

SEIU HEALTH AND WELFARE FUND

STATEMENT OF POLICY FOR COLLECTION OF DELINQUENT CONTRIBUTIONS

(Effective for all amounts due and owing on or after May 1, 2018)

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

SECTION 1 General Policy

It is the policy of the Fund to make such diligent and systematic efforts as are appropriate under the circumstances to collect all employer contributions when they are due.

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

1. The right to establish a date on which contributions are due and the format in which remittance reports supporting such contributions must be made;
2. The right to recover interest, liquidated damages, attorneys' fees, and any other expenses incurred by the Fund in collecting any delinquency;
3. The right to establish a payroll review program;
4. The right to conduct a review of the payroll records of all employees of the Employers, including, but not limited to, payroll ledgers, federal and state tax returns, union dues remittance reports, state unemployment forms and withholding remittances, documentation to verify job classifications and hire/termination dates, IRS Form 941, and such other books and records of the employers that are necessary in order for the auditor to give an opinion that the proper contributions have been made;
5. The right to require Employers to pay the cost of a payroll review plus interest, liquidated damages, attorneys' fees, and any other expenses incurred by the Fund in determining the amount of a delinquency and in collecting the delinquency;

6. The right to require a bond, cash deposit, or other type of instrument as security for prompt future payments due from Employers that have been habitually delinquent in contributions to the Fund;

7. The right to enforce this Policy against all Employers for all periods of covered employment, including a) periods for which the applicable Collective Bargaining Agreement automatically continues following expiration of its term, and b) periods for which Employers remain obligated to contribute to the Fund under the National Labor Relations Act (“NLRA”) and any other applicable law.

8. The right to enforce this Policy against any Employer that ceases to have an obligation to contribute to the Fund for the time period during which the Employer was obligated to contribute to the Fund;

9. The right to take all other steps and to perform all other acts that are necessary in order to collect contributions due to the Fund in a timely and expeditious manner;

10. The right to terminate a delinquent Employer’s participation in the Fund in appropriate circumstances, as determined by the Trustees in their sole discretion; and

11. The right to appoint a Committee of at least one (1) Employer and one (1) Union Trustee to act on behalf of the Board of Trustees, as provided for under this policy.

The procedures set forth herein shall be followed unless the Board of Trustees determines in its sole discretion that they should be waived in a particular instance. All questions or disputes relating to the interpretation, meaning, and/or application of this Policy shall be finally and exclusively resolved by the Board of Trustees in the exercise of its discretion and in the performance of its fiduciary obligations to the Fund's participants and beneficiaries, in the protection of the financial integrity and soundness of the Fund and the efficient and effective administration of the Fund. The obligations to pay interest, liquidated damages, and fees chargeable under this Policy and under the Trust Agreement are contractual in nature and independent of the provisions of ERISA Section 502(g) and other applicable law. In consideration for its participation, or continued participation, in the Fund, each Employer is and shall be obligated to pay all interest, liquidated damages, fees, and costs chargeable pursuant to this Policy and pursuant to the Trust Agreement.

SECTION 2

Collection Procedure

In accordance with the Trust Agreement, ERISA, all other applicable law, and the above declaration of policy, the following procedures shall be required of all Employers and the steps set out below shall be taken by the Fund Office to effectuate the collection of delinquent contributions. As used in this Policy, the term “delinquent contributions” includes all contributions that are unpaid or underpaid for any reason, including but not limited to mistake,

miscalculation, misinterpretation of contract terms, reliance upon a local union or other third party, or ignorance and regardless of whether remittance reports have been provided for such delinquent contributions.

1. Contributions and supporting remittance reports are due as follows: (a) if there is immediate coverage (available only to employers paying monthly rates), payment is due by the 15th day of the month prior to the month of eligibility (*i.e.*, contributions due by the 15th of December provide eligibility for January) or (b) if there is delayed eligibility (available to employers paying hourly or monthly rates), contributions are due by the 15th of the month after the month worked. (*i.e.*, contributions for work performed in the month of January are due by the 15th of February and provide eligibility for the month of March). Any variance from this specified due date must be approved by the Board of Trustees.

2. Initial contributions and supporting remittance reports for Employers who are newly subject to collective bargaining agreements (*i.e.*, for all months necessary to bring the employee group current) are due no later than the 15th day of the month following the month in which the collective bargaining agreement was executed by the bargaining parties.

3. Retroactive contributions made on behalf of probationary employees shall be considered timely made if paid by the 15th of the month following the month in which the relevant probationary period expired.

4. Contributions must be accompanied by a completed remittance report in such form as required by the Fund, including in electronic form. If contributions are received without an acceptable remittance report, liquidated damages will be charged as set forth in paragraph 8 below. The Fund Office may approve the submission of reports in other forms if it is determined that providing reports in such form will not cause additional burden or expense to the Fund.

5. If the contributions and remittance reports are not received by the last day of the month in which they were due, Fund Office staff shall send a notice of delinquency to the Employer requesting immediate payment of the delinquent contributions plus interest thereon at the rate prescribed by Section 2, paragraphs 8(b) and 8(c) and liquidated damages described at Section 2, paragraphs 8(d) and 8(e), along with submission of the appropriate remittance report form. The notice shall inform the delinquent Employer that, unless the full amount due and the required reports are received in the Fund's offices by the 30th day of the month following the month in which the contributions were due, the matter will be referred to the Fund's legal counsel for collection. The notice shall further advise the Employer that contributions and supporting remittance reports must be received by that date if it wishes to avoid the imposition of liquidated damages and that benefits will be terminated for its employees effective on the first of the month following the month in which contributions were due if such contributions have not been received by the last day of the second month following the month in which contributions were due.

6. If the contributions and remittance report(s) are not received by the last day of the month following that in which the contributions were due, the delinquency may be referred to

legal counsel, with copies of notices sent to the Employer and other relevant documents. Fund Office staff also shall refer to counsel the cases of employers that have accrued balances of unpaid interest or liquidated damages that equal or exceed \$1,000. Notwithstanding the procedures set out in this Policy, the Board of Trustees or Executive Director may refer any delinquent account to legal counsel at an earlier or later date than provided for herein or may forego referral to legal counsel, where circumstances warrant that the collection action be expedited or, delayed, or addressed without legal action.

7. If the contributions and remittance report(s) are not received by the last day of the second month following that in which the contributions were due, benefits for employees of the Employer shall be terminated effective for the first of the month following the month in which such contributions were due (*i.e.*, if contributions that are due on the 15th of February are not received by the last day of April, benefits shall be terminated effective March 1). The termination of benefits for the employees of a delinquent Employer shall not relieve the Employer of its obligations to remit contributions and all outstanding amounts owed, including interest and liquidated damages.

8. Whether collected by the Fund's legal counsel or the Fund Office, the following rules shall apply to all delinquent, late or underpaid contributions:

a. Net Contributions Due: Net Contributions Due shall include all monthly delinquent contributions ("Monthly Contributions Owed") owed for all months less any credited monthly overpayments made by the Employer in accordance with Section 2, paragraph 10.

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

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

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d. Liquidated Damages on Late Payments: If contributions and supporting remittance report(s) in a form acceptable to the Fund are received later than the 15th day of the month following the month in which the contributions were due, the Employer shall be obligated to pay liquidated damages in the amount of 5% of the Monthly Contributions Owed, with a minimum of \$50 for each month's delinquency. If litigation has commenced, the Employer shall be obligated to pay

liquidated damages in the amount of the greater of (i) the interest owed on the Late Payment as calculated in Section 2, paragraph 8(b), or (ii) 20% of the Monthly Contributions Owed.

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- e. Liquidated Damages on Underpayments: If an employer underpays its Monthly Contributions Owed for a specific month, the Employer shall be obligated to pay liquidated damages in the amount of 5% of the underpayment, with a minimum of \$50 for each such month. If litigation has commenced, the Employer shall be obligated to pay liquidated damages in the greater of (a) the total of the interest owed on the underpayment or (b) 20% of the underpayment. If liquidated damages have been charged or assessed for a Late Payment, no additional liquidated damages shall be charged on an underpayment of Monthly Contributions Owed.

9. The Executive Director may assess a charge for retroactive corrections (adding employees omitted from a prior report) made by any Employer of \$50 per each corrected remittance report submitted. This fee is imposed in recognition of the fact that the Fund will be required, and will incur expenses, to ensure proper benefit eligibility for any participant who is added retroactively. The Employer will also owe interest from the date the contributions should have been paid at the rate of ten percent (10%) per annum compounded monthly.

10. Any payment made by the Employer in excess of its required monthly contribution amount due shall be applied to the earliest pay period for which any amounts including delinquent contributions, interest and liquidated damages, are due. Notwithstanding the foregoing, the Executive Director may apply such excess payments to contribution delinquencies as necessary to maintain the continued eligibility of affected participants. The Trustees may enforce and take all action under this Policy including the initiation of legal action under Section 3, to collect interest, liquidated damages and other amounts owed.

11. An Employer that believes it has paid an amount in excess of all amounts owed to the Fund (“Net Overpayment”) resulting solely from either an error in its calculations or in the amount of its payment (i.e., not resulting from an error in its reported hours or from a termination of employees) may apply the amount of its Net Overpayment as a credit towards its future contributions. Any other Net Overpayment, including a Net Overpayment resulting from payment of contributions for coverage for an ineligible employee, must be confirmed by the Fund Office before a credit may be taken. Such confirmation from the Fund Office is not binding on the Fund and does not preclude the Fund from auditing the Employer for the same period at a later date. An Employer may request confirmation in writing from the Fund of any believed credit within two years of the original Net Overpayment. The Employer must apply the credit within two years from the date of the Net Overpayment or six months from the Fund’s confirmation of the Net Overpayment, whichever is later, or such overpayment shall be forfeited. An Employer may receive credit for Net Overpayments resulting from termination of an employee for no more than two months of contributions and provided the Employer provides written notice to the Fund of such termination no later than 90 days of such termination; any

such credit shall be reduced by any financial detriment to the Fund resulting from the overpayment, including payment of medical benefits and unrefunded insurance premiums.

12. An Employer that believes it has a Net Overpayment may request a refund of the claimed overpayment by submitting a request in writing to the Trustees within two years following the date on which the overpayment was received by the Fund. The writing must include a detailed explanation for the basis of the claimed overpayment and include all supporting documentation. The Trustees shall have the discretion to approve or deny any request for refund less any outstanding liquidated damages, interest or other penalties (including attorneys' fees and costs and audit testing fees) due. Any approved refund shall also be reduced by (a) an administrative fee equal to ten percent (10%) of the amount of the overpayment and (b) any other financial detriment to the Trust resulting from the overpayments, including payment of medical benefits. An Employer may receive a refund for Net Overpayments resulting from termination of an employee for no more than two months of contributions and provided that the Employer provides written notice to the Fund of such termination no later than 90 days of such termination, subject to the reductions described herein.

13. All credits or refunds for Net Overpayments shall be issued only in a manner consistent with ERISA section 403(c)(2) and Internal Revenue Code section 401(a)(2). No interest shall be due to any employer on any overpayment. The Fund shall not be obligated to pay benefits resulting from any overpaid contributions. Notwithstanding the forgoing, in the event that an Employer's Net Overpayment has resulted in a payment of benefits for an ineligible employee, including terminated employees, the Trustees may elect to apply the amount of the Employer's overpayment towards the cost of the benefit.

SECTION 3

Legal Action and Settlement

1. When a delinquency or other collection matter is turned over to the Fund's legal counsel for collection, legal counsel shall send a letter to the Employer demanding any required remittance report, payment of the delinquent contributions, interest, liquidated damages and costs. In the event an Employer fails to respond to the letter within thirty (30) days, legal counsel shall send a second demand letter.

2. In the event an Employer fails to pay the delinquent contributions and submit the remittance report(s) within thirty (30) days after legal counsel's second demand for payment, legal counsel shall initiate legal action for any delinquent contributions in excess of \$1,000.00. Legal counsel is authorized to immediately initiate legal action notwithstanding the above procedures in order to preserve or maintain the Fund's claim.

Legal counsel, where appropriate, shall also file a charge under the McNamara O'Hara Service Contract Act with the Department of Labor where the employees for whom the contributions are due are performing work covered by the Service Contract Act.

Any recommendation by legal counsel against initiating suit to collect delinquent contributions shall be submitted to the Board of Trustees. A lawsuit shall not be commenced pending action of the Trustees on such recommendation. The Board of Trustees reserves the right to reject a recommendation by legal counsel and to authorize the commencement of a suit.

3. Legal counsel is authorized to enter into settlement negotiations with delinquent Employers.

4. Attorneys' fees shall be assessed against a delinquent Employer, at a reasonable hourly rate (which rate shall be no less than the hourly rate charged to the Fund for such services) for all time spent by legal counsel in collection efforts pursuant to this Policy or in enforcing the Board of Trustees' rights to payroll reviews pursuant to Section 4 hereof.

5. All costs actually incurred in court actions for collection of delinquent contributions or to enforce the Trustees' right to conduct a payroll review of the Employer's records shall be assessed against the delinquent Employer, including, but not limited to, filing fees, fees for service of process, copying charges, postage, and such other costs as would otherwise be charged to or paid by the Fund and all other costs that are properly recoverable under the applicable Rules of Civil Procedure.

6. In any action to collect delinquent contributions or other amounts under this Policy, the limitations period for such action shall be governed by the law of the state in which all or the majority of the employees at the specific work site on whose behalf the contributing employer makes contributions work, unless such limitations period is less than three years, in which case the limitation period under the laws of the District of Columbia shall govern.

7. Any compromise of amounts owed or deadline extension by the Board of Trustees under this Policy shall comply with Prohibited Transaction Exemption 76-1.

SECTION 4 **Payroll Review Procedure**

1. The Board of Trustees shall select such number of participating Employers each year for payroll reviews as it deems from time to time to be appropriate. The Board of Trustees may, at its discretion, delegate the task of selecting which Employers shall be reviewed pursuant to this Policy or pursuant to an employer selection policy to the Executive Director. The Board of Trustees or the Executive Director may also choose for a payroll review an Employer that was not randomly selected. Notwithstanding the foregoing, unless the Board of Trustees or the Executive Director determine that there is good cause to delay or cancel an audit of a particular Employer, each Employer must be subject to a payroll review at least once every 7 years.

2. Unless the Trustees or Executive Director determine otherwise, the period covered by the payroll review shall be not less than one (1) year.

3. The right of the Fund to conduct a review of an Employer's records shall survive the termination of the Employer's collective bargaining agreement, any other written agreement under which the Employer is contributing to the Fund, or any bankruptcy filing.

4. The Executive Director shall forward a letter to the Employer advising of the impending review citing the Trustees' authority to conduct the review.

5. The auditor shall schedule the payroll review with the Employer, which shall make available to the auditor all books and records that the auditor determines are required. Alternatively, at the auditor's election, the Employer shall forward the pertinent records to the auditor or make the records available to the auditor for inspection at a location in the Washington, D.C. metropolitan area. Upon approval of the Trustees, Executive Director, or the committee appointed under Section 1, Paragraph 11, the auditor may expand the scope of the payroll review to cover a longer period of time.

6. Where a payroll review of an Employer is conducted and the payroll review discloses an underpayment, a letter shall be sent to the Employer advising of the underpayment and requesting the Employer to make payment of the underpayment, liquidated damages, interest, auditor's fees (when appropriate under this Policy) and any other costs associated with conducting the payroll review or collecting amounts within thirty (30) days of the date of its receipt of the letter.

7. After the expiration of the thirty (30) day period, a second demand letter shall be sent to the employer demanding that payment be remitted immediately. If payment is not received within ten (10) days of the date of such letter, Fund Office staff may turn the matter over to Fund Counsel, with copies of the letters, for legal action pursuant to Section 3.

8. In the event an Employer refuses to permit a payroll review upon request by the Trustees or if the Employer refuses the Fund auditor access to pertinent records, the Fund auditor shall refer the matter to legal counsel.

9. Legal counsel shall thereafter demand that the Employer make available such books and records as are necessary for the Fund auditor to conduct the payroll review. If such books and records are not made available within a reasonable period of time not to exceed 60 days or the Employer otherwise fails to cooperate with the Fund's payroll audit procedures, the Employer shall be liable for any attorneys' fees and costs incurred by the Fund in enforcing the Fund's right to review the Employer's records. Legal counsel may institute legal action to enforce the Trustees' right to conduct a payroll review and the Employer shall be assessed all costs and attorney's fees incurred as a result of the Employer's refusal to permit the payroll review or refusal to make available all pertinent records.

10. Employers have a duty to maintain a record of individual hours worked by their employees for at least seven (7) years. Any Employer failing to maintain or provide its records as required herein shall sign any authorizations necessary for any state or federal agency to release tax or other records showing payroll records and shall pay all expenses associated with obtaining

these records. If an Employer violates the duty to maintain or provide required records, the burden will be on the Employer to show that any portion of its payroll or independent contractor expense was not for work requiring contributions to this Fund.

11. Employers will be billed by site whenever the net principal amounts owed are in excess of \$50.00. Billings will be calculated as follows:

- a. Principal Amount Owed: The Principal Amount Owed shall include all contributions owed for all months less any overpayments discovered by the payroll review.

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

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

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- d. Testing Fee: The testing fee will include the auditor's time and expenses in performing the payroll review. The cost of the payroll review, in addition to any other applicable fees and costs, shall be payable by the Employer whenever a review of an Employer's record discloses a Principal Amount Owed due equal to or greater than:

- (i) in the case of an Employer that contributed (or should have contributed) \$50,000 or more in any contract year, 5% of the Employer's total required contributions for such period,

or

- (ii) in the case of an Employer that contributed (or should have contributed) \$10,000 or more but less than \$50,000 in any contract year, the lesser of

(A) 7% of the Employer's total required contributions for such period;
or

(B) \$2,500
or

(iii) in the case of an Employer that annually contributed (or should have contributed) less than \$10,000, the lesser of

(A) 10% of the employer's total required contributions for such period;

or
(B) \$1,000.

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

11. The Board of Trustees authorizes the Executive Director to make decisions regarding the collection of fees associated with the audit following the advice of legal counsel. In such cases where legal counsel has advised that the cost of further collection efforts for unsubstantial amounts would not be financially prudent to pursue, the Executive Director may then terminate collection efforts.

12. Any Net Overpayment discovered by the payroll review procedure to any Employer delinquencies including at other work sites shall be applied in accordance with Section 2, paragraph 10. If the Employer has no other delinquencies, the rules for the application of a credit of a Net Overpayment towards future contributions set forth in Section 2, paragraph 11 shall apply.

13. Any request for a refund from an Employer resulting from a Net Overpayment discovered by the payroll review procedure shall be governed by the rules regarding Net Overpayment refunds described in Section 2, paragraph 12. An Employer is not entitled to a refund, however, of any Net Overpayment discovered in the payroll review procedure if it has any contributions or other amounts owed, including at other work sites

SECTION 5

Reports and Records

1. Legal counsel and the Executive Director shall prepare a delinquency report to be presented at each Board of Trustees meeting. The report shall show all Employers that are delinquent. The determination of the Board with respect to action on such delinquencies, and the specific bases therefore, shall be recorded in the minutes.

2. The Executive Director shall maintain a file of currently effective collective bargaining agreements and other agreements detailing the basis upon which Employers are obligated to make contributions to the Fund.

3. Employers are obligated to timely remit to the Fund Office all new Collective Bargaining Agreements that they enter into that provide for participation in the Fund. The failure of an Employer to timely remit to the Fund a signed Collective Bargaining Agreement shall not impede the Fund's ability to pursue delinquencies.

SECTION 6

Effective Date

The revisions to this Policy shall be effective May 1, 2018, and shall be applicable to all amounts due and owing on or after such effective date.