

IRONWORKERS LOCAL 11 BENEFIT FUNDS AND TRAINING FACILITY

Policy for Collection of Delinquent Contributions

SECTION I: GENERAL POLICY

It is the policy of the Board of Trustees of the Ironworkers Local 11 Benefit Funds and Training Facility (hereinafter "Funds"), to collect all employer contributions as they are due and to make such diligent and systematic efforts in that regard as are appropriate under the circumstances.

Subject to the applicable collective bargaining agreements, Trust Agreements of the Funds and Employer Remittance Reports, the Board of Trustees and their designees, have the legal right to exercise all remedies allowable under the same as well as the Employee Retirement Income Security Act of 1974, as amended (ERISA) and other applicable law, including but not limited to:

1. The right to establish a date on which contributions are due;
2. The right to audit the financial records of the employers, including but not limited to payroll ledgers, federal and state tax returns, IRS Form 941 and such other books and records of the employers that are necessary in order for the auditors to ascertain that the proper contributions have been made;
3. The right to establish a random audit program;
4. The right to require that a delinquent employer pay the cost of an audit, interest, attorneys' fees, and any other expenses incurred by the Funds in determining the amount of a delinquency and in collecting a delinquency.
5. The right to recover liquidated damages;
6. The right to require a bond, irrevocable letter of credit or a cash deposit as security for prompt future payments due from an employer or to require such other measures, including joint check agreements, to assure the payment of contributions due to the Funds; and
7. The right to take any other steps and to perform all other acts that are necessary in order to collect contributions due to the Funds in a timely and expeditious manner.

8. The time limits noted herein shall run from the Funds' actual knowledge of the employer's delinquency.

The procedures set forth herein shall be followed unless the Board of Trustees determines that they should be waived in a particular instance.

All questions or disputes relating to the interpretation, meaning and/or application of this policy shall be resolved by the Board of Trustees in the exercise of their discretion and in the performance of their fiduciary obligations to the Funds' participants and beneficiaries and to the Union and its members, in the protection of the financial integrity and soundness of the Funds and the efficient and effective administration of the Funds.

SECTION II: COLLECTION PROCEDURE AND OTHER PROCEDURES IN CASES OF DELINQUENCY

In accordance with the Trust Agreements, ERISA, the Collective Bargaining Agreement ("CBA"), Employer Remittance Reports and the above declaration of policy, the following administrative steps shall be taken to effectuate the collection of delinquent contributions.

POLICY FOR EMPLOYERS THAT HAVE NOT PROVIDED A BOND

1. **Contributions Due Weekly.** Contributions in the amounts to the various Trust Funds, as detailed in the CBA, Trust Agreements, Remittance Reports and notices to employers from the Funds (collectively referred to herein as "Contributions") are due **weekly** on the date the ironworkers are paid ("Due Date") unless a bond is posted.

2. If the total amount of contributions due and owing are not received by the tenth (10th) business day following the Due Date, or were paid late, the Funds Executive Director or legal counsel, as applicable, will send a written notice or, in the case of legal counsel, a Demand for Arbitration, to the employer advising the employer of the Delinquent Amount and/or interest, as applicable, which is due. The Demand shall also state that in addition to the delinquent Contributions, the employer is liable for liquidated damages of ten percent (10%) of the amount due, attorneys' fees of twenty percent (20%) of the amount due, interest of eighteen percent (18%) per annum, fee of the arbitrator, if arbitration is required, and Court costs, if Court action is necessary, which shall be set forth in said notice. In the event full payment of the Principal Amount Due, i.e. the delinquent contributions plus interest at 18% per annum and \$500 for reduced attorney's fee is made 5 days before the arbitration hearing date, then the claimant Funds hereby waive the 10% liquidated damages, the balance of attorney's fees of 20%, and the fee(s) of the Arbitrator.

3. Thereafter, the full amount of the relief sought is due, as outlined above, unless the Employer enters into a repayment plan that includes the repayment of past and on-going interest and executes a CBA if such an agreement has not yet been executed. In such instances, the waiver of certain damages as outlined above will be applied. In the event that the Employer fails to remain current on the repayment agreement, the full amounts described in above shall immediately become due and owing.

POLICY FOR BONDED EMPLOYERS

1. **Contributions Due Monthly.** Effective January 1, 2014 for Contractors who file a bond in the appropriate amount (as detailed in the CBA) with the Fund Office, all contributions in the required amounts to the various Trust Funds, as detailed in the CBA, Trust Agreements, Remittance Reports and notices to employers from the Funds (collectively referred herein as "Contributions") are due (due date) on the fifteenth (15th) of the month following the month for which contributions are due and owing.

2. If the total amount of contributions due and owing are not received by the fifteenth (15th) business day following the Due Date, or were paid late, the Funds Executive Director or legal counsel, as applicable, will send a written notice or, in the case of legal counsel, a Demand for Arbitration, to the employer advising the employer of the Delinquent Amount (or how it is computed) and/or interest, due. The Demand shall also state that in addition to the delinquent Contributions, the employer is liable for liquidated damages of ten percent (10%) of the amount due, attorneys' fees of twenty percent (20%) of the amount due, interest of eighteen percent (18%) per annum, the arbitrator's fee(s), if arbitration is required, and Court costs, if necessary, which shall be set forth in said notice.

3. In the event full payment of the Principal Amount Due, i.e. the delinquent contributions plus interest at 18% per annum and \$500 (reduced attorney's fee) is made 5 days before the arbitration hearing date, then the Funds hereby waives the 10% liquidated damages, the balance of attorney's fees of 20%, and the fee(s) of the Arbitrator.

4. Thereafter, the full amount of the relief sought is due unless the Employer enters into a repayment plan that includes the repayment of past and on-going interest, as well as other associated costs. In such instances, the waiver of certain damages as outlined above will be applied. In the event that the Employer fails to remain current on the repayment agreement, the full amounts as outlined above shall immediately become due and owing.

RULES FOR ALL EMPLOYERS

1. **“Damages”**. If a contribution is delinquent, liquidated damages at ten percent (10%) of the principal contribution past due, additional interest at eighteen percent (18%) per annum, legal fees at twenty percent (20%) of the principal contribution past due, arbitrator fee(s) and audit fee(s), if applicable, shall start to accrue on the delinquent contributions on the first day following the day on which the contribution is due (“Delinquent Amount”). A Covered Employer that does not pay contributions when due shall be obligated to pay unpaid contributions, interest on unpaid contributions as outlined above, or portion thereof, penalties/liquidated damages, reasonable fees and all costs incurred, as set forth above and, in the situation in which the Fund institutes judicial proceedings to collect delinquent contributions, such other amounts as a court may award. In the event a delinquency or deficiency is uncovered as part of a payroll audit and the Executive Director finds both that the underreporting was unintentional and that the Covered Employer does not have a history of underreporting and/or enters into a repayment plan then the Executive Director may reduce the interest on the unreported and unpaid contributions to a rate not less than the interest rate for underpayments prescribed under Section 6621 of the Internal Revenue Code and waive liquidated damages and attorneys’ fees.

2. If an employer pays the principal amount of the delinquency but does not pay any other amounts owed, acceptance of the principal amount (or a portion thereof in the event of a partial payment) shall not constitute a waiver of the Funds’ claim for accrued and unpaid liquidated damages, interest, legal fees and/or any other amounts incurred in the collection.

3. Payment will generally be applied to the oldest delinquency first unless otherwise directed by the Board of Trustees and/or the remittance form(s) specifies a payment for a specific work period; provided, however, that payments from a third party covering specific hours or jobs may be applied to those hours or jobs, unless otherwise directed by the Board of Trustees.

4. If a delinquent employer fails to pay interest within fifteen (15) days of the date of the Fund’s interest demand letter, then the Executive Director will refer that matter to legal counsel.

5. If an employer is delinquent to the Funds and does not have a history of delinquencies, has signed a CBA, and has entered into a repayment agreement of less than twelve (12) months, then the Executive Director may reduce the interest on the unreported, unpaid contributions to a rate not less than eight percent (8%). If the employer fails to remain current under the repayment agreement, or falls behind on new contribution obligations, the eighteen percent (18%) interest rate ~~with~~ be reinstated.

SECTION III: LEGAL ACTION AND SETTLEMENT

1. In the event an employer fails to pay the Delinquent Amount within the

required time after the first notice, as outlined under Section II, Paragraph 2 (15 days), the Executive Director as Fund Administrator shall direct legal counsel to initiate legal action. In determining whether or not to initiate legal action, the Executive Director or the Board of Trustees may consider a different course of action based upon pertinent factors, which include, but are not limited to, the following:

- a. the amount of delinquency;
- b. the length of time the delinquent amount has been owed;
- c. the financial condition of the employer;
- d. the employer's past performance as a contributing employer;
- e. the likelihood of collecting on a judgment once it is obtained;
- f. any other factor that, in the discretion of the Board of Trustees may have a material bearing on the collection of the delinquent contributions.

A lawsuit or arbitration proceeding may not be commenced if the Board of Trustees in its discretion determines that it is likely that the costs of the suit may exceed the recovery.

2. Legal counsel is authorized to enter into settlement negotiations, either orally or in writing, with delinquent employers. Without further approval of the Board of Trustees, legal counsel may agree to the immediate payment of the full amount owed plus full interest at eighteen percent (18%) per annum with or without liquidated damages or other charges, but only with the consent of the Executive Director and if, and only if, the Employer has executed a full collective bargaining agreement or agrees to execute a full collective bargaining agreement.

3. Legal counsel may, without consultation with the Board of Trustees, reject any proposal for settlement that contemplates payment of amounts due over a period of time, if its acceptance would result in collection of less than the total amount due. Such rejection shall be subject to the Board of Trustees' subsequent review. The Executive Director is authorized to accept payment over time not to exceed twelve (12) months if he and legal counsel agree it is prudent to do so considering the factors listed in Section III, ¶ 1 a to f.

4. The Board of Trustees reserves the right to accept or reject an employer's proposal regarding payment of any delinquent Contributions, interest, liquidated

damages, attorneys' fees and costs over a period of time and to compromise any claim or delinquent account as recommended by legal counsel, provided, however, that any such decision to extend the time for payment, or to compromise the amount owing, complies with the Department of Labor Prohibited Transaction Exemption 76-1.

5. Settlements calling for payment over time or compromising the amount, including interest, liquidated damages, attorneys' fees or costs, must be in writing and signed on behalf of the Funds and the employer.

6. Notwithstanding the procedures set out in this policy, the Board of Trustees or Executive Director may refer any delinquent account to legal counsel at an earlier date than provided for herein when circumstances warrant that collection action be expedited.

7. Notwithstanding anything to the contrary contained herein, the Executive Director must submit the claim for unpaid Contributions to legal counsel no later than one (1) month after the delinquency arose, i.e. the Due Date.

8. The Executive Director or Fund Administrator may request the applicable Union to withhold ironworker participants from any employer who is more than one (1) month delinquent in Contributions including interest owed on said contributions. The Executive Director shall contact the Ironworkers Local 11 Business Manager directly regarding such a request to withhold manning.

SECTION IV: INTEREST, LIQUIDATED DAMAGES, ATTORNEYS' FEES AND COSTS

1. In the event that the Board of Trustees institute an arbitration or a lawsuit to collect the delinquent Contributions, then the demand shall also include the other charges detailed in Section II, Paragraph 1 "Damages", above.

2. All costs (including but not limited to attorneys' and accountants' fees) incurred (a) to determine, discover and collect delinquent Contributions, (b) to obtain the information necessary to properly allocate, credit and record such Contributions or necessary to administer Funds, (c) to enforce the Board of Trustees' right to audit the employer's payroll records, shall be due to the Funds from the delinquent employer, including, but not limited to, routine audit fees incurred to verify that Contributions are properly made to the Funds, any other fees incurred in determining, discovering and collecting Contributions from the employer, arbitration fees, filing fees, arbitrator's fees, fees for service of process, travel, copying charges, postage, expert fees, and such other costs as would otherwise be charged to the Board of Trustees to determine, discover and collect any of the amounts described herein.

SECTION V: PAYROLL AUDIT POLICY

1.
 - a. The Auditor will randomly audit employers with the goal that a majority of employers will be audited once every five (5) years. In addition, the Board of Trustees may designate any employer to be audited.
 - b. The period audited shall be three (3) years, unless circumstances dictate otherwise.
 - c. Each new employer may be audited within the first year of participation.
 - d. Notwithstanding the guidelines of this Section, the Board of Trustees may, in the exercise of its discretion, determine that the audit schedule set forth above should not be followed in a particular instance.
2. If an employer ceases to have an obligation to contribute to the Funds under the Funds' Trust Agreements, CBA, or applicable law, the employer shall remain subject to these audit procedures for the purpose of verifying that the employer made the proper Contributions during the time period in which the employer was obligated to contribute to the Funds.
3. Prior to conducting each audit, the auditor shall notify the Fund Administrator and review the employer's CBA and any pending issues. The Fund Administrator will forward a letter to the employer advising it of the impending audit, citing the Board of Trustees' authority to conduct the audit and describing the records required.
4. If during a payroll audit the auditor encounters an issue of interpretation of the CBA or an employer takes a position inconsistent with the auditor's understanding of such CBA, the auditor shall seek the opinion of the Executive Director. If the Executive Director agrees with the employer's interpretation or position, that shall resolve the matter, unless such interpretation or position is, in the view of the auditor, clearly inconsistent with the language of the governing documents. In such an event, or if the Union and employer disagree, the auditor shall present the issue in writing to the Board of Trustees for a decision before completing the payroll audit.
5. After an audit of an employer is conducted, the auditor shall review with the employer the auditor's findings. After providing the employer with a reasonable time to respond to the auditor's findings (no more than ten (10) days), the auditor shall issue a final report to the Board of Trustees with its payroll audit findings.
6. Upon receipt of the auditor's report, the Fund Administrator shall send a

demand letter and audit report to the employer demanding payment of any amounts found to be due by the auditor together with interest at eighteen percent (18%) per annum, liquidated damages at ten percent (10%) and the auditor's fee. If not paid within fifteen (15) days of the date of the demand letter as issued by the Funds, then legal fees at twenty percent (20%) of the amount due will also accrue, together with the fee of the arbitrator and Court costs. The Executive Director shall refer the matter to legal counsel if the amount demanded is not paid within ten (10) days of the date of the Fund's demand letter.

7. In the event an employer refuses to permit an audit upon request by the Board of Trustees, or if the employer refuses to provide the auditor access to pertinent records, then the auditor shall refer the matter to the Executive Director who will refer the matter to legal counsel. The Board of Trustees and/or legal counsel may, thereafter, demand in writing that the employer make available such books and records as are necessary for the auditor to conduct an audit. If the records are still not made available, upon approval of the Executive Director, counsel shall institute legal action to enforce the Board of Trustees' right to conduct a payroll audit and the employer shall pay the Funds all costs and attorneys' fees incurred as a result of the employer's refusal to permit an audit or refusal to make available all pertinent records.

8. If a payroll audit identifies an overpayment by the employer, the payroll auditor shall advise the employer that (a) to receive a refund, the employer must submit a request to the Board of Trustees in writing, stating the reason for the overpayment; (b) in accordance with the Funds' Policy on Refund of Mistaken Contribution, the Board of Trustees will decide in its sole discretion whether a refund will be granted; (c) if the refund is granted by the Board of Trustees, it will be net of the cost of the payroll audit. In no event shall interest credit be allowed to the employer on any overpayment.

SECTION VI: MISTAKEN CONTRIBUTIONS

1. An employer that makes a contribution to the Funds in excess of the amount required by the terms of the employer's CBA, participation agreement, a Trust Agreement or applicable law and under a mistake of fact or law may request a credit of the amount of such excess contribution. Such request for a credit shall be addressed to the Fund Administrator who shall, in turn, submit the request to the appropriate Board of Trustees for consideration;

2. No credit of excess contributions shall be granted by the Funds without a written request for such credit having been received within three (3) years after the date that such excess contributions were received by the Funds;

3. If the Funds incur a direct or indirect cost, expense or liability as a result of an excess contribution or an employer error in submitting contributions, any credit of such contribution shall be reduced by the full value of such cost, expense or liability and

the employer shall be responsible for such direct or indirect cost, expense or liability;

4. No credit will be granted for that portion of an excess contribution that a participant has withdrawn from either his or her Vacation Fund or Annuity Fund individual account prior to the Funds' receipt of a written request for a credit;

5. The obligation to discover and delineate the amount of excess contributions within the time limits provided within the policy is the sole and exclusive responsibility of the employer;

6. The request of the employer for a credit of excess contributions must be in writing and shall not be effective until it is received by the Funds;

7. The request of the employer must contain copies of all documentation upon which the employer relies to substantiate its request or which may be required by the Funds to verify the exact amount of the excess contributions;

8. The credit of such contributions shall be made within two (2) months after the Board of Trustees determines the contributions were made by mistake;

9. The failure and/or refusal of the employer to promptly and fully to comply with any or all of the provisions of this policy shall result in the denial of the request for the credit of excess contributions;

10. As used in this policy, the term "credit" shall include the offset of previously-submitted contributions against currently due contributions. As such, upon approval of the Trustees, an employer may be permitted to credit excess contributions, less the Fund's set-offs described in this Policy, against current contributions only to the extent and under the same terms and conditions as such employer may be entitled to a refund under this policy.

SECTION VII: REPORTS

1. At least quarterly before each Trustee meeting, legal counsel will provide a litigation status report to the Board of Trustees. Minutes will be kept of the meetings of the Board of Trustees. The determination of the Board of Trustees with respect to action on delinquent Contributions, and the specific basis therefor, shall be recorded in the minutes.

2. The Fund Administrator shall maintain a file of currently effective CBAs and other agreements detailing the basis upon which employers are obligated to make Contributions.

3. All written delinquency reports and settlements of all delinquencies shall

be on file in the Fund Office.

**SECTION VIII: CONTRIBUTIONS
DUE ARE PLAN ASSETS**

Once contributions are paid into and/or are due and owing to the Funds, they vest as assets of the Funds. Title to all monies due shall vest in and remain exclusively in the Trustees of each Fund.

SECTION IX: NOTICE TO PAYMENT BOND COMPANY

Whenever Contributions or interest on contributions are thirty (30) days past due hereunder, then the Executive Director shall give written notice to the bonding company by certified mail and first class mail and, if possible, also by fax or email with a copy to legal counsel, together with a copy of the payment bond. If payment is not paid in sixty (60) days, counsel shall file suit to collect delinquency against the bonding company.

Adopted by the Board of Trustees of the Funds this _____ day of _____, 2015.

TRUSTEES

EMPLOYER TRUSTEES

UNION TRUSTEES

LESLIE HYNES

STEPHEN SWEENEY

JOHN F. DALY

RAYMOND WOODALL

FRED ARCHER

RICHARD MALCOLM

JACK KOCSIS

MICHAEL MCKERNAN

MICHAEL LESLIE