

# Southern California IBEW-NECA Joint Collection Committee

## Collection Policy & Procedures

(Updated July 31, 2020)

The Administrative Corporation (“Fund Office”) collects required contributions from employers who are signatory to collective bargaining agreements between IBEW locals and NECA Chapters in certain Southern California counties. The Fund Office also collects contributions from employers who are bound to the Southern California 9<sup>th</sup> District Sound & Communications Agreement and other multijurisdictional agreements (i.e. Market Advancement MOU, etc.), which cover additional counties in Southern California. The Joint Collection Committee of the Boards of Trustees shall oversee the collection of all delinquent employer contributions.

### 1. Contributions

Contributions to each of the funds shall be due and payable on the 10<sup>th</sup> day of each month covering the hours worked by each employee through the last payroll period in the prior calendar month. At the same time, each employer shall also file a monthly report with each fund on the form established by the Fund Office, and such report shall be filed regardless of whether the employer has employed any employees.

- a. Payment of Contributions by Check:<sup>1</sup> The delinquency date (“Delinquency Date”) for making payments and filing reports is the 15<sup>th</sup> day of the month following the work month. If the Delinquency Date falls on a weekend or holiday, the Delinquency Date will become the first following business day. All payments and reports must be postmarked or hand-delivered by the Delinquency Date. Reports and contributions postmarked by the Delinquency Date must be actually received within 10 days thereafter or they will be considered delinquent. If the payment is not timely received, the employer shall be delinquent and liquidated damages and interest will be assessed beginning on the 16<sup>th</sup> of the month in which it is late.
- b. Payment of Contributions by ACH:<sup>2</sup> The Trust Agreements for the Southern California IBEW-NECA Pension Plan, Southern California IBEW-NECA Defined Contribution Trust Fund, Southern California IBEW-NECA Health Trust Fund, and Southern California IBEW-NECA Supplemental Unemployment Benefit Trust Fund were amended to permit employers to pay their contributions by ACH electronic transfers. For such ACH payments, the Delinquency Date referenced above shall be the 20<sup>th</sup> day of the month following the work month. If the 20<sup>th</sup> of the month falls on a weekend or holiday, the Delinquency Date shall be

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<sup>1</sup> Revisions to this paragraph approved at Joint Collection Committee meeting held on July 9, 2019.

<sup>2</sup> Revisions to this paragraph approved at Joint Collection Committee meeting held on July 9, 2019.

the first business day after the 20<sup>th</sup>. If the ACH payment is not received by the Fund Office on or before the Delinquency Date (typically the 20<sup>th</sup> of the month following the work month), the employer shall be delinquent and liquidated damages and interest will be assessed beginning on the 16<sup>th</sup> of the month in which it is late.

## 2. Delinquency

Any employer who fails to pay contributions to the Fund Office by the Delinquency Date, issues a non-sufficient funds check, fails to submit timely reports to the Fund Office, or fails to produce records for an audit when requested, will be considered delinquent and subject to the following:

- a. The employer will be assessed liquidated damages in the amounts permitted under the applicable collective bargaining agreement and/or Trust Agreement, which for most employers is as follows: 1 ½ % of the delinquent fringe benefit contributions for the first 30 days of the delinquency; 3% of the delinquent fringe benefit contributions for the next thirty days; and an additional 1 ½% per month of the delinquent fringe benefit contributions thereafter up to a maximum of 18%, whichever is greater. This amount shall be paid by the employer in addition to the contributions owed. No liquidated damages shall be assessed for a late monthly report which does not in fact have any contributions due. If a lawsuit is filed to collect the delinquent contributions, the amount of liquidated damages will be 20% on the unpaid fringe benefits due at the time the lawsuit is filed or thereafter, in addition to the liquidated damages owed on the delinquent contributions that were paid before the complaint was filed.
- b. The employer will also be assessed interest at the annual rate of 8% on the unpaid fringe benefits from the day after the Delinquency Date until the date of payment.<sup>3</sup> The Joint Collection Committee shall periodically adjust the interest rate to be no less than the actuarial assumed rate of return for the Southern California IBEW-NECA Pension Trust.
- c. If a lawsuit is filed for contributions due to the Southern California IBEW-NECA Defined Contribution Plan, the employer may also be required to pay lost earnings on all contributions received after the Delinquency Date at the greater of the interest rate for delinquent contributions (currently 8%) or the rate of return of the Defined Contribution Plan for the Plan year immediately preceding the delinquency, as shown by the auditor's report.

### 2(A). Delinquencies Arising From Expired Collective Bargaining Agreements

The Joint Collection Committee shall have the authority to pursue claims for fringe benefit contributions from employers after the expiration of their collective bargaining agreement. Current case law requires that claims for fringe benefit contributions arising after the expiration of a collective bargaining agreement be exclusively made with the National Labor Relations

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<sup>3</sup> Revisions to this sentence approved at Joint Collection Committee meeting held on July 9, 2019.

Board (“NLRB”) in the form of an unfair labor practice charge. The NLRB is required to investigate the charge and, if it considers it appropriate, file a complaint against the employer for an unfair labor practice charge. The Joint Collection Committee and the Fund Office shall have the power to file charges with the NLRB and cooperate with the NLRB in prosecuting the unfair labor practice charge. The initial unfair labor practice charge must be filed within six months of the Delinquency Date.

The charge shall cover unpaid fringe benefit contributions from the date of expiration of the collective bargaining agreement to the last date permissible under applicable law at the time the charge is filed.

### 3. Delinquency Notices

Following the Delinquency Date, the Fund Office will send a letter to every employer that failed to report to the Fund Office, or who reported but did not pay contributions, regarding their delinquency. The Fund Office may also notify in writing the last reported employees of the delinquent employer and request that they keep a copy of their paycheck stubs and record of the hours worked on specific jobs for lien purposes. If the employer remains delinquent, the Fund Office may send a declaration of hours form to the employees. The Fund Office shall require the delinquent employer to provide a list of its jobs and the covered hours worked on each job. The Fund Office will follow up by phone, e-mail, fax, and/or correspondence to the employers to collect the delinquent contributions. The Fund Office may notify the employers and any general contractor or public agency that owes the delinquent employer money in writing on a monthly basis of their status until all contributions are paid in full.

The applicable Local Unions and NECA Chapters will be notified of the delinquent employers by the Fund Office or legal counsel. The Local Unions shall be provided with such other information as may be requested about the delinquency, including but not limited to, information needed to remove the employees from employment with the employer.

Written monthly reports on delinquencies will be issued by the Fund Office to the Joint Collection Committee, including information about non-reporting employers and current delinquency balances.

In accordance with the relevant collective bargaining agreements (i.e. Section 7.10(4) of Local 11 Inside Wireman’s Agreement), the Fund Office shall notify the Local Unions in writing that the local may instruct their members to cease working for a delinquent employer. The decision to request employees to cease working for a delinquent employer shall in all instances be made by the Local IBEW Union and/or Apprentice program directors.

### 4. Waiver of Liquidated Damages, Auditing Costs, and Interest

The Fund Administrator does not have the authority to waive all or any part of interest accrued by any employer. However, the Fund Administrator has the authority to waive all or any part of liquidated damages and audit fees incurred by any employer if the conditions set forth in subparagraphs (a) – (h) below are met. Liquidated damages waivers and audit fee waivers are

considered separately, but the conditions governing the Fund Administrator's authority to waive such amounts are the same:

- a. The employer requests any such waiver in writing on business letterhead, signed by an appropriate owner, officer, or director of the employer;
- b. No amounts whatsoever are owed (other than the amounts subject to the requested waiver);
- c. The requested waiver is for liquidated damages totaling \$2,500.00 or less and/or audit fees totaling \$2,500.00 or less;
- d. The requested waiver is for liquidated damages that total less than 10% of the amount of contributions paid by the employer during the same period of time for which the liquidated damages were assessed; and/or audit fees that total less than 10% of the amount of contributions paid by the employer during the same period of time for which the audit fees were assessed;
- e. No similar liquidated damages or audit fee waiver has been provided to the employer within the last three calendar years;
- f. Within 30 days of the date the waiver is granted, the employer must pay 100% of the accrued interest and any remaining liquidated damages and/or audit fees that were not waived pursuant to the waiver request;
- g. If the employer incurs any additional liquidated damages within 12 consecutive months of the date the liquidated damages waiver is granted, the waiver is null and void, and the previously waived liquidated damages will become immediately due and payable. Similarly, if the employer incurs any additional audit fees within 12 consecutive months of the date the audit fee waiver is granted, the waiver is null and void, and the previously waived audit fees will become immediately due and payable; and
- h. The Administrator reports to the JCC all such waivers granted and promptly seeks ratification of those waivers.

All other written requests for waivers will be reviewed and decided by the Joint Collection Committee. The Joint Collection Committee shall have discretion to decide all such requests for waivers of liquidated damages, audit fees, and other fees or damages. The decision of the Joint Collection Committee shall be final and binding.

#### 5. Owners, Corporate Officers of Delinquent Employers

Pursuant to the collective bargaining agreements with Local 11, if an employer remains delinquent for more than forty-five (45) days, any Owner or Corporate Officer of the delinquent employer who is being reported as a designated working member under the collective bargaining agreement will lose his hour bank with the Southern California IBEW-NECA Health Trust Fund. In advance of the forty-fifth (45<sup>th</sup>) day of the delinquency, the Fund Office will mail a written notice to the Owner or Corporate Officer who is bound to a collective bargaining agreement with Local 11 or any other local which the Fund Office is notified of similar requirements of the delinquency and of the possible loss of the hour bank. Rules and procedures regarding participant eligibility for benefits based on unpaid contributions, or late contributions, shall be the responsibility of each Trust Fund that has adopted these delinquency procedures.

6. Actions by Counsel

If an employer is delinquent for more than thirty (30) days, if an employer's total delinquency is more than \$25,000.00 after the first of the month following the delinquency, upon notice of a delinquency by the Fund Office, or upon the filing of a bankruptcy petition by an employer, the Fund Office shall request legal counsel to send a demand letter and commence all other appropriate actions to collect the amounts due. In addition, if an employer's delinquency totals \$500,000.00 or more, the Fund Office shall immediately refer the matter to legal counsel to take all appropriate action to collect the amounts due.<sup>4</sup> These actions may include, but are not limited to, assistance with joint check agreements arranged with general contractors and filing stop notices, Miller Act claims, and liens. The Fund Office and the Joint Collection Committee shall authorize legal counsel to institute a lawsuit against the delinquent employer or other parties to collect the amounts owed, plus liquidated damages, interest, audit fees, costs, and attorney fees.

7. Actions by Labor Management Committee

The Joint Collection Committee or the Fund Office may refer any delinquency to any governing Labor Management Cooperation Committee ("LMCC") for adjudication of the delinquency pursuant to the rules of the LMCC. Any final award by that LMCC shall be enforced as an arbitration award by legal counsel.

8. Joint Collection Committee

The members of the Joint Collection Committee shall consist of those trustees of IBEW-NECA Trust Funds that have adopted these collection policies and procedures and for whom the Fund Office is collecting fringe benefit contributions. Each Trust Fund shall appoint trustees to participate in the meetings of the Committee. All actions by the Committee shall be made by a vote of those members present pursuant to the voting rules contained in the Trust Agreement for the Southern California IBEW-NECA Pension Trust. A quorum for the Committee to meet shall be one committee member from Labor and one committee member from Management. The Committee shall elect a Chair and Co-Chair, one from Management and one from Labor, to preside at the meetings. The Chair and Co-Chair shall serve terms of two years. The Joint Collection Committee will meet at least quarterly to review the status of all delinquent employers. At each meeting, the Fund Office will present a written report about the delinquent employers. Legal counsel shall present a written report with counsel's recommendations on all the matters that require action by the Committee. Minutes will be kept of the meetings and submitted to each participating Board of Trustees for review.

Employers may request in writing that a delinquency be placed on a payment plan. Fund Office staff and/or legal counsel will review the request and make a recommendation regarding approval. The Joint Collection Committee, or the Chair and Co-Chair of the Joint Collection Committee, may approve a payment plan. The following conditions must be included in a payment plan agreement: the agreement must state the amount of the delinquency; the period of time of the payment plan; the agreed payment structure; assessed liquidated damages; and

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<sup>4</sup> This sentence approved at Joint Collection Committee meeting held on January 28, 2015.

interest prorated over the term of the payment plan, the total of which is calculated and included in the payment structure. Any payment plan may require the employer to provide to the Fund Office the job site information required in Section 3 of these policies. In addition, the employer must sign either a letter agreement or a stipulation for judgment on behalf of the company, whereby the employer agrees to pay timely pursuant to the terms of the payment plan, as well as agrees to pay all future contributions timely and agrees that any failure to meet any of the agreed upon conditions may result in a default of the payment plan. Attempts should be made to obtain some form of security in connection with payment plans.

The Joint Collection Committee has the authority to compromise any claim or to enter into written settlement agreements with delinquent employers on the terms it deems appropriate. The Joint Collection Committee also has the authority to write-off amounts past due when it is convinced that the costs of additional collection efforts will outweigh the potential recovery. The Chair and Co-Chair of the Joint Collection Committee shall have the authority to appoint individuals, including themselves, to attend court ordered mediation and settlement conferences, and compromise and settle claims between meetings of the Committee subject to the ratification of all actions at the next Committee meeting.

9. Payroll Audit Program

The Fund Office's audit staff shall conduct periodic audits of the contributions of the employers. These audits shall follow agreed upon procedures that test whether contributions have been made on behalf of all covered employees in the correct amounts. The Fund Office may engage an outside auditing firm to perform audits if its staff is unable to perform an audit. The Fund Office shall report the results of its audits in writing, and information summarizing those reports shall be reviewed by the Joint Collection Committee. If contributions are found to be due, the employer will be assessed liquidated damages and interest, and will be required to pay the cost of the audit. Whenever appropriate, collection procedures will be instituted against the delinquent employer. Audits may be required of any employer at any time at the discretion of the Joint Collection Committee.

10. Applying Payments

When a partial payment for a contribution month is received, then the partial payment will first be applied to that portion of the delinquency related to employee payroll deductions for vacation benefits and local union dues<sup>5</sup>, and thereafter be prorated and applied across the entire delinquency, for all hours and all funds for that month unless otherwise required by law or Court Order.<sup>6</sup>

When several months are delinquent and a payment is received, after the payment of the employee payroll deductions, the payment will be applied to the oldest delinquency unless otherwise directed by the Joint Collection Committee or by Court Order. However, payments from a third party covering specific hours or jobs shall be applied to those hours or jobs, unless otherwise directed by the Joint Collection Committee.

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<sup>5</sup> Revisions to this sentence approved at Joint Contribution Committee meeting held on July 31, 2020.

<sup>6</sup> Approved at Joint Contribution Committee meeting held on April 24, 2014.

11. Statements to Participants

The Fund Office sends the participants quarterly statements reflecting contributions received by the Fund Office for each Trust since the last statement. The Fund Office will research inquiries from participants regarding missing hours or contributions, and whenever appropriate, collection procedures will be instituted against the employers.

12. Crediting Hours

Each Trust Fund shall determine whether, when and how it will credit their participant's account for unpaid fringe benefit contributions.

13. Payroll and Fringe Benefit Guarantee Trust Fund

The Fund Office shall notify those employees who are covered by a payroll and fringe benefit guarantee trust that they may apply for coverage under the terms and conditions of that Trust if the delinquency is not resolved within 30 days.

14. Fund Administrator

The Fund Administrator may write off fringe benefit contributions, liquidated damages, interest and auditing costs under \$2,500.00 where the employer is inactive and its contractor's license has been suspended for more than six months.<sup>7</sup>

The Fund Administrator may enter into settlement agreements and payment plans with employer which require full payment of the delinquency, including all contributions, liquidated damages, interest and auditing costs, providing that: (a) the full amount due under the payment plan (including the amortized interest) totals less than \$75,000.00; (b) the time period of the payment plan does not exceed 36 months; (c) the amortized interest is charged on the full amounts due at yearly rates at least as high as those provided for in the pertinent collective bargaining agreement(s), trust agreement(s), or federal law; and (d) each of these settlement agreements or payment plans will be presented for ratification at the regularly scheduled Joint Collection Committee meeting.<sup>8</sup>

The Fund Administrator may resolve stop notices, Miller Act bond claims, mechanic's liens, payment bond claims, and stop notice release bond claims, providing that: (a) counsel recommends that the claims be resolved for the payment of all contributions due, with no payment of interest or attorney's fees; and (b) each of these settlements are presented for ratification at the regularly scheduled Joint Collection Committee meeting.<sup>9</sup>

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<sup>7</sup> Approved at Joint Contribution Committee meeting held on May 24, 2007.

<sup>8</sup> Approved at Joint Contribution Committee meeting held on September 23, 2008.

<sup>9</sup> Approved at Joint Contribution Committee meeting held on September 23, 2008.

The Fund Administrator may close audits under the following circumstances: a) It appears that the employer performed no covered work during the audit period based on the limited employment records available produced by the employer; b) It appears unlikely that any claim will be made for unpaid contributions during the audit period based on an investigation of the relevant facts performed by the Fund Office; c) Collection counsel recommends that the audit be closed; and d) The Administrator reports on each such closed audit and seeks ratification of such closures at the next JCC meeting.<sup>10</sup>

#### 15. Mistakenly Paid Contributions

Each trust fund and entity to which contributions are owed ("trust fund") has its own policy, usually contained in its trust agreement, as to the circumstances in which mistakenly paid contributions may be refunded to the employer. All such policies require the employer to request the refund in writing, and to provide proof, satisfactory to the trustees, that such a mistake was in fact made. Each of the trust fund's policies set forth a deadline by which such refund requests must be made, and those deadlines are not the same for the various trust funds. Therefore, all such refund requests should be submitted to the Fund Office *as soon as possible* after the employer discovers or is made aware that contributions were or may have been mistakenly paid. If the employer does not submit a written request for a refund in a timely manner, no refund will be provided. Once the employer submits an adequate request for a refund with supporting proof, the trustees of each fund (or their agent) will evaluate each employer's request and determine, in their sole discretion, whether the employer is entitled to a refund based on the terms of each trust fund's policies. The employer will later be advised in writing as to whether any refund will be provided. Note that the trust fund policies typically provide that employers cannot offset underpaid contributions with mistakenly overpaid contributions, and that no refunds will be provided until the underpaid contributions are received.

Adopted by the Joint Collection Committee at their duly held meeting on July 31, 2020.

  
Joel Barton

  
James Willson

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<sup>10</sup> Approved at Joint Contribution Committee meeting held on November 14, 2013.