

**POLICY FOR PAYMENT OF EMPLOYER CONTRIBUTIONS,
COLLECTION OF DELINQUENT CONTRIBUTIONS,
PAYROLL AUDITS, AND OVERPAYMENTS BY EMPLOYERS**

The Board of Trustees of the Dairy Industry – Union Pension Fund of Philadelphia & Pension Fund of Philadelphia & Vicinity (“Fund”) adopts the following policy (“Policy”).

SECTION 1: GENERAL POLICY

Every employer must pay all contributions (“Contributions”) owed the Fund pursuant to the plan document (“Plan Document”), the applicable collective bargaining agreement (“CBA”), rules established by the Board of Trustees – including this Policy, and applicable law. This Policy establishes rules and procedures to safeguard the collection of Contributions. Any action taken by the Board of Trustees under this Policy shall be final to the fullest extent permitted by law. It is recognized that from time to time the Board of Trustees will have to make decisions under this Policy between Board meetings. In such situations, the Chairman and Secretary shall have authority to act on behalf of the full Board of Trustees.

**SECTION 2: COLLECTION PROCEDURE AND
OTHER PROCEDURES IN CASES OF DELINQUENCY**

1. Every employer must pay Contributions owed the Fund by the Due Date, which is the tenth (10th) day of the month that follows the month in which those Contributions were earned. For example, the Due Date for contributions earned in the January of a given year is February 10 of that same year.

2. Contributions not paid by the Due Date will be deemed delinquent (“Delinquent”) if not paid on or after the Delinquency Date, which is the last day of the month in which the Due Date occurred. For example, Contributions owed on February 10 of a given month will be deemed Delinquent if not paid on or before the Delinquency Date of February 28 in that same

year. After the Delinquency Date, interest on the unpaid contributions will accrue at the rate established by the Pension Plan.

3. If Contributions are not received by the Due Date, the Fund Administrator will notify the employer of this fact in writing by the twentieth (20th) day of that same month. In that same written notice, the Fund Administrator will also: (1) demand immediate payment, and (2) inform the employer that interest on the Delinquency will start to accrue on the Delinquency Date if the Fund does not receive payment on or before the Delinquency Date.

4. If an employer pays the principal amount of the Delinquency but does not pay accrued interest and/or any other amounts owed, acceptance of the principal amount will not constitute a waiver of the Fund's claim for accrued and unpaid interest and/or any other amounts.

5. If the Contributions remain Delinquent for two (2) months, the Delinquency will be referred to legal counsel for collection.

6. When a Delinquency is turned over to legal counsel for collection, legal counsel will send a letter to the employer in a timely fashion that informs the employer of: (a) the employer's obligation to the Fund (including interest), (b) the Fund's readiness to institute legal action to recover that obligation, and (c) the Fund's intention to pursue all remedies allowed by law, including without limitation those provided by Section 502(g)(2) of ERISA.

SECTION 3: LEGAL ACTION AND SETTLEMENT

1. If an employer's obligations remain unpaid after ten (10) days following legal counsel's notice referred to in paragraph 6 of Section 2 above, the Board of Trustees may direct legal counsel to initiate legal action. In determining whether or not to initiate legal action, the Board of Trustee may consider a different course of action based upon pertinent factors, which include, but are not limited to, the following:

a. the amount of the Delinquency;

- b. the length of time the Delinquent amount has been owed;
- c. the financial condition of the employer;
- d. the employer's past performance as a contributing employer;
- e. the likelihood of collecting on a judgment once it is obtained; and
- f. any other factor that, in the discretion of the Board of Trustees, may have a material bearing on the collection of the Delinquent Contributions.

A lawsuit will not be commenced if the Board of Trustees determines, in its sole discretion, that litigation will not likely prove cost-effective.

2. Where legal action has been initiated, legal counsel will seek all remedies available under the law, including, without limitation, recovery of the Delinquent Contributions, the remedies provided under Section 502(g)(2) of ERISA (including without limitation and when appropriate, prejudgment interest, double prejudgment interest, attorneys' fees, liquidated damages at a rate of 20%, and costs), and injunctive relief.

3. The Board of Trustees is authorized to enter into settlement negotiations, either orally or in writing, with Delinquent employers through legal counsel under such terms as the Trustees deem appropriate. Any settlement will agree to the terms most favorable to the Fund under the facts and circumstances of the case. Settlements calling for payment over time and/or compromising the amount owed the Fund must be in writing and signed on behalf of the Fund and the employer by persons authorized to do so.

4. Notwithstanding the procedures set out in this Policy, the Board of Trustees may when appropriate refer any Delinquency to legal counsel at an earlier or later date than provided for herein.

SECTION 4: PAYROLL AUDIT POLICY

1. The Fund will prudently conduct payroll audits to ensure the accuracy of the contributions paid by employers. The Board of Trustees will determine when to conduct such audits, taking into account all of the facts and circumstances relevant to each situation. Payroll audits may occur:

- a. when an employer ceases covered operations under the Fund or to have an obligation to contribute to the Fund;
- b. when circumstances relevant to a particular employer indicate that an audit would be prudent;
- c. under criteria for random audits approved by the Board of Trustees; or
- d. under any other circumstances in which a payroll audit would be prudent.

2. If an employer ceases to have an obligation to contribute to the Fund or ceases covered operations under the Fund, the employer will remain subject to these payroll audit procedures and other procedures in this Policy for the purpose of verifying that the employer made the proper Contributions during the time period in which the employer had an obligation to contribute to the Fund.

3. Prior to conducting each payroll audit, the payroll auditor will notify the Fund Administrator and review the employer's CBA, participation agreement, and any other related documents or pending issues. The Fund Administrator will by letter notify the employer of the impending payroll audit, citing the Board of Trustees' authority to conduct the audit and describing the records required.

4. Every employer must permit the Fund's payroll auditors access to all records reasonably needed to perform the audit, such as records of employees (regardless of whether or not these employees participate in the Fund) and all business activities or operations.

5. After a payroll audit of an employer is conducted, the payroll auditor will 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 will issue a final report.

6. Upon receipt of the payroll auditor's report, the Fund Administrator will send a letter to the employer demanding payment of any amounts found to be due by the auditor and enclosing a copy of excerpts of or, as appropriate, the entire auditor's report. The letter shall state that interest on the Delinquent Contributions has been calculated as set forth in Section 2, paragraph 2. If the employer does not pay the amount demanded by the payroll auditor's report within thirty (30) days, the Fund Administrator will send a letter notifying the employer of the continued Delinquency and demanding payment within fifteen (15) days. If the employer does not pay the amount demanded within the fifteen (15) day grace period, the Fund Administrator will refer the case to legal counsel. In that event, the collection procedures in Sections 2 and 3 of this Policy will go into effect.

7. If the Board of Trustees, in its sole discretion, finds a pattern of substantial underpayment or failure to comply with the Contribution obligation by an employer, the employer will pay for the cost of the audit. In making a decision under this paragraph, the Board of Trustees will rely on information provided by the Fund's payroll auditor and any other appropriate source.

8. In the event an employer refuses to permit a payroll audit upon request by the Board of Trustees, or if the employer refuses to provide a payroll auditor access to pertinent records, then the auditor will refer the matter to the Fund Administrator. The Fund Administrator will then refer the matter to legal counsel. Legal counsel will thereafter demand in writing that the employer cooperate with the payroll audit. If the records are still not made available, upon

approval of the Board of Trustees, counsel will institute legal action to enforce the Board of Trustees' right to conduct a payroll audit and the employer will pay to the Fund all costs and attorneys' fees incurred as a result of the employer's refusal to permit the audit or to cooperate with the audit. This provision shall not limit the right of the Union to take any lawful action under the CBA or otherwise.

9. If a payroll audit identifies an overpayment by the employer, the payroll auditor shall advise the employer of such overpayment and of Section 6 of this Policy.

SECTION 5: REPORTS

1. The Fund Administrator will prepare a delinquency report to be presented at each meeting of the Board of Trustees. The report will identify delinquent employers, the amount owed, the Due Date of the Delinquent Contributions, and the steps that have been taken to collect Delinquent Contributions. At least quarterly, legal counsel will also provide a report to the Board of Trustees on the status of litigation on any Delinquent Contributions.

2. The Fund Administrator will maintain a file of currently effective CBAs and other agreements detailing the basis of each employer's obligation to pay Contributions to the Fund.

3. All written settlements of delinquencies shall be on file in the office of the Fund Administrator, subject to the record retention policy approved by the Trustees.

SECTION 6: RELIEF FOR CONTRIBUTION OVERPAYMENTS

1. This Section constitutes the exclusive remedy for an employer that overpays Contributions owed the Fund.

2. An employer that has overpaid Contributions due to a mistake of law or fact may apply to the Fund for either a refund or a credit against future Contribution obligations. Any application must: (a) be made in writing, (b) explain the reasons for the relief sought by the employer, and (c) be received by the Fund within twelve (12) months of the day on which the

employer made the overpayment. Failure to apply for relief under this Section within the timeframe established by the preceding sentence waives the right to seek relief for the alleged overpayment.

3. No employer may attempt to rectify an alleged overpayment by engaging in self-help or other activities not authorized by this Section in order to remedy an alleged overpayment of Contributions. For example, an employer may not reduce Contributions to the Fund to reflect an alleged past overpayment – unless the employer has received credit for that overpayment under this Section. If an employer takes such an unauthorized credit, the withheld Contributions will be deemed Delinquent under terms of this Policy.

4. This Policy presumes that when an employer deserves relief for an overpayment of Contributions, that relief should be a credit against future Contributions rather than a refund. A refund will only occur in extraordinary circumstances that preclude a credit from granting relief – such as when the employer no longer has an obligation to contribute to the Fund. Furthermore, the Fund will only pay a refund under terms established by applicable law, including without limitation Section 403(c) of ERISA.

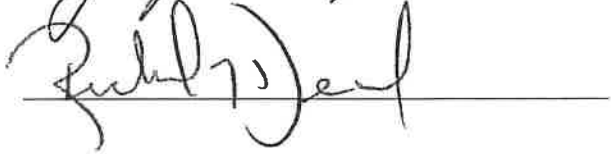
5. The Fund Administrator may grant a credit against future Contributions on obligations if an application submitted under paragraph 2 of this Section clearly establishes the right to that credit – and the application turns on ministerial issues that can be resolved without exercising fiduciary discretion. The Fund Administrator will submit any other applications under paragraph 2 of this Section to the Board of Trustees all other applications and the Board of Trustees' decision will be final to the greatest extent allowed by law.

APPROVED:

UNION TRUSTEES







Date: 12/18/19

MANAGEMENT TRUSTEES

