

Education Fund

seiu2015 Long-Term Care Workers

COLLECTION POLICY AND PROCEDURES

Adopted on
05/19/2014

Amendment Approved on
08/14/2018

I

PURPOSE AND OBJECTIVES

The Trustees of the SEIU Local 2015 Education and Training Trust Fund (the "Fund") recognize their fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA) and the Trust Agreement establishing the Fund to collect employer contributions required by the collective bargaining agreements (CBA).

The purpose of these Collection Policy and Procedures ("Procedures") is to enforce, in a reasonable and cost-effective manner, the obligation of participating Employers to make Contributions to the Fund as required by the Fund's Trust Agreement as well as the underlying CBAs. An Employer that is required by the terms of a CBA to contribute into the Fund is obligated to submit to the Fund monthly Contribution Reports and Contributions in a timely, correct and complete manner. Each Employer must maintain complete and accurate records for employees for whom Contributions are required by the CBA.

These Procedures are designed to state:

1. when the Fund shall send notices to Employers notifying and/ or requesting the Contributions and Contribution Reports;
2. when the Employer becomes delinquent in Contributions and/or Contribution Reports;
3. when the Fund shall refer delinquencies in Contributions and/or Contribution Reports to the Fund's collection attorney; and

4. under what circumstances claims for Contribution and/or Contribution Reports may be settled or abandoned.
5. when the Fund may send an Employer a Request for Explanation in regards to inconsistent reports and/or contributions
6. when the Fund may audit the payroll records of Employers

The Trustees hereby direct the Fund or a designee of the Board to carry out this policy.

II DEFINITIONS and EXPECTATIONS

1. The Fund will send out the Welcome Packet, including Welcome Letter from Trustees, Collection Policy and Procedures, Instructions for Submitting Contributions and Contribution Reports, and a Contribution Report template, 60 days prior to contribution start date, if CBA is signed and proper Employer contact information is received. If no response is received from the Employer, the Fund will follow up with the Employer once a week for three weeks via phone, mail and email.
2. Due Date for Contributions and Contribution Reports (“Due Date”). Contributions for total straight time hours worked and Contribution Reports are due no later than twenty five (25) calendar days following the month in which the contributions accrue pursuant either to (1) the CBA in effect at that time or (2) any obligation under the law to continue making such contributions following expiration of the CBA or by a successor employer.

For example: The Contributions and Contribution Report submitted in May shall be based on the payroll for the month of April and shall be received by the Fund no later than the 25th day of May.

3. Delinquency Date for Contributions (“Delinquency Date”). A participating Employer shall be considered delinquent if it fails, by the fifth (5th) calendar day after the Due Date, to (a) submit a complete Contribution Report, (b) pay the contributions detailed in the respective Contribution Report and/or (c) pay the full amount of contributions required at the then-applicable contribution rate or formula specified in the applicable CBA or as required by law following expiration of the CBA or by a successor employer.

For example: If complete and accurate Contributions and Contribution Report based on the payroll for the month of April are not received by the Fund by the 30th day of May, then the Employer will be considered delinquent.

4. For the sound and efficient administration of the Fund, the Employer contributions shall be accompanied by the electronic submission of an excel Contribution Report listing the facility full name, facility owner, address, phone number, facility supervisors' (Administrator, DSD, DON, etc.) names and contact information along with the following for each employee in the bargaining unit:

- i. Full Name
- ii. Date of Birth
- iii. Number of straight time hours worked during the previous month
- iv. Contribution month and year
- v. Current Contribution Rate
- vi. Total Contribution Due
- vii. Current job classification
- viii. Social security number
- ix. Phone number (upon hire or current)
- x. Full home address (upon hire or current)
- xi. Employee ID
- xii. Email address (if available)
- xiii. Hire date
- xiv. Termination date
- xv. Leave start date
- xvi. Leave end date

5. If Contribution Reports are NOT provided in the format and with the details requested by the Fund more than 3 times per year, LDs and interest may be assessed as determined by the Trustees. If inaccurate Contributions are received, LDs and interest may also be assessed as determined by the Trustees.

6. New Hires

Contributions for newly hired bargaining unit employees must be received starting first day of employment during the Education Fund contribution start and end date unless otherwise provided by the CBA.

7. Union Membership Status

The Employer's obligation to report and contribute to the Fund on behalf of bargaining unit employees is in no way affected by whether or not an employee elects to be a Union member or an agency fee payer or has completed a dues check off card.

All employees working in bargaining unit classifications must be included on all monthly payroll reports, and included in the calculation of contribution payments unless the CBA specifies otherwise.

III CONTRIBUTIONS, CONTRIBUTION REPORTS, LIQUIDATED DAMAGES, INTEREST, ATTORNEY'S FEES AND COSTS

1. Employer Contributions shall be paid into the Fund in such manner and at such time and place and along with complete Contribution Reports as the Trustees may prescribe. Contributions to the Fund shall be payable on a monthly basis as the Trust Agreement or these Procedures may require, and shall be forwarded to a central depository designated by the Trustees. Said Contributions are to continue in accordance with the Contribution schedule and amounts required by any CBA, the Trust Agreement and of any other writing in such form as the Trustees may prescribe for agreeing to become bound by the terms of the Trust Agreement.

2. The regular and prompt payment of Employer Contributions and Contribution Reports to the Fund is essential for the sound and efficient administration and the maintenance of the Fund. It is also necessary for members' timely access to the approved benefits and to enable the Fund to comply with the requirements of Federal and applicable state laws. It would be extremely difficult, if not impracticable, to fix the actual expense and damage to the Fund which would result from the failure of the Employer to pay its Contributions in full in accordance with the requirements set forth in the Trust Agreement or these Procedures. Therefore, the amount of damage to the Fund resulting from any such failure shall be presumed to be the greater of the sum of ten dollars (\$10) or ten percent (10%) of the contributions.

This liquidated damage amount shall become due and payable to the Fund by the Employer as liquidated damages (LDs), and not as a penalty, immediately upon the Delinquency Date. Interest will also be assessed, at 4% as determined by the Trustees or at the rate prescribed by Section 6621(a)(2) of the Internal Revenue Code, against each Employer whose Contributions are delinquent.

3. The Trustees shall have the right to collect said sums due and owing, including reasonable attorney fees and costs of collection.

IV NOTICE PROCEDURE

1. If the complete Contribution Report and Contributions are not received by the Delinquency Date, the Fund shall, no later than the fifth business day after the Delinquency Date, notify the Employer in writing (a) that the Delinquency Date, which will be specified, has passed, (b) that the Employer has not provided the complete Contribution Report and/or paid, in part or whole, the contributions due, and (c) that liquidated damages (LDs) and interest at 4% as determined by Trustees or at the rate for underpaid contributions specified by the IRS are also immediately due. A copy of the notice shall be sent to the Trustees and the Union.

2. If an Employer does not respond to the First Delinquency Notice delivered in writing within 10 business days, the Fund, shall reach out to the Employer via email, phone and/or mail and shall deliver in writing the Second Delinquency Notice no later than 10 business days after the date of the First Delinquency Notice. If the Employer does not respond to the Second Delinquency Notice after 10 business days from the notice date, the Fund should deliver in writing a Third Delinquency Notice. The Fund's attorney should be notified if the Employer does not respond to the Third Delinquency Notice 10 business days after delivery. Early referral to the attorney is permitted if the Employer is not compliant repeatedly and/or there is a reasonable need for it.

3. In the case of any Employer whose contract provides for a limitation on collection of fewer than 180 days, the Fund shall refer the case to the Fund's attorney for collection after the Second Delinquency Notice.

4. When an Employer remains delinquent 30 business days after the date of the First Delinquency Notice (or one month after such date, in the case of an Employer with a contractual limitation on collection of less than 180 days), the Fund shall immediately refer the case to the Fund's attorney for collection, together with copies of the CBA and any other agreements on file with the Trust, all correspondence with the Employer regarding the delinquency, the most recent Contribution Report, and any other documentation deemed relevant by the Fund. In consultation with the Fund's attorney, the Fund may also pursue the collection of delinquent amounts through other channels, including but not limited to labor arbitration to adjust a grievance brought against the Employer by the exclusive representative of the employees on whose behalf delinquent contributions are due.

5. Once the matter has been referred to the Fund's attorney, the Fund shall keep the attorney advised of all significant (as determined by the Fund) communications by the Fund with the Employer. The Fund shall also periodically update the attorney regarding additional delinquencies of the respective Employer and the amounts thereof.

V
ATTORNEY REFERRAL

1. When a delinquent Employer is referred to the attorney, the attorney will send a demand letter to the Employer in writing stating that a lawsuit will be filed unless the full amount due (including the liquidated damages and interest) is paid within a stated time, not to exceed 30 calendar days from the date of the letter sent to the Employer by the attorney. A copy of this letter shall be sent to the Fund and the Union.

2. If payment is not timely received in full, suit shall be filed promptly unless the attorney in the exercise of his/her professional opinion concludes that additional time to investigate and/or resolve the matter is warranted under the circumstances; or unless the Trustees, in consultation with the attorney, determine that release or compromise without filing suit is appropriate in the circumstances (Article VI – Settlements and Releases). The attorney shall endeavor to obtain tolling agreements to avoid any defense of untimeliness in any case in which the applicable statute of limitations may expire in less than six months.

3. The Trustees may authorize the Fund or designee to pursue collection through small claims court where the total amount sought to be recovered is \$10,000 or less.

4. In the event that the Employer remains liable for contributions following expiration of the CBA, or as a result of the Employer's successorship to the obligations of an Employer that was bound by a CBA, the attorney shall file unfair labor practice charges with the National Labor Relations Board on behalf of the Fund, if directed by the Board of Trustees.

VI
SETTLEMENTS AND RELEASES

1. The Trustees may compromise, settle or release claims or demands in favor of or against the Fund, on such terms and conditions as the Trustees may deem prudent, provided however, that such action shall not excuse any violation of any CBA insofar as it is between the Employer and the Union.
2. Any agreement between the Fund and any Employer whereby the time is extended for the making of a Contribution by such Employer to the Fund, must meet the following conditions:
 - (a) Prior to entering into such agreement the Fund has made, or has caused to be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such Contribution;
 - (b) The terms of such agreement are set forth in writing and are reasonable under the circumstances based on the likelihood of collecting such Contributions or the

approximate expenses that would be incurred if the Fund continued to attempt to collect such Contribution through means other than such agreement; and

- (c) Such agreement is entered into or renewed by the Fund in connection with the collection of such Contribution and for the exclusive purpose of facilitating the collection of such Contributions.
3. Any agreement between the Fund and any Employer whereby the Fund agrees to accept less than the entire amount owed by such Employer in satisfaction of such Employer's obligation to pay the entire amount of such Contribution must meet the following conditions:
- (a) Prior to entering into such agreement, the Fund has made, or has caused to be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution in its entirety; and
 - (b) The terms of such agreement are set forth in writing and are reasonable under the circumstances based on the likelihood of collecting such contribution or the approximate expenses that would be incurred if the Fund continued to attempt to collect such contribution through means other than such agreement.
4. A determination by the Fund to consider Contributions due from any Employer as uncollectable, in whole or in part, and to terminate efforts to collect such Contributions must meet the following conditions:
- (a) Prior to making such determination, the Fund has made, or has caused to be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such Contributions or any part thereof; and
 - (b) Such determination is set forth in writing and is reasonable and appropriate based on the likelihood of collecting such Contributions, or the approximate expenses that would be incurred, if the Fund continued to attempt to collect such Contributions.

VII

REQUEST FOR EXPLANATION AND AUDIT PROCEDURES

1. The Fund may submit a Request for Explanation to an Employer under the following circumstances and Employers are required to respond within 10 business days:
 - a. When number of employees reported are at least 20% lower compared to previous month(s)

- b. When number of hours reported are at least 20% lower compared to previous month(s)
 - c. When contributions submitted are at least 20% lower compared to previous month(s)
 - d. When contributions are not received for all bargaining unit job classifications listed in the CBA
 - e. When contributions are missing for bargaining unit employees who are interested in participating in trainings
2. Upon receipt of written notice from the Fund at least sixty (60) calendar days in advance, the Employer agrees to make available for inspection by the Fund, the payroll records for bargaining unit employees to enable the Fund to verify the accuracy of the Employer's contributions.

The Fund shall initiate an audit under the following circumstances:

- (a) when an Employer's assets are sold or transferred;
- (b) whenever information is secured by the Fund from any reliable source from which it appears an Employer is engaged in improper reporting to the detriment of the Fund, its participants and beneficiaries;
- (c) whenever an Employer is delinquent \$10,000 or more in contributions for more than 40 days; or
- (d) periodically on a three (3) year cycle

Reliable sources of information, for the purposes of subsection (b), include, but are not limited to, the Union representing the Employer's employees; any agency of the government of the State of California or the United States with jurisdiction or authority to act in matters related to an Employer, or the employees; any Employer; and any publication of wide print or online distribution.

Employers must make all payroll records available to the Auditor, comply during the audit and be available to respond to inquiries.

3. The Fund may, within its discretion, initiate an audit other than under the circumstances set forth in subsection 2 of Article VII with respect to any Employer with a CBA which provides by its terms for a limitation on the time for the collection of Contributions by the Fund ("contractual limitation period") shorter than the period provided by section 337 of the California Code of Civil Procedure; provided that the Fund shall initiate no more than one discretionary audit

during any single contractual limitation period, with respect to an Employer whose contract provides for such a contractual limitation period.

4. The Auditor shall provide the Employer a copy of the preliminary audit findings and notify the Employer in writing that it has the opportunity to discuss the audit findings with the Auditor within 30 calendar days from the date of the notice. The Auditor shall finalize the audit promptly after the expiration of said 30 calendar days unless the Trustees postpone finalization for a period not to exceed 30 additional calendar days but then only pursuant to a written request from the Employer.
5. As soon as the audit is finalized, the Fund shall notify the Employer in writing of the audit results, including liquidated damages (LDs) and interest assessed in accordance with Article III. The Fund will advise in writing the Employer that if it does not pay the full amount due within 30 calendar days from the date of said notice, the matter shall be referred to the Fund's attorney. In the event that an Employer's books are audited and delinquent amounts of underpaid Contributions in excess of \$1,000 are found due, the Employer shall be charged the costs of said audit.
6. The Fund shall also refer to the attorney all cases in which an audit has been requested by the Fund and the Employer has refused or delayed such audit. Upon referral by the Fund, the attorney shall take such legal action to compel such audits, if in the attorneys' professional opinion it is necessary and prudent to do so.

VIII

BAD CHECKS DUE TO INSUFFICIENT FUNDS

Where an Employer issues a check that is returned by the Fund's bank due to insufficient funds, the Fund shall impose a penalty on the Employer equal to the greater of the: (i) amount charged by the Fund's bank to the Fund; or (ii) \$25 for the first bad check and \$50 for each subsequent bad check. In the event of two or more bad checks are tendered by the Employer within a 12-month period, the Fund may also require the Employer to pay Contributions by cashier's check for a period of 24 consecutive months.

IX

VARIATION FROM PROCEDURES

The Fund and its trustees, and any agents of the Fund may, from time to time, deviate from these Procedures provided that such deviations are made in subjective good faith. Any Employer or Union challenging the subjective good faith of a particular deviation shall have the burden of proof.