

PLUMBERS AND PIPEFITTERS UNION LOCAL 525 JOINT TRUST
FUNDS' AMENDED AND RESTATED
COLLECTION POLICY AND PROCEDURES

October 20, 2014

I. POLICY

- A. Delinquent employer contributions (related to employees or stemming from any other basis provided by law or a labor agreement) create a significant problem for the Plumbers and Pipefitters Union Local 525 Joint Trust Funds ("Trusts"). The Trustees recognize their responsibility to monitor and 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 Trusts will endeavor to prudently collect all money owed to the Trusts, which money (whether paid, unpaid, segregated or otherwise traceable, or not) becomes Trust assets on the Due Date. The Trusts 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 Trusts' policy that all legal 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. The Trustees, however, recognize that it may be administratively difficult and cause unwarranted expense to impose attorneys' fees and audit fees, in some cases. The Trustees, may, in their sole discretion, therefore waive and/or reduce attorneys' fees and audit fees, on a case-by-case basis.
- 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.

II. DUE DATES, INTEREST, AND LIQUIDATED DAMAGES

- A. Contributions are due in full by the Due Date, which is the 20th 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 for each delinquent work month, and (e) all other costs of collection such as audit and legal fees.
- B. Interest on the unpaid contributions shall be computed at fourteen percent (14%), simple interest, from the Due Date to the date of payment in full.
- C. Liquidated damages shall be twenty percent (20%) of the amount of unpaid contributions, or equal to the amount of interest due, whichever is higher.
- D. 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.
- E. It is the policy of the Trusts to impose and to collect all contributions, liquidated damages, interest, costs, audit costs, administrative fees and legal 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, however, recognize that irregularities involving United States postal system mail deliveries and other extenuating circumstances may prevent some employer contributions from being received by the Trusts in a timely manner. The Trustees further recognize that it may be administratively difficult and cause unwarranted expense to impose liquidated damages, interest, audit costs, administrative fees and legal fees in some cases. The Trustees may, in their sole discretion, therefore waive and/or reduce liquidated damages, interest, audit costs, administrative fees and/or legal fees on a case-by-case basis.

- F. All attorneys' fees, administrative fees and other costs expended, including audit fees, shall be paid by the liable party, delinquent employer or other employer for whom attorney referral was necessary. The Trustees, however, recognize that it may be administratively difficult and cause unwarranted expense to impose attorneys' fees, administrative fees and other costs, including audit fees, in some cases. The Trustees, may, in their sole discretion, therefore waive and/or reduce attorneys' fees, administrative fees and other costs expended, including audit fees, on a case-by-case basis.
- G. Where time is important, the Co-Chairpersons of the Trusts may act for the Boards of Trustees. They will notify and solicit ratification from the Boards at the next trust meeting of any such action.
- H. Where necessary to protect the interests of the Trusts, any time period provided for in these procedures may be shortened or modified.
- I. All funds collected shall be deposited into the general funds of the Trusts and individual accounts of the employees shall be credited with hours or dollars as prudent and appropriate or required. Amounts collected as liquidated damages, interest, costs and legal 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.

III. ADMINISTRATOR

- A. The Trusts employ an Administrator whose job is, in part, to receive and accurately monitor employer contributions, determine which employers have failed to timely pay contributions and/or file a properly completed and signed remittance report, and to pursue and facilitate collection. A remittance report must be signed by an authorized person on behalf of the reporting employer in order to be considered properly completed and signed and not delinquent. Commensurate with efforts to immediately address any delinquency and collect all contributions due, the Administrator may, among other things, maintain a list of delinquent employers, send delinquency notices to employers, contact a delinquent employer directly to demand payment, send lists of delinquent employers to

general contractors and/or Employer Association(s) as directed by the Trustees, and take all appropriate actions to secure payment of delinquent contributions and other sums that may be owing.

- B. Promptly following the Due Date, the Administrator will send a delinquency notice 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 in addition to liquidated damages and interest. The notice will allow the employer ten (10) calendar days to cure the delinquency, or contact the Administrator to discuss good faith repayment arrangements. The Administrator will send a copy of the delinquency notice to the Union and Employer Association representing the employer, if any.
- C. 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.
- D. If the employer fails to cure its monetary delinquencies by the expiration of the 10 day letter mentioned in Section III(B), or engage a Trustee, Administrator or Attorney in meaningful good faith negotiations for resolution within that time, the account will be promptly turned over to the Attorney for collection. During this time, the Trustees or Administrator may exercise their discretion as to appropriate follow up letters and/or visits to the employer to obtain payment. Even where the employer is in contact with a Trustee, Administrator or Attorney, any amounts still due 15 days after the Due Date shall be referred to the Collection Attorney. Uncollected accounts can be referred to the Attorney sooner if a Trustee or Administrator determines that time is of the essence.
- E. Upon referral of an account to the Attorney, the Trustee, Administrator or Auditor making the referral shall ensure that copies of all correspondence, Collective Bargaining Agreements, or memoranda signed by the delinquent employers, along with any other notes, account records, or other correspondence that may be relevant, are forwarded to the Attorney. The Trustee, Administrator or Auditor making the referral will send a copy of the referral letter to the Union and applicable Employer Association, if any.

- F. When contributions or shortages have been paid after the Due Date and without referral to the Attorney, the Administrator will bill and collect, subject to this Policy, all interest accrued, liquidated damages and administrative fees. The billing shall inform the employer that if interest and administrative fees are promptly paid, liquidated damages may be waived. Audit fees, if any, that exceed 5% of the contributions audited, will also be billed.
- G. When 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, the Administrator may immediately notify the Co-Chairs and Trusts' attorney.
- H. To prevent delinquencies and misunderstandings, the Administrator will make itself available to employers for review of contribution and remittance procedures. The Administrator will also respond to employer's questions regarding the Policy, including the imposition of interest, liquidated damages and administrative fees.
- I. The Administrator, Trustees, Attorney, Auditor, and others involved in collection activity will provide the Trustees with periodic reports to enable the Trustees to monitor and supervise the collection efforts of the Trusts.

IV. AUDITOR

- A. The Trust Agreements grant the Trustees the power to conduct a contract compliance review ("Audit") to review all books and records of each contributing employer deemed necessary by the Auditor. Specific audit procedures and guidelines for particular industry groups may be established by the Auditor, approved by the Trustees and become part of this Policy.
- B. The purpose of an Audit is to ensure that each employer obligated to make contributions to these Trusts is timely making all required contributions on behalf of all employees for which it is legally obligated to make such contributions.
- C. Consistent with this purpose, an Audit of each employer shall be undertaken to determine the following, among other things:
 - 1. Is the employer accurately reporting all hours, and weeks or months worked in covered employment?

2. Did the employer hire people that performed 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?
- D. It is the Trustees' goal that each employer obligated to contribute money to the Trusts on behalf of its employees shall receive an Audit at least once every three to four years. The Auditor will conduct these Audits at random or by rotation, and for cause, when requested by the Trustees. The Trustees recognize that it may cause unwarranted expense to conduct an Audit if the employer has performed little or no work covered by any relevant collective bargaining agreement, in which case, the Trustees, may, in their sole discretion and on a case-by-case basis, decide an Audit is unnecessary and direct that an Audit not be performed.
- E. The Trusts have the authority to Audit 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.
- F. An employer may be selected for Audit, or be Audited more than once every three to four years, if evidence indicates that such an employer may have failed to make timely or accurate contributions

for all of its employees. In this case, the Board of Trustees shall direct the Auditor to perform an Audit as soon as practicable.

- G. As part of the Audit, the Auditor is entitled to review all business records of the employer that the Auditor deems 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.
- H. The business records that the Auditor is entitled to review include, without limitation, 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.

Employers shall provide documents for an Audit to be conducted in Clark County, Nevada. Out-of-town employers may be offered the choice of providing proper and sufficient documents in Clark County, Nevada, or reimbursing the Auditor's travel expenses for an on-site audit.

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.

- I. The Administrator or Auditor shall notify an employer by mail that it has been selected for an Audit ("Audit Notice"). This Audit Notice

shall state the time period being Audited and shall list the records the Auditor desires to review.

- J. The Auditor shall attempt to contact the employer following the mailing of the Audit Notice. The purpose of this contact is to schedule an appointment with the employer to perform the Audit. The Auditor should confirm scheduled appointments by phone, letter or other means prior to the date of the Audit.
- K. If after two attempted communications, the Auditor cannot make contact with the employer to make arrangement to conduct the Audit, the Auditor shall refer the matter to the Attorney, with written notice to the Union, Employer Association(s) and Administrator.
- L. 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, 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 \$100,000 (whichever is higher) in contributions, plus applicable interest and liquidated damages, shall be deemed due for each calendar year covered by the Audit review period.
- M. After the Audit has been performed, the Auditor should schedule and hold an Audit Conference or Closing Conference with the employer by phone, letter or other means determined by the Auditor. The employer may have an opportunity to submit additional information, questions or dispute particular matters pertaining to the Audit or concur in the Audit results. The Auditor may furnish the employer a copy of the Audit Report before the Audit conference. Following the conference, the Auditor will prepare a final Audit Report noting the

employer's concurrence or the items in dispute and submit the report to the Trustees.

- N. After completing the Audit, the Auditor will request the employer to sign a representation letter to confirm, to the best of the employer's knowledge and belief, that the employer complied with the terms and conditions of the applicable Collective Bargaining Agreement(s), the employer is responsible for its compliance with the Collective Bargaining Agreement(s), the employer responded fully to all inquiries, and the employer communicated all information applicable to the Audit to the Auditor. The employer should also indicate if it concurs with the Audit findings, if any, and whether there are any items in dispute.
- O. After the audit conference, if any, the 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.
- P. If there are outstanding Audit findings, the Administrator shall send a first demand letter and a copy of the report to the employer, Union and Employer Association(s). 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.
- Q. If no response is received within ten (10) days, the matter shall be referred to the Attorney for action and collection, with written notice to the Union and Employer Association(s).

V. COLLECTION ATTORNEY

- A. Upon referral of an account to the Attorney, the Attorney shall establish a file for the delinquent employer or other employer 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, subject to Section II(F).
- B. The Attorney will promptly 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 action.

The Attorney may also solicit the assistance of the Trustees, Union and/or Employer Association(s). The amount to be collected shall include the contributions, interest, liquidated damages, any audit fees and legal fees (collectively "Delinquencies"). The letter should provide that if the employer does not pay the Delinquencies to the Attorney within ten (10) working days or make suitable arrangements to do so, or otherwise communicate with the Attorney in a good faith effort to promptly resolve the Delinquencies, suit may be filed. The Attorney will send a copy of the letter, if any, to the Trustees, Union, Administrator and Employer Association(s).

- 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 Chair, Co-chair, and Trustees. If the defense is determined 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 send a final demand letter, explaining why the employer's explanation does not alter the employer's obligations and informing the employer that suit will be filed in ten (10) working days unless the Delinquencies are paid. Such letter shall be copied to the Trustees, Union, Administrator and Employer Association(s).
- D. If the employer fails to pay the 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 authorization by the Trustees, will file suit. The Attorney will diligently prosecute all claims through pretrial procedure, trial, judgment, and any post judgment proceedings necessary to enforce the judgment. Suit will seek all damages provided under ERISA or other applicable law. Liquidated damages and other delinquency charges will be assessed by the Administrator at the time a delinquent account is referred to the Attorney. All legal fees and all costs of collection, including audit fees, will be assessed by the Attorney. Interest will be monitored and updated by the Attorney.
- E. Under the authority of the Trust Agreements, if in the opinion of the Attorney, an Audit of an employer's payroll records is necessary or desirable to substantiate the amount of contributions owing, the Attorney shall advise the Trustees, and upon approval, 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 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 demand letters, but will file suit as soon as possible.
- H. 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.
- I. If the employer is involved in bankruptcy, the Attorney will file the proof of claim and monitor the bankruptcy.
- J. The Attorney will periodically advise the Trustees of the status of all accounts referred and shall promptly answer any inquiries as to account status made by the Trustees or the Administrator.
- K. As soon as an employer is delinquent, the Administrator and Attorney should immediately investigate the identity of all general contractors and the existence of applicable bonds. When an Audit is completed, the Auditor shall also investigate the identity of any and all general contractors.

VI. 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, consistent with their fiduciary duties, 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 Trustees in writing together with a recommendation from the Attorney and factual information regarding the claim. Where time is of the essence, the Co-Chairs of the Trusts may act for the Trustees as a whole, subject to ratification by the Trustees. The Trustees may approve any proposed settlement agreement and arrangements and, in doing so, shall consider whether:

1. A delinquent account is collectible;
 2. Payment of less than the total amount owing to the Trusts is prudent, appropriate and consistent with the Trustees' fiduciary duties;
 3. Payment of amounts owing over a period of time is prudent, acceptable and consistent with the Trustees' fiduciary duties;
 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 Trusts 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 and difficulty of collection outweigh the prospect of successful collection, and/or whether liability and damages under the Collective Bargaining Agreement are questionable.
- C. All settlement agreements and/or arrangements are contingent on approval by the Trustees and shall be reduced to writing. Copies of all settlement agreements will be kept on file in the Administrator's Office.
- D. All settlement agreements must have security, e.g., a confession of judgment, personal guarantee, general contractor retention or joint checks, among other things. The terms and conditions of one payment plan are not precedent for any other payment plan.
- E. Interest shall continue to accrue for the duration of the settlement agreement and liquidated damages shall be assessed. Interest and liquidated damages may be reduced or waived, however, in exchange for prompt and faithful payment of all amounts due under a payment plan. Waivers of interest (except de minimis interest) will

only be considered in exceptional cases and are within the sole discretion of the trustees.

- F. Subject to Section II(F), the Trusts will attempt to collect all hard dollar costs including audit fees, administrative fees, attorney's fees and other costs associated with resolving a delinquency.
- G. The Trusts' objective is to collect the maximum amount of money at the least expense to the Trusts and 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 payment, such as joint checks, general contractor payments, and others.

VII. CONFIDENTIALITY

- A. It is the policy of the Trusts to maintain the confidentiality of nonpublic information received from employers for the purpose of completing an Audit. Such nonpublic 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 notification to General Contractors, Property Owners, Employer Association(s) and Unions, and coordination with other trades' trust funds, if necessary.
 - 3. Correction of inaccurate contributions, reporting, and overpayments, if any.
- B. Nonpublic 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.

VIII. NO THIRD PARTY RIGHTS

This Policy is an internal operating document of the Trusts and, although binding on parties to the Trust Agreements, 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 Plumbers and Pipefitters Union Local 525 Joint Trust Funds do hereby certify that the foregoing Collection Policy and Procedures was duly adopted on behalf of the Boards of Trustees at a meeting duly called and held on October 20, 2014.

PLUMBERS AND PIPEFITTERS UNION LOCAL NO. 525 HEALTH AND WELFARE TRUST AND PLAN

Mandi L. Lindsay _____ *Vito J. Sordani* _____
Chair Co-Chair

PLUMBERS AND PIPEFITTERS UNION LOCAL NO. 525 PENSION PLAN

Vito J. Sordani _____ *Mandi L. Lindsay* _____
Chair Co-Chair

PLUMBERS AND PIPEFITTERS UNION LOCAL NO. 525 APPRENTICE AND JOURNEYMAN TRAINING TRUST FOR SOUTHERN NEVADA

Mandi L. Lindsay _____ *Vito J. Sordani* _____
Chair Co-Chair