



**Employer Contribution
Policies and Procedures**

- I. Introduction.1**
- II. Reporting and Payment of Contributions.1-3**
- III. Due and Unpaid Contributions Policy.3-9**
- IV. Employer Audits. 10-11**
- V. Mistaken Contributions. 12-13**

I. Introduction

Each Employer shall make prompt contributions or payment to the Trust Fund in such amount and under the terms as are provided for in the applicable collective bargaining agreement in effect from time to time between the Employer or his bargaining representative and the Union. An Employer may also be required to make contributions in such amount and under such terms as agreed to by such Employer in writing, provided that such contributions shall be subject to acceptance by the Trustees. The Employer agrees that such contributions shall constitute an absolute obligation to the Trust Fund, and such obligation shall not be subject to, by way of illustration and not limitation, set-off or counterclaim which the Employer may have for erroneous contributions to any other Trust Funds, or for any other liability of a Union, of an Employee, of any other Trust Funds, or of any other person. In the event the Employer is not a signatory to a Collective Bargaining Agreement, the contribution rate shall be the rate set forth in the Participation Agreement entered into by the Employer, as modified from time to time.

II. Reporting and Payment of Contributions

A. Policy:

1. Contributions to the Fund shall be paid to the Trustees or to such depository as the Trustees shall designate, only by check, bank draft, or money order, or its equivalent, made payable to the order of the NATIONAL EMPLOYEES HEALTH PLAN, or as otherwise provided in the applicable collective bargaining agreement upon such forms as specified by the Trustees. The payment of contributions shall be made periodically at such times as may be provided in the applicable collective bargaining agreement. In the absence of any such provision in a collective bargaining agreement, the payment of contributions shall be made periodically at such times as the Trustees shall specify.
2. Each Employer shall be responsible only for the contributions payable by him on account of Employees covered by him except as may be otherwise provided by law. No other Employers or groups shall be responsible for the contributions, payments, or other obligations of any other Employer except as may be otherwise provided by law.

B. Procedures:

1. Monthly Payment Information

- a. On or about the 20th day of each month (for that month) for **retroactive contribution Employers**, and (for the following month) for **advance contribution Employers**, the Fund staff will issue a Contribution Statement with the following information.
 - 1) A list of the names and Participant ID numbers of Employees for whom the Employer last contributed, excluding Employees identified by the Employer as having terminated employment the prior month;
 - 2) The contribution required for each Employee for the month billed; and
 - 3) The total contribution required for the listed Employees for the month billed.
- b. For **retroactive contribution Employers**, before the tenth day of the month following the month of coverage, Employers will send to the Fund's lockbox the Contribution Statement, the contribution required for each Employee and the total contribution required for the listed Employees. The Contribution Statement must be timely sent to the Fund's lockbox for recordkeeping purposes, even if a contribution is not timely made.
- c. For **advance contribution Employers**, before the first day of the month of coverage, Employers will send to the Fun's lockbox the latest Contribution Statement, edited as explained hereafter, and a remittance payment reflecting the Employer's total contribution obligation for the month. The Employer will edit the statement to reflect 1) the names and Social Security numbers for new Employees for whom the Employer is obligated to contribute, 2) changes in current Employee status. Changes in Employee status during the prior month that

reduced the Employer's contribution obligation are to be detailed, as are additional contribution obligations with respect to Employees for whom contributions were first payable after the start of the prior month. The net total of such adjustments is to be added, or subtracted, as appropriate, from the remittance payment. The Contribution Statement must be timely sent to the Fund's lockbox for record keeping purposes, even if the remittance payment is not timely made.

- d. The Employer must timely report to the Fund all active employment status changes (i.e., layoff, termination, resignation, retirement, personal leave, military leave, work or non-work related disabilities). Failure to timely notify the Fund will obligate the Employer for contributions on behalf of the individual through the date the status change is ultimately determined to be effective.

2. Place and time of contributions

- a. Contributions must be sent to the Fund's lockbox.
- b. For retroactive contribution Employers, contributions are due by the 10th day of the month following the month of coverage.
- c. For advance contribution Employers, contributions are due by the 1st day of the month of coverage.
- d. A contribution is deemed as made on the date the payment is received at the Fund's lockbox.

III. Due and Unpaid Contributions

A. General Policy

It is the policy of the NATIONAL EMPLOYEES HEALTH PLAN (the "Plan") to collect all employer contributions as they are due and to make such diligent and systematic efforts as are appropriate under the circumstances to do so.

If an employer ceases to have an obligation to contribute to the Plan under the Trust Agreement, a collective bargaining agreement, or applicable law, the employer shall remain subject to

this Policy with regard to the time period during which the employer was obligated to contribute to the Plan.

1. The Trustees of the Plan (the "Trustees") have the legal right to exercise all remedies allowable under the collective bargaining agreement, the Trust Agreements, the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and other applicable law, including but not limited to:

- a) The right to establish a date on which contributions are due;
- b) The right to audit the financial records of employers, including but not limited to all: check registers, payroll ledgers, federal and state tax returns, IRS Form 941s, State of Florida Unemployment Compensation Forms U.C.T. 6, and such other books and records of the employers that are necessary in order for the auditors to ascertain that the proper contributions have been made;
- c) The right to establish a random audit program;
- d) The right to require that a delinquent employer pay the cost of an audit, interest, attorneys' fees, and any other expenses incurred by the Plan in determining the amount of a delinquency and in collecting a delinquency;
- e) The right to recover liquidated damages and statutory liquidated damages;
- f) The right to require a bond or a cash deposit as security for prompt future payments due from an employer that has been habitually delinquent in its contributions to the Plan;
- g) The right to establish a Delinquency Subcommittee which shall have such duties and responsibilities as the Trustees may from time to time delegate to it; and
- h) The right to take any other steps and to perform all other acts that are necessary in order to collect contributions due to the Plan in a timely and expeditious manner.

2. The procedures set forth herein shall be followed unless the Trustees determine that they should be waived in a particular instance. Such a waiver shall never set a precedent or be deemed as an amendment to this policy.

3. All questions or disputes relating to the interpretation, meaning and/or application of this policy shall be finally and exclusively resolved by the Trustees in the exercise of their discretion and in the performance of their fiduciary obligations to the Plan's participants and beneficiaries, in the protection of the financial integrity and soundness of the Plan and the efficient and effective administration of the Plan.

B. Collection Procedures in Cases of Delinquency

In accordance with the Trust Agreement, ERISA, and the above declaration of policy, the following administrative steps shall be taken to effectuate the collection of delinquent contributions.

1. Contributions and the supporting remittance reports (the "contributions") are due on the date the employer's collective bargaining agreement requires payment and due on a monthly basis, except to the extent that the Trustees agree to accept contributions at shorter intervals. If the collective bargaining agreement does not state a due date, then contributions are due on the tenth (10th) calendar day of the month immediately after the month on which the Monthly Report and contributions are based (the "Due Date").

Contribution payments shall be made in the name of the Plan. Contributions shall become delinquent on the thirtieth (30th) calendar day following the Due Date (or the first business day after the 30th calendar day, if the 30th day falls on a non-business day).

2. Interest shall accrue on delinquent contributions beginning thirty (30) days from the Due Date at the prevailing rate pursuant to Section 6621 of the Internal Revenue Code.

3. If a contribution is not received by the Due Date, then the Plan's administrative manager shall take the following actions with respect to late and delinquent employers respectively.

a) The administrative manager will send a first written notice of delinquency to a late employer advising the employer that the contributions must be received within seven (7) days thereafter. The administrative manager shall also send a copy of the letter to the Union along with a cover letter inquiring of the Union as to whether the employer is still active; i.e. whether the employer employed any employee in covered employment during the payroll period for which the employer appears delinquent.

- b) If a late employer fails to pay the contributions by the first business day after the twenty-fifth (25th) day of the month, then the administrative manager shall send a second demand letter to the late employer. This letter shall be sent by certified mail, return receipt requested and a copy of this second demand letter shall be sent to the Union.
 - c) The administrative manager shall send Plan Counsel a list of employers who have not paid contributions within ten (10) days of the date the administrative manager sent the second demand letter. Plan counsel will then take appropriate collection action against such delinquent employers, as set forth below in §3, which may include commencement of litigation against a delinquent employer to collect the delinquent contributions and other monies due.
 - d) The administrative manager shall also refer the employer for an audit of each delinquent employer, who has not paid contributions within the above-referenced 10 days of sending the second demand letter. Each delinquent employer shall be charged the actual cost of the audit, including accountant's fees, regardless of whether the audit report shows a delinquency or deficiency in payment of any amounts due to the Plan.
 - e) The administrative manager shall also send a letter notifying the delinquent employer that it has incurred liquidated damages and late charges. The liquidated damages shall be twenty percent (20%) of the unpaid delinquent contributions, as the reasonably anticipated costs of collection. The late charges shall be assessed interest on the delinquent contributions amount at the rate of 1.5% per month for each month, or part thereof, from the date on which the employer became delinquent until the date the employer pays the delinquent contributions.
4. If an employer pays the principal amount of the delinquency but does not pay the service charge, accrued interest, and/or any other amounts owed, acceptance of the principal amount shall not constitute a waiver of the Plan's claim for the late charge, accrued and unpaid interest, and/or any other amounts incurred as costs of collection activity.
5. If an employer's payment of contributions is paid with a check that is not honored by the drawee bank when presented to that bank, the employer will be a considered delinquent employer. The employer will also be charged an administrative fee of ten

percent (10%) of the amount of the check, up to a maximum of \$500.00 for each such dishonored check. The Chair of the Trustees, in his discretion, may waive the administrative fee if the employer successfully replaces the dishonored check with a substitute check within fifteen (15) days of notice by the administrative manager to the employer or for good cause shown by the employer.

6. Collection activity includes all work performed beginning with the initial demand letter sent by Plan Counsel, then proceeding to litigation, obtaining a judgment or settlement, and, if necessary, through the process of execution on and recording of judgments.

7. Notwithstanding the procedures set out in this policy, the Trustees may refer any delinquent account to Plan Counsel at an earlier or later date than provided for herein when circumstances warrant that collection action be expedited or delayed.

8. Notwithstanding the procedures set out in this policy, where a delinquent Employer is located within an area in which the Plan has a cooperative delinquency collection arrangement with a local Delinquency Committee or with another employee benefit fund, the method for collection and assessment of charges, fees, and costs shall be governed by the terms of that arrangement, unless the Board of Trustees elects to utilize the procedures set forth herein.

9. Except as otherwise determined by the Chairman of the Board of Trustees for good cause shown, no extension of time in which an employer is required to make a monthly contribution may be granted unless such extension is set forth in a written promissory note which contains the following minimum provisions: 1) a stipulation for judgment as to liability for the amounts due, 2) fifty percent (50%) shall be paid immediately, 3) interest shall accrue and be paid monthly at the rate of 1.5% of the remaining balance, and 4) payments shall extend for a period not to exceed twelve (12) months. If the employer defaults on the promissory note, the employer will become liable for liquidated damages equal to twenty percent (20%) of the remaining balance or \$500.00, whichever is greater, plus all attorneys' fees and costs and any other available relief.

C. Legal Action and Settlement

1. If a delinquent employer's contributions are not received within ten (10) days of the date of the second notice sent out under

Section 2, the delinquent amount shall be referred to Plan Counsel for collection. Plan Counsel shall send a letter to the employer demanding payment of the delinquent contributions liquidated damages and late charges within seven (7) days.

2. In the event an employer fails to pay the delinquent contributions within seven (7) days after the Plan Counsel's demand for payment, then Plan Counsel shall send a second and final letter to the employer making demand for payment of the delinquent contributions, late charges, and attorneys' fees incurred for collection. By that same letter, Plan Counsel shall advise the employer that its failure to comply with the requirements set forth in such letter may result in the filing of a lawsuit in Federal Court and possibly a motion for preliminary Injunction to compel payment during the pendency of such lawsuit. Plan Counsel's letter shall additionally advise the employer that in the event that the Plan files a lawsuit, that they shall seek to have the employer held liable for all delinquent contributions, late charges, interest, liquidated damages, accountant's fees for the cost of any audit begun after a lawsuit, and all attorneys' fees and costs.

3. Plan Counsel may additionally pursue a claim against an employer's fringe benefit surety bond or cash deposit for collection of the employer's delinquent contributions and late charges.

4. The Trustees may decline to file a lawsuit for collection if they, in their discretion, determine there is a likelihood that the costs of the suit will exceed the recovery.

5. Plan Counsel is authorized to enter into settlement negotiations, either orally or in writing, with delinquent employers. Without further approval of the Trustees, Plan Counsel may agree to the immediate payment of the full amount owed, but any settlement which waives or compromises the amount owed, including late charges, interest, liquidated damages, accountant's fees, attorneys' fees or costs, must be done in consultation with the administrative manager and approved by the Trustees.

6. Upon receipt of a settlement proposal that contemplates payment of amounts due over a period of time, Plan Counsel shall present the proposal to the Trustees for their review and approval.

7. Unless the Trustees specifically agree to the contrary, no settlement may permanently waive the collection of late charges, interest, liquidated damages, accountant's fees, attorneys' fees and/or costs, although the Trustees may agree to suspend the

collection of same until a subsequent delinquency of the current collection, if those amounts would involve unwarranted expense.

8. The Trustees reserve the right to accept or reject an employer's proposal regarding any delinquent contributions, late charges, interest, liquidated damages, accountant's fees, attorneys' fees and/or costs over a period of time and to compromise any claim or delinquent account as recommended by Plan Counsel; provided however, that any such decision to extend the time for payment, or to compromise the amount owing, complies with the Department of Labor Prohibited Transaction Exemption 76-1.

9. Settlements calling for payments over time or compromising the amount, including late charges, interest, liquidated damages, accountant's fees, attorneys' fees or costs, must be in writing and signed on behalf of the Plan and the employer unless it would be inappropriate under the circumstances to do so.

10. The Trustees may, from time to time, appoint a Delinquency Subcommittee comprised of at least one management trustee and one labor trustee to act on behalf of the Trustees, as provided for under this policy.

D. Statutory Liquidated Damages, Attorneys' Fees and Costs

1. Statutory liquidated damages shall be calculated from the Due Date, and shall become due and owing if suit is commenced. The amount of the liquidated damages shall be the greater of:
 - a. Interest on the delinquent Contributions determined in accordance with Section 2, ¶2, or Section 4, ¶8;
or
 - b. 20% of the delinquent Contributions,
2. Attorneys' fees shall be due to the Plan from a delinquent employer for all time spent by Plan Counsel in collection efforts pursuant to Section 3 hereof or in enforcing the Trustees' right to payroll audits pursuant to Section 4 hereof.
3. All costs actually incurred in court actions for collection of delinquent contributions or to enforce the Trustees' right to audit the employer's payroll records shall be due to the Plan from the delinquent employer, including, but not limited to, filing fees, fees for service of process, travel, copying charges, postage,

expert witness fees, deposition fees, and such other costs as would otherwise be charged to the Trustees.

E. Bond Claims

1. The Trustees, in and at their discretion, may direct Plan Counsel to make a claim against a delinquent employer's fringe benefit surety bond or cash deposit in order to satisfy an employer's indebtedness to the Plan for delinquent contributions, interest, liquidated damages, accountant's fees, attorneys' fees and costs.
2. Plan Counsel may assert a claim against an employer's bond or cash deposit, without regard to whether the Plan have filed a lawsuit against the employer for collection of delinquent contributions, interest, liquidated damages, accountant's fees, attorneys' fees and costs.
3. In the event that the employer's fringe benefit surety bond or cash deposit proves insufficient to satisfy the full amount of the employer's indebtedness to the Plan, then Plan Counsel shall advise the Trustees as to the amount of the insufficiency prior to entering into a settlement of the claim against the employer's bond or cash deposit.

IV. Payroll Audit Policy

1. The Trustees shall have discretion in determining which employers will be audited. Employers will be assigned for audit on a random basis. The Trustees may direct the Plan's auditor to conduct an audit of a new employer within the first year of its participation, and each employer that terminates its participation in the Plan or files a bankruptcy petition shall be audited as soon as practicable following such termination or petition.
2. The period audited shall be three (3) years, unless circumstances dictate otherwise. Such period shall commence from the date of the last audit of the employer, or in cases where an employer has not been previously audited, from the date the employer first became a participating employer in the Plan. Employers selected for an audit will be advised in writing by the administrative manager that the audit will be conducted and that the auditor will contact the Employer to arrange a mutually acceptable time, within reason, for conducting the audit. The administrative manager shall send a copy of that letter to the auditor as well. The auditors shall then have the responsibility for contacting the employer to schedule the audit, but in no event shall the audit occur later than a date specified by the administrative manager.

The Plan's auditors shall be authorized to enter upon the premises of any employer at reasonable times and during business hours to examine and copy any and all books, records, papers, or reports of such employer. Any and all such books and records must be maintained by the employer for six (6) years. The employer shall also identify all employees, including their addresses and craft or job classifications. The employer must also produce, upon request, records showing the names of all persons having an ownership interest in the employer, regardless of whether the employer is incorporated

3. Notwithstanding the guidelines of this Section, the Trustees may, in the exercise of their discretion, determine that the audit schedule set forth above should not be followed in a particular instance. For example, the Trustees may, in the exercise of their discretion, decide not to conduct an audit if an employer has consistently reported accurately or, if facts and circumstances indicate that a particular employer may be reporting inaccurately or inconsistently, the Trustees may direct that the Plan's auditors conduct an audit. If an audit uncovers inaccurate or inconsistent reporting by the employer, the Plan's auditor shall monitor such employer and schedule a subsequent audit within the appropriate statute of limitations.

4. If an employer ceases to have an obligation to contribute to the Plan under the Trust Agreement, a collective bargaining agreement, or applicable law, the employer shall remain subject to these audit procedures for the purpose of verifying that the employer made the proper contributions during the time period in which the employer was obligated to contribute to the Plan.

5. Prior to conducting each audit, the Plan's auditor shall notify the administrative manager, the Union, and shall review the employer's collective bargaining agreement and any pending issues. The administrative manager shall also forward to the auditor copies of the employer's ledger card, the employer's monthly reporting form (showing the rate of contribution), and executed copies of any governing documents (e.g. the Participation Agreement, collective bargaining agreement, etc.) if the auditor requests copies of such documents. Plan Counsel, if advised by the auditor that the employer has delayed in scheduling the payroll records review, will forward a letter to the employer advising of the impending audit, citing the Trustees' authority to conduct the audit, and describing the records required.

6. If during a payroll audit the Plan's auditor encounters an issue of interpretation of the collective bargaining agreement or an employer takes a position inconsistent with the auditor's understanding of such collective

bargaining agreement, the auditor shall seek the opinion of the Union. If the Union agrees with employer's interpretation or position, that shall resolve the matter, unless such interpretation or position is, in the view of the auditor, clearly inconsistent with the language of the governing documents. In such an event, or if the Union and employer disagree, the Plan's auditor shall present the issue in writing to the Trustees for a decision before completing the payroll audit.

7. After an audit of an employer is conducted, the Plan's auditor shall review with the employer the auditor's findings. After providing the employer with a reasonable time to respond to the auditor's findings, the auditor shall issue a final report to the Trustees with its payroll audit findings.

8. Upon receipt of the auditor's final report, the administrative manager shall send a letter to the employer demanding payment of any amounts found to be due by the auditor. The letter shall state that interest on the delinquent contributions shall be calculated as set forth in Section 2, ¶2, calculated separately as to each person the employer is delinquent for that employee.

9. The employer shall pay the cost of the audit if:

- a) the Employer is audited as a known delinquent pursuant to these procedures,
- b) the Employer refuses to comply or cooperate with the Trustees' audit request or the auditor,
- c) the audit reveals a substantial underpayment. For purposes of these procedures, a substantial underpayment means that the actual contributions paid for the period of the audit were at least \$550.00 less than the required contributions for that period. The Trustees may waive the assessment of audit fees on the Employer in substantial underpayment situations if payment of the delinquent contributions and interest charges is made within thirty (30) days after the Employer is notified of the delinquency.

The employer shall pay reasonable attorneys' fees incurred for collection and/or litigation to collect if the audit shows a delinquency or deficiency in payment of any amounts due to the Plan.

10. In the event an employer refuses to permit an audit upon request, or if the employer refuses the Plan's auditor access to pertinent records, then the auditor shall refer the matter to Plan Counsel. Plan Counsel shall thereafter demand in writing that the employer make available such books and records as are necessary for the auditor to conduct an audit. If the records are still not made available, upon approval of the Trustees, Plan

Counsel shall institute legal action to enforce the right of the Trustees to conduct a payroll audit and the employer shall pay to the Plan all costs and attorneys' fees incurred as a result of the employer's refusal to permit an audit or refusal to make available all pertinent records.

11. If a payroll audit identifies an overpayment by the employer, the payroll auditor shall advise Plan Counsel of such overpayment, who upon direction from the Trustees, shall advise the employer of its right to submit a written request for a refund. The employer must then submit a written request to the Trustees, stating: (a) the reason for the overpayment; (b) the Trustees will decide in their sole discretion whether a refund will be granted; (c) if the refund is granted by the Trustees, it will be net of the cost of the payroll audit; (d) any such net refund shall be recovered by the employer through a credit against future contributions as determined by the Trustees and communicated to the employer in writing; and (e) any attempt by the employer to recoup any overpayment through a procedure other than the one described in this paragraph (for instance, by the employer unilaterally taking a credit) shall result in the automatic forfeiture of the refund and the treatment of any credit taken by an employer as delinquent contributions.

V. MISTAKEN CONTRIBUTIONS

1. Subject to the terms and conditions of this policy, an employer that makes a contribution to the Plan in excess of the amount required by the terms of the employer's collective bargaining agreement, the Trust Agreement, or applicable law and under a mistake of fact or law may request a refund of the amount of such excess contributions.

2. No refund of excess contributions shall be granted by the Trustees without a written request for such refund having been received by the Trustees within one (1) year after the date that such excess contributions were received by the Plan.

3. If the Plan incurred a direct or indirect cost, expense or liability as a result of an excess contribution, any refund of such contribution shall be reduced by the full value of such cost, expense or liability. In no event shall a credit or refund apply to the Plan if the individual has retired and is in pay status.

4. The obligation to discover and delineate the amount of excess contributions within the time limits provided within the policy is the sole and exclusive responsibility of the employer.

5. The request of the employer for refund of excess contributions must be in writing and shall not be effective until it is received by the Trustees.
6. The request of the employer must contain copies of all documentation upon which the employer relies to substantiate its request or which may be required by the Trustees to verify the exact amount of the excess contributions.
7. The refund of excess contributions shall be made within 6 months after the Trustees determine the contributions were made by mistake.
8. The failure and/or refusal of the employer to comply promptly and fully with any or all of the provisions of this policy shall result in the denial of the request for the refund of excess contributions.
9. As used in this policy, the term “refund” shall include the offset of previously submitted excess contributions against currently due contributions (“credits”). As such, upon approval of the Trustees, an employer may be permitted to credit excess contributions, less the Plan’s set-offs described in this policy, against current contributions only to the same extent and under the same terms and conditions as such employer may be entitled to a refund under this policy. Any attempt by an employer to recoup excess contributions through a procedure other than the one described in this paragraph (for instance by the employer unilaterally taking a credit) shall result in the automatic forfeiture of the refund and the treatment of any credit taken by the employer as a delinquent contribution.