



To: All JPC Authorizer and 2016 SAG-AFTRA Commercials Contract Signatories

From: Douglas J. Wood, JPC Chief Negotiator
Stacy Marcus, JPC Legal Counsel
Kim Stevens, JPC Director of Industry Relations

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Re: **JPC and SAG-AFTRA Joint Clarification on the Application of the Million Dollar Cap on Pension and Health Contributions**

The JPC and SAG-AFTRA have agreed on the below analysis to clarify the proper application of the cap for the calculation of pension and health contributions.

- Step 1: The cap is calculated based on a “contract year”, not a calendar year.
- Step 2: *What is a “contract year”?* A contract year is the 12-month period following the start of the contract.
- Step 3: *When does the contract “start”?* 1) payment to performer; 2) services rendered by performer; or 3) effective date of the contract, **whichever comes first.**
- Step 4: After the start date is determined, use the actual payment dates (as when calculating late payment penalties) not the contractual payment dates to continue the calculation.

The “**whichever comes first**” gives the industry a bright line test for doing the calculation. Regardless of the status of signature of the performer’s agreement, it is difficult to argue that a contract has not yet started if a performer is working or if the performer has been paid. Absent services or payment the contract date itself should govern.

[EXAMPLES FOLLOW ON THE SUBSEQUENT PAGE]

The following examples should provide additional insight:

- Example 1: A contract that is shorter or longer than 12 months followed by a new contract: A celebrity has an 18-month term from 11/1/13-4/30/15 followed by a new contract starting 5/1/15.
- Each contract is treated separately (as opposed to an option year exercised under a current contract).
 - There should be a truncated 6-month “contract year” as it relates to the application of the cap for the final 6 months of the 18-month contract, 11/1/14-4/30/15.
- Example 2: Early payments for a subsequent term occurring in an existing contract year: A payment is made 9/1/16, 3 months before the effective date of a contract, which runs 12/1/16-11/30/17. However, there is an existing contract that covers 12/1/15-11/30/16.
- Each contract is treated separately, start with step 3 of the analysis.
 - If the payment for a new contract was made prior to the “effective date” of the contract that payment date is considered the start date of the contract and the start of the 12-month contract year.
- Example 3: Contracts that include Co-Ed Services but no radio:
- The obligation to make the contribution for a multi-services contract with Co-Ed and Commercial Services with 90/10 and 80/20 splits come from the Commercials Contract.
 - Therefore, both the Commercials Contract Rate (currently 18%) and the million dollar cap for the AFTRA Fund would apply.

We understand that there are many variations to contracts that may not fit precisely within either the aforementioned 4 step analysis or examples above. If you have such a contract, please contact the JPC for guidance concerning the application of the million dollar cap. As always, if you have any questions, please reach out to Kim Stevens, JPC Director of Industry Relations, at kstevens@jointpolicycommittee.org or Stacy Marcus, JPC Legal Counsel, at smarcus@reedsmith.com.