

# **Sheet Metal Workers National Pension Fund**

## **Procedures for the Collection of Contributions**

### **INTRODUCTION**

The Board of Trustees (the “Trustees”) of the Sheet Metal Workers’ National Pension Fund (“Pension Fund”) has a fiduciary obligation to collect all money that is due and owing to the Pension Fund. Additionally, the Pension Fund acts as a collections agent for the International Training Institute for the Sheet Metal and Air Conditioning Industry, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, National Stabilization Agreement of Sheet Metal Industry, the Sheet Metal Workers’ International Scholarship Fund, and the National Supplemental Savings Plan. These obligations require that the Trustees establish a system for monitoring employers’ compliance with their obligations to make contributions to the Benefit Funds and under which the Benefit Funds’ administrators and legal counsel will take all legally appropriate and cost-effective steps to collect delinquent contributions, so that they may be applied for the benefit of the Benefit Funds’ participants.

In addition, the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) defines as a “prohibited transaction” any extension of credit from an employee benefit plan to a contributing employer. A failure to collect contributions when they are due may be treated as such an extension of credit from the plan to the employer. In 1976, the Department of Labor (DOL) issued guidance, in the form of a class exemption from the prohibited transaction rules, which permits reasonable business decisions to be made on unpaid contributions. That guidance is Prohibited Transaction Class Exemption 76-1 (“PTCE 76-1”).

The fundamental principles of PTCE 76-1 are the following:

1. Any compromise of a claim for unpaid contributions, or any arrangement permitting payment later than the normal due date, must be made for the “exclusive purpose of facilitating the collection of such contribution” (and not, for example, to ease the employer’s cash-flow problems).
2. Any such compromise or arrangement and any decision to write off a claim for unpaid contributions as uncollectible must be “reasonable under the circumstances based on the likelihood of collecting such contribution or the approximate expenses that would be incurred” if the plan persisted in trying to collect the contribution by other means.
3. All such compromises, arrangements, or write-offs must be preceded by “such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution or any part thereof.”

On December 30, 2003, the DOL issued a prohibited transaction class exemption that applies to settlements of claims against contributing employers for failure to forward participants’ deferred wages to 401(k) plans within the required time periods. PTCE 2003-39

(Dec. 30, 2003). This PTCE requires that any release or reduction of such a claim for contributions, or any extension of credit permitting payment of such delinquent contributions in installments:

1. Must be based on the plan attorney's determination that there is a genuine controversy involving the plan;
2. Must be authorized on behalf of the plan by a "fiduciary who has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary";
3. Must be described in a written agreement or consent decree;
4. Must not be part of an arrangement that is designed to benefit a party in interest (*i.e.*, either a contributing employer or the union);
5. Must be reasonable in light of the plan's likelihood of full recovery, the costs and risks of litigation, and the value of the claims forgone;
6. If it provides for any installment payments or delayed payment, the credit terms must be reasonable in light of the creditworthiness of the employer and the time value of money, and the fiduciary should consider requiring security; and
7. The plan must participate in the settlement on terms that are at least as favorable to the plan as the terms that affect any other parties that are not plans.

The primary policy consideration of the Pension Fund's collection program, other than those that are mandatory under the DOL's guidance, is that the delinquency policy should be designed to avoid being the lender of first resort for an employer that has cash-flow problems. It is easy for an employer to write itself a loan from the Pension Fund by simply postponing a contribution remittance. The delinquency policy should make that decision costly, so that if the employer must decide which of its creditors it will pay first, it will have a strong reason to pay the Pension Fund first and postpone payment to its other creditors.

In compliance with the foregoing principles governing collection, the Board of Trustees has adopted the following rules and procedures regarding the enforcement of employers' reporting and remittance obligations to the Fund.

A. Definitions

For purposes of these Procedures, the following terms are defined as follows:

1. **Benefit Funds** - Sheet Metal Workers' National Pension Fund, International Training Institute for the Sheet Metal and Air Conditioning Industry, National Energy Management Institute Committee for the Sheet Metal and

Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, National Stabilization Agreement of Sheet Metal Industry, the Sheet Metal Workers' International Scholarship Fund, and the National Supplemental Savings Plan.

2. **CBA** - collective bargaining agreement or other agreement that requires Contributions.
3. **Contributions** - contributions due from an Employer under the terms of a collective bargaining agreement, the Trust Document, or other agreement, which are due any of the Benefit Funds.
4. **Contributions Committee** - Committee of the Board of Trustees to which the Trustees confer authority to administer, implement, adopt, modify, amend, carry out, interpret and/or enforce the Procedures and/or the provisions of the Trust Agreement applicable to the collection of Contributions.
5. **Delinquency Date** - the earlier of the date of delinquency established in a CBA or the 20th day of the month following the month for which Contributions are required to be made, regardless of whether such Contributions are required to be paid monthly or weekly.
6. **Delinquent Employer** - an Employer that fails to timely remit all Contributions and/or complete and file accurate remittance data on or before the Delinquency Date.
7. **Employer** - an Employer, which has, or had, an obligation to contribute to any of the Benefit Funds.
8. **ERISA** - the Employee Retirement Income Security Act of 1974, as amended.
9. **NSSP** - National Supplemental Savings Plan.
10. **Pension Fund** - Sheet Metal Workers' National Pension Fund.
11. **Procedures** - the Sheet Metal Workers' National Pension Fund Procedures for the Collection of Contributions.
12. **PTCE 76-1** - Department of Labor Prohibited Transaction Class Exemption 76-1.
13. **Reports** - reports of hours worked by, and earnings and other information on, persons for whom Contributions are required.

14. **SMACNA** - Sheet Metal and Air Conditioning Contractors' National Association.
15. **Trust Documents** - the documents, as may be amended and restated, under which the Pension Fund is established and operates.
16. **Trustees** - unless the context suggest otherwise, the Trustees of the Pension Fund and/or any committee.
17. **Union** - the International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART") and any Local Union chartered by SMART.

B. Authority

1. The Trustees have the legal right to exercise all remedies under ERISA and the Trust Documents. The Trustees have delegated to the Contributions Committee the authority and power to:
  - a. Take any steps and/or perform all acts that are necessary or proper to collect Contributions in a reasonable, systematic and diligent manner, including (without limitation) amending these Procedures, and retaining counsel, auditors and other professionals to assist with collection.
  - b. Audit Employer records, assess liquidated damages, attorneys' fees and costs, and take such other action permissible under applicable law to collect Contributions.
  - c. Determine whether Contributions have been erroneously paid, and whether a refund of erroneously-paid contributions may be made. This authority does not diminish the authority of the Board of Trustees to independently make determinations respecting erroneously-paid contributions.
  - d. Compromise any claim or enter into a settlement agreement with a Delinquent Employer on the terms the Contributions Committee deem appropriate and consistent with applicable law and regulations.
  - e. Establish Settlement Guidelines for Staff and Counsel. The Trustees may authorize settlements, arrangements, compromises,

understandings or resolutions of delinquencies that waive or compromise an amount owed, or that contemplate payment of amounts due over a period of time. Any such settlement that waives or compromises an amount owed, or that contemplates payment of amounts due over a period of time, shall be in writing and comply with applicable law, including PTCE 76-1.

- f. Depart from these Procedures in any circumstance it deems prudent to do so.

**C. Applicability**

1. If an Employer's contribution obligation cease, these Procedures apply for the period during which the Employer was obligated to contribute until the Employer's delinquency is finally resolved.
2. Nothing in these Procedures creates or confers any substantive or procedural right on any Employer, employee, participant, Local Union or, employee benefit plan or program. Furthermore, departure or deviation from these Procedures does not confer or create any defense to timely payment of contributions, interest, liquidated damages, attorneys' fees and cost and/or claim for mitigation of damages, with respect to payment of Contributions, interest, liquidated damages, attorneys' fees or costs.
3. These Procedures are intended to be consistent with the provisions of the Pension Fund's Trust Documents; however, in the event of a conflict between these Procedures and the Trust Documents, the Trust Documents control. All matters concerning plan benefits (*e.g.*, benefit credit, benefit eligibility, and benefit amounts) shall be determined under the Pension Fund's plan documents.

**SECTION I**

**TIME TABLE, INITIAL NOTICES and RESOLUTION BEFORE REFERRAL**

A. The Trustees direct and authorize all reasonable steps necessary or appropriate to promote timely submission of Contributions and Reports and seek prompt payment or submission of delinquent Contributions and Reports. In most circumstances, the appropriate Local Union and SMACNA representatives shall be copied on any notice or communication to an Employer regarding delinquent Contributions.

B. If Contributions are not received within ten (10) calendar days after the Delinquency Date, the NPF Billing Department shall send a First Notice to the Employer

notifying the Employer of the apparent delinquency and requesting immediate payment. The Employer is liable for late fees (interest and liquidated damages) beginning five (5) days following the Delinquency Date.<sup>1</sup> Generally, late fees are 10% of the total delinquency or \$50, whichever is greater. Those Employers that are required to pay Contributions weekly, but fail to timely remit such Contributions, will be assessed interest and liquidated damages as though the Employer is required to remit Contributions monthly. For example, if an Employer's weekly contributions are due each Friday, the contributions due after the 20<sup>th</sup> of January will be treated as though they were all due the 20<sup>th</sup> of February for purposes of assessing interest, liquidated damages and issuing delinquency letters.

C. If the delinquent Contributions are not paid within ten (10) calendar days of the date on First Notice, the NPF Billing Department shall send a Second Notice as soon as practicable. The Second Notice shall advise that the Employer is liable late fees, attorneys' fees, audit fees, and other collection costs.

D. If the delinquent Contributions are not paid within ten (10) days of the date on the Second Notice, the Compliance Department shall send a Final Notice as soon as practicable. The Final Notice shall advise the Employer, at a minimum, that:

1. the Employer is liable for late fees, attorneys' fees, audit fees, and other collection costs, assessed consistent with the Trust Documents;
2. the Pension Fund may take prompt legal if the Employer does not remit delinquent Contributions, late fees and other collection costs immediately;
3. the Employer may be subject to withdrawal of labor;
4. the Trustees may terminate the Employer's participation in the Pension Fund;
5. any Owner/Member of a Delinquent Employer may cease to accrue benefits, or have his/her benefits adversely affected, under the terms of the applicable plan documents.

E. The NPF Compliance Department may attempt to resolve a delinquency before referral to Counsel (with assistance from other Fund staff as needed). Resolution efforts may include contacting the Employer's owner(s) and officers, registered agent, and highest-level executives at their office and home addresses. Generally, the NPF Compliance staff should require, as a condition of settlement, (1) a personal guarantee by the Employer's

---

<sup>1</sup> As described below, the amount of late fees assessed increases substantially if the Benefit Funds file suit against the employer.

owner, and (2) that the Employer remit Contributions and settlement payments via the Internet Payment System.

F. The Trustees authorize the NPF Executive Director to enter into settlements that comply with the SETTLEMENT GUIDELINES for STAFF AND COUNSEL.

## **SECTION II**

### **REFERRAL TO COUNSEL TO COLLECT DELINQUENCIES AND ENFORCE AUDIT RIGHTS**

A. If the Employer has not responded within ten (10) days of the date of the Final Notice, or the Compliance Department is not able to reach a final resolution for payment within the SETTLEMENT GUIDELINES for STAFF AND COUNSEL, the matter shall be referred to the NPF Legal Department as soon as practicable for further review and possible referral to outside counsel.

B. The NPF Legal Department will send a demand letter advising the Employer of the amounts due and that the matter is being evaluated for legal action. If the Employer's delinquency violates a settlement agreement previously negotiated by outside counsel, the NPF Legal Department may refer the matter back to such outside counsel prior to the NPF Legal Department sending a demand letter.

C. If the matter is not resolved within a reasonable time after the NPF Legal Department sends a demand letter to the Employer, the NPF Legal Department will evaluate whether to bring legal action against the Employer. NPF staff will continue to send delinquency letters inclusive of new delinquencies, and contact the Local Union, Employer and SMACNA, to the extent feasible.

D. The NPF Legal Department will determine if a referral to outside legal counsel is appropriate, consistent with this subsection, unless the Trustees otherwise direct.

1. No case shall be referred to outside counsel unless contributions exceed \$3,000, except for rare matters involving habitually delinquent Employers. For so long as delinquent Contributions are less than \$3,000, the Compliance Department will periodically seek collection. The Compliance Department shall keep other departments apprised of the delinquency as appropriate and necessary for such other departments to carry out their duties and responsibilities (*e.g.*, Pension Department for Owner-Members).
2. For delinquent amounts over \$3,000, the NPF Legal Department will perform a cost/benefit analysis of referring the matter to outside legal counsel, taking into consideration (without limitation) the costs of potential litigation versus the amount owed, the Employer's history

of delinquencies, and the Fund's ability to collect on a judgment against the Employer.

E. In all referrals to outside counsel, the Compliance and NPF Legal Departments shall provide all information and documents reasonably necessary to pursue legal action. The Trustees may refer any Delinquent Employer to outside counsel at an earlier or later date than provided for above, as they find appropriate under the facts and circumstances. An Employer's refusal to permit or cooperate with an audit may result in immediate referral even in the absence of a known delinquency.

F. Upon referral, outside counsel shall conduct a legal and factual review appropriate under the circumstances. In consultation with NPF Legal Department, outside counsel may attempt settlement for a limited time before filing suit. Upon completion of outside counsel's review and settlement efforts, if any, outside counsel will consult with the NPF Legal Department to analyze the likelihood of obtaining recovery and the litigation costs to the Fund. Upon instruction from the NPF Legal Department, and unless circumstances dictate otherwise, outside counsel shall file suit against the Employer within three months of referral. Outside counsel should continue to consult with NPF Legal Department throughout the litigation process, particularly regarding mounting legal costs and obstacles to collecting the amounts owed.

G. When outside counsel collects delinquencies, or seeks to enforce the right to audit an Employer, whether or not suit is filed, the Employer is generally required to reimburse the Fund for any and all costs, including but not limited to audit costs, attorneys' fees and costs incurred in collections and/or enforcing the right to audit, any attorneys' fees incurred in post-judgment collection efforts (*e.g.*, garnishments, income executions).

H. A Delinquent Employer (or an Employer facing legal action to enforce the right to audit) shall be expected to reimburse the Fund for all costs incurred in enforcing the Employer's contribution obligations, including the obligation to submit to an audit. Such costs include, but are not limited to audit fees and costs, attorneys' fees, filing fees, fees for service, travel, copying charges, postage, reports, expert fees, and any other costs incurred by the Fund to determine, discover or collect any of the amounts described herein.

I. If a lawsuit is filed against a Delinquent Employer, the assessment of late fees will increase to:

1. Interest at the rate of 0.0233% per day, compounded daily assessed from the original due date to the payment receipt date, and
2. Liquidated damages the greater of 20% of the delinquent contributions or the amount of the accrued interest.

J. The Benefit Funds may elect a course of action other than legal action including deferring, withdrawing, or settling litigation consistent with the following:

1. The requirements of applicable law, including PTCE 76-1;
2. The Union's implementation of the SMART Protocol;
3. The amount of the delinquent Contributions;
4. The length the delinquency has persisted;
5. The Employer's ability to pay;
6. The likelihood of collecting a judgment once it is obtained;
7. The Employer's payment history;
8. The likelihood that the costs of a lawsuit will exceed any potential recovery;
9. The recommendation of Counsel; and
10. Any other factor that may have a material bearing on the collection of the delinquent Contributions.

K. Once outside counsel files suit, counsel shall prosecute the case to judgment, unless an acceptable settlement or other resolution is reached. Counsel is authorized to enter into settlement negotiations with Delinquent Employers. The Trustees authorize outside counsel to dismiss any legal action in exchange for the immediate payment of all amounts due and owing. Any settlement that waives or compromises any amount owed (including interest, liquidated damages, attorneys' fees, audit fees, or other collections costs), or that contemplates payment in installments, must be approved or meet established parameters for preapproval as set forth in the SETTLEMENT GUIDELINES for STAFF AND COUNSEL.

L. The Fund may publish or otherwise disseminate the names of those Employers against which the Fund has filed suit.

### **SECTION III ALLOCATION POLICY**

If an Employer remits only a portion of its delinquent Contributions, the partial payment may be applied as follows:

A. First, to deferred wages due the NSSP as 401(k) contributions, credited to the participants' accounts *pro rata* based on the full amounts due.

B. Second, to interest due on such deferred wages owed to the NSSP when collected, credited to the participants' accounts *pro rata* based on the full amounts due.

C. Third, to the Benefit Funds for contributions, crediting the amounts to the oldest month due, then to that month's late fees, allocated *pro rata* based on the full amounts due.

### **SECTION IV TERMINATION OF EMPLOYERS AS CONTRIBUTING EMPLOYERS**

The Pension Fund Plan Document authorizes the Trustees to terminate the participation of Delinquent Employers on account of nonpayment of Contributions, among other reasons. Before the Trustees terminate an Employer under the Plan Document, the Trustees will provide advance notice, as soon as practicable after the decision has been made to such Termination, to the respective Benefit Fund administrators or chief executives of the other Benefit Funds asking if such funds wish to proceed with termination. The Benefit Funds shall respond promptly and, if any fund does not respond, it will not be included in the termination. A Benefit Fund may preauthorize the Pension Fund to terminate on its behalf a chronically delinquent Employer.

### **SECTION V MINIMUM STANDARDS EMPLOYER RECORDS REVIEW**

The Fund will review Employer records to monitor Employer compliance with the contribution obligations, deter irregular reporting, and assist in identifying participant benefit credit. The Trustees have the discretion to determine the number of audits performed each year, but have set a target of auditing every Employer once every five years. Employers with repeated discrepancies and delinquent contributions may be audited more frequently. The Trustees may allow exceptions and/or alternatives to these standards in cases where the facts and circumstances make such exceptions and/or alternatives prudent.

A. Qualification Requirements for Auditors

1. Audits of Employer records shall be conducted by a qualified Auditor (the "Auditor") with satisfactory experience in compliance testing programs.

2. Actual fieldwork may be conducted by an audit specialist under the guidance of a qualified accountant from the Auditor.
3. The Auditor's compliance testing methods should substantially meet these Minimum Standards.
4. Notwithstanding anything to the contrary, no representations made by an Auditor in the course of its audit, findings, and reporting will be binding upon the Benefit Funds unless the Benefit Funds adopts the findings.

B. Pre-Audit Procedures

1. The Auditor will work with NPF staff to select a sampling of Employers that have not been audited in the preceding five years. Notwithstanding the foregoing, any Employer may be audited with or without cause even if audited within the preceding five years. The Union, other benefit plans, Contributing Employers or participants may request an audit, however, the request need not be granted.
2. In most instances, staff will advise the Local Union of Employers selected for audit before the audit.
3. An audit confirmation letter will be sent to the Employer before the audit.
4. The Benefit Funds rely on the Local Union for collective bargaining agreement information and other Employer information. In advance of the audit, the auditor should review all applicable collective bargaining agreements, and obtain clarification for jurisdictional, classification or other related issues from the Local Union as necessary.

C. Field Work

1. Initially, the period audited shall be limited to no less than three (3) years. If the auditor notes any substantive discrepancies, irregularities, patterns or trends indicating noncompliance, the Auditor may extend the audit period. Unless directed otherwise, auditors shall use professional and reasonable discretion in determining how far to extend the period audited.
2. The auditor shall request that the Employer have the following records available for inspection:

- a. Original Time Cards/Sheets
  - b. Payroll registers
  - c. Individual Earnings Records
  - d. 941's, State U/C's, W-2's, W-3's and 1099's
  - e. Cash Disbursement Journals
  - f. National Benefit Funds remittance reports/records
  - g. Remittance reports for any other fringe benefit fund to which the Employer contributes
  - h. Personnel records
  - i. Such other records as are necessary to complete the audit
3. The Auditor shall employ reasonable and customary procedures for testing completeness of records provided.
  4. The Auditor shall review all monthly Reports for the period tested for significant variations between or among months. The Auditor shall test the accuracy of all payments, adjustments, trends and variances.
  5. The Auditor shall conduct detail testing based on the results of items 1 and 2; selecting calendar quarters from different years if applicable.
  6. The Auditor shall trace hours for a reasonably representative sample of employees from time cards to payroll registers or individual earnings records for each quarter tested. The Auditor shall compare the gross wages for each employee from the payroll registers or individual earnings records to quarterly tax returns. The Auditor shall verify that the Employer reported hours worked or compensated, in accordance with the collective bargaining agreement and/or the Benefit Funds' governing documents. The Auditor shall itemize all discrepancies in wage and fringe benefit contribution rates and amounts reported. As many Employers are signatory to more than one collective bargaining agreement (*i.e.*, Building Trades, Residential Agreements, Project Agreements, Siding and Decking, Kitchen Equipment Agreements), the Auditor shall verify that hours are reported under the correct collective bargaining agreement for all employees. The Auditor shall note all discrepancies, ambiguities or questions contained in the collective bargaining agreement(s).
  7. The Auditor shall review all monthly reports for the quarters selected and identify all employees who have been added or deleted. The Auditor shall trace employees to appropriate payroll and personnel records to verify accuracy of addition or deletion.

8. For each quarter tested, the Auditor shall review Employer documentation (*e.g.*, personnel records, reports to other trusts/plans, etc.) to determine the job classifications of all employees who are not reported on the reports to the Benefit Funds. The Auditor shall summarize all questionable employees, listing their job classification or position with the Employer.
9. The Auditor shall note all cash payments to employees and the basis for such cash payments - specifically, any payment that could represent payroll compensation not reported to the Funds, the Union, or to other fringe benefit plans.
10. The Auditor shall verify that Employers report the hours for which Contributions are required for all employees, regardless of whether those employees are part of a bargaining unit.
11. The auditor shall identify all employees working for the Employer outside the Union's geographical jurisdiction, and note how those employees' hours are reported to the Union, the Funds, and any other fringe benefit plan (*e.g.*, to the Union under the two-man rule, to the Union but under another Union's collective bargaining agreement, etc.).
12. The Auditor may expand the scope of the testing when necessary to determine the extent of reporting errors.
13. The Auditor shall attempt to hold an exit conference with the Employer to review the initial audit findings and to solicit the Employer's acknowledgment. The Auditor's function is solely to test compliance. The Auditor is not authorized to comment on or interpret any provision of, or dispute concerning, contribution obligations or otherwise. Nor does the Auditor have authority to make representations or enter into any understandings, settlements or compromises.

#### D. Reporting and Follow-Up

1. The Auditor shall prepare a preliminary audit report that summarizes the audit findings, underpayments and overpayments on separate schedules. The preliminary report shall note any known issues concerning the collective bargaining agreement(s) or the Funds' governing documents. The preliminary report should itemize all

discrepancies by employee by month and in total. The preliminary report should contain the employee's name, social security number, hire and termination date, individual fringe contribution rates and the fringe amount computed. All audits of SASMI locals must include the SASMI fringe rate, fringe computed and gross computed.

2. The Auditor shall send copies of the preliminary audit report to the Employer and pose follow-up questions, however, no representations in the preliminary report shall be binding upon the Funds.

E. Final Report

1. If the Employer takes exception to the preliminary report, the Auditor shall respond with recommendations for the Funds' consideration before finalizing the audit report.
2. Funds' staff will review the final audit report and notify the Employer of the results. In cases where discrepancies exist, a demand letter will be sent for all amounts due including the cost of the audit and any liquidated damages. For routine audits where shortages are apparently inadvertent, the cost of the audit and the liquidated damages may be waived upon prompt payment of the shortages.
3. The customary field audit is not expected to uncover each and every reporting irregularity or delinquency; therefore, the absence of an audit finding cannot be taken as definitively establishing the absence of shortages or irregularities. From time to time, notwithstanding an audit, irregularities, shortages, and omissions may be discovered and pursued by the Fund.

F. Failure to Cooperate with Audit

Employers that refuse to permit an audit in whole or in part may be subject to legal action without further notice, with attorneys' fees, audit charges and other costs assessed to the Employer.

G. Cost Sharing

Other employee benefit plans may already have suitable audit programs in which the Benefit Funds may participate. The Trustees authorize staff to enter into these programs if there are savings and the programs materially comply with these Minimum Standards described in this Section. In general, an Auditor should conduct audits on behalf of the Benefit

Funds, and local funds, for a fee less equal or less than the amount the Benefit Funds would pay absent a joint audit.

**SECTION VI**  
**ERRONEOUS CONTRIBUTIONS, OVERPAYMENT,**  
**AND REFUND POLICY**

Erroneous Contributions or Overpayment mean amount(s) an Employer paid to the Benefit Funds, by a mistake of fact or law (other than a mistake relating to whether the Benefit Funds are exempt from tax under Section 501(a) of the Internal Revenue Code of 1986 (as amended)), in excess of the amount an Employer owes and which might, under appropriate circumstances, be returned to the Employer.

It is the Employer's responsibility to make accurate contributions to the Benefit Funds. The Benefit Funds are not responsible for errors by the Employer and its personnel or agents in relation to its contribution obligations.

A. Allocation to Outstanding Delinquencies

1. If an Employer remits a higher Contribution amount than due for its most recent contribution due date, pays a higher or additional settlement payment than required, or pays more in similar situations, the Billing or Compliance Departments will first confirm that the Employer does not have any accumulated delinquencies. If the Employer has outstanding delinquencies, the overpayment will be applied to the oldest delinquent amount first.
2. If the Employer does not have any outstanding delinquencies, the overpayment may be applied to the Employer's next payment due to the Benefit Funds.
3. The Compliance Department will notify the Employer of how the overpayment was applied.

B. Misdirected Payment: If the Overpayment is clearly intended for another fund, such as a local health and welfare fund, the Benefit Funds may refund the Overpayment to the Employer or forward a misdirected check to the local fund. The Compliance or Legal Departments may first attempt to negotiate with the Employer for any outstanding delinquencies owed the Benefit Funds.

C. Refund: The Pension Fund may, consistent with ERISA and other applicable law and regulations, refund Erroneous Contributions to an Employer who duly requests a refund. The Pension Fund may allow a refund of Erroneous Contributions, if at all, only if the Employer establishes a claim for the amount mistakenly paid by filing a written request

within six months after the date it is determined that Erroneous Contributions were made. The Trustees may determine that Erroneous Contributions were made.

D. In general, no refund of Erroneous Contributions shall be considered without a written request for such refund having been received within thirty six (36) months after the date that the Erroneous Contributions were paid. In special circumstances, the Trustees may permit the refund of Erroneous Contributions for longer periods, but not more than six (6) months after the Trustees determine that the contributions constitute Erroneous Contribution.<sup>2</sup> Those special circumstances include, but are not limited to:

1. whether the Erroneous Contributions were made by good faith mistake of fact or law or by computational or other inadvertent mistake;
2. whether the Employer or Local Union or the Benefit Funds have notified any employee for whom Erroneous Contributions have been made to the extent practicable;
3. whether the Employer has a record of timely payment and owes no shortages, liquidated damages or other delinquency;
4. to the extent permitted by Plan, whether any person in pay status is adversely affected by the removal of Erroneous Contributions and the attendant benefit credit; and
5. any other circumstances that lead the Trustees to conclude that a refund is in the best interest of the Benefit Funds, its participants and beneficiaries.

E. A refund may be conditioned on the execution of releases and other documents and satisfactory factual representations. An Employer must provide all documents and any other information the Benefit Funds deem necessary with respect to a refund request and may be required to submit to an audit before consideration of a request for refund. An Employer's failure and/or refusal to timely, promptly, and fully to comply may result in the denial of the request for the refund of Erroneous Contributions.

---

<sup>2</sup> No determination is made by the Trustees until Fund staff presents information to the Trustees, which the Trustees deem sufficient to enable them to determine whether the contributions constitute Erroneous Contributions. All such determinations are based on the actual knowledge of the Trustees. Facts or information known by the Fund's staff shall not be attributed to any Trustee. The Trustees, or their designee, have the sole power and discretion to make the determination whether such contributions constitute Erroneous Contributions, and, if so, whether they may be refunded to an Employer, and any such determination is final and binding.

F. Any refund of Erroneous Contributions shall be limited to the amount of such Erroneous Contributions. An Employer shall not be entitled, and the Fund shall not transfer, any amount of interest or return on investment arguably attributable to Erroneous Contributions, except as required by law. Further, any amounts refunded must be reduced by any net investment loss to the Benefit Funds for the period that the Benefit Funds retained the Erroneous Contributions.

G. Nothing in this Section limits the Funds' right to apply Erroneous Contributions to any other amounts an Employer owes, including contributions, withdrawal liability, interest, liquidated damages, audit costs, attorneys' fees, costs and benefit overpayments. In addition, if the Pension Fund incurred a direct or indirect cost, expense or liability as a result of the Erroneous Contributions, any refund of such Erroneous Contributions may be reduced by the full value of such costs, expense or liability.

As part of an approval of a refund request, an Employer may be permitted to offset Erroneous Contributions against future Contributions.

H. Any attempt by an Employer to recoup any Erroneous Contributions in a fashion inconsistent with these Procedures may result in the denial of a refund request. Additionally, any unilateral credit taken by the Employer shall be treated as a delinquency. Notwithstanding the foregoing, and subject to the Trustees' direction, the Pension Fund shall continue to perform routine adjustments of Contributions, on a monthly basis, which occur due to minor computation and/or reporting errors or misdirected payments to or for other benefit plans. These routine adjustments do not require compliance with the foregoing requirements, and the Benefit Funds may continue to perform them as part of the day-to-day remittance processing.

## **SECTION VII REPORTS AND RECORDS**

A. The Trustees shall receive reports from appropriate Fund personnel and counsel on a regular basis, including at Trustee meetings, no less than annually. The reports shall include such information as the Trustees require for monitoring the effectiveness of collection efforts. In addition, the Trustees shall review, no less than annually, a report on all cases closed as uncollectible and approve the closing of such cases.

B. The Benefit Funds or their agents may maintain delinquency-related documents and records electronically or in other media in lieu of paper records, consistent with the requirements of Department of Labor regulations.

\*\*\*