

**THE PHILADELPHIA BAKERY EMPLOYERS'  
AND FOOD DRIVER SALESMEN'S UNION LOCAL NO. 463  
AND TEAMSTERS' UNION LOCAL NO. 676  
PENSION FUND**

**Policy for Payment of Employer Contributions,  
Collection of Delinquent Employer Contributions,  
Employer Payroll Audits and Employer Contribution Overpayments**

The Pension Committee of the Philadelphia Bakery Employers' and Food Driver Salesmen's Union Local No. 463 and Teamsters Union Local No. 676 Pension Fund ("Fund") has adopted the following policy ("Policy") for the payment of employer contributions, collection of delinquent employer contributions, employer payroll audits and employer contribution overpayments.

**SECTION 1: GENERAL POLICY**

It is the policy of the Pension Committee to collect all employer contributions as they are due and to make such diligent and systematic efforts in that regard as are appropriate under the circumstances. Every employer must contribute to the Fund all contributions owed to the Fund under the terms of the Fund's official plan document ("Plan Document"), a collective bargaining agreement ("CBA"), a participation agreement or other document or agreement of similar import, rules established by the Pension Committee (including this Policy) or applicable law ("Contributions"). Each employer shall remain subject to this Policy with regard to the time period during which the employer was obligated to contribute to the Fund. The Pension Committee and their designees have the legal right to exercise all remedies allowable under the aforementioned documents, the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and other applicable law, including, but not limited to:

1. The right to establish a date on which contributions are due;
2. The right to audit the financial records of the employers, including, but not limited to, payroll ledgers, federal and state tax returns, IRS Form 941 and 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 or pre-scheduled audit program;
4. The right to require that a delinquent employer pay the cost of an audit, interest, liquidated damages, attorneys' fees and any other expenses incurred by the Fund in determining the amount of a delinquency and in collecting a delinquency; and
5. The right to take any other steps and to perform all other acts that are necessary in order to collect contributions due to the Fund in a timely and expeditious manner.

The procedures set forth herein shall be followed unless the Pension Committee determines, in its sole discretion, that they should be waived in a particular instances.

All questions or disputes related to the interpretation, meaning and/or application of this Policy with respect to the Fund shall be resolved by the Pension Committee in the exercise of its discretion and in the performance of the Pension Committee members' fiduciary obligations to the Fund's participants and beneficiaries, in the protection of the financial integrity and soundness of the Fund and the efficient and effective administration of the Fund.

## **SECTION 2: COLLECTION PROCEDURES AND OTHER PROCEDURES IN CASES OF DELINQUENCY**

In accordance with the Plan Document, ERISA, the CBA, applicable participation agreement or other document or agreement of similar import, and the above declaration of policy, the following administrative steps shall be taken to effectuate the collection of delinquent contributions.

1. Every employer must pay Contributions within the ten (10) business days following the end of the calendar month the Contributions accrued for work performed or hours paid ("Due Date"). For the purposes of this Policy, a "business day" is any day that the New York Stock Exchange is open for business.

2. If the Contributions are not received by the end of the month in which the Due Date occurs, the employer will be liable for interest beginning on the first day of the month following the month in which the Due Date occurs. Such interest will be assessed on the amount of the delinquent Contributions for any given month at an annualized rate equal to 2% through the date payment is made. The Fund Administrator shall notify the employer soon after the Due Date if Contributions are not received, but no later than five (5) days before the end of the month in which the Due Date occurs. This notice will inform the employer that if Contributions are not received by the end of the month in which the Due Date occurs, that it is the Fund's policy to apply the interest described in this Section 2 beginning on the first of the following month.

3. Once the delinquent Contribution is received, the Fund Administrator will notify the employer of the interest accrued as a result of the delinquent Contribution within ten (10) business days. If an employer pays the delinquent Contributions but does not pay accrued interest and/or any other amount owed under this Policy, acceptance of such delinquent Contribution payment shall not constitute a waiver of the Fund's claim for accrued interest and/or any other amount owed under this Policy, unless the Pension Committee agrees to such waiver in writing.

4. If the Contributions remain delinquent for sixty (60) days after the last day of the month in which the Due Date occurs, the delinquent Contributions will be referred to legal counsel for collection. In addition to interest described in Paragraph 2, above, the employer will be liable for any legal fees and all other costs incurred in the collection of the delinquent Contributions.

5. When a delinquent Contribution is turned over to legal counsel for collection, legal counsel will send a letter to the employer in a timely fashion demanding immediate payment and

advise the employer that if the delinquent Contributions are not paid, the employer will be liable for interest, legal fees and all other costs of collection. In the event an employer fails to pay the delinquent Contributions, interest, legal fees and all other costs of collection within ten (10) business days after legal counsel's demand for payment, the Pension Committee may direct legal counsel to initiate legal action as described in Section 3 below.

6. In determining if Contributions are delinquent and the amount of delinquent Contributions for any month, the Fund Administrator is authorized to net any new or outstanding delinquent Contributions with any subsequent Contribution payments and credits an employer has accrued or accrues either as a result of the Fund Administrator identifying an Overpayment in ordinary course, an Overpayment discovered during an Audit or an Overpayment properly claimed and approved (and credit issued) by the Pension Committee under Section 5 of this Policy. The credit shall be used to offset the amount of any outstanding delinquent Contributions, if any, in full or in part.

### **SECTION 3: LEGAL ACTION AND SETTLEMENT**

1. If an employer fails to pay the delinquent Contributions, interest, legal fees and all other costs of collection within ten (10) business days after the notice furnished by legal counsel, as described in paragraph 6 of Section 2 above, the Pension Committee may direct legal counsel to initiate legal action. In determining whether or not to initiate legal action, the Pension Committee may consider a different course of action based upon pertinent factors, which include, but are not limited to, the following:

- a. the amount of the delinquent Contributions;
- b. the length of time the Contributions have remained delinquent;
- c. the financial condition of the employer;
- d. the employer's history of delinquent Contributions;
- e. the likelihood of collecting on a judgment once it is obtained;
- f. the cost of collecting the delinquent Contributions, including if the costs of recovery would exceed the recovery of delinquent Contributions; and
- g. any other factor that, in the discretion of the Pension Committee, may have a material bearing on the collection of the delinquent Contributions.

Notwithstanding the procedure set out in this Policy, the Pension Committee may refer any delinquent Contributions to legal counsel at an earlier or later date than provided for herein when circumstances warrant that collection action be expedited or delayed.

2. Where legal action has been initiated, legal counsel will seek all remedies available under the law, including, without limitation, recovery of the delinquent Contributions, interest, legal fees, any other costs of collection, the remedies provided under Section 502(g)(2) of ERISA, and injunctive relief.

3. The Pension Committee is authorized to negotiate and enter into settlements regarding any delinquent Contributions, with employers through its legal counsel under such terms as the

Pension Committee may direct. All settlement agreements must be in writing and signed by a representative of the Fund and the employer.

4. Legal counsel and/or the Fund Administrator may, without consultation with, or approval of the Pension Committee, (i) agree to the immediate payment of the full delinquent Contribution; (ii) reject any proposal for settlement that contemplates payment of delinquent Contributions over a period of time, if its acceptance would result in collection of less than the total delinquent Contributions, or (iii) if in legal counsel's and/or the Fund Administrator's opinion, the settlement proposal is unreasonable. Any rejection of a proposed settlement by legal counsel and/or the Fund Administrator shall be subject to the Pension Committee's subsequent review.

#### **SECTION 4. PAYROLL AUDIT POLICY**

The Fund will conduct random payroll audits ("Audits") periodically to ensure the accuracy of the Contributions paid by employers in accordance with the following:

1. The Pension Committee may select the party to perform the Audits (the "Auditor"), including the Fund Administrator in its sole discretion. However, until the Pension Committee determines otherwise, the Fund Administrator shall be the Auditor. Where this Section 4 requires the Auditor to notify, consult with, or deliver any reports to the Fund Administrator, for so long as the Fund Administrator is the Auditor, such requirements shall not apply.

2. The Pension Committee will determine in its discretion when to conduct such Audits in consultation with the Fund Administrator, taking into account all of the facts and circumstances relevant to each situation, with the general goal of each employer being audited at least once every five (5) years. Notwithstanding this general goal, Audits shall occur when an employer ceases to have an obligation to contribute to the Fund.

3. The scope of the Audit shall normally include the two (2) prior calendar years unless the Pension Committee determines otherwise in its sole discretion under such circumstances as the Pension Committee deems necessary or appropriate.

4. If an employer ceases to have an obligation to make contributions to the Fund under the Plan Document, CBA, applicable participation agreement or other document or agreement of similar import, or under applicable law including ERISA, 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 make Contributions.

5. Prior to conducting each Audit, the Auditor shall notify the Fund Administrator and review the employer's CBA, participation agreement and/or any other related document for any pending issues. If during the Audit, the Auditor encounters issues related to the interpretation of the aforementioned documents, or an employer takes a position inconsistent with the Auditor's understanding of such, the Auditor shall seek the opinion of the Fund Administrator. The Fund Administrator will forward a letter to the employer advising it of the impending Audit, citing the Pension Committee's authority to conduct the Audit and describing the records required. Every

employer must grant the Auditor access to all of the employer's records reasonably needed to perform the Audit, such as records of all employees (regardless of whether or not such employees participate in the Fund), and all business activities and operations.

6. In the event an employer refuses to permit an Audit upon request by the Pension Committee, or if the employer refuses to provide the Auditor access to pertinent records, the Pension Committee and/or the Auditor shall refer the matter to legal counsel. Legal counsel shall thereafter demand, in writing, that the employer make available such books and records as are necessary for the Auditor to conduct an Audit. If the records are still not made available, upon approval of the Pension Committee, legal counsel shall institute legal action to enforce the Pension Committee's right to conduct an Audit, and the employer shall pay to the Fund all legal fees and other costs incurred as a result of the employer's refusal to cooperate. This provision shall not limit the right of the Union to take any lawful action under the CBA or otherwise.

7. After an Audit is conducted, the auditor shall review with the employer the Auditor's findings. After providing the employer with a reasonable time to respond to the Auditor's findings, the Auditor will issue a final report.

8. Upon receipt of the Auditor's report, the Fund Administrator shall send a letter to the employer demanding payment of any delinquent Contributions found by the Auditor and enclosing a copy of excerpts, of, or as appropriate, the entire Auditor's report. The letter shall inform the employer of the imposition of interest on the delinquent Contributions which shall be calculated as set forth in Section 2, paragraph 2 above. For purposes of collecting the delinquent Contributions, the employer shall pay delinquent Contributions in connection with an Audit within twenty-one (21) days after receipt of the Fund Administrator's letter.

9. The Pension Committee may, in its sole discretion, require any employer to pay for the cost of the Audit if it determines that there is a pattern of substantial underpayment or failure to comply with the employer's Contribution obligations. The Fund's auditor shall advise the Pension Committee of its assessment of the findings and pertinent details related to the payroll audit to assist the Committee's determination.

10. If a payroll audit identifies an overpayment by the employer, the Auditor shall advise the employer of such overpayment and the employer can seek the relief set forth in Section 5 of this Policy.

## **SECTION 5: RELIEF FOR CONTRIBUTION OVERPAYMENTS**

1. This Section constitutes the exclusive remedy for an employer that pays in excess of Contributions owed the Fund, including overpayment of Contributions discovered during an Audit or mistaken Contributions identified by an employer (collectively, "Overpayment").

2. An employer that has made an Overpayment due to a mistake of law or fact may apply to the Fund for a credit against future Contributions. Such application must: (a) be made in writing, (b) explain the reasons for the relief sought by the employer and contain copies of all documentation upon which the employer relies to substantiate its request or which may be

required by the Fund to verify the exact amount of the excess Contributions, and (c) be received by the Fund within twelve (12) months after (i) the date the Overpayment occurred or (ii) the date that the employer was notified that an Overpayment was discovered during an Audit. Failure of the employer to apply for relief under this Section within the timeframe established by the preceding sentence waives the employer's right to seek relief for the alleged Overpayment.

3. The Fund Administrator may grant a credit against future Contributions on obligations if an application submitted under paragraph 2 of this Section clearly establishes the right to that credit—and the application turns on ministerial issues that can be resolved without exercising fiduciary discretion. The Fund Administrator will submit any other applications under paragraph 2 of this Section to the Pension Committee all other applications and the Pension Committee's decision will be final to the greatest extent allowed by law.

4. This Policy presumes that when an employer deserves relief for an Overpayment, that relief should be a credit against future Contributions rather than a refund. The Pension Committee may in its discretion issue a refund to correct an Overpayment, however this will only occur in extraordinary circumstances that preclude a credit from granting relief – such as when the employer no longer has an obligation to contribute to the Fund. Furthermore, the Fund will only pay a refund under terms established by applicable law, including without limitation Section 403(c) of ERISA.

5. If the Fund incurs a direct or indirect cost, expense or liability as a result of an excess Contribution or an employer error in submitting Contributions, any credit or refund of such Contribution shall be reduced by the full value of such cost, expense or liability and the employer shall be responsible for such direct or indirect cost, expense or liability.

6. No employer may attempt to rectify an alleged Overpayment by engaging in self-help or other activities not authorized by this Policy in order to remedy an alleged Overpayment. For example, an employer may not reduce Contributions to the Fund to reflect an alleged past Overpayment. If an employer takes such an unauthorized credit, the withheld Contributions will be deemed as delinquent under terms of this Policy.

## **SECTION 6: LEGAL FEES AND COLLECTIONS COSTS**

1. Legal fees and costs shall be due to the Fund from a delinquent employer, including attorneys' fees, at the hourly rate charged to the Fund for such services, incurred by legal counsel in collection efforts hereunder or in enforcing the Pension Committee's right to conduct Audits.

2. 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 to properly allocate, credit and record such Contributions or necessary to administer the Fund, (c) to enforce the Pension Committee's right to conduct Audits shall be due to the Fund from the delinquent employer, including, but not limited to, routine audit fees incurred to verify that Contributions are properly made to the Fund, any other 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 Pension Committee to determine, discover and collect any of the amounts described herein.

## **SECTION 7: REPORTS**

1. The Fund Administrator shall prepare a delinquent Contribution reports to be presented at each Pension Committee meeting. The report shall identify seriously delinquent employers, the amount owed, the Due Date of the delinquent Contributions and the steps that have been taken to collect delinquent Contributions. At least quarterly, legal counsel will also provide a report to the Pension Committee on the status of litigation on any delinquent Contributions.

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

3. All written settlements of delinquencies shall be on file in the office of the Fund Administrator, subject to the record retention policy approved by the Pension Committee.

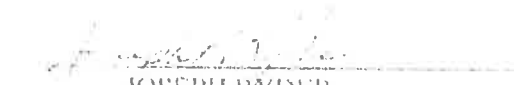
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This Policy is adopted and approved by the Pension Committee on this 19<sup>th</sup> day of NOVEMBER 2019 to be effective on the 1<sup>st</sup> day of January 2020

APPROVED:

UNION TRUSTEES

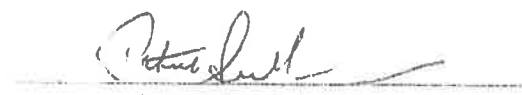
  
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