

# NECA-IBEW WELFARE TRUST FUND'S COLLECTION AND PAYROLL AUDIT POLICY

Effective this 12<sup>th</sup> day of April, 2019, the Trustees of the NECA-IBEW Welfare Trust Fund adopt this Collection and Payroll Audit Policy regarding employer contributions payable to the Fund.

It is the intention of the Board of Trustees of the NECA-IBEW Welfare Trust Fund (hereinafter "the Fund") to establish a collection policy to assure fulfillment of their fiduciary duty to collect delinquent employer contributions. This policy is designed to:

- A. Establish a systematic and reasonable method to collect contributions cost effectively.
- B. Provide assurances that the Fund is not engaging in prohibited transactions by extending credit to parties in interest or allowing them the use of Plan assets.
- C. Implement control procedures to assure consistent application of the policy to all employers.

For purposes of this Policy, the term "collection of contributions" refers to the collection of all contributions due to the Fund by any person or entity that is obligated to contribute to the Fund under any agreement, including any collective bargaining agreement or Participation Agreement; or pursuant to any applicable law.

Any person or entity obligated to pay the Fund contributions as described in the preceding paragraph is hereinafter referenced as an "Employer".

## **DELINQUENT CONTRIBUTIONS/FAILURE TO SUBMIT REPORT FORMS**

### **A. Fund Office Level**

Contributions from Employers are due on or before the 15<sup>th</sup> of the month following the month in which contributions accrued. Delinquency procedures will be instituted on the last day of the month after the end of the month being reported if contributions are not received by the Fund Office.

#### **1. First Demand**

All Employers whose contribution obligations to the Fund are delinquent shall receive a written demand from the Fund Administrator requiring payment of the delinquent contributions within ten (10) days. Should the Employer fail to fully pay the delinquent contributions within ten (10) days, then the Fund Administrator shall notify Fund Counsel in accordance with this policy.

## **2. Liquidated Damages and Interest**

In keeping with the Welfare Trust Agreement, the Employer becomes subject to liquidated damages and interest on delinquent contributions on the first day after the due date. Liquidated damages and interest shall be assessed as follows:

- Liquidated damages shall be assessed at the rate of ten percent (10%) of the contributions due and owing; and
- Interest shall be assessed at the rate of one and a half percent (1.5%) compounded monthly on the unpaid balance.

## **3. Delinquency Status Report**

The Fund Office shall send a monthly report to each Local Union Trustee, Employer Trustee and the NECA Chapter Manager of all delinquent Employers. The report should contain the Local Union Number, name and address of the Delinquent Employer, the months(s) delinquent, and the date and amount (if any) of the last Monthly Payroll Contribution Report filed.

## **4. Referral to Fund Counsel**

Any Employer who is one (1) month delinquent and has been notified via a first demand letter and all time frames have elapsed and no response has been forthcoming shall be referred to Fund Counsel for collection.

If an Employer has made a partial payment for the month that is delinquent, the Fund Administrator may, in his or her discretion, defer referring the Employer to Fund Counsel depending upon the amount that remains due, any promise by the Employer for prompt payment of the remainder, and similar factors. Provided, however, if the Employer becomes delinquent for a second month, a referral shall be made immediately to Fund Counsel.

When referring a delinquent Employer to Fund Counsel, the Fund Office shall provide Fund Counsel with the following information:

- Copies of the agreements the Employer has signed including signed Letter(s) of Assent and signed Participation Agreement(s) and
- A breakdown of all amounts owed, if known.

### **B. Fund Counsel Level**

#### **1. Partial Payments**

If a partial payment has been received after the referral to Fund Counsel, the Fund Administrator shall decide whether to defer further processing by Fund Counsel; in no event should there be deferral if the Employer becomes delinquent for a second month.

## **2. Demand Letter**

Fund Counsel shall send the Employer an initial demand, via certified mail, requiring payment of the delinquent contributions, liquidated damages, and interest within ten (10) days of the receipt of the demand. If no response is received from the Employer and a second and final demand would not prejudice the collection rights and remedies of the Fund, Fund Counsel shall prepare and send a second and final demand, via certified mail, requiring payment within five (5) days of receipt of the demand. Copies of all correspondence shall be sent to the Fund office.

## **3. Institution of Litigation**

If the Employer fails to respond to Fund Counsel's written demand letters, Fund Counsel should immediately file a Complaint for all known contributions, liquidated damages, interest, and any other amounts due and owing to the Fund. If the Employer failed to submit report forms, then Fund Counsel is also authorized to seek all appropriate judicial relief under which the Fund may audit the books and records of an Employer for determining the amount of delinquent contributions due the Fund.

## **DELINQUENT LIQUIDATED DAMAGES**

Employers who have failed to remit liquidated damages due to the remittance of delinquent contributions shall receive a written demand from the Fund Administrator requiring payment of the liquidated damages within ten (10) days. The Fund Administrator shall make the written demand for liquidated damages within thirty (30) days of receiving said delinquent contributions from the Employer. Once the total amount of liquidated damages reaches \$750.00, the Fund Administrator shall notify Fund Counsel and send Fund Counsel copies of the written demand, agreements the Employer has signed, and a breakdown of the amounts owed. Upon receipt of these materials, Fund Counsel shall prepare and send a demand requiring payment within ten (10) days. Should the Employer fail to pay the due and owing liquidated damages, Fund Counsel shall report the status of the liquidated damages delinquency at the next Board of Trustees' meeting. A lawsuit to collect the outstanding liquidated damages will only be initiated upon approval by the Board of Trustees.

## **SETTLEMENT AGREEMENTS**

### **A. Payment Plans**

The Trustees of the Fund, in their discretion, may enter payment plans with Employers for the remittance of delinquent contributions. When a payment plan is entered between the Trustees and an Employer, the Employer must agree to timely remit the payments due under both the payment plan and the applicable agreement requiring contributions. The Trustees shall have the authority to waive the liquidated damages assessments in the event the Employer executes a promissory note/enters a payment plan providing for the payment of said delinquent contributions on such terms as are acceptable to the Trustees under the circumstances. Should the Employer default on the payment plan, then Fund Counsel should immediately file a Complaint.

**B. Settlement Amount**

Upon recommendation from Fund Counsel, the Fund Administrator shall have the authority to settle matters involving delinquent contributions and/or liquidated damages under \$10,000.00. All settlement agreements which exceed the foregoing threshold must be approved by the Board of Trustees.

**C. Deeming a Delinquency Uncollectible**

Upon recommendation from Fund Counsel, a delinquency due from an Employer may be considered uncollectible and the further collection actions would not be an efficient use of Fund resources. In such a case, Fund Counsel shall prepare a written recommendation to be approved by the Trustees.

**PAYROLL AUDIT POLICY**

**A. General Audit Procedures**

The Trustees of the Fund or their respective representatives, by a random, fair and impartial process, shall designate a representative number of the Fund's contributing Employers per year for a random payroll audit in order to fulfill their fiduciary duties under the Employee Retirement Income Security Act of 1974, to ascertain if the proper amount of contributions are being remitted to the Fund, and to determine whether contributions have been remitted in compliance with the applicable agreements, policies, and the law. Upon determination of the Employers to be audited, the Fund shall select a person or entity, certified in public accountancy in the State of Illinois, to conduct an audit of the relevant payroll records.

During any audit, the Trustees, by their representatives, shall have the right to examine the pertinent employment and payroll records of the Employer. Such pertinent employer and payroll records include, but are not limited to, fringe benefit report forms, individual compensation records, individual time records, job classification records, payroll registers and journals, federal and state tax forms, federal and state quarterly tax returns, annual earnings reports, quarterly employer's contributions and wage reports for state unemployment compensation, job cost records, and cash disbursement records. Should the Employer fail to maintain adequate records then the Fund Auditor is entitled to make certain assumptions based on the records provided as to whether contributions are owed to the Fund. Liability will be assessed in accordance with Fund's Trust Agreement provision concerning failure to maintain records.

Each audit performed under this policy shall cover a period of two (2) consecutive years. The two (2) year period shall begin and end based on the closest quarterly date. The Fund, in consultation with the Fund Auditor, may extend this two (2) year period based on the facts and circumstances of each case. In preparing the audit, the Plan Auditor shall assess any liquidated damages and interest found to be due and owing by a contributing Employer.

If the ratio of delinquent contributions discovered to total contributions paid during the audit period is 5% or less, no audit costs will be assessed to the delinquent Employer. If a lawsuit is filed, then 100% of the audit costs will be assessed. If this ratio exceeds 5%, or if the Board of Trustees determines in their sole discretion that the Employer intentionally misreported contributions/hours of work, the Employer will be assessed the full cost of the audit.

**B. Audit Discloses Delinquent Contributions**

**1. Initial Demand Letter**

A copy of the completed audit shall be provided to the Fund Office and to Fund Counsel. If an audit discloses due and owing contributions, then Fund Counsel shall send a demand letter that the Employer remit payment for the contributions determined to be due in the audit within ten (10) days of the demand. A copy of the Fund Auditor's report will accompany the demand so that the Employer will be able to reconcile the findings of the Fund Auditor's report with its books and records. The Employer shall also have the right to submit audit challenges for the Trustees' review.

**2. Second and Final Demand**

Should the Employer fail to submit audit challenges or pay the audit liabilities within ten (10) days of Fund Counsel's initial demand letter, then Fund Counsel shall prepare and send a second and final demand requiring payment or submission of audit challenges within five (5) days (if a second and final demand would not prejudice the collection rights and remedies of the Fund). If no response is received from the Employer, Fund Counsel is authorized to immediately file a Complaint on behalf of the Fund to collect the amounts owed, including, but not limited to, delinquent contributions, liquidated damages, interest, attorney's fees, accountant fees and audit costs, and court costs.

**3. Audit Costs and Attorney Fees**

In the event it becomes necessary to file suit and/or otherwise retain legal counsel to enforce the Fund's authority to perform an audit, the Employer shall be liable for all reasonable costs incurred including attorney's fees, accountant fees and audit costs, court costs, and any other expenses actually incurred by the Fund in the course of the action, without regard to whether the Employer did or did not owe delinquent contributions.

**C. Priority Audit**

The Board of Trustees shall have the discretion to have a Priority Audit conducted on an Employer at any time. The audit shall cover a time of no less than a twenty-four (24) month period. A priority audit must be approved by at least (1) Labor and one (1) Management Trustee. If a priority audit is approved, then the Fund Office will notify Fund Counsel and the Fund Auditor. Fund Counsel will then send a demand letter to the Employer to contact the Fund Auditor within five (5) days to schedule a payroll audit. If the Employer fails to contact the Fund Auditor, then Fund Counsel will send a final demand and require compliance within five (5) days. If the Employer is still not responsive, then Fund Counsel will immediately file a Complaint.

If the Employer agrees to the Priority Audit after receiving Fund Counsel's demand letter, the Priority Audit should take place within thirty (30) days of the approval of the Priority Audit by the Trustees, unless exceptional circumstances dictate otherwise. After the scheduling of the Priority Audit, if the Fund Auditor does not receive cooperation from the Employer (i.e. the Employer cancels the audit appointment, or the Employer does not timely respond to follow-up inquiries by the Fund Auditor after the completion of the field work) then the Fund Auditor must immediately notify the Fund Office and Fund Counsel. Fund Counsel will then send a demand letter to the Employer indicating the Employer has five (5) days to cure any deficiencies or otherwise cooperate with the Fund Auditor. If the Employer fails to do so, then Fund Counsel shall immediately file a Complaint to compel compliance.


**GENERAL PROVISIONS:**

This Collection and Payroll Audit Policy is intended to be a *guide* for the Trustees, the Fund Administrator, the Fund Auditor, and Fund Counsel.

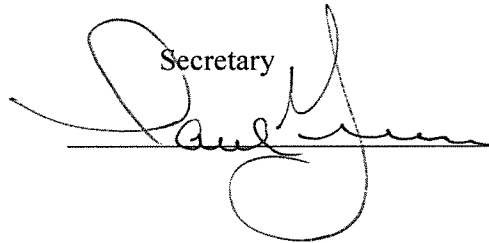
The Fund Administrator and Fund Counsel may deviate from the dates, timeframes, and schedules with respect to sending demand letters, referring matters to Fund Counsel, and other similar dates, timeframes, and schedules set forth herein should the circumstances so warrant. Notwithstanding the foregoing, the Board of Trustees shall, always, have final authority to collect, settle, compromise, and pursue all collection actions.

This Collection and Payroll Audit Policy shall supersede all prior policies. This Collection and Payroll Audit Policy shall be interpreted in conjunction with the Restated Agreement and Declaration of Trust, as amended.

Chairman

A handwritten signature in black ink, appearing to be "M. Smith", written over a horizontal line.

Secretary

A handwritten signature in black ink, appearing to be "Paul J. Smith", written over a horizontal line.