

## **BRICKLAYERS JOINT DELINQUENCY COMMITTEE COLLECTION POLICY AND PROCEDURE**

The Trustees of the Bricklayers Joint Delinquency Committee, acting pursuant to the authority and duties vested in them by the Enabling Resolutions establishing said Committee and by the Agreements and Declarations of Trust and in recognition of their duty to establish and implement collection procedures which are reasonable, diligent and systematic, do hereby set forth this Collection Policy and Procedure as a memorialization of their policies and procedures.

### **I. Reporting and Contributions**

All fringe benefit contributions are due by the fifteenth day of the month following the month in which the work was performed. The contributing employer shall prepare for each calendar month the monthly payroll report form, providing all required information for each covered employee. This form and the contribution check due from the contributing employer for that calendar month shall be submitted by the contributing employer to the address provided on the form. A completed form and accompanying contributions are expected monthly from each contributing employer.

The amount of employer contributions and the employees on whom contributions are due are based solely and exclusively on the collective bargaining agreement(s) then applicable, and all documents and agreements appended thereto or incorporated by reference therein and, where applicable, other pension and/or Welfare agreements. Verbal agreements or statements that may be or are made by any party which purport to limit, expand or in any way alter or change the contributing employer's duty to contribute or the amount and/or extent of its responsibility to contribute from that set forth in the collective bargaining agreement(s) then applicable, and all documents and agreements appended thereto or incorporated by reference therein and, where applicable, other pension and/or welfare agreements, are **not** valid or effective to in any way alter the rights of the Funds to the full amount and extent of contributions due them.

### **II. Payroll Auditing**

In order to ensure that eligible employees and their beneficiaries receive the benefits to which they are entitled, it is the policy of the Trustees to audit the books and records of newly-signatory contributing employers six months after they become signatory and to audit the books and records of other contributing employers at least once every three years as one means of determining the accuracy of contributions upon which benefits are predicated.

Routine audits of contributing employers are initiated by the Funds' Trust Investigator and, except for newly-signatory contributing employers, cover the most recent three year period. If a discrepancy is found, the audit covers either the entire period during which the employer was required to make contributions or the entire period since its last audit.

Non-routine audits of contributing employers are initiated by the Trust Investigator or by one or more of the following:

1. Upon request of the local union.
2. Upon request of a Trustee.
3. Upon request of legal counsel.
4. Upon receipt of notice that a contributing employer is in bankruptcy.
5. Upon receipt of notice from the union that an employer is no longer obligated to contribute.
6. Upon receipt of credible information from a third party that contributions are not being paid accurately.

Audits will include amounts owed by the contributing employer to all Funds and entities to which contributions are owed under the terms of all applicable collective bargaining agreements and documents incorporated therein by reference, and, where applicable, pension and/or welfare agreements.

Contributing employers are notified in writing by the Funds' Trust Investigator or auditor that the Trustees have directed that a payroll audit be conducted on behalf of the Funds and of the records to be produced for audit. The auditor attempts to schedule the audit promptly at a date and time convenient for the contributing employer.

If the contributing employer resists scheduling or repeatedly asks that the audit be rescheduled, the Trust Investigator consults with legal counsel, who may, in an appropriate case, initiate litigation or other legal procedures to compel the production of records for audit.

If the contributing employer refuses to provide all records which the auditor believes to be necessary to the audit, the Trust Investigator and/or the auditor consults with legal counsel, who may, in an appropriate case, initiate litigation or other legal procedures to compel the production of records for audit.

The records required vary from situation to situation and from accounting system to accounting system. However, the following items are always to be made available if requested for audit and copying, though this list does not restrict the right to audit and review any other records that are needed to accurately determine the contractual fringe benefits owing:

Each employee's payroll records (regardless of craft or occupation), provided such records indicate the employee's name, address, social security number, occupation, straight time and overtime hours worked, rate of pay, gross earnings, F.I.C.A. deduction, withholding tax deduction, any other deductions, check number and net pay.

Copy of W-2 forms filed for each employee for each year.

Copy of W-3 form filed for each year.

Copy of W-4 form filed for each employee for each year.

Copy of all 1099 forms issued annually.

Copy of 1096 form filed for each year.

Copy of all 940 and 941 forms for each year and canceled checks supporting same.

Copy of all M.E.S.C. Forms 1017 (employer's quarterly wage detail report) for period being audited.

All cash disbursement records, including check registers and journal entries.

All job cost records, showing payroll costs.

City, state, and federal tax returns.

Time and material billing records.

Certified payrolls

If questions or issues arise regarding the trade jurisdiction of any person, the effective date(s) of the agreement(s) to contribute, the classification of employees or other matters of a similar nature involving legal questions, the Trust Investigator or the auditor consults with legal counsel and/or the parties to the agreement or agreements involved.

Where an employer fails to maintain adequate books and records from which the exact fringe benefit contribution amount can be calculated, the auditor shall determine the contribution amount due from the available documents, reconstructed records, and/or other available information. Such determination shall be **prima facie** evidence of the employer's indebtedness and the employer shall then have the burden of coming forward with such additional contemporaneous documentary evidence as will establish the contribution amount due. If an employer's payroll records indicate the amount of remuneration paid to an employee, but not the number of hours worked by such employee for which contributions are due, the auditor shall determine the number of such hours based upon the best available information.

At the conclusion of the audit, the contributing employer is notified in writing of the auditor's findings and provided an opportunity to challenge the audit results. The contributing employer which does not challenge the audit results shall remit the amount(s) shown due in the manner provided in the audit result/billing letter. Delinquencies revealed by audit that remain unpaid, including those which the contributing employer has challenged without legal basis in the view of legal counsel for the Fund, shall be turned over to legal counsel for collection (see Part IV).

Once a matter has been referred to legal counsel, all contacts with or from the contributing employer or any representative thereof are referred to, cleared with or reported to

legal counsel. Legal counsel is also notified of any payment made on the referred indebtedness, any interest assessments subsequently levied, any subsequent audits with respect to the contributing employer subject to the collection referral, and all settlement discussions.

### **III. Delinquent Contributions**

All contributions not paid by the final day of the month following the month in which the work was performed shall be assessed simple interest at a rate of 10% per annum, beginning the first day after the due date of the fringe benefit contributions, i.e., the fifteenth day of the month following the month in which the work was performed.

When fringe benefit contributions are delivered in person to the authorized agent of the Trustees, the date stamped on the contribution form by the authorized agent will identify the date of payment. When fringe benefit contributions are delivered by mail, the date of payment will be the date of receipt. When fringe benefit contributions are directly wired (E.F.T.) to the lock box account of the Funds, the settlement date will identify the date of payment.

The Trustees will consider and act upon requests for reduction or waiver of interest.

### **IV. Collections and Enforcement**

Matters are referred to legal counsel for collection by the Trust Investigator where a contributing employer is in bankruptcy, where suit has been filed against the Funds involving collection or delinquent contributions, where a contributing employer refuses to permit an audit or to provide all of the necessary records to perform the audit, where the contributing employer fails or refuses to remit the amounts determined to be due, or where an emergency situation develops. Such referrals are reported to the Trustees at their next meeting.

Once a matter has been referred to legal counsel, legal counsel is also notified of any payment made on the referred indebtedness, any interest assessments subsequently levied, any subsequent audits with respect to the contributing employer subject to the collection referral, and all settlement discussions.

Legal counsel may, in the course of its collection efforts, find it from time to time advisable, for the facilitation of collection and in view of attendant circumstances, to recommend that the Trustees extend the time for payment of delinquent contributions, accept less than the entire amount due in satisfaction of a contributing employer's indebtedness or determine that a debt is uncollectible in whole or part. As a condition for acceptance of such recommendation, the Trustees require that the terms and conditions of Prohibited Transactions Class Exemption 76-1, Part A, be met.

Legal counsel may take any action between meetings with respect to a collection matter which is within the authority of the Committee if a meeting of the Committee cannot be scheduled in a timely manner. Such actions shall be reported at the next regular meeting of the Committee or sooner, if that is appropriate under the circumstances.

The employer shall be charged with all costs, including actual attorney's fees, incurred by the Funds as a result of litigation that the Trustees find necessary as a result of the employer's failure to provide records for audit and/or report and pay fringe benefit contributions and liquidated damages as required hereunder. Such legal proceedings include direct actions against the employer and actions to which the employer is not a party, such as liens, bond claims, and prevailing wage claims, which are brought to collect the employer's delinquent fringe benefit contributions and/or liquidated damages.

In making the decisions regarding what collection actions to take, the Trustees will weigh the amount of the contributions involved, the likelihood of a successful recovery, and the expenses expected to be incurred. Among other factors, the Trustees may take into account the employer's solvency in deciding whether to expend plan assets to pursue a claim

#### **V. Overpayments**

If it is established through audit, or otherwise, that a contributing employer has overpaid contributions to some or all of the Funds to which contributions are paid, it shall be within the sole discretion of the Trustees of the respective Funds to determine whether some, all, or any of the overpayment shall be refunded and whether any refund shall be in the form of a direct payment to the contributing employer or a credit upon future contributions owed by that employer. No interest shall be paid or any amount refunded.

#### **VI. Quorum Requirements**

Three Trustees, consisting of at least one Employer Trustee and one Union Trustee, shall constitute a quorum for a meeting of the Trustees. Actions of the Trustees taken at a meeting shall be by majority vote. At any time any matter is voted upon at a meeting, the Employer Trustees shall cast three votes (including abstentions) which shall be divided equally among those Employer Trustees present and the Union Trustees shall cast three votes (including abstentions) which shall be divided equally among those union Trustees present. Any actions of the Trustees taken at a meeting in the absence of a quorum must be ratified at a later meeting of the Trustees at which a quorum is present.

(As adopted October 19, 2001 and revised on April 18, 2008, September 23, 2008 and December 2, 2009)