

# ***DGA-PRODUCER*** **PENSION & HEALTH**

## **SIGNATORY PRODUCERS GUIDE**

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**DGA–Producer Pension and Health Plans**

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(877) 866-2200  
[www.dgaplans.org](http://www.dgaplans.org)

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## OVERVIEW

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The Directors Guild of America–Producer Pension and Health Plans (Plans) are employee benefit plans created by tax exempt trusts established through collective bargaining between the Directors Guild of America (DGA) and certain motion picture, television and commercial producers, or associations representing these producers.

Members of the DGA (including Directors, Unit Production Managers, Assistant Directors, Stage Managers, Associate Directors and other job categories) that perform DGA-covered services are, generally, eligible to receive benefits from the Plans. The individuals that receive these benefits are typically referred to as the Plans' participants.

Our participants are eligible to participate in two separate pension plans: the Basic Pension Plan, a defined benefit pension plan, and the Supplemental Pension Plan, a defined contribution pension plan. In addition, they are eligible for health benefits through the DGA-Producer Health Plan. The Health Plan provides participants and their families with a comprehensive set of medical, dental, vision and prescription drug benefits. In order to be eligible for the benefits available from the Plans, participants must meet certain minimum earnings thresholds.

Funding for the benefits provided by the Plans comes from two sources: employer contributions and employee contributions. The amounts of employer and employee contributions due when a DGA member works for a Signatory Producer are detailed in your bargaining agreement with the DGA. These amounts are also summarized in the next section, **Remitting Contributions to the Plans**.

Pursuant to federal law, the Plans are completely separate and distinct entities from the DGA. The Plans are governed by a joint Board of Trustees comprised of equal numbers of Trustees appointed by the DGA and Signatory Producers.

**This document is intended to be a summary of the contribution and reporting requirements of the various bargaining agreements between the DGA and Signatory Producers. Although every effort has been made to ensure its accuracy, nothing in this summary is intended to change in any way the provisions of the bargaining agreements or the interpretations of these provisions by the bargaining parties. Please refer to the bargaining agreements to which you are signatory for details. In addition, you may contact the Plans' office at (323) 866-2200, ext. 567 or toll-free at (877) 866-2200, ext. 567 with any questions.**

This package will be periodically updated and made available through the Plans' office and on [www.dgaplans.org/producers](http://www.dgaplans.org/producers).

## REMITTING CONTRIBUTIONS TO THE PLANS

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### REMITTING PAYMENT

All contributions payments should be made payable to the **DGA–Producers Pension and Health Plans, Inc.** and must be sent along with a completed contributions report to:

DGA–Producer Pension and Health Plans  
8436 W 3rd St Ste 900  
Los Angeles CA 90048-4180

Sample contributions reports are available on [www.dgaplans.org/producers](http://www.dgaplans.org/producers).

### ELECTRONIC REPORTING

The Plans encourage all employers and payroll services to electronically report contributions to the Plans. Currently, the Plans can accept contributions reports via FTP, disc, or upload through the Plans' Producer reporting website.

The Plans' electronic reporting system is designed to greatly assist employers and the Plans in ensuring that contributions are correctly reported on a timely basis. This system not only reduces the up-front time and costs associated with contributions reporting, but it also reduces the amount of telephone calls and inadvertent billings from the Plans' office that can occur due to unclear or incomplete information being submitted via paper reports. Producers who report electronically have also found that the amount of time and money they expend during a compliance audit is greatly reduced.

Please contact Ed Bohm at (323) 866-2225 for the electronic reporting specifications or if you have any questions.

### THE CONTRIBUTIONS AND COMPLIANCE DEPARTMENT

The Plans' Contributions and Compliance Department is responsible for processing the contributions received by the Plans. The Contributions and Compliance Department also processes refunds in those cases where contributions have been made in error. Please see the **Contributions Refund Policy** section beginning on page 23 for more information.

## CONTRIBUTION RATES

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Generally, a Signatory Producer is required to pay contributions based on a participant's DGA-covered earnings up to certain caps or maximums. The applicable maximums vary by bargaining agreement and are detailed in the **Calculating Reportable Earnings** section on page 7.

Contributions are typically broken into one of three general rate categories:

- Pension Plan Contributions;
- Health Plan Contributions; and
- Training Plan and Qualification List Contributions.

## PENSION PLAN CONTRIBUTIONS

### Employer Contributions

Employers must remit pension contributions based on 5.5% of a participant's DGA-covered earnings.

### Employee Contributions

Employees must remit pension contributions based on 2.5% of their DGA-covered earnings.

#### United States Department of Labor Reporting Regulations

Typically, the 2.5% employee pension contribution is withheld from the employee's paycheck and remitted to the Plans by the employer. Employers are required by Federal law to remit employee contributions to the Plans as soon as such contributions can be reasonably segregated from the employer's assets, but no later than the 15<sup>th</sup> business day of the calendar month following the calendar month in which the contributions are withheld from employee paychecks. The United States Department of Labor (DOL) has confirmed that these regulations are applicable to multiemployer plans like ours, regardless of the terms of the underlying collective bargaining agreements, and regardless of the many practical problems that may result. In addition, the DOL has indicated that it will be serious about reviewing compliance with this requirement.

If employee contributions are withheld from employees in one month, but are not remitted to the Plan until the end of the following month (or later), the DOL regulations may be violated. Violation of these regulations could result in the assessment of excise taxes on contributing employers, as well as the requirement of additional employer contributions to make up for any lost earnings. Violation may also adversely affect the Plans.

**If you are not already in compliance with DOL regulations, you should modify your reporting and contribution practices immediately.**

If your company remits all contributions that are withheld from employee paychecks on a weekly or biweekly basis, you are most likely already in compliance with the DOL regulations and will not need to take any further action.

If you have any questions about DOL reporting regulations, please do not hesitate to contact the Contributions and Compliance Department Manager, Irene Cheung at (323) 866-2235.

## **HEALTH PLAN CONTRIBUTIONS**

The applicable Health Plan contributions rates vary based on the applicable agreement:

- Basic Agreement and Freelance Live & Tape Television Agreement;
- National Commercial Agreement and National Commercial Agreement as Modified by the AICP Sideletter; and
- Network Agreements.

### **Basic Agreement and Freelance Live & Tape Television Agreement**

For work performed under the Basic Agreement and the Freelance Live & Tape Television Agreement, employers must remit health contributions based on 10% of a participant's DGA-covered earnings, effective July 1, 2012, the health contributions will be based on 10.25% of a participant's DGA-covered earnings, not including vacation pay or completion of assignment pay (see **Alternate Rate for Vacation Pay and Completion of Assignment Pay** section below).

#### **Effective Dates by Job Category**

For all job categories except Directors, the 10.25% health contributions rate (and alternate rate for vacation pay and completion of assignment pay) are in effect for all Plans reportable earnings for work performed beginning July 1, 2012. Work performed before July 1, 2012 will still have the 10% health contributions rate. The rate is determined based on the date the individual performs the work, not the date on which contributions are remitted to the Plans.

For Directors, the health contributions rate in effect on the date the Director's preparation period began shall be the applicable contribution rate for the duration of the project. For example, if a Director's preparation period began on June 15, 2012, the Health Plan contributions rate will remain at 10% for the duration of the project. All other DGA-covered job categories on the same project shall have contributions reported at 10.25% effective for work performed on or after July 1, 2012.

With regard to residual compensation paid to Directors, contributions shall be based on the contribution rate in effect at the commencement of principal photography for the project.

#### **Alternate Rate for Vacation Pay and Completion of Assignment Pay**

Effective July 1, 2011, employers will make contributions on Vacation Pay and Completion of Assignment Pay to the Health Plan at the rate of 14.5%.

### **National Commercial Agreement and National Commercial Agreement as modified by the AICP Sideletter**

Effective December 1, 2011, for work performed under the National Commercial Agreement and the National Commercial Agreement as modified by the AICP Sideletter, employers must remit health contributions based on 10% of a participant's DGA-covered earnings.

### **Contributions on Vacation Pay**

Effective December 1, 2011, employers will make health plan contributions on Vacation Pay for Assistant Directors and Unit Production Managers at the rate of 10%.

### **Network Agreements**

For work performed under the Network Agreements, employers must remit health contributions based on 10.25% of a participant's DGA-covered earnings, effective July 1, 2012. Any work performed prior to July 1, 2012 will have health contributions based on 9.5% of a participant's DGA-covered earnings.

## **TRAINING PLAN AND QUALIFICATION LIST CONTRIBUTIONS**

Certain employers are required to make contributions to the DGA Training Plan and Qualification List (see the **Frequently Asked Questions** section beginning on page 18 for a description of these Training Plan and Qualification List). Like Pension and Health Plan contributions, Training Plan and Qualification List contributions are based on a percentage of a participant's DGA-covered earnings up to the pension ceiling of the applicable collective bargaining agreements.

The requirement to remit contributions to the Training Plan and Qualification List is broken down by the applicable agreement, as follows:

### **Basic Agreement**

All Producers located in Los Angeles County or the New York metropolitan area are required to remit Training Plan and Qualification List contributions for projects produced under the Basic Agreement (see the **Training Plan and Qualification List Rates Chart** on page 6 for a summarization of the applicable rates).

### **Freelance Live & Tape Television Agreement**

Training Plan and Qualification List contributions are not required in connection with projects produced under the Freelance Live & Tape Television Agreement.

### **National Commercial Agreement and National Commercial Agreement as modified by the AICP Sideletter**

All Producers located in the Southern California region (San Luis Obispo to the California-Mexico Border), the New York Area, or the Third Area (areas within the geographic coverage of Agreement outside the Southern California and New York Areas) are required to remit Qualification List contributions for projects produced under the National Commercial Agreement and National Commercial Agreement as modified by the AICP Sideletter.

### **Network Agreements**

Training Plan and Qualification List contributions are not required in connection with projects produced under the Network Agreements.

## TRAINING PLAN AND QUALIFICATION LIST RATES CHART

The following table summarizes the applicable Training Plan and Qualification List contribution rates for covered earnings in connection with both the Basic Agreement and Commercial Agreement based on job category.

Entity	Basic Agreement		Commercial Agreement	
	Director	UPM 1 <sup>st</sup> AD 2 <sup>nd</sup> AD	Director	UPM 1 <sup>st</sup> AD 2 <sup>nd</sup> AD
West Coast Training Plan	None	0.375%	None	None
West Coast Qualification List	None	0.125%	0.25%	0.25%
East Coast Training Plan	None	0.375%	None	None
East Coast Qualification List	None	0.25%	0.25%	0.25%
Third Area Qualification List	None	None	0.25%	0.25%

Example A: A West Coast commercial company that paid a UPM covered earnings of \$1,000 would be required to remit \$2.50 in Qualification List contributions ( $\$1,000 \times 0.25\%$ ).

Example B: An East Coast company that produced a project under the Basic Agreement and paid a 2<sup>nd</sup> AD covered earnings of \$1,000 would be required to remit \$3.75 in Training Plan contributions ( $\$1,000 \times 0.375\%$ ) and \$2.50 in Qualification List contributions ( $\$1,000 \times 0.25\%$ ).

## CALCULATING REPORTABLE EARNINGS

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In this section, we summarize many of the applicable guidelines for calculating the reportable earnings under selected agreements. For the minimum salaries and other compensation rates under a specific agreement, please refer to that specific agreement. Agreements are available on [www.dga.org](http://www.dga.org) or by contacting the DGA at (310) 289-2000.

### BASIC AGREEMENT

Contributions are due to the Plans on Salary, as defined in Article 12-200, 12-300 of the Basic Agreement, and include the following:

#### Theatrical Motion Pictures

##### Pension Plan Contributions

Pension Plan contributions should be remitted on DGA-covered earnings, for all job categories, up to a ceiling of \$200,000.

If a Director of a theatrical motion picture begins preparation in one calendar year and delivers the answer print in a subsequent calendar year, and is paid at least \$200,000, of which at least \$150,000 is paid in the first calendar year, the Producer shall make Pension Plan contributions of 5.5% of \$150,000 in the first year and 5.5% of \$50,000 in the subsequent calendar year. The contributions in the subsequent calendar year based on \$50,000 are only allocated to the Supplemental Plan, however the Director will receive credit in the Basic Plan.

##### Health Plan Contributions

The Health Plan contributions ceiling varies by job category, broken down as follows:

- **Directors.** Health Plan contributions should be remitted on DGA-covered earnings up to a ceiling of \$400,000.
- **Unit Productions Managers.** Health Plan contributions should be remitted on DGA-covered earnings up to a ceiling of \$350,000.
- **Assistant Directors.** Health Plan contributions should be remitted on DGA-covered earnings up to a ceiling of \$250,000.

##### Unit Production Manager Hyphenate Contributions

Any Unit Production Manager (UPM) who is also employed as a Producer on a theatrical motion picture, the Signatory Producer shall make contributions based on the salary paid for UPM services, but in no event shall contributions be made on an amount less than \$100,000 for the picture. However, the foregoing shall not apply to a Producer/UPM who is employed solely for the purpose of preparing budgets and/or storyboards; in that case, pension and health contributions shall be based on the total salary paid for such services.

Staff Production Executives Performing Unit Production Manager Duties

The Board of Trustees of the Directors Guild of America-Producer Pension and Health Plans wish to remind all companies signatory to the DGA Basic Agreement of contribution requirements for staff production executives performing Unit Production Manager duties.

**Article 13, Section 202 (c) (1) of the Basic Agreement states:**

*Employer may assign the duties of a UPM on no more than one theatrical motion picture or television program or series of programs at a time to each staff production executive in its employ (regardless of such executive's title) who actually performs the UPM functions, provided that Pension and Health and Welfare contributions are made on behalf of each such staff production executive to the Pension Plan and the Health and Welfare Plan as provided herein. Such contributions shall be based on the actual salary of the UPM for the time that the staff production executive performs the duties of a UPM. Each production executive performing UPM functions must be on the Qualification List, unless such executive was "qualified" under the 1978 Basic Agreement. The employer shall send the DGA a list of such "qualified" executives.*

Contributions for each such Production Executive/UPM ("Executive UPM") shall be reported based on the applicable UPM weekly minimum scale for 50 weeks (which assumes two weeks of vacation) each calendar year of the Executive UPM's term of employment. Any company reporting amounts other than the applicable minimum scale for 50 weeks will be required to provide documents substantiating the services performed by such Executive UPM and periods worked for the Plans review. It is the sole discretion of the Plans whether or not such reduced reporting will be accepted.

**Television Motion Pictures**

Pension and Health Plan Contributions

Contributions to the Pension and Health Plans are remitted on DGA-covered earnings as follows:

- **For programs less than 90 minutes.** On the greater of (i) initial compensation or (ii) 250% of applicable minimum compensation.

All residual compensation shall have contributions made to the Plans until the ceiling is reached.

- **For programs 90 minutes or longer.** Up to a ceiling of \$200,000 for any one program or multipart closed end series.

Daytime Serial Directors

For Daytime Serial Directors, pension and health contributions should be remitted on DGA-covered earnings up to a ceiling of \$350,000 per calendar year per employer.

**Exceptions**

The Basic Agreement's definition of Salary does include contract settlements, but does not include:

- Severance pay; and

- Penalties, allowances, distant location per diem, aircraft flight or underwater work allowance. (Note: Extended Workday is considered a penalty and is not reportable); and
- Cost of transportation or living expenses paid to or on behalf of the Employee (as defined in the Basic Agreement).

### **Contributions on Additional Compensation**

Contributions are due the Plans based on additional compensation paid to Directors of Free Television Films, subject to the ceiling described in Section 12-202 of the Basic Agreement. Free Television Films are discussed in Article 11 of the Basic Agreement.

### **Contributions on Gross Receipts**

Contributions are due to the Plans based on gross receipts from supplemental markets (see Article 18 of the Basic Agreement for more information). Supplemental markets contributions apply to theatrical and free TV motion pictures released for distribution by cassette or pay TV.

The amount of supplemental market contributions are broken down by the distribution method:

- Distribution on cassette;
- Distribution other than on cassette;
- Theatrical Motion Pictures Released to Free Television; and
- Programs Produced Mainly For the Pay Television and Videodisc/Videocassette Market.

### **Distribution on Cassette**

Contributions are remitted to the Plans at a rate of:

- 0.3% of the first \$1 Million of the Signatory Producer's gross receipts; and
- 0.36% of the Signatory Producer's gross receipts in excess of \$1 Million.

Gross receipts are determined as follows:

- If the Signatory Producer is the distributor, or if the distributor is owned by or affiliated with the Signatory Producer, gross receipts equal 20% of the worldwide wholesale receipts derived by the distributor; or
- If the Signatory Producer is not the distributor, or if the distributor is neither owned by nor affiliated with the Signatory Producer, gross receipts equal 100% of the Signatory Producer's receipts from licensing the video cassette distribution rights.

Please see article 18-104 for further information on the calculation of worldwide wholesale receipts.

### Allocation of Gross Receipts Contributions

For pictures the principal photography of which commences on or after July 1, 2005, if there is at least one (1) Director, UPM, First or Key Second Assistant Director subject to the Basic Agreement who performs services in connection with such picture, the Signatory Employer shall pay the full amount of the percentage payment due the DGA and the Pension and Health Plans. If there is more than one

participating employee in any of the job categories, the DGA shall determine the allocation of such payment among such participating employees, provided that the Directors, UPMs, First or Key Second Assistant Directors subject to the Basic Agreement shall receive no less than their share as set forth in articles 18-103(a) and 18-104 (a) of the Basic Agreement.

If there are no participating employees assigned to such picture in a job category, the share of the percentage payment allocable to that job category shall be paid directly to the Health Plan, but any report to the DGA under article 18-106 of the Basic Agreement shall disclose the amount paid to the Health Plan.

#### **Distribution Other Than on Cassette**

Contributions are remitted to the Plans for Free TV at a rate of 0.6% and for Pay TV at a rate of 0.4% of the Signatory Producer's gross receipts.

Gross receipts are determined as follows:

- Worldwide total gross receipts derived by the distributor or sub-distributor from licensing the right to exhibit the picture in supplemental markets other than by cassettes; or
- The income derived by the seller from the outright sale of the supplemental markets' distribution rights; or
- If an outright sale includes supplemental market rights and other rights, a fair and reasonable portion of the sales price allocated to the supplemental markets distribution rights.

#### **Theatrical Motion Pictures Released to Free Television**

Contributions are due the Plans only on accountable receipts from theatrical features that have been released to free television (See Article 19 of the Basic Agreement).

Contributions must be remitted to the Plans at a rate of 1% of the Signatory Producer's accountable receipts.

Accountable receipts are determined as follows:

- **Determine the Signatory Producer's gross receipts.** The Signatory Producer's gross receipts for films released to Free Television will equal (a) worldwide receipts derived by the distributor from licensing Free Television rights added to earned security deposits plus sums required to be paid as taxes as well as frozen foreign currency converted to U.S. Dollars; or (b) in the case of an outright sale of Free Television rights, income from the outright sale of distribution rights (this does not include any income realized by the purchaser or licensee of such rights). If an outright sale includes Free Television rights and other rights, a fair and reasonable portion of the sales price shall be allocated to the free television distribution rights.
- **Determine the Signatory Producer's accountable receipts.** Accountable receipts will equal (a) gross receipts multiplied by 60% (note that the remaining arbitrary 40% allows for fees and costs associated with distribution), except in the case of (b) for any outright sale, income from sale of

distribution rights multiplied by 90% (note that the remaining arbitrary 10% allows for costs associated to the sale).

Please see Article 19-103 of the Basic Agreement for further information on the calculation of worldwide wholesale receipts.

### **Programs Produced Mainly For the Pay Television and Videodisc/Videocassette Market**

Contributions are due to the Plans on the greater of:

- initial compensation; or
- 250% of applicable minimum compensation (see Article 12 of the Basic Agreement).

There are various forms of residuals payable on behalf of the Directors of this type of programming, and the payments for the Directors, along with the contributions due, are remitted to the Pay Television and Videodisc/Videocassette Payments Fund Administrator, as described in Exhibit E-1 of the Basic Agreement. These monies are remitted in the same manner and amount owed as if the Signatory Producer had made the payments directly to the applicable participant or, if applicable, to the participant's loan-out company. The Pay Television and Videodisc/Videocassette Payments Fund Administrator then distributes the compensation to participants performing Covered Service for the Signatory Producer, and distributes the contributions to the Plans.

Please see Article 20 of the Basic Agreement and referenced exhibits for further details.

### **Contributions on Development Services**

Although contributions for development services are not required under any of the collective bargaining agreements, the Plans accept such contributions under certain circumstances.

The Plans accept contributions for Directors performing development services for theatrical or long-form television productions if *each* of the following conditions is met:

- A deal memo was filed with the DGA at or before the time that the work was performed which states the amount of compensation that is being paid for development services; and
- A deal memo, personal services contract, or other written agreement between the Producer and the Director entered into at or before the time the work was performed provides that contributions are to be paid to the Plans in connection with the compensation paid to the Director for development services; and
- The Director was actually paid for bona fide development services which were actually performed. In determining whether the development services were bona fide and were actually performed, the trustees will consider evidence of third party financing, a commitment to produce (such as a first look deal or output deal), a history of producing projects based on such development projects in the past, or any other evidence deemed relevant by the trustees; and
- The Director is not a principal of the Producer. A Director will be considered a "principal" of the production company if the Director or the Director's spouse, children, parents or siblings,

together have an ownership interest in the Producer (or any closely related company) of 10% or more; and

- There is substantial evidence that the development services provided by the Director were substantial and that the Producer had invested substantial resources in the development of the project.

Based on these Guidelines, the following are examples of circumstances under which contributions would *not* be accepted:

- Development services performed for a Producer which has expended little or no resources toward the development of the project, except for the payment of compensation to the Director to develop the project; or
- Development services performed for a Producer which has no history of actually producing similar projects in the past unless there is some other indication that the project is not wholly speculative (such as a first look deal, an output deal, or third-party financing); or
- Development services, where there is no deal memo filed with the DGA at or before the time that the work was performed which specifies that compensation is being paid for development services; or
- Development services, where the deal memo or a personal services contract does not specifically provide that contributions are to be made on the compensation for such development services; or
- Development services are performed by a Director who has, and/or whose spouse, children parents or siblings together have, an ownership interest in the Producer (or any closely related company) of 10% or more.

## **FREELANCE LIVE & TAPE TELEVISION AGREEMENT**

### **Contributions on Salary and Additional Compensation**

Contributions to the Plans are remitted on DGA earnings, which includes gross compensation, residuals and foreign use fees equal to the greater of:

- initial compensation; or
- 250% of applicable minimum compensation.

See Articles 11 and 12 of the Freelance Live & Tape Television Agreement for more information.

### **Contributions on Gross Receipts**

Contributions are due the Plans based on gross receipts from supplemental markets (see Article 24 of the Freelance Live & Tape Television Agreement for more information).

The amount of supplemental market contributions are broken down by the distribution method:

- Distribution on cassette;

- Distribution other than on cassette; and
- Programs Produced Mainly For the Pay Television and Videodisc/Videocassette Market.

#### **Distribution on Cassette**

Contributions are remitted to the Plans at a rate of:

- 0.3% of the first \$1 Million of the Signatory Producer's gross receipts, and
- 0.36% of the Signatory Producer's gross receipts in excess of \$1 Million.

Gross receipts shall be determined as follows:

- If the Signatory Producer is the distributor, or if the distributor is owned by or affiliated with the Signatory Producer, gross receipts equal 20% of the worldwide wholesale receipts derived by the distributor; or
- If the Signatory Producer is not the distributor, or if the distributor is neither owned by nor affiliated with the Signatory Producer, gross receipts equal 100% of the Signatory Producer's receipts of sales from licensing the videocassette distribution rights.

Please see Article 24, Section D (2) of the Freelance Live & Tape Television Agreement for further information on the calculation of worldwide wholesale receipts.

#### Allocation of Gross Receipts Contributions

For pictures the principal photography of which commences on or after July 1, 2005, if there is at least one (1) Director, UPM, First or Key Second Assistant Director subject to the Basic Agreement who performs services in connection with such picture, the Signatory Employer shall pay the full amount of the percentage payment due the DGA and the Pension and Health Plans. If there is more than one participating employee in any of the job categories, the DGA shall determine the allocation of such payment among such participating employees, provided that the Directors, Associate Directors or Stage Managers subject to the Freelance Live & Tape Television Agreement shall receive no less than their share as set forth in Articles 24(C)(1) and 24(D)(1) of the Freelance Live & Tape Television Agreement.

If there are no participating employees assigned to such picture in a job category, the share of the percentage payment allocable to that job category shall be paid directly to the Health Plan, but any report to the DGA under Article 24(F) of the Freelance Live & Tape Television Agreement shall disclose the amount paid to the Health Plan.

#### **Distribution Other Than on Cassette**

Contributions must be remitted to the Plans at a rate of 0.4% of the Signatory Producer's gross receipts.

Gross receipts are determined as follows:

- Worldwide total receipts derived by the distributor or sub-distributor from licensing the right to exhibit the picture in supplemental markets other than by cassettes; or
- Income derived by the seller from the outright sale of the supplemental markets distribution rights; or

- If an outright sale includes supplemental market rights and other rights, a fair and reasonable portion of the sales price allocated to the supplemental markets distribution rights.

Please see Article 24, Section C(2) of the Freelance Live & Tape Television Agreement for further information on the calculation of gross receipts.

**Programs Produced Mainly For the Pay Television and Videodisc/Videocassette Market.**

Contributions are due the Plans on the greater of:

- initial compensation; or
- 250% of applicable minimum compensation. (See Articles 11 and 12 of the Freelance Live & Tape Television Agreement).

There are various forms of residuals payable on behalf of the Directors of this type of programming, and the payments for the Directors, along with the contributions due, are remitted to the Pay Television and Videodisc/Videocassette Payments Fund Administrator, as described in Exhibit B of the Freelance Live & Tape Television Agreement. These monies are remitted in the same manner and amount owed as if the Signatory Producer had made the payments directly to the applicable employee or, if applicable, to the employee's loan-out company. The Pay Television and Videodisc/Videocassette Payments Fund Administrator then distributes the compensation to participants performing Covered Service for the Signatory Producer, and distributes the contributions to the Plans. Please see Article 29 of the Freelance Live & Tape Television Agreement and referenced exhibits for further details.

**NATIONAL COMMERCIAL AGREEMENT**

The National Commercial Agreement (NCA) covers those signatory commercial production companies that are not members of the Association of Independent Commercial Producers (AICP).

**Contributions on Gross Compensation**

Contributions are due the Plans based on total gross compensation as defined below:

**Principals**

Definition of Director, UPM and AD-Principal

A Director Principal, UPM Principal or AD Principal is a participant who, either alone or in combination with his or her spouse, parents, siblings and/or lineal descendants owns, directly or indirectly through other entities, 10% or more of the equity of the Producer.

Contributions for Principals

With respect to Principals (Directors, UPMs, and ADs), without regard to whether or not they perform work solely in DGA-covered capacities or in multiple capacities, total gross compensation includes, but is not limited to, all salary, wages, fees, profit participation and expenses, except those expenses that are incurred solely and exclusively in connection with a specific production.

Effective January 1, 2003, such contributions shall be made on such salaries up to a maximum of \$250,000.00 in a calendar year. Directors, UPMs, and ADs must work at least one day during the calendar year in a DGA-covered capacity in order to make contributions to the Plans.

### **Freelance Staff**

#### Freelance Directors, UPMs and ADs Engaged Solely in a DGA-Covered Capacity

For freelance Directors, UPMs and ADs that are engaged solely in a DGA-covered capacity, total gross compensation includes, but is not limited to, all salary, wages, fees, profit participation and expenses, except those expenses which are incurred solely and exclusively in connection with a specific production.

#### Freelance Directors, UPMs and ADs Engaged in Multiple Capacities

For freelance Directors, UPMs, and ADs that are engaged to work in multiple capacities, at least one of which is not in a DGA-covered capacity (*e.g.* Producer/Director, Director/Cameraman, Producer/1st AD, etc.), total gross compensation includes, but is not limited to, all salary, wages, fees, profit participation and expenses (except those expenses which are incurred solely and exclusively in connection with a specific production), paid for covered services.

A reasonable allocation between covered services and non-covered services will be allowed provided that sufficient documentation (*e.g.* time sheets for each capacity, daily production reports, call sheets, deal memos, contracts, etc.) is maintained by the Signatory Producer to support the allocation.

## **NATIONAL COMMERCIAL AGREEMENT AS MODIFIED BY THE AICP SIDELETTER**

The National Commercial Agreement (NCA) as Modified by the AICP Sideletter covers those signatory commercial production companies that are members of the Association of Independent Commercial Producers.

### **Principals**

#### **Definition of Director, UPM and AD-Principal**

A Director Principal, UPM Principal or AD Principal is a participant who, either alone or in combination with his or her spouse, parents, siblings and/or lineal descendants owns, directly or indirectly through other entities, 10% or more of the equity of the Producer.

#### **Contributions for Director-Principals**

Effective November 1, 2010, contributions are due the Plans based on a presumed salary of \$159,135 (this amount will increase to \$164,000 on December 1, 2012), reportable and payable in 12 equal monthly installments. Directors must work at least one day during the calendar year in a Director capacity in order to make contributions to the Plans.

### **Contributions for UPM and AD-Principals**

Effective November 1, 2010, contributions are due the Plans based on a presumed salary of \$127,308 (this amount will increase to \$132,000 on December 1, 2012), reportable and payable in 12 equal monthly installments. AD-Principals or UPM-Principals must work at least one day during the calendar year in an AD or UPM capacity in order to make contributions to the Plans.

### **Director-Principal Opt-Out**

Any Director-Principal who believes he or she earns less than the presumed annual earnings set forth above from all income derived from directing for his or her company may exercise an option, upon written notice to the Plans and the DGA served no later than January 20 of each calendar year, to pay contributions based on actual gross earnings (including but not limited to initial compensation, profit participation or other production contingent compensation). If ten percent (10%) or more of the Director/Principals having companies represented by the AICP exercise such option, the DGA may terminate the option for the following calendar year.

## **Directors Other than Director-Principals**

### **Contributions**

Effective December 1, 2011, contributions are due the Plans for any Director, other than Director-Principals, based on a presumed salary of \$7,575 per shoot day.

## **Staff UPMs and Staff 1<sup>st</sup> ADs**

### **Definition of Staff UPM and Staff 1<sup>st</sup> AD**

A Staff UPM or Staff 1<sup>st</sup> AD is a participant who works as a UPM or 1<sup>st</sup> AD under a guarantee of not less than 26 weeks and who may also perform other non-covered services for a production company.

### **Contributions**

Effective November 1, 2010, contributions are due the Plans based on a presumed salary of \$127,308 (this amount will increase to \$132,000 on December 1, 2012), reportable and payable in 12 equal monthly installments. A Staff 1<sup>st</sup> AD or Staff UPM must work at least one day during the calendar year in a 1<sup>st</sup> AD or UPM capacity in order to make contributions to the Plans.

## **Staff 2<sup>nd</sup> ADs**

### **Definition of Staff 2<sup>nd</sup> AD**

A Staff 2<sup>nd</sup> AD is a participant who performs work as a 2nd AD under a guarantee of not less than 26 weeks and who may also perform other non-covered services for a production company.

### **Contributions**

Effective November 1, 2010, contributions are due the Plans based on a presumed salary of \$74,263 (this amount will increase to \$76,000 on December 1, 2012), reportable and payable in 12 equal monthly installments. The Staff 2<sup>nd</sup> AD must work at least one day during the calendar year in a 2<sup>nd</sup> AD capacity in order to make contributions to the Plans.

## **All Other UPMs, 1<sup>st</sup> ADs and 2<sup>nd</sup> ADs**

Effective December 1, 2011, contributions are due the Plans based on the participant's actual gross earnings for covered employment, including, but not limited to, initial compensation, profit participation or other production related compensation.

## **Special Rules for Low Budget Commercials**

### **Low Budget Commercials**

For low budget commercials (as defined in the Commercial Agreement), pension and health contributions shall be paid as follows:

- For Unit Producer Managers and Assistant Directors, pension and health contributions shall be paid on the minimum rates of pay set forth in Articles 4 and 5 of the National Commercial Agreement.
- For AICP Directors, pension and health contributions shall be made based on a presumed salary of \$7,575 per shoot day.
- For non-AICP Directors, pension and health contributions shall be made based on the greater of gross compensation or the minimum rates of pay set forth in Articles 4 and 5 of the National Commercial Agreement.

## **NETWORK AGREEMENTS AND MISCELLANEOUS OR SPECIAL AGREEMENTS**

Space limitations herein preclude a summary of the Network Agreement and other DGA bargaining agreements. Please contact either the Directors Guild of America or the Plans' Office to obtain further information on these agreements.

## FREQUENTLY ASKED QUESTIONS

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If you have any additional questions that are not answered in this document, do not hesitate to contact the Plans' office at (323) 866-2200 or toll-free at (877) 866-2200.

**Q: To whom should checks be written?**

A: All contributions checks should be made payable to **DGA–Producer Pension and Health Plans, Inc.** and mailed to:

DGA–Producer Pension and Health Plans  
8436 W 3rd St Ste 900  
Los Angeles CA 90048-4180

**Q: When are contributions due?**

A: For employer contributions, unless specified to the contrary in the collective bargaining agreement, contributions are due by the end of the month following the calendar month in which the work is performed. For example, if work was performed in November of a given year, contributions on that Covered Employment would be due by December 31st of the same year.

For employee contributions, please refer to **United States Department of Labor Reporting Regulations** section beginning on page 3.

**Q: Can contributions be paid retroactively?**

A: Yes. However, late charges will be assessed for contributions received after the due date (the end of month following the calendar month of employment). The late charges amount to the greater of:

- an interest penalty of 12% per year for interest accruing prior to January 1, 2003, 9% per year for interest accruing after January 1, 2003 but prior to April 1, 2009 and 7.5% per year for interest accruing after April 1, 2009; or
- 20% liquidated damages.

**Q: Can contributions be paid through a loan-out company?**

A: In general, no. However, loan-out companies may still have responsibility for contributions on residuals for projects with principal photography dates commencing prior to July 1, 1990 (see Basic Agreement, Article 12-105 (c), (d)) and Freelance Live & Tape Television Agreement Article 12 B.). Otherwise, a Signatory Producer may remit contributions to the Plans through a payroll service or other company (provided that the Signatory Producer allows such other company to remit contributions); however, the Signatory Producer will remain responsible for the timeliness and accuracy of the contributions payments.

**Q: Can contributions be remitted by an entity other than the Signatory Producer?**

A: Yes. However, a pay agent letter must be submitted to the Plans. The letter must be signed by the Signatory Producer and must confirm that the remitting entity is acting as an agent of the employer for the purpose of remitting contributions and that the signatory company is the responsible party for the contributions pursuant to the applicable collective bargaining agreements.

**Q: Can contributions be paid for a sole-proprietor or partner of a partnership (unincorporated companies) for DGA services provided for his/her own company?**

A: No. However, contributions can be reported on behalf of employees of the unincorporated companies.

**Q: Can I pay contributions on behalf of multiple participants and/or projects with a single check?**

A: Yes. It is preferable that a Signatory Producer write a single check for all DGA-covered participants who have worked on a given project for each calendar month services are rendered.

**Q: How often should my company remit and report on contributions?**

A: All companies must report and remit contributions on a monthly basis, no later than the last day of the calendar month following the calendar month in which the work was performed and salary paid, except as noted in each of the bargaining agreements (*e.g.* contributions relating to Articles 18 and 19 of the Basic Agreement, which are due quarterly). With respect to the employee contributions to the Supplemental Pension Plan, federal law requires that employers remit employee contributions to defined contribution pension plans as soon as such contributions can be reasonably segregated from the employer's assets, but no later than the fifteenth business day of the calendar month following the calendar month in which the contributions are withheld from employee paychecks. For further information, please refer to the **United States Department of Labor Reporting Regulations** section beginning on page 3.

**Q: Should contributions be made on a pay-or-play contract?**

A: Yes. Pay-or-play contracts guarantee a participant his or her compensation regardless of whether the Signatory Producer utilizes the participant's services or not.

**Q: How do you report pension and health contributions on a low budget commercial?**

A: For Unit Producer Managers and Assistant Directors, pension and health contributions shall be paid on the minimum rates of pay set forth in Articles 4 and 5 of the National Commercial Agreement.

For AICP Directors, pension and health contributions shall be made based on a presumed salary of \$7,575 per shoot day.

For non-AICP Directors, pension and health contributions shall be made based on the greater of gross compensation or the minimum rates of pay set forth in Articles 4 and 5 of the National Commercial Agreement.

**Q: How do you report pension and health contributions on Spec Spots and PSA's?**

A: For Spec Spots, salaries for Directors and other DGA-represented Employees shall be individually negotiated and shall be subject to pension and health contributions on the actual negotiated salaries. On a PSA, Directors shall be exempt from minimum salaries and shall be subject to pension and health contributions on the actual negotiated salaries.

**Q: Can I use a Federal ID Number instead of a Social Security Number when reporting contributions?**

A: No. All reported participants are identified by their Social Security Numbers. Use of correct Social Security Numbers is essential for the proper crediting of participant accounts.

**Q: Are contributions due on holiday pay?**

A: Yes. Holiday pay is not listed among the exceptions to the definition of "salary" in any of the bargaining agreements.

**Q: Are contributions due on vacation pay, completion of assignment pay, extended workday pay or severance pay?**

A: Under the Basic Agreement and the Freelance Live & Tape Television Agreement, Health contributions are due on vacation pay and completion of assignment pay (see the **Alternate Rate for Vacation Pay and Completion of Assignment Pay** section on page 4 for more information). Pension contributions are not due on vacation pay and completion of assignment pay.

Under the National Commercial Agreement as Modified by the AICP Sideletter, contributions are due on vacation pay for Assistant Directors and Unit Production Managers

Under the Basic Agreement, contributions are not due on extended workday pay. Under the Freelance Live & Tape Television Agreement, contributions are due on extended workday pay, except for work performed on prime time dramatic programs.

Under the Basic Agreement and the Freelance Live & Tape Television Agreement, contributions are not due on severance pay.

**Q: What are the DGA Training Plans and the DGA Qualification Lists? In which cases are Producers obligated to pay contributions for these programs?**

A: The DGA West Coast and East Coast Training Plans are formal programs designed to train a sufficient number of qualified 2<sup>nd</sup> Assistant Directors to meet the needs of the entertainment industry. Qualification Lists of trained 1<sup>st</sup> and 2<sup>nd</sup> Assistant Directors and Unit Production Managers are

maintained for each area and provided to Signatory Producers as an aid in hiring qualified members of the Directorial team.

Please refer to the **Training Plan and Qualification List Contributions** section beginning on page 5 for more information on determining if you are required to pay contributions in connection with these programs. You may also refer to Article 14 of the Basic Agreement or Article 6 of the Commercial Agreement for more details.

**Q: Can contributions be reported for development services?**

A: In some cases contributions can be reported for development services, if certain conditions are met. For details, please refer to the **Contributions on Development Services** section beginning on page 11. In addition, you can consult Section I. (5) of the Basic Agreement.

**Q: Should I report the minimum compensation necessary to obtain automatic health coverage?**

A: No. Contributions should be made pursuant to the terms of the applicable bargaining agreement under which the work was performed.

**Q: Are Documentaries Made for Pay TV/Basic Cable reportable projects?**

A: No. Documentaries made for Pay TV/Basic Cable are not reportable projects under the collective bargaining agreements. However, the Plans accept contributions for these projects when a production company signs a special sideletter agreement with the DGA that requires contributions to be reported to the Plans for such projects. Without this special sideletter agreement, documentaries made for Pay TV/Basic Cable are subject only to DGA Shop provisions.

**Q: For television motion pictures less than 90 minutes, if the guaranteed days pursuant to the Director's deal memo is greater than the minimum number of guaranteed days pursuant to the Basic Agreement and Freelance Live & Tape Television Agreement, does this affect the pension and health ceiling calculation?**

A: Yes. With respect to all television motion pictures less than 90 minutes, the principal photography of which commences on or after January 1, 2003, when the ceiling for pension and health contributions for the Director of a television motion picture is to be computed by reference to 250% of the applicable minimum compensation, pursuant to Paragraph 12-202(b) of the Basic Agreement or Article 11.A.1. of the Freelance Live & Tape Television Agreement, "applicable minimum compensation" shall be the minimum salary scale payment due for all days guaranteed the Director, whether worked or not.

Here are some examples:

**Scenario A**

The deal memo for Director Bob Jones shows he directed a 30-minute network free television show on January 22, 2003 which was covered under the 2002 Basic Agreement. The deal memo

guarantees 12 days. According to Article 10, Section 101 of the 2002 Basic Agreement, the minimum guaranteed days for this type of program is seven. Therefore, there are five extra days guaranteed in the deal memo. The minimum compensation is determined as follows: \$18,339 (minimum scale for this type of project) divided by seven = \$2,619.86 (daily rate) times 12 total days = the new minimum of \$31,438.32 and a ceiling of \$78,595.80 (250% of \$31,438.32).

**Scenario B**

The deal memo for Director Bob Jones shows he directed a 60-minute basic cable show on October 4, 2003 which was covered under the 2002 Basic Agreement. The deal memo guarantees 15 days. According to Article 10, Section 101 of the 2002 Basic Agreement, the minimum guaranteed days for this type of program is 12. Therefore, there are three extra days guaranteed in the deal memo. The minimum compensation is determined as follows: \$16,002 (minimum scale for this type of project) divided by 12 = \$1,333.50 (daily rate) x 15 total days = the new minimum of \$20,002.50 and a ceiling of \$50,006.25 (250% of \$20,002.50).

**Scenario C**

The deal memo for Director Bob Jones shows he directed a 30-minute network variety series on August 25, 2004 which was covered under the 2002 Freelance Live & Tape Television Agreement (2002 Freelance Live & Tape Television Agreement). The deal memo guarantees eight days. According to Article 6 Section B of the 2002 Freelance Live & Tape Television Agreement, the minimum guaranteed days for this type of program is five. Therefore, there are three extra days guaranteed in the deal memo. The minimum compensation is determined as follows: \$6,806 (minimum scale for this type of project) divided by five = \$1,361.20 (daily rate) x eight total days = the new minimum of \$10,889.60 and a ceiling of \$27,224.00 (250% of \$10,889.60).

## **CONTRIBUTIONS REFUND POLICY**

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Occasionally, a Signatory Producer will over-contribute for one or more participants or otherwise pay contributions in error. When provided with appropriate supporting documentation, the Plans will refund the overpaid contributions. The type of supporting documentation required is broken down as follows:

### **Incorrect Calculation of Contributions**

Please submit copies of the original contributions report and payment highlighting the miscalculation and overpayment.

### **Earnings Reported Over Bargaining Agreement Ceilings (other than Internal Revenue Code Section 401(a)(17))**

Please submit copies of all original contributions reports and payments, along with copies of deal memos, employment contracts, and any other information on the initial compensation and residual earnings.

### **Overstated Earnings**

Please submit copies of all original contributions reports and payments, along with pay stubs, deal memos, employment contracts, and any other pertinent documentation to support the overpayment.

Before we process a refund, the Plans will determine the effects, if any, on the affected participant's pension and health benefits. If a refund results in an overpayment of either pension or health benefits, the overpaid or otherwise unacceptable contributions will be used to offset the overpayment of benefits. The Plans will then seek reimbursement from the employer for the balance of the overpaid benefits plus interest charges and other costs of collection.

Please contact the Plans' Contributions and Compliance Department at (323) 866-2213 if you feel you are due a refund of contributions.

## AUDIT PROGRAM

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Federal law requires that employee benefit plans ensure that employer contributions are made accurately and timely. In employee benefit plans such as the Plans, this legal obligation can only be satisfied through conducting payroll and contributions compliance audits of signatory or contributing employers. A by-product of employer compliance audits is achieving a more level playing field for all Signatory Employers. By ensuring that all Signatory Employers have the same employee benefit costs for DGA personnel, no one employer can have an unfair economic competitive advantage.

Each year, the Plans audit approximately 250 employers, representing approximately 10% of all employers remitting contributions to the Plans. The basis for selecting an employer for an audit may be purely random or due to some other information indicating that the employer is not reporting and remitting contributions properly. Although audits frequently identify unremitted contributions, they are generally the result of unintentional errors or failure to fully understand the contribution requirements in the bargaining agreement. In some cases, audits uncover intentional underreporting, overreporting or otherwise fraudulent contributions reporting (*e.g.* reporting contributions merely to gain Health Plan coverage when no DGA services were actually performed).

Audits typically cover the four-year period immediately preceding the date of the audit announcement letter. Once an audit is completed, the Plans will not conduct a later audit of any portion of that four-year period. However, if additional information is later brought to the attention of the Plans identifying delinquencies not discovered by the audit, the Plans reserve their right to request additional information covering all or a portion of a previously audited period and pursue any resulting delinquencies.

The Plans and its audit staff go to great lengths to make the audits as unobtrusive, accommodating and non-adversarial as possible.

The Plans conduct three types of audit:

- Payroll Compliance Audits;
- Authenticity Audits; and
- Gross Receipts/Supplemental Markets Audits.

### **Payroll Compliance Audits**

Payroll Compliance Audits determine whether Producers have properly reported and remitted contributions on all of the covered earnings of participants working in covered employment. Auditors will review payroll records, payroll tax returns, accounts payable records, and any other documents deemed necessary to complete the audit. This information is then compared to the Plans' records. Discrepancies, if any, are reviewed by both the Plans' auditors and the Producer before a final report is issued.

## **Authenticity Audits**

Authenticity Audits serve to identify those Producers who report contributions solely to obtain pension and/or health benefits for participants who may not have actually worked in covered employment and/or not been compensated for their services. In addition to the materials described above, auditors will review production records including, but not limited to, daily production reports, call sheets, cast and crew lists, time cards, and credit listings in an attempt to determine whether covered employment was performed. If it is determined that compensation was reported incorrectly, the Plans will seek reimbursement of any benefits paid as a result of the improperly gained eligibility made as a result of the incorrectly reported contributions, as well as interest and audit fees.

## **Gross Receipts/Supplemental Markets Audits**

Gross Receipts/Supplemental Markets Audits serve to determine whether proper contributions have been paid into the Pension Plans based on a company's reportable gross receipts (as defined in the applicable collective bargaining agreement). Auditors from the Plans may review license agreements, licensee statements, cash receipts, general ledgers and other documents to determine reportable gross receipts and calculate contributions payable to the Plans.

## **THE AUDIT PROCESS**

The following is a brief description of the employer audit process.

- When an employer is selected for audit, they will receive an audit announcement letter from the Plans' Audit Department.
- An auditor will contact the employer to introduce himself or herself and determine who will be the employer's audit representative.
- The auditor will schedule a mutually convenient time to discuss the types of records kept by the employer and which records will be required to begin the audit and when to conduct the fieldwork portion of the audit. Should the initial documents not be sufficient, the auditor may request additional documents as deemed necessary.
- The types of documents the auditor may request include, but are not limited to, the following:
  - Payroll records, journals
  - General ledger, receipts and disbursements journals
  - Detail backup for ledger and journal entries
  - Employee time cards and earning statements, job invoices
  - Canceled checks, check stubs, check register
  - Deal memos, contracts, agreements, project files
  - Payroll tax returns, Form 1099
  - Chart of accounts
  - Copies of trust fund reports filed with other trusts
  - Call sheets, daily production reports, budgets, and actuals
- The auditor, at his or her discretion, may make an initial sample selection of projects to conduct the audit, usually no less than 25% of the total projects produced during the audit period. If

there are little or no delinquent contributions findings based on the sample selection, the audit will be completed for that period. However, if the sample selection identifies delinquencies which the Plans believe warrant further review, the auditor may expand the scope to include additional projects or all projects produced during the audit period.

- The Plans recognize that employers are busy and may not be able to make necessary records or personnel available to accommodate the audit shortly after the audit is announced. The Plans will make every effort to accommodate the employer. However, the Plans have a legal obligation to diligently and timely administer the audit program. Accordingly, should an employer request that any phase of the audit process be delayed, the Plans may request that the company sign a Tolling Agreement, which effectively stops or tolls the Statute of Limitations from running for the period of time specified in such agreement. Should an employer be unwilling to start the audit in a timely manner, the Plans may be obligated to refer the matter to their attorneys to file a lawsuit to compel the audit.
- Once the employer and auditor have agreed to a date to commence the audit, the auditor will come to the location where the records are kept to commence fieldwork. In some cases, records can be copied and mailed directly to the auditor.
- The documents supplied by employers during the course of an audit will be treated confidentially and will not be disclosed except as provided by the Pension and Health Plan Trust Agreements.
- During fieldwork, the auditor will gather all information necessary to identify those participants working in DGA capacities, compensation paid for such services, dates of service, and in some cases, evidence of services performed during the audit period.
- Upon completion of fieldwork, the auditor will compare the information obtained from the employer to the compensation and contributions reported to the Plans. Any discrepancies will be included in a preliminary findings or draft report. If there are no findings, a final report will be issued.
- The preliminary findings or draft report will be sent to the employer for review. At that time, the employer is afforded the opportunity to provide further information that may eliminate some or all of the preliminary findings.
- After the preliminary findings have been reviewed by the employer and auditor, any amounts remaining due will be billed to the company with applicable costs, including interest, liquidated damages, audit fees, legal fees and any other costs incurred by the Plans. Pursuant to the terms of the Plans' Trust Agreements, these costs are generally only charged when delinquent contributions are discovered.<sup>1</sup>

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<sup>1</sup> Interest or liquidated damages (whichever is greater) is charged based on the amount of delinquent Employer pension and health contributions. Interest on delinquent contributions is charged at 12% per year for interest accruing prior to January 1, 2003, 9% per year for interest accruing after January 1, 2003 but prior to April 1, 2009 and 7.5% per year for interest accruing after April 1, 2009. Interest is charged from the date contributions were initially due the Plans; liquidated damages are charged at 20% of the delinquency. Audit fees, legal fees (if any) and other costs are charged based on actual costs incurred by the Plans. However, under certain circumstances, Plans' policies provide that any of these fees or costs may be waived.

- If the employer is in agreement with the findings, payment is made and the audit is complete.
- If the employer disputes any or all of the findings, the employer may appeal the Plans' audit findings to the Legal & Delinquency Committee of the Board of Trustees. This is accomplished by sending a written appeal to the attention of the auditor conducting the audit, or the Assistant Manager or Manager of the Audit Department. The appeal should describe the dispute, the employer's position, and a request for waiver of any amounts the employer believes should not be due.
- The Legal & Delinquency Committee is comprised of four DGA-appointed Trustees and four Producer-appointed Trustees. The Plans' staff presents the information to the Committee, including, but not limited to, the employers' written appeal, the Plans' invoice and audit report, and any other pertinent documents and correspondence.
- The decision of the Committee is communicated to the employer in writing and its decision is final and binding.

This audit process detailed here is a general description of the Plans' current procedures. It does not modify the Trust Agreements, and does not restrict the Plans from utilizing other procedures which it believes are appropriate.

Should you have any questions regarding the audit process or wish to raise any concerns during the audit process, please contact the Audit Department Manager, Maggie Der-Minassian at (323) 866-2258.

## FEDERAL LIMITATIONS ON EMPLOYER CONTRIBUTIONS

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Internal Revenue Code (IRC) Section 401(a)(17) limits the amount of compensation that a pension plan can recognize for benefit determination purposes. For 2006, the limit is \$220,000. This limit is applied on an employer-by-employer basis and is increased periodically based on an IRS cost-of-living index.

For 1998 and prior, the Basic and Supplemental Plans could not recognize or give credit to participants for compensation earned above these limits. For those years, the DGA and Producers made arrangements for the return of contributions on compensation in excess of the IRC Section 401(a)(17) limit to the affected participants through their employers. For the years 1999 and forward, the Trustees have made a change to the Plans, approved by the IRS, whereby special allocations are made to the affected participants' Supplemental Plan accounts in an amount approximating the amount of the excess contributions. For those affected by this change, there will no longer be a refund of contributions in excess of the IRC Section 401(a)(17) limit.

Once a year, generally in November, the Plans will return contributions in excess of the IRC Section 401(a)(17) limit to Signatory Producers. Due to the change to the Plans made in 1999, as discussed above, the Plans now make a special allocation to the Supplemental Plan for contributions in excess of the IRC Section 401(a)(17) limit for work performed in the years 1999 and forward.

Beginning in 2002, the Plans instituted a procedure to refund contributions in excess of the IRC Section 401(a)(17) limit directly to the affected participants instead of to Signatory Producers. If an affected participant worked through his or her loanout company, he or she can elect to have the contributions in excess of the IRC Section 401(a)(17) limit refunded to their loanout company, thus expediting payment to the participant. Contributions in excess of the IRC Section 401(a)(17) limit no longer need to be returned to Signatory Producers.

The 2.5% employee pension contribution (see the **Pension Plan Contributions** section beginning on page 3 for more information) on compensation in excess of the IRC Section 401(a)(17) limit continues to be returned by on a quarterly basis directly to affected participants.

Please contact the Plans' Controller, Jean Sommerville at (323) 866-2224 in the Plans' office with any questions.