

**NEW YORK STATE TEAMSTERS
COUNCIL
HEALTH & HOSPITAL FUND**



**POLICIES AND PROCEDURES FOR
CONTRIBUTING EMPLOYERS**

JULY 2012

**NEW YORK STATE TEAMSTERS COUNCIL
HEALTH & HOSPITAL FUNDS**

POLICIES AND PROCEDURES FOR CONTRIBUTING EMPLOYERS

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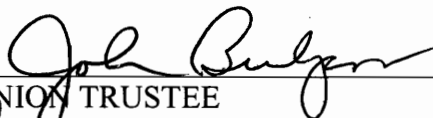
**NEW YORK STATE TEAMSTERS COUNCIL
HEALTH & HOSPITAL FUNDS**

POLICIES AND PROCEDURES FOR CONTRIBUTING EMPLOYERS

The New York State Teamsters Council Health & Hospital Fund (“Health Fund” or “Fund”) is a multiemployer employee benefit plan within the meaning of Sections 3(1) and (37)(A) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §1002(1), (37)(A), and Section 414(f) of the Internal Revenue Code (“Code”), 26 U.S.C. §414(f). In accordance with the Fund’s Restated and Amended Agreement and Declaration of Trust (“Trust Agreement”), the Board of Trustees (“Trustees”) adopt the following policies and procedures for contributing employers. To the extent there is any conflict, these policies supersede the policies previously adopted by the Trustees. The signatures below certify that these policies and procedures were duly adopted by the Trustees on the 12th day of July 2012 to be effective as adopted unless otherwise specified below.

**NEW YORK STATE TEAMSTERS COUNCIL
HEALTH & HOSPITAL FUND**

Dated: 7/12/12



UNION TRUSTEE

Dated: 7/12/12



EMPLOYER TRUSTEE

1. General Policy

It is the policy of the Fund to collect all employer contributions as they become due, and to make such diligent and systematic efforts as are appropriate under the circumstances to do so. The Trustees have the right to establish rules and regulations for the operation of the Fund and enforce such rules and regulations pursuant to the Trust Agreement and ERISA, including, but not limited to, the right to:

- A. Establish a date on which contributions are due;
- B. 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 to ensure that proper contributions are made to the Fund;
- C. Establish a random or pre-scheduled audit program;
- D. Require that a delinquent employer pay the cost of an audit, interest, liquidated damages, attorney's fees, audit fees, court costs, disbursements, and any other expenses incurred by the Fund in determining the amount of a delinquency and in collecting the delinquency;
- E. Recover interest at a rate adopted by the Trustees;
- F. 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;
- G. Require employers to sign a standard participation agreement as a condition precedent to participation in the Fund; and
- H. Immediately terminate a contributing employer if the employer fails and/or refuses to abide by the terms of the participation agreement for the Fund, or refuses to sign same, or fails to comply with the rules and regulations of the Fund, or becomes delinquent in paying contributions in a timely manner.

2. Policies Concerning Participation Agreements

Employers must execute both a collective bargaining agreement and a standard participation agreement as a condition precedent to participation in the Fund. The participation agreement is the document that provides the obligation to contribute to the Fund pursuant to 29 U.S.C. §1145. A new participation agreement must be signed and submitted to the Fund for each subsequent collective bargaining agreement. If there is a conflict between the collective bargaining agreement and the participation agreement, the terms of the participation agreement

shall govern. An employer that fails and/or refuses to abide by the terms of the participation agreement, or refuses to sign same, or fails to comply with the rules and regulations of the Fund, or becomes delinquent in paying contributions in a timely manner, may be immediately terminated by the Trustees in their sole discretion.

3. Policies Concerning Contributions

A. Due Date and Damages

1. Employers must contribute to the Fund on behalf of all employees performing bargaining unit work, whether full time, part time, casual or seasonal employees. Employers and unions must execute a participation agreement that is acceptable to the Fund related to such contributions. Employers may remit contributions on behalf of employees who are not performing bargaining unit work (or employees who perform other covered work) only in accordance with a Fund approved participation agreement. However, if an employer contributes on behalf of non-bargaining unit employees, the employer must contribute on behalf of all employees in that category or performing that work subject to the same conditions and on the same basis as provided in the participation agreement.
2. Once a rate basis is selected for contributions to the Fund, the bargaining parties may only change the rate basis when the Trustees approve the change. For construction project agreements, the Fund may accept contributions at rates that are lower than the published rates if (i) the Fund Trustees approve the rates; and (ii) the hours over 150 hours are credited toward future periods for eligibility.
3. Contributions and reports to the Fund are due on or before the tenth (10th) day of the month following the month for which the contributions are required (“Due Date”), unless the participation agreement imposes a different Due Date. The Fund may, in the sole and exclusive discretion of the Trustees, refrain from collecting interest and liquidated damages if the Fund receives the contributions before the last day of the month in which the contributions are due.

4. Reports of contributing employers must be filed each month even if no contributions are due for that month, except for employers operating in seasonal business cycles in which the businesses close for extended periods. In those instances, the Fund will, in the sole and exclusive discretion of the Trustees, accept notification from the employers that the businesses are closed for a specified period of time. All contributing employers must report contributions on the standard report form or through electronic filing, at the sole and exclusive discretion of the Trustees, or in another format acceptable to the Trustees.
5. Employer reports will be date-stamped on the day received by the Fund. The stamped date will be the controlling date with regard to these policies and procedures. If any controlling date under these policies and procedures falls on a weekend or legal holiday, the applicable date will be the preceding working day.
6. Any contributing employer that has made timely contributions to the Fund in accordance with that Fund's policies and procedures for a period of twenty-four (24) months without a delinquency may request in writing, and be granted in sole and exclusive discretion of that Fund's Trustees, a waiver of liquidated damages for its first delinquency.
7. Unless otherwise excused, the Fund, in the sole and exclusive discretion of the Trustees, will assess interest on the amount of delinquent contributions at eleven percent (11%) per annum from the Due Date, plus ten percent (10%) liquidated damages on delinquent contributions. Regardless of whether litigation is commenced, a delinquent employer will be liable for 11% interest on the delinquency together with the greater of another award of interest at 11% or 10% liquidated damages, costs and attorney's fees.
8. An employer shall be responsible for the payment of all Fund claims of the employer's covered employees and the eligible dependents of such employees which are not paid by the Fund by reason of the employer's delinquency.

B. Notice of Delinquency

1. If the Fund has not received payment by the last day of the month of the Due Date, the Fund will send a reminder notice to the employer stating that the contributions and report are past due (“Reminder Notice”). The Reminder Notice will indicate that the employer must pay the contributions due for the month plus liquidated damages at ten percent (10%). If payment has not been received ten (10) days after the Reminder Notice, a Notice of Delinquency will be sent to the employer (“Notice of Delinquency”).
2. The Notice of Delinquency will advise the employer that required contributions were not received by the Due Date and will include an estimation of the amount of contributions and liquidated damages which are due. The Notice of Delinquency will inform the employer that if the contributions are not received within fifteen (15) days, the employer will be considered delinquent (“Delinquent Date”). The Notice of Delinquency will also warn the employer that if contributions and liquidated damages are not received, the matter will be referred to the attorney for the Fund (“Counsel”) for collection.
3. If the employer disputes the Notice of Delinquency, it must immediately pay all amounts due to the Fund. After said payment, the employer may appeal the Fund’s decision to its Trustees whose decision is final and binding.

C. Counsel Procedures

1. If the Fund has not received the delinquent contributions and liquidated damages for any delinquency over \$100, the matter will be referred to Counsel.
2. Within ten (10) days of referral, Counsel will send a letter to the employer advising that if payment of the contributions, liquidated damages, interest from the Due Date, costs and attorney’s fees are not received within ten (10) days, the Fund will, in the sole and exclusive discretion of the Trustees, commence legal proceedings to collect the debt.

3. Suit against the employer, or such other collection proceeding, including, but not limited to, an adversary proceeding or claim against a surety or third party, will be instituted within ten (10) days as stated in the letter or as soon as practicable thereafter, unless Counsel recommends a different course of action based upon pertinent factors which include, but are not limited to, the following:
 - (a) the financial condition of the employer;
 - (b) the probability of collecting a judgment once it is obtained;
 - (c) the employer's past performance as a contributing employer;
 - (d) the amount of the delinquency;
 - (e) the likelihood that the costs of the suit will exceed the recovery;
 - (f) the length of time the delinquency amount has been owed; and
 - (g) any other factor that, in the discretion of Counsel, may have a material bearing on the collection of the delinquent contributions.

Any recommendation by Counsel against initiating a lawsuit or other proceeding to collect delinquent contributions shall be submitted to the Trustees for consideration. The Fund's Trustees shall then have the final authority as to whether a lawsuit or other proceeding shall be initiated for the Fund.

4. Counsel shall file suit for all moneys recoverable, including, but not limited to, damages that may be recoverable under 29 U.S.C. §1132(g)(2). Counsel may seek remedies under applicable law against individual corporate officers and/or shareholders, including, but not limited to, remedies available because the employer's officers and/or shareholders breached their fiduciary duties by failing to remit contributions.
5. The Fund is independently authorized to seek legal redress against an employer at any time regardless of whether the above procedures have been exhausted and/or followed, with the concurrence of the Trustees. If an employer fails to make any payment when due, a lawsuit may be filed to collect all delinquent contributions, interest, liquidated damages, costs, attorney's fees, and other damages.

6. All lawsuits shall be commenced and heard in the United States District Court for the Northern District of New York. Any action or proceeding commenced or initiated in any other jurisdiction or venue shall be transferred to the Northern District of New York.

E. Settlement Policy

1. Subject to the policies and procedures set forth herein, the Executive Administrator, with the advice of Counsel, is authorized to enter into written settlements with employers, consistent with Department of Labor (“DOL”) regulations, including, but not limited to, Prohibited Transaction Exemption 76-1, 41 Fed. Reg. 12740 (March 26, 1976).
2. The following guidelines for settlements shall be applicable:
 - (a) The Fund Office shall have limited authority to enter into settlements once the matter has been referred to Counsel, except to the extent that the Executive Administrator may provide direction to Counsel with the consent of the Trustees.
 - (b) With the consent of the Executive Administrator, Counsel may negotiate among other things, a settlement with terms and conditions acceptable to the Fund including, but not limited to, obtaining a confession of judgment and/or collateral to secure payment of any settlement amounts. Upon any failure of the employer to meet its obligations under the schedule set forth in the settlement, Counsel shall execute on said judgment and/or collateral and/or enforce the settlement agreement unless otherwise instructed by the Executive Administrator.
3. Except as may be otherwise required by law, the Trustees, in accordance with their fiduciary obligations, shall have the power and authority, in their sole discretion, to allocate and disburse payments remitted by an employer, including, but not limited to, the authority to allocate and disburse payments to current obligations or past due obligations of the employer. Such allocation and disbursement shall be binding upon the employer, the employer’s surety, participants, beneficiaries, and all other interested parties. An employer’s request that the Fund allocate and

disburse payments in a particular manner, and/or in a different manner than the method chosen by the Trustees, shall be of no force and effect.

- F. Termination. The Fund may terminate coverage for the employees of employers that contribute to the Fund whenever the Trustees determine, in their sole discretion, that an employer has (i) failed to remit current and complete contributions on behalf of all affected employees; or (ii) violated any rule of the Fund. Regardless of the number of days credited to an employee for a Qualifying Quarter, termination of an employee's coverage may occur upon (i) the expiration of the collective bargaining agreement, participation agreement, interim agreement, or the employer's obligation to contribute to the Fund under applicable law; or (ii) a determination by the Trustees, in their sole discretion, that the employer will no longer pay contributions in accordance with the policies and procedures of the Fund.

4. **Policies Concerning Audits**

- A. Audit Requirement. The Fund will conduct audits to ensure full compliance with employer obligations under the participation agreements and/or applicable law. Every employer will be audited at least once every six (6) years in accordance with these policies and procedures. The Fund will schedule an immediate audit for any employer that terminates participation with the Fund. If a delinquency greater than one thousand dollars (\$1,000.00) is discovered as the result of an audit, the employer will be assessed the cost of the audit, subject to any existing Fund policy. Employers that have voluntarily or involuntarily terminated participation in the Fund shall pay the full cost of conducting the audit regardless of the amount of the delinquency. A contributing employer, except for a terminated employer, shall not be required to pay audit fees in an amount greater than the lesser of: (i) twenty-five percent (25%) of the Delinquent Contributions the employer owes the Fund; or (ii) the total expense to the Fund of conducting the audit, including the cost of fringe benefits paid to the Fund's payroll auditors.
- B. Audit Scope. The Trustees may at any time examine and copy such books, records, papers, or reports of the employer as they deem necessary to permit them to determine whether the employer is making full and proper reports and

payments to the Fund. Such examination will occur whenever and wherever such examination is deemed necessary or advisable by the Trustees.

- C. Notification of Audit Delinquency. The Fund Office will send a Notice of Delinquency to audited employers found to be delinquent stating the amount of additional contributions owing as a result of the audit. The Fund allows employers sixty (60) days to respond to the results of the audit report. After the sixty (60) day period has run, an audit delinquency will be referred to Counsel and treated according to these policies and procedures.
- D. New Employers. The Fund will conduct the initial audit of a new employer, meaning an employer that has not contributed to the Fund before, within fifteen (15) months of the date this employer makes the first contributions to that Fund. The new employer shall not owe the Fund for the audit fees related to this initial audit so long as the new employer satisfies any obligations to the Fund within three (3) months of the audit report.
- E. Breach. The failure of an employer to agree on a date for an audit or to permit review of any and all necessary payroll or related records shall be, among other things, a breach of these policies and procedures.
- F. Failure to Maintain Records. Employers are required to maintain sufficient employment records for the auditor to complete the examination. The Fund reserves the right to draw an adverse inference against the employer and to make reasonable estimates of hours worked by employees, in the event that an employer fails to adequately maintain sufficient records.

5. Policies Concerning Return of Mistaken Contributions

- A. Standards for Return of Mistaken Contributions. Pursuant to ERISA Section 403(c)(2), 29 U.S.C. §1103(c)(2), the Fund will return mistaken contributions only after the Trustees, in their sole and exclusive discretion, determine that: (1) such contributions were made by mistake; (2) the return of such contributions will not jeopardize the financial security of the Fund; and (3) the return of such contributions is permitted by applicable law. The Trustees may require any employer requesting a return of mistaken contributions to provide such proof as is necessary in the opinion of the Trustees to demonstrate that such contributions

were made by mistake. The Trustees may require such employer to pay the expenses of an independent auditor, chosen by the Trustees, to certify to the amount claimed.

- B. Timing for Return of Mistaken Contributions. The Fund shall return mistaken contributions to any employer within six (6) months after the Trustees determine that the contribution was made by mistake, but only if a claim is made by the employer for the refund of such contribution within one (1) year after the Fund received the contributions.
- C. Credits for Excess Contributions. Upon approval of the Trustees, an employer may be permitted to credit mistaken contributions, less any outstanding unpaid delinquency, including outstanding amounts owed for interest, liquidated damages, and/or attorneys' fees and costs. Contributions shall not be returned to any employer who has a delinquency with the Fund, including any outstanding contributions, interest, liquidated damages, audit fees, and/or attorneys' fees and costs, and no credit shall be given as an offset. Contributions shall not be returned to any employer who is not signatory to a collective bargaining agreement and participation agreement providing for contributions to the Fund.
- D. Wash Rule. If the employer remits improper contributions to the Fund regardless of whether the employer requests a refund, the employer shall be responsible for the difference between the improper contributions remitted and the benefits paid on behalf of the individual. For instance, if the employer remitted \$3,000 in improper contributions on behalf of an individual and the Fund paid \$5,000 in benefits, the employer is liable for the difference of \$2,000 plus interest, costs, auditor fees, and attorney fees.

6. Policies Concerning Disclosure of Information

- A. General Mandatory Disclosures
 - 1. Upon receipt of a written request from an employer, the Executive Administrator shall make available the following documents together with any amendments or restatements thereto: (a) Agreements and Declarations of Trust of the Fund; and (b) the Policies and Procedures Concerning Contributing Employers.

2. Upon receipt of a written request from an employer on or after January 1, 2008, the Executive Administrator shall furnish copies of the following documents within thirty (30) days:

- (a) Any periodic actuarial report (including any sensitivity testing) received by the Fund for any plan year which has been in that Fund's possession for at least thirty (30) days;
- (b) Any quarterly, semi-annual, or annual financial report prepared by any investment manager, advisor, or other fiduciary which has been in the Fund's possession for at least thirty (30) days; and
- (c) Any application filed with the Secretary of Treasury requesting an extension of amortization periods and any response to such application.

In disclosing the information and/or documents listed in Section 6(A)(2), the Executive Administrator shall redact any individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer together with any proprietary information regarding the Fund, any contributing employer, or entity providing services to the Fund. The Executive Administrator may provide the response(s) in written, electronic, or other appropriate form if the form is reasonably accessible to the employer requesting the information. No employer is entitled to receive more than one copy of a document under Section 6(A)(2) more than once during any consecutive twelve (12) month period. The Fund is not required to disclose any documents that, as of the date on which the request is received by the Fund, were in the Fund's possession for six (6) years or more. In addition, the term "periodic actuarial reports" in this Section 6(A)(2) includes any information provided to the Fund by an actuary that depicts alternative funding scenarios based on a range of actuarial assumptions, including any: (i) actuarial report prepared by an actuary of the plan and received by the Fund at regularly scheduled, recurring intervals; and (ii) study, test (including a sensitivity test), document, analysis or other information (whether or not called a "report") received by the Fund from an actuary of

the Fund that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the Fund at regularly scheduled, recurring intervals. The term “proprietary information” includes trade secrets and other non-public information (*e.g.*, processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the Fund, may cause, or increase a reasonable risk of, financial harm to the Fund, a contributing employer, or entity providing services to the Fund.

B. Permissive Disclosures.

The Executive Administrator shall not disclose any other books and records to employers, except upon the approval of the Boards of Trustees of the Fund, which disclosure and approval shall be granted in the sole and exclusive discretion of the Trustees and upon such terms as they deem appropriate. Should the Trustees grant an employer’s request for records under this Permissive Disclosures subsection, the Executive Administrator shall impose a reasonable charge for the cost of furnishing such records, including, but not limited to, reproduction costs, handling, and/or postage charges.

7. Miscellaneous Policies

- A. All questions or disputes relating to the interpretation, meaning and/or application of these policies and procedures shall be finally and exclusively resolved by the Trustees of the Fund, in their sole discretion, in the performance of their fiduciary obligations to the Fund’s participants and beneficiaries, and in the protection of the financial integrity and actuarial soundness of the Fund and the efficient and effective administration of that Fund.
- B. Failure by the Trustees to adhere to any provision provided herein shall not abrogate, alter, or amend any other provision, duty, or requirement of this Policy and shall not constitute a waiver by the Trustees. Nothing contained herein, or absent herein, shall relieve a contributing or terminated employer of any obligation under ERISA or other applicable law, regulation, or policy of the Fund. In addition, failure to follow any provision of these policies and procedures shall not be deemed a failure to follow the terms of any plan of benefits.

- C. If any provision of these policies and procedures shall be held illegal or invalid, such illegality or invalidity shall not affect the remaining provisions, but shall be fully severable, and these policies and procedures shall be construed and administered as if said illegal and invalid provision had never been included herein.
- D. The headings and other organizational features contained in these policies and procedures are for the convenience of the Trustees; the headings and other organizational features should not be used to interpret or apply these policies and procedures.
- E. This policy may be terminated, amended, or otherwise modified without notice in any manner by the Trustees in their sole and exclusive discretion.