advertisement and interstitial programming). "Television series" includes, but is not limited to, late-night variety series, daily news series, situation comedies, single camera comedies, reality series, game shows, morning news and newsmagazine shows.

(Amended City Record 3/30/2018, eff. 4/29/2018)

### **§ 15-03 Application process.**

For the purposes of this chapter, only an authorized applicant will be eligible to apply for the New York City Made in New York Marketing Credit Program.

(a) The application form required for the Program will be available on the Office's website, and must be completed and submitted by an authorized applicant to the Office through its U.S. postal mail or email address as set forth in the application form. In addition, applicants may submit such application through private delivery services including, but not limited to, Federal Express, United Postal Service (UPS) or private messenger. In addition to providing contact information including its name, postal address, electronic (email) address and fax number, the applicant must also submit information about total production costs at film production facilities in and outside of New York; the total number of shooting days in and outside of New York; and any other information the Office determines is necessary to properly evaluate the application.

(b) An authorized applicant may submit an application for a qualified film that is a television series no more than once a year.

(c) The authorized applicant must include information about the date that the qualified film is set to make its debut in theatres, on television, online, on DVD or any and all media. The application must be received at least sixty (60) days prior to the release date.

(d) Applications will be reviewed by the Office in the order they are received.

(e) The Office will approve or disapprove the application based upon criteria outlined in 43 RCNY § 15-04(a).

(f) The Office will advise the authorized applicant about whether its request has been approved, by U.S. postal service or electronic mail, no later than twenty (20) business days from receipt of the application. The notification will inform the applicant of such approval or disapproval. If approved, the notification will inform the applicant the amount and type of media assets available for the promotional media campaign during the dates requested on the application.

(Amended City Record 3/30/2018, eff. 4/29/2018)

### **§ 15-04 Evaluation of applications.**

(a) In order to be approved for marketing credit, each of the following requirements must be satisfied:

(1) the application is substantially complete;

(2) the authorized applicant is a producer and/or distributor with a qualified film or television series;

(3) the authorized applicant's qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services in the production of a qualified film;

(4) the authorized applicant has identified the cultural institution or community organization to which it will make a payment as part of the Program; and

(5) the authorized applicant intends to comply with the end credit requirements set forth in 43 RCNY § 15-02(h).

(b) In the event that all of the criteria outlined in this section are not met, or in the event that the Office concludes that the authorized applicant has knowingly submitted false or misleading information, the Office will disapprove the application.

(Amended City Record 3/30/2018, eff. 4/29/2018)

### **§ 15-05 Allocation of New York City Made in New York marketing credit.**

(a) When an application has been approved the Office will allocate the credit in order of priority based upon submission date of an application and subject to the availability of media assets. In the event that an marketing credit recipient is unable to use the media assets after the credit has been allocated, such recipient will lose its "first come, first served" status and will be accommodated subject to availability without guarantee of reallocation.

(b) The Office will allocate the credit based on a project's qualified production costs. The amount of qualified production costs will determine which of the following three tiers an applicant would qualify for:

Tier 1: Qualified production costs of \$10 million (ten million dollars) or more

Tier 2: Qualified production costs of at least \$5 million (five million dollars) and less than \$10 million (ten million dollars)

Tier 3: Qualified production costs of at least \$400,000 (four hundred thousand dollars) and less than \$5 million (five million dollars)

(c) Depending on the availability of media assets, the Office will determine the amount and type of media assets assigned to each tier, which will be allocated to marketing credit recipients according to their tier category.

(d) Productions that have qualified production costs of \$10 million or more, or are produced (i) by a company of which more than 5 percent of the beneficial ownership is owned directly or indirectly by a publicly traded entity, or (ii) by a company having more than \$35 million in annual revenue, must pay for the costs, if any, of printing materials for distribution through the media assets assigned under the credit.

(e) If a marketing credit recipient does not pay the Community Benefit within thirty (30) days of the completion of such recipient's media campaign, such recipient may be required to make a payment to MOME in an amount equivalent to 100% of the value of the media assets received, as determined by MOME.

(Amended City Record 3/30/2018, eff. 4/29/2018)

### **§ 15-06 Appeal process.**

(a) If an authorized applicant's application is disapproved by the Office, or if a marketing credit recipient disagrees with the amount of the media assets granted by the Office, each such person or entity may appeal such determination.

(b) In the case of an appeal from a disapproval of an application, an authorized applicant can request an appeal by sending a letter to the Mayor's Office of Media and Entertainment, Attn: Commissioner, to the address and by the means specified in the application form, within thirty (30) days from the date of the denial letter issued by the Office.

(c) In the case of an appeal from a determination of the amount of media assets, a marketing credit recipient can request an appeal by sending a letter to the Commissioner as provided in Subdivision (b), within thirty (30) days from the date of issuance of the certificate of marketing credit.

(d) If an authorized applicant or a marketing credit recipient fails to request an appeal within thirty (30) days of the Office's denial decision and/or allocated amount of media assets, such decision will be deemed final.

(e) Upon receipt of a timely letter of appeal, the Commissioner will appoint an appeal officer within the Office to review the matter. The appeal officer may reverse, affirm or modify the original determination and provide a written explanation of his or her finding in a report to the Commissioner. The Commissioner or his or her designee must issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appealing person or entity within ten (10) days after the date the Commissioner or his or her designee renders the final order.

(Amended City Record 3/30/2018, eff. 4/29/2018)

### **§ 15-07 Final report.**

As part of the community benefit component of the Program, within thirty (30) days after the completion of a marketing credit recipient's media campaign, such recipient must submit to the Office by U.S. mail, email or fax, proof of payment to the identified New York City cultural institution, in the form of a cancelled check or letter of acknowledgment. Such recipients who have not satisfied this component of the Program will be required to make a payment to MOME in an amount equivalent to 100% of the value of the media assets received, as determined by MOME.

(Amended City Record 3/30/2018, eff. 4/29/2018)

**§ 15-08 Record retention.**

Each marketing credit recipient must maintain records, in paper or electronic form, of any qualified productions costs used to calculate the media assets received through this Program for a minimum of three years from the date of filing of the tax return applicable to the time period for which such recipient claims the marketing credit. The Office has the right to request such records upon reasonable notice.

(Amended City Record 3/30/2018, eff. 4/29/2018)