

CHEROKEE FILM COMMISSION INCENTIVE ADMINISTRATIVE RULES

AUTHORITY:

Cherokee Film Commission

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Definitions

"Annual Program Cap" means the maximum amount of funds available to be as incentives under the Cherokee Nation Film Incentive Program during the current fiscal year.

"Application Estimate" means the estimated QPEs and resulting estimated rebate submitted to CFC prior to the start of principal photography.

"Cherokee Nation" means the 7,000 square miles in Northeast of Oklahoma that make the Cherokee Nation Reservation.

"Cherokee Film Commission" or **"CFC"** means the department of Cherokee Nation Cultural and Economic Development, LLC, that is charged with administering and overseeing the Cherokee Nation Film Incentive Program.

"Cherokee Nation resident" means any person who is a resident within the boundaries of the Cherokee Nation at the time of hire.

"Cherokee Nation Citizen" means an enrolled member of the Cherokee Nation tribe regardless of place of residence.

"Committee" means the CFC Film Incentive Selection Committee comprised of select executives of the Cherokee Nation Cultural and Economic Development, LLC.

"Conditional Pre-Qualification" or **"Conditionally Pre-Qualified"** means the status or act of approval being granted to a Production's Initial Application by CFC.

“Earned Rebate Claim” means the amount of the rebate approved to be paid upon acceptance and approval of the Final Application and Rebate Claim.

“Eligible Crew” means those employees of a Production Company whose wages are identified in the Summary as being eligible for rebate.

“Initial Incentive Application” means the online Initial Incentive Application, found on the CFC website, to be completed for consideration of the eligibility of the Project. If the application is approved by CFC, the film is "Conditionally Pre-Qualified".

“Film” is the term that shall reflect and include any and all methods of recording images for distribution intended for Feature Films, Scripted Television, Reality Television, Pilots, Animation, Music Videos, and Documentary projects.

“Final Application and Rebate Claim” means the final application for CFC to award an Earned Rebate Claim and the formal request for CFC to issue a Rebate under the Program.

“Office” or **“CFC”** means the Cherokee Film Commission or its successor entity. "

“Oklahoma resident” means a person who is a resident under the Oklahoma Tax Code at the time of hire.

“Oklahoma vendor” means a seller, renter or lessor of goods or services who charges Oklahoma sales tax under an Oklahoma Sales Tax Permit on taxable transactions and is either (1) Oklahoma-Based or (2) a foreign business entity with an active registration to do business in Oklahoma and an Oklahoma physical location for transacting business.

“Payroll Burden” means employer-paid taxes (e.g. FICA, Medicare and Unemployment Insurance) and payroll-associated payments made on a specific employee's behalf by law or collective labor bargaining agreement (e.g. union dues and union fringes) . Payroll Burden includes the employer-paid portion of health insurance for an employee, if such insurance was paid to an Oklahoma-Based insurance company or obtained through a licensed Oklahoma insurance broker.

“Per Diem” means fixed payments made to Crew and above-the-line personnel regardless of residency in lieu of reimbursement for lodging/housing, meals and incidentals, up to a maximum of the Per Diem Rate allowed for the applicable location and date in the U.S. General Services Administration Per Diem Rates. This does not include car and travel stipends, as these expenses are ineligible for rebate. Per Diem payments are only authorized for “boots on the ground” expenses inside the Cherokee Nation that are not covered as expenses that are paid for by the production company (ie: lodging and hotels). Per Diem expenses are rebated at 20% of actual expenses.

“Potential Rebate Claim” means the maximum possible rebate available to a Production as calculated by the CFC Incentive Selection Committee upon approval of the Initial Application and communicated to production company in their prequalification letter.

“Pre-Production” Pre-production is the planning process and execution of tasks that must take place before production begins.

"Principal photography" means the filming of significant components of a Film which involve principal cast or, in the case of Films that do not involve live actors, the beginning of substantive work on the animation or graphics that form the Film's primary visual story.

"Production" means the physical process of making a Film.

"Production Budget" means the total budgeted cost of the Production.

"Production Company" means a person or company who produces film for exhibition in theaters, on television or elsewhere. Initial and Final Applications are filed by the Production Company and, unless previously agreed to in writing by the CFC, payment of approved Rebate Claims is made to the Production Company upon final approval by CFC.

"Program" means the Cherokee Nation Film Incentive Program.

"Project filmed in this state" means that at least one of the film's principal photography production days have occurred in Oklahoma. A project that does not meet this threshold is a "project filmed outside this state".

"Project filmed in Cherokee Nation" means that at least one of the film's principal photography production days have occurred within the boundaries of the Cherokee Nation. A project that does not meet this threshold is a "project filmed outside Cherokee Nation".

"Proof of funding" means demonstration in a form acceptable to the CFC that a Production has or will have funding in place to cover the Production Budget. Acceptable forms approved by the CFC may include a letter of intent from a recognized industry financier, written verification of dedicated deposits in a recognized financial institution or a letter of credit from an acceptable guarantor.

"Qualified production expenditure amount" or "QPE" means a qualified production expenditure which meets the criteria as set forth in these rules.

"Rebate Claim" means the formal request for CFC to issue a Rebate under the Program.

"Rebate Schedule" means a schedule of dates, deadlines, and submittals the Production is to achieve to submit the Final Application and have its Rebate Claim approved.

"Salaries" or "Wages" means those salaries and wages designated as Oklahoma earnings on payroll records along with the associated Payroll Burden, Per Diem and Housing Allowance.

"Scouting expenses" means costs incurred to identify locations, crew, facilities, services and equipment to be used in the production.

"Series season" means a group of episodes of the same Eligible Television Series which are either released simultaneously or at regular intervals to be aired within a certain time frame through traditional television content providers or through a streaming service. "Start of pre-production" means the opening of an Oklahoma office for the production, or incurring QPE other than Scouting Expenses, or otherwise commencing business on the Production in Oklahoma other than scouting.

“Summary” means the Cherokee Nation Film Incentive Summary (attached hereto and incorporated herein).

“Television series” means a group of two or more episodes of a production with a common series title and general theme intended to be released for viewing through a traditional television content provider or through a streaming service.

Program criteria, qualifications, rules and procedures

(a) Applying for Rebate Eligibility:

(1) Production Company shall submit the online Initial Application, found on the CFC website for consideration of the Production Company’s Project for rebate eligibility. The completed Initial Incentive Application with an estimated rebate request will be considered the Initial Application.

(2) Unless otherwise authorized by CFC, Initial Applications submitted for projects filmed inside the Cherokee Nation may be submitted no earlier than one (1) year prior to the start of Principal Photography but no later than forty-five (45) days prior to the start of Principal Photography. If eligibility of a project was not available or known prior to the beginning of Principal Photography a Production Company may submit an Initial Application within ten

(10) days after the eligibility of the project is known with a detailed explanation of the reason for not submitting the application in accordance with the aforementioned deadlines. CFC may within its sole discretion reject an Initial Application for the sole purpose of failing to timely submit. The exact specifications of the Initial Application are shown on the CFC website, and include but are not limited to: General information about the Production;

- i. Contact information;
- ii. Preliminary production milestone dates;
- iii. A copy of the screenplay (and treatment if appropriate);
- iv. The Production Budget and estimated headcount;
- v. Various acknowledgements of program and CFC criteria and agreements to abide by them.

(11) Application does not guarantee acceptance. CFC considers each Initial Application individually based upon many factors, including compliance with these Rules, the benefits of the project to the Cherokee Nation (such as economic impact, jobs, Native American representation, tourism, branding, image and follow-on work), funds available, anticipated future Program needs, and other projects applying for a rebate.

(12) If the Initial Application is approved, the Production Company will be Conditionally Pre-Qualified and CFC will work with the Production to establish a Rebate Schedule.

(13) Conditional Pre-Qualification does not guarantee ultimate approval of a Rebate Claim. The Rebate Claim is not deemed to be approved until after the Final Application is approved.

(6) If the initial Application is denied, CFC may provide the applicant with the reason(s) it was _____ denied.

(7) Only one Initial Application per fiscal year per Production may be accepted.

(b) Initial Application Review:

- (1) Upon receipt of an Initial Application the CFC Incentive Selection Committee will review the application for completeness and accuracy.
- (2) Submission of an Initial Application with a requested rebate estimate does not guarantee that the Production will be approved for rebate eligibility.
- (3) The award of a Conditional Pre-Qualification for a Production is completely within the sole discretion and determination of the Committee and is final and cannot be appealed by the Production Company.
- (4) The Committee may take into consideration many factors to determine whether to award a Conditional Pre-Qualification to a Production including but not limited to:
 - i. Completeness and accuracy of the Eligibility Application
 - ii. Compliance with these Rules
 - iii. Benefits of the Production to the Cherokee Nation (such as economic impact, jobs, Native American representation, tourism, branding, image and follow-on work)
 - iv. Funds available in the Annual Program Cap
 - v. Anticipated future Program needs
 - vi. Other Projects applying for a rebate
 - vii. Other factors the Committee considers relevant in administering the Program.

(c) Award of Conditional Pre-Qualification:

- (1) If the Initial Application is approved by the Committee, then the Application Estimate will be recognized for the Production and the Committee will establish the estimated rebate ("Incentive") based upon the rates and qualifications contained in the Cherokee Nation Film Incentive Summary (attached hereto and incorporated herein).
- (2) Upon approval the Committee will issue a Pre-Qualification Letter which will recognize the Production's Application Estimate, establish the Potential Rebate Claim/Incentive and Rebate Schedule, and include further instructions for compliance to the Production Company.
- (3) The Potential Rebate Claim will be reserved for the Production subject to receipt and approval of the Final Application.
- (4) A Conditionally Pre-Qualified Production may delay the start of Principal Photography two times for a total delay up to one hundred eighty (180) days from the date when Principal Photography was originally scheduled to begin. If the start is delayed a third time, or a Production does not start by the date specified in their latest update to the Production Schedule submitted to CFC, Pre-Qualification is revoked, the Eligibility Application is denied and the Production cannot apply again until the following fiscal year.

- (5) Conditional Pre-Qualification is specific to the Production and Production Company and is non-transferable. Productions, screenplays and budgets may evolve as long as they are substantially similar to those submitted in the Initial Application.
- (6) Unless otherwise approved by CFC, Conditional Pre-Qualification expires two (2) years from the start of Principal Photography.
- (7) If Conditional Pre-Qualification expires or is revoked, the Potential Rebate Claim and/or Incentive amount from the revoked or expired Conditional Pre-Qualification will no longer be reserved for the Production and will be added to the remaining balance of the current fiscal year Annual Program Cap for future award.
- (8) The award of a Conditional Pre-Qualification and Potential Rebate Claim does not grant to the Production Company any enforceable rights, vested interest or entitlement to funds which rise to a level of an enforceable right in a court of law.

(d) Rebate Schedule:

For Projects filmed in the Cherokee Nation, unless otherwise agreed by CFC in writing, after Conditional Pre-Qualification, CFC and the Production Company will establish a schedule of dates based upon the following benchmarks:

- (1) At least forty-five (45) calendar days prior to Principal Photography the Production Company shall submit a Proof of Funding for at least fifty percent (50%) of the Production budget unless otherwise previously agreed upon by CFC.
- (2) Prior to paying salaries or wages to any employee of Production Company, the Production Company shall submit a certificate of workers' compensation insurance with limits pursuant to Oklahoma Law.
- (3) At least thirty (30) calendar days prior to Principal Photography the Production Company shall submit the following:
 - i. Proof of full funding for the Production Budget;
 - ii. Updated filming schedule;
 - iii. Updated screenplay;
- (4) At least ten (10) calendar days prior to Principal Photography the Production Company shall submit the following:
 - i. A certificate of general liability insurance with a minimum limit of \$1,000,000 in coverage (or a binder for such with a state date no later than the estimated Start of Pre-Production);
 - ii. A certificate of automobile liability insurance with minimums of \$250,000/500,000/250,000 coverage (or a binder for such with a start date no later than the estimated Start of Pre-Production) or certification that no employee of the Production will drive an automobile as part of the Production.
- (5) During Principal Photography the Production Company shall submit the following (preferably in advance, if practical):
 - i. Updates to the screenplay;
- (6) Within ninety (90) calendar days of completion of the Production (or payment date of last QPE, if later) the Production Company shall:
 - i. Upload through the CFC website the list of crew and Oklahoma Vendors used on the Production;
 - ii. Submit the Final Application.

(di) Completion Bond:

For those Productions with a Production Budget of at least One Million Dollars (\$1,000,000), unless a Production is backed by a major studio or other financing source acceptable to CFC the Production will post a Completion Bond from a guarantor acceptable to CFC guaranteeing completion of the Production and payment of all liabilities incurred within the Cherokee Nation. In lieu of a Completion Bond, a Production may produce evidence acceptable to CFC that all Crew, vendors and taxes have been paid and there are no outstanding or potential liens in Oklahoma against the Production Company.

(f) Final Application and Rebate Claim:

(1) In accordance with the agreed upon Rebate Schedule, the Production Company shall submit a Final Application and Rebate Claim.

(2) The Final Application and Rebate Claim shall include the following:

- i. Evidence of Production credits meeting one of the following criteria:
 - a. The opening credit crawl of all release prints of a film of the Project will include "filmed in the Cherokee Nation" card and a logo provided by CFC, or "Filmed In Association with the Cherokee Film Commission" or language to be approved by the CFC.
 - b. If the production does not contain opening credits, the Production Company will provide equivalent value as determined by CFC prior to payment of the Rebate Claim. If the Production does not intend to use opening credits, this should be disclosed to CFC prior to Conditional Pre-Qualification of the project.
- ii. Proof of Native American and/or Cherokee Nation citizenship in the form of a Department of Interior issued Certificate of Degree of Indian Blood and/or tribal citizenship documentation for all crew, actors and business owners whose wages or business purchases are claimed to be eligible for rebate based upon Native American status.
- iii. Completed CFC-provided Trainee questionnaires and/or surveys.
- iv. Certified Public Accountant's Report:
 - a. Final Applications shall be accompanied by a CPA's Report, prepared at the expense of the Production Company, attesting that the amounts in the Final Application are QPE for expenses in the Cherokee Nation that comply with applicable rules and that all expenses and liabilities incurred within the Cherokee Nation have been paid and/or satisfied.
 - b. Reports will be prepared by a CPA currently licensed by the State of Oklahoma and who is independent under the American Institute of certified Public Accountants' (AICPA) Independence Rule.
 - c. CPAs will carry professional liability insurance, in a form and from a carrier acceptable to CFC, for at least \$500,000.
 - d. The CPA's examination will be conducted according to the AICPA's Attestation Standards.
 - e. Reports will use a materiality threshold set by CFC and published on its website.
 - f. CPAs will work with the Production Company to resolve exceptions or discrepancies prior to submitting the Final Application, such that the CPA's Report attests to the validity and accuracy of the amounts on the Application without exception.

- g. The CPA's Report will attest:
 - 1) Actual Production expenditures were at least Twenty-Five Thousand Dollars (\$25,000) in QPE in the Cherokee Nation;
 - 2) All amounts on the Application are properly calculated and materially accurate;
 - 3) All expenses and liabilities incurred within Cherokee Nation have been paid or satisfied by the Production Company.
- h. The CPA will retain all workpapers for the CPA's Report for seven (7) years, during which they may be subject to audit by CFC or its agents, upon a request by CFC.

(g) Final Application and Rebate Claim Review and Approval:

- (1) Submitting a Final Application does not guarantee approval. The Committee may approve or disapprove any claims within sixty (60) calendar days of receipt of a properly completed Final Application and Rebate Claim.
- (2) The Committee may take into consideration all of the factors considered in awarding the Conditional Pre-Qualification of the Production and other factors including but not limited to:
 - i. Prioritization of Projects giving consideration of whether the Project is part of a television series filmed in Cherokee Nation where either the series Television Pilot or a previous Series Season was filmed in Cherokee Nation;
 - ii. Significance and extent of exposure of Cherokee Nation and Native American cultures and interests;
 - iii. Effect on the Program's ability to provide Incentives to future projects.
 - iv. The amount of rebate payments conditionally prequalified by CFC for the current fiscal year;
 - v. Impact on the ability of CFC to commit funds to additional projects for the current fiscal year
- (3) If a Production fails to meet the criteria or qualification for a particular QPE for which the Production was initially pre-qualified to receive a rebate amount then the amount of the Potential Rebate Claim shall be reduced by the total amount of the attributed rebate amount if the Production failed to meet a prerequisite criteria or qualification or a pro-rata portion of the rebate amount attributable to the QPE if the Production proportionately failed to meet a criteria or qualification.
- (4) If a Production uses fewer trainees than required, the Final Application and Rebate Claim may be rejected in its entirety or may be reduced in the sole discretion of the Committee.
- (5) Upon approval of the Final Application and Rebate Claim
 - i. The Committee shall issue a letter establishing CNFO's obligation to pay the Earned Rebate Claim which shall not exceed the original Potential Rebate Claim awarded with the approval of the Eligibility Claim;
 - ii. The Production Company shall complete all vendor application documentation required to be recognized as a vendor of the parent of CFC, Cherokee Nation Businesses, LLC ("CNB").
 - iii. Upon receipt of the required vendor application documentation CFC will notify the Production Company of the payment date of the rebate.
 - iv. Amendments to approved Final Applications and Rebate Claims are not allowed.

- (6) If a Final Application and Rebate Claim is denied, the Production Company may attempt to correct any discrepancies or problems and resubmit within thirty (30) days of denial.
- (7) The amount of the final Earned Rebate Claim is made in the final and sole discretion of the Committee and shall not be reviewable or subject to any appeals.

(h) Qualified Production Expenditure:

- (1) A Qualified Production Expenditure, or production cost, includes expenditures or production costs paid and/or incurred within Cherokee Nation including the following expenditures, whether paid directly or through an Oklahoma based entity:
 - i. Wages earned by Above-The-Line (ATL) Eligible Crew as defined in the Summary;
 - ii. Wages earned for Below-The-Line (BTL) Eligible Crew as defined in the Summary;
 - iii. Permits and fees paid directly to the Cherokee Nation or Oklahoma state, county, or municipal governmental or quasi-governmental entity;
 - iv. Payments to an Oklahoma or Cherokee Nation Vendor for the following Production costs:
 - a. Studio, stage or set construction and dismantling;
 - b. Production scheduling, management, administration and operations;
 - c. Casting and security services;
 - d. Wardrobe and make-up materials, consumables and services;
 - e. Set props and accessories (individual props costing in excess of fifty thousand dollars (\$50,000) may only be included as a QPE if prior approval is granted by the CFC);
 - f. Cameras, film, microphones, tape, digital storage media and other materials and equipment used to record sound and images;
 - g. Photography, visual image editing, animation, Computer graphics and effects, and related visual services;
 - h. Sound (other than music) recording, editing, synchronization and related services;
 - i. Licensing or use rights for music, or recording of songs or musical score, used in the Film;
 - j. Lighting and electrical materials, equipment and services;
 - k. Location, building, facility, equipment, prop and wardrobe rental;
 - l. Stunts, special effects, pyrotechnics, firefighting, safety, handling/wrangling, security and other specialty services;
 - m. Lodging and accommodations (whether paid for directly by the Production Company, paid through a third party who is paid by the production company, or provided as an allowance in the amount of actual costs of housing) for ATL and Crew;
 - n. Food, restaurants and catering (whether paid for directly by the Production company or paid through a third party who is paid by the Production Company);
 - o. Transportation of ATL, Crew, equipment and supplies (whether paid for directly by the Production company or paid through a third party who is paid by the Production Company);

- p. Travel costs to and from Oklahoma paid to or through a travel agent operating in the Cherokee Nation;
 - q. Completion bonds and insurance where either the guarantor or insurer is an Oklahoma Vendor operating in the Cherokee Nation);
 - r. Shipping and postage for packages originating or terminating within Cherokee Nation;
 - s. Fees, interest and financing charges paid to Oklahoma-Based Vendors and Oklahoma Based financial institutions and companies operating in the Cherokee Nation;
 - t. Other materials, supplies and contracted services approved in advance by CFC;
 - u. CPA Report.
- v. Payments to a Vendor (or employee) for the following valid Scouting Expenses of the Production
- a. Location scouting, planning and packaging services;
 - b. Travel costs to and from Oklahoma paid to a Cherokee Nation based travel agent;
 - c. Lodging and accommodations within the Cherokee Nation;
 - d. Transportation within the Cherokee Nation;
 - e. Meals purchased within the Cherokee Nation.
- vi. Reimbursements made to individuals for goods and services provided by a Vendor that would have been QPE if paid directly by the Production, provided the individual provides a receipt for such goods and services;
- vii. Reimbursements made for automobile mileage and toll fees paid to crew for travel beginning from a location in Cherokee Nation and ending at another location in Cherokee Nation as long as:
- a. Mileage payments are limited to the current Internal Revenue Service (IRS) standard mileage rates and
 - b. Payment of mileage is compliant with IRS rules for claiming mileage.