

SMART Local 265 Fringe Benefit Funds

Procedures for the Collection of Contributions

INTRODUCTION

The Boards of Trustees (the “Trustees”) of the SMART Local 265 Welfare Fund, Pension Fund and Supplemental Retirement Savings Plan (“Benefit Funds”) have a fiduciary obligation to collect all money that is due and owing to the Benefit Funds. Additionally, the Benefit Funds act as a collections agent for the SMART Local 265 Joint Apprenticeship Training Committee, Sheet Metal Workers Local 265 Industry Fund, and SMART Local 265 Labor Management Cooperative Committee Trust Fund. These obligations require that the Trustees establish a system for monitoring employers’ compliance with their obligations to make contributions to the Funds and under which the Benefit Funds’ administrators and legal counsel will take all legally appropriate and cost-effective steps to collect delinquent contributions, so that they may be applied for the benefit of the Benefit Funds’ participants.

In addition, the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) defines as a “prohibited transaction” any extension of credit from an employee benefit plan to a contributing employer. A failure to collect contributions when they are due may be treated as such an extension of credit from the plan to the employer. In 1976, the Department of Labor (DOL) issued guidance, in the form of a class exemption from the prohibited transaction rules, which permits reasonable business decisions to be made on unpaid contributions. That guidance is Prohibited Transaction Class Exemption 76-1 (“PTCE 76-1”).

The fundamental principles of PTCE 76-1 are the following:

1. Any compromise of a claim for unpaid contributions, or any arrangement permitting payment later than the normal due date, must be made for the “exclusive purpose of facilitating the collection of such contribution” (and not, for example, to ease the employer’s cash-flow problems).
2. Any such compromise or arrangement and any decision to write off a claim for unpaid contributions as uncollectible must be “reasonable under the circumstances based on the likelihood of collecting such contribution or the approximate expenses that would be incurred” if the plan persisted in trying to collect the contribution by other means.
3. All such compromises, arrangements, or write-offs must be preceded by “such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution or any part thereof.”

On December 30, 2003, the DOL issued a prohibited transaction class exemption that applies to settlements of claims against contributing employers for failure to forward participants’ deferred wages to 401(k) plans within the required time periods. PTCE 2003-39 (Dec. 30, 2003). This PTCE requires that any release or reduction in such a claim for contributions, or any extension of credit permitting payment of such delinquent contributions in installments:

1. Must be based on the plan's attorney's determination that there is a genuine controversy involving the plan;
2. Must be authorized on behalf of the plan by a "fiduciary who has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person's best judgement as a fiduciary";
3. Must be described in a written agreement or consent decree;
4. Must not be part of an arrangement that is designed to benefit a party in interest (*i.e.*, either a contributing employer or the union);
5. Must be reasonable in light of the plan's likelihood of full recovery, the costs and risks of litigation, and the value of the claims forgone;
6. If it provides for any installment payments or delayed payment, the credit terms must be reasonable in light of the creditworthiness of the employer and the time value of money, and the fiduciary should consider requiring security; and
7. The plan must participate in the settlement on terms that are at least as favorable to the plan as the terms that affect any other parties that are not plans.

The primary policy consideration of the Benefit Funds' collection program, other than those that are mandatory under the DOL's guidance, is that the delinquency policy should be designed to avoid being the lender of first resort for an employer that has cash-flow problems. It is easy for an employer to write itself a loan from the Benefit Funds by simply postponing a contribution remittance. The delinquency policy should make that decision costly, so that if the employer must decide which of its creditors it will pay first, it will have a strong reason to pay the Benefit Funds first and postpone payment to its other creditors.

In compliance with the foregoing principles governing collection, the Trustees have adopted the following rules and procedures regarding the enforcement of employer's reporting and remittance obligations to the Benefit Funds.

A. Definitions

For purposes of these Procedures, the following terms are defined as follows:

1. **Benefit Funds** -- SMART Local 265 Welfare Fund, Pension Fund and Supplemental Retirement Savings Plan
2. **CBA** - collective bargaining agreement or other agreement that requires Contributions.
3. **Contributions** – contributions due from an Employer under the terms of a collective bargaining agreement, the Trust Document, or other agreement, which are due to any of the Benefit Funds.
4. **Collections Committee** – Committee to which the Trustees confer authority to administer, implement, adopt, modify, amend, carry out, interpret and/or enforce the Procedures and/or the provisions of the Trust Agreements applicable to the collection of Contributions.
5. **Delinquency Date** – the earlier of the date of delinquency established in a CBA or the 20th day of the month following the month for which Contributions are required to be made, regardless of whether such Contributions are required to be paid monthly or weekly.
6. **Delinquent Employer** – an Employer that fails to timely remit all Contributions and/or complete and file accurate remittance data on or before the Delinquency Date.

7. **Employer** – an Employer, which has, or had, an obligation to contribute to any of the Benefit Funds.
8. **ERISA** – the Employee Retirement Income Security Act of 1974, as amended.
9. **Procedures** – the Procedures for the collection of Contributions
10. **Reports** – reports of hours worked by, and earnings and other information on, persons for whom Contributions are required.
11. **Trust Documents** – the documents, as may be amended and restated, under which the Fringe Benefit Funds are established and operate.
12. **Trustees** – unless the context suggests otherwise, the Trustees of the Benefit Funds and/or any committee.
13. **Union** – SMART Local 265.

B. Authority

The Trustees have the legal right to exercise all remedies under ERISA and the Trust Documents. The Trustees have delegated to the Collections Committee the authority and power to:

1. Take any steps and/or perform all acts that are necessary or proper to collect Contributions in a reasonable, systematic, and diligent manner, including (without limitation) amending these Procedures, and retaining counsel, auditors, and other professionals to assist with collection.
2. Audit Employer records, assess liquidated damages, attorneys' fees and costs, and take such other action permissible under applicable law to collect Contributions.
3. Determine whether Contributions have been erroneously paid, and whether a refund of erroneously paid contributions may be made. This authority does not diminish the authority of the Board of Trustees to independently make determinations respecting erroneously paid contributions.
4. Compromise any claim or enter into a settlement agreement with a Delinquent Employer on the terms the Collections Committee deem appropriate and consistent with applicable law and regulations.
5. Establish Settlement Guidelines for Collections Committee Staff and Counsel. The Trustees may authorize settlements, arrangements, compromises, understandings, or resolutions of delinquencies that waive or compromise an amount owed, or that contemplate payment of amounts due over a period of time. Any such settlement that waives or compromises an amount owed, or that contemplates payments of amounts due over a period of time, shall be in writing and comply with applicable law, including PTCE 76-1.
6. Depart from these Procedures in any circumstance it deems prudent to do so.

C. Applicability

1. If any Employer's contribution obligation ceases, these Procedures apply for the period during which the Employer was obligated to contribute until the Employer's delinquency is finally resolved.
2. Nothing in these Procedures creates or confers any substantive or procedural right on any employer, employee, participant, Local Union or, employee benefit plan or program.

Furthermore, departure or deviation from these Procedures does not confer or create any defense to timely payment of contributions, interest, liquidated damages, attorneys' fees and cost and/or claim for mitigation of damages, with respect to payment of Contributions, interest, liquidated damages, attorneys' fees or costs.

3. These Procedures are intended to be consistent with the provisions of the Benefit Funds' Trust Documents; however, in the event of a conflict between these Procedures and the Trust Documents, the Trust Documents control. All matters concerning plan benefits (*e.g.*, benefit credit, benefit eligibility, and benefit amounts) shall be determined under the Benefit Funds' plan documents.

SECTION I

TIMETABLE, INITIAL NOTICES and RESOLUTION BEFORE REFERRAL

- A. The Trustees direct and authorize all reasonable steps necessary or appropriate to promote timely submission of Contributions and Reports and seek prompt payment or submission of delinquent Contributions and Reports. In most circumstances, the National Pension Fund, and any other appropriate Local Union shall be copied on any notice or communication to an Employer regarding delinquent Contributions.

- B. If Contributions are not received within ten (10) calendar days after the Delinquency Date, the Fringe Benefits Funds' office shall send a First Notice to the Employer notifying the Employer of the apparent delinquency and requesting immediate payment. The Employer is liable for late fees (interest and liquidated damages) beginning the 17th day following the Delinquency Date.¹ Generally, interest is assessed at the rate of 0.0233% per day, compounded daily assessed from the 17th day following the Delinquency Date to the payment receipt date. Generally, liquidated damage fees are 10% of the total delinquency. Employers that are required to pay Contributions weekly, but fail to timely remit such Contributions, will be assessed interest and liquidated damages as though the Employer is required to remit Contributions monthly. For example, if an Employer's weekly contributions are due each Friday, the contributions due after the 20th of January will be treated as though they were all due the 20th of February for purposes of assessing interest, liquidated damages and issuing delinquency letters. Note: For late 401(k) contributions due to SRSP, a lost earnings calculation is also calculated twice a year.

- C. If the delinquent Contributions are not paid within fifteen (15) calendar days of the date on the First Notice, the Fringe Benefits Funds' office shall send a Second Notice as soon as practicable. The Second Notice shall advise that the Employer is liable for late fees, attorneys' fees, audit fees, and other collection costs.

¹ As described below, the amount of late fees assessed increases substantially if the Benefit Funds file suit against the employer.

- D. If the delinquent Contributions are not paid within fifteen (15) calendar days of the date on the Second Notice, the Fringe Benefit Funds' office shall send a Final Notice as soon as practicable. The Final Notice shall advise the Employer, at a minimum that:
1. The Employer is liable for interest, late fees, attorneys' fees, audit fees, and other collection costs, assessed consistent with the Trust Documents;
 2. The Benefit Funds may take prompt legal action if the Employer does not remit delinquent Contributions, late fees, and other collection costs immediately;
 3. The Employer may be subject to withdrawal of labor;
 4. The Trustees may terminate the Employer's participation in the Benefit Funds;
 5. Any Owner/Member of a Delinquent Employer may cease to accrue benefits, or have his/her benefits adversely affected, under the terms of the applicable plan documents.
- E. The Fringe Benefits Funds' office may attempt to resolve a delinquency before referral to Fund Counsel. Resolution efforts may include contacting the Employer's owner(s) and officers, registered agent, and highest-level executives at their offices, registered agent, and highest-level executives at their office and home addresses. Generally, the staff should require, as a condition of settlement, (1) a personal guarantee by the Employer's owner, and (2) that the Employer remit Contributions and settlement payments by regular mail or a delivery service to the Fund Office in the form of a check.
- F. The Trustees authorize the Collections Committee to enter into settlements that comply with the SETTLEMENT GUIDELINES for STAFF, COLLECTIONS COMMITTEE AND COUNSEL.

SECTION II

REFERRAL TO COUNSEL TO COLLECT DELINQUENCIES AND ENFORCE AUDIT RIGHTS

- A. If the Employer has not responded within ten (10) days of the date of the Final Notice, or the Fringe Benefits Funds' office is not able to reach a final resolution for payment within the SETTLEMENT GUIDELINES for STAFF, COLLECTIONS COMMITTEE AND COUNSEL, the matter shall be referred to Fund Counsel as soon as practicable for further review.
- B. The Fund Counsel will send a demand letter advising the Employer of the amounts due and that the matter is being evaluated for legal action.
- C. If the matter is not resolved within a reasonable time after Fund Counsel sends a demand letter to the Employer, Fund Counsel will evaluate whether to bring legal action against the Employer.

- D. No case shall be referred to Fund Counsel unless contributions exceed \$3,000 except for rare matters involving habitually delinquent Employers. For so long as delinquent Contributions are less than \$3,000, the Fringe Benefits Funds' office will periodically seek collection.
- E. For delinquent amounts over \$3,000 the Fringe Benefits Funds' office will refer the matter to Fund Counsel, who will perform at the outset of the referral and throughout the period in which Fund Counsel is handling the matter, a cost benefit analysis taking into consideration (without limitation) the costs of potential litigation versus the amount owed, the Employer's history of delinquencies, and the Benefit Funds' ability to collect on a judgement against the Employer.
- F. In all referrals to Fund Counsel, the Fringe Benefits Funds' office shall provide all information and documents reasonably necessary to pursue legal action. The Trustees may refer any Delinquent Employer to Fund Counsel at an earlier or later date than provided for above, as they find appropriate under the facts and circumstances. An Employer's refusal to permit or cooperate with an audit may result in immediate referral even in the absence of a known delinquency.
- G. Upon referral, Fund Counsel shall send the Delinquent Employer a demand letter for compliance with the CBA and Trust Agreements. In consultation with the Fringe Benefits Funds' office, Fund Counsel may attempt settlement for a limited time before filing suit. Upon completion of Fund Counsel's review and settlement efforts, Fund Counsel will consult with the Benefits Funds' office to analyze the likelihood of obtaining recovery and the litigation costs to the Benefit Funds. Unless circumstances dictate otherwise, Fund Counsel shall file suit against the Employer within one month of an Employer's failure to respond to a demand letter or within one month of the exhaustion of settlement efforts.
- H. When Fund Counsel collects delinquencies or seeks to enforce the right to audit an Employer, whether or not suit is filed, the Employer is generally required to reimburse the Benefit Funds for any and all costs, including but not limited to audit costs, attorneys' fees and costs incurred in collections and/or enforcing the right to audit, any attorney's fees incurred in post-judgement collection efforts (*e.g.*, garnishments, income executions).
- I. A Delinquent Employer (or an Employer facing legal action to enforce the right to audit) shall be expected to reimburse the Fund for all costs incurred in enforcing the Employer's contribution obligations, including the obligation to submit to an audit. Such costs include, but are not limited to audit costs, attorneys' fees, filing fees, fees for service, expert fees, and any other costs incurred by the Benefit Funds to determine, discover, or collect any of the amounts described herein.
- J. If a lawsuit is filed against a Delinquent Employer, the assessment of late fees will increase to:
 - 1. Interest at the rate of 0.0233% per day, compounded daily assessed from the 17th day following the Delinquency Date, to the payment receipt date, and
 - 2. Liquidated damages equal to 20% of the delinquent contributions.
- K. The Benefit Funds may elect a course of action other than legal action including deferring, withdrawing, or settling litigation consistent with the following:

1. The requirements of applicable law, including PTCE 76-1;
 2. The amount of the delinquent Contributions;
 3. The length the delinquency has persisted;
 4. The Employer's ability to pay;
 5. The likelihood of collecting a judgement once it is obtained;
 6. The Employer's payment history;
 7. The likelihood that the costs of a lawsuit will exceed any potential recovery;
 8. The recommendation of Fund Counsel; and
 9. Any other factor that may have a material bearing on the collection of the delinquent Contributions.
- L. Once Fund Counsel files suit, counsel shall prosecute the case to judgement, unless an acceptable settlement or other resolution is reached. Counsel is authorized to enter into settlement negotiations with Delinquent Employers. The Trustees authorize Fund Counsel to dismiss any legal action in exchange for the immediate payment of all amounts due and owing. Any settlement that waives or compromises any amount owed (including interest, liquidated damages, attorneys' fees, audit fees, or other collections costs), or that contemplates payment in installments, must be approved or meet established parameters for preapproval as set forth in the SETTLEMENT GUIDELINES for STAFF AND COUNSEL.
- M. The Fund may publish or otherwise disseminate the names of those Employers against which the Fund has filed suit.

SECTION III ALLOCATION POLICY

If any Employer remits only a portion of its delinquent Contributions, the partial payment may be applied as follows:

- A. First, to deferred wages due as 401(k) contributions, credited to the participants' account *pro rata* based on the full amounts due.
- B. Second, to interest due on such deferred wages owed when collected, credited to the participants' account *pro rata* based on the full amounts due.
- C. Third, to the Benefit Funds for contributions, crediting the amounts to the oldest month due, then to that month's late fees, allocated *pro rata* to all Benefit Funds except Industry Fund based on the full amounts due. Amounts will be allocated to Industry Funds after all delinquent contributions have been paid to Benefit Funds.

SECTION IV

TERMINATION OF EMPLOYERS AS CONTRIBUTING EMPLOYERS

The Trustees are authorized to terminate the participation of Delinquent Employers on account of nonpayment of Contributions, among other reasons. Before the Trustees terminate an Employer, the Trustees will provide advance notice, as soon as practicable to the Union and Delinquent Employer.

SECTION V MINIMUM STANDARDS EMPLOYER RECORDS REVIEW

The Benefits Funds will review Employer records to monitor Employer compliance with the contribution obligations, deter irregular reporting, and assist in identifying participant benefit credit. The Trustees have the discretion to determine the number of audits performed each year but have set a target of auditing every Employer once every three years on average. Employers with repeated discrepancies and delinquent contributions may be audited more frequently. The Trustees may allow exceptions and/or alternatives to these standards in cases where the facts and circumstances make such exceptions and/or alternatives prudent.

A. Qualification Requirements for Auditors

1. Audits of Employer records shall be conducted by a qualified Auditor (the “Auditor”) with satisfactory experience in compliance testing programs.
2. Actual fieldwork may be conducted by an audit specialist under the guidance of a qualified accountant from the Auditor.
3. The Auditor’s compliance testing methods should substantially meet these Minimum Standards.
4. Notwithstanding anything to the contrary, no representations made by an Auditor in the course of its audit, findings, and reporting will be binding upon the Benefit Funds unless the Benefit Funds adopt the findings.

B. Pre-Audit Procedures

1. The Auditor will work with the Fringe Benefits Funds office to select a sampling of Employers that have not been audited in the preceding three years. Notwithstanding the foregoing, any Employer may be audited with or without cause even if audited within the preceding three years. The Union, other Benefit Funds, Contributing Employers, or participants may request an audit; however, the request need not be granted.
2. In most instances, the Fringe Benefits Funds will advise the Local Union of Employers selected for audit before the audit.
3. An audit confirmation letter will be sent to the Employer before the audit.
4. The Benefit Funds rely on the Local Union for collective bargaining agreement information and other Employer information. In advance of the audit, the auditor should review all applicable collective bargaining agreements, and obtain clarification for jurisdictional, classification or other related issues from the Local Union, as necessary.

C. Field Work

1. Initially, the period audited shall be limited to no less than three (3) years. If the auditor notes any substantive discrepancies, irregularities, patterns or trends indicating noncompliance, the Auditor shall contact the Fund Office to request authorization to extend the audit period. Unless directed otherwise, the Fund Office shall use professional and reasonable discretion in determining how far to extend the period audited. The Fund Office will report to the Collections Committee on all decisions to extend the audit period.
2. The auditor shall request the Employer have the following records available for inspection:
 - a. Original Time Cards/Sheets
 - b. Payroll registers
 - c. Individual Earnings Records
 - d. 941's, State U/C's, W-2's, W-3's and 1099's
 - e. Cash Disbursement Journals and general ledger
 - f. Remittance reports/records
 - g. Remittance records for any other fringe benefit fund to which the Employer contributes
 - h. Personnel records
 - i. Such other records as are necessary to complete the audit
3. The Auditor shall employ reasonable and customary procedures for testing the completeness of the records provided.
4. The Auditor shall review all monthly Reports for the period tested for significant variations between or among months. The Auditor shall test the accuracy of all payments, adjustments, trends and variances.
5. The Auditor shall conduct detail testing based on the results of items 1 and 2; selecting calendar quarters from different years if applicable.
6. The Auditor shall trace hours for a reasonable representative sample of employees from timecards, payroll registers or individual earnings records for each quarter tested. The Auditor shall compare the gross wages for each employee from the payroll registers or individual earnings records to quarterly tax returns. The Auditor shall verify that the Employer reported hours worked or compensated, in accordance with the collective bargaining agreement and/or the Benefit Funds' governing documents. The Auditor shall itemize all discrepancies in wage and fringe benefit contribution rates and amounts reported. As many Employers are signatory to more than one collective bargaining agreement (i.e., Building Trades, Residential Agreements, Project Agreements), the Auditor shall verify that hours are reported under the correct collective bargaining agreements for all employees. The Auditor shall note all discrepancies, ambiguities or questions contained in the collective bargaining agreement(s).
7. The Auditor shall review all monthly reports for the quarters selected and identify all employees who have been added or deleted. The Auditor shall trace employees to appropriate payroll and personnel records to verify accuracy of addition or deletion.
8. For each quarter tested, the Auditor shall review Employer documentation (e.g., personnel records, reports to other trusts/plans, etc.) to determine the job classifications of all

employees who are not reported on the reports to the Benefit Funds. The Auditor shall summarize all questionable employees, listing their job classification or position with the Employer.

9. The Auditor shall note all cash payments to employees and the basis for such cash payments – specifically, any payment that could represent payroll compensation not reported to the Funds, the Union, or to other fringe benefit plans.
10. The Auditor shall verify that Employers report the hours for which Contributions are required for all employees, regardless of whether those employees are part of a bargaining unit.
11. The Auditor shall identify all employees working for the Employer outside the Union’s geographical jurisdiction, and note how those employees’ hours are reported to the Union, the Benefit Funds, and to any other fringe benefit plan (e.g., to the Union under the two-man rule, to the Union but under another Union’s collective bargaining agreement, etc.).
12. The Auditor may expand the scope of the testing when necessary to determine the extent of reporting errors.
13. The Auditor shall attempt to hold an exit conference with the Employer to review the initial audit findings and to solicit the Employer’s acknowledgment. The Auditor’s function is solely to test compliance. The Auditor is not authorized to comment on or interpret any provision of, or dispute concerning, contribution obligations or otherwise. Nor does the Auditor have authority to make representations or enter into any understandings, settlements, or compromises.

D. Final Report

1. The final report shall summarize the audit findings, underpayments, and overpayments on separate schedules. The final report shall note any known issues concerning the collective bargaining agreements(s) or the Funds’ governing documents. The final report should itemize all discrepancies by employee by month and in total. The final report should contain the employee’s name, social security number, hire and termination date, individual fringe contribution rates and the fringe amount computed.
2. Funds’ staff will review the final audit report and notify the Employer of the results related to underpayments. In cases where discrepancies exist, a demand letter will be sent for all amounts due including the cost of the audit and any liquidated damages. For routine audits where shortages are apparently inadvertent, the cost of the audit and the liquidated damages may be waived upon prompt payment of the shortages.
3. If the Employer takes exception to the final report, the Funds’ will review the exceptions and either accept or reject them. If the Funds’ disagree with the Employer’s exceptions and the Employer continues to assert said exceptions, the Employer’s exception will be presented to the Board of Trustees for a final decision or whether the exceptions will be accepted.
4. The customary field audit is not expected to uncover each and every reporting irregularity or delinquency; therefore, the absence of an audit finding cannot be taken as definitively establishing the absence of shortages or irregularities. From time to time, notwithstanding an audit, irregularities, shortages, and omissions may be discovered and pursued by the Funds.

E. Failure to Cooperate with Audit

Employers that refuse to permit an audit in whole or in part may be subject to legal action without further notice, with attorneys' fees, audit charges and other costs assessed to the Employer.

**SECTION VI
ERRONEOUS CONTRIBUTIONS, OVERPAYMENT
AND REFUND POLICY**

Erroneous Contributions or Overpayments mean amount(s) an Employer paid to the Benefit Funds, by a mistake of fact or law (other than a mistake relating to whether the Benefit Funds are exempt from tax under Section 501(a) of the Internal Revenue Code of 1986 (as amended)), in excess of the amount an Employer owed and which might, under appropriate circumstances, be returned to the Employer.

It is the Employer's responsibility to make accurate contributions to the Benefit Funds. The Benefit Funds are not responsible for errors by the Employer and its personnel or agents in relation to its contribution obligations.

- A. Allocation to Outstanding Delinquencies: If an Employer remits a higher Contribution amount than due for its most recent contribution due date, pays a higher or additional settlement payment than required, or pays more in similar situations, the Funds will hold credits in the system for discrepancies, send the adjustment to the National Funds so the Employer essentially gets a credit back for their next payment.
- B. Misdirected Payment: if the Overpayment is clearly intended for another fund, the Benefit Funds may refund the Overpayment to the Employer or forward a misdirected check to the appropriate fund. The Fringe Benefits Office may first attempt to negotiate with the Employer for any outstanding delinquencies owed to the Benefit Funds.
- C. Refund: The Benefit Funds may, consistent with ERISA and other applicable law and regulations, refund Erroneous Contributions to an Employer who duly requests a refund. The Benefit Funds may allow a refund of Erroneous Contributions, if at all, only if the Employer establishes a claim for the amount mistakenly paid by filing a written request written one year from the date on which the contributions were due.
- D. In general, no refund of Erroneous Contributions shall be considered without a written request for such a refund having been received one year after the date that the Erroneous Contributions were due. In special circumstances, the Trustees may permit the refund of Erroneous

Contributions for longer periods, but not more than six (6) months after the Trustees determine that the contributions constitute Erroneous Contribution.²

- E. A refund may be conditioned on the execution of releases and other documents and satisfactory factual representations. An Employer must provide all documents and any other information the Benefit Funds deem necessary with respect to a refund request and may be required to submit to an audit before consideration of a request for refund. An Employer's failure and/or refusal to timely, promptly, and fully comply may result in the denial of the request for the refund of Erroneous Contributions.
- F. Any refund of Erroneous Contributions shall be limited to the amount of such Erroneous Contributions. An Employer shall not be entitled, and the Fund shall not transfer, any amounts of interest or return on investment arguably attributable to Erroneous Contributions, except as required by law. Further, any amounts refunded must be reduced by any net investment loss to the Benefit Funds for the period that the Benefit Funds retained the Erroneous Contributions.
- G. Nothing in this Section limits the Funds' right to apply Erroneous Contributions to any other amounts an Employer owes, including contributions, withdrawal liability, interest, liquidated damages, audit costs, attorneys' fees, costs, and benefit overpayments. In addition, if the Benefits Funds incurred a direct or indirect cost, expense, or liability as a result of the Erroneous Contributions, any refund of such Erroneous Contributions may be reduced by the full value of such costs, expense, or liability.
- H. As part of an approval of a refund request, an Employer may be permitted to offset Erroneous Contributions against future Contributions.
- I. Any attempt by an Employer to recoup any Erroneous Contributions in a fashion inconsistent with these Procedures may result in the denial of a refund request. Additionally, any unilateral credit taken by the Employer shall be treated as a delinquency. Notwithstanding the foregoing, and subject to the Trustees' direction, the Fringe Benefit Funds shall continue to perform routine adjustments of Contributions, on a monthly basis, which occur due to minor computation and/or reporting errors or misrouted payments to or for other benefit plans. These routine adjustments do not require compliance with the foregoing requirements, and the Benefit Funds may continue to perform them as part of the day-to-day remittance processing.

² No determination is made by the Trustees until the Fringe Benefit Funds present information to the Trustees, which the Trustees deem sufficient to enable them to determine whether the contributions constitute Erroneous Contributions. All such determinations are based on the actual knowledge of the Trustees. Facts or information known by the Fringe Benefit Funds' staff shall not be attributed to any Trustee. The Trustees, or their designee, have the sole power and discretion to make any determination whether such contributions constitute Erroneous Contributions, and, if so, whether they may be refunded to an Employer, and any such determination is final and binding.

SECTION VII REPORTS AND RECORDS

- A. The Trustees shall receive reports from appropriate Fringe Benefit Funds' personnel and Fund Counsel on a regular basis, including at Trustee meetings, no less than annually. The reports shall include such information as the Trustees require for monitoring the effectiveness of collection efforts. In addition, the Trustees shall review, no less than annually, a report on all cases closed as uncollectible and approve the closing of such cases.
- B. The Benefit Funds or their agents may maintain delinquency-related documents and records electronically or in other media in lieu of paper records, consistent with the requirements of Department of Labor regulations.

The Trustees expressly reserve the right to modify or amend the Collection Policy and Procedures at any time.