

REVISED STATEMENT OF POLICY FOR COLLECTION OF EMPLOYER CONTRIBUTIONS

The Board of Trustees of the New York City District Council of Carpenters Pension Fund, New York City District Council of Carpenters Welfare Fund, New York City District Council of Carpenters Annuity Fund and New York City District Council of Carpenters Apprenticeship, Journeyman Retraining, Educational and Industry Fund (collectively, the "Funds") hereby adopts the following revised policy ("Policy") for the collection of employer contributions on this 20th day of March 2014.

SECTION I General Policy

It is the policy of the Funds to make such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect all employer contributions when they are due and payable. The procedures set forth in this Policy shall be followed unless the Board of Trustees or the Delinquency Committee determines, in its sole and absolute discretion, that it is appropriate to follow different procedures based on the facts and circumstances of a particular case. The Board of Trustees hereby delegates to the Delinquency Committee all of the authority vested in the Board of Trustees that relates to the subject matter of this Policy.

SECTION II General Collection Procedures

In accordance with the Employee Retirement Income Security Act of 1974, the Trust Agreements, and this Policy, the Fund Office shall take the following steps to effectuate the collection of delinquent contributions.

1. If the applicable collective bargaining agreement sets a contribution due date, then such due date specified in the collective bargaining agreement shall be the due date of contributions. If the applicable collective bargaining agreement does not specify a due date, then contributions are due seven (7) calendar days after the end of each pay period.

2. Employers shall submit contributions by electronically providing to a payroll firm designated by the Trustees, via the Internet or via other technology approved by the Trustees, a remittance report of the total hours of covered work performed by all employees of the employer in the contribution period and authorization for the computerized payroll firm to debit via electronic transfer the employer's designated bank account by the contribution amount corresponding to the reported hours worked. Employers also may submit contributions by timely delivering a corporate check or money order accompanied by a complete remittance report directly to the Fund Office. Contributions shall not be regarded as having been made timely unless accompanied by a complete remittance report of hours worked supporting such contributions. Employers making contributions on behalf of non-bargaining unit employees must enroll in the Funds all of such employers' Principal-Owner/Non-Classified Worker Employees. It is intended that the employer's Principal-Owner/Non-Classified Worker Employees shall continue to participate in the Funds indefinitely. Notwithstanding the preceding sentence, participation in the Funds shall be irrevocable by the employer during the term of the

collective bargaining agreement between the employer and the New York City District Council of Carpenters (the "District Council") governing the participation of the employer's bargaining unit employees in the Funds. If an employer has enrolled its Principal-Owners in the Funds, then contributions by such employer with respect to Principal-Owners shall be for an average of at least 28 hours per week. If any employer has enrolled its Non-Classified Workers in the Funds, then such employer shall make contributions to the Funds on behalf of such Non-Classified Workers for an average of at least the same number of hours per week as the employer is required to contribute on behalf of employees of the employer covered by a collective bargaining agreement.

3. A "delinquency" or "delinquent contribution" consists of failure to submit a remittance report, failure to report on all hours for all participating employees of the employer in the contribution period, failure to make full contributions or other payments as required on time, or failure to pay payroll review and/or audit amounts and payroll review and/or audit fees and other costs and damages as determined by the Funds' outside accounting firms (the "Outside Accounting Firms"). Once the Fund Office determines that an employer is delinquent beyond the applicable Grace Period (as set forth in Section V), the employer is scheduled for audit and the District Council is informed of the delinquency.

4. If there is a dispute as to the proper amount owed by the employer for current contributions, the employer shall pay the undisputed amount immediately. Any disputed amounts will be resolved pursuant to the policies contained herein.

5. The Fund Office shall maintain copies of all collective bargaining agreements and other agreements requiring an employer to contribute to the Funds, all remittance reports submitted by contributing employers and all rate sheets and other documents establishing contribution rates, and shall make available all such records for viewing by the Trustees.

6. The Fund Office shall take the following actions with respect to delinquent employers:

- a) If the full contributions and remittance report of an employer are not received by the date on which the contributions were due, the Fund Office shall send a notice of delinquency to the employer requesting immediate payment of the delinquent contributions plus interest thereon. The notice also shall inform the delinquent employer that, unless the full amount due is received by the end of the applicable "Grace Period" (as set forth in Section V), the information concerning the delinquency shall be referred to the District Council, the employer shall be scheduled for audit, and the matter shall be referred to the Funds' Collection Counsel for collection (as set forth in Section VI). The notice shall further advise the employer that contributions and supporting remittance report(s) must be received by that date if it wishes to avoid the imposition of delinquency assessment (as set forth in Section V).
- b) If an employer is subject to a Payment Plan (as set forth in Section VII) due to a prior delinquency and fails to make the required installment payments in the time and manner prescribed by the Payment Plan, or fails

to remain current on all required contributions, the Fund Office shall immediately send a notice of delinquency to the employer. The notice shall demand payment within 24 hours of all delinquent installment payments and/or contributions plus interest and inform the delinquent employer that, unless the full amount due is received within 24 hours, the debt will be accelerated and due in full, and the matter will be referred to the Funds' Collection Counsel for collection. The notice shall further advise the employer that contributions and supporting report(s) must be received within 24 hours to avoid the imposition of delinquency assessment and any other charges that may have been suspended.

- c) The Trustees, the Delinquency Committee, or the Fund Office at any time may refer a matter to the Funds' Collection Counsel more quickly than the time prescribed in this Policy if circumstances indicate that earlier referral is appropriate.

7. Upon receipt of the delinquency notice, the employer shall be required to provide a listing of all job sites to the Funds. During the period of any alleged delinquency, the employer shall have a continuing obligation to notify the Funds of any additional job sites or any changes in this required information. Weekly remittance reports shall be submitted to the attention of the Fund Office whether work is performed that week or not. The failure of an employer to provide information requested by the Funds or the providing of inaccurate or incomplete information shall constitute a violation of this Policy. The Fund Office shall take any action that may be reasonably required to ensure collection of contributions due. These actions include but are not limited to locating all jobs and obtaining job breakdowns of unpaid hours, contacting employees, requesting check stubs and job locations, visiting job sites, and estimating hours and the corresponding delinquencies based on available information.

8. If an employer believes it has overpaid contributions, by mistake of fact or law, the employer shall bring the matter to the attention of the Fund Office. The Delinquency Committee shall consider the matter under Section VIII of this Policy.

9. An employer's failure to cooperate with the Funds at any step in the collections process, or an employer's violation of the provisions of this Policy, including the refusal to respond to information and other requests issued pursuant to this Policy, may result in the Funds' foregoing the procedures outlined herein in favor of immediate legal, criminal, or other action, including, but not limited to, the Funds' seizing any bond or other security posted by the employer. The Funds may also forego the administrative procedures in the sole discretion of the Delinquency Committee if circumstances indicate that it is appropriate to do so.

10. If an employer, or any related, affiliated, or subsidiary company (or principal, shareholder, officer, or director thereof) has a pattern or record of delinquency, the Funds may immediately pursue an action to collect.

SECTION III
Bonding or Security Arrangements

As a condition to participating in the Funds, and in accordance with the applicable collective bargaining agreements or any other agreements under which employers contribute to the Funds, all contributing employers must post with the Fund Office a surety bond providing bonding protection to the Funds in an amount equal to sixty (60) days of estimated contributions. The Fund Office shall determine the amount of bonding required. The amount of the bond shall be subject to increase or decrease depending on a particular job or period and/or the contributing employer's past record of delinquency. The Delinquency Committee may establish security requirements for employers that are unable to post the required bond. These alternate security arrangements may include requiring the employer to contribute to an escrow account established by the Fund Office an amount equal to sixty (60) days of estimated contributions. Notwithstanding anything in this Policy to the contrary, the Funds shall adhere to any provision in an applicable collective bargaining agreement that expressly states that no bond is required.

SECTION IV
Payroll Reviews and Audits

1. The Outside Accounting Firms engaged by the Funds shall periodically review and/or audit the books and records of all of the employers bound by or signatory to a collective bargaining agreement with the District Council or any other agreements under which they are obligated to contribute to the Funds. The purposes of the employer payroll reviews and audits are to determine whether or not the employer has complied with its obligation to pay timely contributions to the Funds and to encourage timely and accurate payment of contributions owed to the Funds.

2. The Delinquency Committee and/or the Fund Office shall determine the frequency of the payroll reviews and/or audits. The Delinquency Committee and/or the Fund Office may determine that particular employers or groups of employers are to be audited more frequently than others if circumstances indicate that it is appropriate to do so. The Delinquency Committee and/or the Fund Office may expand the scope of a particular payroll review and/or audit to cover a longer period of time if circumstances indicate that it is appropriate to do so.

3. The right of the Funds 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 obligated to contribute to the Funds, or any bankruptcy or insolvency proceeding.

4. The Fund Office or Outside Accounting Firms shall forward a letter to the employer advising it of the impending review and/or audit. The Outside Accounting Firms shall schedule the payroll review and/or audit with the employer, who shall make available to the Outside Accounting Firms all books and records which the Outside Accounting Firms determine are required. Such records may include payroll ledgers; individual earnings records of all employees; the employer's general ledgers; the employer's contracts with subcontractors; invoices; canceled checks; certificates of insurance; bills of lading; journals; remittance reports submitted to any Taft-Hartley benefit fund; final tax forms including but not limited to Forms W-

2, Forms 1099, quarterly state payroll tax returns, and annual federal and state tax returns; certified payroll(s); expense vouchers; cash disbursements; check register; evidence of unemployment insurance contributions; disability insurance payments; certification of workers compensation coverage; corporate dissolution papers; proof of coverage on company's medical and/or retirement plan; and check stubs, time cards or such additional books or records of the employer that the Funds' Outside Accounting Firms, in their professional judgment, deem necessary to enable them to give an opinion that the contributions have been made timely and accurately. Such records shall also include all of the aforementioned records of any other business entity which is affiliated with the employer and has employed persons who have performed the same or similar type of work as the employees of the employer, or which is part of a group of trades or businesses "under common control" as that term is used in 29 U.S.C. § 1301(b)(1), whenever the Delinquency Committee or Board of Trustees determines that such an examination is advisable in connection with the administration of the Funds. Upon request, the employer shall forward the pertinent records to the Outside Accounting Firms or make the records available to the Outside Accounting Firms for inspection at a location in the New York Metropolitan Area. Upon request, the employer shall forward the pertinent records to the Outside Accounting Firms or make the records available to the Outside Accounting Firms for inspection at a location within the geographical territory of the District Council. If an employer maintains its books and records outside the geographical territory of the District Council and refuses to or cannot make such books and records available for inspection within the geographical territory of the District Council, then the employer must reimburse the Funds for all fees and expenses incurred by the Funds in connection with the auditors' travel to the location at which the records are produced for inspection, regardless of whether the audit reveals a delinquency.

5. Sufficient records of the type described in this Section for the Outside Accounting Firms to determine the employer's compliance with its obligation to pay timely fringe benefit contributions to the Funds shall be retained by the employer for six (6) years, even if such records are from a time period for which a review or audit has already been performed. If the employer fails to keep sufficient and complete records such that the Outside Accounting Firm is unable to determine the employer's compliance with its obligation to the Funds, or if such records are lost or destroyed, then the burden will be on the employer to prove that contributions are not due and owing for all employees working during the time period under review and/or the amount of any delinquent contributions may be estimated in accordance with paragraph 11 of this Section and/or paragraph 7 of Section II.

6. When a payroll review and/or audit of an employer is conducted and the payroll review and/or audit discloses an underpayment, the representative of the Outside Accounting Firm performing the audit shall, prior to departing, attempt to meet with an appropriate representative of the employer for the purpose of explaining the underpayment. When a payroll review and/or audit of an employer is conducted at the offices of the Outside Accounting Firm and the payroll review and/or audit discloses an underpayment, the representative of the Outside Accounting Firm performing the audit shall attempt to contact an appropriate representative of the employer for the purpose of explaining the underpayment.

7. When a payroll review and/or audit of an employer is conducted and the payroll review and/or audit discloses an underpayment, the Outside Accounting Firms shall provide the

Fund Office with a bill of delinquency, which shall include the amount of the delinquency, the interest owed, the delinquency assessment, and the cost of the payroll review and/or audit. The amount of the underpayment shall be determined without regard to any *de minimis* discrepancies between shop steward reports and the employer's internal payroll records. The classification of discrepancies as *de minimis* shall be in accordance with guidelines prescribed by the Trustees or the Delinquency Committee from time to time. The Fund Office shall send by regular mail a letter with the bill of delinquency to the employer advising of the underpayment and requesting the employer to make payment of the underpayment, interest and costs of collection within fourteen (14) days of the date of the letter. If the employer challenges the outcome of the payroll review and/or audit, the employer shall be permitted to submit to the Outside Accounting Firms additional documentation supporting its challenge within the fourteen (14) day period. The employer will be informed of any resulting adjustments.

8. The employer shall be required to pay the cost of a payroll review and/or audit if the payroll review and/or audit discloses an underpayment of contributions to the Funds totaling at least two (2) percent of the employer's total payroll for covered employees for the payroll review and/or audit period at issue, or an underpayment of contributions totaling at least \$10,000, whichever is less. However, whenever the collection of underpayments found in a payroll review and/or audit proceeds to arbitration or litigation, the employer shall pay all payroll review and/or audit costs without regard to the preceding sentence.

9. In the event the employer is unable to pay the full amount of the delinquency, interest and collection costs, the employer may meet with the Fund Office to discuss a Payment Plan, as described in Section VII.

10. After the expiration of the fourteen (14) day period, the matter shall be referred to the Fund Office or Collection Counsel. If the audit (individually or in combination with audits of the same employer covering other periods) indicates that the principal amount of the employer's unpaid contributions to the Funds and interest thereon total more than a *de minimis* amount prescribed by the Trustees, then the Fund Office or Collection Counsel shall send by Certified Mail, Return Receipt Requested, a Notice of Intent to Arbitrate (or, when appropriate, file a lawsuit in state or federal court, as set forth in Section VI) against the employer.

11. If the matter proceeds to arbitration or litigation, the employer will be responsible for all delinquent contributions, interest, delinquency assessment, debt collection service fees, attorneys' fees, the entire cost of a payroll review and/or audit, and any other expenses incurred by the Funds in determining the amount of the delinquency and in collecting the delinquency, to the full extent permitted by applicable law. However, the Delinquency Committee or Board of Trustees may reduce or waive the delinquency assessment, fees, costs, and expenses in any case where it is prudent to do so based on all the facts and circumstances.

12. In the event that an employer refuses to permit a payroll review and/or audit upon request by the Fund Office or the Outside Accounting Firms, or if the employer refuses the Outside Accounting Firms access to pertinent records, the Outside Accounting Firms shall inform the Fund Office. The Fund Office shall notify the District Council of the employer's lack of cooperation. Except as otherwise provided in this Policy, the Fund Office shall determine the estimated amount of the employer's delinquent contributions based on the assumption that the employer's weekly hours subject to contributions for each week of the requested audit period are

the highest number of average hours reported per week for any period of four consecutive weeks during the audit period. If the employer reported no hours during the audit period, then the determination shall be made based on the highest number of average hours reported per week for any period of four consecutive weeks during the prior audit period. A determination under this paragraph shall constitute presumptive evidence of delinquency. Prior to making such determination, the Fund Office shall send the employer a letter by Certified Mail, Return Receipt Requested, stating that such determination shall be made if the employer does not schedule an audit within seven (7) days after the date of the letter. Upon making such determination, the Fund Office or Collection Counsel shall send by Certified Mail, Return Receipt Requested, a Notice of Intent to Arbitrate (or, when appropriate, file a lawsuit in state or federal court, as set forth in Section VI) against the employer. In any such proceeding, the employer will be responsible for all delinquent contributions in the estimated amount determined under this paragraph, and all other amounts set forth in paragraph 10 of this Section.

13. If circumstances warrant, the Delinquency Committee may determine that, in lieu of or in addition to applying the estimation method prescribed by paragraph 11 of this Section, the Funds institute legal action to enforce the Trustees' right to conduct a payroll review and/or audit. In the event the Funds institute such action, the employer shall be assessed all costs and attorneys' fees incurred as a result of the employer's refusal to permit the payroll review and/or audit or refusal to make available all pertinent records. In addition to or in lieu of the procedures prescribed by this paragraph and/or paragraph 11 of this Section, the Delinquency Committee may determine to estimate the delinquency based on other available information in accordance with paragraph 7 of Section II.

14. In the event that the Fund Office determines that an interim payroll review and/or audit is desired for any reason, the Fund Office may direct the Outside Accounting Firms to conduct an "available records audit." In conducting such an available records audit, the Outside Accounting Firms shall look to any and all records available that will aid them in conducting the payroll review and/or audit.

15. In the event there is reason to suspect employer fraud or other misconduct with regard to such employer's obligations to the Funds, the Trustees or the Delinquency Committee shall have the right to conduct a forensic audit, notwithstanding that a payroll review may have already been conducted for the same time period.

16. The Outside Accounting Firms shall be required to obtain permission, in advance from the Funds' Executive Director, to audit any contributing employer which requires the auditor to travel in excess of one-hundred (100) miles or to have an overnight stay. In determining whether to authorize such an audit, the Funds' Executive Director shall consider the size of the employer, whether the employer is known to have performed a large amount of work in the geographical jurisdiction of the applicable collective bargaining agreement, whether the employer has had large delinquencies in the past, whether there is reason to suspect that the employer failed to make all required contributions to the Funds for the period covered by the proposed audit, the distance to be traveled, the expense to be incurred, and any other factor that the Funds' Executive Director reasonably deems relevant to the determination.

SECTION V
Interest, Delinquency Assessment, Debt
Collection Service Fees, Attorneys' Fees and Costs

1. Interest owed by a delinquent employer shall be calculated at the prime lending rate of Citibank plus 200 basis points, compounded daily, on a declining principal basis. Interest shall accrue from the date the contributions were due to the date when payment of the contributions is received. As long as any amount remains unpaid on a delinquency, further interest continues to accrue daily on the outstanding balance.

2. Although interest shall accrue it shall not be assessed against a delinquent employer if the employer's delinquent contributions are received within the applicable "Grace Period." Employers are afforded a seven (7) day Grace Period, unless otherwise provided in the applicable collective bargaining agreement. If, however, such delinquent contributions are not received by the end of the applicable Grace Period, interest shall be assessed against the delinquent employer for every day after the contributions were due and interest shall continue to accrue to the date when payment of the delinquent contributions is received.

3. During the first quarter of each calendar year beginning after adoption of this Policy, the Funds' Collection Counsel shall obtain from the Fund Office a list of all employers that owe interest on past late payments during the prior six years, excluding payments prior to February 1, 2012. Collection Counsel shall promptly transmit a copy of the list to the Delinquency Committee and send a letter to each employer on the list demanding immediate payment of the interest upon pain of legal proceedings. If an employer has not paid the interest within thirty (30) days after the date of counsel's letter and owes interest in excess of a *de minimis* amount prescribed by the Trustees, Collection Counsel shall initiate legal action by sending by Certified Mail, Return Receipt Requested, to the employer a Notice of Intent to Arbitrate for the interest.

4. In addition to the interest referred to in paragraph 1 of this Section, in the event that a lawsuit, arbitration or other legal action is filed against a delinquent employer, a delinquency assessment shall be made against such employer. The amount of the delinquency assessment shall be the greater of (a) interest on the delinquent contributions determined in accordance with paragraph 1; or (b) liquidated damages in the amount of twenty percent (20%) of the principal amount of all delinquent contributions. This amount is calculated once on the sum of all delinquent contributions demanded in the collection action, rather than repeatedly on the principal amount of the delinquent contribution due in each period of the delinquency.

5. Debt collection service fees shall be assessed against a delinquent employer, at the same rate charged to the Funds.

6. Attorneys' fees shall be assessed against a delinquent employer, at the same hourly rate charged to the Funds for such services (or in the case of work conducted by the Funds' in-house counsel, a pro rata portion of such in-house attorneys' remuneration) for all time spent by Collection Counsel in collection efforts or in enforcing the Board of Trustees' rights to payroll reviews and/or audits.

7. All recoverable costs actually incurred in court or other legal actions for the collection of delinquent contributions or to enforce the Funds' right to conduct a payroll review and/or audit of the employer's records as well as the costs expended in conducting any payroll review(s) and/or audit(s) shall be assessed against the delinquent employer, except *de minimis* costs which are administratively impractical to determine on a case by case basis.

SECTION VI

Legal Action and Settlement

1. Except as otherwise provided in this Policy, legal action to collect delinquencies shall generally be in the form of arbitration. However, the Delinquency Committee may determine that a particular matter be filed in court where it is appropriate under the circumstances to do so. Legal action in the form of arbitration or a lawsuit in court shall be initiated and litigated to conclusion unless the Delinquency Committee determines otherwise.

2. The District Council shall be a named party to any arbitration or court proceeding pursued under this Policy unless it is inappropriate under the circumstances.

3. Employers shall not be permitted to delay legal collection procedures by postponements or dilatory tactics. If an adjournment or postponement is granted by Delinquency Counsel, the employer will be required to pay any adjournment costs, including the cost owed to the arbitrator for such postponement.

4. Collection Counsel is authorized to enter into settlement negotiations with delinquent employers. Collection Counsel is authorized to settle claims against delinquent employers in instances where payment is made immediately in full, including the delinquent contributions owed, interest thereon, delinquency assessment, debt collection fees, payroll review and/or audit fees, and attorneys' fees and costs. The Delinquency Committee must approve any settlement which waives or compromises any amounts due and owing including delinquent contributions, interest thereon, delinquency assessment, debt collection fees, audit fees, and attorneys' fees and costs, or which provides for payments over a period of time.

5. Settlements compromising the amount owed, including interest, delinquency assessment, payroll review and/or audit fees, attorneys' fees and costs, must be in writing, comply with the requirements of this Policy, and be signed on behalf of the Funds and on behalf of the employer. Settlements calling for payments over a period of time should adhere to Section VII of this Policy. Any settlement or other resolution of a delinquency matter should dispose of all outstanding amounts owed by the employer unless there is a compelling reason not to do so.

6. The Trustees and the Delinquency Committee acknowledge the requirements of Prohibited Transaction Class Exemption 76-1 regarding the determination of uncollectible funds, agreements for payment of less than the amount owing, and agreements for payments of amounts owing over a period of time. Any decision by the Board of Trustees or the Delinquency Committee that a contribution due to the Funds is uncollectible shall be: (a) in writing, (b) reasonable and appropriate based on the likelihood of collecting such contribution or the approximate expenses that would be incurred if the Funds continued to attempt to collect such contribution or any part thereof, and (c) made only after the Funds have made, or have caused to

be made, such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect such contribution or any part thereof.

7. Notwithstanding the procedures set out in this Policy, the Delinquency Committee or the Fund Office may refer any delinquent account to Collection Counsel at an earlier or later date than provided for herein where circumstances warrant that the collection action be expedited or delayed.

SECTION VII **Payment Plans**

1. If an employer has failed to pay contractually required fringe benefit contributions and requests a payment schedule due to its financial condition, the Delinquency Committee is authorized to approve and the Fund Office is authorized to prepare and execute such a payment schedule, or "Payment Plan," provided that the following conditions are met:

- a) the Payment Plan must be in writing, executed on behalf of both the Funds and the employer;
- b) the Payment Plan must require payment of interest, at a rate as determined by the Delinquency Committee in accordance with paragraph 2 of this Section, compounded daily, on a declining principal basis, accrued from the date the contributions became due;
- c) the Payment Plan will generally provide for full payment of principal and interest in no more than twelve (12) equal monthly payments, except in extraordinary circumstances;
- d) the employer must agree to weekly payments of current fringe benefit contributions as they become due;
- e) the employer must, in appropriate circumstances, execute a Confession of Judgment on behalf of the business entity and a Confession of Judgment and a personal guarantee on behalf of the principal thereof for the amount outstanding;
- f) there shall be a notice in the written document setting forth the Payment Plan that any default by the employer will result in acceleration of the entire debt, reinstatement of any delinquency assessment that may have been suspended or waived, and immediate legal action;
- g) the employer must provide appropriate documentation as requested by the Funds to substantiate its financial condition claim and be subject to audit; and
- h) the employer must expressly agree to waive any conflicting time limitations or any other conditions set forth in its collective bargaining agreement with the District Council that would prohibit or limit the

District Council's or the Funds' responses to an employer's breach of the payment plan, including, but not limited to, collective bargaining agreement provisions limiting the District Council's shutdown rights until certain pre-conditions have been satisfied. Such waiver by the employer includes a waiver of any rights or remedies that the employer may otherwise have against the District Council and/or the Funds for engaging in such action.

2. The interest rate referred to in paragraph 1(b) of this Section shall ordinarily be the prime lending rate of Citibank plus 200 basis points for any employer's first Payment Plan; the prime lending rate of Citibank plus 500 basis points for any employer that had one prior Payment Plan; and the prime lending rate of Citibank plus 800 basis points for any employer that had two or more prior Payment Plans. However, the Delinquency Committee may, in its discretion, apply a different interest rate where appropriate on a case-by-case basis after a thorough review based on all the circumstances.

3. If the employer will not provide a Confession of Judgment on behalf of the business entity and a Confession of Judgment and a personal guarantee on behalf of the principal thereof, a written explanation should be provided.

SECTION VIII

Refunds of Erroneous Contributions

1. Once contributions are made to the Funds, they may be returned to an employer, in the Delinquency Committee's discretion, only upon the employer's written request and only if the employer conclusively demonstrates to the satisfaction of the Delinquency Committee that the contributions were made in error based on a mistake of fact or law.

2. In determining whether the contributions were made in error and whether a refund will be made, the Delinquency Committee shall consider all circumstances, including the period of time that has elapsed since the contributions were made and whether benefits have been paid based on the employer's erroneous reporting of hours or contributions. Generally, contributions will not be refunded if a written request is not received within two years of the date the hours were worked.

3. No refund shall be provided unless the Trustees find in their sole discretion that the refund is equitable and complies with all applicable provisions of law. Requests for refunds under \$25,000 can be granted on a ministerial basis if made within 45 days for erroneous identification or arithmetic miscalculation of hours or rate if other provisions are satisfied.

4. The Patient Protection and Affordable Care Act provides that health plans must not rescind coverage, *i.e.*, cancel coverage retroactively (except to the extent attributable to a failure to timely pay premiums towards coverage), unless there is fraud or an individual makes an intentional misrepresentation of material fact. *See* Public Health Service Act § 2712. On June 22, 2010 the Departments of Treasury, Labor and Health and Human Services issued interim final regulations addressing in part this prohibition on rescission. In determining whether contributions to the Welfare Fund were made in error and whether a refund will be made, the

Delinquency Committee shall consider whether the requested refund would result in an impermissible rescission of coverage. If so, the Welfare Fund will not refund the contributions.

5. The Funds will deduct from any refund the amounts of any unpaid contributions, interest, delinquency assessment, audit fees or other amounts owed to the Funds by the employer, any investment losses incurred by the Funds on the erroneously contributed amounts, and all other costs, expenses, or losses incurred by the Funds as a result of the employer's error, including but not limited to the administrative costs of correcting the mistake, professional fees, computer related costs, any benefits paid in reliance on the erroneous contributions or hours, the costs of collecting or attempting to collect such benefits, and the expenses of any litigation resulting from the adjustment of any employee's pension or welfare benefits to reflect the erroneous contributions. Credits to employees' individual accounts based on the erroneous contributions will be deducted.

6. In accordance Internal Revenue Service regulations, the Funds will pay no interest or investment earnings to the employer in connection with the refunded amount.

7. An employer must not apply a claimed overpayment against subsequent amounts due to the Funds prior to review and approval of a refund or credit under this Policy. Any amounts so withheld by an employer will be treated as delinquencies for all purposes under this Policy.

8. If the Delinquency Committee determines that contributions are to be refunded, the Fund Office will issue the refund to the employer within six (6) months after the determination under this Policy that the contribution was made in error.

SECTION IX **Miscellaneous**

1. This revised Policy is effective immediately upon adoption and applies to all matters pending at that time or initiated thereafter to the full extent permitted by law.

2. Except as provided in Section III, to the extent that any provision in this Policy is inconsistent with any collective bargaining agreement, the terms of this Policy shall govern to the full extent permitted by law.

3. A finding that any provision of this Policy is invalid shall not affect the validity of any other provision.

Adopted by the Board of Trustees at the March 20, 2014 Meeting.



Ryk Tierney, Executive Director
NYCDC Benefit Funds