

***DISTRICT COUNCIL 16
NORTHERN CALIFORNIA
HEALTH and WELFARE
TRUST FUND***

***Restated Audit*
and
*Audit Collection Procedures***

District Council 16 Northern California Health and Welfare Trust Fund

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**District Council 16 Northern California Journeyman &
Apprentice Training Trust Fund**

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Bay Area Painters and Tapers Trust Funds

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**Northern California Glaziers Architectural Metal and
Glass Workers Trust Funds**

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Northern California Floor Covering Industry Trust Funds

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International Union of Painters and Allied Trades

Approved November 17, 2020
Adopted November 17, 2020

**DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE
TRUST FUND**

Restated Audit And Audit Collection Procedures

I. TYPES OF PAYROLL INSPECTIONS:

- A. Random Payroll Inspections are done in such a way to allow all signatory Employers to be selected once every three (3) years and for a three (3) year inspection period.
- B. Special Payroll Inspections can be requested by the Board of Trustees, or Counsel (with approval from the Board of Trustees) when it appears that an Employer may not be reporting correctly. This can occur when, for example: members submit paystubs demonstrating that their hours have not been reported correctly, dramatic changes occur in Employer reporting, certified payroll reports do not match contribution reports, Employer reports “no employees” while observed working, and/or there are reports of suspicious work or payment activities.
- C. Courtesy Payroll Inspections are conducted as directed by the Board of Trustees after each new Employer (other than those signatory to a PLA) has been signatory for at least six (6) months, to confirm or correct its reporting to the Trust Funds. Employer will not be billed for liquidated damages, interest, or testing fees on courtesy audits. The Auditor shall be included on all new account set up e-mails sent by DC16 to the Administrator for the purpose of the Auditor scheduling courtesy audits. If the employer is a traveler (an out of area employer not signatory to DC 16) then the Auditor shall consult with the Director of Service (or his or her designee) to determine the timing of the audit.
- D. Exit Payroll Inspections are conducted as directed by the Board of Trustees when an Employer advises that they will be closing their doors, moving, or going out of business.
- E. Employers Shall Be Audited For All Trades to which they are signatory, unless the Auditor is advised by the Director of Service (or his or her designee) or the Board of Trustees that the employer did not perform any work under a particular trade.

II. DISCREPANCIES, OVERPAYMENTS AND BILLING

- A. Definition of Discrepancy: Payroll audit discrepancies are defined as any incorrect or improper Employer contributions that are found during a

compliance audit of the Employer's payroll and employment records.

- B. "No Significant Discrepancy" Audits: If \$200 or less in discrepancies is found during a compliance audit of the Employer's payroll and employment records, then the employer shall not be billed. A letter shall be sent to the Employer noting that the audit is complete and nothing that no significant discrepancies were found.
- C. Mistaken Contributions: For mistaken contributions made within four (4) years of the due date:
1. The Auditor shall quantify mistaken contributions resulting in overpayments (eligible for credit) and/or improper payments (may be eligible for credit) as set forth below. Mistaken contributions may be refunded or credited to the employer pursuant to the District Council 16 Health & Welfare Trust Fund Policy on Mistaken Contributions.. Mistaken contributions shall be quantified as follows:
 - a. **Mistaken contributions resulting from reporting a greater number of hours than required**: the Auditor shall quantify overpayments (eligible for credit) to the defined benefit pension trust and improper payments (may be eligible for credit) to all other funds.
 - b. **Mistaken contributions resulting from reporting hours at a higher rate than required**: the Auditor shall quantify the resulting net overpayment due to the rate variance and the amount overpaid shall be credited to the employer.
 - c. **Mistaken contributions resulting from reporting hours to an incorrect craft or area**: the Auditor shall quantify overpayments (eligible for credit) to the defined benefit pension trust and improper payments (may be eligible for credit) to all other funds. Separately, the Auditor shall quantify underpayments to the proper craft or area.
 - d. **All other mistaken contributions**: the Auditor shall quantify overpayments (eligible for credit) to the defined benefit pension trust and improper payments (may be eligible for credit) to all other funds.
 2. Upon receipt of audit report with improper payments (may be eligible for credit), the Administrator shall analyze the improper payments and determine the amount subject to refund or credit to the employer, pursuant to the District Council 16 Health & Welfare Trust Fund Policy on Mistaken Contributions.
 3. The audit report may be considered the Employer's written request for a refund. Unless the District Council 16 Health & Welfare Trust Fund

Policy on Mistaken Contributions states otherwise, no credit is allowed for overpayments made more than four (4) years prior to date of submission of the audit report to the Employer or where credit would jeopardize the financial stability of Trust(s), in sole discretion of Board.

D. Audit Fees:

1. Employer pays full audit fee:

- Where net underpayments equal or exceed 10% of Employer's correct contributions for the audit period;
- Where Employer fails to maintain records in accordance with CBA, causing surplus of work by auditor;
- Where Employer intentionally or negligently omits, deletes, misclassifies or otherwise provides fraudulent reports or records

2. Employer pays 50% of audit fee: Where net underpayments equal 5%-9.99% of Employer's correct contributions for the audit period

3. Employer does not pay audit fee: Where net underpayments are less than 5% of Employer's correct contributions for the audit period.

4. Trustee Discretion: Where application of the billing policies for audit fees results in an egregious loss to the Trust Funds or Employer: Board has discretion to waive or adjust above policy to what is reasonable under the circumstances.

5. Matters in Litigation: If the Trust is required to file suit to either enforce compliance with an audit, or compel payment, and additional work by the Auditor is required either to respond to a dispute of the audit findings, or otherwise, then the Trustees, in their discretion, may require that the employer be billed for the additional fees incurred by the Trust for the Auditor's time.

Steps Taken By Auditor

	Time/Event	Action
1.	Select 33% of signatory Employers for annual sample testing of 3 year period, so that all Employers are tested at least every 3 years:	Special and exit audits may be directed by the Board through the Chairman or his designee, due to irregularities of reporting, bankruptcy, withdrawal, or other cause.
2.	Upon notice from administrator that a new Employer has been signatory for 6 months, whether or not reporting hours worked:	Send Employer a notice to schedule “courtesy audit” of first 6 months to assure compliance. As audit is “courtesy,” no LDs, interest, or audit fees to be charged to Employer. If litigation is required to compel the audit or collect the amounts due, the Trustees have discretion to include LDs, interest and audit fees.
3.	Where Employer fails or refuses to schedule or continue testing, or allows testing but fails to provide all required documents, after attempting to work with Employer by letters and/or telephone calls: at the Auditor’s discretion:	If Employer refuses to comply with request(s) to schedule audit, immediate written referral to Counsel. If Employer fails to continue testing, or provide all necessary documents, written referral to Counsel after follow up to demand audit compliance. Provide Counsel with all letters/phone logs relative to contact with Employer along with referral.
4.	Where Employer fails to keep signed timecards:	Note failure in narrative; presume all payments made to Employee were wages requiring contributions, unless records indicate otherwise (such as materials repayment). Note any irregularities for consideration of application of 40 hour presumption, at the direction of the Trustees, for an Employee who did any covered work in the week.

	Time/Event	Action
5.	Where Employer fails to maintain records within California and fails to provide adequate records electronically or otherwise for review, requiring auditor to travel for testing:	Include reasonable expenses of travel for audit, to be billed to Employer.
6.	Where Employer misclassifies Employees or hires subcontractors and/or independent consultants:	If supporting evidence of non-covered work is shown (such as invoices for materials), do not include in audit as covered work.
7.	<p>Upon completion of audit:</p> <p>a. Report showing no discrepancies:</p> <p>b. Upon completion of report where discrepancies found:</p>	<p>Review findings with Employer; disclose Employer response if any, and any reporting irregularities, in report; include date of completed report, LDs (greater of \$150 or 10% on underpayments, to maximum of \$750, per month, inclusive of all accounts), interest to a stated date at 5% simple interest per annum, and audit fees as set forth below.</p> <p>Mail simultaneously to Employer and DC 16.</p> <p>Mail report to Employer for two week review requesting any dispute be submitted in writing, with supporting documentation, within two weeks.</p>
8.	Upon dispute/objection by Employer:	<p>Contact DC 16 for relevant facts, (including as to employees claimed to be “out of area”) and/or interpretation of CBA provisions or Trust Counsel for law, then attempt resolution with Employer. Resolution may result in revised report.</p> <p>Refer unresolved objections, including objection to 40-hour presumption, to Administrator or Counsel for determination of action, as applicable.</p>

	Time/Event	Action
9.	After two week period from mailing of draft report, with no dispute/objection from Employer:	Final report forwarded to administrator for billing as set forth above.
10	Upon Employer's withdrawal from Trust Funds:	Perform exit audit.
11	Upon Employer's imminent bankruptcy:	Notify Counsel and Chairman for determination of prompt audit.
12	Each Meeting of the Board of Trustees:	Report audits completed.

Steps Taken By Administrator

	Time/Event	Action
1.	Upon new Employer reporting to Trust Funds for 6 months	Notify auditor to send notice for “6 month courtesy audit” to assure compliance.
2.	Upon receipt of information that Employer reported one employee’s hours as those of another employee:	Determine and provide to auditor: <ul style="list-style-type: none"> (a) Net credit to or balance due from Employer; (b) Resulting credit or balance due; and (c) Make administrative adjustment.
3.	<p>Upon receipt of report of underpayments:</p> <p>a. Within two weeks after receiving undisputed audit results:</p> <p>b. Seven days after billing without payment:</p> <p>c. Upon receipt of dispute of billing:</p> <p>d. Within 6 months of receiving the audit</p>	<p>Confirm auditor’s accounting for net underpayments, determined by deducting any permissible credit of overpayments.</p> <p>For matters previously referred to Counsel, prepare billing letter, but send to Counsel instead of directly to Employer. Counsel to bill audits on pending matters. For all other matters, bill audit for net underpayment due, plus liquidated damages of 10% (with \$150 minimum/\$750 maximum applied to total audit), interest, and audit fees as applicable. Process Defined Benefit hours.</p> <p>Refer to Counsel with a copy of audit report and billings, with all other amounts owing by the Employer, i.e., liquidated damages and interest from prior delinquencies, and new contribution delinquencies.</p> <p>Advise auditor of objection, for procedure under auditor’s paragraph 8 above. Hours to be allocated to members</p>
4.	Upon receipt of audit payment:	Process audit, including any remaining 40

	Time/Event	Action
		<p>hour presumptions, except where the presumed hours would provide benefit eligibility not otherwise provided.</p> <p>Advise Counsel of payments received for referred matters.</p>
5.	Upon Employer's filing of bankruptcy:	Notify Trust Counsel and Chairman for determination of audit.
6.	For disputed audits referred to Counsel:	Provide quarterly summary of those cases referred to Counsel, to confirm as still under negotiation or litigation, or for direction to process.

Steps Taken By Attorney

	Time/Event	Action
1.	Upon receipt of auditor's request for assistance for access, or upon referral from administrator for collection:	Demand letter sent to Employer.
2.	Ten days after demand letter, if no response or resolution forthcoming:	File lawsuit <i>as appropriate</i> to compel audit and/or to collect any amounts found due, including liquidated damages, interest, attorneys' fees and costs, and audit fees.
3.	Upon referral of Employer's objection to 40-hour presumption:	Provide Employer with Declarations as appropriate, allowing 14 days for return.
4.	Upon receipt of appropriate Declarations signed by Employees and/or Employer:	Provide Declarations to auditor for revision of final report.
5.	Upon Employer's failure to return Declarations after 14 days:	Advise auditor to finalize report.
6.	Upon auditor's referral for Employer disputes:	Contact Employer to attempt resolution, as appropriate. Upon resolution or need for lawsuit, advise auditor to finalize report.
7.	Upon referral from administrator for failure to pay:	Send demand letter; negotiate or litigate, as necessary.
8.	Upon indication of Employer's imminent or recent bankruptcy:	Notify Chairman for determination of audit.

Steps Taken By District Council 16

	Time/Event	Action
1.	Upon Employer's withdrawal or indication of withdrawal from trust:	Notify Chairman, Trust Counsel and auditor, administrator and actuary for audit and determination of withdrawal liability.
2.	Upon Employer bankruptcy or imminent bankruptcy:	Notify Chairman, Trust Counsel and auditor for audit.