

ENGINEERS JOINT WELFARE, PENSION, SUPPLEMENTAL  
UNEMPLOYMENT BENEFIT AND TRAINING FUNDS

POLICY FOR MONITORING/AUDITING CONTRIBUTING EMPLOYERS

**WHEREAS**, the Board of Trustees of the Engineers Joint Welfare, Pension, Supplemental Unemployment Benefit and Training Funds (hereinafter referred to jointly as the "Trustees") have a duty under the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended (hereinafter referred to as "ERISA") to make all reasonable efforts to collect all Employer contributions, including interest and liquidated damages thereon, owed to the Engineers Joint Welfare, Pension, Supplemental Unemployment Benefit and Training Funds (hereinafter jointly referred to as "Funds"); and

**WHEREAS**, pursuant to various collective bargaining agreements between certain employers or their representatives (hereinafter referred to as "Employers"), and the International Union of Operating Engineers, Local Unions Nos. 17, 106, 463, 545, and 832 (hereinafter referred to as the "Union"), Employers are required to make prompt payments of the contributions owed to the Funds and are bound by the Restated Agreements and Declarations of Trust of the Funds (hereinafter referred to as the "Trust Agreements"); and

**WHEREAS**, the Funds' Trust Agreements empowers the Trustees to demand, collect and receive Employer payments and all other money and property to which the Funds may be entitled, and to take such steps including the institution and prosecution of, or the intervention in

any proceeding at law, or in equity, or in bankruptcy, as may be necessary or desirable, in their sole discretion, to verify the accuracy of Employer remittances to the Funds and to effectuate the collection of Employer contributions; and

**WHEREAS**, the Funds' Trust Agreements authorizes the Trustees of the Funds to promulgate any and all such rules and regulations as they deem necessary to facilitate the administration of the Funds, including such rules, regulations and policies as are required to govern the process for verifying the accuracy of Employer remittances to the Funds and the collection of Employer payments; and

**WHEREAS**, Section 515 of ERISA requires every Employer who is obligated to make contributions to the Funds under the terms of any collective bargaining agreement to make such contributions as are required in that agreement; and

**WHEREAS**, in keeping with the relevant provisions of the Trust Agreements, it is deemed desirable by the Trustees to formulate a written policy to be applied uniformly to the collection of Employer contributions, containing certain terms and conditions governing the identification of delinquencies and payment of Employer contributions to the Funds;

**NOW, THEREFORE**, it is resolved that the Trustees hereby adopt a Monitoring Policy as follows:

Section 1. Monitoring of Contributing Employer's Remittance Reports and Contributions.

(a) Section 3 of the Funds' Collections Policy is incorporated herein by reference as if set forth at length herein.

(b) The Funds will audit contributing Employers every five (5) years, which five (5) year cyclical audit shall include a review of the Employer's books and records through the date of the Auditor's audit and shall report any underreporting from the date of the last audit through the date of the Auditor's current audit. Such audit will be conducted by such person, Auditor and/or Accountant [collectively referred to as "Auditor"] as may be selected by the Funds, in their sole discretion, to conduct the audit.

(c) In addition to or in lieu of the routine cyclical audit, to monitor Employers to verify that their remittances are accurate, that they have reported on all employees performing bargaining unit work, and that they have remitted all monies due and owing to the Funds, the Funds will, when appropriate given the circumstances, engage in the following activities:

1. Audit, more often, those Employers who often exhibit deficiencies and/or delinquencies;
2. Obtain pay stubs, payroll information and hours worked information from all employees of an Employer to determine whether that Employer accurately reported hours worked by the employees;
3. Obtain payroll information and hours worked information, together with steward reports, if any, from the Unions;

4. Audit, if necessary, Employers submitted to Fund Counsel for collection proceedings and legal action;
5. Obtain the certified payroll records filed by the Employer in connection with work performed on public projects to ensure that hours were accurately reported and paid to the Funds.

(d) In addition to the foregoing avenues for monitoring Employers, the Funds will monitor the reports and remittances of Employers through the following means:

1. Employees who contact the Fund Office to advise it that their monthly personal account plan statements are inaccurate, do not correctly reflect the number of hours worked by them for the Employer, and do not contain the correct amount of contributions;
2. Unions which contact the Fund Office to advise it that the Employer is working in certain areas, and/or not reporting the hours worked by all of its employees.

(e) The Funds may, as requested by the Funds' Administrator, the Boards of Trustees of the Funds, the Consultants, Counsel and/or representatives of the Funds, conduct "special" audits outside the random yearly audits. Such "special" audits shall include, but are not limited to, audits required in the course of or in preparation for litigation, audits conducted on a construction project basis, or audits required to conduct a financial analysis of the Employer's business. The "financial analysis" audit will be conducted for the purposes of determining the viability of the Employer's business and whether it is prudent for the Funds to settle a delinquency on terms proposed by an Employer and/or to continue with efforts to collect a

delinquency from the Employer. The "financial analysis" audit shall be conducted with the Employer's consent and upon such terms and conditions as are mutually agreeable to the Funds and the Employer.

**Section 2. Effect of This Monitoring Policy.**

This Monitoring Policy constitutes a rule of the Funds. To the extent this Monitoring Policy conflicts with the terms and provisions of the Funds' Trust Agreements or the Collective Bargaining Agreement, the terms and provisions of this Monitoring Policy will govern.

Nothing in this Monitoring Policy shall be construed as diminishing, altering, amending or abrogating the Funds' rights and remedies under the Employee Retirement Income Security Act of 1974 ["ERISA"], the Labor Management Relations Act of 1947 ["LMRA"], the Federal Rules of Civil Procedure, and/or the New York Civil Practice Law and Rules.

Failure by the Trustees to adhere to any provision provided herein shall not diminish, abrogate, alter or amend any other provision, duty or requirement of this Policy and shall not constitute a waiver by the Trustees and shall not relieve the contributing Employer of any obligation under ERISA, LMRA, the collective bargaining agreement, or the Funds' Trust Agreements or Collections Policy.

IN WITNESS WHEREOF, the Board of Trustees of the Engineers Joint Welfare, Pension, Supplemental Unemployment Benefit and Training Funds have executed this Monitoring Policy, effective the 31<sup>st</sup> day of July, 2008.

**ENGINEERS JOINT WELFARE FUND**

DATED: 7-31-08

Thomas H. Hoff  
UNION TRUSTEE

DATED: July 31, 2008

Richard E. Quinn  
EMPLOYER TRUSTEE

**ENGINEERS JOINT PENSION FUND**

DATED: 7-31-08

Thomas H. Hoff  
UNION TRUSTEE

DATED: July 31, 2008

Richard E. Quinn  
EMPLOYER TRUSTEE

**ENGINEERS JOINT SUPPLEMENTAL UNEMPLOYMENT BENEFIT FUND**

DATED: 7/31/08

David M. Hill  
UNION TRUSTEE

DATED: 7/31/08

Richard E. Quinn  
EMPLOYER TRUSTEE

**ENGINEERS JOINT TRAINING FUND**

DATED: 7-31-08

Thomas H. Hoff  
UNION TRUSTEE

DATED: 7-31-08

Richard E. Quinn  
EMPLOYER TRUSTEE

UPSTATE NEW YORK ENGINEERS PENSION,  
HEALTH, S.U.B. AND TRAINING FUNDS

POLICY FOR MONITORING/AUDITING CONTRIBUTING EMPLOYERS

AMENDMENT

In accordance with Article V, Section 9, of the Restated Agreements and Declarations of Trust of the Upstate New York Engineers Pension Fund, Upstate New York Engineers Health Fund, Upstate New York Engineers S.U.B. Fund, and Upstate New York Engineers Training Fund [hereinafter the "Funds"], the Policy for Monitoring/Auditing Contributing Employers, effective July 31, 2008, is hereby amended to delete the existing Section 1(b) and to add a new Section 1(b) to read as follows:

- (b) The Funds will audit contributing Employers every five (5) years, which five (5) year cyclical audit shall include a review of the Employer's books and records through the date of the Auditor's audit and shall report any underreporting from the date of the last audit through the date of the Auditor's current audit. Such audit will be conducted by such person, Auditor and/or Accountant [collectively referred to as "Auditor"] as may be selected by the Funds, in their sole discretion, to conduct the audit. The Trustees may, by their representatives, conduct such examination at the Employer's place of business or they may require that the Employer produce said records for examination at the Funds' Office or at the Funds' representative's office.



THIS IS TO CERTIFY that the foregoing Amendment was adopted by the Board of Trustees of the Upstate New York Engineers Pension Fund, Upstate New York Engineers Health Fund, Upstate New York Engineers S.U.B. Fund, and Upstate New York Engineers Training Fund on the 29<sup>th</sup> day of August, 2012, to be effective April 1, 2012.

**UPSTATE NEW YORK ENGINEERS PENSION FUND**

DATED: 8-29-12

  
\_\_\_\_\_  
UNION TRUSTEE

DATED: 8-29-12

  
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EMPLOYER TRUSTEE

**UPSTATE NEW YORK ENGINEERS HEALTH FUND**

DATED: 8-29-12

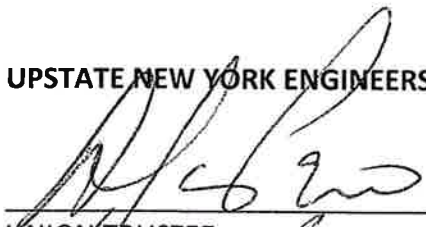
  
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UNION TRUSTEE

DATED: 8-29-12

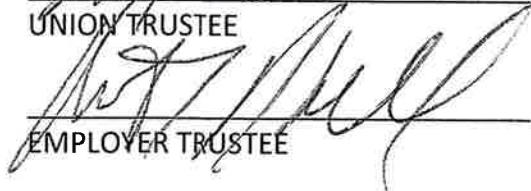
  
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EMPLOYER TRUSTEE

**UPSTATE NEW YORK ENGINEERS S.U.B. FUND**

DATED: 8/29/12

  
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UNION TRUSTEE

DATED: 8-29-12


  
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EMPLOYER TRUSTEE

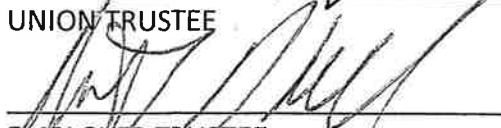


UPSTATE NEW YORK ENGINEERS TRAINING FUND

DATED: 8-29-12

DATED: 8-29-12

  
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UNION TRUSTEE

  
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EMPLOYER TRUSTEE

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