

**SEIU NATIONAL INDUSTRY PENSION FUND**  
**STATEMENT OF POLICY FOR COLLECTION OF DELINQUENT CONTRIBUTIONS**

(effective for all amounts due and owing on or after August 1, 2017)

The Board of Trustees of the Service Employees International Union National Industry Pension Fund (“Fund”), in accordance with the Restated Trust Agreement of the Service Employees International Union National Industry Pension Fund (“Trust Agreement”), hereby adopts the following policy for the collection of delinquent contributions. The following policy shall apply to all employers participating in the Fund (“Employers”), including employers that have executed or will execute a collective bargaining agreement or other agreement requiring contributions to the Fund (collectively “Collective Bargaining Agreement”), all other employers that are or were bound by, or whose employees are or were otherwise covered by, such agreements, and any successor to such employer.

**SECTION 1**  
**General Policy**

It is the policy of the Fund to make such diligent and systematic efforts as are appropriate under the circumstances to collect contributions when they are due. The Trustees have the legal right to exercise all remedies allowable under the Trust Agreement and under the Employee Retirement Income Security Act of 1974, *as amended* (“ERISA”), and any other applicable law, including but not limited to:

1. The right to establish a date on which contributions are due and the format in which remittance reports supporting such contributions must be made;
2. The right to conduct a review of the payroll records of all employees of the Employers, including, but not limited to, payroll ledgers, federal and state tax returns, union dues remittance reports, state unemployment forms and withholding remittances, documentation to verify job classifications and hire/termination dates, IRS Form 941 and such other books and records of the Employers that are necessary in order for the auditor to give an opinion that the proper contributions have been made;
3. The right to establish an audit or payroll review program;
4. The right to require that Employers pay the cost of a payroll review, plus interest, liquidated damages, attorneys’ fees, and any other expenses incurred by the Fund in conducting the payroll review;
5. The right to recover interest, liquidated damages, attorneys’ fees and any other expenses incurred by the Fund in collecting any delinquency;
6. The right to require a bond, a cash deposit, or other type of instrument as security for prompt future payments due from Employers that have been habitually delinquent in their contributions to the Fund;
7. The right to enforce this Policy against all Employers for all periods of covered employment, including a) periods for which the applicable Collective Bargaining

Agreement automatically continues following expiration of its term, b) periods for which Employers remain obligated to contribute to the Fund under the provisions of the Pension Protection Act (“PPA”), as modified by the Multiemployer Pension Reform Act of 2014 (“MPRA”) and c) periods for which Employers remain obligated to contribute to the Fund under the National Labor Relations Act (“NLRA”) and any other applicable law.

8. The right to enforce this Policy against any Employer that ceases to have an obligation to contribute to the Fund for the time period during which the Employer was obligated to contribute to the Fund;
9. The right to terminate a delinquent Employer's participation in the Fund in appropriate circumstances, as determined by the Trustees in their sole discretion;
10. The right to take all other steps and to perform all other acts that are necessary to collect contributions due to the Fund in a timely and expeditious manner;
11. The right to, from time to time, appoint a Committee of at least one Employer and one Union Trustee to act on behalf of the Board of Trustees, as provided for under this Policy; and
12. The procedures set forth herein shall be followed unless the Board of Trustees in their sole discretion determines that they should be waived in a particular instance.

All questions or disputes relating to the interpretation, meaning, and/or application of this Policy shall be finally and exclusively resolved by the Board of Trustees in the exercise of its discretion and in the performance of its 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. The obligations to pay interest, liquidated damages, and fees chargeable under this Policy and under the Trust Agreement are contractual in nature and independent of the provisions of ERISA Section 502(g) and other applicable law. In consideration for its participation, or continued participation, in the Fund, each Employer is and shall be obligated to pay all interest, liquidated damages, fees, and costs chargeable pursuant to this Policy and pursuant to the Trust Agreement.

## **SECTION 2**

### **Collection Procedure**

In accordance with the Trust Agreement, ERISA, all other applicable law, and the above declaration of policy, the following procedures shall be required of all Employers and the steps set out below shall be taken to effectuate the collection of delinquent contributions. As used in this Policy, the term “delinquent contributions” includes all contributions and surcharges or supplemental contributions owed pursuant to the PPA or a Funding Improvement Plan or Rehabilitation Plan adopted by the Trustees under the PPA, that are unpaid or underpaid for any reason, including but not limited to mistake, miscalculation, misinterpretation of contract terms, reliance upon a local union or other third party, or ignorance and regardless of whether remittance reports have been provided for such delinquent contributions.

1. Contributions and supporting remittance reports(s) are due by the 15<sup>th</sup> day of the month following the month in which the work was performed for which the contributions are

owed. Initial contributions and supporting remittance reports for Employers which are newly subject to Collective Bargaining Agreements (*i.e.* for all months necessary to bring the employee group current) are due no later than the 15<sup>th</sup> day of the month following the month in which the agreement to contribute was executed by the parties. Retroactive contributions made on behalf of employees shall be considered timely made if paid by the 15<sup>th</sup> day of the month following the month in which the employee becomes eligible for those contributions.

2. Contributions must be accompanied by a completed remittance report form(s) supplied by the Fund, or in electronic form as directed by the Fund Office, supporting such contributions. The Executive Director may approve the submission of reports in other forms, including in electronic form, if it is determined that providing reports in such form will not cause additional burden or expense to the Fund.
3. If the contributions and the remittance report are not received by the last day of the month in which they were due, the Fund Office shall send a notice of delinquency to the Employer requesting immediate payment of the delinquent contributions plus interest thereon at the rate prescribed by Section 2, paragraphs 5(b) and 5(c) and liquidated damages described at Section 2, paragraphs 5(d) and 5(e), along with submission of the appropriate remittance report form. The notice will inform the delinquent Employer that, unless the full amount due and required reports are received, the matter may be referred to the Fund's legal counsel for collection.
4. If the contributions and remittance report(s) are not received by the last day of the second month following that for which contributions were due, the delinquency may be referred to legal counsel, with copies of notices sent to the Employer and other relevant documents. The Fund Office also shall refer to counsel the cases of Employers that have accrued balances of unpaid interest or liquidated damages that equal or exceed \$1,000. Notwithstanding the procedures set out in this Policy, the Board of Trustees or Executive Director may refer any delinquent account to legal counsel at an earlier or later date than provided for herein or may forego referral to legal counsel, where circumstances warrant that the collection action be expedited or, delayed, or addressed without legal action.
5. Whether collected by the Fund's legal counsel or the Fund Office, the following rules shall apply to all delinquent, late or underpaid contributions:
  - a. Net Contributions Due: Net Contributions Due shall include all monthly delinquent contributions, supplemental contributions and surcharges ("Monthly Contributions Owed") owed for all months less any credited monthly overpayments made by the Employer in accordance with Section 2, paragraph 7.

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- b. Interest on Late Payments: If contributions are not received by the last day of the month in which the contributions were due, interest shall be charged on the late payment from the due date for the delinquent contributions through and including the date payment is actually received by the Fund Office at the rate of ten percent (10%) per annum on the contributions due for the Monthly Contributions Owed. Interest shall be compounded monthly. Notwithstanding the foregoing, interest calculated to be less than one dollar (\$1.00) shall not be charged.

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- c. Interest on Net Contributions Due: If an Employer has Net Contributions Due, interest shall be calculated on the Net Contributions Due at a rate of ten percent (10%) per annum compounded monthly.

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- d. Liquidated Damages on Late Payments: If contributions and supporting remittance report(s) in a form acceptable to the Fund are received later than the 15<sup>th</sup> day of the month following the month in which the contributions were due, the Employer shall be obligated to pay liquidated damages in the amount of 5% of the Monthly Contributions Owed, with a minimum of \$50 for each month's delinquency. If litigation has commenced, the Employer shall be obligated to pay liquidated damages in the amount of the greater of (i) the interest owed on the Late Payment as calculated in Section 2, paragraph 5(b), or (ii) 20% of the Monthly Contributions Owed.

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- e. Liquidated Damages on Underpayments: If an employer underpays its Monthly Contributions Owed for a specific month, the Employer shall be obligated to pay liquidated damages in the amount of 5% of the underpayment, with a minimum of \$50 for each such month. If litigation has commenced, the Employer shall be obligated to pay liquidated damages in the greater of (a) the total of the interest owed on the underpayment or (b) 20% of the underpayment. If liquidated damages have been charged or assessed for a Late Payment, no additional liquidated damages shall be charged on an underpayment of Monthly Contributions Owed.
6. If the Fund Office has not received complete and correct remittance report(s) necessary to determine the amounts owed by the Employer, the Fund Office shall estimate the contributions due based on the most recent remittance report submitted to the Fund, payroll information, or other basis as reasonably determined by the Fund, and the Employer shall be deemed delinquent in its contributions in that amount on a monthly basis, as a minimum, in any subsequent legal action.
  7. Any payment made by the Employer in excess of its required monthly contribution amount due shall be applied to the earliest pay period for which any amounts including delinquent contributions, interest and liquidated damages, are due. The Trustees may enforce and take all action under this Policy including the initiation of legal action under Section 3, to collect interest, liquidated damages and other amounts owed.
  8. An Employer that believes it has paid an amount in excess of all amounts owed to the Fund ("Net Overpayment") resulting solely from either an error in its calculations or in the amount of its payment (*i.e.*, not resulting from an error in its reported hours) may apply the amount of its Net Overpayment as a credit towards its future contributions. Any other Net Overpayment, including a Net Overpayment resulting from a reporting error, must be confirmed by the Fund Office before a credit may be taken. Such confirmation from the Fund Office is not binding on the Fund and does not preclude the Fund from auditing the Employer for the same period at a later date. An Employer may request

confirmation in writing from the Fund of any believed credit within two years of the original Net Overpayment. The Employer must apply the credit within two years from the date of the Net Overpayment or six months from the Fund's confirmation of the Net Overpayment, whichever is later, or such overpayment shall be forfeited.

9. An Employer that believes it has a Net Overpayment may request a refund of the claimed overpayment by submitting a request in writing to the Trustees within two years of the date on which the overpayment was received by the Fund. The writing must include a detailed explanation for the basis of the claimed overpayment and include all supporting documentation. The Trustees shall have the discretion to approve or deny any request for refund less any outstanding liquidated damages, interest or other penalties (including attorneys' fees and costs and audit testing fees) due. Any approved refund shall also be reduced by (a) an administrative fee equal to ten percent (10%) of the amount of the overpayment and (b) any other financial detriment to the Trust resulting from the overpayments, including overpaid pension benefits which are not recovered.
10. Credits or refunds for Net Overpayments shall be issued only in a manner consistent with ERISA section 403(c)(2) and Internal Revenue Code section 401(a)(2). The Fund shall not be obligated to pay benefits resulting from any overpaid contributions. Notwithstanding the forgoing, in the event that an Employer's overpayment has resulted in an erroneous increase in a participant's pension benefit, the Trustees may elect to not correct any overpayment to the participant and shall apply the amount of the Employer's overpayment towards the cost of the additional benefit in a manner consistent with IRS self-correction rules. No interest shall be due to any Employer on any overpayment.

### **SECTION 3**

#### **Legal Action and Settlement**

1. When a delinquency or other collection matter is referred to the Fund's legal counsel for collection, legal counsel shall send a letter to the Employer demanding any required remittance report with payment of the delinquent contributions and advising the Employer of its liability for interest, liquidated damages, and costs. In the event an Employer fails to respond to the letter within thirty (30) days, legal counsel shall send a second demand letter.
2. In the event an Employer fails to respond or otherwise fails or refuses to pay the delinquent contributions and submit the remittance report(s) within thirty (30) days after legal counsel's second demand for payment, legal counsel may initiate legal action for any delinquency valued to be in excess of \$1,000.00. Legal counsel is authorized to immediately initiate legal action notwithstanding the above procedures in order to preserve or maintain the Fund's claim.
3. Legal counsel is authorized to enter into settlement negotiations with delinquent Employers.
4. Attorneys' fees shall be assessed against a delinquent Employer, at a reasonable hourly rate (which rate shall be no less than the hourly rate charged to the Fund for such services) for all time spent by legal counsel in collection efforts pursuant to this Policy or in enforcing the Board of Trustees' rights to payroll reviews pursuant to Section 4 hereof.

5. All costs actually incurred in court actions for collection of delinquent contributions or to enforce the Trustees' right to conduct a payroll review of the Employer's records shall be assessed against the delinquent Employer, including, but not limited to, filing fees, fees for service of process, copying charges, postage, and such other costs as would otherwise be charged to or paid by the Fund and all other costs that are properly recoverable under the applicable Rules of Civil Procedure.
6. In any action to collect delinquent contributions or other amounts under this Policy, the limitations period for such action shall be governed by the law of the state in which all or the majority of the employees at the specific work site on whose behalf the contributing employer makes contributions work, unless such limitations period is less than three years, in which case the limitation period under the laws of the District of Columbia shall govern.
7. Any compromise of amounts owed or deadline extension by the Board of Trustees under this Policy shall comply with Prohibited Transaction Exemption 76-1.

#### **SECTION 4**

#### **Payroll Review Procedure**

1. The Board of Trustees shall select such number of participating Employers each year for payroll reviews as it deems from time to time to be appropriate. The Board of Trustees may, at its discretion, delegate to the Executive Director the task of selecting which Employers shall be reviewed pursuant to this Policy or pursuant to an employer selection policy separately adopted by the Trustees. The Board of Trustees or the Executive Director may also choose for a payroll review an Employer which was not randomly selected. Notwithstanding the foregoing, unless the Board of Trustees or the Executive Director determine that there is good cause to delay or cancel an audit of a particular Employer, each Employer must be subject to a payroll review at least once every 7 years.
2. The Executive Director may coordinate audit/payroll review activities with those of any other employee benefit plan(s) covering employees of the selected Employer. In each case of a joint audit/review, the Fund Office shall enter into an agreement (or agreements) with the other plan(s) for an equitable allocation of the costs of such audit/review. The Executive Director is authorized to enter into any cost sharing agreement with respect to preliminary payroll reviews (in which testing for discrepancies is involved) in which costs are shared equally. The Executive Director is authorized to enter into any cost sharing agreement with respect to detailed payroll reviews (in which data on a per participant basis is generated) pro-rata in the same proportions as the discovered delinquencies of, or underpayments to, the respective plans bear to one another. Cost sharing agreements on any other basis must be approved by the Trustees or Committee appointed under Section 1, paragraph 11.
3. The period covered by the payroll review shall not be less than one (1) year.
4. The right of the Fund to conduct a review of an Employer's records shall survive the termination of an Employer's Collective Bargaining Agreement, any other written agreement under which the Employer is contributing to the Fund, any bankruptcy filing, or any assessment or payment of withdrawal liability.

5. The Fund Office shall forward a letter to the Employer advising it of the impending payroll review and citing the Trustees' authority to conduct the review.
6. The auditor shall schedule the payroll review with the Employer, which shall make available to the auditor all books and records which the auditor determines are required. Alternatively, at the auditor's election, the Employer shall be required to send the pertinent records to the Fund Office or make the records available to the auditor for inspection at a location in the Washington, D.C. metropolitan area
7. Where a payroll review of an Employer is conducted and the payroll review discloses an underpayment, the Fund Office shall send a letter to the Employer advising of the underpayment and requesting that the Employer make payment of the underpayment, liquidated damages, interest, testing fees (when appropriate under this Policy) and any other costs associated with conducting the payroll review or collecting amounts owed within thirty (30) days of the date of the letter. After the expiration of the thirty (30) day period, a second letter shall be sent to the Employer demanding that the underpayment be remitted immediately. If payment is not received within ten (10) days of the date of such letter, the Fund Office may turn the matter over to legal counsel, with copies of the letters, for legal action pursuant to Section 3.
8. In the event an Employer refuses to permit a payroll review upon request by the Trustees or if the Employer refuses the Fund auditor access to pertinent records, the Fund auditor shall refer the matter to legal counsel.
9. Legal counsel shall thereafter demand that the Employer make available such books and records as necessary for the Fund auditor to conduct the payroll review. If such books and records are not made available within a reasonable period of time not to exceed 60 days or if the Employer otherwise fails to cooperate with the Fund's payroll review procedures, the Employer shall be liable for any attorneys' fees and costs incurred by the Fund in enforcing the Fund's right to review the Employer's records. Legal counsel may institute legal action to enforce the Trustees' right to conduct a payroll review and the Employer shall be assessed all costs and attorney's fees incurred as a result of the Employer's refusal to permit the payroll review or refusal to make available all pertinent records. Employers have a duty to maintain a record of individual hours worked by their employees for at least seven (7) years. Any Employer failing to maintain or provide its records as required herein shall sign any authorizations necessary for any state or federal agency to release tax or other records showing payroll records and shall pay all expenses associated with obtaining these records. If an Employer violates the duty to maintain or provide required records, the burden will be on the Employer to show that any portion of its payroll or independent contractor expense was not for work requiring contributions to this Fund.
10. Employers will be billed for net amounts owed in excess of \$50.00. Billings will be calculated as follows.
  - a. Principal Amount Owed: The Principal Amount Owed shall include all contributions, supplemental contributions, and surcharges owed for all months less any overpayments discovered by the payroll review.

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- b. Interest: Interest on the amounts owed is calculated from the date originally due to the date paid and compounded monthly at rate of 10% per annum.

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- c. Liquidated Damages: Liquidated Damages are calculated at the greater of 5% of the total net Principal Amount Due or \$50. If litigation has commenced, the Employer shall be obligated to pay liquidated damages in the greater of (1) the total of the Interest on the amounts due or (2) 20% of the total Principal Amount Due. Notwithstanding the forgoing, the Executive Director may waive Liquidated Damages assessed on any amount of the underpayment that the Employer pays within 30 days of the initial demand.

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- d. Testing Fee: The testing fee will include the auditor's time and expenses in performing the payroll review. The cost of the payroll review, in addition to any other applicable fees and costs, shall be payable by the Employer whenever a review of an Employer's record discloses a Principal Amount Owed due equal to or greater than:
  - i. in the case of an Employer that contributed (or should have contributed) \$50,000 or more in any contract year, 5% of the Employer's total required contributions for such period,  

or
  - ii. in the case of an Employer that contributed (or should have contributed) \$10,000 or more but less than \$50,000 in any contract year, the lesser of
    - 1. 7% of the Employer's total required contributions for such period;
    - 2. \$2,500,  

or
  - iii. in the case of an Employer that annually contributed (or should have contributed) less than \$10,000, the lesser of
    - 1. 10% of the Employer's total required contributions for such period;
    - 2. \$1,000.

The testing fee will be charged for the entire audit period whenever one of the above thresholds is met in any of the calendar years tested.

- 11. The Board of Trustees shall authorize the Executive Director to make decisions regarding the collection of fees associated with the audit following the advice of legal counsel. In such cases where legal counsel has advised that the cost of further collection efforts for unsubstantial amounts would not be financially prudent to pursue, the Executive Director may then terminate collection efforts.
- 12. The Board of Trustees authorizes the Executive Director to apply any Net Overpayment discovered by the payroll review procedure to any Employer delinquencies including at

other work sites in accordance with Section 2, paragraph 7. If the Employer has no other delinquencies, the rules for the application of a credit of a Net Overpayment towards future contributions set forth in Section 2, paragraph 8 shall apply.

13. Any request for a refund from an Employer resulting from a Net Overpayment discovered by the payroll review procedure shall be governed by the rules regarding Net Overpayment refunds described in Section 2, paragraph 9. An Employer is not entitled to a refund, however, of any Net Overpayment discovered in the payroll review procedure if it has any contributions or other amounts owed, including at other work sites.

## **SECTION 5 Reports and Records**

1. Legal counsel and the Fund Office shall prepare a delinquency report to be presented at each Board of Trustees' meeting. The report shall show all Employers that are delinquent. The determination of the Board with respect to action on such delinquencies, and the specific bases therefore, shall be recorded in the minutes.
2. The Fund Office shall maintain a file of currently effective Collective Bargaining Agreements and other agreements detailing the basis upon which Employers are obligated to make contributions to the Fund.
3. Employers are obligated to timely remit to the Fund Office all new collective bargaining agreements that they enter into that provide for participation in the Fund. The failure of an Employer to timely remit to the Fund a signed collective bargaining agreement shall not impede the Fund's ability to pursue delinquencies.

## **SECTION 6 Termination of Employer Participation**

1. The Board of Trustees, upon recommendation by the Fund Office and with consultation with Fund Counsel, may immediately suspend a delinquent Employer's participation in the Fund in their sole discretion. Employees of a suspended Employer shall accrue no benefits under the Fund unless such Employer's participation is restored. Following suspension, the Fund Office shall send a notice to the Employer, with a copy to the local union(s) whose members are presently employed by such Employer. Such notice shall state the reason for the Employer's suspension from the Fund and shall describe the actions the Employer must take in order to avoid permanent termination from the Fund.
2. In determining whether to suspend a delinquent Employer, the Trustees may consider the following:
  - a. The frequency of the Employer's delinquencies over the preceding five years, and the amount owed for, length of employment covered by or number of employees affected by such delinquencies;
  - b. The extent to which the Employer has complied with the terms of previous settlement agreements with the Fund;
  - c. The financial solvency of the Employer and likelihood that the Fund will be able to collect contributions for ongoing covered employment at such Employer's worksites;

- d. Any pattern of failure or refusal to cooperate with the Fund in resolving delinquencies by the Employer or Employer's agent;
  - e. Any dilatory conduct or other acts believed to be taken in bad faith by the Employer or Employer's agent in the course of attempted resolution of a delinquency by the Fund;
  - f. The projected costs and expense of continuing the employer's participation in the Fund; and
  - g. Any other recommendations and comments from the Fund Office and Fund Counsel regarding the Employer.
3. This provision shall be applied in a manner that conforms to ERISA Section 204(h) and ensures that the appropriate notice is provided to the effected employees.
  4. Any suspended Employer which fails to take the actions necessary to lift the suspension within thirty days shall be permanently terminated from the Fund. Any termination of participation under this Section shall be deemed a complete withdrawal by the Employer. The right of the Fund to enforce collections of contributions, interest, liquidated damages, and other applicable fees under this Policy against an Employer suspended or terminated pursuant to this Section shall survive such Employer's termination of participation in the Fund.

**SECTION 7**  
**Pension Protection Act Provisions**

Any Employer obligated to contribute in accordance with a contribution schedule imposed or elected pursuant to the PPA shall remain bound by such contribution schedule, including any applicable increases under the contribution schedule, as may be updated by the Trustees, following expiration of its Collective Bargaining Agreement unless the Employer has ceased participation in the Fund.

**SECTION 8**  
**Effective Date**

The revisions to this Policy, which originally was adopted May 1, 1994, and revised effective March 1, 2007, December 17, 2008, November 15, 2011, November 30, 2012, and May 24, 2017; respectively, shall be effective August 1, 2017, and shall be applicable to all amounts due and owing on or after such effective date.