

# SAG-AFTRA Imposes New Restrictions on Third-Party Signatories through New Letter of Adherence

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## The Bottom Line

- *The terms of the LOA are set to become effective on **January 1, 2020**. This deadline gives the signatories, advertisers and non-union agencies limited time to assess how the LOA's new restrictions will impact their respective roles in the production process, and chart their best path forward.*

The Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), the union representing on-camera talent in the advertising industry, has reached an agreement with six leading signatory co-producers. The agreement establishes new restrictions on what those signatories can do during the production process, including restrictions concerning the extent to which non-signatory ad agencies may be involved in productions featuring SAG-AFTRA talent.

Although the agreement only binds the six companies that signed it, SAG-AFTRA is requiring other third-party signatories to sign as well or risk losing their signatory status, causing changes that will likely be felt throughout the industry.

SAG-AFTRA's crackdown on third-party signatories began over a year ago, when the union sent them letters requesting information regarding their status and role as producers and employers as defined under their then-existing letter of adherence to the SAG-AFTRA Commercials Contract. Earlier this year, SAG-AFTRA escalated its push by revoking the signatory status of six leading third-party signatories, claiming that they were not "bona fide employers" of the talent performing services in the commercials as to which the signatories were hired to engage the SAG-AFTRA talent.

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## The Letter of Adherence

Since then, the six companies negotiated an agreement with SAG-AFTRA, culminating in their signing a new Letter of Adherence (LOA) as a condition of their being able to remain signatories. The LOA imposes wide-ranging employer obligations on third-party signatories and substantial restrictions on the ad agencies attached to the production.

First, the LOA lists 10 activities that the signatory must perform in connection with any production in order to be an "employer." The LOA further states that the enumerated activities "are non-delegable and must be performed by an actual W-2 employee" of the signatory, and requires that signatories provide SAG-AFTRA, within 30 days of shooting an ad, with documents demonstrating compliance.

Under the LOA, signatories must do at least all of the following:

1. Secure a casting agent in collaboration with the client;
2. Resolve all cast clearance issues;

3. Hire and contract with performers in collaboration with clients;
4. Have personnel on-set for each and every production except voiceover sessions or foreign shoots (defined as shoots taking place outside of the United States). Those on-set personnel must be able to address any issues arising under the SAG-AFTRA Commercials Contract for any shoot days;
5. Ensure proper payment of session fees and residuals of all performers and be available to promptly engage with SAG-AFTRA staff to resolve any claims at the time of production or thereafter;
6. Attend pre-production meetings (in person or via conference call) if signatory's responsibilities set forth are discussed;
7. Participate in the selection of a production company;
8. Review scripts and storyboards for purposes of determining the number of performers to employ;
9. Be involved in selection of performers; and
10. Negotiate union talent agreements with performer representatives in collaboration with the client.

The LOA also states that third-party signatories may only serve as signatories directly for advertisers, not advertising agencies, "and only when the advertiser has not engaged and will not engage an advertising agency to perform any of the [same enumerated] employer functions . . . in connection with the commercial for which the [c]ompany is being engaged." The LOA includes a form that signatories must have advertisers sign attesting to this, and also requires the advertiser to attach a signed agreement between the advertiser and an advertising agency working on the commercial (if any) stating that the agency will not provide any of the enumerated "employer services."

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## Impact of the LOA

By requiring that any advertising agency attached to the production not perform any of the 10 enumerated "employer functions," the LOA, in essence, seeks to prevent third-party signatories from working with non-union advertising agencies at all. Many see this effort primarily as a way to get non-union agencies to become signatories.

For years, non-union agencies have worked with third-party signatories on commercial productions that include SAG-AFTRA talent, which SAG-AFTRA views as usurping the requirement that an agency become a signatory. By focusing on the third-party signatories' status as "employers," the union sought to restrict the participation of non-union agencies.

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