

Michigan Conference of Teamsters Welfare Fund

2700 TRUMBULL AVENUE, DETROIT, MICHIGAN 48216

TELEPHONE (313) 964-2400

FAX (313) 964-3144

www.mctwf.org



Employer Accounts Policies and Procedures

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MICHIGAN CONFERENCE OF TEAMSTERS WELFARE FUND



**EMPLOYER ACCOUNTS
POLICIES AND PROCEDURES**

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MICHIGAN CONFERENCE OF TEAMSTERS WELFARE FUND

EMPLOYER ACCOUNTS POLICIES AND PROCEDURES

I. Introduction

The Board of Trustees ("Trustees") of the Michigan Conference of Teamsters Welfare Fund ("the Trust 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 Trust 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 Trust 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 Trust 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 Agreement and Declaration of Trust for the Michigan Conference of Teamsters Welfare Trust Fund ("Trust Agreement").

II. Employer Accounts Committee

POLICY: The Employer Accounts Committee ("EAC") is a committee of the Trustees consisting of one or more Employer Trustees and one or more Union Trustees appointed by the 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 Trust Fund, to be made pursuant to a written agreement with the Employer ("Written Agreement"). Accordingly, contributions to the Trust 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 the International Brotherhood of Teamsters ("IBT") or a Local Union of the IBT ("Local Union") that provides for contributions to the Trust Fund for Employees of the Employer; and/or
 - b. the Trust 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 Trust Fund commences on or after January 2, 2005 and formerly participating employers returning on or after January 2, 2005 following a break in Trust Fund participation must execute the Trust Fund's "Advance Contribution" Participation Agreement. Other participating Employers must execute either the Trust Fund's "Advance Contribution" Participation Agreement or its "Retroactive Contribution" Participation Agreement, at the option of the bargaining parties.
2. Eligibility for Coverage
 - a. The Trust Fund will not accept Collective Bargaining Agreements or Participation Agreements that cover only non-Employees. For this purpose, a person is a non-Employee if (i) the person owns more than 50% of the ownership interest of a trade or business or partnership, and (ii) 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 Trust 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 and section III.A.2.d. below, an individual is eligible for coverage under the Trust Fund as an Employee if the individual is employed by a corporation or limited liability company that (i) meets the Trust Fund's definition of Employer and (ii) 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. The Trust Fund does not permit voluntary or selective participation. Accordingly, for instance, any separate agreement which make the payment of Employer contributions to the Trust Fund contingent upon the payment of a share of those contributions by an Employee will be deemed null and void by the Trust Fund.
- d. The *entire* Teamster bargaining unit group must participate in a Benefit Plan and its members must uniformly be covered by its designated benefit package. The same is true of any non-Teamster group, as described in section III.A.2.d. hereof, that wishes to participate.
- e. With specific regard to non-Teamster group participation, effective February 1, 2014, for all new and renewing Contributing Employers, only the full-time employees (i.e., averaging 30 hours per week or more, measured as prescribed by the full-time employee determination provisions of the Affordable Care Act) of a non-Teamster group whose specific job function or title is distinctly identifiable may participate in a Benefit Plan. The right of an Employer's non-Teamster group to participate is contingent upon the participation of the Employer's Teamster bargaining unit group(s). Contributions for non-Teamster group new hires must commence in accordance with a uniformly applied formula (for example, the first Sunday occurring on or immediately after 30 calendar days after hire date). The duration of any contribution obligation for non-Teamster group employer shall not exceed the duration of such obligation as required for Teamster bargaining unit members under the Collective Bargaining Agreement.

3. Minimum Participation Requirement

Effective October 1, 2001:

- a. Each Collective Bargaining Agreement and Participation Agreement must require the Employer to contribute to the Trust Fund for a minimum period of three years (36 months) from the effective date of the obligation to contribute to the Trust Fund. A Collective Bargaining Agreement or Participation Agreement that does not clearly specify the three-year minimum term of participation will be rejected.
- b. Notwithstanding the three year/36-month minimum, the Trust Fund will accept a Participation Agreement from an Employer for its non-Teamster group Employees if the effective date of coverage for the non-Teamster group Employees is not later than two months after the effective date of coverage of the Teamster bargaining unit Employees and terminates on the same date as the Participation Agreement for the Employer's Teamster bargaining unit Employees.
- c. For each Plan year (April 1st – March 31st), the Trustees shall establish the contribution rates for each plan of benefits through the fourth Plan year in the future.
 - 1) The April 1st contribution rate change shall be applied to the week in which April 1st falls if it falls between Sunday and Wednesday, and shall be applied to the following week if April 1st falls between Thursday and Saturday.
 - 2) If a contribution rate change occurs 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 Trust Fund, the Employer must pay the adjusted rate for the last plan of benefits designated in the Participation Agreement. If the

III. Agreement Requirements (*continued*)

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 Trust Fund's Trust Agreement, Benefit Plan Documents, 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 Trust Fund's Trustees pursuant to the Trust Agreement, and all of the actions of the Trustees in administering the Benefit Plan(s) 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.

B. PROCEDURES:

1. The Employer and Local Union will provide the Trust Fund with:
 - a. A Collective Bargaining Agreement between the Employer and the IBT or a Local Union that provides for contributions to the Trust Fund for Employees of the Employer; and
 - b. The Trust 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 Trust Fund shall continue to be paid and accepted after the expiration of the Collective Bargaining Agreement until the Trust Fund acknowledges the cessation of the Employer's obligation to contribute pursuant to (i) the Employer's notification to the Trust Fund by certified mail, with a copy to the Local Union, that the Employer no longer has a legal duty to contribute to the Trust Fund and the specific basis upon which its legal duty to contribute to the Trust Fund has ceased, or (ii) the Local Union's notification to the Trust Fund, by certified mail, that the Employer no longer has a legal duty to contribute to the Trust Fund and the specific basis upon which the Employer's legal duty to contribute to the Trust Fund has ceased.
3. If for any reason a change in the contribution rate occurs after the expiration date of a collective bargaining agreement but while the Employer is engaged in collective bargaining for a new agreement or is otherwise legally required to continue contributing to the Fund, the Employer must pay the adjusted rate.
4. If the Employer and the IBT or a Local Union enter into a new Collective Bargaining Agreement or modify their current Collective Bargaining Agreement, the result of which affects the obligations under the Employer's Participation Agreement, the Employer and Local Union must notify the Trust Fund of such change. No such new Collective Bargaining Agreement or modification shall affect the obligations under the Employer's Participation Agreement unless approved in writing by the Trust Fund.
5. Upon receiving contributions from an Employer for which the Trust Fund has no current Written Agreement, the Trust Fund shall:
 - a. Deposit the contributions into a separate 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 Trust 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 Trust 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 provided within the specified time period, the Trust Fund shall transfer the contributions, plus interest, to the Trust 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 Trust Fund necessary to determine an Employer's obligation to contribute to the Trust 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 Trust Fund:
 - a. Name and address of each Employer signatory to a Written Agreement to contribute to the Trust Fund;
 - b. Effective and termination dates of the Written Agreement;
 - c. Employer's negotiated switch to a different benefit plan under the Trust Fund and the effective date of the switch;
 - 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 Trust Fund;
 - 2) The decertification of the Local Union; and
 - 3) The execution of a pre-hire agreement with the Union or Local Union, and the effective and termination dates of the pre-hire 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 Trust Fund are Trust Fund assets.
 2. Contributions shall be paid to the Trust Fund by Employers in accordance with the Collective Bargaining Agreement and the Participation Agreement. For all purposes, the contribution week is defined as Sunday through Saturday.

Employers whose initial participation commences on or after January 1, 2005 must remit contributions in advance of the period of coverage. In addition, Employers whose initial participation commences on or after January 1, 2010 must remit contributions on a tiered basis.

Payments will be made only on behalf of Employees. The term "Employee" means a person who is employed by an Employer and is eligible to participate in and receive benefits under a Benefit Plan, and as further defined in paragraph 2.d.(i) below. With regard to Employers contributing on a tiered basis, the Employer must contribute for each such Employee at the contribution rate tier applicable to the Employee's coverage status as determined by the Trust Fund (employee only, employee plus any children, employee plus spouse, or family coverage).

Notwithstanding contrary provisions in the Collective Bargaining Agreement, the Trust Fund further requires at a minimum that an Employer:

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

- a. Contribute on behalf of an Employee during the Employee's absence from the job due to an off-the-job illness or injury 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 the off-the-job illness or injury. Once a contribution obligation hereunder is satisfied, no new contribution obligation will be triggered with respect to a new absence due to the same off-the-job illness or injury unless the Employee has returned to regular work for a minimum of 14 continuous calendar days unless the Collective Bargaining Agreement provides for a shorter period or no minimum return period;
- b. Contribute on behalf of an Employee during the Employee's absence from the job due to an on-the-job illness or injury (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 the on-the-job illness or injury. Once a contribution obligation hereunder is satisfied, no new contribution obligation will be triggered with respect to a new absence due to the same on-the-job illness or injury unless the Employee has returned to regular work for a minimum of 14 continuous calendar days unless the Collective Bargaining Agreement provides for a shorter period or no minimum return period;
- c. Contribute on behalf of an Employee for the 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, including each week for which wages are received, retroactively and prospectively, pursuant to any National Labor Relations Board proceeding, grievance/arbitration proceeding or other legal proceeding or settlement. The Collective Bargaining Agreement may limit this obligation, **in the case of compensatory time off only**, to compensation exceeding the value of 16 hours.
 - (i) e. The term "Employee" does not include an individual who voluntarily quits, is terminated, is permanently laid off, or is deceased. .
 - (ii) f. Unless otherwise provided in the Collective Bargaining Agreement or a separation agreement pursuant thereto, or other written severance agreement, contributions are not payable on severance pay.
- g. Contribute on behalf of an Employee for whom contributions have not commenced by April 1, 2014, commencing for the week in which falls the 91st day following the commencement of the individual's employment as an Employee. However, if the Employee is subject to a contractual probationary period, the 90 days is counted beginning upon the earlier of the completion of the contractual probationary period, or the completion of the following limits on such probationary period:
 - (i) 210 calendar days for calendar day probationary periods;
 - (ii) 150 working days for working day probationary periods;
 - (iii) 1,200 working hours for working hour probationary periods;
 - (iv) for probationary periods not based on calendar days, working days, or working hours, as determined by the Trustees consistent with probationary periods stated above.

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

For example —

Employer X's Collective Bargaining Agreement provides that following completion of a 60 calendar day trial period, the employee will be placed on the regular seniority list, but further provides that health and welfare contributions are payable after six months of employment. The Trust Fund will assume (subject to dispute by the bargaining parties) that the period following the completion of the 60 day trial period is not required for substantive reasons (i.e., that it exists solely for the passage of time) and will require that contributions commence as of the 91st day thereafter (i.e., 30 days prior to the completion of the Collective Bargaining Agreement's intended six month contribution commencement period).

Employer Y's Collective Bargaining Agreement provides for the commencement of health and welfare contributions immediately following the completion of a 32 week probationary period. The Trust Fund will assume that the portion of the probationary period exceeding 30 weeks is not required for substantive reasons (i.e., that it exists solely for the passage of time), but because the remaining two weeks is less than the 90-day waiting period limitation, the Trust Fund will honor the Collective Bargaining Agreement as it is written.

If the Employer contributes to the Trust Fund on behalf of both Teamsters-represented and non-Teamsters-represented Employees, the Trust Fund will require the Employer to provide documentation reflecting any current benefit coverage eligibility waiting period affecting any non-Teamsters-represented Employees for whom there is an obligation to contribute to the Trust Fund. Such documentation includes employee handbooks, corporate policy statements, non-Teamsters collective bargaining agreements, etc.

- f. 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 following conditions must be met in order for the Trust Fund to provide extended coverage to Participants due to a strike or lockout:
 - 1) The strike or lockout must be sanctioned by the IBT or the locked out Employees must be supported by the IBT, as evidenced by IBT strike wages; and
 - 2) The Local Union involved must provide the Trust Fund with confirmation of said IBT sanctioning or support, the inception and termination dates, and a list of affected participants, and
 - 3) The Employer involved must be no more than 30 days delinquent in making legally required contributions to the Trust Fund at the commencement of the sanctioned strike or lockout.
 - 4) During a lockout or strike, the Teamsters bargaining unit Employees will be provided up to eight weeks of extended coverage immediately following the cessation of available benefit bank weeks, following the inception date of the lockout or strike.

The following limitations will apply when extended coverage is granted:

- 1) Extended coverage will not be provided to participants whose employment status as of the date the sanctioned strike or lockout begins is one of the following – on leave of absence or sick leave (until return from leave), laid off, or terminated.

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

- 2) During a lockout or strike that is sanctioned by the IBT, the non-Teamsters group Employees will be provided a maximum of seven weeks extended coverage following the inception date of the lock out or strike, contingent on the Employer's payment of advance contributions for that period, after which further contributions will be refused until the lockout or strike ends.
- 3) An employee hired to replace a locked out or striking Employee is not eligible for coverage under the Trust Fund during a lockout or strike that is sanctioned by the IBT. The Trust Fund will not accept contributions on behalf of an employee hired to replace a locked out or striking Employee during a lockout or strike that is sanctioned by the IBT.

B. PROCEDURES:

1. Instructions for Reporting and Payment

The Trust Fund staff shall provide an Employer that contributes to the Trust Fund with a copy of the Trust Agreement and a copy of the Employer Accounts Policies and Procedures, and timely notice of material and pertinent changes or amendments to such documents.

2. Monthly Payment Information

- a. On or about the 25th 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 Trust 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;
 - 3) The total contribution required for the listed Employees for the month billed;
 - 4) The outstanding contribution shortages due;
 - 5) The estimated contributions due for any delinquent period(s);
 - 6) The interest and liquidated damages due (assessed on contributions paid late);
 - 7) The estimated accruing interest and liquidated damages due (on delinquent contributions not yet paid); and
 - 8) The available credit(s) on the account.
- b. For **retroactive contribution Employers**, before the tenth day of the month following the month of coverage, Employers will send to the Trust Fund's lockbox the Contribution Remittance Statement for the month of coverage 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, the total contribution required for the listed Employees and a remittance payment reflecting the Employer's total contribution obligation for the month. The Contribution Remittance Statement must be timely sent to the Trust Fund's lockbox for recordkeeping purposes, even if a contribution is not timely made.

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

- c. For **advance contribution Employers**, before the first day of the month of coverage, Employers will send to the Trust Fund's lockbox the Contribution Remittance Statement for the month of coverage, edited as explained hereafter, and a remittance payment reflecting the Employer's total contribution obligation for the month. The Employer will edit the Contribution Remittance Statement to reflect (i) the names and Social Security numbers and contribution weeks for new Employees for whom the Employer is obligated to contribute, and (ii) changes in current Employee status. Included with the Trust 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, (notwithstanding the requirements to timely report employment status changes - see d. below) 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 Trust Fund's lockbox for record keeping purposes, even if the remittance payment is not timely made.
- d. The Employer must timely report to the Trust Fund all active employment status changes (i.e., layoff, termination, resignation, retirement, personal leave, military leave, work or non-work related illness or injuries), in accordance with the reporting option chosen on the Participation Agreement. The reporting options are as follows:
 - 1) Report once per week on the following 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.

Failure to timely notify the Trust Fund of all active employment status changes will obligate the Employer for contributions on behalf of the Employee at issue through the date the status change is ultimately reported and consequently will affect the right to credit for advance contribution Employers under Section V.B.2.c. above. The collection of Employer contributions for untimely employment status change notifications of quit, discharges, permanent layoff (e.g., contract not renewed, shop closing) or death cannot extend eligibility because the individual is not considered an Employee as defined by the Trust Agreement and Participation Agreement and therefore is ineligible to receive benefits. 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 Trust Fund receives written notice of the contribution obligation.

3. Place and time of contributions
 - a. Contributions must be sent to the Trust Fund's lockbox.
 - b. For **retroactive contribution Employers**, contributions are due by the 10th day of the month following the month of coverage.
 - c. For **advance contribution Employers**, contributions are due by the 1st day of the month of coverage.
 - d. A contribution is deemed as made on the date the payment is received at the Trust 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 Trust Fund:

1. For **retroactive contribution Employers**, the due date for contributions is the 10th day of the month following the month of coverage.
2. For **advance contribution Employers**, the due date for contributions is the 1st day of the month of coverage.
3. For **retroactive contribution Employers**, if a contribution is not received on or before the 15th 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 the last Board meeting in each calendar year. Interest on contributions that are not received on or before the 15th day of the month shall accrue in monthly increments beginning on the 11th day of the month, and shall continue to accrue for each successive monthly period (11th day of the month through the 10th 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.
4. For **advance contribution Employers**, if a contribution is not received on or before the 6th 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 the last Board meeting in each calendar year. Interest on contributions that are not received on or before the 6th day of the month shall accrue in monthly increments beginning on the 2nd day of the month, and shall continue to accrue for each successive monthly period (2nd day of the month through the 1st 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.
5. For **retroactive contribution Employers**, liquidated damages of 10% of the amount of the unpaid contribution shall be assessed on contributions that are not received on or before the 10th day of the month following the month in which the contribution was due. Beginning on the 11th of each subsequent month additional liquidated damages of 1% of the unpaid contribution amount will be assessed in monthly increments for each month 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 are not received on or before the 1st day of the month following the month in which the contribution was due. Beginning on the 2nd day of each subsequent month additional liquidated damages of 1% of the unpaid contribution amount will be assessed in monthly increments for each month 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 interest and liquidated damages in accordance with applicable law.
8. For **retroactive contribution Employers**, the Trust Fund staff will refer to Collection Counsel matters involving contributions that are not received by the 10th day of the second month following the due

VI. Due and Unpaid Contributions (*continued*)

date. Trust Fund staff also may refer matters involving shorter delinquencies to Collection Counsel as warranted by the circumstances.

9. For **advance contribution Employers**, the Trust Fund staff will refer to Collection Counsel matters involving contributions that are not received by the 1st day of the second month following the due date. Trust Fund staff also may refer matters involving shorter delinquencies to Collection Counsel as warranted by the circumstances.
10. The Trust 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 11th day of the month in which a contribution is due but not received, the Trust Fund staff will send a Notice of Delinquency to the Employer, with a copy to the Local Union. The Trust Fund staff will also attempt to contact the Employer by phone.
 - b. For **advance contribution Employers**, on the 2nd day of the month in which a contribution is due but not received, the Trust Fund staff will send a Notice of Delinquency to the Employer, with a copy to the Local Union. The Trust Fund staff 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 on or before the 15th day of the month, and that liquidated damages and attorneys' fees 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 Trust 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 on or before the 6th day of the month, and that liquidated damages and attorneys' fees 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 Trust Fund.
 - e. For **retroactive contribution Employers**, on or about the 16th day of the month in which an Employer Contribution is due and not received, the Trust Fund staff 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 7th day of the month in which contributions are due and not received, the Trust Fund staff 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 Trust Fund will be suspended beginning on the later of the 15th 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 and liquidated damages owed;

VI. Due and Unpaid Contributions (*continued*)

- 2) For **advance contribution Employers**, state that the Employee's coverage under the Trust Fund will be suspended beginning on the later of the 7th 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 and liquidated damages owed;
 - 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 Trust Fund receives payment of the due and unpaid Employer Contributions and applicable interest and liquidated damages 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 Trust Fund during the Employer's delinquency pursuant to the provisions in section VI B. n. 5) below.
- h. For **retroactive contribution Employers**, on or before the 11th day of the month following the month in which the contribution was due, if contributions or interest are not received, the Trust Fund staff shall send a Final Notice of Delinquency to the Employer, with a copy to the Local Union. 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 that liquidated damages, and attorneys' fees may be assessed against the Employer.

The Final Notice of Delinquency also will state that coverage of the Employer's Employees under the Trust Fund will be suspended if due and unpaid contributions are not received on or before the 15th of the month. In addition, the Trust 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 2nd day of the month following the month in which the contribution was due, if contributions or interest are not received, the Trust Fund staff shall send a Final Notice of Delinquency to the Employer, with a copy to the Local Union. 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 that liquidated damages, and attorneys' fees may be assessed against the Employer.

The Final Notice of Delinquency also will state that coverage of the Employer's Employees under the Trust Fund will be suspended if due and unpaid contributions are not received on or before the 6th of the month. In addition, the Trust 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 Trust Fund receives payment of due and unpaid contributions and interest on or before the 15th day of the month following the month in which the contribution was due, the Trust Fund staff will send a notice to the Employer's Employees informing them that the Employer is no longer delinquent in payment of contributions to the Trust Fund and has brought its account current. The Trust Fund staff will send a copy of this notice to the Local Union representing the Employer's Employees.

VI. Due and Unpaid Contributions (*continued*)

- k. For **advance contribution Employers**, if the Trust Fund receives payment of due and unpaid contributions and interest on or before the 6th day of the month following the month in which the contribution was due, the Trust Fund staff will send a notice to the Employer's Employees informing them that the Employer is no longer delinquent in payment of contributions to the Trust Fund and has brought its account current. The Trust Fund staff will send a copy of this notice to the Local Union representing the Employer's Employees.
- l. For **retroactive contribution Employers**, if contributions or interest are not received on or before the 15th day of the month following the month in which the contribution was due, the Trust Fund staff 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 Trust Fund and their Local Union on or about the 16th day of the month following the month in which the contribution was due.
- m. For **advance contribution Employers**, if contributions or interest are not received on or before the 6th day of the month following the month in which the contribution was due, the Trust Fund staff 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 Trust Fund and their Local Union on or about the 7th 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 Trust 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 and liquidated damages;
 - 3) Advise that benefit bank weeks used by an Employee will be restored if the Trust Fund receives payment of the due and unpaid Employer Contributions with applicable interest and liquidated damages; and
 - 4) Advise that the Employee may make self-contributions to the Trust Fund to provide for continued coverage under the Trust Fund after the Employee's benefit bank weeks are exhausted, and that self-contributions will be refunded to the Employee if the Trust Fund receives all due and unpaid Employer Contributions with applicable interest and liquidated damages.
 - 5) The rules regarding your right to self-contribute during an Employer delinquency period are as follows:
 - a. Monthly delinquency self-contributions must be made timely, commencing with the first week of eligibility suspension following exhaustion of benefit bank week coverage and must continue without break thereafter, regardless of whether you were actively working that week, to maintain eligibility during the delinquency suspension period.
 - b. You self-contribution must be paid in accordance with your Employer's regular contribution due date (i.e., for retro contributing employers by the 10th day of the calendar month following the month of coverage; for advance contributing employers, by the 1st day of the calendar month of coverage). **However, eligibility for each month will not be established until MCTWF's receipt of the delinquency self-contributions.**
 - c. Any late payment or any week skipped will result in the return of the delinquency self-contributions for that month and the loss of the Employee's right to self-contribute for the duration of the current delinquency.

- d. Delinquency self-contributions will not be accepted beyond the last contribution week of the sixth calendar month following the effective date of the initial delinquency self-contribution. However, if during that period the Employer enters into a payback arrangement with MCTWF (and resumes proper reporting of employment status changes), delinquency self-contributions will continue to be accepted for the duration of the delinquency repayment period, subject to the above rules, except that no delinquency self-contributions will be accepted for weeks not worked. For unworked weeks, COBRA continuation coverage will be offered.
- e. If the Employer defaults on its payback arrangement, MCTWF will cease acceptance of further delinquency self-contributions for periods beyond the last contribution week of the following calendar month.
- f. Once your Employer brings its account current, including all applicable interest and liquidated damage charges, you will be promptly notified, any used Benefit Bank weeks will be restored, and self-contributions will be refunded.
- o. Upon receiving payment of due and unpaid Employer contributions and applicable interest and liquidated damages for the entire period for which contributions are due and owing, the Trust Fund staff 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 Trust Fund.
- p. In addition to sending Notices of Delinquency, Trust 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. Trust 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 on or before February 10th. The Trust Fund staff sends a Notice of Delinquency to the Employer, the Local Union on or about February 11th.
 - 2) If the contribution is not received on or before February 15th, the Trust Fund staff sends a Notice of Employer Delinquency to the Employer's Employees and their Local Union on or about February 16th.
 - 3) If the contribution and interest are not received on or before March 10th, the Trust Fund staff sends a Final Notice of Delinquency to Employer on or about March 11th.
 - 4) If the contribution and interest are received between February 16th and March 15th, the Trust Fund staff 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 have not been received on or before March 15th, the Trust Fund staff will send a Notice of Suspension of Coverage to the Employees of the Employer on or about March 16th, with a copy to the Employees' Local Union.
 - 6) If the contribution and interest have not been received by April 10th, 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.

VI. Due and Unpaid Contributions (*continued*)

- 7) If all unpaid contributions and interest are received after March 15th, the Trust Fund staff will send a Reinstatement of Coverage letter to Employees of the Employer, their Local

Union.

s. Example for **advance contribution Employers:**

- 1) A contribution for coverage in January is not received by January 1st. The Trust Fund staff sends a Notice of Delinquency to the Employer and the Local Union on or about January 2nd.
- 2) If the contribution is not received on or before January 6th, the Trust Fund staff sends a Notice of Employer Delinquency to the Employer's Employees and their Local Union on or about January 7th.
- 3) If the contribution and interest are not received on or before February 1st, the Trust Fund staff sends a Final Notice of Delinquency to Employer on or about February 2nd.
- 4) If the contribution and interest are paid between January 7th and February 6th, the Trust Fund staff 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 have not been received on or before February 6th, the Trust staff Fund will send a Notice of Suspension of Coverage to the Employees of the Employer on February 7th, with copies to the Employees' Local Union.
- 6) If the contribution and interest have not been received on or before March 1st, 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 February 6th, the Trust Fund staff will send a Reinstatement of Coverage letter to Employees of the Employer, their Local Union.

2. Interest on Due and Unpaid Contributions

- a. For **retroactive contribution Employers**, for any contribution that is not received on or before the 15th day of the month following the month of coverage, interest shall be assessed in monthly increments beginning after the 10th day of the month, and for each successive monthly period (11th day of the month through 10th 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 Trust Fund's lockbox.
- b. For **advance contribution employers**, for any contribution that is not received on or before the 6th day of the month of coverage, interest shall be assessed in monthly increments beginning after the 1st day of the month, and for each successive monthly period (2nd day of the month through 1st 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 Trust Fund's lockbox.
- c. Contribution payments received from Employers will be applied first to accrued interest and then to outstanding contributions.
- d. Example for **retroactive contribution employers**: An Employer owes \$5,000 for coverage for the month of January. The contribution is due on February 10th. The \$5,000 contribution is received at the Trust Fund's lockbox on March 31st. Assuming an annual rate charged on delinquent contributions of 10.95% resulting in monthly increments of .913%, the Employer owes interest in the amount of \$91.30 (.00913 times 2 times \$5,000). This represents \$45.65 for the monthly period from February 11th through March 10th plus \$45.65 for part of the monthly period from March 11th to March 31st. The \$5,000 payment is applied to the interest first, leaving an outstanding contribution of \$91.30. Interest accrues on the \$91.30 at .913% for each successive monthly period or portion of a monthly period beginning March 31st until the outstanding contribution is received in full.

VI. Due and Unpaid Contributions (continued)

- e. Example for **advance contribution employers**: An Employer owes \$5,000 for coverage for the month

of January. The contribution is due on January 1st. The \$5,000 contribution is received at the Trust Fund's lockbox on February 20th. Assuming an annual rate charged on delinquent contributions of 10.95% resulting in monthly increments of .913%, the Employer owes interest in the amount of \$91.30 (.00913 times 2 times \$5,000). This represents \$45.65 for the monthly period from January 2nd through February 1st plus \$45.65 for part of the monthly period from February 2nd through February 20th. The \$5,000 payment is applied to the interest first, leaving an outstanding contribution of \$91.30. Interest accrues on the \$91.30 at .913% for each successive monthly period or portion of a monthly period beginning February 20th until the outstanding contribution is received in full.

3. Liquidated Damages for Due and Unpaid Contributions

- a. For **retroactive contribution Employers**, for contributions that are not received on or before the 10th 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 11th 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 are not received on or before the 1st 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 2nd 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. Example for **retroactive contribution Employers**: An Employer owes \$5,000 for coverage for the month of February. The due date is March 10th. If on April 11th 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 11th of the following month (by May 11th), then the Employer owes additional liquidated damages of \$50 and will owe an additional \$50 in liquidated damages on the 11th of each subsequent month until the total amount of liquidated damages equals \$1,000 (20% of the unpaid contribution).
 - d. Example for **advance contribution Employers**: An Employer owes \$5,000 for coverage for the month of February. The due date is February 1st. If on March 2nd 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 2nd day of the following month (by April 2nd), then the Employer owes additional liquidated damages of \$50 and will owe an additional \$50 in liquidated damages on the 2nd 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 delinquent in payment of contributions more than four times 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 Trust Fund assets from the individual or individuals responsible for the payment of an Employer's contributions to the Trust 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 Trust 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 Trust Fund for deposit in the Trust Fund's general account.
5. Collection Counsel will maintain contemporaneous records of the time expended on collection activities for the Trust Fund and submit monthly bills to the Executive Director of the Trust Fund for review and payment as appropriate.

B. PROCEDURES:

1. For each matter referred to Collection Counsel, the Trust Fund staff will identify the total amount of contributions, interest and liquidated damages due and provide the information to Collection Counsel. In addition, the Trust 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.
3. Collection Counsel will notify the Trustees in writing 5 business 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 5 business-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 Trust Fund which are determined by the Trustees to have been made by mistake (other than a mistake relating to whether the Trust Fund as described in section 401(a) of the Internal Revenue Code ("Code") or the trust holding assets of the Trust 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 Trust Fund, regardless of whether benefits were actually provided.

VIII. Return of Contributions

- b. Contributions sent to the Trust Fund that were intended to be made to another Employee benefit plan will be returned to the Employer only upon approval by the Trustees and will under no circumstances be transferred to the intended Plan.

IX. Records of Contribution Payments

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

X. Employer Audits (*continued*)

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 Trust Fund's Field Auditor will:
 - 1) Conduct a field and/or desk audit of each Employer approximately every three years on average. Desk audits will be conducted for consecutive periods only with the approval of the Director of Financial Services;

- 2) Conduct audits of Employers on a rotating basis so that no individual auditor performs the audit of an Employer in consecutive periods unless approved by the Director of Financial Services;
 - 3) Conduct a follow-up audit of the Employer within 12 months if an audit revealed serious reporting deficiencies by an Employer;
 - 4) Conduct an audit of an Employer when its obligation to contribute to the Trust Fund terminates or when it files for bankruptcy protection, unless the Employer has been audited recently and with few or no deficiencies found;
 - 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 six months after the Employer begins contributing to the Trust Fund; and
 - 7) Conduct audits of Employers as requested by the management of the Trust Fund's Contribution Control Department, the EAC, the Trustees, or the Executive Director.
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. 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 that the 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 on the Employer 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.
 - 3) The cost of the audit is defined as Auditor's hours and applicable travel expenses.
 - 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 Financial Services, 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 Employer to contact the Auditor and set a date for the commencement of the 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 Trust Fund and contributed on Employees for whom the Employer was obligated to contribute:
 - 1) Seniority list and list of all employees (Teamster bargaining unit and non- Teamster 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 Michigan UIA 1017 Wage Detail Report and Form Michigan UIA 1020 Employer Quarterly Tax Report, or corresponding forms for non-Michigan tax reports;
 - 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 Trust Fund, when such examination is deemed necessary or advisable for proper administration of the Trust 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) Cash disbursements journals; and
 - 10) 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 Trust Fund concerning the Employer to be audited:
- 1) Copies of Contribution Remittance Statements showing contributions made by the Employer as needed;
 - 2) Names and Social Security numbers of Employees of the Employer from the Trust 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 current "CheckOff Pre Billing" lists indicating active 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, and the contribution rates required for each period audited and the dates contributions were due.
- g. The Auditor will seek guidance from the Director of Financial Services 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 current "CheckOff Pre Billing" list 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 advise the Employer that a letter with the audit findings will be sent to the Employer within approximately 60 days after the date the audit is submitted for internal review by Trust Fund staff.
- 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 and will submit the report to Trust Fund management for further review. The audit report will be reviewed internally by the Audit Supervisor and the Trust Fund's Director of Financial Services.
- b. If no underpayments are found during the audit, the Trust Fund staff will so notify the Employer and Local Union by letter within approximately 60 days after the audit has been submitted for internal review.
- c. If underpayments are found during the audit, the Trust Fund staff will send a letter ("Audit Findings Letter") to the Employer, copied to the Local Union, within approximately 60 days after the audit has been submitted for internal review. The Audit Findings Letter shall state that the Trustees will seek payment of liquidated damages and audit costs, if applicable, 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 Trust 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 Trust 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 Trust Fund's Manager of Contribution Control and Paralegal 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 Trust Fund staff 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. Trust Fund staff will refer to Collection Counsel matters involving unpaid audit charges, the provision for payment for which has 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 of any such amount owed, the EAC will consider the following factors as well as any other information the EAC deems relevant:
 - a. The amount owed;
 - b. The timeliness of the Employer's contributions to the Trust Fund generally;
 - c. The length of time the amount has been outstanding;
 - d. The financial condition of the Employer;
 - e. The likelihood that the amount can be collected;
 - f. The reason for the late payment;
 - g. The cost of continuing to pursue collection; and
 - h. The effect the write-off may have on the Trust 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:

Trust 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 Trust 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 Trust Fund to follow the Employer Accounts Policies shall not give an Employer, Employee, the Union, Local Union, or any other individual or entity any substantive right with respect to the Trust Fund or the benefits provided under the Trust 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 Trust Fund adopted in accordance with section 503 of ERISA and the regulations there under.

Any and all disputes between the Employer and the Trustees relating to contributions shall be submitted for resolution to the Trustees as a condition precedent to any formal claim or appeal, and shall not be subject to arbitration or other dispute resolution procedures in the Collective Bargaining Agreement.

5. Termination of Participation of Employer

The Trustees have the right to terminate participation in the Trust 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 Trust Fund to provide coverage, benefits, or payments that a participant, beneficiary, or other individual, or entity was not entitled to receive.

APPENDIX

DEFINITIONS

- 1) **Benefit Plan** means a group health, accident or death benefit or other welfare benefit plans established by the Trustees for the benefit of Employees and Beneficiaries and funded by the Trust Fund. Each reference to Benefit Plan herein shall be deemed to refer to each Benefit Plan independently.
- 2) **Collective Bargaining Agreement** means any collective bargaining agreement between an Employer and the Union or Local Union that provides for contributions to the Trust Fund, including any extensions or renewals of such collective bargaining agreement.
- 3) **Employee** means a person who is eligible to participate in and receive benefits from a Benefit Plan in accordance with this Agreement and rules and regulations adopted by the Trustees and who is:
 - employed by an Employer and represented by the Union or Local Union;
 - employed by an Employer that contributes on behalf of a bargaining unit represented by the Union or Local Union;
 - employed by the Union, Local Union, or the Trust Fund;
 - eligible to make self-contributions to the Trust Fund in accordance with rules and regulations adopted by the Trustees; or
 - retired from employment with an Employer.
- 4) **Employer** means any individual, firm, association, partnership or corporation (i) whose employees are employed under the terms of and who has entered into a Collective Bargaining Agreement and Participation Agreement and in accordance therewith agrees to participate in and contribute to the Trust Fund, (ii) is represented in collective bargaining by an employer association and is bound by a Collective Bargaining Agreement and Participation Agreement and in accordance therewith agrees to participate in and contribute to the Trust Fund, or (iii) is not a member of nor represented in collective bargaining by an employer association, but has duly executed and/or is bound by a Collective Bargaining Agreement and a Participation Agreement and in accordance therewith agrees to participate in and contribute to the Trust Fund.
- 5) **ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 6) **Executive Director** means the Executive Director of the Trust Fund appointed by the Trustees and serving as such.
- 7) **Local Union** means affiliated local unions of the Union, as well as Union Joint Councils and affiliates the Detroit Teamsters Temple Association and the Teamsters Credit Union.
- 8) **Participation Agreement** means the agreement requiring contributions to the Trust Fund.
- 9) **Trust Agreement** means the Amended Agreement and Declaration of Trust for Michigan Conference of Teamsters Welfare Fund, as amended from time to time.
- 10) **Trustee** means the persons designated and appointed as Trustees in accordance with the terms of this Trust Agreement. The Trustees, collectively, shall be the Administrator, as defined in ERISA, of each Benefit Plan.
- 11) **Union** means the International Brotherhood of Teamsters.