

EMPIRE STATE DEVELOPMENT
NYC MUSICAL AND THEATRICAL TAX CREDIT PROGRAM

AGREED UPON PROCEDURES
February 2022

The purpose of this document is to set forth the Agreed Upon Procedures (AUP) a qualified CPA firm must follow for inspecting a final application for the New York City (NYC) Musical and Theatrical Tax Credit Program on behalf of a production company.

Background

The NYC Musical and Theatrical Tax Credit Program is administered by Empire State Development (ESD) and provides incentives to qualified production companies that are principally engaged in the production of qualified musical or theatrical productions, perform in a qualified production facility and incur costs associated with the creation and ongoing performances of these musical and theatrical productions. Program tax credits of \$100 million can be allocated and used to encourage qualified production companies to present productions at qualified production facilities in New York City.

An application is first submitted as an initial application prior to the beginning of paid performances and includes estimated project costs. When an applicant completes the project, a final application must be submitted with actual project information and documentation. An applicant may include an Agreed Upon Procedures (AUPs) inspection by a third-party along with the final application. The AUPs must be completed by a Certified Public Accountant (CPA) on the ESD vendor list of CPA firms determined to be pre-qualified to conduct a CPA inspection. In addition, the CPA firm must conduct the inspection according to the Agreed Upon Procedures indicated in this document.

Qualified production companies must submit a **complete** final application in order to receive a Tax Credit Certificate. The Project Summary Form must be submitted online, and the remainder of application must be uploaded through the secure file transfer site. Refer to the program's [website](#) for the link and instructions to the online application.

Regulatory References

See Title 5 of the New York Codes, Rules and Regulations (NYCRR), Part 270 for regulations governing third –party verification [§§ 270.2 (y), 270.7].

Agreed Upon Procedures

The purpose of the AUP is to ensure and confirm that the production company has met the eligibility requirements of the Program and has submitted as qualified expenditures only those costs that are outlined in Program Materials as eligible for the NYC Musical and Theatrical Production Tax Credit. The AUP Report must include the following information:

1. The CPA's name and contact information for the CPA responsible for the review and final sign off on this Report.
2. The name of the production.
3. The date that the agreed upon procedures were completed.

The production company's cost information must be presented in U.S. dollars.

The CPA shall perform the following procedures. Any exceptions are to be listed as a finding in the AUP Report.

Eligibility

1. Obtain from the production company a **complete** final application that consists of the following documents. A complete final application means that all required information is provided in the form and manner prescribed by Program Staff.

- a. Project Summary – Final – Online Application Form (in PDF).
- b. Weekly Payroll Report (Excel Template).
- c. Payroll summary report.
- d. General Ledger (GL) Credit period only (Entire in Excel).
- e. General Ledger Credit period only (Separate Reports in Excel from the GL for Qualified NYS Costs, Non-Qualified NYS Costs, Non-Qualified Costs Outside NYS).
- f. Diversity and Arts Job Training Report.
- g. Public Access and Availability Report.

For further information about these documents, see the [Program Guidelines](#).

2. Verify with a responsible official at the production company (Applicant) to
 - a. Determine that the Applicant entity is the authorized applicant per program regulations
 - b. Determine that only costs incurred and paid within the credit period (as documented by item 3, below) are included in qualified expenditures.
 - c. Determine if any non-reimbursable New York State governmental economic assistance (e.g. grant funds) was provided to the production. If yes, determine the use of funds and contact the Program Staff to discuss the potential impact on qualified expenses.
3. Determine and document the credit period of the production. The credit period commences up to twelve weeks prior to the first paid performance of the production, and culminates with: 1) the date the production has expended sufficient qualified production expenditures to reach its credit cap; 2) March 31, 2023; or 3) the date the qualified musical and theatrical production closes, whichever comes first.. These dates must reconcile to section 1-3 in the Project Summary-Final application form.
4. Obtain the production company’s (Applicant) documentation to support the basis of eligibility based on criteria below:

- a) The production is a for-profit, live, scripted dramatic performance by one or more performers of a narrative presentation with or without musical performances and/or accompaniment.
 - b) The production is being performed at a Qualified Production Facility (see Guidelines for details on what constitutes a Qualified Production Facility).
 - c) The production executed a Diversity and Arts Job Training Plan in accordance with the program requirements. (As confirmed by the production's Diversity and Arts Job Training Final Report and Form.)
 - d) The production executed a Public Access and Availability Plan in accordance with the program requirements. (As confirmed by the production's Public Access and Availability Final Report and Form.)
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If the production has not met eligibility standards as noted (item 4, above), there is no need to continue with the CPA Inspection using the AUP.

Expenditures (Excluding Payroll)

1. **Inspect the GL reports for non-qualified expenses.** Deduct any errors from the Qualified Cost Summary (QCS) and **remove** them from the population to be sampled. Consult the Program Guidelines for general rules on qualified costs and contact the department if unsure about eligibility of specific costs. Attach a list of any non-qualified costs found. The list is to include GL report coding, amount, vendor/person/entity and nature of discrepancy from the Schedule of Qualified Expenditures.

2. Verify with a responsible official at the production company (Applicant) that any qualified expenditures included in insurance claims have been credited in the GL. If the production company filed an insurance claim and received funds, the CPA is to inspect the supporting documentation of the claim to ensure the expenditures were properly credited to the correct accounts in the General Ledger.

3. Select a sample of expenditures (excluding payroll) from the Qualified NY Costs ledger report according to the sampling methodology noted in the Sampling Chart.

4. For each expenditure item selected in the sample, perform the following procedures:
 - a. Determine if the expenditure is an allowable cost (refer to Program Guidelines). If unsure, contact the ESD Program Staff.

 - b. Inspect invoices; proof of payment (i.e. canceled checks, check images, check copies, bank statements, credit card statements, etc.). Inspect the expenditure in order to establish the accuracy of the entry (i.e. the expenditure was paid or incurred for services rendered or goods used in NYS).

 - c. Determine that the expenditure was paid by the applicant entity and recorded net of any refunds, discounts, rebates, sale proceeds, invoicing errors, and purchase returns, as recorded in the GL reports.

- d. Verify that the expenditure was not for in-kind services.
5. For non-qualified costs noted in the expenditure test for the sample identified in Category 1 of the Sampling Chart, adjust the Qualified Costs Summary to reflect the results of your testing.
 6. Prepare a list of transactions from Category 2 and Category 3 in accordance with the number of invoices required on the Sampling Chart. Any non-qualified expenditures found during procedure 1 listed above are to be excluded from the sample population. Category 2 and Category 3 are to be evaluated independently from each other and not aggregated. Adjust the QCS for known errors noted during your expenditure tests for Category 2 and Category 3. Calculate the rate of misstatement from the expenditure tests for categories 2 and 3 by dividing the dollar amount of the misstated items in each category by the dollar amount of the sample population in each category. This is your rate of misstatement.
 7. Perform the following procedures based upon the results of the calculation of the rate of misstatement:
 - a. If the rate of misstatement does not exceed 2% of qualified expenditures in the sampled population for Category 2 and/or Category 3, no further action is required.
 - b. If the rate of misstatement for Category 2 and/or Category 3 exceeds 2% of qualified expenditures (excluding payroll) in the sampled population, select a second sample set.
 - c. According to the sampling methodology noted above for Category 2 and Category 3, test a second sample set and recalculate the rate of misstatement for this second sample set. Do not include the previously selected invoices in the second sample. If the number of invoices available for the sample does not meet the minimum number according to the Sampling Chart, include 100% of the invoices not previously included in the samples.

- d. If the rate of misstatement for the second sample does not exceed 2%, adjust the QCS for any known errors in the second sample and no further action is required. If the rate of misstatement from the second sample selection exceeds 2% of qualified expenditures, adjust the QCS for known errors found in the second test AND adjust the remainder of the applicable categories untested expenses by the projected misstatement. The projected misstatement is obtained by multiplying the remaining untested population by the average of the two rates of misstatement. In summary, when the expenditure tests for Category 2 and/or Category 3 exceed 2% for both tests, the deduction for that category will include the known errors found in each of the sample tests plus the projected misstatement on the remainder of the untested population in the applicable category.

Expenditures (Weekly Payroll)

1. **Inspect the GL reports for non-qualified expenses.** Deduct any errors from the QCS and **remove** them from the population to be sampled. Consult the Program Guidelines for general rules on qualified costs and contact the department if unsure about eligibility of specific costs. Attach a list of any non-qualified costs found. The list is to include GL report coding, amount, vendor/person/entity and nature of discrepancy.

2. Select a sample of employees according to the methodology described in the Sampling Chart. For each employee in the sample perform the following procedures:

- a. Determine that all wages incurred and paid fall within the credit period indicated on the Project Summary. Any errors should be deducted from the Qualified Cost Summary.
- b. Review timecards, or equivalent documentation to determine that work was performed in New York. Verify that all wages do not include compensation for any work incurred out of the state.

3. For non-qualified costs noted in the expenditure test in item 2 above, for the sample identified in Category 4 of the Sampling Chart, adjust the Qualified Costs Summary to reflect the results of your testing.
4. For non-qualified costs noted in the expenditures test in item 2 above, for the sample identified in Category 5 of Sampling Chart: divide the dollar amount of misstated entries by the sample population total amount to obtain the rate of misstatement.
5. Perform the following procedures based upon the results of the calculation of the rate of misstatement:
 - a. If the rate of misstatement does not exceed 2% of qualified expenditures (payroll), adjust the QCS for known errors discovered in the sample population. No further action is required.
 - b. If the rate of misstatement exceeds 2% of qualified expenditures, select a second additional sample according to the sampling methodology noted above for Category 5. Recalculate the rate of misstatement for the second sample set.
 - c. If the rate of misstatement for the second sample set does not exceed 2%, document the rate of misstatement in the AUP Report and adjust the QCS for known errors discovered in the second sample population. No further action is required.
 - d. If the rate of misstatement from the second sample selection exceeds 2% of qualified expenditures (payroll), adjust the QCS for known errors found in the second test AND adjust the remainder of the untested Category 5 expenses by the projected misstatement. The projected misstatement is obtained by multiplying the remaining untested population by the average of the two rates of misstatement.

Include the following with Agreed Upon Procedures Report:

- c. Table of Contents
- d. Qualified Costs Summary with adjustments for non-qualified costs and revised total qualified costs. Include in Report and send to applicant as an Excel file.
- e. Sampling documentation, including the calculation of misstatement percentages, for both non-payroll (Category 2 and Category 3) and payroll (Category 5) expenditures per the Sampling Chart. Attach a list of any non-qualified costs noted in the expenditure test (both general and payroll). The list is to include GL report coding, amount, vendor/person/entity and nature of discrepancy from the Schedule of Qualified Expenditures.

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 APPLICATION
 SAMPLING CHART
 EXPENDITURES (EXCLUDING PAYROLL)**

Samples must be chosen from each column of qualified costs on The Budget Cost Qualifier in proportion to their percentage of the total qualified costs for the project.

	CATEGORY 1	CATEGORY 2	CATEGORY 3
	Items \$10,000 and over	Items under \$10,000 and over \$1,000	Items \$1,000 and less
QUALIFIED EXPENDITURES			
\$1,000,001 - \$5,000,000	All items	25	10
	Items \$20,000 and over	Items under \$20,000 and over \$2,500	Items \$2,500 and less
\$5,000,001+	All items	50	20

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PAYROLL EXPENDITURES

	CATEGORY 4	CATEGORY 5
	Employees with top 5 Total Qualified Wages	Employees with Total Qualified Wages under top 5
QUALIFIED EXPENDITURES		
\$500,001 - \$1,000,000	All items	5
\$1,000,001 - \$5,000,000	All items	10
	Top 10 Total Qualified Wages	Under Top 15 Total Qualified Wages
\$5,000,001 +	All items	20

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Diversity and Arts Job Training Program Final Application Report

1. Refer to the production company's (Applicant) final report to document the company's compliance with the Diversity and Arts Job Training requirements of the program. All applicants should complete Part A. Applicant should complete one additional section based upon its answer in Part A. Applicants who were approved to work with a New York State approved program should complete Part B. Applicants who were approved for a Self-Operated Program should complete Part C. Applicants who were approved for a waiver should complete Part D. For Parts C and D, verify that the final report contains information showing that the final plan met the criteria indicated in the [Program Guidelines](#). Verify that the report addresses whether the final plan deviated from the original plan and provides an explanation for any differences between the initial plan and final plan (See Final Report, Part A, Question 3).

2. Obtain the production company's Certificate of Conditional Eligibility to document statements on the Final Report regarding prior approvals of a training program plan for questions A(2), B(4), C(4) and/or D(1) as appropriate for this application.

3. The Final Report parts are as follows and must include the information indicated below:

A. All Applicants complete this part:

1. Credit Period.
2. Applicant's approved plan on its initial application.
3. If the production completed the initial plan as approved.

B. Applicants approved to participate in a NYS-approved program only:

1. Name of Fellow.
2. Fellowship Period.
3. Name of the NYS Approved Program.
4. Name of the department where the fellow was placed.
5. If a fellow is also being employed to satisfy another MTTCP application, name of other production(s).
6. A brief narrative describing how the production implemented the diversity and arts job training program plan.

C. Applicants who participated in a Self-Operated Fellowship program

1. Name of Fellow.
2. Fellowship Period.
3. Did the fellowship commence or was it committed to during the credit period?
 - a. If NO, please have the applicant contact ESD.
4. Name of program operator/employer of fellow.
5. Type of employer (production company, producer, or general manager).
 - a. If type of operator is not on the list, have applicant contact ESD
6. Was the program for a minimum of six (6) months?
 - a. If NO, does production provide a listed reason?
 - b. If reason the fellowship is less than 6 months is not on the list, please have the applicant contact ESD.
7. Production's statement about why it reasonably believes the fellow is from an underrepresented community within the theater industry.
8. The annualized salary for the fellowship is provided and it is at least \$42,250.
9. The hours worked by fellow are full-time (minimum 35 hours/week).
10. Production's statement explaining the recruitment efforts made to identify candidates throughout NYS (specifically at SUNY theatrical programs outside NYC).
11. The fellow resided in New York State during the duration of the fellowship.

12. Name and title of mentor to fellow and education opportunities offered to fellow.
13. Networking opportunities offered to fellow.
14. A brief narrative describing how the production implemented the diversity and arts job training program plan.

D. Applicants who requested and were approved for a waiver

1. Obtain the production company's (Applicant) Certificate of Conditional Eligibility to confirm the Applicant was approved for a waiver.
2. Proof of payment to an approved theatrical fellowship program including amount and date of payment.
3. If amount of payment to the approved theatrical fellowship program is less than \$35,000, provide the estimated payment for the production. (Note: Amount of payment must be at least the lesser of \$35,000 or 2.33% of the production's estimated tax credit).
4. If the applicant is waiting for ESD's determination of the credit amount, no proof of payment is required at this time.

Public Access and Availability Program Final Report:

Verify that the production included a final public access and availability report, which may be a narrative with relevant tables, charts or attachments, and must outline how a production met its requirement under the New York City Musical and Theatrical Production tax credit program that it create and implement a plan to ensure that their production is available and accessible for low or no cost to low income New Yorkers.

Verify that the report summarizes the production's plan which it laid out in the initial application and reports on what the production actually did. This must include areas where the production followed through on its plan as well as areas where the production may have deviated from the plan and why. The report must include the total amount of seats in the theater, length of run of the show, amount of tickets which were made available, amount of tickets which were utilized, and through which channels/community-based organizations the utilized tickets were obtained/distributed.

Verify that during the first year of performances the production made a number of tickets available that is equal to or greater than twice the capacity of the theatre. For shows open less than 1 year, this requirement is prorated based on their number of weeks open. These tickets are to be made available to a distribution network (community organization) approved by New York State. The following steps are required to document compliance.

Refer to the copy of the applicant's Certificate of Conditional Eligibility to confirm prior approval of the production's plan to work with the Theatre Development Fund or New York State ESD approved community-based organizations per questions in Part C of the Final Report. If the applicant is approved to work with New York State approved community-based organizations, obtain a copy of the applicant's initial application and any additional approvals of community-based organizations.

- a. **Determine the performance period** for the production (First Paid Performance Date and Last Paid Performance Date)

- b. **Determine if the production was approved to work with the Theatre Development Fund (TDF) approved program or if they were approved for a Self-Operated program.**
- i. Obtain a copy of the applicant’s Certificate of Conditional Eligibility to confirm prior approval of either TDF or Self-Operated program.
- c. **If the production was approved to work with TDF,** they should fill in the top line of the chart, “TDF Final Counts” and attach the final report provided by TDF.
- d. **If the production was approved for a Self-Operated Program:** If the production’s public access and availability program is a self-operated program or is a hybrid program (some tickets through the approved TDF program and some tickets self-operated by the individual production), determine if:
- i. the community-based organizations listed are approved by New York State in the applicant’s initial application or through an additional approval provided after the initial application.
 - ii. Number and price point of tickets **offered** and **utilized** through each organization (both approved and self-operated).
 - iii. Any fees related to such tickets.
 - iv. For tickets offered through the self-operated program at \$40, include the **seating section in the theatre** those tickets represent (\$40 tickets must be orchestra or front mezzanine).
- e) **Calculate/verify compliance thresholds:**
- A production whose first performance is in the first year of the program (between 7/22/2021 and 7/21/2022), **the required minimum number of reduced cost tickets required** to be offered is calculated by (# of weeks of paid performances the show is open/26 weeks) x (# of seats in the theatre)
= required minimum number of tickets offered

Note: the maximum number of weeks is 52. If a production is open longer than 52 weeks, use 52 in the formula.

- i. Verify that least 50% of the required minimum number of reduced cost tickets were offered for \leq \$20.
- ii. Verify that any \$40 ticket in a self-operated program offered a seat in the orchestra or front mezzanine section.
- iii. Verify that no fees related to any tickets offered/sold exceeded \$4 per ticket.
- iv. Verify that the community organizations in the self-operated portion of the program were approved by New York State (i.e. they were referenced in the productions initial application or the production has received approval through NYS through other communications).
- v. Verify that the tickets were offered for productions which were open to the general public and not at rehearsals or shows dedicated only to ticket giveaways unless approved by New York State.