

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 825
EMPLOYEE BENEFIT FUNDS**

**EMPLOYER CONTRIBUTION COLLECTION POLICY
AND PROCEDURES**

(Effective as of October 1, 2014)

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CONTRIBUTION COLLECTION POLICY AND PROCEDURES

The Board of Trustees (“Trustees” or “Board”) of the Operating Engineers Local 825 Pension Fund, Welfare Fund, Apprenticeship Training and Retraining Fund, Annuity Fund, Savings Fund and Supplemental Unemployment Benefit Fund (hereinafter singularly the “Fund” and collectively the “Funds”) hereby adopts the following policies and procedures for the collection of employer contributions.

SECTION 1: GENERAL POLICY

The Funds collect required contributions from employers who are signatory to a collective bargaining agreement with Local Union 825, 825A, 825B, 825C, 825D, 825R, 825RH, International Union of Operating Engineers (“Union”) or other written agreement requiring contributions to the Funds. It is the policy of the Funds to collect all employer contributions as they are due, and to make such regular, diligent and systematic efforts as are appropriate under the circumstances to do so. All such efforts at collection, and any decisions to compromise or settle claims for amounts owed by employers, shall comply with Prohibited Transaction Class Exemption 76-1 as promulgated by the Department of Labor.

The Trustees have the legal right to exercise all remedies allowable under the Funds’ respective Trust Agreements (“Trust Agreements”), the applicable collective bargaining or other written agreements requiring contributions to the Funds, and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), including, but not limited to, the right to:

1. Establish a specific date on which contributions are due and payable to the Fund, the form and manner in which remittance reports or other reports supporting such contributions must be made by the Employer, and the form and manner in which an Employer must submit its remittance reports and contributions, provided that such requirements are consistent with the terms of the Employer’s respective collective bargaining (or other written) agreement and applicable law;
2. Establish an audit program, including, but not limited to, a random and for cause audit program;
3. Conduct periodic examinations and audit the financial accounts, books and records of any Employer (and any of its affiliates, subsidiaries, alter egos, joint ventures, successors and/or related companies) required to contribute to the Funds to determine the accuracy, completeness and timeliness of such Employer’s contributions to the Fund, and to require an Employer to submit to audit. Such financial accounts, books and records of an Employer include, but are not limited to: payroll records including detail on hours worked and paid (weekly or monthly), individual employee earnings records (quarterly or yearly), timecards/certified payroll reports (daily), Federal 941 quarterly payroll tax returns, Federal annual earnings reports (Forms W-2, W-3, 1099, 1096), State quarterly payroll tax and unemployment compensation reports, copies of monthly contribution reports for all fringe benefit funds to which the employer contributes,

general ledger and cash disbursement records with back up documentation such as invoices, all pertinent personnel information, such as hire and termination dates, Forms 1120 (corporations), copies of the Employer's most recent worker's compensation audit, and any other documents required by the Fund's auditors to give an unqualified opinion that the proper contributions have been made to the Trust Fund;

4. Commence and/or defend litigation or arbitration concerning the collection of contributions;
5. Seek and obtain legal and equitable relief including, but not limited to, the right to seek and obtain injunctive relief, and the right to require that an Employer pay: delinquent or deficient contributions (including all applicable estimated amounts); interest; liquidated damages; penalties; auditor's fees; attorney's fees; arbitrator's fees; court costs; arbitration costs; and any other costs incurred by the Fund in the collection of contributions;
6. Estimate the amount of delinquent or deficient contributions due from an Employer. The right to estimate contributions amounts shall also apply to any month in which an Employer has failed to submit a remittance report to the Trust Fund, or has failed to sufficiently respond to a document request from the Trust Fund's auditors;
7. Require an Employer to post a surety bond or cash deposit as security for prompt future payments;
8. Appoint Permanent Arbitrators to resolve issues concerning the collection of contributions;
9. Settle, compromise, and/or waive claims concerning the collection of contributions;
10. Allocate monies due or received from Employers;
11. Delegate their powers and authority concerning the collection of contributions to a Committee or to the Fund Administrator;
12. Create and operate systems of record-keeping concerning the collection of contributions;
13. Credit or return mistaken contributions in compliance with applicable law, the Trust Agreement, and this Collection Policy;
14. Take all other steps and to perform all other acts that are necessary in order to collect all contributions due to the Funds in a timely and expeditious manner;

15. Establish or modify this Collection Policy or any other employer contribution collection, audit or payroll review programs or procedures established hereunder.

The procedures set forth herein shall be followed, unless the Trustees, in their sole and absolute discretion and consistent with the requirements of ERISA Prohibited Transaction Class Exemption 76-1, determine that they should be modified or waived in a particular instance depending upon prevailing circumstances.

No provision set forth herein shall modify or otherwise supersede the terms of any applicable collective bargaining (or other written) agreement governing an employer's contribution obligation to the Funds, except as otherwise provided herein or to the extent that such agreement may be inconsistent with the provisions of the Funds' respective Trust Agreements or ERISA.

SECTION 2: AUDIT AND DELINQUENCY COMMITTEE

The Audit and Delinquency Committee will meet at least quarterly to review the status of all delinquent employers. At each meeting, the Fund Administrator will present a written report about delinquent employers, and Fund legal counsel will also present a written report of all matters referred to legal counsel for collection. Minutes will be kept of the meetings and submitted to the full Board for review.

The Trustees shall appoint one (1) Employer Trustee and one (1) Union Trustee as members of the Audit and Delinquency Committee to act on behalf of the Board. The Audit and Delinquency Committee shall have all discretionary authority that the Trustees have with respect to the enforcement, compromise, or waiver of claims for contributions due from employers, for interest, liquidated damages, collection expenses, or other amounts associated with delinquent contributions. The Audit and Delinquency Committee is authorized to seek the advice of Fund counsel, collection counsel, or other professional advisors to the extent it considers such advice helpful with the exercise of its responsibility.

The Audit and Delinquency Committee, in its discretion, may refer any particular matter to the Trustees for decision. In the event that any matter presented for a decision to the Audit and Delinquency Committee cannot be decided due to a deadlock or absence of a quorum at two consecutive meetings of the Audit and Delinquency Committee, the matter shall be presented for consideration to the Trustees. In the event that the Audit and Delinquency Committee is deadlocked on an issue or refers a matter to the Trustees, the Trustees shall adhere to all of the standards and procedural requirements set forth in this Collection Policy and Procedures.

SECTION 3: APPOINTMENT OF PERMANENT ARBITRATORS

The Trustees shall appoint two (2) Permanent Arbitrators to hear any controversy, dispute, or disagreement that may arise between employers, Trustees and/or the Funds including, but not limited to: (i) the payment or non-payment of fringe benefit contributions, interest, liquidated damages, attorneys' fees, audit fees or other costs required to be paid to the Funds; (ii) the performance of random and for cause audits and the scope of the information required to be presented to Fund auditors for review; (iii) the failure to provide a surety bond or cash security or

the amount of the surety bond or cash security required to be provided by an employer; and (iv) an employer's failure to reasonably comply with any aspect of this Collection Policy.

The Permanent Arbitrators shall have the full and complete authority and power to decide any and all issues presented to them by an employer, Trustees, and Funds and to award appropriate damages, including but not limited to, the amount of unpaid contributions, interest, liquidated damages, attorneys' fees, audit costs, costs of the arbitration, per diem monetary penalties, required use of the Funds' online remittance report and payment system, the fees to be paid to the Permanent Arbitrator as provided by these policies and procedures, and injunctive relief enjoining ongoing and further violations of the Collection Policy and Procedures by compelling the employer to perform some affirmative act or acts or refrain from engaging in the same. The award of the Permanent Arbitrator shall be final, binding, and conclusive upon the parties and judgment upon any award rendered by the Permanent Arbitrator may be entered in any Court having jurisdiction thereof.

Permanent Arbitrators appointed by the Trustees shall be attorneys of unimpeachable integrity and reputation, preferably with experience in both law enforcement and the workings of the labor movement. As of the effective date of this Collection Policy and Procedures, the Permanent Arbitrators for the Funds shall be John W. Bissell, Esq., of Connell Foley, P.C., in Roseland, New Jersey, and Dennis J. Cavanaugh, Esq., of McElroy, Deutsch Mulvaney & Carpenter, LLP, of Morristown, New Jersey.

SECTION 4: CONTRIBUTIONS AND EMPLOYER REMITTANCE REPORTS

Contributions and employer remittance reports (singularly and collectively referred hereinafter as "Contribution(s)") are due on the date the employer's collective bargaining agreement requires the payment and submission of the same; if the collective bargaining agreement does not state a due date, the contribution payment and submission of the employer remittance report is due on the last day of the month following the month in which the work was performed for which the contributions are owed (either date to be referred to hereinafter as the "Due Date"). For a month in which no work was performed for which contributions are owed, an employer remittance report must still be submitted by the Due Date with a written notation of "NO WORK PERFORMED."

For months in which work was performed and contributions are owed, Contributions must be accompanied by a completed remittance report form (or forms) from the employer supporting such contributions and be provided to the Funds on or before the Due Date. The remittance report shall provide such information about the covered employees that the Funds require to determine the accuracy and completeness of an employer's contributions to the Funds. The failure to submit remittance reports meeting this standard is the equivalent of a failure to pay required contributions to the Funds and, therefore, shall be deemed to be a delinquency regardless of whether actual contributions have been remitted for the periods at issue.

SECTION 5: COLLECTION PROCEDURES

In accordance with the Funds' respective Trust Agreements, ERISA, and the collection policy set

forth above, the following administrative steps shall be taken by the Fund to effectuate the collection of delinquent contributions.

1. In the event the Funds have not received Contributions on the Due Date, to the extent practicable, in addition to the collection procedures set forth below, the Fund Administrator shall routinely contact the employer and the Union by telephone, email and/or facsimile to attempt to effectuate timely and accurate payment of Contributions.
2. If Contributions are not received on the Due Date, the Fund Administrator shall send by regular mail a "First Delinquency Notice" to the employer requesting immediate payment. The First Delinquency Notice shall be issued on or about five (5) days after the last day of the month following the month in which the work was performed for which contributions are owed (or, if impracticable to do so, then as soon as administratively feasible following such date). The First Delinquency Notice shall be in a form approved by the Audit and Delinquency Committee. The First Delinquency Notice shall advise the employer that the delinquent Contributions must be remitted immediately to avoid the assessment of interest charges and liquidated damages. A copy of the First Delinquency Notice issued to employers shall also be maintained on file at the Fund Office.
3. Each employer is responsible for providing and maintaining its current business mailing address with the Fund Office and shall advise the Fund Administrator in writing of any changes to such address for as long as the employer is obligated to make contributions to the Funds. The Fund Administrator shall be entitled to rely on each employer's business address on file at the Fund Office, unless and until the Fund Administrator receives such written notice from an employer of any change in such address, and all notices required by these Collection Policies and Procedures (and any notices required by law that permits service through the U.S. Postal Service) shall be deemed conclusive and properly served if mailed to the address on file with the Funds.
4. If the delinquent Contributions are not received within ten (10) business days from the issuance of the First Delinquency Notice, the Fund Administrator shall promptly send by regular mail a "Second (and Final) Delinquency Notice." A copy of the Second (and Final) Delinquency Notice shall also be maintained on file at the Fund Office. The Second (and Final) Delinquency Notice shall state the following:
 - a. That the employer, in addition to the payment of all delinquent contribution amounts, is liable for interest charges, liquidated damages, attorneys' fees and court costs, arbitrator fees, and all other applicable expenses and costs incurred in the collection of such Contributions, as described in Section 8 hereof, unless the unpaid contributions are received by the Funds no later than the end of the month in which the Second (and Final) Delinquency Notice is issued.

- b. That the Pension Fund may terminate, on a prospective basis, the participation of the employer in the Pension Fund , and the crediting of future service credit under the Pension Fund to employees of such terminated Employer;
 - c. That termination as a participating employer shall not relieve the Employer of its obligation to provide benefits, but may result in grievances or other legal action being instituted by the Union that represents the covered employees, and may result in employer withdrawal liability; and
 - d. That if payment is not received within five (5) business days of the mailing of the Second (and Final) Delinquency Notice, the delinquency will be referred to arbitration for further collection efforts.
5. If the Contributions are not received within ten (10) business days of the date of the Second (and Final) Delinquency Notice, the Fund Administrator shall promptly issue a notice of arbitration to each delinquent employer. The Fund Administrator shall also prepare a report for the Union's Business Manager and, when requested, the Audit and Delinquency Subcommittee, listing all employers that were issued said notice. The notice of arbitration shall be accompanied by a letter advising the Employer that, if the delinquency is not resolved before the scheduled date of arbitration, the Funds will seek an award from a Permanent Arbitrator designated by the Trustees for the amount of the unpaid contributions, interest, liquidated damages, attorney's fees, arbitrator's fees and costs. Fund legal counsel shall be copied on all notices of arbitration.
6. If an employer makes payment of the amount of the delinquency but does not make payment of accrued interest and other amounts owed, acceptance of the payment by the Fund shall not constitute a waiver of the Funds' claim for such accrued interest and other amounts.
7. When an Employer submits a report that is significantly different from its preceding remittance report or a payment that is significantly lower than a previous payment, the Fund Administrator shall seek to reconcile what appears to be a discrepancy by contacting the Employer and Business Manager of the Union on the matter. If the apparent discrepancy is not satisfactorily explained, the Fund Administrator shall report the situation to the Audit and Delinquency Committee and a determination shall be made as to whether or not a payroll audit should be conducted. A report shall be made by the Fund Administrator to the Board at its next regularly scheduled meeting.
8. Notwithstanding the foregoing, the collection procedures described above may, at the written request of an Employer or upon recommendation of Fund legal counsel, be suspended temporarily at any point for up to thirty (30) days for the

sole purpose of evaluating additional factual information relevant to the existence or amount of the employer delinquency, subject to the approval of the Fund Administrator. After the expiration of the thirty (30) day suspension period, the Audit and Delinquency Committee will have the sole and absolute discretion to consider and approve additional temporary suspension requests made by an Employer in writing. The Employer has sole responsibility for furnishing any such relevant information to the Funds. Interest shall continue to accrue during such a suspension of these procedures under this Paragraph, unless the Employer makes full payment of the claimed amount, subject to refund in the event that some or the entire amount is ultimately determined not to be due to the Funds.

9. In any situation in which the Fund Administrator obtains information from which it may appear that legal action should be initiated immediately (e.g., because of an Employer's impending liquidation, bankruptcy, insolvency, or other imminent risk that its assets will become unavailable to satisfy the debt), any or all of the steps set forth in this Section 5 may be omitted, and the matter may be referred directly to the Audit and Delinquency Committee for a determination and approval to have the Fund legal counsel initiate immediate legal action (including, without limitation, those set forth in Section 7 of this Collection Policy and Procedures) and take such appropriate steps as may be necessary to protect the Funds. If approved, such action shall be reported to the Trustees at their next regularly scheduled meeting.
10. Unless the Funds have agreed otherwise in writing, all payments of delinquent contributions and interest will be allocated equally among each Fund to the oldest unpaid principal first, until all principal has been collected. Thereafter, subsequent payment amounts will be applied to interest, attorney's fees, arbitrator's fees, and liquidated damages, in that order, until the full amount owed to the Funds is satisfied. If there is a joint check agreement or other writing memorializing an upper-tier contractor's (such as the general contractor's) agreement to pay an employer's delinquency arising at a particular jobsite where covered work is or was being performed for the contributions at issue, collections may be applied first to delinquent contributions that pertain to the particular covered employees at such jobsite in accordance with the terms of such written agreement; and all other payments toward the balance of the delinquent contributions will then be allocated first to the oldest unpaid principal first, until all principal has been collected.

SECTION 6: NOTIFICATION TO AND ACTIONS BY THE UNION

The Fund Administrator shall prepare a report showing Delinquency Notice(s) issued to delinquent employers during a particular time period at issue for the Union's Business Manager and, upon request, the actual delinquency notice(s). Following receipt of such delinquency notice report, the Union may provide the Fund Administrator with any and all relevant information about the delinquent employers contained therein that might assist the Fund

Administrator's efforts to quantify the amounts due and owing to the Funds and might facilitate the Funds' collection of delinquent Contribution amounts.

SECTION 7: NOTIFICATION TO AND ACTIONS BY FUND LEGAL COUNSEL

A. ARBITRATION

1. Prior to arbitration, the Fund Administrator shall prepare all documentation necessary to support the delinquency, including proof that First and Second Delinquency Notices have been served, and any other relevant correspondence or documents, such as the underlying remittance reports or member paystubs substantiating the delinquency. In addition, the Fund Administrator shall prepare all necessary affidavits and proposed arbitration awards with the assistance of Fund legal counsel. The Fund Administrator shall also prepare a report for the Union's Business Manager and, when requested, the Audit and Delinquency Committee, listing all employers that were issued a notice of arbitration. For those employers having failed to submit Remittance Reports or pay contributions for at least three consecutive months, the Funds may also seek an arbitration award enjoining the employer from ongoing, continuing or further violations or other injunctive relief (such as compelling the employer to engage in a particular act or refraining from the same) and the assessment of a per diem penalty fixed in an amount that the Permanent Arbitrator deems appropriate.
2. The arbitration proceedings and award shall be in accordance with such procedural rules as the Trustees and the Permanent Arbitrator may agree upon, which until further notice shall be the rules promulgated by the New Jersey State Board of Mediation.
3. The arbitration award must be in writing and issued no later than 30 days of the arbitration hearing.
4. Following issuance of the arbitration award, the Fund Administrator may prepare a claim against a delinquent employer's bonds or letters of credit on file with the Fund Office. For employers with personal guarantees on file, the Fund Administrator shall forward the personal guarantee and all documentation supporting the employer's delinquency to Fund legal counsel for review and recommendation. Fund legal counsel shall present a recommendation to the Fund Administrator and/or the Audit and Delinquency Committee as to whether it is appropriate under the circumstances to initiate legal action against the personal guarantee.
5. In the absence of a written request by an employer and subsequent approval of a thirty (30) day suspension period by the Audit and Delinquency Committee consistent with Section 5, Paragraph 5, all delinquencies submitted to arbitration shall be resolved with delinquent employers in one of the following ways in order to avoid having the delinquency matter presented to the Permanent Arbitrator for final and binding arbitration:

- a. Payment of the full amount of the delinquency owed in a lump sum plus interest thereon from the Due Date to the actual payment date (unless exempted by another provision of this Collection Policy and Procedure); or
- b. Written agreement memorializing the terms of a payment plan for the full amount of the delinquency plus interest signed by a duly authorized representative of the employer prior to the date of the scheduled arbitration date, which agreement shall be subject to ratification by the Audit and Delinquency Committee.

B. CONFIRMATION OF ARBITRATION AWARDS

1. Following the issuance of an arbitration award by the Permanent Arbitrator, the Fund Administrator shall promptly notify the employer of the outcome of the proceeding. If favorable, the Fund Administrator shall serve the arbitration award on the employer with a demand for payment in writing and advise the employer that the Funds will seek to confirm the award if the employer fails to pay the amounts awarded therein, plus any additional amounts which continue to accrue after the arbitration award is served.
2. Before making a referral to Fund legal counsel consistent with Paragraph 3 below (unless, in her discretion, circumstances dictate otherwise), for a period not to exceed eight (8) weeks commencing on the date that the Permanent Arbitrator issues a favorable award, the Fund Administrator shall engage in collection efforts which shall include routinely contacting the employer and Union by telephone, email and/or facsimile in an to attempt to effectuate timely and accurate payment of Contributions, filing surety bond claims, and other formal or informal collection efforts depending on the nature and amount of the delinquency.
3. If an employer fails to pay the award prior to the end of the aforementioned eight (8) week time period, the Fund Administrator shall refer the unpaid arbitration award to Fund legal counsel, who shall promptly seek the necessary judicial recourse to convert the arbitration award into a final judgment in accordance with federal or state law, as the circumstances require. In the event, however, that the total amount of an arbitration award referred to Fund legal counsel is below the threshold amount of \$1,000.00 (the “threshold amount”), the award will be held in a queue with other similar matters so that additional collection efforts short of filing a petition can be undertaken. The threshold amount is established based upon costs associated in preparing and initiating a judicial action to convert the arbitration award into a final judgment. Awards held in the queue shall be released on the following occasions: (1) on July 1st and January 1st of the year in which they were issued to ensure that awards are filed in a timely fashion and no later than the year needed to confirm an award under federal law; (2) when and if the Funds obtain other arbitration awards against the same employer and Funds

legal counsel is preparing judicial actions against that employer; or (3) when awards falling below the threshold amount reach an aggregated value of \$3,000 or more.

4. Once a final judgment is entered by the Court, Fund legal counsel shall undertake appropriate post-judgment discovery and enforcement efforts to collect all amounts owed in a reasonable, systematic, and diligent manner.
5. After receiving a final judgment, Fund legal counsel shall adhere to the procedures set forth in this Section 7 in pursuing post-judgment discovery and further collection efforts of an employer's delinquency on behalf of the Funds, except as set forth below:
 - a. If the principal amount of contribution due is less than \$1,500 and the total amount of money due the Funds is less than \$5,000, then the Fund legal counsel shall seek further approval from the Audit and Delinquency Committee to proceed with the post-judgment collection efforts.
 - b. If an employer delinquency remains unpaid for one hundred and eighty (180) days after a final judgment has been issued, the delinquency will be presented to the Audit and Delinquency Committee for further disposition.

C. LAWSUITS

1. As an alternative to commencing arbitration proceedings to collect delinquent employer Contributions, the Audit and Delinquency Committee may authorize Fund legal counsel to commence a Federal or State Court litigation seeking the recovery of past due Contributions together with interest, liquidated damages, attorney's fees and costs, and injunctive relief. Nothing in these policies shall limit the Funds' right to either: (i) commence Federal or State Court litigation, or (ii) an arbitration proceeding to collect any monies due or other remedies afforded by their respective Trust Agreements, ERISA, or this Collection Policy and Procedures.
2. Once final judgment is entered by the Court, Fund legal counsel shall undertake post-judgment discovery and enforcement efforts to collect all amounts owed in a reasonable, systematic, and diligent manner, subject to the conditions set forth in Section 7.B above.

D. OTHER PERMISSIBLE EFFORTS.

1. Upon receipt of a referral from the Fund Administrator that an employer is delinquent, Fund legal counsel is authorized to immediately send a payment demand letter to the delinquent employer and commence all other appropriate actions, in addition to instituting arbitration or litigation to collect the amounts due as more fully set forth below. These actions may include, but are not limited

to, filing stop work notices, Miller Act claims, liens, and claims against a surety bond or cash deposit.

2. Fund legal counsel shall also present a recommendation to the Fund Administrator and/or the Audit and Delinquency Committee as to whether it is appropriate under the circumstances to initiate legal action (arbitration or litigation), accept a compromise, refer the delinquency to an investigative agency, conduct viability studies, investigate alter ego issues, initiate legal action against alter egos, determine that the delinquency is uncollectible, or take some other action. In reviewing recommendations and making decisions as to whether to initiate or discontinue legal action (arbitration or litigation) involving the recovery of delinquent/deficient contributions, the Audit and Delinquency Committee shall consider the factors set forth in Section 15 herein. The Audit and Delinquency Committee reserves the right to reject a recommendation of this nature from Fund legal counsel, the Fund Administrator or other employees or agents of the Funds.
3. If the Audit and Delinquency Committee authorizes the initiation of legal action, such lawsuit or arbitration (as well as any legal actions to obtain a final judgment and collect thereon) shall not be withdrawn until the employer has paid the full amount that it owes (including interest, liquidated damages, attorneys' fees and other collection expenses, where applicable), or the Audit and Delinquency Committee has authorized the discontinuance of such legal actions.
4. The collection procedures described in Paragraphs 5 through 9 of Section 5, at the request of an Employer or upon recommendation of Fund legal counsel, may be suspended temporarily by the Fund Administrator at any point for up to thirty (30) days for the sole purpose of evaluating additional factual information relevant to the existence or amount of the employer delinquency. After the expiration of the thirty (30) day suspension period, the Audit and Delinquency Committee will have the sole and absolute discretion to consider and approve additional temporary suspension requests made by an employer. The employer has sole responsibility for furnishing any such relevant information to the Funds. Interest shall continue to accrue during such a suspension of these procedures under this Paragraph, unless the Employer makes full payment of the claimed amount, subject to refund in the event that some or the entire amount is ultimately determined not to be due to the Funds.

SECTION 8: INTEREST, LIQUIDATED DAMAGES, FEES AND COSTS

1. Interest owed by a delinquent employer shall be calculated from the Due Date for the delinquent contributions at two (2%) percent above the prime rate charged by the Fund's depository bank as of July 1st ("Interest Rate Determination Date"), which interest rate shall remain in effect until the next Interest Rate Determination Date, and assessed consistent with Section 5. Notwithstanding previous upward or downward adjustments to the interest rate during the term of a delinquency, the

interest rate in effect at the time of the payment shall govern and apply to the entire amount owed.

2. Liquidated damages shall be assessed and become due and owing consistent with the Second Notice described in Section 5. The assessment for liquidated damages shall be in an amount equal to the greater of the interest owed on the unpaid contributions or twenty percent (20%) of the total unpaid Contributions.
3. In addition, if the recovery of the delinquent Contributions follows an arbitration proceeding, the Funds' attorney's fees shall be assessed against a delinquent employer in accordance with the following rates: fifteen (15%) percent on the first \$750.00; ten (10%) percent on any amount in excess of \$750.00. If the actual cost for the Funds' attorney's fees exceeds the above amounts, the actual cost for attorney's fees may be assessed.
4. Arbitrator's fees shall be assessed in an amount of \$800.00 for any uncontested arbitration. The actual cost for the arbitrator's fee may be assessed for any matter that is contested by an employer when the cost exceeds \$800.00.
5. All costs actually incurred in court actions for the collection of delinquent Contributions or to enforce the Trustees' right to audit the employer's payroll records shall be assessed against the delinquent employer including, but not limited to, filing fees, fees for service of process, copying charges, postage, and such other costs as would otherwise be charged to the Trustees and/or Funds.

SECTION 9: SETTLEMENT OF DELINQUENCIES BY FUND ADMINISTRATOR

1. Pre-arbitration settlements may be entered into by the Fund Administrator provided that the settlement agreement is in writing and the full amount of unpaid contributions and interest is paid in one lump-sum. Interest may be waived by the Fund Administrator so long as the amount of the interest is five hundred (\$500.00) dollars or less and no more than one interest assessment was made during the prior fiscal year.
2. Following an arbitration proceeding (and before the time that the matter is referred to Funds' legal counsel for handling), the Fund Administrator may enter into settlements, provided the settlement agreement is in writing and the full amount of the unpaid contributions, interest, and arbitrator's fee are paid in one lump-sum.
3. Any proposed settlement agreement in which the acceptance of less than one hundred percent (100%) of the delinquent contributions owed, a compromise of the amounts specified in Paragraphs 1 and 2 of Section 9, or the payment of amounts owed over time shall be permitted only upon approval by the Audit and

Delinquency Committee and ratification of the Trustees in accordance with Section 10 herein.

4. The Fund Administrator may respond in writing to requests from employers seeking confirmation with respect to the amounts of contributions paid by such employer through a certain date. Any such writing issued by the Fund Administrator should provide confirmation that employer contributions have been received and applied to participants appearing on the employer's remittance report. Such a confirmation does not foreclose the Funds from collecting additional obligations identified in a subsequent payroll audit or from any other information sources.
5. In response to a written request made in accordance with Paragraph 4 above, the Funds' Collections Department shall prepare an Intake Form memorializing such request from the employer. Thereafter, it will notify the Union's applicable Business Agent based upon the location of the jobsite. Upon notice from the Collections Department, the Business Agent will visit the jobsite and/or contact members directly regarding hours reported by the employer and investigate any problems at the jobsite regarding the payment of benefits. The Collections Department will then determine whether the employer has a (1) current delinquency, (2) outstanding Remittance Reports, (3) unpaid audit findings or audit refusals, (4) payment plans, (5) surety bond issues, (6) outstanding arbitration awards and/or (7) pending first or second delinquency notices.

Upon completion of investigation, the Collections Department will then respond to the paid through letter from the employer. If no response is received from the Business Agent, the Collections Department will send a letter informing the employer that the Funds' review is inconclusive and direct the employer to contact the Business Agent responsible for the jobsite in question.

6. The Fund Administrator should promptly refer any employer request for a release or a joint check agreement to Fund legal counsel for review. Only the Fund Administrator or the Audit and Delinquency Committee have the authority to sign joint check agreements and releases on behalf of the Funds.

SECTION 10: SETTLEMENT OF DELINQUENCIES THAT REQUIRE APPROVAL BY THE AUDIT AND DELINQUENCY COMMITTEE

1. Upon review and consideration of Fund legal counsel's recommendation, the extension of time for payment by an employer of required contributions (and the compromise of amounts with respect to settlements specified in Paragraph 3 of Section 9) may be granted by the Audit and Delinquency Committee in their sole and absolute discretion. In reviewing recommendations and making decisions about whether to extend the time for payment (or otherwise compromise amounts owed for pre-arbitration and post-arbitration settlements specified in Paragraph 3

of Section 9) regarding a delinquent contribution, the factors to be considered include, but shall not be limited to, the following:

- a. A reasonable, diligent and systematic effort having been made to collect the entire contribution delinquency amount (plus interest and liquidated damages) as are appropriate under the circumstances and in accordance with this Collection Policy and Procedures;
 - b. The terms of the extension of time are reasonable and in writing;
 - c. An estimate of arbitration/litigation and other collection expenses;
 - d. The extension of time is for the exclusive purpose of facilitating collection of the delinquent contributions; and/or
 - e. The extension of time is based upon the employer's known or represented financial condition and the reasonable likelihood of collecting the delinquent amounts due, as well as the additional collection expense which would be incurred without the payment extension.
2. Upon review and consideration of Fund legal counsel's recommendation, the Audit and Delinquency Committee, subject to the ratification of the Board, may accept less than one hundred percent (100%) of a delinquent contribution. In reviewing recommendations and making decisions of this nature, the factors to be considered include, but shall not be limited to, the following:
- a. A reasonable, diligent and systematic effort has been made to collect the entire delinquent contribution amount (plus interest and liquidated damages) as are appropriate under the circumstances and in accordance with this Collection Policy and Procedures;
 - b. The proposed payment plan and/or reduction of the principal or interest amount owed is reasonable under the circumstances, based on the likelihood of collecting the full amounts due and the likely additional costs that would be incurred in attempting to collect the full amounts;
 - c. The ability of the employer to meet its installment payment obligations, and that accepting the installment agreement is the best available alternative for collecting the maximum amount of the delinquency;
 - d. The agreement with the employer compromising the Funds' claims is set forth in writing, executed by both the Audit and Delinquency Committee and such employer, and complies with the applicable requirements of Prohibited Transaction Class Exemption 76-1;

- e. The agreement is entered into for the exclusive purpose of facilitating the collection of amounts owed by the employer to the Funds;
 - f. The employer agrees to (i) pay all installments of compromised and deferred amounts owed and, where feasible, to pay interest on the declining balance of the installment payments, (ii) pay all current contributions on time and in full during the period the amounts owed are being repaid, and (iii) maintain a surety bond or other approved collateral;
 - g. The agreement provides that any default by the employer will result in the full amount of the deferred payment and/or the full amount of the otherwise reduced principal and interest becoming immediately due, and legal action by the Funds' legal counsel may be commenced without further notice to the employer and, in appropriate cases, Confessions of Judgment (or Consent Arbitration Awards, as the case may be) may be obtained for the total amount owed to the Fund and filed with a Court of competent jurisdiction); and
 - h. Any other appropriate conditions may also be included in the agreement.
3. Minutes of the Audit and Delinquency Committee regarding settlement determinations shall be presented to the Board for ratification.

SECTION 11: MONITORING SETTLEMENT PAYMENTS

1. The Funds shall establish a system to monitor payments pursuant to the terms of any settlement agreement in which the time for extending payment has been agreed to by the Audit and Delinquency Committee and ratified by the Trustees. To this end, delinquent employers should be directed to mail checks directly to Funds, unless the matter requires the use of a trust account in which case the employers shall be directed to mail checks to Fund legal counsel on behalf of the Funds who will in turn note the payment and forward the same to the Fund Administrator for processing. Checks should be made payable to the Funds for which the delinquency is owed and, under no circumstances, shall such checks be made payable to the Funds legal counsel, unless the matter requires the use of a trust account in which case the procedures noted above shall be followed. When checks are mailed directly to the Funds pursuant to a settlement agreement, the Fund Administrator shall prepare a report for Fund legal counsel reflecting said payment on the fifth day of every month (or as close to that day as administratively feasible) in order for Fund legal counsel to prepare and issue the necessary default documentation to the employer.
2. Unless otherwise instructed by the Fund Administrator, Fund legal counsel shall resume collection efforts in accordance with this Collection Policy and Procedures whenever an employer fails to comply with the payment or any other terms of a settlement agreement.

SECTION 12: PROSPECTIVE TERMINATION OF A DELINQUENT EMPLOYER'S PARTICIPATION IN THE PENSION FUND

1. If an employer fails to pay its contribution obligations to the Local 825 Pension Fund ("Pension Fund"), the Pension Fund generally is required by ERISA to grant pension credit to the covered employees who earned covered wages from such employer while the employer was signatory to a collective bargaining (or other written) agreement requiring such contributions to the Pension Fund. To protect the Pension Fund from accruing additional obligations to grant pension credit for periods during which an employer fails to make the required contributions to the Pension Fund, in accordance with the terms of the Pension Fund's Trust Agreement, the Board (or its authorized delegate) may and is empowered, in its sole and absolute discretion, to terminate, on a prospective basis, the participation of the employer in the Plan, and the crediting of future service credit to employees of such terminated employer.
2. At any time that the Fund Administrator determines (a) that an employer is substantially delinquent in making its required contributions, (b) that the collection procedures described herein have not resulted in collecting the amounts owed to the Pension Fund, and (c) that circumstances indicate that the employer is likely to incur additional delinquencies that cannot be collected pursuant to the procedures described herein, the Fund Administrator shall report this determination, and the circumstances that support the determination, to the Audit and Delinquency Committee. The Fund Administrator may also investigate whether a withdrawal may have been triggered by the employer.
3. Upon consideration of the aforesaid report from the Fund Administrator, the Audit and Delinquency Committee may initiate any action that in its discretion is in the best interest of the participants and beneficiaries of the Pension Fund. Such actions may include (without limitation):
 - a. Issuing a final notice to the employer that failure to cure an outstanding delinquency by a date certain will result in the prospective termination of the employer's participation in the Pension Fund. The notice may also set forth the conditions, if any, pursuant to which the employer may be reinstated as a participating employer in the Pension Fund. Copies of this notice will be sent to the Union;
 - b. Imposing such conditions on the employer's continuing status as a participating employer in the Pension Fund, as the Audit and Delinquency Committee determines to be appropriate; or
 - c. Terminating the employer's participation in the Pension Fund prospectively, effective on a specified date, following at least thirty (30) days written notice of the cessation of their benefit accruals to affected Employees of such delinquent Employer.

4. The Audit and Delinquency Committee will promptly report its action to the Board by electronic mail for ratification; and provide a report at the Board's next regularly scheduled meeting of the status of the same.
5. Upon ratification of the Board to terminate a delinquent employer's participation in the Pension Fund, a notice of termination will be sent to such employer, the Union, and all employees of such employer who have been reported as performing covered work for the employer during the most recent calendar year.
6. Prospective termination of an Employer shall have no effect on its obligation to make contributions and pay accumulated interest, liquidated damages, attorneys' fees, collection agent fees, or other costs and expenses of collection for periods prior to the effective date of termination owed to the Pension Fund, and shall have no effect on the employer's obligation to submit to audit for any periods prior to that effective date.
7. Prospective termination of an employer shall also have no effect on any rights that the Union or employees may have to enforce the provisions of the collective bargaining (or other written) agreement.
8. An Employer whose participation in the Pension Fund has been terminated in accordance with this Section 12 may later be reinstated as a participating employer in the discretion of the Trustees.

SECTION 13: CREDITS OF EMPLOYER CONTRIBUTIONS MADE BY MISTAKE OF FACT OR LAW

1. To the extent permitted by Section 403(c)(2)(A)(ii) of ERISA, the Trustees acknowledge that it is prudent to treat employers in a fair and business-like manner with regard to the return of mistaken contributions made to the Funds. To this end, the Trustees promulgate these guidelines governing the credit of employer contributions made by a good faith mistake of fact or law, recognizing that the credit of such contributions is a question properly addressed to the Trustees' judgment as fiduciaries of the Funds and that fairness to an employer, who has made a good-faith mistaken contribution, must be balanced against the effect of returning or crediting such contributions upon the Funds in all cases. Accordingly, as a matter of general policy, the Trustees, in their sole and absolute discretion, have determined that the Funds will not credit or refund overpayments to an employer if: (i) the overpayments were associated with a reporting error that has caused the Funds to provide benefits to a person who was not eligible to receive them, or to pay benefits to an eligible person in excess of the amounts that person is entitled to receive; (ii) the reporting error is likely to cause benefits to be paid to such an ineligible person in spite of reasonable administrative efforts to correct the error; or (iii) a credit otherwise would adversely affect the financial stability of the Funds.

2. Recognizing the need to provide a uniform, responsive and cost-effective manner for crediting to participating employers overpayments of mistaken contributions they have made to the Funds, the Trustees have delegated their authority to the Funds' Administrator to issue credits to the accounts of employers who submit satisfactory evidence showing that they have made an overpayment of mistaken contributions to the Funds if and when:
 - a. The employer makes a request in writing that identifies the amount and the date of the overpayment and provides any additional information that the Funds request to verify that the amount at issue was an eligible overpayment resulting from a mistake of fact or law. Accordingly, the employer shall have the burden of clearly proving that an overpayment of contributions has occurred; the amount of the overpayment; and that the overpayment was caused by mistake of either fact or law. The Trustees (and their delegate, the Funds' Administrator) reserve the right to require any necessary documentation, including, but not limited to, the following items: (i) the amount and date of each overpayment; (ii) the period of time to which each overpayment corresponds; (iii) the name of the participant or employees on whose behalf the overpayment was made, the social security numbers of such persons and the dates on which such participants or employees actually performed work for which the contributions at issue were made by the employer; and (iv) the employer's detailed explanation of the mistake of fact or law that caused the mistaken contributions.
 - b. The request for the credit of an overpayment is made within 180 days of the date that the payment was remitted to the Funds.
 - c. The amount of the credit request is \$25,000 or less.
 - d. The employer has not had any credits from overpayments applied to its account within the previous twelve (12) months from the credit date.
 - e. No benefits have already been provided to any participants based on the erroneous overpayment or no harm to any participant will result from the credit.
 - f. The employer does not have any outstanding delinquencies to the Funds.

If any one of conditions a, b, c, d and e above is not satisfied, the Fund Administrator is prohibited from granting the overpayment credit request and shall refer it to the Audit and Delinquency Committee for consideration at their next quarterly meeting. If the employer has a current delinquency (condition e), the request is to be denied outright and the amount of the overpayment shall be applied against the existing delinquency.

3. Except as otherwise provided in Paragraph 2 of this Section, the Fund Administrator shall refer any employer requests for an overpayment credit to the Audit and Delinquency Committee who shall review the matter and provide a credit in accordance with applicable law. In no event, absent extraordinary circumstances and the Board's approval shall contributions be returned if the Employer requested their return more than one (1) year after the date on which such contributions were due. In addition, no interest shall be granted or credited to the employer on any contribution overpayment if a mistaken contribution credit is granted by the Audit and Delinquency Committee.
4. If the employer's request is granted by the Audit and Delinquency Committee (or the Funds' Administrator), in whole or in part, the employer will be advised of the amount of the future credit that will be applied against contributions due to the Funds.
5. If the employer's request is denied by the Audit and Delinquency Committee (or the Funds' Administrator), the employer shall have no right to appeal the decision, and the Audit and Delinquency Committee (or the Funds' Administrator) shall have no obligation to reconsider the denial of the employer's request. The Audit and Delinquency Committee (or the Funds' Administrator) may, however, in their sole and absolute discretion, reconsider their decision in the event that the employer presents additional information, documentation or other evidence, not previously available to the employer and the employer presents such evidence within thirty (30) days after the later of the date on which the Audit and Delinquency Committee (or the Funds' Administrator) have/has communicated their denial of the employer's initial request or the earliest date on which such evidence became available. If the Audit and Delinquency Committee (or the Funds' Administrator) reconsiders its decision and determines to credit any overpayments for mistaken contributions, the date of such determination shall be the date of the decision to grant a refund or credit.
6. No refund or credit of mistaken contributions shall be made if, in the discretion of the Audit and Delinquency Committee (or the Funds' Administrator), after analysis of the affected Fund's financial condition, investments, and funding methods, a refund or credit of contributions would adversely impact the Funds' participants, prejudice the financial position of the Funds at issue, jeopardize its actuarial soundness, or could cause the Funds at issue to incur more than a de-minimis expense as a result of the credit of such mistaken contributions (including, but not limited to, expenses incurred in verifying the overpayment, or processing the credit).
7. The amount of such credit, if any, shall be credited, in whole or in part, to the employer within six (6) months of the Audit and Delinquency Committee's (or the Funds' Administrator's) determination that a mistaken contribution was made and the amount of the overpayment.

8. The amount of the credit shall be the amount determined by the Audit and Delinquency Committee (or the Funds' Administrator) to have been overpaid, less the following:
 - a. Any expenses incurred by the Funds during or as a result of their consideration of the employer's request for the refund of the overpayment, including but not limited to attorneys' fees and costs, accounting, auditing, actuarial or other professional fees or costs, or other administrative expenses;
 - b. Any outstanding monies the employer owes to the Funds, whether for contributions, interest, fees (arbitrator, auditor, attorney or otherwise), withdrawal liability, or any other debt owed to the Funds for any period;
 - c. If the employer has been delinquent in paying contributions to the Funds in the past, the Audit and Delinquency Committee (or the Funds' Administrator) may, in their sole and absolute discretion, determine that some or all of the overpayment shall be held by the Funds to offset contributions that have, may or will become due from the employer and to credit any such overpayments toward any future delinquencies (including interest) to the Funds; and
 - d. Any payments made by the Funds or other losses incurred by the Funds, which are attributable to the mistaken contributions, either directly or indirectly.

In addition to the foregoing, the following rules apply to the return of overpayments:

- a. No refund of mistakenly made contributions shall be made except to the extent that such refund complies with the requirements of Section 403(c)(2)(A)(ii) of ERISA; and
 - b. Any interest or income of any kind, which may be either attributable to, or generated by, such mistaken contributions, whether, directly or indirectly, shall never inure to the benefit of, or be paid or credited to, an employer. Any investment losses may be deducted before a refund of mistaken contributions.
9. In circumstances where the auditor identifies an employer contribution overpayment, the auditor will not record a credit to the employer, if such overpayment resulted in a participant having become eligible for a higher level of benefits than which he or she would otherwise have been eligible to receive. In such circumstances, the employer will be liable for a payment equal to the highest contribution amount required to be paid under the collective bargaining agreement necessary for the employee to qualify for the higher level of benefit. If the

employee reported by the employer is reported to have worked more hours than he/she actually worked, or if the person reported by the employer is not actually an employee, the employer may be liable for any actual and consequential damages incurred, or benefits paid, by the Funds on account of the incorrect reporting.

10. Subject to Paragraph 1 of this Section, if a non-random or for cause payroll audit shows that there has been an employer contribution overpayment by the employer for the audited period, the Fund Administrator shall be advised of the result and the Fund Administrator shall notify the employer in writing that, in order to request a credit, the employer must submit a written request, which states the reasons for the employer's overpayment, to the Audit and Delinquency Committee. The Audit and Delinquency Committee will decide whether a credit will be granted. The cost of a non-routine or for cause payroll audit of an employer may be offset against the amount of any such credit.
11. These mistaken contribution guidelines herein may be amended, in whole or in part, at any time by the Board.
12. All determinations made and actions taken by the Audit and Delinquency Committee (or the Funds' Administrator) pursuant to these guidelines herein will be conclusive and binding. Further, any prior determination made by the Audit and Delinquency Committee (or the Funds' Administrator) pursuant to these guidelines shall not have any effect on subsequent determinations in accordance with these guidelines herein.

SECTION 14: RECORDS AND REPORTING TO TRUSTEES

Fund legal counsel shall prepare and distribute a quarterly report to the Audit and Delinquency Committee and to the Trustees detailing collection activity. Fund legal counsel should also make recommendations about the appropriate action to be taken for each delinquent account. If, during or after the institution of collection attempts, it is determined that an audit is necessary or advisable to determine the amount of contributions due, upon referral from the Fund Administrator or the Audit and Delinquency Committee, Fund legal counsel will coordinate audit activities with the Fund Auditor in accordance with the procedures outlined below.

The Fund Auditors shall report to the Fund Administrator, the Audit and Delinquency Committee and the Trustees periodically concerning the number of employers audited (or sought to be audited) and the results of each audit. At each regularly scheduled Trustees' meeting, the Funds Auditors shall report in writing the names of the employers that have been audited during the past fiscal year and, if an audit of an employer was sought but not obtained, the identity of each such Employer and the reason(s) therefor.

The Funds shall maintain, for as long as is legally required, a file of (a) currently effective collective bargaining agreements and other written agreements detailing the basis upon which employers are obligated to make contributions to the Funds; (b) records concerning reports and payments received from employers; (c) copies of all audit reports and correspondence received from the Fund Auditors, Fund legal counsel and from employers; (d) copies of all written reports described above in this Section 14; and (e) copies of all determinations made by the Audit and Delinquency Committee or the Trustees and of all agreements with employers relating to the collection of contributions, interest, liquidated damages, and expenses associated with collection efforts.

SECTION 15: UNCOLLECTIBLE DELINQUENT CONTRIBUTIONS

The Trustees, in their sole and absolute discretion, may determine that an employer's delinquent contributions (or any part thereof) due to the Funds are uncollectible. In reviewing recommendations of the Audit and Delinquency Committee and making decisions of this nature, the factors to be considered include, but shall not be limited to, the following:

- a. That reasonable, diligent and systematic efforts have been made by the Funds in the attempt to collect such contributions, and such efforts have not been successful;
- b. The decision is reasonable under the circumstances, based on the likelihood of collecting the full amounts due and the likely additional costs that would be incurred in attempting to collect the full amounts or any part thereof;
- c. The additional costs outweigh the prospect of any recovery based on either the merits of the claim or the collectability of the employer; and
- d. The decision is in writing (which may be satisfied by written minutes of the Trustees' meeting) and shall comply with the applicable requirements of Prohibited Transaction Class Exemption 76-1.

SECTION 16: PAYROLL AUDIT PROCEDURE

Pursuant to the Funds' respective Trust Agreements, the applicable collective bargaining (or other written) agreements and ERISA, the Board is authorized to examine and audit periodically the books and records of the employers required to contribute to the Funds. The purpose of the audits is to determine whether employers are fully, accurately and timely complying with their obligation to make contributions to the Funds and to discover any unpaid contributions and interest which the Funds may, thereafter, collect.

A. RANDOM PAYROLL AUDITS

1. Random payroll audits of employers shall be proposed by the Fund Administrator and reviewed and approved by the Funds' Audit and Delinquency Committee.

Payroll audits shall be conducted by the Funds' auditor ("Fund Auditor"). Audits shall be scheduled in a manner which provides for a systematic review of employers and contribution amounts to help assure that the Funds are collecting the appropriate contributions and to enable the auditor to satisfy the payroll audit requirements necessary to the issuance of an unqualified opinion letter.

2. This goal will generally be met if outside construction employers signed to collective bargaining agreements pursuant to Section 8(f) of the National Labor Relations Act, ("NLRA") 29 U.S.C. §185, or similar pre-hire agreements, are audited at least every five (5) years. Likewise, this goal will be met if those employers signed to collective bargaining agreements under Section 9(a) of the NLRA, 29 U.S.C. §185, or similar agreements, (colloquially known as "Shop Employers") are audited at least once every five (5) years.

B. NON-RANDOM OR FOR CAUSE PAYROLL AUDITS

1. Non-random or for cause payroll audits may be referred by the Fund Administrator to the Fund Auditor if there are continuing or chronic employer contribution delinquencies, under-reporting, or other reporting irregularities identified by the Funds staff.
2. Some examples of situations that may trigger non-random or for cause payroll audits are as follows:
 - a. The request of the Union's Business Manager or the Funds Administrator;
 - b. The request of a Union Business Agent, based on employer violations observed by the Union;
 - c. The request of a Trustee;
 - d. Receipt of notification by the Fund that an employer is temporarily or permanently ceasing payment of contributions, due to a partial or complete withdrawal; the filing of a voluntary or involuntary bankruptcy; or for other good and sufficient cause; and
 - e. The request by an employer for a credit for an overpayment of contributions where such mistaken contributions were not discovered during a payroll audit. (The cost of the payroll audit or repeat payroll audit in this instance, shall be paid by the employer and shall be deducted from, or offset against, any credit granted to the employer).

C. SINGLE EMPLOYEE BARGAINING UNIT PAYROLL AUDITS

An employer's payroll records may be audited when a problem is brought to the Funds' attention regarding a single employee bargaining unit member who has experienced a benefits eligibility

problem. Such “single employee” audits shall be conducted as quickly as practicable. Systemic problems found during a single employee audit will be referred to the Audit and Delinquency Committee to determine if a broader audit is required.

D. EMPLOYER’S OBLIGATION TO PERMIT AUDIT AND COOPERATE

Each employer is required to make available to the Fund Auditors all of its accounts, books and records (as well as all records of any of its affiliates, subsidiaries, alter egos, joint ventures, successors or other related companies or affiliates) that are deemed necessary by the Fund Auditors, at reasonable times at the employer’s place of business. Additionally, each employer shall complete the Funds’ Employer Questionnaire – Statement of Business Affairs (referred to as “Business Statement”) in a form approved by the Audit and Delinquency Subcommittee, and shall have the continuing obligation to provide supplemental responses to its Business Statement to reflect updated information or changed circumstances. The Funds shall have the right to require employers to complete additional Statements on a periodic basis or upon request. The right of the Funds to conduct an audit of such books and records shall survive the termination of an employer’s collective bargaining agreement, any other written agreement under which the employer is contributing to the Funds, and/or any bankruptcy or similar insolvency proceeding, dissolution, and/or any change in name, location or form of the employer.

E. AUDIT PROCESS AND PROCEDURES

1. Payroll audits for the Funds will be conducted by qualified auditors selected by the Board, who are Certified Public Accountants (referred to herein as “Fund Auditor(s)” or “auditor(s)”). Fund auditors will conduct payroll audits in conformance with the guidelines set forth below.
2. Employers selected by the Fund Administrator for audit will be notified by regular mail of the decision to perform a payroll audit and the information that will be reviewed by the Fund auditor. Unless emergency situations require otherwise, an audit date of no sooner than fourteen (14) days or no more than thirty (30) days from the date of the letter shall be proposed. The audit date shall be confirmed with the employer in writing.
3. On the first day of the month in which payroll audits will be conducted, the Fund auditor shall distribute a list to the Fund Administrator, Union’s Business Manager, and Funds’ legal counsel identifying the employers scheduled to be audited in that month. Prior to the audit taking place, the Fund auditor shall consult with the Funds’ Administrator, Union and Funds’ legal counsel to determine whether any material information exists that will assist in determining whether a delinquency exists.
4. Employers shall be permitted to adjourn a scheduled audit date for up to fourteen (14) business days, provided that the employer has given the Fund Auditors no less than ten (10) days’ advance written notice of its need for an adjournment and a reasonable explanation of the need for the delay. Adjournments of greater

length or with less advance notice may be granted, based upon the employer's reasonable request that the audit be scheduled at a time that would be significantly less disruptive for the employer. No scheduled audit date may be adjourned more than twice, unless expressly authorized by the Audit and Delinquency Committee.

5. In the event proper and timely notice of an audit has been sent to the employer, and the employer (i) refuses to permit an audit of its books and records (as defined herein), (ii) refuses to cooperate with the specific requests of the Fund Auditors, or (iii) has failed to maintain (or no longer has) possession of the books and records necessary for an audit, the Fund Administrator shall refer the matter to arbitration or to Fund legal counsel for further legal action in accordance with these procedures. An employer shall be considered to have refused to permit an audit when it:
 - a. refuses to permit the Auditors access to its premises or any of the specified books and records;
 - b. seeks to postpone the scheduled audit date more than twice (absent any additional postponements specifically granted by the Audit and Delinquency Committee);
 - c. imposes such other conditions as the Audit and Delinquency Committee determines in its discretion would result in undue delay or otherwise would compromise or frustrate the Funds' right to determine the accuracy, completeness and timeliness of such employer's contributions to the Funds; or
 - d. fails to comply with its obligations under this Collection Policy (as determined by the Auditors or the Fund Administrator).
6. The arbitration referral pursuant to Paragraph 5 above shall include all communications by and between the Fund Auditors and the employer, together with a copy of a signed collective bargaining agreement between the employer and the Union, or a participation agreement signed by the employer and the Funds.
7. The Fund auditor shall review and be familiar with the terms of the Funds' respective Trust Agreements and the appropriate collective bargaining agreement, specifically the provisions thereof with respect to eligibility, contribution rates, scope of the bargaining unit, employment guarantees, shift differential, work preservation clauses, contributions due for vacation, holiday or sick leave pay, and any other provisions pertinent to the audit.
8. During the course of a routine audit, the auditor will compare the payroll records of the employer against Funds' records of contributions made by the employer and calculate any deficiency or credit for the period examined. The names and

social security numbers of employees, along with their job classifications, if known, shall be noted by the auditor. Unless an employee's job classification is specifically identified on the employer's payroll records, a unilateral determination of job classification shall not be made by the auditor. In such cases, the auditor will assume an employer reporting error, and the employee will be included in the audit. Job classification issues will be resolved after the audit is completed. The audit will include the number of hours worked by each employee per payroll period. To the extent practicable, hours attributable to particular job sites should be calculated by the auditor. In addition, the Fund Auditors will review the employer's general ledgers, vendor lists, cash disbursement journals and/or 1099s to determine whether contributions are owed due to subcontractor violations. The Fund Auditors will also ask the employer to produce its completed and signed Business Statement, and will review the same for accuracy and completeness and, thereafter, provide a report to the Fund Administrator of any issues of concern.

9. If the Fund Auditor encounters problems (or issues are raised) about the trade jurisdiction of the employees, the effective date(s) of the employer's agreement(s) to contribute, the job classifications of employees or similar other matters which require legal analysis or the opinion of Fund legal counsel, the auditor may suspend the payroll audit, and review the issue with Fund legal counsel. The auditor shall review the matter in question with the Audit and Delinquency Committee and receive a determination before proceeding to complete the audit.
10. In circumstances where the auditor identifies an employer contribution overpayment, the auditor will not record a credit to the employer, if such overpayment resulted in a participant having become eligible for a higher level of benefits than which he or she would otherwise have been eligible to receive. In such circumstances, the employer will be liable for a payment equal to the highest contribution amount required to be paid under the collective bargaining agreement, necessary for the employee to qualify for the higher level of benefit. If the employee reported by the employer is reported to have worked more hours than he/she actually worked, or if the person reported by the employer is not actually an employee, the employer may be liable for any actual and consequential damages incurred, or benefits paid, by the Funds on account of the incorrect reporting.
11. After completion of the audit, interest, liquidated damages and audit costs shall be computed based on the audited contributions due at the rate determined by the Trustees and set forth in the Funds' respective Trust Agreements and/or any other related Fund documents, and the assessment of interest shall relate back to the period for which the contribution underpayment actually occurred.
12. The Trustees will periodically review the cost of the audit program (in relation to, among other things, the contribution amounts and interest collected, the correct pension credit information obtained, and the overall effectiveness of the program

in encouraging employers to contribute to the Funds in a timely and accurate manner), and from time to time determine, in their discretion, whether to reduce or expand the number of employers audited each year, the extent of the audit, and/or the format of the audit report.

F. POST-AUDIT PROCEDURES

1. At the conclusion of the payroll audit, and following a review of the audit by Funds' legal counsel, the Fund Administrator (or his or her designee) shall notify the employer in writing of the payroll audit findings. The employer shall be afforded a fourteen (14) day period of time to review and either agree with, dispute or take written exception to the findings, and furnish all documentary and testimonial (in the form of affidavits) evidence to specifically support their objections.
2. Upon the expiration of the fourteen (14) day review period, the results of a payroll audit which are not specifically disputed by an employer shall be deemed accepted by and between the employer and the Funds. The employer shall be precluded from presenting any documentary or live, in-person testimonial evidence at the arbitration hearing if the documents or affidavits memorializing the live, in-person testimonial evidence to be offered were not provided to the Funds during the review period. The auditor shall adjust the audit findings to the extent the auditor determines an adjustment is supported by the evidence submitted by the employer. The auditor shall thereafter issue a final written audit report to the Fund Administrator and to the Funds' legal counsel for review and legal action, if necessary.
3. In the event that, after a reasonable request by the Funds and proper and timely notice has been given, an employer fails to produce all books and records necessary to enable the Fund Auditors to conduct a thorough audit, or is otherwise uncooperative (as described in Subparagraph E(5) of this Section 16), the Audit and Delinquency Committee may determine that the amount of an employer's contributions to the Funds for each month of the requested audit period is the highest amount of contributions reported and/or paid in any month during the period to be audited, or during the last twelve (12) months for which reports were filed (adjusted, as appropriate, for any change in the rate of contributions) plus twenty-five (25%) percent. Such determination by the Audit and Delinquency Committee shall constitute presumptive evidence of the delinquency. The employer may rebut this presumption by producing a sufficient and complete set of the requested books and records to enable the Fund Auditors to conduct a thorough audit. Prior to referring such a matter for the Audit and Delinquency Committee's determination, Fund legal counsel shall mail a final, written notice to the employer advising it that such determination may be made if the employer does not promptly schedule an audit and produce all necessary books and records within seven (7) days. Nothing in this Paragraph shall be construed to signify that

the Funds relinquish or abridge any of their rights to commence legal proceedings to compel an audit of the employer's books and records.

4. Audit corrections which are based upon documentary and testimonial evidence submitted by the employer, or upon an interpretation of the provisions of the collective bargaining agreement, will be made with the concurrence of the employer, the Union, and the Audit and Delinquency Committee.
5. For good and sufficient cause, when requested by the employer in writing, additional time to review, dispute or take exception to the accuracy of the audit may be granted by the Fund Administrator, unless special circumstances dictate otherwise. All such written requests shall be copied to Fund legal counsel.
6. In the event an employer disputes the final results of a payroll audit and the Funds incur additional auditing fees and costs, and the final payroll audit continues to reveal a contribution underpayment, the Fund Administrator shall promptly demand payment of the contribution underpayment in writing, together with interest, liquidated damages, attorney's fees and costs, as well as the additional audit costs. The interest assessment shall relate back to the month in which the contribution underpayment actually occurred. This demand shall also be accompanied by a notice from the Fund Administrator that the matter will be submitted to the Permanent Arbitrator for resolution by final and binding arbitration, if a settlement is not reached or full payment of the monies owed to the Funds is not made within seven (7) days of the notice.
7. The demand letter shall also provide notice to the employer regarding the procedure for requesting a waiver of the interest or liquidated damages assessment on the contribution underpayment. The Trustees, upon the recommendation of the Audit and Delinquency Committee, may waive interest and/or liquidated damages on the contribution underpayment after considering the relevant factors regarding the underpayment, including, but not limited to, the following:
 - a. Whether the contribution underpayment was for a limited number of employees and/or a limited duration;
 - b. Whether the applicable collective bargaining agreement is silent or unclear regarding the employer's contribution obligation in question (if the contribution underpayment arises from an incorrect interpretation of a collective bargaining agreement provision which either the Fund Administrator or the Union has previously brought to the attention of the affected Employer, then this factor is disregarded);
 - c. Whether the contribution underpayment resulted from an isolated, arithmetical programming or clerical error (if the contribution underpayment arises from accounting procedures which either the Fund

Administrator or the Union previously advised the affected employer were improper or inadequate, then this factor is disregarded);

- d. Whether the contribution underpayment is insignificant relative to the affected employer's total contribution obligations for the period in question;
 - e. The likelihood of the success, and the costs associated with, collecting interest, including the financial condition of the employer; and
 - f. The level of cooperation with the Funds evidenced by the affected employer concerning the payroll audit and/or the payment of the contribution underpayment discovered during such audit (if the affected Employer was not cooperative with either the Fund Administrator or the auditor, (e.g., in promptly scheduling a payroll audit at the time such employer was notified of such audit, including the employer's refusal to permit such audit upon initial request or postponement of an audit that was scheduled, then this cooperation factor shall be disregarded).
8. In conjunction with the conduct of the payroll audit, the auditor responsible for the payroll audit shall maintain sufficient information to enable him to provide input concerning the presence of one or more of the aforementioned factors. The decision to waive interest or liquidated damages on a contribution underpayment in whole or in part shall rest entirely with the Trustees or by delegation to the Audit and Delinquency Committee. The nonexistence of one or more of the above factors does not require that the employer's request for waiver be denied.
 9. Pursuant to uniform rules consistently applied, the Trustees may assess an employer for the cost of the payroll audit in instances where the contribution underpayment is for a period of one year or more or the employer fails to timely pay the contribution underpayment following demand for payment. Also, in the event the employer resists the Fund Auditor's attempt to conduct the payroll audit or obstructs completion of the payroll audit (e.g., refuses to provide to the Fund auditor all records it possesses which the Fund Auditor believes are necessary to complete the payroll audit) and such action results in an increased cost for such audit, the Trustees may assess the Employer the excess cost for the payroll audit.
 10. The Trustees may enter into payment plans or may grant employers extensions of time to pay contributions provided the same are consistent and in compliance with the aforementioned policies and procedures and further provided that:
 - a. The extension does not extend beyond twelve (12) months from the date on which it is finalized, and payments shall be made in twelve (12) equal monthly payments or a more accelerated schedule;

- b. Interest shall be charged at the rate established by the IRS under IRC Section 6621; and
 - c. Adequate security is posted by the employer.
11. Decisions to accept less than the total audit and additional amounts due, or decisions to consider the entire amounts due the Funds as uncollectible, shall be made by the Audit and Delinquency Committee, only pursuant to the provisions outlined in these policies, which decisions shall be subject to the approval of the Trustees.
 12. Any modification or deviation from the policies and procedures set forth herein must be approved in writing by the Trustees.
 13. In all cases, an employer is responsible for its own costs and expenses in connection with an audit.

SECTION 17: STATUS AND RECORD OF PAYROLL AUDITS

The Fund auditors will maintain for six (6) years a written record of the status of all payroll audits conducted.

SECTION 18: SURETY BONDS AND CASH SECURITY

A. AMOUNT OF BOND

1. Contributing employers are required to maintain a minimum bonding amount of \$25,000 unless otherwise provided by the applicable collective bargaining agreement. Pursuant to this Collection Policy, the amount of a bond may be adjusted upward to an amount equal to the average contributions made by the employer during any consecutive three (3) month period as determined by the Trustees in their sole discretion. Failure to maintain the appropriate bonding amounts under the Funds' respective Trust Agreements constitutes a delinquency for purposes of employer reporting and payment obligations under these policies and procedures.
2. The Fund Administrator will review the bonding levels of each contributing employer to ensure that the proper bonds are on deposit with the Funds. A status report will be provided to the Trustees by the Fund Administrator on a quarterly basis. In the event that an employer's bonding level is not in compliance with the requirements set forth in this Collection Policy, the Fund Administrator will promptly initiate arbitration or other legal action to ensure that the employer complies with its obligation.
3. In addition to any and all other remedies under ERISA, the Funds shall be entitled to liquidated damages in the amount of twenty percent (20%) of the difference

between the bond amount that an employer maintains with the Funds and the amount called for under this Collection Policy.

B. CASH SECURITY

Any employer that is unable to secure a surety bond in the amounts prescribed herein, shall be required to post a cash security deposit in the same amount, evidenced by an escrow agreement in writing approved by the Audit and Delinquency Committee. The amount of the cash security deposit shall be upwardly adjusted consistent with the provisions governing surety bonds above.