

# Michigan Conference of Teamsters Welfare Fund

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## **Employer Accounts Policies and Procedures**

*Revised February 2010*

MICHIGAN CONFERENCE OF TEAMSTERS WELFARE FUND



**EMPLOYER ACCOUNTS  
POLICIES AND PROCEDURES**

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MICHIGAN CONFERENCE OF TEAMSTERS WELFARE FUND

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**EMPLOYER ACCOUNTS POLICIES AND PROCEDURES**

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## **I. Introduction**

The Board of Trustees ("Trustees") of the Michigan Conference of Teamsters Welfare Fund ("Fund") has adopted and from time to time amended its Employer Accounts Policies to ensure that appropriate, systematic and diligent efforts are made to collect contributions owed to the Fund. The Trustees hereby amend and restate the Employer Accounts Policies, accompanied by applicable Procedures, to protect the interests of the participants and beneficiaries of the Fund, comply with applicable law and assure the uniform administration of collection activities.

The provisions designated as "Policies" herein may be amended from time to time by action of the Trustees. The provisions designated as "Procedures" herein may be changed or additional Procedures added from time to time by Fund staff authorized to make such changes without further action by the Trustees, provided that such changes are consistent with the applicable Policies.

All capitalized terms used herein, unless otherwise defined, have the same meaning as set forth in the Amended Agreement and Declaration of Trust for the Michigan Conference of Teamsters Welfare Fund ("Trust Agreement").

## **II. Employer Accounts Committee**

**POLICY:** The Employer Accounts Committee ("EAC") is a committee of the Board of Trustees consisting of one or more Employer Trustees and one or more Union Trustees appointed by the Board of Trustees. The Trustees have delegated to the EAC, pursuant to section 405(c) of ERISA, responsibility for addressing issues that may arise under the Employer Accounts Policies, including, but not limited to, the discretion to interpret the Employer Accounts Policies and to take appropriate action to collect unpaid contributions, interest and liquidated damages.

## **III. Agreement Requirements**

### **A. POLICY:**

1. Written Agreement The Labor Management Relations Act, 1947, as amended ("LMRA"), requires Employer contributions to jointly administered multiemployer plans, such as the Fund, to be made pursuant to a written agreement with the Employer ("Written Agreement"). Accordingly, contributions to the Fund shall be made pursuant to a Written Agreement. The Trustees reserve the right to determine whether a writing is a Written Agreement. For this purpose, a Written Agreement shall be:
  - a. a Collective Bargaining Agreement between an Employer and a Local Union of the Michigan Teamsters Joint Council No. 43 ("Local Union") that provides for contributions to the Fund for Employees of the Employer; and/or
  - b. the Fund's Participation Agreement signed by an Employer and Local Union and accepted by the Trustees. Newly participating Employers whose first contribution obligation to the Fund commences on or after January 2, 2005 and formerly participating employers returning on or after January 2, 2005 following a break in Fund participation must execute the Fund's "Advance Contribution" Participation Agreement. Other participating Employers must execute either the Fund's "Advance Contribution" or its "Retroactive Contribution" Participation Agreement, at the option of the bargaining parties.
2. Eligibility for Coverage
  - a. Effective October 1, 2000, the Fund will not accept new Employers' Collective Bargaining Agreements or Participation Agreements that cover only non-Employees. For this purpose, a person is a non-Employee if (1) the person owns more than 50% of the ownership interest of a trade or business or partnership, and (2) the person (or the person and his/her spouse) are the sole individuals in the trade or business or partnership who seek coverage under the Fund. Any interest that a person's spouse, brothers, sisters, brothers-in-law, sisters-in-law, ancestors or lineal descendants own in the trade or business or partnership will be considered as that person's interest.

### III. Agreement Requirements (*continued*)

- b. Notwithstanding section III.A.2.a. above, an individual is eligible for coverage under the Fund as an Employee if the individual is employed by a corporation or limited liability company that (1) meets the Fund's definition of Employer and (2) operates pursuant to the provisions of the Associated General Contractors agreement, Associated Underground Contractors agreement, Michigan Road Builders Association agreement, or pursuant to the provisions of an agreement that mirrors the former Aggregate Carriers Association agreement or any of the aforementioned association agreements and which provides for the type of work contemplated by the association agreements.
- c. A distinctly identifiable group of non-bargaining unit Employees may be covered under the Fund if the Employer's bargaining unit Employees are covered under the Fund.
- d. Other than those Employees who have received written approval from the Fund to opt out of Fund participation, the *entire* bargaining unit group must participate in its designated plan of benefits. The same is true of any distinctly identifiable non-bargaining unit group.
- e. An Employee is not eligible for coverage under the Fund for the period during which the Employee works for an Employer during a temporary work stoppage of the Employee's bargaining unit that is sanctioned by the International Brotherhood of Teamsters.

#### 3. Minimum Participation Requirement

Effective October 1, 2001:

- a. Each Collective Bargaining Agreement and/or Participation Agreement must require the Employer to contribute to the Fund for a minimum period of three years (36 months) from the effective date of the obligation to contribute to the Fund. A Collective Bargaining Agreement or Participation Agreement that does not clearly specify the three-year minimum term of participation will be rejected.
  - 1) Notwithstanding the three year/36-month minimum, the Fund will accept a Participation Agreement from an Employer for its non-bargaining group Employees if the effective date of coverage for the non-bargaining group employees is not later than two months after the effective date of coverage of the bargaining unit Employees and terminates on the same date as the Participation Agreement for the Employer's bargaining unit Employees.
- b. For each Plan year (April 1<sup>st</sup> – March 31<sup>st</sup>), the Trustees shall establish the contribution rates for each plan of benefits through the fourth Plan year in the future.
  - 1) The April 1<sup>st</sup> (August 1<sup>st</sup> for TIF Plans) contribution rate increase shall be applied the week in which the 1<sup>st</sup> of the month falls if it does so between Sunday and Wednesday, and shall be applied the following week if the 1<sup>st</sup> falls between Thursday and Saturday.
  - 2) If a contribution rate increase becomes effective after the expiration date of a Collective Bargaining Agreement but while the Employer is engaged in collective bargaining for a new agreement, or if the Employer is otherwise legally required to continue contributing to the Fund, the Employer must pay the increased rate. If the Employer's Participation Agreement does not expressly include this requirement, the Employer must execute an Interim Participation Agreement providing for contributions at the increased rate.
- 4. Employers and the Local Unions are bound by the terms of the Fund's Trust Agreement, its Participation Agreement and all policies, rules and regulations including these Policies and Procedures, that have been adopted or that are adopted in the future by the Fund's Trustees pursuant to the Trust Agreement, and all of the actions of the Trustees in administering the Fund in accordance with the Trust Agreement and rules and regulations adopted by the Trustees, notwithstanding any provision to the contrary in a Collective Bargaining Agreement between the Employer and the Local Union.

### III. Agreement Requirements (*continued*)

#### B. PROCEDURES:

1. The Employer and Local Union will provide the Fund with:
  - a. A Collective Bargaining Agreement between the Employer and the Local Union that provides for contributions to the Fund for Employees of the Employer; and
  - b. The Fund's Participation Agreement signed by an Employer and the Local Union and accepted by the Trustees.
2. Contributions received from an Employer pursuant to a Collective Bargaining Agreement requiring contributions to the Fund shall continue to be paid and accepted after the expiration of the Collective Bargaining Agreement until the Employer notifies the Fund by certified mail, with a copy to the Local Union, that the Employer no longer has a legal duty to contribute to the Fund.

The Employer shall set forth in the required written notice to the Fund the specific basis upon which the Employer is relying in terminating its contributions to the Fund. The Employer is obligated to make contributions to the Fund until the above-mentioned written notice is received by the Fund and the Trustees acknowledge the Employer's termination in writing.

3. Upon receiving contributions from an Employer for which no Written Agreement is listed, the Fund shall:
  - a. Deposit the contributions into a separate, interest bearing trust account maintained for this purpose.
  - b. Notify the Employer and, if known, the Local Union whose members are employed by the Employer that (i) contributions have been received, (ii) the Fund has no record of a current Written Agreement requiring contributions and (iii) unless evidence of a Written Agreement is provided within five business days from the date of the notice, the contributions will be refunded to the Employer and coverage of the Employer's Employees will cease.
  - c. Notify Employees of the Employer that coverage under the Fund will cease unless the Employer or Local Union provides satisfactory evidence of a Written Agreement within five business days from the date of the notice to the Employer and Local Union.
  - d. If satisfactory evidence of a Written Agreement is not provided within five business days after receipt of the contributions, the Fund shall refund the amount to the Employer. If satisfactory evidence of a Written Agreement is provided within the specified time period, the Fund shall transfer the contributions, plus interest, to the Fund's general account.

### IV. Obligation of Local Unions to Provide Information to the Trustees

A. POLICY: The Trustees consider it the obligation of the Local Unions to provide information to the Fund necessary to determine an Employer's obligation to contribute to the Fund and collect contributions from the Employer.

#### B. PROCEDURES:

1. The duties of the Local Union include, but are not limited to, providing the following information to the Fund:
  - a. Name and address of each Employer signatory to a Written Agreement to contribute to the Fund;
  - b. Effective and termination dates of the Written Agreement;
  - c. Employer's negotiated switch to a different benefit plan under the Fund and the effective date of the switch;

#### IV. Obligation of Local Unions to Provide Information to the Trustees (*continued*)

- d. Changes in the Written Agreement;
- e. Changes in an Employer's name, ownership or form;
- f. Date on which an Employer last performed work pursuant to a Collective Bargaining Agreement with the Local Union;
- g. Copy of the Employer's Written Agreement or other evidence thereof; and
- h. Written notification of the occurrence and dates of the following events:
  - 1) The disclaimer of interest by the Local Union in representing Employees of an Employer that contributes to the Fund;
  - 2) The decertification of the Local Union; and
  - 3) The execution of a prehire agreement with the Union or Local Union, and the effective and termination dates of the prehire agreement.

#### V. Reporting and Payment of Contributions

##### A. POLICY:

- 1. Contributions and other amounts due and owing from an Employer required to make contributions to the Fund are Fund assets.
- 2. Contributions shall be paid to the Fund by Employers in accordance with the Collective Bargaining Agreement and/or the Participation Agreement. Notwithstanding contrary provisions in the Collective Bargaining Agreement, the Fund further requires at a minimum that an Employer:
  - a. Contribute on behalf of an Employee during the Employee's absence from the job due to illness for the lesser of (i) a minimum of 4 weeks following the contribution week in which the Employee last worked or (ii) the duration of the absence due to injury/illness;
  - b. Contribute on behalf of an Employee during the Employee's absence from the job due to an injury/illness on the job (i.e., eligible for workers' compensation benefits) for the lesser of (i) a minimum of 26 weeks following the contribution week in which the Employee last worked or (ii) the duration of the absence due to injury on the job;
  - c. Contribute on behalf of an Employee for first 4 weeks of the Employee's absence from the job while on military duty, commencing with the contribution week following the contribution week in which the Employee last worked (*Military duty* means service in the uniformed services, including the Armed Forces; Army National Guard and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service and any other category of persons designated by the President in time of war or national emergency.);
  - d. Contribute for each week on behalf of an Employee if the Employee worked or is compensated for any portion of the contribution week (except as provided under the Hourly/Seasonal and TIF Plans), regardless of whether the employment relationship is terminated. For purposes of this section, compensation includes severance pay, disability or sick pay, vacation or other personal day pay, holiday pay, the payment of wages which are the result of any National Labor Relations Board proceeding, grievance/arbitration proceeding or other legal proceeding or settlement, or any other pre or post termination remuneration; and

**V. Reporting and Payment of Contributions (*continued*)**

- e. For the Hourly/Seasonal Plan, weeks referenced in items a-c above shall be converted to hours (i.e. each week will be converted to 40 hours).
3. The Fund will not accept contributions on behalf of an Employee for the period during which the Employee works for an Employer during a temporary work stoppage of the Employee's bargaining unit that is sanctioned by the International Brotherhood of Teamsters. See section III.A.2.e.

**B. PROCEDURES:**

1. Instructions for Reporting and Payment

The Fund staff shall provide an Employer that contributes to the Fund with the following information and timely notice of changes or amendments to the information: copy of the Trust Agreement and a copy of the Employer Account Policies and Procedures.

2. Monthly Payment Information

- a. On or about the 25<sup>th</sup> day of each month (for that month) for **retroactive contribution Employers**, and on or about the 11th day of each month (for the following month) for **advance contribution Employers**, the Fund staff will issue a Contribution Remittance Statement with the following information:
  - 1) A list of the names and Social Security numbers of Employees for whom the Employer last contributed, excluding Employees identified by the Employer as having terminated employment the prior month;
  - 2) The contribution required for each Employee for the month billed; and
  - 3) The total contribution required for the listed Employees for the month billed.
- b. For **retroactive contribution Employers**, before the tenth day of the month following the month of coverage, Employers will send to the Fund's lockbox a Contribution Remittance Statement listing the names and Social Security numbers of the Employees for whom the Employer is obligated to contribute for the prior month, the contribution required for each Employee and the total contribution required for the listed Employees. The Contribution Remittance Statement must be timely sent to the Fund's lockbox for recordkeeping purposes, even if a contribution is not timely made.
- c. For **advance contribution Employers**, before the first day of the month of coverage, Employers will send to the Fund's lockbox the latest Contribution Remittance Statement, edited as explained hereafter, and a remittance payment reflecting the Employer's total contribution obligation for the month. The Employer will edit the statement to reflect 1) the names and Social Security numbers and contribution weeks for new Employees for whom the Employer is obligated to contribute, 2) changes in current Employee status. Included with the Fund's Contribution Remittance Statement is a Prior Month Contribution Adjustment Form which the Employer is to use to reflect prior month overpayments and underpayments. Changes in Employee status during the prior month that reduced the Employer's contribution obligation are to be detailed, as are additional contribution obligations with respect to Employees for whom contributions were first payable after the start of the prior month. The net total of such adjustments is to be added, or subtracted, as appropriate, from the remittance payment. The Contribution Remittance Statement must be timely sent to the Fund's lockbox for record keeping purposes, even if the remittance payment is not timely made.

## V. Reporting and Payment of Contributions (*continued*)

- d. The Employer must timely report to the Fund all active employment status changes (i.e., layoff, termination, resignation, retirement, personal leave, military leave, work or non-work related disabilities), in accordance with the reporting option chosen on the Participation Agreement. Failure to timely notify the Fund will obligate the Employer for contributions on behalf of the individual through the date the status change is ultimately reported. The Michigan six-year written contract statute of limitations, which shall apply to any claim for unpaid contributions, shall not run with respect to contributions owed by the Employer on any Employee until the Fund receives written notice of the contribution obligation. The reporting options are as follows:
  - 1) Report once per week on a set day, not exceeding six calendar days from the last day of the week being reported on (e.g., report each Friday all status changes that occurred through the prior Saturday); or
  - 2) Report within seven calendar days of each status change. This option will also be deemed the default option if the Employer fails to make a selection.
3. Place and time of contributions
  - a. Contributions must be sent to the Fund's lockbox.
  - b. For **retroactive contribution Employers**, contributions are due by the 10<sup>th</sup> day of the month following the month of coverage.
  - c. For **advance contribution Employers**, contributions are due by the 1<sup>st</sup> day of the month of coverage.
  - d. A contribution is deemed as made on the date the payment is received at the Fund's lockbox.

## VI. Due and Unpaid Contributions

### A. POLICY:

As provided in section 502(g) of ERISA, and in accordance with procedures developed by the Fund:

1. For **retroactive contribution Employers**, the due date for contributions is the 10<sup>th</sup> day of the month following the month of coverage.
2. For **advance contribution Employers**, the due date for contributions is the 1<sup>st</sup> day of the month of coverage.
3. For **retroactive contribution Employers**, if a contribution is not received on or before the 15<sup>th</sup> day of the month following the month of coverage, interest shall be charged on the unpaid contribution at a rate set for the coming calendar year by the Trustees at each December Board meeting. Interest on contributions that are not received by the 15<sup>th</sup> day of the month shall accrue in monthly increments beginning on the 11<sup>th</sup> day of the month, and shall continue to accrue for each successive monthly period (11<sup>th</sup> day of the month through the 10<sup>th</sup> day of the following month), or portion of a monthly period, thereafter until contributions are received. Contribution payments will be applied first to accrued interest and then to outstanding contributions. Under no circumstances shall interest be waived, except in extraordinary circumstances, pursuant to Article XI.

## **VI. Due and Unpaid Contributions (continued)**

4. For **advance contribution Employers**, if a contribution is not received on or before the 6<sup>th</sup> day of the month of coverage, interest shall be charged on the unpaid contribution at a rate set for the coming calendar year by the Trustees at each December Board meeting. Interest on contributions that are not received by the 6<sup>th</sup> day of the month shall accrue in monthly increments beginning on the 2<sup>nd</sup> day of the month, and shall continue to accrue for each successive monthly period (2<sup>nd</sup> day of the month through the 1<sup>st</sup> day of the following month), or portion of a monthly period, thereafter until contributions are received. Contribution payments will be applied first to accrued interest and then to outstanding contributions. Under no circumstances shall interest be waived, except in extraordinary circumstances, pursuant to Article XI.
5. For **retroactive contribution Employers**, liquidated damages of 10% of the amount of the unpaid contribution shall be assessed on contributions that remain unpaid on the 11<sup>th</sup> day of the month following the month in which the contribution was due. Beginning on the 11<sup>th</sup> of each subsequent month additional liquidated damages of 1% of the unpaid contribution amount will be assessed for each monthly period, or part of a monthly period, that a contribution remains unpaid until the total amount of liquidated damages has reached 20% of the unpaid contribution amount.
6. For **advance contribution Employers**, liquidated damages of 10% of the amount of the unpaid contribution shall be assessed on contributions that remain unpaid on the 2<sup>nd</sup> day of the month following the month in which the contribution was due. Beginning on the 2<sup>nd</sup> day of each subsequent month additional liquidated damages of 1% of the unpaid contribution amount will be assessed for each monthly period, or part of a monthly period, that a contribution remains unpaid until the total amount of liquidated damages has reached 20% of the unpaid contribution amount.
7. The Trustees will strictly enforce collection of liquidated damages in accordance with applicable law and will not agree to waive collection of liquidated damages except in extraordinary circumstances. In determining whether to waive collection of liquidated damages, the Trustees will consider the relevant facts, including, but not limited to:
  - a) The timeliness of the Employer's contributions to the Fund generally;
  - b) The Employer's financial condition;
  - c) The reason for the late payment of contributions giving rise to the liquidated damages;
  - d) The length of time the amount has been outstanding;
  - e) The likelihood that the amount can be collected;
  - f) The cost of continuing to pursue collection; and
  - g) The effect the write-off may have on the Fund's ability to collect other amounts owed.
8. For **retroactive contribution Employers**, the Fund staff will refer to Collection Counsel matters involving contributions that are not received by the 10<sup>th</sup> day of the second month following the due date. Fund staff also may refer matters involving shorter delinquencies to Collection Counsel as warranted by the circumstances.
9. For **advance contribution Employers**, the Fund staff will refer to Collection Counsel matters involving contributions that are not received by the 1<sup>st</sup> day of the second month following the due date. Fund staff also may refer matters involving shorter delinquencies to Collection Counsel as warranted by the circumstances.

## VI. Due and Unpaid Contributions (*continued*)

10. The Fund will seek attorneys' fees and costs in any case in which litigation is filed to collect contributions, interest or liquidated damages from an Employer, or in any case where audit costs are assessed pursuant to Article X.

### B. PROCEDURES:

1. Identification of and Communications with Employers with Due and Unpaid Contributions and Their Employees
  - a. For **retroactive contribution Employers**, on the 11<sup>th</sup> day of the month in which a contribution is due but not received, the Fund will send a Notice of Delinquency to the Employer, with a copy to the Local Union and to Collection Counsel. The Fund will also attempt to contact the Employer by phone.
  - b. For **advance contribution Employers**, on the 2<sup>nd</sup> day of the month in which a contribution is due but not received, the Fund will send a Notice of Delinquency to the Employer, with a copy to the Local Union and to Collection Counsel. The Fund will also attempt to contact the Employer by phone.
  - c. For **retroactive contribution Employers**, the Notice of Delinquency will state the amount of the contribution owed, the rate of interest that will accrue if the contribution is not received by the 15<sup>th</sup> day of the month, and the liquidated damages and attorneys' fees that may be assessed against the Employer. The Notice of Delinquency also will state that failure to pay the amounts due will cause the Employer's Employees to lose coverage under the Fund.
  - d. For **advance contribution Employers**, the Notice of Delinquency will state the amount of the contribution owed, the rate of interest that will accrue if the contribution is not received by the 6<sup>th</sup> day of the month, and the liquidated damages and attorneys' fees that may be assessed against the Employer. The Notice of Delinquency also will state that failure to pay the amounts due will cause the Employer's Employees to lose coverage under the Fund.
  - e. For **retroactive contribution Employers**, on or about the 16<sup>th</sup> day of the month in which an Employer Contribution is due and not received, the Fund shall send a Notice of Employer Delinquency to the Employees of the Employer and their Local Union.
  - f. For **advance contribution Employers**, on or about the 7<sup>th</sup> day of the month in which contributions are due and remain unpaid, the Fund shall send a Notice of Delinquency to the Employees of the Employer and their Local Union.
  - g. The Notice of Delinquency to the Employees of the Employer and their Local Union shall:
    - 1) For **retroactive contribution Employers**, state that the Employee's coverage under the Fund will be suspended beginning on the later of the 15<sup>th</sup> day of the month following the month in which the Employer Contribution was due, or the date the Employee's benefit bank has been exhausted, identified by date, and that coverage will not be reinstated until the Employer pays all due and unpaid Employer Contributions and applicable interest owed;
    - 2) For **advance contribution Employers**, state that the Employee's coverage under the Fund will be suspended beginning on the later of the 7<sup>th</sup> day of the month following the month in which the Employer Contribution was due, or the date the Employee's benefit bank has been exhausted, identified by date, and that coverage will not be reinstated until the Employer pays all due and unpaid Employer Contributions and applicable interest owed;

## VI. Due and Unpaid Contributions (*continued*)

- 3) Identify the number of remaining benefit bank weeks available to the Employee;
  - 4) Advise that benefit bank weeks used by an Employee will be restored if the Fund receives payment of the due and unpaid Employer Contributions and applicable interest attributable to the delinquency that triggered the use of the Employee's benefit bank weeks; and
  - 5) Advise that the Employee may make self-contributions to the Fund during weeks which the Employee is still working but the Employer is not making contributions, to provide for continued coverage under the Fund after the Employee's benefit bank weeks are exhausted, and that self-contributions will be refunded to the Employee if the Fund receives the due and unpaid Employer Contribution and interest attributable to the delinquency that triggered the Employee's self-contributions.
- h. For **retroactive contribution Employers**, on or before the 11<sup>th</sup> day of the month following the month in which the contribution was due, if contributions or interest remain unpaid, the Fund shall send a Final Notice of Delinquency to the Employer, with a copy to the Local Union and to Collection Counsel. The Final Notice of Delinquency will state the amount of the contribution owed, the rate and amount of interest accrued as of the date of the Final Notice of Delinquency and the liquidated damages and attorneys' fees that may be assessed against the Employer.

The Final Notice of Delinquency also will state that coverage of the Employer's Employees under the Fund will be suspended if due and unpaid contributions are not received by the 15<sup>th</sup> of the month. In addition, the Fund staff shall ask the business agent of the Local Union representing the Employees of the Employer for any information concerning the reason for the Employer's failure to contribute, *e.g.*, cessation of business.

- i. For **advance contribution employers**, on or before the 2<sup>nd</sup> day of the month following the month in which the contribution was due, if contributions or interest remain unpaid, the Fund shall send a Final Notice of Delinquency to the Employer, with a copy to the Local Union and to Collection Counsel. The Final Notice of Delinquency will state the amount of the contribution owed, the rate and amount of interest accrued as of the date of the Final Notice of Delinquency and the liquidated damages and attorneys' fees that may be assessed against the Employer.

The Final Notice of Delinquency also will state that coverage of the Employer's Employees under the Fund will be suspended if due and unpaid contributions are not received by the 6<sup>th</sup> of the month. In addition, the Fund staff shall ask the Business Agent of the Local Union representing the Employees of the Employer for any information concerning the reason for the Employer's failure to contribute, *e.g.*, cessation of business.

- j. For **retroactive contribution Employers**, if the Fund receives payment of due and unpaid contributions and interest before the 15<sup>th</sup> day of the month following the month in which the contribution was due, The Fund will send a notice to the Employer's Employees informing them that the Employer is no longer delinquent in payment of contributions to the Fund and has brought its account current. The Fund will send a copy of this notice to the Local Union representing the Employer's Employees.

- k. For **advance contribution Employers**, if the Fund receives payment of due and unpaid contributions and interest before the 6<sup>th</sup> day of the month following the month in which the contribution was due, the Fund will send a notice to the Employer's Employees informing them that the Employer is no longer delinquent in payment of contributions to the Fund and has brought its account current. The Fund will send a copy of this notice to the Local Union representing the Employer's Employees.

## VI. Due and Unpaid Contributions (*continued*)

- l. For **retroactive contribution Employers**, if contributions or interest remain unpaid on the 15<sup>th</sup> day of the month following the month in which the contribution was due, the Fund shall send a copy of the Final Notice of Delinquency and a Notice of Suspension of Coverage to the Employees of the Employer covered by the Fund and their Local Union on the 16<sup>th</sup> day of the month following the month in which the contribution was due.
- m. For **advance contribution Employers**, if contributions or interest remain unpaid on the 6<sup>th</sup> day of the month following the month in which the contribution was due, the Fund shall send a copy of the Final Notice of Delinquency and a Notice of Suspension of Coverage to the Employees of the Employer covered by the Fund and their Local Union on the 7<sup>th</sup> day of the month following the month in which the contribution was due.
- n. The notices of Suspension of Coverage shall:
  - 1) State the date that the Employee's coverage under the Fund is suspended;
  - 2) Advise the Employee to continue to submit claims for services rendered during the suspension period and that the claims will be processed when the Employer pays all due and unpaid Employer Contributions with applicable interest;
  - 3) Advise that benefit bank weeks used by an Employee will be restored if the Fund receives payment of the due and unpaid Employer Contribution with applicable interest attributable to the delinquency; and
  - 4) Advise that the Employee may make self-contributions to the Fund to provide for continued coverage under the Fund after the Employee's benefit bank weeks are exhausted, and that self-contributions will be refunded to the Employee if the Fund receives the due and unpaid Employer Contribution with applicable interest attributable to the delinquency.
- o. Upon receiving payment of due and unpaid Employer contributions and applicable interest for the entire period for which contributions are due and owing, the Fund shall notify the Employee that suspension of coverage has ceased and claims submitted for services provided during the suspension period will be processed by the Fund.
- p. In addition to sending Notices of Delinquency, Fund staff shall contact Employers by telephone or letter to determine whether the Employer is still in business and to seek payment of due and unpaid contributions.
- q. Fund staff also shall notify the EAC of any other matters referred to Collection Counsel.
- r. Example for **retroactive contribution Employers**:
  - 1) A contribution for coverage in January is not received by February 10<sup>th</sup>. The Fund sends a Notice of Delinquency to the Employer, the Local Union and Collection Counsel on February 11<sup>th</sup>.
  - 2) If the contribution is not received by February 15<sup>th</sup>, the Fund sends a Notice of Employer Delinquency to the Employer's Employees and their Local Union on February 16<sup>th</sup>.
  - 3) If the contribution and interest remain unpaid on March 10<sup>th</sup>, the Fund sends a Final Notice of Delinquency to Employer on March 11<sup>th</sup>.
  - 4) If the contribution and interest are received between February 16<sup>th</sup> and March 15<sup>th</sup>, the Fund will send a notice to Employees of the Employer and their Local Union informing them that the Employer no longer is delinquent.

## VI. Due and Unpaid Contributions (*continued*)

- 5) If the contribution and interest have not been received by March 15<sup>th</sup>, the Fund will send a Notice of Suspension of Coverage to the Employees of the Employer on March 16<sup>th</sup>, with copies to Collection Counsel and the Employees' Local Union.
  - 6) If the contribution and interest have not been received by April 10<sup>th</sup>, the matter will be referred to Collection Counsel and the EAC notified of the referral, unless Collection Counsel is notified sooner based on the circumstances of the case.
  - 7) If all unpaid contributions and interest are received after March 15<sup>th</sup>, the Fund will send a Reinstatement of Coverage letter to Employees of the Employer, their Local Union and Collection Counsel.
- s. Example for **advance contribution Employers**:
- 1) A contribution for coverage in January is not received by January 1<sup>st</sup>. The Fund sends a Notice of Delinquency to the Employer and the Local Union on January 2<sup>nd</sup>.
  - 2) If the contribution is not received by January 6<sup>th</sup>, the Fund sends a Notice of Employer Delinquency to the Employer's Employees and their Local Union on January 7<sup>th</sup>.
  - 3) If the contribution and interest remain unpaid on February 1<sup>st</sup>, the Fund sends a Final Notice of Delinquency to Employer on February 2<sup>nd</sup>.
  - 4) If the contribution and interest are paid between January 7<sup>th</sup> and February 6<sup>th</sup>, the Fund will send a notice to Employees of the Employer and their Local Union informing them that the Employer no longer is delinquent.
  - 5) If the contribution and interest remain unpaid on February 6<sup>th</sup>, the Fund will send a Notice of Suspension of Coverage to the Employees of the Employer on February 7<sup>th</sup>, with copies to the Employees' Local Union.
  - 6) If the contribution and interest remain unpaid on March 1<sup>st</sup>, the matter will be referred to Collection Counsel and the EAC notified of the referral, unless Collection Counsel is notified sooner based on the circumstances of the case.
  - 7) If all unpaid contribution and interest are paid after February 6<sup>th</sup>, the Fund will send a Reinstatement of Coverage letter to Employees of the Employer, their Local Union and Collection Counsel.
2. Interest on Due and Unpaid Contributions
- a. For **retroactive contribution Employers**, for any contribution that is not received on or before the 15<sup>th</sup> day of the month following the month of coverage, interest shall be assessed in monthly increments beginning after the 10<sup>th</sup> day of the month, and for each successive monthly period (11<sup>th</sup> day of the month through 10<sup>th</sup> day of the following month), or portion of a monthly period, thereafter until the date of payment. The date of payment is the date the payment is received at the Fund's lockbox.
  - b. For **advance contribution employers**, for any contribution that is not received on or before the 6<sup>th</sup> day of the month of coverage, interest shall be assessed in monthly increments beginning after the 1<sup>st</sup> day of the month, and for each successive monthly period (2<sup>nd</sup> day of the month through 1<sup>st</sup> day of the following month), or portion of a monthly period, thereafter until the date of payment. The date of payment is the date the payment is received at the Fund's lockbox.
  - c. Contribution payments received from Employers will be applied first to accrued interest and then to outstanding contributions.

## VI. Due and Unpaid Contributions (*continued*)

- d. Example for **retroactive contribution employers**: An Employer owes \$5,000 for coverage for the month of January. The contribution is due on February 10<sup>th</sup>. The \$5,000 contribution is received at the Fund's lockbox on March 31<sup>st</sup>. Assuming an annual rate charged on delinquent contributions of 10.25% resulting in monthly increments of .854%, the Employer owes interest in the amount of \$85.40 (.00854 times 2 times \$5,000). This represents \$42.70 for the monthly period from February 11<sup>th</sup> through March 10<sup>th</sup> plus \$42.70 for part of the monthly period from March 11<sup>th</sup> to March 31<sup>st</sup>. The \$5,000 payment is applied to the interest first, leaving an outstanding contribution of \$85.40. Interest accrues on the \$85.40 at .854% for each successive monthly period or portion of a monthly period beginning March 31<sup>st</sup> until the outstanding contribution is received in full.
- e. Example for **advance contribution employers**: An Employer owes \$5,000 for coverage for the month of January. The contribution is due on January 1<sup>st</sup>. The \$5,000 contribution is received at the Fund's lockbox on February 20<sup>th</sup>. Assuming an annual rate charged on delinquent contributions of 10.25% resulting in monthly increments of .854%, the Employer owes interest in the amount of \$85.40 (.00854 times 2 times \$5,000). This represents \$42.70 for the monthly period from January 2<sup>nd</sup> through February 1<sup>st</sup> plus \$42.70 for part of the monthly period from February 2<sup>nd</sup> through February 20<sup>th</sup>. The \$5,000 payment is applied to the interest first, leaving an outstanding contribution of \$85.40. Interest accrues on the \$85.40 at .854% for each successive monthly period or portion of a monthly period beginning February 20<sup>th</sup> until the outstanding contribution is received in full.

### 3. Liquidated Damages for Due and Unpaid Contributions

- a. For **retroactive contribution Employers**, for contributions that remain unpaid on the 11<sup>th</sup> day of the month after the month in which the contribution was due, liquidated damages of 10% of the unpaid contribution amount shall be assessed. Beginning on the 11<sup>th</sup> of each subsequent month, additional liquidated damages of 1% of the unpaid contribution amount will be assessed for each monthly period, or part of a monthly period, that a contribution remains unpaid until the total amount of liquidated damages has reached 20% of the unpaid contribution amount.
- b. For **advance contribution Employers**, for contributions that remain unpaid on the 2<sup>nd</sup> day of the month after the month in which the contribution was due, liquidated damages of 10% of the unpaid contribution amount shall be assessed. Beginning on the 2<sup>nd</sup> day of each subsequent month, additional liquidated damages of 1% of the unpaid contribution amount will be assessed for each monthly period, or part of a monthly period, that a contribution remains unpaid until the total amount of liquidated damages has reached 20% of the unpaid contribution amount.
- c. For contributions determined to be due and unpaid as the result of an audit of an Employer, liquidated damages shall be assessed in accordance with Section X.A.3, below.
- d. Example for **retroactive contribution Employers**,: An Employer owes \$5,000 for coverage for the month of February. The due date is March 10<sup>th</sup>. If on April 10<sup>th</sup> the contribution has not been received, the Employer's liquidated damages are 10% of the unpaid amount, or \$500. If the Employer does not pay the contribution by the 11<sup>th</sup> of the following month (by May 11<sup>th</sup>), then the Employer owes additional liquidated damages of \$50 and will owe an additional \$50 in liquidated damages on the 11<sup>th</sup> of each subsequent month until the total amount of liquidated damages equals \$1,000 (20% of the unpaid contribution).

## **VI. Due and Unpaid Contributions (*continued*)**

- e. Example for **advance contribution Employers**: An Employer owes \$5,000 for coverage for the month of February. The due date is February 1<sup>st</sup>. If on March 2<sup>nd</sup> the contribution has not been received, the Employer's liquidated damages are 10% of the unpaid amount, or \$500. If the Employer does not pay the contribution by the 2<sup>nd</sup> day of the following month (by April 2<sup>nd</sup>), then the Employer owes additional liquidated damages of \$50 and will owe an additional \$50 in liquidated damages on the 2<sup>nd</sup> day of each subsequent month until the total amount of liquidated damages equals \$1,000 (20% of the unpaid contribution).
4. Retroactive contribution Employers who are more than four times delinquent in payment of contributions in any consecutive twelve month period will be required to contribute thereafter on an advance contribution basis. A warning notice will be issued to both the Employer and the Local Union principal officer and business agent after the fourth delinquency. The advance contributions requirement will begin with contributions for the month following the fifth such delinquency, upon final notice thereof issued to the Employer and the Local Union representatives.

## **VII. Authority of Collection Counsel**

### **A. POLICY:**

1. Collection Counsel shall take reasonable steps to collect unpaid contributions, interest and liquidated damages, which may include the commencement of litigation pursuant to section 515 of ERISA and section 502(a)(2) of ERISA for recovery of due and unpaid contributions constituting Fund assets from the individual or individuals responsible for the payment of an Employer's contributions to the Fund. Collection Counsel shall provide 5 business days advance notice to the Trustees prior to commencing litigation. The Trustees will be deemed to have authorized commencement of litigation unless Collection Counsel is instructed within the 5 business-day period not to commence litigation.
2. Collection Counsel is authorized to settle the Fund's claims for unpaid contributions and interest without further authority from the EAC or Board of Trustees under the following circumstances:
  - a. The amount to be paid in settlement covers all contributions due plus accrued interest; and
  - b. The amount of the settlement will be paid over a period not longer than 12 months.
3. Collection Counsel will submit settlement offers that do not fall within his or her settlement authority to the Executive Director who will seek directions from the EAC.
4. Amounts collected by Collection Counsel will be transferred within three business days after receipt by Collection Counsel to the Fund for deposit in the Fund's general account.
5. Collection Counsel will maintain contemporaneous records of the time expended on collection activities for the Fund and submit monthly bills to the Executive Director of the Fund for review and payment as appropriate.

### **B. PROCEDURES:**

1. For each matter referred to Collection Counsel, the Fund staff will identify the total amount of contributions, interest and liquidated damages due and provide the information to Collection Counsel. In addition, the Fund staff will provide Collection Counsel with the relevant Collective Bargaining Agreement(s), Participation Agreement(s), correspondence, Audit Findings Letter, Initial Determination Letter, Final Determination Letter and/or any documents received from the bankruptcy court.
2. At each EAC meeting, Collection Counsel will provide a summary of pending matters and, where appropriate, recommendations concerning action to be taken on matters referred for collection.

## VII. Authority of Collection Counsel (*continued*)

3. Collection Counsel will notify the Trustees in writing 15 days before commencing litigation to collect unpaid contributions, interest, or liquidated damages, identifying the Employer to be sued and the amount owed. The Trustees will be deemed to have authorized commencement of litigation unless Collection Counsel is instructed within the 15-day period not to commence litigation.

## VIII. Return of Contributions

### A. POLICY:

1. Pursuant to section 403(c)(2)(A)(ii) of ERISA, contributions made to the Fund which are determined by the Trustees to have been made by mistake (other than a mistake relating to whether the Fund is described in section 401(a) of the Internal Revenue Code ("Code") or the trust holding assets of the Fund is exempt from taxation under section 501(a) of the Code) may be returned to the Employer within six months after the Trustees determine that the contributions were made by mistake. The decision to return such contributions lies within the sole discretion of the Trustees, or the Executive Director if so delegated.
  - a. Return of contributions is not authorized for mistaken contributions unless the mistake did not trigger eligibility for benefits under the Fund, regardless of whether benefits were actually provided.
  - b. Contributions sent to the Fund that were intended to be made to another Employee benefit plan will not be transferred, except by written request, satisfactory to the Executive Director, from the Employer that made the contributions.

## IX. Records of Contribution Payments

- ### A. POLICY:
- The Fund shall maintain records of each Employer's contributions to the Fund for each month and shall maintain a Plan year to date total of each Employer's monthly contribution information.

### B. PROCEDURES:

1. The Fund shall maintain the following records of Employer contributions to the Fund for each month:
  - a. Name of Employer;
  - b. Month of coverage;
  - c. Amount and date of contribution received;
  - d. Amount and date contribution is deposited in Fund's account;
  - e. Name and Social Security number of each Employee for whom contribution was made;
  - f. Weeks worked by each Employee;
  - g. Amount of contribution for each Employee;
  - h. Total amount contributed by the Employer;
  - i. Total number of Employers reported by the Employer;
  - j. Total number of Employers billed;
  - k. Total number of Employers who made contributions; and
  - l. Total dollar amount of contributions paid.
2. For each Employer, the Fund shall maintain a Plan year to date total of the Employer's monthly contribution information.

## **X. Employer Audits**

### **A. POLICY:**

1. Employer Audits are required to assure that Employers comply with applicable contribution requirements. The results of all audits shall be confidential to the Trustees and their designated representatives and shall not be made available to any other individual, firm or corporation, except that audit charges or underpayments may be shared with the Employer and Local Union whose members are employed by the Employer.
2. Employers to Be Audited and Scope of Audits
  - a. The Fund's Field Auditor will:
    - 1) Conduct desk audits of Employers with fewer than ten Employees every three years, as chosen by the Auditor on a random basis.
    - 2) Conduct an audit of each Employer with ten or more Employees every three years, as chosen by the Auditor on a random basis;
    - 3) If an initial audit revealed serious reporting deficiencies by an Employer, conduct a follow-up audit of the Employer within 12 months after the initial audit;
    - 4) Conduct an audit of an Employer when its obligation to contribute to the Fund terminates or when it files for bankruptcy protection;
    - 5) Conduct an audit of an Employer when the Employer is delinquent in making contributions for three or more consecutive months, unless circumstances indicate that an audit would not be useful or appropriate;
    - 6) Conduct an audit of each new Employer within the first year that the Employer begins contributing to the Fund; and
    - 7) Conduct audits of Employers as requested by the management of the Fund's Contribution Control Department, the EAC or the Trustees.
3. Interest, Audit Costs and Liquidated Damages
  - a. Interest, computed in monthly increments, shall be assessed on due and unpaid contributions disclosed in Employer audits from the date each unpaid contribution was due until the date of payment.
  - b. Except as otherwise provided below, liquidated damages shall be assessed on due and unpaid contributions disclosed in Employer audits as follows:
    - 1) Liquidated damages of 10% shall be assessed on the amount of the unpaid contribution that remains unpaid 45 days after the date of the Undisputed Audit Bill, or, to the extent audit bill is disputed, 45 days after the date of the Decision on Request for Further Consideration or, if appealed, 40 days after the date of the Final Decision on Appeal.
    - 2) Thereafter, additional liquidated damages of 1% of the unpaid contribution amount will be assessed for each 30-day period, or part of a 30-day period, that a contribution remains unpaid until the total amount of liquidated damages has reached 20% of the unpaid contribution amount.
  - c. Where unpaid contributions exceed 5% of the total amount due for the audit period, or if determined by the EAC based on the facts and circumstances of the audit, the cost of the audit will be assessed and liquidated damages will be assessed as follows:
    - 1) Liquidated damages of 10% will be immediately assessed on the amount of the unpaid contributions disclosed in the audit.

**X. Employer Audits (*continued*)**

- 2) Additional liquidated damages of 1% of the unpaid contribution amount will be assessed for each 30 day-period, or part of a 30-day period, that a contribution remains unpaid after the due date for payment as stated in the Undisputed Audit Bill, Decision on Request for Further Consideration or Final Decision on Appeal, as applicable, until the total amount of liquidated damages has reached 20% of the unpaid contribution amount.
  - d. The Trustees shall seek payment of liquidated damages and audit costs in any court action to recover unpaid contributions disclosed in an audit.
4. Statute of Limitations In regard to any unpaid amounts that are discovered as a result of an audit, the Statute of Limitations will begin to run upon the date of issuance of the Audit Findings Letter.

**B. PROCEDURES:**

1. Information and Preparation for a Formal Audit

- a. The initial audit period will consist of periods since the last audit chosen by the Auditor based on his or her professional judgment. If the Auditor notes unusual reporting patterns or other circumstances indicating that review of additional periods would be useful, the Auditor, upon authorization from the Director of Finance, will audit additional time periods.
- b. The Auditor will give written notice to an Employer selected for an employer audit. The notice will:
  - 1) Identify the time period to be audited initially;
  - 2) Describe the documents the Auditor will review; and
  - 3) Advise the Auditor to contact the Employer and set a date of commencement of audit.
- c. The Auditor will obtain any of the following documents from the Employer being audited as necessary to satisfactorily verify that the Employer properly reported to the Fund and contributed on Employees for whom the Employer was obligated to contribute:
  - 1) Seniority list and list of all employees (bargaining unit and non-bargaining unit) and their job classifications;
  - 2) Payroll journals/registers and individual earnings records that show for all Employees:
    - i. Weeks and hours worked
    - ii. Hourly rate
    - iii. Quarterly totals
  - 3) Personnel records that show for all Employees:
    - i. Date of hire
    - ii. Classification or status changes
    - iii. Last date worked and reason for termination
  - 4) Federal tax reports, including, if filed, Form 941 Employer's Quarterly Federal Payroll Tax Return, Form 940 Employer's Annual Federal Unemployment (FUTA) Tax Return, W-2 Wage and Tax Statements, W-3 Transmittal of Wage and Tax Statements, Form 6559 Transmitter Report and Summary of Magnetic Media, Form 1099-MISC Miscellaneous Income and Form 1096 Annual Summary and Transmittal of U.S. Information Returns;

**X. Employer Audits (*continued*)**

- 5) State unemployment compensation tax reports, including Form UC 1017 Wage Detail Report and Form UC 1020 Employer Quarterly Tax Report;
  - 6) Time cards, if required by the Employer;
  - 7) Employer copies of monthly contribution reports to all employee benefit funds;
  - 8) All pertinent payroll records of each Employer with respect to all of its Employees, whether or not in covered employment or participants in the Fund, when such examination is deemed necessary or advisable for proper administration of the Fund's contribution collection program. Such payroll records shall include, but are not limited to, payroll registers, check stubs, canceled checks, time cards, Employee individual earning records, new hire reports, quarterly, semiannual and annual federal and state payroll tax returns, federal information returns for non-Employee compensation and industrial insurance reports; and
  - 9) Such other information, books, ledgers, journals, records and reports, including but not limited to job cost records, company tax returns, business ledgers, cash disbursements journals, reports to other Employee benefit plans, as the auditor may deem necessary to conduct an audit in accordance with generally accepted auditing standards.
- d. The Auditor will obtain the following information maintained by the Fund concerning the Employer to be audited:
- 1) Copies of Contribution Remittance Statements showing contributions made by the Employer;
  - 2) Names and Social Security numbers of Employees of the Employer from the Fund's eligibility records;
  - 3) Copies of Collective Bargaining Agreements and Participation Agreements in effect during the period under audit; and
  - 4) Copies of prior audit findings and supporting work papers.
- e. The Auditor will obtain seniority lists indicating active and inactive Local Union members from the Local Union representing the Employees of the Employer under audit and ask the Local Union if there are any supplemental contracts or potential issues the Auditor should be aware of for the audit period.
- f. Prior to commencing the audit, the Auditor will set up audit work papers, review relevant documents to determine the eligible classes of Employees, the contribution rates required for each period audited and the dates contributions were due, and briefly review the scope of the audit with the Local Union and Employer.
- g. The Auditor will seek guidance from the Director of Finance if an Employer refuses to provide requested information or otherwise refuses to cooperate in the audit.

2. Audit Procedure

- a. The Auditor will compare the list of Employees provided by the Employer to the roster of Employees provided by the Local Union. The Auditor will ask the Employer for an explanation of any differences.
- b. The Auditor will review the documents obtained from the Employer, including payroll records and verify that the documents are sufficient to complete the audit.

## X. Employer Audits (*continued*)

- c. The Auditor will compare Employer payroll records with the Contribution Remittance Statements. The Auditor will ask the Employer for an explanation of any failure to include any eligible Employee on a Contribution Remittance Statement.
- d. The Auditor will determine whether an Employer has provided complete payroll records based on the Auditor's review of documents. The Auditor will ask the Employer for an explanation of any failure to report Employees.
- e. The Auditor will conduct an exit interview with the Employer upon completion of the employer audit to discuss the Auditor's findings and the contribution requirements under the Collective Bargaining Agreement, Participation Agreement and Trust Agreement. The Auditor will inform the Employer that the audit findings are subject to change upon further review by Fund staff. The Auditor will advise the Employer that a letter with the audit findings will be sent to the Employer within 60 days after the date of the exit interview.
- f. Where unpaid contributions exceed 5% of the total amount due for the audit period, or if determined by the EAC based on the facts and circumstances of the audit, including, but not limited to, whether the audit was a regularly scheduled audit or was conducted out of sequence due to concerns about the Employer's compliance with contribution obligations, liquidated damages and the cost of the audit will be assessed against the Employer.

### 3. Notification of Audit Findings

- a. The Auditor will complete an audit report detailing the results of an Employer audit within 15 days after the exit interview and will submit the report to Fund management for further review. The audit report will be reviewed by the Fund's Director of Finance and its Participation Compliance Supervisor.
- b. If no underpayments are found during the audit, the Fund will so notify the Employer and Local Union by letter within 60 days after the exit interview.
- c. If underpayments are found during the audit, the Fund will send a letter ("Audit Findings Letter") to the Employer, copied to the Local Union, within 60 days after the exit interview. The Audit Findings Letter shall state that the Trustees will seek payment of applicable liquidated damages and audit costs if the Trustees file a court action for unpaid contributions, and will:
  - 1) List the underpayments found, accrued interest through the date of the Audit Findings Letter and liquidated damages and audit costs, if applicable;
  - 2) Advise the Employer that if it wishes to dispute or explain the discrepancies, it must submit information to the Fund in writing within 30 days from the date of the Audit Finding Letter; and
  - 3) Advise the Employer that, if no further information is provided, the Fund will treat the discrepancies as conceded and send an Undisputed Audit Bill for the additional contributions, interest liquidated damages and audit costs, if applicable, due within 15 days from the date of the Undisputed Audit Bill.

### 4. Post-Audit Procedures

- a. The Fund's Director of Finance and its Director of Contribution Control will consider a request for further consideration based on written information concerning discrepancies submitted by the Employer and Local Union. They shall determine, based on the information submitted, whether an adjustment should be made in the unpaid contribution amount shown in the Audit Findings Letter.

## **X. Employer Audits (*continued*)**

- b. The Decision on Request for Further Consideration shall be sent to the Employer within 60 days after the date of the Audit Finding Letter, with a copy to the Local Union, identifying the amount of any due and unpaid contributions, interest, liquidated damages, and audit costs and notifying the Employer that it may ask the Trustees to review the Decision on Request for Further Consideration. The Decision on Request for Further Consideration will request payment of due and unpaid amounts within 15 days after the date of the Decision, unless the Employer submits a request for Trustee review within ten days of the date of the Decision.
- c. If the Employer submits an appeal for Trustee review within 10 days of the Decision on Request for Further Consideration, the payment obligation will be suspended pending Trustee review. The EAC will review Employer appeals at the next scheduled meeting and the Fund will promptly notify Employers of the EAC's decision in a Final Decision on Appeal, copied to the Local Union, requesting payment of any amounts due within ten days after the date of the Final Decision on Appeal.
- d. Fund staff will refer to Collection Counsel matters involving unpaid audit charges, the provision for payment for which have not been made within 30 days following a request for payment after the Employer's appeal rights have been exhausted.

## **XI. Settlements and Write-Offs**

### **A. POLICY:**

1. The EAC will consider whether unpaid contributions, interest, liquidated damages and audit costs owed by particular Employers should be settled or written off and no further action taken to collect the amounts. In deciding whether to agree to a settlement or write off an amount, the EAC will consider the following factors as well as any other information the EAC deems relevant:
  - a. The amount owed;
  - b. The length of time the amount has been outstanding;
  - c. The financial condition of the Employer;
  - d. The likelihood that the amount can be collected;
  - e. The reason for the late payment;
  - f. The cost of continuing to pursue collection; and
  - g. The effect the write-off may have on the Fund's ability to collect other amounts owed.
2. The EAC is authorized to approve the settlement or write-off of contributions, interest, liquidated damages and audit costs of up to \$20,000 per Employer during any 12-month period. The EAC will submit a recommendation to the Trustees for approval of the settlement or write-off of contributions, interest, liquidated damages and audit costs totaling more than \$20,000 per Employer during any 12-month period.

### **B. PROCEDURE:**

Fund staff or Collection Counsel will refer to the EAC particular amounts that may be appropriate for settlement or write-off.

## **XII. General Provisions**

### 1. Due Date

If a due date for any action or notice falls on a weekend or Federal holiday, the due date is extended to the next business day that is not a federal holiday.

### 2. Receipt of Documents Rule

No document, including financial instruments such as checks or money orders, shall be presumed to have been received by the Fund unless actually received, regardless of the circumstances of mailing.

### 3. No Substantive Relief for Procedural Violations

To the extent permitted by law, the failure of the Trustees, their employees, agents or representatives or the employees, agents or representatives of the Fund to follow the Employer Accounts Policies shall not give an Employer, Employee, the Union, Local Union, Affiliate, or any other individual or entity any substantive right with respect to the Fund or the benefits provided under the Fund.

### 4. Appeal Rights

Any person or entity that feels aggrieved by the application of these rules and regulations may appeal in accordance with the appeals procedure of the Fund adopted in accordance with section 503 of ERISA and the regulations there under.

### 5. Termination of Participation of Employer

The Trustees have the right to terminate participation in the Fund of any Employer if the Trustees, in their sole discretion, determine that the Employer (or its representative) knowingly provided false information, directly or indirectly, with the intent to cause the Fund to provide coverage, benefits, or payments that a participant, beneficiary, or other individual, or entity was not entitled to receive.