



# EASTERN ATLANTIC STATES

CARPENTERS BENEFIT FUNDS

WWW.CARPENTERS.FUND

**New Jersey Office:** 91 Fieldcrest Ave. Suite  
A25, Edison, NJ 08837  
(732) 417-3900

**Philadelphia Office:** 1811 Spring Garden St.  
Philadelphia, PA 19130  
(215) 568-0430

## Eastern Atlantic States Carpenters Funds Employer Contribution

### Audit and Collection Policy

Dear Contributing Employer,

The Board of Trustees of the Eastern Atlantic States Carpenters Benefit Funds has adopted a combined Audit and Collection Policy (the "Policy") which consolidates the New Jersey and Philadelphia procedures for the reporting and collection of fringe benefit contributions due under relevant collective bargaining agreements ("CBA"). **The Policy will go into effect for all work performed on or after November 1, 2023.** A copy of the Policy is enclosed with this letter. Please review the Policy and refer to it as your company reports hours worked and remits contributions to the Funds. If you have any questions about the Policy or the reporting and remittance provisions of your applicable CBA, please contact the Fund Office.

Below several important provisions of the Policy are summarized for your convenience.

### Collections

- Employers may be required to post a surety bond in accordance with the terms of the applicable CBA. If the CBA is silent with respect to surety bond, the Trustees may require an employer with a record of delinquencies, or an employer with no previous record of payments to the Funds to post a surety bond, in an amount determined by the Trustees, but not less than \$25,000.
- Contributions and a remittance report must be received by the Fund Office on or before the due date specified in the applicable CBA. If no due date is specified, contributions must be received on or before the 20th of the month following the month in which the work was performed.
- All employers are strongly encouraged to submit contributions and remittance reports via the Funds' iRemit online remittance system. Employers should consult the applicable CBA to determine if iRemit contributions are mandatory.
- If a remittance report and the required contributions are not received by the end of the month in which the due date occurs, the Fund Office will send notices advising employers that: (1) contributions are past due and that, absent payment within 10 days, notice will be sent to the applicable Union Regional Council, any upstream contractors of the Employer and the project owner; and (2) if payment is not received within 20 days of the notice, that arbitration will be scheduled by the Funds before the permanent arbitrator for resolution of delinquency disputes, as appointed by the Funds' Trustees.

- Employers who pay their fringe benefits past the due date may incur interest and other penalties, including attorney's fees, liquidated damages and costs of arbitration and/or litigation. Employers should consult their CBAs to determine the timing and amounts of any applicable interest, fees and penalties. If the applicable CBA is silent on the matter, interest is assessed at a rate not less than prime plus 1% and will be assessed retroactive to the Due Date if contributions are not received within thirty (30) days after the due date.
- Employers that fail to submit required remittance reports by the Due Date may be subject to a delinquency assessment in an amount estimated by the Funds. The estimate, which shall serve as presumptive evidence of said delinquency at arbitration or in litigation, will be based on the highest number of average hours reported per week for any period of four consecutive weeks, during the 36 months preceding the unreported period, plus interest, attorneys' fees, costs, auditor's fees, liquidated damages, and the arbitrator's fees.

### **Audits**

- Employers are subject to an audit at least once during each three-year period. An employer determined to be habitually delinquent may be subject to more frequent audits;
- The baseline audit period will be three (3) years. However the Funds' director, collection manager and Trustees have the discretion to extend or reduce the audit period as circumstances warrant;
- Prior to conducting an audit, the Funds will notify the employer of the impending audit and advise of records that will be requested. After the audit, the auditor will review its findings with the employer and provide the employer a reasonable period of time to respond to the findings before issuing a final report; and
- Employers may be responsible for the cost of the audit in accordance with the terms of the Employer's CBA. Absent express direction from the applicable CBA, audit costs will be assessed where an audit finds the employer has underpaid by at least: (a) 3% of its annual contributions during any twelve-month period covered by the audit or (b) \$10,000, whichever is lower.

The Board is hopeful that the Policy will provide clarity for employers and will result in a more efficient and effective audit and collections process.

Should you have any questions regarding the Policy, please contact the Collections Department at the Fund Office.

Sincerely,



Pete Tonia  
Executive Funds Director  
EAS Carpenters Benefit Funds

# EASTERN ATLANTIC STATES CARPENTERS FUNDS EMPLOYER CONTRIBUTION AUDIT AND COLLECTION POLICY

(Effective November 1, 2023)

## ARTICLE I GENERAL POLICY

### 1.1 General Provisions

A. Collection of Contributions. It is the policy of the EASTERN ATLANTIC STATES CARPENTERS FUNDS, comprising: the Eastern Atlantic States Carpenters Pension Fund; the Eastern Atlantic States Health and Welfare Fund; the Eastern Atlantic States Annuity Fund; and the Eastern Atlantic States Technical College (sometimes collectively referred to herein as the “Carpenters Benefit Funds” or the “Funds”) to collect all employer contributions as they are due to those Funds and to make such diligent and systematic efforts as are appropriate under the circumstances to do so.

B. Remaining Employer Obligation. If an employer ceases to have an obligation to contribute to one of the Funds under that Fund’s respective Agreement and Declaration of Trust (the “Trust Agreement”), a collective bargaining agreement (“CBA”), Participation Agreement or any other writing which obligates an employer to make contributions to one or more of the Funds, or applicable law, the employer shall remain subject to this Policy with regard to the time period during which the employer was obligated to contribute to the Fund and all obligations herein shall survive the expiration of a CBA.

C. Remedies. The Funds’ respective Boards of Trustees (collectively, the “Board of Trustees,” the “Trustees,” or the “Board”) shall have the exclusive legal right to exercise all remedies allowable under the Trust Agreements, the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and other applicable laws, including but not limited to:

1. the right to establish a date on which contributions are due (unless otherwise specified in the employer’s CBA);
2. the right to audit the financial records of the employers, including but not limited to, payroll ledgers, timesheets, federal and state tax returns, IRS Forms W-2, W-3, 940, 941, 1098, and 1099 federal tax returns, check registers, general ledgers, job lists and all 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 recover liquidated damages as outlined in the employer’s CBA, or other applicable agreement, or ERISA;
5. the right to require a surety bond as outlined in and to the extent permitted by the employer’s CBA or other applicable agreement; and, if the applicable CBA is silent with respect to surety bonds, the Trustees of the respective

Funds , pursuant to the Trust Agreements and this Policy, may require an employer with a record of delinquencies, or an employer with no previous record of payments to the Funds, to post a surety bond obtained from a qualified and licensed carrier, or to post cash escrow with the Trustees in whatever manner the Trustees deem appropriate, prior to commencement or re-commencement of any covered work by said employer. Such bond shall be in the amount determined by the Trustees but not less than \$25,000.00 and must guarantee the payment of contributions as required by this Policy, the relevant CBA and/or the relevant Trust Agreements. A copy of such bond, or proof of escrow, shall be furnished to the Union and Funds before any employer subject to this section commences or re-commences any covered work.

Enforcement of the foregoing bond policy may be by any means made available to the Funds in the applicable CBA, Trust Agreements, this Policy or ERISA, and/or by notice to the Union for remedy under the appropriate CBA.

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.

D. Collection Procedures. The provisions of this Employer Contribution Audit and Collection Policy (“Policy”) shall be followed unless the Board of Trustees determines in its sole and exclusive discretion that they should be waived in a particular instance.

E. Resolution by the Board of Trustees. All questions or disputes relating to the interpretation, meaning and/or application of this Policy shall be finally and exclusively resolved by the Board of Trustees, or the Funds’ Executive Finance Committee (“EFC”) in the exercise of the authority delegated to it pursuant to the relevant Declarations of Trust and/or Section 3.10 of this Policy.

F. Requirement for Written Obligation to Contribute. No employer shall be permitted to contribute to the Funds without having signed or otherwise agreed to be bound by a CBA, participation agreement or other written agreement requiring contributions to the Funds for hours worked by covered employees. The Funds shall not accept contributions from any employer unless the Fund Office has received a signed CBA or other written agreement reflecting the employer’s obligation to make contributions to the Funds. Contributions submitted in the absence of a signed agreement or other adequate evidence of a contribution obligation will be deposited in an escrow account until an executed agreement obligating the employer is received and participants will not receive credit for benefit service until such executed agreement is received. In the event no such executed agreement is received by the Funds, contributions will be returned to the employer and no benefit service shall be credited.

G. Employer Notification Obligation. Employers subject to this Policy are required to notify the Funds in writing of any changes or modifications to the name in which the employer

conducts business under this Policy. Owners or managers of an employer must report the establishment of any new business entity to the Fund Office if the new business will perform the type of work covered by CBAs with the Union and/or Regional Council..

**ARTICLE II**  
**COLLECTION PROCEDURE AND OTHER  
PROCEDURES IN CASES OF DELINQUENCY**

In accordance with the applicable Trust Agreements, ERISA, and the above declaration of policy, the following administrative steps shall be taken to effectuate the collection of delinquent contributions:

**2.1 Pre-Arbitration Administrative Steps to be Taken by the Fund Office**

A. Due Date Defined. Employers shall submit all contributions, and supporting remittance documentation, to the Funds in accordance with the schedules and procedures established by the relevant CBA and/or incorporated Declarations of Trust (“Due Date”). If the CBA does not state a Due Date, then the Due Date shall be the 20<sup>th</sup> day of the month following the month in which work was performed. However with respect to an employer with a record of delinquencies or with a limited record of payments to the Funds, the Funds reserve the right to require submission of contributions and supporting remittance on a weekly schedule, in conformance with the relevant CBA where applicable.

The Funds maintain the iRemit online remittance system. In some cases, a CBA may require electronic reporting and electronic payment of accompanying contributions. In other cases where the CBA is silent, employers nevertheless are strongly encouraged to submit reports and accompanying contributions electronically via the Funds’ iRemit online remittance system.

If a CBA imposes or authorizes the Trustees to impose an administrative fee for failing to use the iRemit system, then any employer performing work under such a CBA shall be subject to a monthly administrative fee for each month during which the employer fails to use the iRemit system. The fee is designed to cover the additional cost associated with manual entry of an employer’s reporting and contributions by the Fund Office. Fees will be imposed according to the following schedule:

- 1-10 Members: \$100.00 per report.
- 11-20 Members: \$250.00 per report.
- 21+ Members: \$500.00 per report.

If an employer’s CBA does not specify or permit imposition of administrative fees for manual entry, then no such fee will be imposed by the Trustees against such an Employer.

If the employer has not performed covered work during a reporting period, then it shall inform the Funds by one of the following ways:

- Submitting a “Zero Report” for that work period per the procedures established in the applicable CBA;
- Check the “Final Report” option on their final remittance report.

Or contact the Collections Department directly by phone, fax, or e-mail.

B. Verbal or Electronic Notice to Employer. In the event the Funds have not received Contributions by the Due Date, and to the extent practicable, in addition to the procedures described below, the Fund Office shall contact the employer and the local Union and/or Regional Council, to attempt to effectuate payment of Contributions.

C. Monthly Notice to Regional Councils. The Fund Office shall send the Regional Councils monthly reports 10 days prior to the third Thursday of each month informing them of delinquent employers in their respective territories. The Regional Council shall work with the Fund Office to assist with the collection of Contributions owed, including making telephone calls to delinquent contractors.

D. Letter to Associations. The Fund Office shall send letters each month to the appropriate employer associations informing them of the delinquent employers that are members of their respective association and ask for their assistance in collection. Specifically, such letters shall be sent as needed to ACCNJ, DISCA, GBCA, CAEP, IFCA and CCLE and any affiliates or successor Associations. The letters to the respective Associations shall be copied to Delinquency Counsel and the EFC.

E. Costs of Collection/Liquidated/Interest Damages. Liquidated damages fees and costs, and/or interest on contributions outstanding after the Due Date shall be assessed in accordance with and to the extent permitted by an employer's applicable CBA and consistent with past practice. A chart summarizing liquidated damages, fees and costs, and interest provisions from certain CBAs is attached hereto as Appendix 1. . If the CBA is silent on the matter, then liquidated damages and/or interest (at a rate not less than prime plus 1%) may be assessed consistent with this Policy, the Trust Agreements and ERISA. Although interest shall accrue, it shall not be assessed against an employer if the employer's contributions are received within the 30 days after the Due date. Thereafter, interest shall be assessed on the delinquent Contributions retroactive to the Due Date and shall continue to accrue to the date when payment of the delinquent contributions is received.

The Trustees, either themselves, or by delegation to the EFC, may institute appropriate procedures for waiving or compromising on the assessment of Liquidated Damages and/or Interest.

F. Written Notice to Employer. If Contributions are not received by the final day of the month in which the Due Date occurs, the Fund Office will send a written notice to the employer at the employer's business address on file with the Fund Office advising the employer that Contributions are past due. The notice shall state that if payment is not received within 10 days, the Fund Office will notify the applicable Regional Council and the general contractor, and/or any upstream contractor(s) and/or the project owner. The notice shall also advise that if payment is not received within 20 days of the date of the notice, the matter will be scheduled for arbitration by the Fund Office. A sample letter is attached as Exhibit A.

G. Written Notice to Union and General Contractor or End User. If payment is not received within 10 days pursuant to the Notice described in Section 2.1(E), the Fund Office will send a second notice to the employer stating that: (i) the Regional Council and general contractor are being advised of the employer's failure to pay; and (ii) if payment is not received within 10

days of the date of the second notice, the matter will be scheduled for arbitration by the Fund Office. A sample second notice is attached as Exhibit B. At that time, the Fund Office will also notify the Regional Council that the employer has not paid despite the prior notice and will further send a written notice to the employer's general contractor. A sample notice to the general contractor is attached as Exhibit C.

H. Notice to Delinquency Counsel of Employer Dispute. The Fund Office shall immediately notify the Funds' Delinquency Counsel as soon as it becomes aware that the employer is disputing its obligation to contribute on behalf of one or more employees, or because the CBA has expired, or the employer otherwise argues it no longer is required to make contributions.

I. Notice to Employees/Participants of Delinquency. If payment is not received within sixty (60) days of the Due Date, the Fund Office will send a notice to Fund participants, who are employed by the delinquent employer and who performed the work giving rise to the delinquency, stating: (1) that the contractor is at least 60 days delinquent in payment of the participants' benefits; (2) that the delinquency has been referred to the Funds' collection process and/or Delinquency Counsel for collection; (3) absent payment, the participant will not be credited for benefits which would otherwise accrue for the performance of CBA work (except to the extent credit is required by law); (4) requesting that the participant forward all pay stubs, W-2 forms or other relevant documentation, which may reflect additional delinquencies owed to the Funds by the employer.

J. Payment of Principal but not Liquidated/Interest Damages. If an employer pays the principal amount of the delinquency but does not pay accrued Liquidated/Interest damages and/or any other amounts owed, acceptance of the principal amount shall not constitute a waiver of the Funds' claim for accrued and unpaid interest and/or any other amounts. During the first quarter of each calendar year, the Funds' Delinquency Counsel shall obtain from the Fund Office a list of all employers that owe interest on past late payments during the prior six years. Delinquency Counsel shall promptly send a letter to each employer on the list demanding immediate payment of the interest with notice that legal proceedings may commence if the employer fails to make payment. The Fund Office shall determine thirty (30) days after the date of counsel's letters to employers whether the employers have paid the Liquidated/Interest Damages. If an employer has not paid and owes interest in excess of \$10,000, the Fund Office may initiate legal action by sending by Certified Mail, Return Receipt Requested, the employer a Notice of Intent to Arbitrate for the unpaid Liquidated/Interest Damages. This procedure may be waived or compromised at the discretion of the Trustees either themselves, or by delegation to the EFC, if it is determined that the amount outstanding is uncollectible or if waiver or compromise of the amount outstanding would be in furtherance of effective and efficient administration of the Funds.

## **2.2 Claims Against Bonds**

A. Claims Against Fringe Benefit Bonds. In the event of a CBA Employer's default of its obligation to pay benefits for CBA work, a Surety Bond, or fringe benefit bond, where posted by signatory employers consistent with this Policy, stipulates that claims must be timely filed. The

Funds shall use best efforts to exhaust the herein described collection procedures prior to filing a claim against available bonds. Where circumstances necessitate the Funds filing a claim prior to exhaustion of collection procedures, the Funds shall nevertheless continue the collection process against the delinquent contractor as necessary to preserve all claims for payment of the delinquency. Once a bond claim has been prepared for filing, a copy is then sent certified mail to the bonding company as well as the delinquent employer. CBAs may also specify bonding requirements and, for any employer subject to collectively bargained bonding requirements, the CBA will control to the extent of a conflict with this Policy.

B. Claims Against Labor and Material Bonds. Where permissible by law, contemporaneous with the referral of a delinquency to Delinquency Counsel, the Fund Office shall request information from the Union concerning the identity of all projects on which the employer is working or worked during the delinquency period, the identity of the general contractor, the name and address of the insurer who underwrote any labor and materialmen's payment bond for the general contractor and/or employer on the project, and the bond number. Upon receipt of this information, a claim may be made on the labor and materialmen's payment bond, if any.

### **2.3 Initiation of Arbitration Process**

A. Notice to Arbitrate. If the delinquent Contributions are not received within 20 days following the date of the notice described in Section 2.1(F) (Exhibit B), the Fund Office shall prepare a Notice to Arbitrate before the Funds' designated arbitrator, which may be a permanent arbitrator, designated by the Board of Trustees, for the resolution of fringe benefit payment controversies. The Funds' Delinquency Counsel shall forward the Notice to Arbitrate to the designated permanent arbitrator. The Notice to Arbitrate shall be signed by the Funds' Collections Manager or designee or by the Executive Director of the Funds. A sample Notice to Arbitrate is set forth at Exhibit D.

B. Employer Dispute Regarding Designated Arbitrator. If after receiving a Notice to Arbitrate, an employer objects to the arbitration of the delinquency before the designated arbitrator by means other than the commencement of an action to stay the arbitration, the matter may be pursued by Delinquency Counsel in Federal Court as set forth in Article III after receiving approval of the Board of Trustees.

### **2.4 Uncollectible Contributions**

The Board of Trustees may deem contributions uncollectible after the Fund Office, Executive Director, Director, Collections Manager, and/or Delinquency Counsel have made every attempt to collect monies owed to the Funds but have been unsuccessful. Delinquent accounts will be reviewed on a case-by-case basis to determine whether a recommendation should be made to the Trustees that the delinquent contributions are uncollectible. Factors taken into account include:

1. whether the company has any assets;
2. whether the company is defunct or remains in business;



3. whether the company is solvent or has sought bankruptcy protection;
4. whether the company or its officers can be located;
5. what effort has already been expended to collect the delinquency; and
6. the amount at issue and the length of time since the delinquency was incurred.

In each case, the decision to deem the delinquent contributions as uncollectible is made by the Board of Trustees in its sole and exclusive discretion, after the Funds have made all reasonable, diligent and systematic efforts to collect the Contributions owed to the Funds. Determining that a delinquency is uncollectible is intended to avoid additional and burdensome expenses which may be incurred by the Funds.

### **ARTICLE III** **LEGAL ACTION AND SETTLEMENT**

#### **3.1 Action by Delinquency Counsel**

If the employer does not agree to arbitration consistent with Section 2.3, Delinquency Counsel may initiate legal action in Federal Court, unless Delinquency Counsel recommends a different course of action based upon pertinent factors which include, but are not limited to, the following:

1. the amount of the delinquency;
2. the length of time the delinquent amount has been owed;
3. the financial condition of the employer;
4. the employer's past performance as a contributing employer;
5. the likelihood of collecting on a judgment once it is obtained;
6. any other factor that, in the opinion of Delinquency Counsel, may have a material bearing on the collection of the delinquent Contributions.

The Board of Trustees, in its sole and exclusive discretion, shall determine whether a lawsuit shall be commenced. If the Trustees decide not to litigate a particular matter, they may, in their discretion, apply such delinquent amounts to an employer's account and such amounts will be considered due and owing upon any subsequent delinquency of that employer.

#### **3.2 Estimated Contributions**

If an employer fails to submit remittance reports, weekly payroll reports, or other reports of work for which contributions to the Funds are required, such that the Funds cannot determine the amount owed by the employer for a given month, then the following procedures will be used: The Fund Office will compute the estimated amount of contributions due by assuming that the hours for which the employer is obligated to contribute for each week in the unreported month(s)

equal(s) the highest number of average hours for which the employer was obligated to contribute in a week for any four consecutive weeks within the 36 months immediately preceding the unreported month. A determination under this paragraph shall constitute presumptive evidence of delinquency. However, if, prior to the entry of an arbitration award or judgment, the Funds determine (such as through discovery in arbitration or federal court litigation) that a greater amount of contributions is owed by the employer for that month, then the Funds shall seek to recover the actual contributions determined to be owed, rather than an estimated amount. Notwithstanding the foregoing, in the event the Funds obtain an arbitration award and/or judgment for a given month based upon estimated contributions, and the Funds later discover that additional contributions are owed by the employer for that month, whether through an audit or otherwise, the Funds shall be authorized to pursue additional arbitration and/or litigation to collect those additional amounts. Such additional arbitration and/or litigation may come in the form of an action to modify an existing arbitration award and/or judgment, or a new arbitration and/or litigation. No defense shall be raised against the Funds in any such subsequent action based upon the existence of the prior arbitration award and/or judgment based upon estimated contributions. If the Funds obtain an arbitration award and/or judgment based upon estimated contributions and later discover that the actual contributions owed for a month were less than the estimate, the Funds shall reduce the amount of that award or judgment by the difference between the amount of the estimated contribution obligation and the amount of the actual contribution obligation.

### **3.3 Pre- and Post-Award Litigation**

Upon issuance of an arbitration award, Delinquency Counsel shall send a copy of the Award to the employer. If an arbitration award has not been satisfied within 30 days of the date it is sent to the employer, Delinquency Counsel shall seek to confirm the award in a court of appropriate jurisdiction.

### **3.4 Settlement Negotiations**

Delinquency Counsel, the Executive Director, Fund Director, the EFC, and/or the Collections Manager are authorized to enter into settlement negotiations, either orally or in writing, with delinquent employers. However, Delinquency Counsel, the Executive Director, Fund Directors and/or the Collections Manager may not agree to any settlement that waives or compromises the amount owed, Liquidated/Interest Damages, attorneys' fees or costs. Such settlements must be approved by the Board of Trustees, the EFC, or their designee, as may be appointed pursuant to Section 3.10 below. All settlements must be in writing and signed by the employer's duly authorized representative and the duly authorized representative of the Board of Trustees.

### **3.5 Rejection of Proposal for Settlement**

Delinquency Counsel, the Executive Director, Fund Director, and/or the Collections Manager may, without prior consultation with the Board of Trustees, reject any proposal for settlement that contemplates the payment of amounts due over a period of time, if its acceptance would result in collection of less than the total amount owed. Such rejection shall be subject to the Board of Trustees' subsequent review.

### **3.6 No Waiver of Liquidated/Interest Damages, or Attorneys' Fees**

Unless the Trustees or their duly designated representative specifically agree to the contrary, no settlement may permanently waive the collection of Liquidated/Interest damages, or attorneys' fees, although any settlement may suspend the collection of Liquidated/Interest Damages, or attorneys' fees until a subsequent delinquency if the current collection of those amounts would involve unwarranted expense.

### **3.7 Determination by the Board of Trustees**

The Board of Trustees reserves the right to accept or reject an employer's proposal to pay delinquent Contributions, Liquidated/Interest Damages, and/or attorneys' fees over a period of time, and to compromise any claim or delinquent account as recommended by Delinquency 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.

### **3.8 Settlements over Time**

Settlements calling for payment over time or compromising the amount owed, including Liquidated /Interest Damages, attorneys' fees, or costs, must be in writing and signed by the employer. The Trustees must approve any proposal for any payment schedule that exceeds twelve months for all amounts owed. Delinquency Counsel, the Executive Director, Fund Director, the Delinquency Committee and/or the Collections Manager are authorized, without prior consultation with the Board of Trustees, to accept proposals for payments over time that do not exceed twelve months and that do not compromise the amount owed, including, Liquidated/Interest Damages, attorneys' fees, and costs.

### **3.9 Expedited or Delayed Collection Action**

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

### **3.10 Authority of Executive Finance Committee**

The Funds referenced herein have authorized an Executive Finance Committee (see above "EFC") to act on behalf of the Board of Trustees, as provided for under this Policy. All actions required to be taken by the Board of Trustees pursuant to this Policy can be taken by such EFC on behalf of the entire Board, provided that the Board shall receive a detailed report of all delinquencies and all actions taken by the Administrator, Delinquency Counsel, and the EFC to determine and collect contributions owed to the Funds at each quarterly Board meeting.

Where not already authorized, the Trustees referenced herein may authorize the EFC to act on the Trustees' behalf, consistent with the preceding paragraph.

The Trustees of the Funds referenced herein, on their own behalf or by delegation to the EFC, may authorize a Funds' Delinquency Committee (the "Delinquency Committee") to act on behalf of the Board of Trustees, as provided for under this Policy. The Trustees and/or the EFC may delegate to said Delinquency Committee any action required or permitted to be taken by the Board of Trustees and/or the EFC pursuant to this Policy, provided that the Board of Trustees shall receive a detailed report of all Delinquency Committee actions at each quarterly Trustees meeting.

## **ARTICLE IV** **PAYROLL AUDIT POLICY**

### **4.1 Payroll Audit**

A. Timing of Audit. The Board of Trustees, Executive Director, Funds Directors or Collections Manager shall have discretion in determining which employers will be audited in each year. In general, each signatory employer participating in the Funds, shall be audited at least once during a three-year period. If an employer has a pattern of repeated delinquency, then the Trustees, Executive Director or Collections Manager may require such employer to be audited once per year, or more frequently, as necessary under the circumstances.

B. Audit Period. The period audited shall be three years, unless circumstances dictate otherwise.

C. Audit Discretion. Notwithstanding the guidelines of this Section 4.1, the Trustees, Executive Director, Funds Director or Collections Manager may, in the exercise of their discretion, determine that the audit schedule set forth above should not be followed in a particular instance. For example, the parties listed above may, in the exercise of their discretion, decide not to conduct an audit if an employer has consistently reported accurately, or, if facts and circumstances indicate that a particular employer may be reporting inaccurately or inconsistently, the parties listed above may direct the Funds' auditor to conduct an audit. If an audit uncovers inaccurate or inconsistent reporting by an employer, the Fund's auditor shall monitor such employer and schedule a subsequent audit within the appropriate statute of limitations.

D. Documents to be Provided. In connection with any audit undertaken by the Funds pursuant to this policy, the employer shall make available to the Funds' auditor, any and all documents requested by the auditor or the Trustees, including, but not limited to all of the following categories: (i) W-2, W-3, 940, 941, 1098, and 1099 federal tax returns; (ii) state and federal unemployment tax returns; (iii) remittance reports to outside carpenter jurisdictions and other trades; (iv) employee identification lists; (v) weekly payroll journals or employee earnings reports from payroll companies (copies for auditors / electronic copies required); (vi) job lists; (vii) cash disbursement journals, check registers, bank statements, and cancelled checks; (viii) quarterly payroll tax returns; and (ix) state and federal tax returns (upon request). This list is not intended to be exhaustive. Failure to produce any of these records, or any others deemed pertinent by the auditor, shall result in this matter being referred to Delinquency Counsel pursuant to Section 4.8. If requested by the contributing employer, the Funds and the auditor may enter into a confidentiality agreement in the form attached hereto as Exhibit E.

## **4.2 Remaining Employer Obligation**

If an employer ceases to have an obligation to contribute to the Funds under the Trust Agreements, a CBA, Participation Agreement or other writing, 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.

## **4.3 Notice to Fund Office and Employer**

Prior to conducting each audit, the Funds' auditor shall review the employer's CBA, or, as applicable, any other written agreement requiring contributions to the Funds, and any pending issues. The Fund Office will forward a letter to the employer advising it of the impending audit, citing the Trustees' authority to conduct the audit and describing the records required to be made available at the audit.

## **4.4 Employer Response**

After an audit of an employer is conducted, the Funds' auditor shall review the auditor's findings with the employer. After providing the employer with a reasonable time to respond to the auditor's findings, the auditor shall issue a final report to the Fund with its payroll audit findings. All final audits should be presented to the Fund's Collections Manager prior to issuance to the employer.

## **4.5 Demand Letter**

Upon receipt of the Funds' auditor's report, the Fund Office shall send a letter to the employer demanding payment, within 10 days of the date of the letter, of any amounts found to be due by the auditor, including any interest, liquidated damages, and costs and fees of the audit, if applicable. The letter shall state that liquidated damages on the delinquent Contributions shall be calculated as set forth in Section 2.1(D).

## **4.6 Cost of Audit**

Except as otherwise specified by an applicable CBA, the employer shall pay the actual cost of a payroll audit if the payroll audit results in a finding that the employer has underpaid by at least an amount equal to the lesser of: (a) 3% of its annual contributions during any twelve-month period covered by the audit or (b) ten thousand dollars (\$10,000.00). An employer that fails to cooperate in the audit process (as determined by the Trustees in their sole and exclusive discretion) shall be required to pay the full cost of the audit regardless of whether the audit reveals any underpayment. The Trustees shall have the right to waive the cost of the audit if, in their sole and exclusive discretion, circumstances warrant.

#### **4.7 Maintenance of Records/Cooperation with Auditors**

Each employer shall maintain records such that a determination can be made by the Funds' auditor of each project on which the employer performed covered work in any given period and the number of hours worked on each such project by each employee with respect to whom the employer is required to remit contributions to the Funds, and shall make these records available for audit upon request. Each employer is required to make available at all reasonable times to the auditors or other representatives of the Funds all of its books and records (as well as all books and records of any of its affiliates, subsidiaries, alter egos, joint ventures, successors or other related companies), that are deemed necessary by the auditor. The right of the Funds to conduct an audit of an employer's (or, where applicable, an employer's payroll company's or similar agent's) books and records shall survive the termination of an employer's CBA or any other written agreement under which the employer is required to contribute to the Funds and/or a bankruptcy or similar insolvency proceeding, dissolution, liquidation, and/or any change in name, location, or form of the employer.

#### **4.8 Employer Refusal**

In the event that an employer refuses to permit a payroll audit upon request by the Fund Office or the Funds' auditor, or if the employer refuses the Funds' auditor access to pertinent records, the Funds' auditor shall inform the Fund Office. The Fund Office shall notify the Regional Council of the employer's lack of cooperation. Except as otherwise provided in this Policy, the Fund Office may determine the estimated amount of the employer's delinquent contributions per Section 3.2 of this Policy. A determination under this paragraph shall constitute presumptive evidence of delinquency.

Prior to making such determination, the Fund Office shall send the employer a letter by Certified Mail, Return Receipt Requested, stating that such determination shall be made if the employer does not schedule an audit within 7 days after the date of the letter. Upon making such determination, the Fund Office or Delinquency Counsel shall send by Certified Mail, Return Receipt Requested, a Notice of Intent to Arbitrate (or, when appropriate, file a lawsuit in state or federal court) against the employer. Delinquency Counsel shall forward a copy of the Notice of Intent to Arbitrate to the permanent arbitrator. In any such proceeding, the employer will be responsible for all delinquent contributions in the estimated amount determined under this paragraph, and all attorneys' fees, costs, auditor's fees, arbitrator's fees, interest and/or liquidated damages. Any such estimate is subject to adjustment, regardless of whether before or after entry of an arbitration award and/or judgment per the procedures set forth in Section 3.2 of this Policy.

**ARTICLE V**  
**MISTAKEN CONTRIBUTIONS**

**5.1 Refund of Excess Contributions**

Subject to the terms and conditions of this Policy, an employer that makes contributions to one or more of the Funds in excess of the amount required by the terms of the employer's CBA, Participation Agreement, the Trust Agreements, or applicable law and under a mistake of fact or law, may request a Refund of the amount of such excess contributions. The Board of Trustees will decide in its sole discretion whether a Refund will be granted.

**5.2 Overpayments Discovered by Payroll Audit**

If a payroll audit identifies an overpayment to one or more of the Funds by the employer, the payroll auditor shall advise the employer of the requirements of this Article V in order to request a Refund.

**5.3 Written Request Required**

No Refund of excess contributions shall be granted by the Board of Trustees without a written request for such Refund having been received within the later of: (i) 6 months of the date that such excess contributions were received by the Fund; or (ii) 6 months after the date on which the Trustees determined that a mistake occurred.

**5.4 Reduction.**

A. Any Refund of excess contributions made to an employer shall not include interest or investment earnings attributable to the overpayment, and, if required by Section 5.4(C), shall be reduced by the amount of any investment losses allocable to the overpayment. If a Fund incurred a direct or indirect cost, expense, or benefit liability as a result of an excess contribution, any Refund of such contributions shall be reduced by the full value of such cost, expense or liability. In no event shall a credit or Refund of contributions be taken or allowed for any period during which coverage has been provided by a Fund to an individual based on the employer's contributions, regardless of whether the Fund actually paid benefits or premiums on behalf of that individual.

B. Each Fund under this Policy shall treat its cash account as the source of any Refunds of excess contributions to employers so long as the cumulative refunded contributions to all employers in that plan year are less than 1 percent of the total employer contributions in the aggregate made to the respective Fund during the plan year prior to the plan year in which the Refund is made. This rule shall be applied separately by each Fund.

C. Once the cumulative refunded contributions to all employers in a plan year equal 1 percent of the total employer contributions made to the respective Fund during the plan year prior to the plan year in which the Refund is made under Section 5.4(B), any subsequent Refunds shall be reduced by the amount of any investment loss by the Fund, calculated as

follows: Investment losses shall be calculated by the Fund based on the investment return for the Fund as a whole from the first day of the calendar quarter in which the mistaken contribution was made through the first day of the calendar quarter in which contributions are returned, unless the Trustees determine that another method more reasonably reflects the circumstances in a particular Refund.

### **5.5 Employer Responsibility**

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

### **5.6 Effective Date of Request for Refund**

The request of the employer for Refund of excess contributions must be in writing and shall not be effective until it is received by the Fund.

### **5.7 Supporting Documentation**

It shall be the obligation of the employer to provide evidence proving that the contribution or payment was made because of mistake of law or fact. 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.

### **5.8 Time Period for Refund**

The Refund of contributions shall be considered as returned within the required period if the employer establishes to the satisfaction of the Trustees its right to a Refund of contributions within 6 months after the date on which the Trustees determined that a mistake occurred.

### **5.9 Employer Compliance**

The failure and/or refusal of the employer 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 Refund of excess contributions.

### **5.10 Definition of Refund**

As used in this policy, the term "Refund" shall include the offset of previously-submitted excess contributions against currently due contributions ("credits"). 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 same extent and under the same terms and conditions as such employer may be entitled to a Refund under this Policy. Any employer attempt to recoup any excess contribution through a procedure other than the one described in this paragraph (for instance by the employer unilaterally take a credit) shall result



in the automatic forfeiture of the Refund and the treatment of any credit taken by the employer as a delinquent contribution.

**ARTICLE VI**  
**ATTORNEYS' FEES AND COSTS**

**6.1 Attorneys' Fees**

Attorneys' fees shall be due to the Funds from a delinquent employer at the rate authorized by the relevant CBA and/or Declarations of Trust and consistent with past practice. Or, if the CBA and Declarations of Trust are silent as to the appropriate rate, then Attorneys' Fees shall be assessed at rates consistent with ERISA.

**6.2 Other Fees and Costs**

Subject to the limitations in Section 4.6, 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 or to properly allocate, credit and record such Contributions as necessary to administer the Funds, and (c) to enforce the Trustees' right to audit the employer's payroll records, shall be due to the Fund from the delinquent employer, including, but not limited to, any 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.

**ARTICLE VII**  
**REPORTS**

**7.1 Reports**

The Fund Office, or as the case may be, Delinquency Counsel or the Funds' auditor, shall prepare a delinquency and audit report to be presented periodically at meetings of the Delinquency Committee and the Board of Trustees. The report shall identify by Fund the delinquent employers, the amount owed, and the Due Date of the delinquent Contributions and the steps that have been taken to collect delinquent Contributions. The determination of the Trustees with respect to action on such Contributions, and the specific basis thereof, shall be recorded in the minutes. The report shall also include a list of those employers who have undergone an audit during the period since the last Trustees' meeting.

**7.2 Agreements**

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

### **7.3 Settlements**

All written settlements of delinquencies shall be on file in the Fund Office.

## Appendix 1

### *Liquidated damages/interest applicable to Employers signatory to ACCNJ CBA*

Due Date: 20<sup>th</sup> day of the month following the month in which the work is performed.

Contributions not received within 30 days of the Due Date are subject to interest assessed as of the Due Date at the rate of 12%.

If arbitration is initiated against the employer, or other legal action is required to collect the delinquent contributions, in addition to the above, such delinquent employer is also assessed attorneys' fees per the schedule below, and costs, including arbitration fees.

Schedule of attorneys' fees: 27 ½% of the first \$750.00; 22 ½ % over \$750.00; Minimum of \$25 per Fund.

**Example:** Employer A is signatory to the ACCNJ CBA. Employer A does not remit contributions for work performed in May by the 20<sup>th</sup> of June. As of July 20<sup>th</sup>, the Employer is assessed interest at the rate of 12%, calculated back to June 20, 2023. Employer A fails to remit the delinquent contributions and arbitration proceedings are initiated against the Employer. Following arbitration, Employer A is required to pay the principal amount of the delinquent contributions; plus interest at the rate of 12%, assessed as of the Due Date; plus arbitration fees; plus attorneys' fees (pursuant to the schedule) and costs.

### *Liquidated damages/interest applicable to Employers signatory to GBCA CBA*

Due Date: 15<sup>th</sup> day of the month following the month in which the work is performed.

Contributions not received within 10 days of the Due Date are subject to liquidated damages of 10% of the gross amount due.

If arbitration is initiated against the employer, or other legal action is required to collect the delinquent contributions, in addition to the above, such delinquent employer is also assessed interest at a rate not less than prime plus 1%, attorneys' fees and costs, including arbitration fees.

**Example:** Employer B is signatory to the GBCA CBA. Employer B does not remit contributions for work performed in May by the 15<sup>th</sup> of June. As of June 25<sup>th</sup>, the Employer is assessed liquidated damages in the amount of 10% of the gross amount due. Employer B fails to remit the delinquent contributions and arbitration proceedings are initiated against the Employer. Following arbitration, Employer B is required to pay the principal amount due; plus liquidated damages in the amount of 10% of the gross amount due; plus interest at a rate of 9.5% assessed as of the Due Date; plus administrative fees; plus arbitration fees; plus attorneys' fees and costs.