

Film Musicians Secondary Markets Fund



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HOW THE FUND BEGAN

In the late 1950s, the American Federation of Musicians (AFM) and some of its Los Angeles members became entangled in a series of ongoing disputes over the lack of adequate representation of full-time recording musicians. At the heart of these disputes was the AFM's costly and cumbersome musician payment structure. While this system generated significant revenue for the Union, very little of it made its way to the musicians. Far worse, this practice made it prohibitive for the majority of producers to utilize union musicians. As a result, studio musicians in Los Angeles left the AFM and formed their own union, The Musician's Guild of America.

In 1964, due to the changing political climate within the AFM as well as the difficulties the Musician's Guild was experiencing, the Guild agreed to dissolve and re-affiliate with the AFM. Union leaders agreed to sweeping changes and a more enlightened approach to contract negotiation. It was in this spirit that the AFM, representing musicians working in television and motion pictures, and the Alliance of Motion Picture and Television Producers (AMPTP) sat down to negotiate a new motion picture contract and television film agreement. These talks resulted in a collective bargaining agreement that allowed producers to hold the line on their up-front costs while providing an overall compensation package commensurate with musicians' participation on a production-by-production basis. Ultimately, this led to the establishment of the Theatrical and Television Motion Picture Special Payments Fund (**Fund**) in 1972.

FUND OPERATIONS

Each July, the Fund makes an annual distribution of contributions received throughout its fiscal year, which runs from April 1 of the prior year through March 31 of the current year. Participating musicians are sent a package which contains their annual disbursement check as well as their itemized member's statement, a movie master list, an inquiry form and a postage-paid envelope. In addition, the Fund services musicians throughout the year, allocating and tracking contributions, researching and allocating newly paid films, resolving outstanding inquiries, as well as dealing with address changes, beneficiary information, check reissue requests, deaths, divorces, levies/liens, tax withholdings and the like.

WWW.FMSMF.ORG

The Fund's website www.fmsmf.org provides more information about Fund operations. The public area of the website includes: information about the Fund, film titles with obligations to the Fund, film titles which have had contributions to the Fund made on their behalf, frequently asked questions about the Fund, Fund policies and a links section providing website information for related organizations.

The Fund's quarterly newsletter provides articles about the Fund and the entertainment industry. Find out about services offered by the Fund, get a history lesson or gain the perspective of the Fund Administrator by reading this informative newsletter edited and written by Fund staff.

The Private Area of our website is a convenient and secure way to review statements, update an address or a beneficiary, review your tax statements, print a tax form, and/or sign up for or update direct deposit information. This area requires prior registration. The process is easy...just register electronically on the website, print, sign and mail to the Fund the online access agreement and when the Fund receives your agreement, we will send you your personal identification number (PIN). Once you have your PIN you can change it to something you will easily remember. You will then be able to perform all transactions online.

WHICH MOTION PICTURES AND TELEVISION FILMS REQUIRE PAYMENTS BE MADE

To be defined as a “*covered*” motion picture, the following conditions must be met:

- Motion pictures and television films must have *at least one original* scoring session, or utilize sideline musicians, pursuant to the AFM Basic Theatrical Motion Picture or Basic Television Film Labor Agreements.
- Sessions must be done for a *signatory employer* (i.e. a producer or company who is signed to the AFM labor agreements or a non-signatory producer using a signatory payroll company with an assumption agreement).
- A *theatrical production* (i.e. a film initially released to theaters) must have commenced principal photography after January 31, 1960.
- A *television film* or *series* (i.e. initially released to television) must have been produced after July 1, 1971.

HOW REVENUE IS GENERATED

Producers or other “*rights holders*” make payments to the Fund equal to one percent (1%) of their gross receipts from the release of covered films into a supplemental market(s). These obligations last for the life of the motion picture, and remain with the production regardless of how many times the ownership and/or distribution rights are transferred. “*Supplemental markets*” are defined and indicated in the shaded area as follows:

	Free TV	Videocassette/DVD	Pay Cable	In-Flight
Theatrical Films Produced 1/31/60 - 7/1/71				
Theatrical Films Produced After 7/1/71				
TV Films/TV Series				
Direct-to-Video/Direct-to-Pay				

WHO QUALIFIES AS A PARTICIPATING MUSICIAN

Any musician who is listed on an original recording session contract filed through the AFM for a covered theatrical motion picture or television film is eligible for payments provided any of the following circumstances apply:

- Any **musician** (including **leaders, conductors** and **contractors**) employed by a signatory employer/producer to record music utilized in a covered motion picture.
- Any **sideline musician** (musician photographed playing an instrument on camera) employed by a signatory employer/producer whose performance is utilized in a covered motion picture.
- Any **music preparation musician** (including **orchestrators, copyists** and **librarians**) provided that there was at least one original AFM scoring session or sideline session for the specific film they worked on.
- Any **musician** entitled to receive a “*new-use*” payment for the inclusion of a pre-existing phonograph recording as part of the music score for a covered film. Eligibility for new-use payment requires:
 - ◆ The film using this music must have been produced after January 1, 1991.
 - ◆ Songs used must have been recorded in the U.S. or Canada, under the Auspices of the AFM.
 - ◆ Original recording session(s) filed on a phonograph recording contract (**B4**) with the appropriate AFM local, or approved documentation.

IDENTIFYING WHO PARTICIPATED IN A FILM

In order to determine the participants of a film, the Fund relies primarily on obtaining AFM B7 contracts and studio orchestra manager reports from various sources, including AFM locals where the sessions are done, the Federation, contractors and the studios themselves. Over the years, the Fund has compiled a vast library of resources to assist the staff in researching musicians who have worked on a film. *However, we still rely on the participating musicians themselves to assist in obtaining the most complete information available.*

MUSICIAN FILM INQUIRIES

Each inquiry received is entered, assigned a log number and maintained on our custom-designed database. A letter of acknowledgment is then sent to the inquiring musician. Inquiries are processed in chronological order, based on date of receipt. It is possible that a claim may be processed early due to another musician’s prior inquiry about the same film. When a log number is reached, research is begun in an attempt to verify the claim. To expedite research and the processing of claims, we encourage musicians to supply us with documentation or information such as: copies of contracts, paychecks or pay stubs, dates and/or locations of the original recording sessions, etc. The Fund may request such items when they are needed. Further, it is not necessary to re-submit an inquiry concerning a film after the initial inquiry submission. Once a claim is verified, credit is given for prospective payment(s) for the respective film(s), as well as appropriate retroactive payment(s).

GENERAL INQUIRIES

The Fund has a research department and paralegal on staff to research, track and handle a variety of general inquiries for musicians. According to the nature of the requests, the Fund updates and maintains a database that tracks changes and files the requests. *We encourage musicians to supply us with up-to-date information, as their participation is instrumental in helping us provide the highest level of service possible.*

EMPLOYER COMPLIANCE AND COLLECTIONS

The Fund has a compliance department that continuously tracks released films. The department actively pursues collection efforts if it appears that an obligation exists and that contributions should be forthcoming. In addition, this department does follow-up on employers who have ceased payments on certain films. They also ensure that scheduled compliance audits of the various contributors are conducted regularly.

FUND POLICIES

Operations policies directly affecting the musicians include:

[Musician/Beneficiary Policy \(revised 9/5/2003\)](#)

In the event of the death of a musician entitled to a payment from the Fund, the Administrator will distribute such payment to the beneficiary or beneficiaries, or alternate beneficiary (in the event the beneficiary pre-deceased the musician) as designated by the musician on a form provided by the Administrator. If no beneficiary has been designated by the musician, the payment will be made to the beneficiary designated by the American Federation of Musicians and Employer's Pension Fund. If no beneficiary has been so designated, then payment is made to the surviving spouse of the musician; if there is no such person, then to the beneficiary determined by the musician's estate.

[Beneficiary of Beneficiary \(BOB\)](#)

In addition, a beneficiary of a musician or alternate beneficiary (in the event the beneficiary pre-deceased the musician) may select a beneficiary or beneficiaries, and if no beneficiary is so designated, then payment shall be made to the surviving spouse of this beneficiary. If there is no such person, then payment shall be made to the beneficiary determined by the beneficiary's estate. However, the Fund will cease to make any further payments upon the death of all such beneficiaries of beneficiaries.

[Participant Replacement Check - December Moratorium](#)

Effective December 2001, no replacement checks will be issued during the month of December. This is due to the fact that issuing checks in December causes too many internal administrative tax and accounting problems. The **final** replacement checks for a calendar year will be issued on the last Thursday in November of that year. There will be a moratorium on checks in December, and replacement checks will resume again in January of the following calendar year. Any musician requesting a replacement check in December will be told they must wait until the beginning of the next year. Any exception to this policy will be at the sole discretion of the Fund Administrator.

[Direct Deposit Policy](#)

Effective June 19, 2001, irrespective of the permission granted in the Direct Deposit enrollment form that authorizes the Fund to debit a Participating Musician's or Beneficiary's account, in the event of an erroneous deposit into his/her account¹, it is the policy of the Fund that no such debit(s) shall be taken without prior notification via certified mail to the Participating Musician or Beneficiary at the Participating Musician's or Beneficiary's address of record with the Fund. The Participant will then have an opportunity to explain why the debit should not be taken. The Fund Administrator has final approval related to such requests.

¹*"In the event that the Fund deposits funds erroneously into my account, I authorize the Fund to debit my account for an amount not to exceed the original amount of the erroneous credit."*

[Credit for Full and Partial Film Omissions – \(Prospective & Retroactive Payments\)](#)

Any musicians who have been omitted from a film, either partially or in full, will be credited prospectively (forward from the date of processing) upon verification of their participation. All retroactive checks will be issued for the period inclusive of the date of the first contribution on behalf of the film in question, from 1989 forward, through the date of processing. This policy applies to films from all the studios, productions companies and payroll companies utilizing musicians under the auspices of the AFM and for which the first contribution was received by the Fund during and after the year 1989.

Musicians who were omitted for work done on films for which contributions were received prior to 1989 will be covered when an inquiry is received and verified. These omissions will be credited prospectively and retroactive checks will be issued which cover the period between the date of receipt of the first contribution, but no earlier than 1989, through the date of processing only.

[Participating Musician for New-Use – Addendum to Side-Letter Agreement](#)

Effective July 5, 2001, the Fund will expand slightly the application of “Participating Musicians” resulting from the inclusion of phonograph records in covered motion pictures and television films. Specifically, this policy will amend the second and third sentences in the first paragraph of the May 13, 1992, Side-Letter Agreement (at page 100 of the ’96-’99 Basic Theatrical Motion Picture Agreement and page 95 of the ’96-’99 Basic Television Motion Picture Agreement) regarding “Participating Musicians” as follows:

“It is understood that the Special Payments Fund may distribute the payments provided under Articles 15 and 16 of the Theatrical Agreement and under Article 14 of the Television Agreement to “participating musicians,” as defined in those Articles, and to musicians ~~who received~~ entitled to receive live session payments under Article 8B. Any musician ~~who received~~ entitled to receive live session payments under Article 8B shall participate in the distribution of such monies on the same basis as if he/she were considered a “participating musician.”

This change – while necessary to enable the Fund to include numerous phonograph musicians for participation in SPF payments who unequivocally performed on records utilized in motion pictures, but were not actually paid for such performances – will have absolutely no financial impact on the Producers. The policy is not intended to create any additional obligation for payment on the part of the Producer, but merely to secure the appropriate participation in the Fund for the affected musicians.

[Second Replacement Check Fee](#)

Effective, July 1, 2002, the Fund will issue an original check and a first replacement check to a participant with no fee. If a participant requests a second, or subsequent, replacement check, a \$10 fee will be charged for each such replacement check issued. Any exception to this policy will be at the sole discretion of the Fund Administrator.

[Check Re-Issue Requests \(7 Years Or Older\) Policy](#)

Effective date: July 1, 2002. For information regarding this policy, please contact the Fund’s Research Dept.

The above policies have been abbreviated to accommodate this publication. For a copy of the complete policie(s), please contact the Fund.

DIVORCES - please contact Heather Mills, Fund Paralegal, at: (818)755-7777 x806 or hmills@fmsmf.org, before preparing the final settlement.

FREQUENTLY ASKED QUESTIONS

Why haven't some of the films I worked on ever paid into the Fund?

A film must generate some income or revenue in a supplemental market to trigger an obligation on the part of the producer or other rightsholder of the film to contribute to the Fund on the film's behalf. If you do not see a film listed on the master list, it means that the film did not have a contribution made to the Fund on its behalf during the preceding fiscal year (April 1 to March 31). It may still generate contributions for subsequent years.

Do composers and vocalists also receive payments from the Fund?

The Fund collects and distributes residuals for session musicians and music preparation personnel working on film and/or television productions, or in some cases other musicians whose prior recorded product has been utilized in a motion picture or television film. The Fund does not cover composers, except to the extent they do "bargaining unit work" such as conducting, orchestrating, etc. This is also true in the case of vocalists. Composers may be covered under ASCAP, BMI or SESAC. Vocalists may be covered under AFTRA or SAG.

I worked on several phonograph recordings that were utilized in films but I'm not sure if I have been properly credited. How does this work?

Initially, to receive credit for Fund payments as a result of a "new-use," there must be an AFM phonograph session contract (**B4**) filed with the appropriate local. The B4 should list the title(s) of any songs recorded during the session, along with the names, social security numbers and wages of all the participants. A motion picture scoring session contract (**B7**) is then created by the AFM. This contract acknowledges the usage of a particular song in the film and provides the Fund with the appropriate wage information. This B7 becomes the basis for properly crediting the participating musicians by the Fund. In the absence of the B7, the Fund must be able to acquire copies of the original B4's as they are essential for crediting the participating musicians.

Can I use my U.S. federal tax I.D. number and have my Fund checks made payable to my corporation?

No. The collective bargaining agreement and the IRS mandate that payments be treated as wages. As such, taxes must be taken out despite the fact that original session payments were made to your corporation.

Can I have my checks deposited to my account by direct deposit?

Yes. We will arrange for direct deposit to your account. Contact the Fund for details.

Why didn't I receive a check for a film I worked on, even though the title appears on the master list?

You may have been omitted from the reporting, or the total check amount was *de minimus* (i.e. your total check was less than \$10.00), or the contribution from the film resulted in a pro-rata share less than one cent.

The Fund and its participating musicians are in a unique partnership. The more we communicate, the better the Fund can serve you. Please give us a call with any questions.

PARTICIPANT STATEMENT (SAMPLE)

Film Musicians Secondary Markets Fund
Participant's Statement as of Fiscal Year Ended 03/31/2003

Name and Address
MUSICIAN, JODY
1234 STRASSE ST.
LE CITE, CA 00000

Account Number
0000000

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Film Title Contributor(s)	Release Year	Reported Wages Wage Ratio	Amount Contributed	Base Amt	Employer Tax+Adm Expense	Pro-Rata Share
ARMED AND DANGEROUS SPE CORPORATE SERVICE/COLUMBIA	1986	1,014.00 .0167634	2,054.82	34.45	6.28	28.17
CORNBREAD EARL AND ME MGM AND UA SERVICES COMPANY	1975	212.89 .0118009	(1,259.24)	(14.86)	(2.71)	(12.15)
OUT TO SEA 20TH CENTURY FOX	1997	3,932.99 .0154779	11,505.11	178.07	32.53	145.54
TOTALS				227.38	41.52	185.86

Check Number/Voucher Number
Check Gross
Employee Tax Withholding
Check Net
Taxable Marital Status: Married
Federal/State Allowances: 2

23004916
185.86
15.88
169.98

Bolded titles are films reporting to the Fund for the first time in Fiscal Year 2003.
*Film's Contributor may not necessarily have been your employer.
**Misallocated Title-present films for which past contributions were misapplied or reported in error.
Debits (amounts indicated in parenthesis are deductions for prior overpayments).

Wage Ratio times (x) Amount Received equals (=) Base Amount.
Base Amount minus (-) Employer Payroll Taxes and Administration Expenses equals (=) Total Pro-Rata Share.
Total Pro-Rata Share equals (=) Check Gross.

A separate "contributor" line appears for each amount contributed, by film title, for which you are being credited.

This statement is not intended for Tax purposes.

Statement Breakdown & Explanation of Terms

1. **Film Title**
2. **Contributor** (producer, distributor or other rightsholder)
3. **Film Release Year**
4. **Reported Wages** [total wage listed on the session contract(s)]
5. **Wage Ratio** [musician's wage (+) total film wages for all musicians on the session contract(s)]
6. **Amount Contributed** (total contribution made to the Fund for that title for the recently completed fiscal year)
7. **Base Amount** [amount contributed (x) wage ratio]
8. **Employer Payroll Taxes & Administrative Expenses** (deducted from base amount)
9. **Credit** (deduction against the film title for overpayment)
10. **Pro-Rata Share** (musician's gross amount for that title)
11. **Check Gross** (total pro-rata share)
12. **Employee Tax Withholding** (deducted from check gross).
13. **Check Net** (final check amount after tax adjustments)

NOTE: Musicians are highly encouraged to compare their member statement to the Master List and report any discrepancies using the Inquiry form.