

**IBEW LOCAL 357 JOINT TRUST FUNDS AMENDED AND  
RESTATED COLLECTION POLICY AND PROCEDURES**

**January 1, 2020**

**1. POLICY**

- A. Delinquent employer contributions (related to employees or stemming from any other basis provided by law or a labor agreement) and withdrawal liability payments (hereinafter "Contributions") create a significant problem for the IBEW Local 357 Joint Trust Funds ("Trusts"). The Trustees recognize their responsibility to collect Employer Contributions and other sums that may be owing to the Trusts under applicable labor agreements, Trust Agreements or applicable law. To fulfill that duty, the Trustees adopt this Amended and Restated Trust Collection Policy and Procedures ("Policy").
- B. The Trustees will endeavor to prudently collect all money owed to the Trusts, which money (whether paid, unpaid, segregated or otherwise traceable, or not) become Trust assets on the Due Date. The Trustees recognize the need to implement a reasonable, diligent and systematic collections program and to coordinate the collection efforts of the Administrative Office, the Auditor and the Trusts' Collection Attorney. Such program shall consist of timely and consistent procedures to ensure prompt collection of amounts owing to the Trusts.
- C. It is the Trustees' policy that all attorneys' fees, audit fees and all other costs be paid by the employer or any other entity for whom legal action was required to carry out any matter herein, whether or not such actions result in a delinquency finding.
- D. This Policy provides general guidelines for routine collections and may be adjusted, modified, or supplemented to fit particular circumstances as determined in the sole discretion of the Trustees.

**2. DUE DATES, INTEREST, LIQUIDATED DAMAGES AND ATTORNEYS' FEES**

- A. Contributions are due in full, by the Due Date, which is before 3 p.m. on the 15th of the month following the month of work ("Due Date"). Contributions must be received by the Due Date or such contributions are delinquent and the employer shall immediately be liable for (a) the unpaid contributions, (b) interest on the unpaid Contributions dating back to the Due Date, (c) liquidated damages, (d) an administrative fee of \$250, and (e) all other costs of collection such as audit and attorney fees. Liquidated damages shall be twenty percent (20%) of the amount of unpaid contributions, or the interest due at the trust rate, whichever is higher. Interest on the unpaid contributions shall be computed at twelve percent (12%), simple interest, from the Due Date to the date of payment in full.
- B. If any date specified in this Policy falls on a Saturday, Sunday or any day that the United States Postal Service does not make regularly scheduled mail deliveries, then such date shall be the next following day on which regularly scheduled deliveries of the United States mail are made.
- C. Employers having zero covered hours to report during a month, or a "no-man" report, are required to submit such reports on a monthly basis to the Trusts on or before the Due Date.
- D. At the discretion of the Trustees, employers not having a bond with the Nevada State Contractor's Board, may be required to submit a fringe benefit bond for the benefit of the Trusts with the same parameters and requirements as those described for Habitually Delinquent Employers in Section 7 of this document. The failure of the Trustees to require such a bond from such an employer shall not give rise to a defense, for any party, to any action by the Trusts' hereunder, including but not limited to audits, collection actions or Original Contractor claims under NRS 608.150.
- E. It is the policy of the Trusts to impose and to collect all contributions, liquidated damages, interest, costs, audit costs, administrative fees and attorneys' fees against any liable party, delinquent employer or other employer for whom attorney action was necessary or who did not fully cooperate with the auditing

process (as determined in the sole discretion of the Trustees). The Trustees further recognize that it may be administratively difficult and cause unwarranted expense to impose liquidated damages and interest in some cases. Where costs exceed the benefits, or it is otherwise prudent and in the best interest of the Trusts' participants, the Trustees may waive or reduce interest or liquidated damages on a case-by-case basis. In particular, the Trustees may waive interest for the first time, short term delinquencies occasioned by mail/delivery errors or other good faith de minimis errors determined in the sole and exclusive determination of the Trustees. The Trustees may also determine whether, in such cases, the \$250 administrative fee shall be charged.

- F. All attorneys' fees and other costs expended, including audit fees, shall be paid by the liable party, delinquent Employer or other Employer for whom action was necessary. Attorneys' fees and other costs expended prior to signing a settlement agreement and confession of judgment, including the fees and costs of preparing the documents, will be collected at the time of signing. Any fees or other costs incurred in implementing or monitoring a settlement agreement will be collected on an ongoing basis.
- G. Employers that are subject to this Policy must pay all legal costs and fees incurred by the Trusts in relation to such Employer. At such times when attorneys' fees have been paid by the Trusts on an hourly basis, the attorneys' fees an Employer that is subject to this Policy must pay shall be the actual time entries multiplied by the actual hourly rates, and costs, billed to the Trusts. At such times when attorneys' fees have been paid by the Trusts on a flat-rate retainer basis, the attorneys' fees an Employer that is subject to this Policy must pay shall be a reasonable amount of hours multiplied by the applicable law firm's standard billable rates for each time keeper, as set forth in an affidavit of counsel, which shall be conclusive as to such amounts, all challenges to the reasonableness of such time or rates being hereby waived by any party subject to this Policy.
- H. Where time is important, the Co-Chairmen of the Trusts may act for the Board. They will notify and solicit ratification from the Board at the next trust meeting of any such action.
- I. Where necessary to protect the interests of the Trusts, any time

period provided for in these procedures may be shortened or modified.

- J. All funds collected shall be deposited into the general funds of the Trusts and all of the employees shall be credited with hours or dollars as appropriate. Amounts collected as liquidated damages, interest, costs, audit fees, attorneys' fees and administrative fees shall be recorded as miscellaneous income. All legal fees and costs incurred in the collection effort shall be charged against the general fund as collection expenses. The allocation of collected funds against contributions due or ancillary costs is in the sole discretion of the Trustees.

### **3. ADMINISTRATIVE OFFICE**

- A. The Trusts employ an Administrator whose job is to receive and monitor employer Contributions, determine which Employers have failed to pay Contributions and/or file a remittance report using the remittance report form required by the Trusts, and to pursue and facilitate collection. The Employer must also sign and submit all other required Trust documentation demonstrating hours and employees worked on all new and pending projects with the name of the owner, general, or original contractor. In their endeavor to immediately address any delinquency and collect all Contributions due, the Administrator may, among other things, maintain a list of the delinquent Employers, send delinquency notices via certified mail to Employers, contact a delinquent Employer directly to demand payment and take all appropriate actions to secure payment of delinquent Contributions, including sending lists of delinquent employers to general contractors or Employer Association as directed by the Trustees.
- B. Promptly following the Due Date, the Administrator will send a delinquency notice via certified mail to the Employer demanding payment of the delinquent Contributions and/or submission of the missing remittance report. A \$250 administrative fee shall also be assessed against any delinquent Employer for each delinquent work month it fails to pay or underpays in addition to liquidated damages and interest. The notice will allow the Employer five (5) calendar days upon receipt of the notice to cure the delinquency, or contact the Trustees or Administrator to finalize payment arrangements.

- C. In the event an Employer fails to pay the administrative fee by the following month's Due Date, an additional \$250 fee will be assessed for each additional month's delay thereafter. Any employer receiving three (3) delinquency notices, even for interest, liquidated damages, and administrative fees only, shall promptly be referred to the Trust Attorney for collection.
- D. Any employer failing to pay the administrative fee three (3) times in any of the previous twelve (12) months shall be considered a repeatedly delinquent employer, and subject to the conditions outlined in Section 7 of this Policy.
- E. Any certified letters returned as undeliverable will be investigated and hand delivered to local employers, or sent via traceable express delivery, whichever is appropriate.
- F. In the event an employer reports and pays Contributions on time but underpays the amount properly due as a result of a computational error, rate change, or other good faith mistake, the Administrative fee will be waived if the amount underpaid is less than 5% of the total Contributions properly due to all funds, the shortage is paid in full by the following Due Date. If the shortage is not paid in full by the following due date, interest accrues on the shortage from the date it was initially due, and will be subject to administrative fees, liquidated damages, and costs associated with collection of the shortage. Shortages in excess of 5% of the total Contributions to all funds properly due will be considered delinquent and subject to interest, liquidated damages, administrative fees and all costs associated with collection.
- G. The Administrator is authorized to investigate all shortages. The Administrator may contact and solicit the cooperation of general contractors, owners or others to prudently protect and collect Trust contributions.
- H. Uncollected accounts can be referred to the Attorney immediately if the Administrator determines that time is of the essence. The Administrator will forward to the Attorney copies of all correspondence, Collective Bargaining Agreements, or memoranda signed by the delinquent Employers, along with any other notes, promissory notes, account records, or other correspondence that may be relevant. The Administrator will send a copy of the referral notice

to the Union and applicable Employer Association, if any.

- J. When Contributions or shortages have been paid after the Due Date and without referral to the Collection Attorney, the Administrator will bill and collect all interest accrued.
- K. Where the Administrator has reason to believe that immediate suit is necessary to protect the interests of the Trusts and to increase the likelihood of recovery by the Trusts for delinquencies, the Administrator may immediately notify the Co-Chairmen and Trusts' Collection Attorney.
- L. To prevent delinquencies and misunderstandings, the Administrator will make themselves available to Employers for review of Contribution and remittance procedures. The Administrator will also respond to employers' questions regarding the Trust's Collection Policy, including the imposition of interest and liquidated damages.
- M. The Administrator, Collection Attorney, Auditor, and others involved in the collection activity will provide the Trustees with periodic reports to enable the Trustees to monitor and supervise the collection efforts of the Trusts.

#### **4. AUDITOR**

- A. The Trust Agreements grant the Trustees the power to conduct compliance audits and to review all necessary books and records of each contributing employer. Specific audit procedures and guidelines for particular industry groups will be established by the Auditor, approved by the Trustees, and become part of this Policy.

The purpose of the compliance audit is to ensure that each employer obligated to make Contributions to the Trusts, is making all required Contributions on behalf of all employees for which it is legally obligated to make such Contributions.

Consistent with this purpose, a compliance audit of each employer shall be undertaken to determine the following:

- (1) Is the employer reporting all hours, weeks or months worked in covered employment?

- (2) Did the employer hire people to perform covered employment, but not report them to the Trusts?
- (3) Is the employer subcontracting with its employees or paying them on a commission or bonus basis?
- (4) Does the employer have an agreement with an employee to perform jobs, receive pay from a third party and reimburse the employer for the employer's profit?
- (5) Is the employer contributing on any individual not covered by a Collective Bargaining Agreement or Participation Agreement with the Trusts?
- (6) Are there any clerical errors and/or contribution overages/shortfalls?
- (7) On what specific jobs/projects and for what specific General Contractors/owners did the Employer perform work, and for what specific time periods?

- B. It is the Trustees' goal that each employer obligated to contribute money to these Trusts on behalf of its employees shall be audited at least once every three (3) years for all contractors. The Trusts' Auditor will conduct these audits at random and for cause.

The Trustees have the authority to conduct compliance audits for any proper Trust purpose including, without limitation, new employer audit, resident or out-of-town employer performing occasional covered work, employer with a history of repeated delinquencies, terminating employer, large jobs, etc. Additionally, the Trusts have the authority to conduct project closeout audits. To enable the Trusts to determine whether a project closeout audit is necessary, all Employers signatory to a project labor agreement are required to give notice to the Trusts and Union within ten (10) days upon completion of the project.

An Employer may be selected for audit, or be audited more than once every three (3) years, if it is in the Trustees' sole and absolute discretion. In this case, the Board of Trustees shall direct the Trusts' Auditor to perform a compliance audit as soon as practicable.

- C. As part of the compliance audit, the Trusts' Auditor may review all business records of the employer reasonably relevant to verify compliance with the Employer's obligation to make contributions to the Trusts under the Trust Agreements and its Collective Bargaining Agreement, and the Trusts' right and entitlement to receive payment from whatever source (original contractors, general contractors, owners, bonds, guarantors, fiduciaries, etc.), of amounts owed to them.

These records include, but are not limited to, payroll journals or registers including details on hours worked and paid by employee, individual employees' earnings records (quarterly or yearly), an Employer's annual earnings reports (W-2's and W-3's, 1099 and 1096 forms), workers' compensation insurance reports and owner controlled insurance program reports (OCIP), Nevada state unemployment labor and wage reports, 941 quarterly payroll tax returns, employee time cards, job cost reports, subcontract agreements, check registers, cash disbursements records, cash receipts records, corporate, individual or partnership tax returns, Employer's general ledger, Employer copies of monthly remittance reports to all fringe benefit funds to which the Employer contributes, all pertinent personnel information such as hire and termination information, and any other records deemed necessary and prudent by the Auditor.. The Trustees require an Employer to provide documents for an audit, in Clark County, Nevada; however, out-of-town Employers may be offered the choice of providing documents in Clark County, Nevada, or reimbursing the Auditor's travel expenses for an on-site audit.

- D. If an Employer for whom records have been requested has failed or refused to provide satisfactory records, or if the Auditor deems an on-site Audit, as opposed to a mail Audit, to be necessary and prudent, then the Employer shall be liable for and pay all costs, including but not limited to, the Auditor's travel, lodging and food costs, associated with such on-site audit.

The Administrator shall notify an Employer by mail that it has been selected for a compliance audit. This notice shall state the time period being audited.

- E. The Trusts' Auditor shall attempt to contact the Employer following the mailing of the Notice of Audit letter. The purpose of this contact



is to schedule an appointment with the Employer to perform the compliance audit and provide the Employer with a list of records the Trusts' Auditor desires to review. The Trusts' Auditor should confirm scheduled appointments by phone, letter or other means prior to the audit date.

If the Trusts' Auditor cannot make contact with the Employer within ten (10) working days following the mailing of the Notice of Audit letter, the Trusts' Auditor shall refer the matter to the Trustees. The Trustees will then render a decision as to whether or not the matter should be referred to the Attorney for legal action.

If an employer refuses to provide all or part of the requested records, or if the Employer's records are incomplete, inaccurate or unclear, the Trustees have the right to presume that all of the Employer's employees were engaged in work for which Trust contributions are due and apply such conversions and assumptions as they deem appropriate to determine the amount thus due, including but not limited to, personal knowledge and expertise in the trade, size of project, personal knowledge of amount of work performed, industry standards regarding type of work performed, calculating hours worked from reports filed with state or national agencies, delinquencies for other time periods for which records were provided, or other such information available. The Trustees may also presume any other related matter, including but not limited to, converting subcontractor payments to contributions due and allocating delinquencies by project. If there are no facts, records or information available, then the average annual Contributions reported by the Employer over the previous three years prior to the Audit review period or \$250,000 (whichever is higher) in Contributions, plus applicable interest and liquidated damages, shall be deemed due for each calendar year covered by the compliance audit review period.

- F. After the audit has been performed, the Trusts' Auditor may schedule an Audit Conference or Closing Conference with the employer. At this conference the Employer will have an opportunity to submit additional information, questions or dispute particular matters pertaining to the audit or concur in the audit results. The Trusts' Auditor may furnish the employer a copy of the audit prior the audit conference. Following the conference the Trusts' Auditor will prepare a final report noting the employer's concurrence or the

items in dispute and submit the final report to the Trustees.

- G. After the audit conference, if any, the Trusts' Auditor shall report to the Trustees stating the results of the audit, the Employer's agreement with the audit, or the particular items the Employer continues to dispute.

If the Trusts' Auditor determines that the Employer owes additional contributions or liquidated damages, the Administrator shall send a first demand letter and a copy of the report to the Employer, Union, NECA and any other applicable Employer Association. If the Employer disputes any audit findings or submits additional documentation, the Trustees shall take such action as they deem appropriate in connection with the items in dispute, including informing the employer that they will refer the matter to the Attorney for collection. The failure of the Administrator to send any such letter shall not give rise to a defense, for any party, to any action by the Trusts' hereunder, including but not limited to audits, collection actions or Original Contractor claims under NRS 608.150.

If no response is received within seven (7) working days, the Administrator shall send a second demand letter to the employer, requesting payment of the contributions and liquidated damages within five (5) working days. If no money is received within five (5) working days, the matter shall be referred to the Attorney for action and collection.

## **5. COLLECTION ATTORNEY**

- A. Upon referral, the Trusts' Collection Attorney shall establish a file for the delinquent Employer or other entity for whom attorney action is necessary and collect information necessary for legal collection. A minimum attorney fee of \$500 shall be assessed against the delinquent Employer. Additionally, the Attorney will continue to assess the \$250 administrative fee for each month the employer remains delinquent.
- B. The Attorney will contact the delinquent Employer, bonding company or other responsible party for whom attorney action is necessary by letter and/or by telephone pursuant to his own established procedure to attempt collection without further effort. Payments at this point include the Contributions, interest, liquidated

damages, administrative fees, any audit fees and attorney's fees (collectively "delinquencies"). The letter should provide that if the Employer does not pay the delinquencies to the Attorney within five (5) working days or make suitable arrangements to do so, suit will be filed. The Attorney may send a copy of the letter to the Union, NECA or applicable Employer Association, if any.

- C. If the Employer responds with a defense that would reduce its liability, the Attorney will investigate the defense to determine its validity. The Attorney will present such information, along with a recommendation to the Co-Chairmen, and Board of Trustees. If the defense is valid, the account and the audit, if appropriate, will be corrected to reflect the new information. If the defense is determined invalid, the Attorney will inform the Employer why its explanation does not alter the Employer's obligations and demand payment.
- D. If the Employer fails to pay its delinquencies or make arrangements to do so by the deadline previously set, or to otherwise cooperate with the collection and/or auditing process, the Attorney, upon Co-Chairs authorization, will file suit. The Attorney will diligently prosecute all claims through pretrial procedure, trial, judgment, and any postjudgment proceedings necessary to enforce the judgment. Suit will seek all damages provided under ERISA. Liquidated damages and other delinquency charges, including administrative fees, will be assessed by the Administrative Office at the time a delinquent account is referred to the Attorney. Attorneys' fees as calculated pursuant to Section 2(G) above, and all costs of collection, including audit fees, will be assessed by the Attorney. Interest will be updated by the Attorney.
- E. Under the authority of the Trust Agreement, if in the opinion of the Attorney, an audit of the Employer's payroll records is necessary or desirable to substantiate the amount of Contributions owing, the Attorney shall advise the Trustees, and upon approval of the Co-Chairmen or Board of Trustees, contact the Auditor directly to commence the audit.
- F. If in the opinion of the Attorney, an Employer's proposal for settlement, compromise, extension or discontinuance should be considered by the Board of Trustees, the Attorney may submit such proposal in writing to the Trustees.

- G. If the Trustees have authorized immediate suit, the Attorney will not send the demand letters, but will file suit as soon as possible.
- H. If the Employer is involved in bankruptcy, the Attorney will file the proof of claim and monitor the bankruptcy.
- I. The Attorney will periodically advise the Board of Trustees of the status of all accounts referred and shall promptly answer any inquiries as to account status made by the Board of Trustees or the Administrative Office.
- J. As soon as an Employer is delinquent and referred to the Attorney, the Attorney should immediately investigate the identity of all general contractors and the existence of applicable bonds. In any instance where the Trust(s) seek a delinquency judgment, either by default, summary judgment, stipulation or otherwise, \$5,000 in future legal fees shall be added to such judgment as and for anticipated future costs of collection.

## **6. SETTLEMENT AGREEMENT GUIDELINES**

- A. The Trusts have the right to receive the full and timely payment of all Contributions to which the Trusts are entitled. However, the Trustees have authority to settle and compromise delinquencies when doing so is in the best interests of the Trusts, as determined in the sole discretion of the Trustees.
- B. All proposals for settlements, compromises, extensions or discontinuances should be submitted to the Board of Trustees in writing together with a recommendation from the Administrator or the Collection Attorney and factual information regarding the claim. Where time is of the essence, the Co-Chairmen of the Trusts may act for the Board, subject to ratification by the Board. The Trustees may approve any proposed settlement agreement and arrangements and, in doing so, shall consider whether:
  - (1) A delinquent amount is uncollectible;
  - (2) Payment of less than the total amount owing to the Trusts is prudent and appropriate;
  - (3) Payment of amounts owing over a period of time is prudent

and acceptable;

- (4) The Trusts have made such reasonable, diligent and systematic efforts as are prudent and appropriate under the circumstances to collect such amounts owing;
  - (5) The terms of the settlement agreements are set forth in writing and are prudent and reasonable under the circumstances, based on (a) the likelihood of collecting such amounts and (b) the expense that the Trusts would incur if the funds attempted to collect such amounts through means other than such agreements;
  - (6) The settlement agreement is entered into for the exclusive purpose of facilitating the collection of the amount due; and
  - (7) The costs of collection and difficulty of collection outweigh the prospect of collecting the money, and/or whether liability and damages under the Collective Bargaining Agreement are questionable.
- C. All settlement agreements and/or arrangements are contingent upon approval by the Board of Trustees and shall be reduced to writing. Copies of the agreements will be forwarded to the Administrator and kept on file in the Administrator's Office.
- D. It is the policy of the Trustees that all settlement agreements require monthly payments of at least \$1,000 and continue for no more than 6 (six) months. All settlement agreements must have security, i.e., a confession of judgment or general contractor retention, among other things. These requirements may be altered in certain cases when prudent and appropriate. Payment schedules exceeding 6 months and/or less than \$1,000 monthly require Board approval. The terms and conditions of one settlement agreement are not precedent for any other settlement agreement.
- E. Interest and liquidated damages may be reduced or waived in exchange for prompt and faithful payment of all amounts due under a settlement agreement. However, waivers of interest (except de minimis interest) will only be considered in extraordinary and rare cases.

- F. The Trusts will attempt to collect all hard dollar costs including audit fees, administrative fees, attorneys' fees and other costs associated with resolving a delinquency.
- G. The objective is to collect the maximum amount of money in the shortest period of time under the circumstances of each case and in light of these general guidelines. The Trusts may take such actions as are prudent and reasonable under the circumstances to protect and secure the payments, such as joint checks, general contractor payments, and others.

## **7. REPEAT DELINQUENCIES**

- A. It is not the Trustees' policy to allow settlement agreement on a repeat or on-going basis or tolerate repeated delinquencies. Therefore the Trustees adopt the following procedures to deal with repeatedly-delinquent employers:
  - (1) A "repeatedly-delinquent" Employer is one that has received three (3) notices of delinquency from the Administrator anytime within the previous twelve (12) months; has been referred to the Trusts' Collection Attorney and then received an additional delinquency notice from the administrator within twelve (12) months of the referral; or has been assessed a \$250.00 administrative fee by the Administrator any three (3) times within the previous twelve (12) months.
  - (2) Repeatedly-delinquent Employers are not eligible for any waiver or reductions in interest due without specific Trustee approval after being appraised of the situation.
  - (3) Repeatedly-delinquent Employers are not eligible for any settlement agreement that includes installment payments unless the Trustees specifically approve such agreement after being notified of the repeated delinquencies.
  - (4) A repeatedly-delinquent Employer may, at the discretion of the Trustees, be required to post a surety bond in favor of the Union and the Trusts. Failure to do so would result in a recommendation by the Trustees that the Union withhold workers from that employer until a suitable bond is in place.

- (5) Such bonds shall be issued on a form prepared and approved by the Trustees. The amount of the bond required for repeatedly delinquent Employer shall be equal to three (3) times the highest single monthly amount of contributions due for the previous twelve (12) months, not to exceed \$100,000, and is at the sole discretion of the Trustees.
- (6) The Administrator shall report all repeatedly-delinquent Employers to the Trustees as part of the monthly meeting packet.
- (7) No bond shall be acceptable under this provision unless it is issued by a surety that, at the time the bond is issued, is rated in the top 50% of all bonding companies by Standard and Poor's or Moody's.

## **8. EMPLOYER REFUNDS**

In any case in which an Employer claims that it has overpaid contributions to the Trusts, the rules and regulations of this section apply.

### **A. The Trustees acknowledge the following:**

- (1) All employers contributing to the Trusts have an affirmative obligation to verify the accuracy of their contributions and ensure that they contribute the correct amount;
- (2) The Trusts should not bear either expenses or losses caused by Employer mistakes in contributing to the Trusts; and
- (3) Expenses and losses occasioned by Employer overpayments cause a significant detriment to the Trusts and their participants.

### **B. No Employer shall receive any refund of contributions made to the Trusts or and credit against future contributions, except in the Trustees' sole discretion, and in accordance with this provision, in case of erroneous payment or over-payment, and then only to the extent permitted by law and in the manner determined by the Trustees.**

- (1) No request for a refund or credit shall be considered unless made in writing, to the Board of Trustees, no later than 180 days after the payment allegedly occurred. Any claims made outside of 180 days after the payment allegedly occurred are waived and void.
- (2) Any Employer seeking a refund or credit shall be liable for, and must agree in writing to reimburse the Trusts for, all the Trusts' expenses in reviewing and verifying the request, including but not limited to administrative, auditing, legal fees, and costs, without regard to the amount, if any, ultimately credited or refunded, it being acknowledged that the Trust Funds should not bear any losses due to the Employer's mistake. The Employer shall pay these fees and costs due within ten (10) days upon written request of the Board of Trustees, Administrator or Trusts' Collection Attorney or the request for a refund or credit shall be waived.
- (3) No refund or credit may be given until and unless the Employer can demonstrate, to the satisfaction of the Trustees, that the mistaken payment or overpayment was made due to a mistake of fact or mistake of law. For purposes of satisfying this requirement, the following circumstances shall not be considered such a mistake (by way of example only):
  - a. Any instance where the Employer deliberately paid or overpaid such contributions for any reason, including but not limited to its own business or employment needs or desires;
  - b. Any instance where the Employer has made a similar request based on a similar "mistake" previously, it being acknowledged that it is the Employer's obligation to ensure its own mistakes are not repeated.
- (4) Any refund or credit must be reduced by intervening investment losses, if any, and must not cause the benefits of a participant to be lower than they would otherwise be but for the alleged mistaken payment or overpayment. Under no circumstances will an Employer be entitled to interest or earnings related to any mistakenly paid or overpaid amount.



- (5) Any refund or credit based on overpayments identified and/or scheduled by the Trusts' Auditor shall be reduced by a \$500 fee as reimbursement by the Employer for the Auditor's fees incurred by the Trusts.
  - (6) Limitation of Actions: No action seeking refund or credit of allegedly mistakenly paid or overpaid contributions may be commenced unless it is commenced within 180 days of making the written request referred to in paragraph 1 above (without regard to whether the Trustees have responded to the request or not), or within 365 days after the payment allegedly occurred, whichever comes first. Except as stated in paragraph 2 above, each party to any such action shall bear its own fees and costs, without regard to the outcome.
- C. The decision of the Board of Trustees regarding any claim for allegedly overpaid contributions shall be final and binding on all parties, subject to the right of the Employer to request reconsideration and present additional relevant evidence.
  - D. The Employer Refund procedures herein are the exclusive remedy available and no Employer shall have standing to bring any cause of action in any court or other tribunal seeking a refund or credit for allegedly overpaid contributions, except for the provision mentioned in paragraph B(5).

## **9. CONFIDENTIALITY**

- A. It is the policy of the Trusts to maintain the confidentiality of nonpublic information received from Employers for the purpose of completing a contract compliance audit. Such nonpublic audit information will only be used for Trust purposes, including:
  - (1) Determining that contributions have been properly paid into the Trusts.
  - (2) Collecting delinquent contributions, including litigation, and coordination with other trades' trust funds, if necessary.
  - (3) Correction of inaccurate contributions, reporting, and overpayments, if any.


- B. The nonpublic audit information provided to the Auditor will be treated as confidential information and will not be disclosed to third parties or any other entity without the permission of the employer, except as part of the Trusts' normal collection procedures such as notifying and seeking the cooperation of general contractors, in accordance with the actions listed above, or as required by law.


#### 10. NO THIRD PARTY RIGHTS

This Policy is an internal operating document of the Trusts and creates no rights, claims or defenses in favor of any Employee, participant, employer, general contractor or any other person or entity.

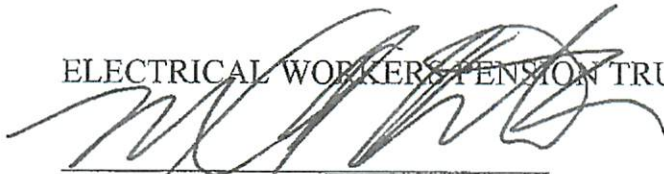
The undersigned Trustees of the IBEW Joint Trust Funds do hereby certify that the foregoing Collection Policy and Procedures was duly adopted on behalf of the Board of Trustees at a meeting duly called and held on January 21, 2020.

##### ELECTRICAL WORKERS HEALTH AND WELFARE TRUST

  
Chairman

  
Co-Chairman

##### ELECTRICAL WORKERS PENSION TRUST

  
Chairman

  
Co-Chairman

##### LAS VEGAS ELECTRICAL WORKERS JOINT APPRENTICESHIP AND TRAINING TRUST FUND

  
Chairman

  
Secretary

20206416