

# **Guidelines**

## **Nova Scotia Film & Television Production Incentive Fund**



Nova Scotia Business Inc.

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### General Eligibility Requirements, Conditions, and Limitations

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1. Effective July 1, 2015, Nova Scotia will create and provide initial and annual funding (until the 2020–2021 fiscal year) to the Nova Scotia Film & Television Production Incentive Fund. The Fund shall be administered by Nova Scotia Business Incorporated (the “Fund”) or such other body the Minister of Business may designate from time to time.
2. Eligible organizations, as set out below, are able to apply to receive funding from the fund to facilitate the production of projects in Nova Scotia that meet the eligibility requirements, with the object of supporting and expanding the film and television production industry in Nova Scotia and to create economic value for a broad group of Nova Scotians, including, in particular, key creative positions including Nova Scotia resident directors, writers, and principal performers.
3. Projects that are eligible for the Digital Media Tax Credit, the Digital Animation Tax Credit, the Film Industry Tax Credit or any other Nova Scotia tax credit program are not eligible.
4. Eligible organizations must be engaged primarily in film and television production business and demonstrate that their main activity is the creation of film/video productions available for public viewing. Eligible organizations must have a permanent establishment in Nova Scotia.
5. All applicants must be incorporated in Nova Scotia under the *Companies Act* or continued as a Nova Scotia company through a Certificate of Continuance and be in good standing with the Registry of Joint Stock Companies.
6. Recipients must also be in good standing in all respects with the former Nova Scotia Film and Creative Industries Inc. and its successor, Nova Scotia Business Inc., by having no outstanding or overdue reporting requirements. Should the recipient have any outstanding or overdue reporting requirements in any other jurisdiction, the Minister of Business reserves the right to deny eligibility.
7. Genres of any production and platforms NOT eligible for funding:
  - Any film or production prohibited under the *Theatres and Amusement Act*
  - News, current events or public affairs programming, or a program that includes weather or market reports;
  - Talk shows
  - Production in respect of a game or contest
  - Professional/franchise sporting events or activities
  - Production that solicits funds
  - Reality television
  - Pornography
  - Advertising
  - Production produced primarily for industrial, corporate, or institutional purposes
  - Production, other than documentary that has at least 25 per cent non-stock footage, that consists of all or substantially all stock footage
  - Console or online video games

- Software/programming applications
  - Animated film or video productions where all or substantially all of the production consists of the sequencing of a series of 2-D, 3-D or stop-motion animation image rendered to create artificial moving images
  - Such other genres or productions that the Minister of Business may add to this list by publishing an updated Guidelines
8. The amount of money spent in Nova Scotia (Nova Scotia Spend) for the project must be greater than \$25,000 (before HST).
  9. The maximum funding from this Fund payable to any project is \$4 million.
  10. Nova Scotia Film & Television Production Incentive Fund applications, including all submission materials, must be received prior to commencement of principal photography.
  11. At the time of submission, unless otherwise determined by the Administrator, applicants seeking production funding must provide written evidence of a commercial licence agreement and evidence of 75 per cent confirmed financing for projects with budgets of \$1 million or greater, and evidence of 50 per cent confirmed financing for projects under \$1 million. Funding from the Nova Scotia Film & Television Production Incentive Fund and federal tax credit calculations may be included as part of the confirmed financing. A commercial licence agreement is defined as an agreement issued by a third party entity whose primary business is broadcasting, distributing, or disseminating film or television to the public, and who is able to demonstrate a track record of such enterprise, and may include an online distributor. A commercial licence agreement does not require a licence fee; however, agreements in which the applicant has purchased airtime will not be eligible.
  12. In order to meet the confirmed financing requirement, the applicant must present, at the time of application, documentation that adequately demonstrates the funds available to the production.
  13. All approved incentives shall be documented in an incentive agreement between the Administrator and the applicant, and incentives must be used for the purposes outlined in the incentive agreement.
  14. Applications that are deemed complete will be handled on a first-in, first-out basis for production funding. Notwithstanding the foregoing, the Administrator may set aside from the Fund each year an amount to incent and support first-time producers.
  15. Notwithstanding any other provision of these guidelines or the worksheets, no individual shall directly or indirectly receive pay, salary, fees, compensation, or any similar payment that is budgeted or paid from the fund in an amount greater than \$150,000 per project. Indirect payments may include payments to holding companies or personal services companies.
  16. In addition to other deliverables outlined in the Incentive Recipient Obligations contained within this document, recipients will be required to submit financial statements for projects with budgets of \$200,000 to \$500,000 with a Review Engagement Report and third party audited financial statements for budgets over \$500,000; or an uncertified Final Production Cost Report supported by a Statutory Declaration (available online) for projects with budgets under \$200,000.
  17. Application Fees. All applications shall be subject to an application fee equal to .50 per cent of the Nova Scotia total eligible costs budget to a maximum of \$5,000 plus HST. The fee shall be payable by a non-refundable application charge of \$250 plus HST payable to the Administrator at the time of application and the balance held back from the disbursement of funds under the Incentive Agreement.

## Specific Eligibility Requirements and Funding Levels by Production Type

For the purposes of this incentive, screen-based productions are classified into two categories based on percentage of ownership:

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### **Stream I – Indigenous/Co-production: eligible incentive.**

- Twenty-six per cent of all eligible Nova Scotia costs (as defined and subject to the limits set out below).
- Between 50 and 100 per cent Nova Scotian corporate ownership and control (e.g., shareholders and directors) of production and proportionate financial and creative control, as well as proportionate profit participation. Exceptions may be made by the Administrator in the case of International Treaty Co-productions, Interprovincial Co-productions or International Co-ventures.
- A minimum of eight Nova Scotians must be employed in Head of Department positions. Two trainee positions in eligible departments may be substituted for one Head of Department position to a maximum of four trainees in instances where qualified Nova Scotia–defined Heads of Departments are not available, and in consultation with appropriate union, guild, or labour association as applicable.
- For shoots where greater than 51 per cent of the principal photography is in a rural/non-metropolitan area, 2 percentage points of additional funding will be granted.
- For shoots of more than 30 days, 1 percentage point of additional funding will be granted.

### **Stream II – Service Production: eligible incentive.**

- Twenty-five per cent of all eligible Nova Scotia costs (as defined and subject to the limits set out below).
- Fifty per cent or less Nova Scotian corporate ownership or control of production.
- A minimum of four Nova Scotians must be employed in Head of Department positions. Two trainee positions in eligible departments may be substituted for one Head of Department position to a maximum of four trainees in instances where qualified Nova Scotia–defined Heads of Departments are not available, and in consultation with the appropriate union, guild, or labour association.
- For shoots where greater than 51 per cent of the principal photography is in a rural/non-metropolitan area, 2 percentage points of additional funding will be granted.
- For shoots of more than 30 days, 1 percentage point additional funding will be granted.

Incentive percentage will be deducted by 0.5 per cent for each Head of Department position below the minimum stream requirement.

## **Nova Scotia Content Incentive**

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The following additional Nova Scotia content incentives are available separately or cumulatively if the applicable criteria are met.

- A. An additional 1.5 percentage points of all eligible Nova Scotia Costs will be granted for productions in which no less than 60 per cent of all principal performers, actors, stunt performers, and stunt actors are Nova Scotia residents. For greater certainty, background performers are not included in this calculation.
- B. Notwithstanding the foregoing, a further additional 1.5 percentage points of all eligible Nova Scotia Costs will be granted for all productions that meet at least three (3) the following specified Nova Scotia–content requirements:

1. Productions with majority copyright ownership by the applicant Nova Scotia production company.
2. Productions in which a minimum of two Nova Scotia resident trainees with no prior paid film or TV production experience are employed for the duration of the production.
3. Productions in which 75 per cent of the post-production work is carried out in Nova Scotia.
4. Productions by a Nova Scotia resident as producer, who has been a resident for two years prior to principal photography.
5. Productions in which the amount of money spent in Nova Scotia (Nova Scotia Spend) is 75 per cent of total production costs and greater than \$25,000.
6. The principal writer of the production is a Nova Scotia resident, or, for a series, the majority of episodes are written by Nova Scotia residents.
7. The principal director of the production is a Nova Scotia resident, or, for a series, the majority of episodes are directed by Nova Scotia residents.

**IMPORTANT:** If an applicant is unable to provide the required documentation supporting their eligibility the application will be returned to the applicant for completion.

## Definitions

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**“Nova Scotian”** means a lawful resident of Canada for the purposes of the *Income Tax Act (Canada)* who:

- (i) was a resident of Nova Scotia on December 31 of the year preceding the one in which principal photography of the production commences or commenced; and
- (ii) files a Nova Scotia Income Tax Return as a resident of Nova Scotia and did so for the previous income tax year immediately preceding the one in which photography of the production commences or commenced

Applicants may request that individuals be considered Nova Scotian if they have filed a Nova Scotia Tax Return in any of the four prior taxation years or otherwise are considered to be qualified Nova Scotia residents. Only those individuals approved in an advanced ruling will be considered. This practice will be reviewed on an annual basis.

**“Producer”** means, in relation to a production, an individual:

- (i) whose primary business is developing, producing, and marketing theatrical films and/or television programs;
- (ii) who controls and is a central decision maker in respect to the production;
- (iii) who is directly responsible for the creative and financial control and exploitation of the production; and
- (iv) who does not work on the production in any technical, administrative, or creative “below-the-line” capacity, except for productions with budgets of \$1 million or less.

The functions of line producer and production manager, in and of themselves, are not sufficient to confer producer status.

**“Rural/Non-metropolitan Area”** means outside the boundaries of Halifax Regional Municipality.

**“Co-producer”** means, in relation to a production, an individual who shares with one or more others decision making and creative and financial control and exploitation of the production, but otherwise meets the previous definition of “Producer”, and:

- (i) is directly responsible for negotiating and securing Canadian production financing and exploitation agreements;
- (ii) is contractually entitled (whether through a corporate entity or otherwise) to reasonable and demonstrable monetary participation in budgeted producer fees/corporate and revenues of exploitation, in each case commensurate with ownership of and financial participation in the production;
- (iii) receives an onscreen producer credit and onscreen corporate credit as a co-producing partner and credits in all promotion and publicity, both written and electronic, in respect of the production commensurate with the Nova Scotia producer's financial participation; and
- (iv) who does not work on the production in any technical, administrative, or creative below-the-line capacity, except for productions with budgets of \$1 million or less.

**“Distributors”** are defined as any entity or undertaking that controls sales rights to a production that has been funded by the Nova Scotia Film & Television Production Incentive Fund.

The level of Nova Scotia ownership in a production will be determined as follows:

- (i) by the percentage of rights to the production held by the applicant Nova Scotia production company
- (ii) proportionate to the degree that the Nova Scotian producer(s) exercises creative and financial control over the production
- (iii) proportionate to the degree that the Nova Scotian producer(s) shares in the profits arising through the exploitation of the production. Back-end participation must be commensurate with the Nova Scotia producer's financial participation in the project

It will be the responsibility of the applicants to affirmatively establish **“Nova Scotian Ownership of Production”** including

- supplying all documentation required to establish the percentage of “Nova Scotian Ownership of Production” based on the above criteria
- responding to any further requests for documentation or other confirmation as required
- supplying, if so requested, one or more duly sworn statutory declarations attesting to specific facts of circumstances

In the event that there is an issue not covered by the published criteria, the Minister of Business shall determine whether an applicant has satisfactorily established the degree of “Nova Scotian Ownership of Production.”

### **Head of Department Positions**

The 16 eligible Head of Department positions recognized by the Nova Scotia Film & Television Production Incentive Fund -- or the Fund for the purposes of determining eligibility status are writer, director, production manager, art director, production designer, editor, director of photography, composer, wardrobe, key hair, key makeup, location sound mixer, visual effects artist, accounting, electrical, and key grip. As an alternative, a minimum of five Nova Scotia resident performers in Lead or Principal Performer roles in any production with a cast of more than 10 performers and for productions with 10 or less a majority of the cast being Nova Scotia resident performers may be deemed to be the equivalent of one Head of Department position.

The employment of two qualified trainees in any eligible department may be substituted for one Head of Department position, to a maximum of four trainees per production. Trainees must be able to provide either evidence of completion of a recognized accredited educational program or a letter of reference from an accredited mentor prior to being employed on the production. Training must be conducted by an established professional in the field. Applicants who substitute trainees for eligible Head of Department positions must submit a detailed training plan for each trainee. The plan must identify trainee skills to be developed and include specific goals relevant to their position.

Trainees must

- have industry experience/education
- be a Nova Scotian graduate from an accredited post-secondary institution and reside in Nova Scotia.

To be considered an eligible Nova Scotian performer in a lead or supporting role, the individual must meet the following definition:

**“Principal Actor”** means a performer engaged to speak or mime six or more lines of dialogue, or an actor engaged to perform a major role without dialogue. A line of dialogue means a line of script 10 words or fewer, including directed by unscripted dialogue.

The Nova Scotian performer’s engagement must

- for one performer, be in the top seven performer contracts issued
- for two performers, be in the top eight performer contracts issued
- for three performers, be in the top nine performer contracts issues

In the case of narration or voice-over performances, the Nova Scotian performer’s engagement must be one of the top two performer contracts issues in terms of recording days’ work.

In the event of shared Head of Department positions, provided one of the individuals is Nova Scotian and the onscreen credit is shared equally, a point will be granted. However, only one point will be awarded regardless of the number of Nova Scotians employed in that position.

In the event that one individual Nova Scotian serves in multiple Head of Department positions, only one Head of Department point will be granted for that individual, regardless of the number of eligible Head of Department positions they hold. For the purposes of this guideline, this principle will apply without limitation for eligibility for the Nova Scotia Content Incentive. Exceptions to this requirement may be made by the Administrator for documentaries or small-scale productions that customarily have one individual in multiple Head of Department positions.

## Eligible Nova Scotia Costs

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Eligible costs include all expenditures where the good or service is purchased from a Nova Scotia–based supplier with a permanent physical establishment within Nova Scotia, and is leased, used, provided, or consumed in Nova Scotia.

A list of eligible expense items is available on the Eligible Nova Scotia Costs Worksheet. If an applicant has expenses not explicitly identified as eligible on the worksheet, they should apply to the Nova Scotia Film & Television Production Incentive Fund Administrator for an advanced ruling. Only those expenses identified in the list of eligible expense items, or that have been approved in an advanced ruling, will be considered in funding calculations.

Insurance costs will be prorated to the number of Nova Scotia production days.

Except when approved by the Administrator in advance, producers may claim no more than one Head of Department/Performer positions in addition to being a producer. In these approved instances, total fees eligible for inclusion as an eligible Nova Scotia cost for Head of Department/Performer services payable to producers also employed in Head of Department positions will be no greater than applicable industry standard or 20 per cent of the budget, whichever is lower, and, in any event, will be within the threshold set by paragraph 15.

The value of in-kind contribution is not considered an eligible Nova Scotia expense.

Capital items are not considered an eligible Nova Scotia expense.

Fees for goods or services subcontracted by Nova Scotia companies to out-of-province individuals and organizations are not considered eligible Nova Scotia expenses. The good or service must be supplied, receipted or performed in Nova Scotia.



## Incentive Recipient Obligations

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Recipients of funding are required to fulfill the obligations set out below. Specific requirements are detailed in the incentive agreement and supersede information provided in these guidelines. **Recipients are advised to review their incentive agreement carefully prior to signing.**

### 1. Credit and Promotion

The applicant will use best efforts to include the following in its credits:

- Onscreen and advertising, promotional material credit  
“Produced with the assistance of the Government of Nova Scotia, Nova Scotia Film & Television Production Incentive Fund” or other suitable logo in a position, size, and prominence that is proportionate to the Fund’s financial contribution to the production and in relation to other financing participants, and: “Shot on location in Nova Scotia, Canada” in the tail credits of the project (where applicable).

Where the production is a TV series, the above credits are required for each episode.

### 2. Insurance

The applicant will provide evidence of a certificate of industry standard insurance prior to the first day of principal photography.

### 3. Deliverables

Upon completion of the production, the applicant shall provide the following deliverables:

- A completed copy of the Production Statistics Form.
- A copy of the completed production in a format requested by the Administrator.
- The final list of head and tail credits as they actually appear on the completed production.
- Subject to current statutory and existing contractual obligations to, and approval rights of, third parties, if available and requested by the Administrator, a full electronic press kit including, but not limited to, a minimum of two cast shots and two behind-the-scenes production shots, submitted in a format required by the Administrator, as well as any additional publicity/promotional materials available (e.g., posters).
- A Statutory Declaration (available online) verifying that all Nova Scotians in Head of Department positions satisfy a minimum of 50 per cent of the function of each Head of Department position and verification pursuant to section 16.
- If trainees were substituted towards eligible Head of Department positions, the applicant must submit a final report for each trainee demonstrating that objectives outlined in the training plan have been successfully met. Trainees must also submit a report detailing the impact of the position on the trainees’ professional development and the achievement of their training objectives.
- Such other documentation listed in the incentive agreement or that the Fund Administrator advises the applicant may be required.
- Where the final cost of the production exceeds \$500,000, an audited Production Cost Statement prepared by a certified accountant with a CGA, CA, CMA or CPA designation. The audit requires schedules detailing the total production cost, total Nova Scotia cost, balance sheet, detailed listing of accounts payable remaining unpaid, audit report stating the audit opinion, list of Nova

Scotians in Head of Department positions including the amount they were paid. All schedules must be audited in accordance with the terms noted in the signed contract and these production guidelines. Where the final cost of the production is greater than \$200,000 up to \$500,000, a Production Costs Statement with a Review Engagement Report shall be submitted.

- Where the final cost of the production is equal to or less than \$200,000 an uncertified Final Cost Report supported by a Statutory Declaration (available online).
- The Administrator of the Nova Scotia Film & Television Production Incentive Fund has the right to audit the books and records of any company that receives a payment from the Fund. These records may include, but are not limited to, the following: invoices, bank statements, cancelled cheques, audited financials, agreements, contracts with individuals and companies, and proof of Nova Scotia residency for any personnel.
- Retention of records is required for a period of seven years.

Notes: The following must be included as a schedule or note to the Audited Production Cost Statement or uncertified Final Cost Report:

- A final detailed breakdown of all Eligible Nova Scotia Costs and all other expenses related to the production.
- Auditors are required to provide an opinion on financial compliance with the incentive agreement, program accounting, and reporting requirements.
- A list of all Nova Scotians in Head of Department Positions.
- Nova Scotia residency must be verified by a Statutory Declaration, sworn to and signed by the Producer.
- A final detailed breakdown of any unpaid Nova Scotian costs that are due and owing at the time of reporting.
  - o An allowance of up to 5 per cent for unpaid Nova Scotia costs is permitted for reasonable costs that are not able to be paid at the time of delivery.
  - o Nova Scotian expenditures exceeding the 5 per cent threshold that remain unpaid at the time of reporting will not be included toward the final incentive calculation unless approved in an advanced ruling. (Producer Fees and Corporate Overhead are excluded from this condition.)

The Administrator reserves the right to require that an audit be performed regardless of the final cost. Stream II projects have the option of reporting against only the Nova Scotia Spend portions of the final costs.

## **Production Funding Process**

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- A complete application submission must be received by the Administrator before a project will be considered for funding. Incomplete submissions will be returned to the applicant. A complete application submission consists of a completed Application Form and all required accompanying documentation and supplementary information.
- An eligibility assessment test will be conducted on complete submissions. The assessment of the application is reviewed and approved by the Administrator.
- Applicant notification of funding decision.
- Letter of Intent to enter into Incentive Agreement issued from the Administrator to applicants of eligible projects.

- Execution of Incentive Agreement, including notification of project deliverables and reporting requirements.
- Receipt of all project deliverables including production costs financial reports.
- Release of incentive funding as per incentive agreement.
- All cost overruns are at the sole risk of the applicant and the Fund assumes no obligation with respect to any costs that exceed the project budget.

Note: Assignment and direction of incentive funds may only be assigned to a recognized financial or lending institution.

The Nova Scotia Film & Television Production Incentive Fund shall be subject to a sunset review no later than the 2020–2021 fiscal year.

Applicants acknowledge and agree that funding approval under these guidelines shall be disclosed to the public in accordance with the *Accountability in Economic Development Assistance Act (Nova Scotia)*.

### **Transition Provision: Film Industry Tax Credit**

Without limiting the scope of paragraph 3 hereof, projects for which principal photography has commenced prior to July 1, 2015, or for which a Part A application has been filed and for which principal photography has either commenced or is claimed to have commenced, shall not be an eligible project under these guidelines.

Whether principal photography has been commenced prior to July 1, 2015, shall be conclusively determined by the Administrator applying the following industry standard. The Administration will use the following Canadian Audio-Visual Certification Office (CAVCO) definition to determine when principal photography begins:

“The phase of film production during which the movie is actually shot, as distinct from pre-production and post-production. Principal photography begins with the first day of shooting of significant scenes which involve the main photography unit, e.g. in drama, scenes with actors rather than simple establishing shots. For animation, it is specified as being the beginning of key animation.”

Applicants who have filed a Part A application under the former Film Industry Tax Credit and have not commenced principal photography prior to July 1, 2015, are advised to issue a letter to the Administrator withdrawing the Part A application for the project to the following address: Nova Scotia Film & Television Production Incentive Fund Administrator, NSBI World Trade & Convention Centre, 1800 Argyle Street, Suite 701, Halifax, NS, B3J 3N8.

Projects for which Part A or B applications under the former Film Industry Tax Credit have been filed that are not withdrawn shall be assessed for eligibility only under the requirements of the former Film Industry Tax Credit.

Applicants are referred to Nova Scotia Finance and Treasury Board’s “Clarification on July 1, 2015—Film and Television Production for Film Industry Tax Credit” dated May 5, 2015.