

*District Council 16 Health & Welfare Trust Fund*

**Policy on Mistaken Contributions**

**Effective February 11, 2020**

The District Council 16 Health & Welfare Fund (“Trust Fund”) administers contributions made by Individuals Employers owed to ERISA Trust Funds and non-ERISA organizations pursuant to a Collective Bargaining Agreement (“CBA”) with District Council 16. Where contributions are made by an Individual Employer in excess of what is properly due to the respective Trust Fund or organization this policy shall govern any refund or credit to that Individual Employer.

**1. Mistaken Contributions:** Within the discretion of the Board of Trustees of the Trust Fund, contributions (but not interest thereon or earnings) made by an Individual Employer as a result of mistake of fact or law, may be returned to the Individual Employer within six months after the Board of Trustees (or the delegated Committee or agent for this purpose) determines that the contribution was made by such a mistake and can be returned under ERISA Section 403(c)(2), 26 CFR 1.401(a) and (b), and this Policy.

**2. Unpermitted Contributions:** If a contribution is made on behalf of a person for whom contributions are not permitted or are not required under the Individual Employer’s CBA, the Trust Funds shall not be obligated to pay benefits based on any such unpermitted contribution. Benefits paid in excess of the improper contribution may be billed to and payable by the Employer whose improper contributions caused the benefits to be paid.

**3. Discovery of Mistaken Contributions:** Where an Individual Employer claims that contributions were made as a result of a mistake:

**a. Written Request:** Where mistaken contributions were made, a written refund request must be submitted to the Trust Fund by the Individual Employer within four (4) years of the due date of the report form containing the mistaken contributions, setting forth the details of the alleged mistaken contribution. Such statement, wherever practical, shall be under penalty of perjury.

**b. Audit:** Where mistaken contributions are determined by an audit conducted by the Trust Funds before the Individual Employer claims that mistaken contributions were made to the Trust Funds, no written request for refund or credit from the Individual Employer shall be required for the period of the audit.

**4. Limitations:** In no event shall mistaken contributions be refunded from a Trust Fund to the extent that:

**a.** Disbursements or benefits have been paid or are owed on behalf of the Individual Employer’s employees. For example, credits and refunds will not be issued if health premiums were paid, medical or drug claims exist, distributions have been made to a participant’s Annuity Plan account, participant has received the vacation pay, and/or participant is already in pay status for pension benefits.

- b. If in the sole discretion of the Boards, such refund, or such refund if combined with other refunds, would jeopardize the financial stability of any of the Trust Funds.
- c. Any administrative fee associated with the mistaken contributions shall be non-refundable unless otherwise determined by the Board of Trustees or its delegated Committee or agent.
- d. Interest or earnings attributable to excess contributions shall not be returned to the employer, and any losses attributable to excess contributions must reduce the amount returned to the employer.
- e. Overpaid liquidated damages may be returned to the Individual Employer as determined by the Trust Fund's Board of Trustees or its delegated Committee or agent.

**5. Audit following Refund Request:** Where a substantial refund is claimed by the Individual Employer, the Individual Employer may be audited by the Trust Funds, and the Individual Employer shall be responsible for payment of the attorneys' fees and any costs incurred by such audit.

**6. Credit or Refund of Mistaken Contributions:** If mistaken contributions have been determined by the Trust Fund's Board of Trustees, or its delegated Committee or agent, to be made following audit or the required written request from the Individual Employer:

- a. **Credit to Delinquent Employers:** Where the Individual Employer owes or will owe additional contributions to the Trust Funds or other organizations to which contributions are required under the Individual Employer's contribution agreement, rather than being refunded, the amounts determined as refundable shall be credited against the current obligations or future obligations of the Individual Employer as they become due.
- b. **Refund to Non-Delinquent Employers:** Where the Individual Employer does not and will not owe additional amounts to the Trust Funds or other organizations, the amounts determined as refundable shall be issued to the Individual Employer by the Trust Fund or other organization to which the mistaken contributions were made.

**7. Administrative Procedures:** Fund Administrator shall issue the credit or refund in accordance with this Policy and make the necessary adjustments to the respective participant's account.

- a. **Verification of Overpayment by Fund Administrator:** The Fund Administrative will regularly verify any mistaken contributions on an employer's account to confirm the amount of any overpayment which the Fund Administrator will report to the Trust Fund's Board of Trustees, or its delegated Committee or agent, quarterly.
- b. **Potential Overpayment Notice from Fund Office:** After any verified overpayments are presented to the Trust Fund's Board of Trustees, or its delegated Committee or agent quarterly, the Fund Administrator will promptly send up to three (3)

letters entitled “Potential Overpayment Notice” to the employer advising the employer that the Trust Fund has determined that the employer has made mistaken contributions.

- i. **Credit to Delinquent Employers:** The Potential Overpayment Notice will notify the respective delinquent employer to request in writing within 6 months from the date of the notice to have their overpayment credited to their outstanding balance with the Trust Funds. The Potential Overpayment Notice will specify that if the employer does not make such a written request the credit will no longer be available to the employer.
- ii. **Refund to Non-Delinquent Employers:** The Potential Overpayment Notice will notify the respective employer to request in writing within 6 months from the date of the notice a refund from the Trust Funds. The Potential Overpayment Notice will specify that if the employer does not make such a written request the refund will no longer be made to the employer.
- c. **Fund Administrator Contact Regarding Overpayments:** The Fund Administrator may reach out to employers with a verified overpayment by telephone and/or when the respective employer requests their status letter(s) to urge the employer to request the credit or refund in writing within 6 months from the date of the Potential Overpayment Notice.
- d. **Fund Counsel Contact Regarding Overpayments:** Fund Counsel may reach out to employers referred to Legal Counsel who are delinquent but have a verified overpayment to urge the employer to request the credit or refund in writing within 6 months from the date of the Potential Overpayment Notice.

Adopted this 11<sup>th</sup> day of February 2020.

---

Chris Christophersen, Chair

---

John Maggiore, Secretary