

**GUIDELINES FOR EMPLOYERS PARTICIPATING IN  
THE NATIONAL ELEVATOR INDUSTRY PENSION FUND,  
THE NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN,  
THE NATIONAL ELEVATOR INDUSTRY EDUCATIONAL PROGRAM,  
THE ELEVATOR CONSTRUCTORS ANNUITY AND 401(k) RETIREMENT PLAN  
AND THE ELEVATOR INDUSTRY WORK PRESERVATION FUND**

**As of September, 2014**

National Elevator Industry  
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Newtown Square, PA 19073-3288

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**INTRODUCTION**

The purpose of this booklet is to assist Employers understand the requirements for remittance reporting and making contributions to the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, the Elevator Constructors Annuity and 401(k) Retirement Plan and the National Elevator Industry Educational Program. These Funds are sometimes referred to hereafter as the “ERISA Funds.” Federal law requires each Employer to make contributions to the Funds in conformity with: (1) each Fund’s trust and plan documents; (2) the applicable collective bargaining agreements between the International Union of Elevator Constructors (“IUEC”) or its local unions, and participating Employers, associations or groups representing participating Employers, and (3) Participation Agreements between participating Employers and the Board of Trustees of one or more of the Funds. This booklet also covers the requirements for contributions to the Elevator Industry Work Preservation Fund.

This booklet also explains the Funds’ procedures for conducting audits of Employer records, as well as the Funds’ procedures for collecting delinquent contributions. Timely payment of all contributions is critical to the operation and financial stability of the Funds.

By law, ERISA Funds must be established and administered for the sole and exclusive benefit of participants. These guidelines set forth the rules concerning the participation of mechanics, helpers, apprentices and other specified Employees of Employers.

This booklet has been prepared for your use as a convenient reference. It is not a contract. To the extent that anything contained herein conflicts with the Plan or Trust Agreement of the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, the National Elevator Industry Educational Program, the Elevator Constructors Annuity and 401(k) Retirement Plan or the Elevator Industry Work Preservation Fund, those documents will control. Those documents are available for review. Please contact the Executive Director of the National Elevator Industry Benefit Plans (“Executive Director”) if you wish to review the documents.

Please note that a separate booklet, “Guidelines for IUEC Local Unions Participating in the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, and the Elevator Constructors Annuity and 401(k) Retirement Plan Pursuant to Participation Agreements,” describes the requirements for remittance reporting and making contributions that are applicable to IUEC Local Unions.

If you have any questions concerning your remittance reporting and contribution requirements or other questions, please contact the Benefits Office. The toll free number and the address are noted on the cover page.

Respectfully,

September, 2014

The Boards of Trustees of the  
National Elevator Industry Pension Fund  
National Elevator Industry Health Benefit Plan  
National Elevator Industry Educational Program  
Elevator Constructors Annuity and 401(k) Retirement Plan  
Elevator Industry Work Preservation Fund

## TABLE OF CONTENTS

	<b>Page</b>
I. Collective Bargaining Agreement.....	1
II. Contributions to the Pension Fund, Health Benefit Plan, Annuity 401(k) Plan and NEIEP.....	1
III. Contributions to ERISA and Non-ERISA Funds.....	1
IV. Participation Rules.....	2
V. Remittance Reporting and Payment Procedure.....	16
VI. Penalties For Coverage of Non-eligible Employees.....	21
VII. Delinquency Procedure.....	22
VIII. Provision of Documents and Data.....	25
IX. Payroll Audits of Employer Records.....	25
X. Refund of Erroneous Contributions.....	28
XI. Any Questions?.....	28
Appendix I - Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives.....	29
Appendix II - Contact Information.....	32

## **I. Collective Bargaining Agreement**

As an Employer who has signed a Collective Bargaining Agreement with the IUEC (or an Employer who is bound by another written agreement, such as a Participation Agreement, to make contributions to the Funds), you are obligated to make certain fringe benefit payments on behalf of your Employees who work under the Collective Bargaining Agreement or other written agreement.

Federal law requires Employers to make contributions to the Funds in conformity with the terms of their Collective Bargaining Agreement or other written agreements, and the Trust and other plan documents governing the Funds.

An Employer's obligation to pay contributions on behalf of an Employee is not controlled by whether the Employee is a member of the IUEC, but whether the work performed by the Employee is covered by the terms and conditions of a Collective Bargaining Agreement. Employers must contribute to the Funds on behalf of all Employees who perform work covered by a Collective Bargaining Agreement, regardless of whether the Employee is an IUEC member.

## **II. Contributions to the Pension Fund, Health Benefit Plan, Annuity 401(k) Plan and NEIEP**

Timely payments are required in the amounts specified in your Collective Bargaining Agreement or other written agreement to:

- The National Elevator Industry Pension Fund ("Pension Fund" or "Pension Plan") to provide retirement benefits and related benefits to eligible Employees who retire under the terms of the Pension Plan.
- The National Elevator Industry Health Benefit Plan ("Health Benefit Plan") to provide health and related benefits for eligible Employees, retirees and their eligible dependents.
- The Elevator Constructors Annuity and 401(k) Retirement Plan ("Annuity 401(k) Plan") to provide additional retirement benefits to eligible Employees.
- The National Elevator Industry Educational Program ("NEIEP") to provide a program of training and continuing education for Elevator Constructor Mechanics, Helpers and Apprentices.

## **III. Contributions to ERISA and Non-ERISA Funds**

### **A. The ERISA Funds**

The Pension Plan, Health Benefit Plan, Annuity 401(k) Plan and NEIEP are multiemployer plans established pursuant to Federal law and are approved as tax exempt organizations by the Internal Revenue Service. The Pension and Health Benefit Plans are each governed by a Board composed of ten Trustees, five appointed by the IUEC and five appointed by The National Elevator Industry, Inc. ("NEII"). The Annuity 401(k) Plan is governed by a Board composed of ten Trustees, five appointed by the IUEC and five appointed by Otis and NEII. The NEIEP is governed by a Board composed of ten Trustees, five appointed by the IUEC and five appointed by NEII. Each Fund is established under a separate Agreement and Declaration of Trust. The Trustees administer each Fund in accordance with the Fund's Agreement and Declaration of Trust as well as other governing documents. In signing a Collective Bargaining Agreement or other written agreement, each Employer agrees to be bound by each Fund's Agreement and Declaration of Trust and Plan.

The Pension and Health Benefit Funds employ an Executive Director to manage the day-to-day operations of the Funds and to perform certain administrative functions for the NEIEP, the Annuity 401(k) Plan and the Work Preservation Fund. The Annuity 401(k) Plan also employs a Record Keeper and Custodian to account for and process the investment of and transactions for participants' Individual Accounts. The Record Keeper is Massachusetts Mutual Life Insurance Company.

The Executive Director files the reports for the Pension Fund, Health Benefit Plan and Annuity 401(k) Plan that are required under Federal law, including reports to the U.S. Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation. In order to meet reporting requirements, the Benefits Office must have your Employer Identification Number (EIN). Please include your EIN on the Monthly Report Form on which each Employer reports contributions to the Benefits Office.

**B. Non-ERISA Fund: The Elevator Industry Work Preservation Fund (Non-ERISA Fund)**

The Elevator Industry Work Preservation Fund ("EIWPF"), first established in Article XX of the 1997-2002 Standard Agreement, is authorized by Section 6(b) of the Labor-Management Cooperation Act of 1978 and Section 302(c)(9) of the Taft-Hartley Act. This Fund is not an ERISA fund and is not governed by ERISA.

Employer contributions to the EIWPF are calculated pursuant to the applicable Collective Bargaining Agreement, using the hourly contribution rate set forth in the applicable Collective Bargaining Agreement and the total number of hours of work performed by each Employee covered by the applicable agreement. Contributions to the Fund will be reported on and transferred on a monthly basis, using the monthly Remittance Report, to the Benefits Office, which will in turn segregate and deposit the contributions to the EIWPF in that Fund's separate account.

The Remittance Reporting and Payment Procedure, Delinquency Procedure, Audits of Employer Records and Refund of Erroneous Contributions Sections of this booklet are generally applicable to the EIWPF in the same manner as they apply to the other Funds.

#### **IV. Participation Rules**

- A. (1) Employer contributions are required to the Pension Fund, Health Benefit Plan, Annuity 401(k) Plan, NEIEP and EIWPF on all hours worked by Mechanics, Assistant Mechanics, Helpers, Apprentices and Probationary Apprentices subject to the limited exception set forth below in subsection (2). Subject to the limited exception set forth below in subsection (2), any Employee working in an IUEC bargaining unit may defer a portion of his wages into the 401(k) portion of the Annuity 401(k) Plan.
- (2) A Probationary Apprentice shall participate in the Funds beginning no sooner than six (6) months following his initial date of hire (industry date) or after the completion of at least 100 hours of employment in each of six 30-day periods within an aggregate period of not more than nine months following his initial date of hire (industry date), but not later than the completion of a 12 consecutive calendar month period during which he has completed at least 1,000 Hours of Service. The Probationary Apprentice's participation will begin on, and contributions are due on hours worked by the Probationary Apprentice beginning with, the first day of the month next following the *later* of:
- (i) six (6) months following his initial date of hire (industry date),
  - (ii) the end of the last of the six 30 day periods or
  - (iii) the end of the 12 consecutive calendar month period, as the case may be.

B. Except as provided otherwise in Section C below, the following shall not be considered Elevator Constructor Mechanics, Assistance Mechanics, Helpers, Apprentices or Probationary Apprentices and shall be excluded from participation in all of the Plans:

- (1) any owner of an Employer which is not incorporated or a limited liability company, contractor, subcontractor, jobber, partner or stockholder who directly or indirectly possesses more than a one-half of one percent (0.5%) ownership interest in any entity which is an Employer;
- (2) any person who is an officer of or otherwise involved in the management of an Employer, except for those individuals identified as Grandfathered Employees as described below; and,
- (3) any person compensated in a lump sum, piecework or other basis which is not in accordance with the wage scales and working conditions established by a Collective Bargaining Agreement with the IUEC or one of its local unions.

C. However, there are exceptions to the above rules in Section B as follows:

(1) Pension Fund

(a) Participation by Owners, Officers and Other Officials of the Employer

The Pension Fund provides that if an Employee *performing bargaining unit work*, or the Employee's spouse, holds more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which is a limited liability company, either directly or indirectly, or if an Employee *performing bargaining unit work* is an officer or other official of his Employer which is a corporation or a limited liability company, then the Employer must contribute to the Pension Fund on the Employee's behalf the *greater* of:

- (i) 160<sup>1</sup> hours a month, or
- (ii) the number of hours in a month the Employee performs bargaining unit work.

The reporting and contribution requirements under this rule shall commence with the date the stockholder/limited liability company owner/officer/other official first acquires such ownership interest or becomes an officer or other official and shall continue thereafter for every month regardless of the hours actually worked in any month.

See Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), for special requirements for Employees performing bargaining unit work who are Relatives (as that term is defined in Section A. of Appendix I) of an owner of their Employer.

Participation by owners, officers and other officials of the Employer shall be in accordance with the Pension Fund's Restated Agreement and Declaration of Trust, the Pension Plan document, rules and regulations established by the Pension Fund's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Pension Fund's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(b) Participation by Former Owners, Officers and Other Officials of an Employer

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<sup>1</sup> The requirement to report a minimum of 160 hours to the NEI Pension Plan generally applies to owners regardless of any hours reported to the Plan by other Employers.

If an Employee, or the Employee's spouse, held more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which was a limited liability company, either directly or indirectly, or if an Employee was an officer or other official of his Employer which was a corporation or a limited liability company, and as a result of an acquisition, merger or consolidation between the Employee's Employer and another Employer, the Employee, or the Employee's spouse, no longer holds more than one-half percent (0.5%) of the stock of his Employer, or of the ownership interest in his Employer, or is no longer an officer or other official of his Employer, the Employee will be eligible to continue to participate in the Plan if:

- (i) immediately prior to such acquisition, merger or consolidation, the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above;
- (ii) on March 13, 2006 the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above;
- (iii) at some time prior to March 13, 2006 the Employee was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and at that time was a proper and eligible participant in the Plan;
- (iv) on January 10, 2007, the Employee was age 45 or older;
- (v) the Employee will not be participating in any other retirement, pension annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan;
- (vi) on October 1, 2009 the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above; and
- (vii) his Employer contributes to the Pension Fund on behalf of the Employee for the *greater of*:
  - (A) 160 hours a month, or
  - (B) the number of hours the Employee works in a month.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a former owner, officer or other official in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the former owner, officer or other official does not exercise any control over the hours of employment of the Relative employed by the Employer.

A former owner, officer or other official participating in the Pension Fund under this paragraph (b) will no longer be eligible to participate in the Pension Fund under this paragraph if:

- (i) he becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or
- (ii) after December 31, 2009, he changes Employers, unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

Participation by former owners, officers and other officials shall be in accordance with the Pension Fund's Restated Agreement and Declaration of Trust, the Pension Plan document, rules and regulations established by the Pension Fund's Board of Trustees including these Guidelines

and the Participation Agreement entered into between the Employer and the Pension Fund's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(c) The 180 Day Participation Rule

The Pension Fund provides for a continuation of participation during the 180 day period immediately following a change in an Employee's employment with his Employer to a position that is not eligible for participation in the Pension Plan. The Employer must notify the Benefits Office of the change in position on the Monthly Report Form for the month in which the change occurs. No penalties will be applied to the Employer for continuing the Employee's participation in the Plan during this 180 day period. If the Employer fails to notify the Benefits Office of the change in position, the enforcement penalties noted in Article VI, Penalties for Coverage of Non-eligible Employees, will apply. This provision may only be used by an Employee once during any 36 month period. During this 180 day period, the Employer must contribute to the Pension Fund on the Employee's behalf the *greater* of:

- (i) 160 hours a month, or
- (ii) the number of hours the Employee works in a month.

Participation under this 180 day participation rule shall be in accordance with the Pension Fund's Restated Agreement and Declaration of Trust, the Pension Plan document, rules and regulations established by the Pension Fund's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Pension Fund's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(d) Bargaining Unit Alumni

The Pension Fund provides for participation of "bargaining unit alumni" - that is, an Employee who is no longer working in the bargaining unit but the Employee's Employer agrees to continue the Employee's participation in the Pension Plan, the Employee meets the requirements of the bargaining unit alumni rules and the Employer signs a Participation Agreement covering the Employee.

To participate as a bargaining unit alumni:

- (i) the Employee must have been a member of the bargaining unit on or after June 30, 1994;
- (ii) the Employee must have accrued at least 5 years of vesting service in the Plan while a member of the bargaining unit;
- (iii) the Employee must have been reported for at least 8500 hours as a member of the bargaining unit on Employer Monthly Report Forms;
- (iv) the Employee cannot participate in any other retirement, pension, annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan;
- (v) the Employee's Employer enters into a Participation Agreement with the Trustees with respect to such Employee within 180 days of the Employee's change in employment to a position that is not eligible to participate in the Plan or 180 days of the date the

Trustees determine that the Employee has ceased to be eligible for continued participation in the Plan as a collective bargaining Employee;

- (vi) any individual employed by any Employer as a non-bargaining unit Employee at any time between January 1, 1994 and July 1, 1994 will not be able to participate in the Plan unless he works as a bargaining unit Employee after June 30, 1994 for at least 12 consecutive calendar months and earns a minimum of 1700 Hours of Future Benefit Service during that 12-month period; and
- (vii) the Employer must make contributions on behalf of the “bargaining unit alumni” Employee for the *greater* of:
  - (A) 160 hours a month, or
  - (B) the number of hours the Employee works in a month.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a bargaining unit alumni in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Employee covered by the bargaining unit alumni rule does not exercise any control over the hours of employment of the Relative employed by the Employer.

Participation for bargaining unit alumni shall be in accordance with the Pension Fund’s Restated Agreement and Declaration of Trust, the Pension Plan document, rules and regulations established by the Pension Fund’s Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Pension Fund’s Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans’ Website or will be provided upon request.<sup>2</sup>

(e) “Grandfathered Employees”

The Pension Fund provides for continued participation under the 2009 Non-Eligible Employee Arbitration Award of Grandfathered Employees under the “Grandfathered Employee Rule.”

A “Grandfathered Employee” is an individual:

- (i) who on March 13, 2006 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement but was participating in the Plan even though he was not then employed in a category of work covered by a Collective Bargaining Agreement;
- (ii) who at some time prior to March 13, 2006 was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and therefore at that time was a proper and eligible participant in the Plan;
- (iii) who on January 10, 2007 was age 45 or older;

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<sup>2</sup> Certain Employees who were identified during the Non-Eligible Employee Arbitration as non-eligible Employees, but who did not meet the requirements to continue to participate in the Plan under the Grandfathered Employee Rule discussed in subsection (e) below, are allowed to continue to participate in the Pension Plan as bargaining unit alumni even though they might not meet all of the requirements for such participation as described in this subsection (d) if their Employer agrees to such continued participation.

- (iv) who was identified by his Employer in the Employer's response to the Supervisor Survey as a Non-eligible Employee currently participating in the Plan;
- (v) who does not participate in any other retirement, pension, annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan;
- (vi) who on October 1, 2009 is employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement; and
- (vii) whose Employer continues to make contributions to the Pension Fund in accordance with the arbitration award of Arbitrator Scheinman dated February 26, 2009 as long as the Grandfathered Employee remains in his position. The Employer must contribute to the Fund for the *greater of*
  - (A) 160 hours a month, or
  - (B) the number of hours the Employee works in a month.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a Grandfathered Employee in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Grandfathered Employee does not exercise any control over the hours of employment of the Relative employed by the Employer.

A Grandfathered Employee will permanently lose his status as Grandfathered Employee if he:

- (i) becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or
- (ii) after December 31, 2009, changes Employers, unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

Participation for Grandfathered Employees shall be in accordance with the Pension Fund's Restated Agreement and Declaration of Trust, the Pension Plan document, rules and regulations established by the Pension Fund's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Pension Fund's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

## (2) Health Benefit Plan

### (a) Participation by Owners, Officers and Other Officials of the Employer

The Health Benefit Plan provides that if an Employee *performing bargaining unit work*, or the Employee's spouse, holds more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which is a limited liability company, either directly or indirectly, or if an Employee *performing bargaining unit work* is an officer or other official of his Employer which is a corporation or a limited liability company, then the Employer must contribute to the Health Benefit Plan on the Employee's behalf the *greater of*:

- (i) 165 hours a month or
- (ii) the number of hours in a month the Employee performs bargaining unit work.

The reporting and contribution requirements under this rule shall commence with the date the stockholder/limited liability company owner/officer/other official first acquires such ownership interest or becomes an officer or other official and shall continue thereafter for every month regardless of the hours actually worked in any month.

See Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), for special requirements for Employees performing bargaining unit work who are Relatives (as that term is defined in Section A. of Appendix I) of an owner of their Employer.

Participation by owners, officers and other officials of the Employer shall be in accordance with the Health Benefit Plan's Restated Agreement and Declaration of Trust, rules and regulations established by the Health Benefit Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Health Benefit Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(b) Participation by Former Owners, Officers and Other Officials of an Employer

If an Employee, or the Employee's spouse, held more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which was a limited liability company, either directly or indirectly, or if an Employee was an officer or other official of his Employer which was a corporation or a limited liability company, and as a result of an acquisition, merger or consolidation between the Employee's Employer and another Employer, the Employee, or the Employee's spouse, no longer holds more than one-half percent (0.5%) of the stock of his Employer, or of the ownership interest in his Employer, or is no longer an officer or other official of his Employer, the Employee will be eligible to continue to participate in the Plan if:

- (i) Immediately prior to such acquisition, merger or consolidation, the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above;
- (ii) on March 13, 2006 the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above;
- (iii) at some time prior to March 13, 2006 the Employee was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and at that time was a proper and eligible participant in the Plan;
- (iv) on January 10, 2007, the Employee was age 45 or older;
- (v) on October 1, 2009 the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above; and
- (vi) his Employer contributes to the Plan on behalf of the Employee for the equivalent of 165 hours a month multiplied by the current hourly contribution rate under the Employer's collective bargaining agreement with the IUEC.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a former owner, officer or other official in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the former owner, officer or other official does not exercise any control

over the hours of employment of the Relative employed by the Employer.

A former owner, officer or other official participating in the Health Benefit Plan under this paragraph (b) will no longer be eligible to participate in the Health Benefit Plan under this paragraph if:

- (i) he becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or
- (ii) after December 31, 2009, he changes Employers, unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

Participation by former owners, officers and other officials shall be in accordance with the Health Benefit Plan's Restated Agreement and Declaration of Trust, rules and regulations established by the Health Benefit Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Health Benefit Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(c) "Bargaining Unit Alumni Rule" Does Not Apply to the Health Benefit Plan

A bargaining unit alumni rule like the one described in paragraph C(1)(d) of this Article IV, does not apply to the Health Benefit Plan. "Bargaining unit alumni" may *only* participate in the Pension Plan under the rules of that Plan.

(d) The 180 Day Participation Rule

The Health Benefit Plan provides for continued participation during the 180 day period immediately following a change in an Employee's employment with his Employer to a position that is not eligible for participation in the Health Benefit Plan. The Employer must notify the Benefits Office of the change in position on the Monthly Report Form for the month in which the change occurs. No penalties will be applied to the Employer for continuing the Employee's participation in the Plan during this 180 day period. If the Employer fails to notify the Benefits Office of the change in position, the enforcement penalties noted in Article VI, Penalties for Coverage of Non-eligible Employees, will apply. This provision may only be used by an Employee once during any 36 month period. During this 180 day period, the Employer must contribute to the Health Benefit Fund on the Employee's behalf the *greater* of:

- (i) 165 hours a month or
- (ii) the number of hours the Employee works in a month.

Participation under the 180 day participation rule shall be in accordance with the Health Benefit Plan's Restated Agreement and Declaration of Trust, rules and regulations established by the Health Benefit Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Health Benefit Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(e) "Grandfathered Employees"

The Health Benefit Plan provides for continued participation under the 2009 Non-Eligible Employee Arbitration Award of Grandfathered Employees under the “Grandfathered Employee Rule.”

A “Grandfathered Employee” is an individual:

- (i) who on March 13, 2006 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement but was participating in the Plan even though he was not then employed in a category of work covered by a Collective Bargaining Agreement;
- (ii) who at some time prior to March 13, 2006 was employed by an Employer in category of work covered by a Collective Bargaining Agreement and therefore at that time was a proper and eligible participant in the Plan;
- (iii) who on January 10, 2007 was age 45 or older;
- (iv) who was identified by his Employer in the Employer’s response to the Supervisor Survey as an Non-eligible Employee currently participating in the Plan;
- (v) who on October 1, 2009 is employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement; and
- (vi) whose Employer continues to make contributions to the Health Benefit Plan in accordance with the arbitration award of Arbitrator Scheinman dated February 26, 2009 as long as the Grandfathered Employee remains in his position.
- (vii) whose Employer contributes to the Health Benefit Plan on behalf of the Employee for the equivalent of 165 hours a month multiplied by the current hourly contribution rate under the Employer’s collective bargaining agreement with the IUEC.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a Grandfathered Employee in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Grandfathered Employee does not exercise any control over the hours of employment of the Relative employed by the Employer.

A Grandfathered Employee will permanently lose his status as a Grandfathered Employee if he:

- (i) becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or
- (ii) after December 31, 2009, changes Employers, unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

Participation for Grandfathered Employees shall be in accordance with the Health Benefit Plan’s Restated Agreement and Declaration of Trust, the rules and regulations established by the Health Benefit Plan’s Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Health Benefit Plan’s Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans’ Website or will be provided upon request.

(3) NEIEP

The NEIEP has a rule similar to the Pension Plan. It provides:

If an Employee *performing bargaining unit work*, or the Employee's spouse, holds more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which is a limited liability company, either directly or indirectly, or if an Employee *performing bargaining unit work* is an officer or other official of his Employer which is a corporation or a limited liability company, then the Employer must contribute to the NEIEP on the Employee's behalf the *greater* of: (i) 160<sup>3</sup> hours a month or (ii) the number of hours in a month the Employee performs bargaining unit work. The reporting and contribution requirements under this rule shall commence with the date the stockholder/limited liability company owner/officer/other official first acquires such ownership interest or becomes an officer or other official and shall continue thereafter for every month regardless of the hours actually worked in any month.

See Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), for special requirements for Employees performing bargaining unit work who are Relatives (as that term is defined in Section A. of Appendix I) of an owner of their Employer.

(4) Annuity 401(k) Plan

(a) Participation by Owners, Officers and Other Officials of the Employer

The Annuity 401(k) Plan provides that if an Employee *performing bargaining unit work*, or the Employee's spouse, holds more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which is a limited liability company, either directly or indirectly, or if an Employee *performing bargaining unit work* is an officer or other official of his Employer which is a corporation or a limited liability company, then the Employer must contribute to the Annuity 401(k) Plan on the Employee's behalf the *greater* of:

- (i) 160<sup>4</sup> hours a month, or
- (ii) the number of hours in a month the Employee performs bargaining unit work.

The reporting and contribution requirements under this rule shall commence with the date the stockholder/limited liability company owner/officer/other official first acquires such ownership interest or becomes an officer or other official and shall continue thereafter for every month regardless of the hours actually worked in any month.

See Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), for special requirements for Employees performing bargaining unit work who are Relatives (as that term is defined in Section A. of Appendix I) of an owner of their Employer. See also, Section E. of Appendix I for special rules for the Annuity 401(k) Plan relating to an Employer's obligation to report to the Benefits Office compensation of owners, officers, other officials and Relatives.

Participation by owners, officers and other officials of the Employer shall be in accordance with the Agreement and Declaration of Trust of the Annuity 401(k) Plan, the Annuity 401(k) Plan document, rules and regulations established by the Annuity 401(k) Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer

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<sup>3</sup> The requirement to report a minimum of 160 hours to the NEIEP applies to owners regardless of any hours reported to the Plan by other Employers.

<sup>4</sup> The requirement to report a minimum of 160 hours to the Annuity 401(k) Plan applies to owners regardless of any hours reported to the Plan by other Employers.

and the Annuity 401(k) Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(b) Participation by Former Owners, Officers and Other Officials of an Employer

If an Employee, or the Employee's spouse, held more than one-half of one percent (0.5%) of the stock of his incorporated Employer, or of the ownership interest in his Employer which was a limited liability company, either directly or indirectly, or if an Employee was an officer or other official of his Employer which was a corporation or a limited liability company, and as a result of an acquisition, merger or consolidation between the Employee's Employer and another Employer, the Employee, or the Employee's spouse, no longer holds more than one-half percent (0.5%) of the stock of his Employer, or of the ownership interest in his Employer, or is no longer an officer or other official of his Employer, the Employee will be eligible to continue to participate in the Plan if:

- (i) immediately prior to such acquisition, merger or consolidation, the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above;
- (ii) on March 13, 2006 the Employee was participating in the Plan as an owner, officer or other official in accordance with paragraph (a) above;
- (iii) at some time prior to March 13, 2006 the Employee was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and at that time was a proper and eligible participant in the Plan;
- (iv) on January 10, 2007, the Employee was age 45 or older;
- (v) the Employee will not be participating in any other retirement, pension annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the Plan;
- (vi) on October 1, 2009 the Employee was participating in the Annuity 401(k) Plan as an owner, officer or other official in accordance with paragraph (a) above; and
- (vii) his Employer contributes to the Annuity 401(k) Plan on behalf of the Employee for the *greater* of:
  - (A) 160 hours a month, or
  - (B) the number of hours the Employee works in a month.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a former owner, officer or other official in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the former owner, officer or other official does not exercise any control over the hours of employment of the Relative employed by the Employer.

A former owner, officer or other official participating in the Annuity 401(k) Plan under this paragraph (b) will no longer be eligible to participate in the Plan under this paragraph if:

- (i) he becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or

- (ii) after December 31, 2009, he changes Employers, unless the change of Employers is due to an acquisition, merger or consolidation between the old and new Employer.

Participation by former owners, officers and other officials shall be in accordance with the Agreement and Declaration of Trust of the Annuity 401(k) Plan, the Annuity 401(k) Plan document, rules and regulations established by the Annuity 401(k) Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Annuity 401(k) Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

(c) The 180 Day Participation Rule

The Annuity 401(k) Plan provides for participation during the 180 day period immediately following a change in an Employee's employment with his Employer to a position that is not eligible for participation in the Plan. The Employer must notify the Benefits Office of the change in position on the Monthly Report Form for the month in which the change occurs. No penalties will be applied to the Employer for continuing the Employee's participation in the Plan during this 180 day period. If the Employer fails to notify the Benefits Office of the change in position, the enforcement penalties noted in Article VI, Penalties for Future Coverage of Non-eligible Employees, will apply. This provision may only be used by an Employee once during any 36 month period. During this 180 day period, the Employer must contribute to the Annuity 401(k) Plan on the Employee's behalf the *greater of*:

- (i) 160 hours a month, or
- (ii) the number of hours the Employee works in a month.

Participation under the 180 day participation rule shall be in accordance with the Agreement and Declaration of Trust of the Annuity 401(k) Plan, the Annuity 401(k) Plan document, rules and regulations established by the Annuity 401(k) Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Annuity 401(k) Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request

(d) "Bargaining Unit Alumni Rule" Does Not Apply to the Annuity 401(k) Plan

A "bargaining unit alumni rule" like the one described in paragraph C.(1)(d) of this Article IV, does not apply to the Annuity 401(k) Plan. "Bargaining unit alumni" may only participate in the Pension Plan under the rules of that Plan.

(e) "Grandfathered Employees"

The Annuity 401(k) Plan provides for participation under the 2009 Non-Eligible Employee Arbitration Award of Grandfathered Employees under "the Grandfathered Employee Rule."

A "Grandfathered Employee" is an individual:

- (i) who on March 13, 2006 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement but was participating in the Plan even though he was not then employed in a category of work covered by a Collective Bargaining Agreement,
- (ii) who at some time prior to March 13, 2006 was employed by an Employer in category of work covered by a Collective Bargaining Agreement and therefore at that time was a proper and eligible participant in the Plan,

- (iii) who on January 10, 2007 was age 45 or older,
- (iv) who was identified by his Employer in the Employer's response to the Supervisor Survey as an Non-eligible Employee currently participating in the Plan,
- (v) who does not participate in any other retirement, pension, annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan,
- (vi) who on October 1, 2009 is employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement, and
- (vii) whose Employer continues to make contributions to the Annuity and 401(k) Retirement Fund in accordance with the arbitration award of Arbitrator Scheinman dated February 26, 2009 as long as the Grandfathered Employee remains in his position. The Employer must contribute to the Annuity 401(k) Plan for the *greater* of
  - (A) 160 hours a month, or
  - (B) the number of hours the Employees works in a month.

Appendix I, (Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives), shall apply to a Relative (as that term is defined in Section A. of Appendix I) of a Grandfathered Employee in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Grandfathered Employee does not exercise any control over the hours of employment of the Relative employed by the Employer.

A Grandfathered Employee will permanently lose his status as a Grandfathered Employee if he:

- (i) becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or
- (ii) after December 31, 2009, changes Employers unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

Participation by Grandfathered Employees of the Employer shall be in accordance with the Agreement and Declaration of Trust of the Annuity 401(k) Plan, the Annuity 401(k) Plan document, rules and regulations established by the Annuity 401(k) Plan's Board of Trustees including these Guidelines and the Participation Agreement entered into between the Employer and the Annuity 401(k) Plan's Board of Trustees. The Employer Participation Agreements are available on the Benefit Plans' Website or will be provided upon request.

#### D. Notification of Termination of Owner, Officer or Other Official Participation

##### (1) In General

In the event an Employee who participates in the Funds as an owner, officer or other official in accordance with IV.C.(1)(a), IV.C.(2)(a), IV.C.(3) and IV.C.(4)(a), ceases to perform bargaining unit work for any calendar month, such Employee is required to submit to the Benefits Office an Owner's Declaration of Termination of Participation. A completed Owner's Declaration of Termination of Participant must be received by the Benefits Office on or before the date the Employee's Employer submits its Monthly Report Form.

##### (2) Engaging in Bargaining Unit Work after Termination: Special Health Benefit Eligibility Rule for Owners, Officers and Other Officials

- (a) An owner, officer or other official of an Employer who after terminating his participation in the Health Benefit Plan pursuant to IV.C.(2)(a) may reestablish his eligibility for benefits under the Health Benefit Plan as an owner, officer or other official of an Employer after a period of 24 months or more, and may again participate in the Health Benefit Plan in accordance with IV.C.(2)(a).
- (b) An owner, officer or other official of an Employer who after termination his participation under IV.C.(2)(a) again engages in bargaining unit work as an owner, officer or other Official of an Employer after a period of fewer than 24 months, may again participate in the Health Benefit Plan in accordance with IV.C.(2)(a) and be eligible for benefits under the Health Benefit Plan provided an initial contribution in addition to the contribution required under IV.C.(2)(a) is remitted to the Health Benefit Plan. This initial contribution shall equal the lesser of:
  - (i) the amount the Employee's Employer would have been required to contribute under IV.C.(2)(a) had the Employee engaged in bargaining unit work during the six (6) months immediately prior to the month the Employee again engages in bargaining unit work as an owner, officer or other official of that Employer (such amount shall be offset by any amounts paid to the Health Benefit Plan for COBRA Continuation Coverage for the Employee and/or his eligible dependents or any amounts remitted on behalf of the Employee to the Health Benefit Plan by another Employer during such six-month period); or
  - (ii) the amount the Employee's Employer would have been required to contribute under IV.C.(2)(a) had the Employee not terminated his Participation under IV.C.(2)(a) (such amount to be offset by any amounts paid to the Health Benefit Plan for COBRA Continuation Coverage for the Employee and/or his eligible dependents or any other amounts remitted on behalf of the Employee to the Health Benefit Plan by another Employer during such period).

E. Notification of Inactive Employer Status

- (1) An Employer that ceases to perform bargaining unit work must promptly notify the Benefits Office of the Employer's Inactive Status and submit an Inactive Employer Affidavit.
- (2) An Employee who participates in the Funds as an owner, officer or other official in accordance with IV.C.(1)(a), IV.C.(2)(a), IV.C.(3) and IV.C.(4)(a) must submit an Owner's Declaration of Termination of Participation at the time his Employer submits an Inactive Employer Affidavit.
- (3) If an owner, officer or other official of a corporation or a limited liability company works for another Employer that makes contributions to the Funds on his behalf, and the owner's, officer's or other official's corporation or limited liability company is inactive and submitted an Inactive Employer Affidavit, the owner's, officer's, or other official's corporation or limited liability company does not have to make contributions to the Health Benefit Plan on behalf of such owner, officer, or other official, provided the owner, officer or other official submitted to the Benefits Office an Owner's Declaration of Termination of Participation.

## V. Remittance Reporting and Payment Procedure

### A. General

The Trustees have established a uniform remittance reporting and payment procedure for all Employers in accordance with the terms of the Collective Bargaining Agreements and Trust Agreements. As described below, there are separate reporting and payment procedures for monthly and weekly reporting, both of which may apply to each Employer.

### B. Monthly Hours Reporting and Payment Procedure

- (1) For all funds you will receive a Monthly Report Form for each Local Union in which your Employees work along with a Remittance Advice form to complete each month. The name, Social Security Number, job title, job title effective date, hours worked, vacation/holiday hours, and non-vacation and vacation earnings data for each of your Employees must be entered by you on the first Monthly Report Form. Each subsequent report sent to you by the Funds will have your Employees' names, Social Security Numbers, job title, and job title effective date already printed on the report. The total amount due the Funds each month in contributions will equal the number of hours worked, as reported on the monthly report, multiplied by the applicable fringe benefit contribution rate (printed on the report). The Remittance Advice form must accompany your contribution payment.

Owners participating in the Plans will receive a separate Monthly Report Form in addition to the one used to report hours for non-owner Employees. The Monthly Report Form for Owners requires the name, Social Security Number, job title, job title effective date, Health Benefit Plan hours, hours for all other Funds (Pension Plan, NEIEP and EIWPF hours), and non-vacation and vacation earnings data for each Owner-Employee and Relative (See Appendix I, Section A.) reportable on this form. The minimum number of hours required to be reported by Owner-Employees and Relatives for each Plan is listed at the top of the corresponding column on the Monthly Report Form.

**Important Note: The records of the Funds are maintained on a computer system which is compatible with many automated payroll systems. Employers who utilize an automated payroll system can supply the information required by the Funds electronically. The Employer Electronic Reporting Specification Form can be supplied by the Benefits Office upon request or can be downloaded from the Employers section of our website ([www.neibenefits.org](http://www.neibenefits.org)). You are required to file timely with the Benefits Office all of the information contained in the Monthly Report Form each month regardless of the format of your report.**

- (2) The Monthly Report Form and contribution payment must be **received** by the Benefits Office no later than the 15<sup>th</sup> calendar day of the month following the month covered by the report. If the 15<sup>th</sup> calendar day falls on a federal holiday or weekend, the report is due the next business day. A report must be submitted every month, even if you did not employ any Employees in a particular month. In this case, you should mark "No Hours Worked" and return the report to the Benefits Office by the date the report is due. Otherwise, the Benefits Office will estimate contributions due based on hours worked in the previous months and your record will show a delinquency.
- (3) Include only those reportable hours worked or otherwise reportable during the reporting period. Do not combine reportable hours worked from different reporting periods with those reportable hours during the present reporting period. Reportable hours worked by an Employee in prior reporting periods which were inadvertently omitted from the reports covering those periods and any other correction or comment relating to monthly reports of hours worked which have already been filed with the Benefits Office, should be noted by separate letter (and the necessary fringe benefit

contribution payment made, if applicable) to the Benefits Office. Your letter should state the basis for the claimed adjustment to a prior report. Do not attempt a correction by adjusting (or “netting out”) a subsequent report of hours worked. Any adjustments may only be made by the Benefits Office. Failure to follow this procedure may result in the Employer being considered delinquent for the month for which you attempted to make an adjustment.

- (4) Corrections to a Social Security Number or Local Union number can be made directly on the Report Form or on a separate sheet of paper attached to the Monthly Report Form.
- (5) Each Employee’s current job title and appropriate effective date needs to be reported on each Monthly Report Form. Any change in an Employee’s job title and effective date of change needs to be reported on the Monthly Report Form for the month in which the change occurs.

One of the following two digit codes that accurately classifies the Employee’s job title needs to be used to identify an Employee’s current job title:

- 10 Mechanic in Charge
- 11 Mechanic/Journeyman (Including Adjustors, Local Representatives, and Temporary Mechanics)
- 12 Apprentice (Including 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> year)
- 13 Helper
- 14 Probationary
- 20 Owner
- 30 Supervisor “Grandfathered Employee”
- 31 Supervisor during a 180 day trial period
- 32 Supervisor Pension Only (Pension Plan Alumni Election)

- (6) Contributions for the following compensation components are to be made as follows:
  - (a) All regular hours worked. (*But see also* IV.C.(1), (2), (3) and (4) which require a minimum of 160 or 165 hours a month for certain Employees.)
  - (b) Overtime Hours. A contribution based on actual reportable hours worked is required for those hours beyond 40 hours per week. For example, if an Employee worked 40 hours straight time and worked 8 hours overtime, you must report and contribute 48 hours for such Employee.
  - (c) Travel Time. Travel time incurred during the course of regular working hours shall be contributed on as hours worked. Travel time incurred on overtime call-backs is also to be contributed on as hours worked. Except for overtime call-backs, travel time outside the course of regular working hours is not considered hours worked for which contributions to the Funds are required. The Employer must keep proper records to document the nature of travel time.
  - (d) Paid Vacations and Paid Holidays. No contribution is to be made to the Funds for these hours/days during which an Employee does not work. However, these hours/days must be reported according to the instructions in these Guidelines, as they are applied toward the Employee’s eligibility for coverage by the Health Benefit Plan.
- (7) FMLA Leave – when an Employee takes a leave of absence under the Family and Medical Leave Act of 1993 (FMLA) and the Employee is not otherwise entitled to extended benefits under the terms of the Health Benefit Plan’s Summary Plan Description, you must immediately notify the Benefits Office of the Employee’s name, Social Security Number, beginning and anticipated end date of the FMLA leave, and, to the extent permitted by law, the reason for the FMLA leave. You will receive a separate monthly report for the Employee while the Employee is on the FMLA leave. You must submit the

report to the Benefits Office as provided in these Guidelines. However, contributions on behalf of an Employee on FMLA leave are only due to the Health Benefit Plan (plus 3.5 cents per hour withholding), at the rate of 160 hours per month. When the Employee's FMLA leave ends, you must recommence the normal reporting procedure for the Employee, that is, contributions to all the Funds as specified in these Guidelines.

- (8) Do not interline the names of Employees. If an Employee for whom contributions are due is not listed on the pre-printed Monthly Report Form, insert the Employee's name and other applicable information on the first blank line on the form. If the Monthly Report Form is full, then submit the information on a separate sheet of paper. The added Employees will be pre-printed on future reports.
- (9) The specific beginning and ending dates covering the reporting period must be entered on the Monthly Report Form. The report is intended to cover a 4-5 week monthly period.
- (10) Reportable hours for each Employee, for the period covered by the report, are to be entered in the "Constructor" column. Reportable hours for Probationary Apprentices who are not yet eligible for benefits (See Section A.(1) of Article IV, Participation Rules) are to be reported in the "Probationary" column each reporting period even though no contribution is due the Funds on their behalf. Vacation/Holiday hours, that is hours paid though not worked, are to be reported in the designated column even though no contributions are due on such hours. Hours are to be sub-totaled at the bottom of each page and totaled, on the form, for each Local Union in which your Employees performed reportable hours of work.
- (11) Earnings for each Employee, for the period covered by the report, are to be entered in the "Earnings for report period excluding vacation earnings" column and/or the "Vacation earnings" column.
  - (a) Earnings for the report period excluding vacation earnings represents earnings as defined as W-2 compensation, excluding vacation earnings, with any deferrals, including 401(k) elective deferrals, added back.
  - (b) Vacation Earnings represents earnings associated with vacation pay with any deferrals, including 401(k) elective deferrals, added back. For Employees covered under a Collective Bargaining Agreement, vacation pay must be paid by the 15<sup>th</sup> of July and January for the vacation accrued from January 1<sup>st</sup> through June 30<sup>th</sup> and July 1<sup>st</sup> through December 31<sup>st</sup> respectively.

Note for Employers reporting electronically, the earnings information is reported with the 401(k) elective deferrals rather than the hours.

- (12) The total number of Constructor hours worked and fractions thereof (reported in 0.25, 0.50 and 0.75 hour increments) by all of your Employees is to be multiplied by the total contribution rate per hour printed on the Monthly Report Form. This calculation is to be made separately for each Local Union in which your Employees performed covered work.
- (13) If applicable to an Employee's status, you must note the appropriate letters appearing in brackets next to the Employee's name on the Monthly Report Form: Laid-Off (LO), Quit (QT), Disabled (DIS), Deceased (DECD), Terminated (TER), Retired (RET) or Transferred to Salaried Employment (SE). New hires should be noted as (NEW) next to the Employee's name.
- (14) The Monthly Report Form must be dated and signed by a duly authorized person. The signer's title, telephone number and e-mail address must also be noted. By signing the Monthly Form, the authorized signer is certifying the following:

- (a) the Employer is confirming that the remitted contributions are for Employees eligible to participate in each of the Plans.
- (b) the Employer is acknowledging that the Employer understands the penalties for making contributions on behalf of Non-eligible Employees. (The penalties are set forth in Article VI, Penalties for Coverage of Non-eligible Employees.)
- (c) the Employer is aware that any false information reported on the Monthly Report Form may subject the Employer and the authorized signer to federal criminal prosecution.

Employers reporting electronically will need to sign an Employer Certification form during the implementation and testing period certifying the above.

- (15) The Remittance Advice form requires the Employer to identify every Local Union in whose jurisdiction Employees work and to report the contributions due on behalf of Employees in each such Local Union, as well as the total amount due in contributions. One check for the total amount of contributions due, not including 401(k) elective deferrals, which are to be remitted separately, for a reporting period must be made payable to "NEI Benefit Plans" and mailed along with the Remittance Advice form to P.O. Box 8500-4680, Philadelphia, PA 19178-4680. The Hours Report Form should be addressed and sent to, 19 Campus Boulevard, Suite 200, Newtown Square, PA 19073-3288.
- (16) With respect to all contributions **except for 401(k) elective deferrals** to the Annuity 401(k) Plan, the Remittance Advice form and check for the total amount due must be mailed to and **received** by the Funds' bank no later than the 15th calendar day of the month following the month covered by the form. Important Note: The LATE RECEIPT of contributions can be avoided by the wire transfer of the monies due the Funds from your bank to the Funds' bank. The necessary information to effectuate a wire transfer is as follows:

ACH or EDI ROUTING NUMBER & NAME: 121000248 Wells Fargo NA

FED WIRE ROUTING NUMBER & NAME: 121000248 Wells Fargo NA

PAYEE: NEI Benefit Plans a/c# 2000067127157

PAYOR: Employer's Name, City & State

SPECIFICATIONS: Wire Amount and breakdown by Local Union Numbers, if applicable.

#### C. Elective Deferrals Reporting and Payment Procedure

- (1) A participating Employer will receive a separate Weekly Report Form which requires the name, Social Security Number, deferral type, deferral rate, and amount of Employee 401(k) elective deferrals for the period reported and pay date. The back of the form has complete reporting instructions. If an Employer currently reports to the Benefits Office electronically, the Benefits Office will provide the Employer with the electronic reporting specifications for 401(k) elective deferral reporting (i.e., current deferrals, earnings and vacation earnings information.)

**Important Note: The records of the Funds are maintained on a computer system which is compatible with many automated payroll systems. Employers who utilize an automated payroll system can supply the information required by the Funds electronically. The Employer Electronic Reporting Specification Form can be supplied by the Benefits Office upon request or can be downloaded from the Employers section of our website ([www.neibenefits.org](http://www.neibenefits.org)). You are required to file timely with the Benefits Office all of the information contained in the Weekly Report Form each month regardless of the format of your report.**

- (2) The Weekly Report Form must be **received** by the Benefits Office no later than 7 calendar days following the day in which the amounts were deducted from an Employee's pay. If the 7<sup>th</sup> day falls on a federal holiday or weekend, the report is due the next business day. A report must be submitted every week, even if you did not employ any Employees that particular week. In this case, you should enter "zero" in the "Amount of Employees 401(k) Deduction" column and return the report to the Benefits Office by the date the report is due. Otherwise, your record will show a delinquency.
- (3) Include only those elective deferrals deducted from the Employee's pay during the reporting period. Do not combine elective deferrals deducted from different reporting periods with those reportable during the present reporting period. Elective deferrals deducted from an Employee's pay during prior reporting periods which were inadvertently omitted from the reports covering those periods and any other correction or comment relating to weekly reports of elective deferrals which have already been filed with the Benefits Office, should be noted by separate letter (and the total deferral payment made, if applicable) to the Benefits Office. Your letter should state the basis for the claimed adjustment to a prior report. Do not attempt a correction by adjusting (or "netting out") a subsequent report of elective deferrals. Any adjustments may only be made by the Benefits Office. Failure to follow this procedure may result in you being considered delinquent for the week for which you attempted to make an adjustment.
- (4) Corrections to a Social Security Number or Local Union number can be made directly on the Report Form or on a separate sheet of paper attached to the Weekly Report Form.
- (5) Do not interline the names of Employees. If an Employee for whom elective deferrals are due is not listed on the pre-printed Weekly Report Form, insert the Employee's name and other applicable information on the first blank line on the form. If the Weekly Report Form is full, then submit the information on a separate sheet of paper. The added Employees will be pre-printed on future reports.
- (6) The specific beginning and ending dates covering the reporting period must be entered on the Weekly Report Form. The report is intended to cover a one week period.
- (7) The Pay Date represents the date the Employer paid its Employees for the weekly payroll periods reported.
- (8) Employees have the option of deferring a flat amount or a percentage of compensation as documented on the Employee's deferral agreement.
- (9) Elective deferrals for each Employee, for the period covered by the report, are to be entered in the "Amount of Employee 401(k) Deduction" column.
- (10) The Weekly Report Form must be dated and signed by a duly authorized person. The signer's title, telephone number and email address must also be noted. By signing the Weekly Form, the authorized signer is certifying the following:
  - (a) the Employer is confirming that the remitted contributions are for Employees eligible to participate in the Plan.
  - (b) the Employer is acknowledging that the Employer understands the penalties for making contributions on behalf of Non-eligible Employees. (The penalties are set forth in Article VI, Penalties for Coverage of Non-eligible Employees.)
  - (c) the Employer is aware that any false information reported on the Monthly Report Form may subject the Employer and the authorized signer to federal criminal prosecution.

Employers reporting electronically will need to sign an Employer Certification form during the implementation and testing period certifying the above.

- (11) The Remittance Advice form requires the Employer to identify every Local Union in whose jurisdiction Employees work and to report the elective deferrals due on behalf of Employees in each such Local Union, as well as the total amount due in elective deferrals. A separate weekly payment is to be made (either by check, wire, ACH or EDI) for the total elective deferrals. The check payable to “Annuity & 401(k) Plan” along with a Remittance Advice form should be mailed to Lockbox # 9891, P.O. Box 8500, Philadelphia PA 19178-9891. The Deferral Report Form should be addressed and sent to, 19 Campus Boulevard, Suite 200, Newtown Square, PA 19073-3288. Elective deferral remittances are to be received by the Fund’s bank as soon as the elective deferrals can be reasonably segregated from the Employer’s assets, but elective deferrals must be received no later than 7 calendar days following the day in which the amounts were deducted from an Employee’s pay.
- (12) Electronic payment information for elective deferrals to the Annuity 401(k) Plan is as follows:

ACH or EDI ROUTING NUMBER & NAME: 121000248 Wells Fargo NA

FED WIRE ROUTING NUMBER & NAME: 121000248 Wells Fargo NA

PAYEE: NEI Benefit Plans a/c# 2000001682784

PAYOR: Employer’s Name, City & State

SPECIFICATIONS: Wire Amount and breakdown by Local Union Numbers, if applicable.

## **VI. Penalties For Coverage of Non-eligible Employees**

This Section VI of these Guidelines relates to penalties that may be assessed against Employers who make contributions on behalf of an employee after that employee loses eligibility in the Pension Plan, Health Benefit Plan and Annuity 401(k) Plan because he ceases to perform covered work for the Employer. This Section VI has been added to these Guidelines to implement the arbitration award of Arbitrator Scheinman dated February 26, 2009.

### **A. “Non-eligible Employee”**

For purposes of this Section, a “Non-eligible Employee” is an employee of an Employer who:

- (1) was previously employed by an Employer in a category of work covered by a Collective Bargaining Agreement;
- (2) ceased to work in a category of work covered by a Collective Bargaining Agreement; and
- (3) otherwise fails to meet—
  - (a) in the case of Pension Plan participation, the requirements of subparagraphs (b), (c), (d) or (e) of Section IV.C.(1) of these Guidelines;
  - (b) in the case of Health Benefit Plan participation, the requirements of subparagraphs (b), (d) or (e) of Section IV.C.(2) of these Guidelines, and
  - (c) in the case of Annuity 401(k) Plan participation, the requirements of subparagraphs (a), (b), (c) or (e) of Section IV.C.(4) of these Guidelines.

### **B. Non-eligible Employee Participation Determined as a Result of a Payroll Audit**

If, as a result of a payroll audit of an Employer, the Trustees learn that the Employer has made contributions to one or more Plans for one or more Non-eligible Employees, the following penalties will be imposed:

- (1) All improper contributions will be forfeited,
- (2) The Employer must pay an amount equal to the total benefits paid by the Plans on behalf of Non-eligible Employees and their covered dependents, and
- (3) In the discretion of the Trustees, monetary penalties up to but not exceeding:
  - (a) First offense: 25% of annual contributions for the Non-eligible Employees
  - (b) Second offense: 50% of annual contributions for the Non-eligible Employees
  - (c) Third and subsequent offenses: \$10,000 for each offense and the Employer may be subject to an annual payroll audit.

All Non-eligible Employees identified in a payroll audit are considered to be a single offense.

C. Non-eligible Employee Participation Determined Other Than as a Result of a Payroll Audit

If the Trustees determine that an Employer has made contributions to one or more Plans for Non-eligible Employees, other than a determination made as a result of the coverage of Non-eligible Employees identified in a payroll audit of the Employer, the Trustees in their discretion shall determine which, if any, of the penalties set forth in Section B above are appropriate and should be applied. In making their determination of which, if any, of the penalties set forth in Section B above are appropriate and should be applied, the Trustees shall take into account the circumstances under which it was discovered that the Employer had made contributions to one or more Plans for each such Non-eligible Employee and such additional factors as they consider appropriate, including but not limited to the following factors:

- The period of time that the Employer made contributions to one or more of the of the Plans for each such Non-eligible Employee,
- The period of time elapsed from the time the Employer learned that it had made contributions to one or more of the Plans for each such Non-eligible Employee until the Employer ceased contributions to the Plans for such Non-eligible Employee,
- The period of time elapsed from the time the Employer learned that it had made contributions to one or more of the Plans for each such Non-eligible Employee until the Employer advised the Benefits Office that it had made contributions to one or more of the Plans for each such Non-eligible Employee and the circumstances as to why it had made contributions to one or more of the Plans for each such Non-eligible Employee, and
- The past history, if any, of the Employer in making contributions to one or more of the Plans for Non-eligible Employees.

## **VII. Delinquency Procedure**

The Trustees are charged by Federal law with the responsibility to collect all monies due the Funds, including delinquent contributions. The Trustees have the right to take all legal steps to collect all amounts due the Funds. The Trustees have established a delinquency procedure which authorizes such action as is necessary to collect delinquent contributions and related amounts.

A. Monthly Hours Reporting

- (1) Employer Monthly Report Forms are to be received by the Benefits Office and contribution remittances are to be received by the Funds' bank no later than the 15<sup>th</sup> calendar day of the month

following the month covered by the report. If reports and/or payments are not received on time, the following will occur:

- (a) the Executive Director will send a statement notifying the delinquent Employer of the delinquency and that interest and liquidated damages may be assessed; and
  - (b) the IUEC will be notified of the Employer's delinquency; and
  - (c) the Funds' attorneys ("Legal Counsel") will be notified of all delinquent Employers.
- (2) If no payment is received by the 15<sup>th</sup> calendar day of the month following the contribution due date, the delinquent Employer will be referred to Legal Counsel for appropriate legal action. Notwithstanding the above, the Executive Director may immediately refer to Legal Counsel any delinquency should the particular situation warrant it.
  - (3) Legal Counsel will contact the delinquent Employer and attempt to resolve the delinquency. If a delinquency is not resolved, Legal Counsel is authorized to take whatever legal action it deems appropriate to collect the monies due the Funds. This includes but is not limited to the following:
    - (a) the filing of mechanic's liens and claims against performance bonds; and
    - (b) the filing of claims against Miller Act Bonds (on federal jobs) or Little Miller Act Bonds (on applicable state jobs); and
    - (c) the filing against state contractor bonds; and
    - (d) any other legally enforceable method available to the Fund.
  - (4) The Trustees may file suit in Federal Court to collect any amounts due the Funds. Under ERISA, the Funds are authorized to file suit for Employer delinquencies in the Federal District Court for the Eastern District of Pennsylvania located in Philadelphia regardless of where the delinquent Employer is located. If judgment is entered in favor of the ERISA Funds, Federal law requires the court to award the Funds all of the unpaid contributions *plus* interest, liquidated damages, court costs and attorney's fees.
  - (5) If a delinquent Employer fails to remit Monthly Report Forms and contributions for any given month, then the Benefits Office will estimate the amount due from that Employer for that month.
  - (6) Legal Counsel may be authorized by the Chairman and Co-Chairman of the Funds to negotiate settlement agreements with delinquent Employers. However, any settlement agreement negotiated by Legal Counsel will be subject to Trustee approval. In addition to delinquent contributions, these settlements may include attorney's fees and costs, interest and liquidated damages.
  - (7) Interest is charged in monthly increments on contributions not received by the required due date. If all amounts due (delinquent contributions and interest) are not received by the 15<sup>th</sup> of the next month, an additional month's interest will be charged on the total due. Interest will continue to accrue in monthly increments until the amounts due the Funds are paid in full. Said interest will then be billed by the Executive Director and Benefits Office. Interest will be charged at the rate established by the Internal Revenue Service for underpayment of taxes.
  - (8) An Employee's eligibility to participate in the Health Benefit Plan will terminate when the Employee's Employer fails to make the required contributions to the Benefits Office when due on the Employee's behalf for two or more months. This means that the Health Benefit Plan will not provide benefits to Employees and their eligible dependents if the Employees' Employer is two months delinquent in the payment of the required fringe benefit contributions. Failure of

an Employer to pay fringe benefit contributions does not constitute a COBRA event under the law; therefore, COBRA continuation coverage will not be available to the Employee.

- (9) An Employee's eligibility to participate in the Health Benefit Plan will be restored retroactively if the Employer pays the entire amount due for all delinquent periods including any applicable interest and damages due.
- (10) The Trustees may assess liquidated damages on delinquent contributions up to twenty percent (20%) of the amount due.

#### B. Elective Deferrals

- (1) Employer Weekly Report Forms are to be received by the Benefits Office and 401(k) elective deferral remittances are to be received by the Fund's bank as soon as the elective deferrals can be reasonably segregated from the Employer's assets, but elective deferrals must be received no later than seven (7) calendar days following the day in which the amounts were deducted from an Employee's pay. If reports and/or payments are not received on time, the following will occur:
  - (a) the Executive Director will send a statement notifying the delinquent Employer of the delinquency; and
  - (b) the IUVEC will be notified of the Employer's delinquency.
- (2) If no payment is received by the 15<sup>th</sup> calendar day of the month following the remittance due date, the delinquent Employer will be referred to Legal Counsel for appropriate legal action. Notwithstanding the above, the Executive Director may immediately refer to Legal Counsel any delinquency should the particular situation warrant it.
- (3) Legal Counsel will contact the delinquent Employer and attempt to resolve the delinquency. If a delinquency is not resolved, Legal Counsel is authorized to take whatever legal action it deems appropriate to collect the monies due the Fund. This includes but is not limited to the following:
  - (a) the filing of mechanic's liens and claims against performance bonds; and
  - (b) the filing of claims against Miller Act Bonds (on federal jobs) or Little Miller Act Bonds (on applicable state jobs); and
  - (c) the filing against state contractor bonds; and
  - (d) any other legally enforceable method available to the Funds.
- (4) The Trustees may file suit in Federal Court to collect any amounts due the Fund. Under ERISA, the Fund is authorized to file suit for Employer delinquencies in the Federal District Court for the Eastern District of Pennsylvania located in Philadelphia regardless of where the delinquent Employer is located. If judgment is entered in favor of the Fund, Federal law requires the court to award the Fund all of the unpaid contributions plus interest, liquidated damages, court costs and attorney's fees.
- (5) Legal Counsel may be authorized by the Chairman and Co-Chairman of the Fund to negotiate settlement agreements with delinquent Employers. However, any settlement agreement negotiated by Legal Counsel will be subject to Trustee approval. In addition to delinquent contributions, these settlements may include attorney's fees and costs, interest and liquidated damages.
- (6) Interest is charged in daily increments on contributions not received by their due date. Interest will continue to accrue in daily increments until the amounts due the Fund is paid in full. Said interest

will then be billed by the Executive Director and Benefits Office. Interest will be charged at the greater of interest calculated at the underpayment rate established by the Internal Revenue Service for underpayment of taxes or the rate of return of the investments alternative that earned the highest rate of return among the investment alternatives provided by the Fund during or in the month prior to the period of the delinquency. Lost earnings shall be allocated among the affected individual participants.

- (7) The Trustees may assess liquidated damages on delinquent elective deferrals up to twenty percent (20%) of the amount due.
- (8) Employers that do not remit Employees' elective deferrals by the due date may be held personally responsible as fiduciaries of the Plan for withholding Plan Assets.

### **VIII. Provision of Documents and Data**

Under the terms of the Trust Agreements governing the Funds, the Trustees are charged with maintaining the qualified tax exempt status of each Fund. Both IRS and Department of Labor regulations require each Fund to provide certifications or documentation that the Funds meet certain requirements under ERISA and the Internal Revenue Code. The Funds are required to obtain certain documentation or certifications such as compensation data, W-2 records or other information from participating Employers in order to meet the requirements of ERISA and the Internal Revenue Code. Participating Employers are required to provide necessary documentation or data to the Benefits Office upon request in order for the Trustees to meet these requirements and obligations. Participating Employers who fail to provide such data or documentation for a Plan Year or period of Plan Years may have their participation in the Plans, or the participation in the Plans of the employees with respect to whom the data or documentation was requested, suspended or terminated effective on the last day of the last Plan Year prior to the earliest Plan Year for which the data or documentation was requested. In the event an Employer fails to provide necessary documentation or data as described above to the Benefits Office for an individual on whose behalf the Employer made contributions to the Annuity 401(k) Plan, such contributions may be forfeited at the discretion of the Trustees of the Annuity 401(k) Plan.

### **IX. Payroll Audits of Employer Records**

#### **A. Payroll Audits (In General)**

As fiduciaries under ERISA, the Trustees are obligated to insure that all contributions due the Funds are reported accurately and collected. Therefore, the Trustees have instituted a systematic Employer payroll audit procedure. Under this procedure, all Employers whose names appear on the delinquency lists prepared by the Funds' Executive Director as delinquent for two or more consecutive months in the preceding twelve months will be audited. Also, all newly signatory Employers will be audited at the end of the first 12-month period as a signatory Employer. Audits will be conducted on a geographic regional basis. In addition to the Employers subject to audit under these procedures, Employers will be selected for audit on a random basis. The Trustees may also select Employers for audit. It is intended that each Employer will be audited periodically even if the Employer has not been delinquent in making contributions.

Once an Employer is selected, the Benefits Office will notify the Employer in writing. An independent Certified Public Accountant selected by the Trustees will contact the Employer to make necessary arrangements to conduct the payroll audit. The Employer shall provide the Auditor with all payroll records and other required data which will enable the Auditor to perform an accurate and complete

payroll audit of the Employer's compliance with the Funds' reporting requirements in accordance with the procedures established by the Trustees. It is considered the responsibility of each Employer to maintain all appropriate records needed to substantiate the propriety of reporting, hours and paying contributions to the Plans.

If, as a result of the payroll audit, the Employer owes additional contributions, the Employer will be notified of this discrepancy by Legal Counsel or by the Benefits Office. If the delinquency, as revealed by the audit, equals or exceeds 5% of the contributions made by the Employer during the audit period, then the Employer must also pay all costs associated with the audit. Effective with audit reports issued on and after October 1, 2002 additional contributions due as a result of the audit shall be assessed interest calculated from the original due date of the contributions. The interest is to be considered part of the delinquency amount found to be due the Funds. If the Funds must file suit to conduct an audit or to collect a delinquency revealed by an audit, the Funds will also seek from the Employer all of its costs and attorney's fees.

#### B. Initial Employer Appeals of Payroll Audits

Delinquencies identified on a payroll audit generally are governed by the provisions of Section VII ("Delinquency Procedure") of these Guidelines. However, where the Employer disputes the findings of the Auditor and the Auditor cannot resolve the dispute, the Employer may file an appeal with the Board of Trustees of the findings of the payroll audit, subject to the following requirements:

- (1) The Employer's appeal should be sent to the Benefits Office within sixty (60) days after the Employer's receipt of the findings of the payroll audit.
- (2) The Employer's appeal of the findings of the payroll audit should be in writing and should contain specific information as to why the Employer believes that all or part of the findings are incorrect.
- (3) Notwithstanding an Employer's compliance with (1) and (2) above, the Trustees may refuse to consider any Employer's initial appeal if, during the pendency of the Employer's initial appeal, the Employer is found to have failed to comply with the remittance reporting and payment procedures set forth in Section V ("Remittance Reporting and Payment Procedures") of these Guidelines.

The Employer's appeal generally will be reviewed by the Trustees at their regular meeting immediately following the receipt of the Employer's appeal unless the appeal is received within thirty (30) days of the date of the meeting. If the appeal is received by the Benefits Office within thirty (30) days of the date the meeting, the Trustees may not be able to review the appeal until the second regular meeting following receipt of the appeal. However, if the Trustees determine that special circumstances require a further extension of time for processing the Employer's appeal, the Trustees may delay consideration of the Employer's appeal until the third regular meeting following the date the Benefits Office receives the appeal. If such an extension of time is required, the Benefits Office will notify the Employer in writing of the extension. If special circumstances require the Trustees to delay consideration of the Employer's appeal beyond the third regular meeting following the date the Benefits Office receives the appeal, the Employer will be notified in writing and an extension of time to consider the appeal will be obtained through mutual consent of the Employer and the Trustees.

If in reviewing the Employer's appeal, the Trustees determine that additional information is needed in order for the Trustees to make a determination with regard to any part of the appeal, the Employer must submit such additional information no later than thirty (30) days prior to the Trustees' regular meeting next following the regular meeting at which the Employer's appeal was initially reviewed by

the Trustees. The Employer's appeal will again be reviewed by the Trustees at the regular meeting next following the regular meeting at which the Employer's appeal was initially reviewed by the Trustees. If the Employer does not submit any additional information, the Trustees shall review the appeal based on the information initially submitted by the Employer.

An Employer may withdraw its appeal of a payroll audit at any time. Moreover, during the period an Employer's initial appeal under this subsection B or subsequent appeal under subsection C is pending with the Trustees, the provisions of Section VII of these Guidelines relating to the accrual of interest shall apply to all contributions and elective deferrals the Trustees find due and owing after consideration of the Employer's appeal(s). Finally, nothing in subsections B or C of this Section IX should be construed to foreclose an Employer from engaging in settlement negotiations with the Fund's attorneys in accordance with Section VII of these Guidelines during the period the Employer's appeal(s) is pending with the Trustees.

#### C. Subsequent Employer Appeals

If in reviewing the Employer's appeal—

- the Trustees determine that additional information is not needed and also determine that all, or a portion, of the Employer's appeal should be denied, or
- the Trustees determine that additional information is needed and, based on the information available to the Trustees at the regular meeting next following the regular meeting at which they reviewed the Employer's initial appeal, the Trustees determine that all or part of the Employer's appeal should still be denied,

the Employer may file a subsequent appeal **but only if**:

- The Employer first pays to the Plans the amount determined by the payroll audit to be due to the Plans, plus accrued interest (other than such amounts, if any, that relate to the portions of the Employer's appeal which have been granted by the Trustees).
- A further appeal by the Employer **must** include additional information which the Employer believes supports its position. If such additional information is not submitted with the request for a further appeal, the Trustees will not consider a subsequent appeal and the decision previously reached by the Trustees will be considered final and non-appealable.

The Trustees may refuse to consider an Employer's subsequent appeal if, during the pendency of the Employer's subsequent appeal, the Employer fails to comply with the remittance reporting and payment procedures set forth in Section V of these Guidelines.

If upon review of an Employer's subsequent appeal the Trustees determine that part, or all, of the Employer's appeal should be granted, then the amount paid to the Plans with respect to the portion, or all, of the Employer's appeal which has been granted shall be paid back to the Employer. Such payment will be without interest or investment return on the payment. If upon review of an Employer's subsequent appeal the Trustees determine that part, or all, of the Employer's appeal should still be denied, the portion of the amount paid to the Plans with respect to the part, or all, of the Employer's appeal which has been denied shall not be returned to the Employer and shall remain in the Plans.

## **X. Refund of Erroneous Contributions**

- A. Once contributions are made to the Funds, subject to the requirements of Section VI, Penalties for Coverage of Non-eligible Employees, and of Section XI, Payroll Audits of Employer Records, Trustees have complete discretion to determine whether they may be returned to an Employer, to the extent permitted by ERISA and the Internal Revenue Code. Except as otherwise provided in section B. below, to consider a refund of erroneous contributions, the Trustees must receive a written request for the refund within one year after payment of the contribution. Retention by the Trustees of contributions mistakenly made on behalf of a Non-eligible Employee or otherwise, will in no way affect the eligibility or ineligibility of any Employee for benefits from the Funds.
- B. Notwithstanding Section A. above, and only to the extent permitted by ERISA and the Internal Revenue Code, the Trustees have complete discretion to determine whether a refund or crediting of contributions made by an Employer by a mistake of law or fact is appropriate if such erroneous contributions were made by the Employer during an Employer's payroll audit period and such erroneous contributions were first identified during the payroll audit. To consider a refund of erroneous contributions under this section B, the Trustees must receive a written request for the refund within 60 days after the Employer's receipt of the findings of the payroll audit.
- C. Any refund of an erroneous contribution will be without interest. All of the Funds' costs and expenses resulting from the Employer's erroneous contributions may be deducted from any refund. These deductions will include the administrative costs of correcting the mistake, any uncollected benefits paid in reliance on the erroneous contributions, or the cost of collecting such benefits, the expenses of any litigation resulting from the adjustment of any Employees' medical or pension eligibility to reflect the refunded contributions, and all other costs and losses to the Funds attributable to the erroneous contributions. In the event erroneous contributions were first identified during a payroll audit, any refund of erroneous contributions shall be reduced by the cost of the payroll audit if, under procedures established by the Trustees, the Employer is found to have had underreported contributions during the payroll audit period and the amount of underreported contributions, *without regard to the Employer's erroneous contributions*, would have required the Employer to pay the cost of such payroll audit.

## **XI. Any Questions?**

If you have any questions regarding the foregoing, do not hesitate to contact the Benefits Office.

## **Appendix I - Reporting Requirements for Relatives of Owners and Compensation Reporting Requirements for Owner-Employees and Relatives**

### A. Definitions

#### (1) Relative

For purposes of this Appendix I, and where otherwise referenced in these Employer Guidelines, a “Relative” is an Employee who performs some bargaining unit work and is: (i) a relative *other than a spouse* of the owner of his or her Employer; (ii) a relative of an Employee who is a former owner, officer or other official of his or her Employer; (iii) a relative of an Employee of his or her Employer who participates in the Pension Plan as a bargaining unit alumni; or (iv) a relative of a Grandfathered Employee of his or her Employer.

A Relative includes:

- a parent of the owner or of the owner’s spouse,
- a brother or sister of the owner or of the owner’s spouse,
- a child of the owner and/or of the owner’s spouse, or
- a grandchild of the owner and/or of the owner’s spouse.

#### (2) Owner-Employee

For purposes of this Appendix I, and where otherwise referenced in these Employer Guidelines, an “Owner-Employee” is an Employee who participates in the Funds under the terms of these Employer Guidelines as an owner, officer or other official of an Employer including a spouse of an owner, officer or other official (See Article IV.C.(1)(a), IV.C.(2)(a), IV.C.(3), and IV.C.(4)(a)).

### B. Reporting Hours for Relatives

#### (1) Funds other than the Health Benefit Plan

Except as provided in subsection (2) below, if an Employer *substantiates* the hours reported to the Funds on behalf of Relatives in accordance with the *Substantiation Requirements* set forth below, the Employer shall report the *actual hours worked by a Relative*. However, if the Funds’ auditor, while conducting a payroll audit concludes that the Employer has failed to substantiate the hours reported to the Plans for Relatives, the Employer will be assessed additional contributions up to the 160 hour minimum to the Pension Plan, National Elevator Industry Education Program, EIWPF and Annuity 401(k) Plan for any month in which the reported hours were less than the 160 hour minimum.

#### (2) Health Benefit Plan

If an Employer *substantiates* the hours reported to the Funds on behalf of Relatives in accordance with the *Substantiation Requirements* set forth below, the Employer shall report the *actual hours worked by a Relative*. However, if the Funds’ auditor, while conducting a payroll concludes that the Employer has failed to substantiate the hours reported to the Plans for Relatives, the Employer will be assessed additional contributions up to the 165 hour minimum to the Health Benefit Plan for any month in which the reported hours were less than the 165 hour minimum.

The Boards of Trustees reserve the right to change these rules at any time upon which appropriate notice of the change will be given.

C. Reporting Hours for Owner-Employees

(1) Funds other than the Health Benefit Plan

On behalf of any Owner-Employee (or spouse of an owner who performs bargaining unit work), an Employer shall be required to report to the Pension Plan, the Annuity 401(k) Plan, EIWPF and National Elevator Industry NEIEP *the greater of* 160 hours or the actual number of hours of bargaining unit work performed by the Owner-Employee.

(2) 165 Hour Minimum to the Health Benefit Plan

On behalf of any Owner-Employee (or spouse of an owner who performs bargaining unit work), an Employer shall be required to report to the Health Benefit Plan *the greater of* 165 hours or the actual number of hours of bargaining unit work performed by the Owner-Employee.

D. Substantiation Requirements for Relatives

This Section D sets forth the Substantiation Requirements that if followed by the Employer will permit the Employer to report actual hours worked by a Relative rather than the 160 hour minimum as described in Section B.(1) above; however, these Substantiation Requirements *do not affect* an Employer's reporting obligations to the Health Benefit Plan as described in Section B.(2) above..

In order to report only actual hours of a Relative worked in employment covered by a Collective Bargaining Agreement, an Employer must:

- (1) Keep detailed records that are created at approximately the same time the Relative performs the work for the Employer and that are maintained at least five (5) years. The detailed records must document:
  - (a) The total hours worked by the Relative for the Employer,
  - (b) The number of hours worked by the Relative that is work covered by the Collective Bargaining Agreement and a description of each different type and amount of bargaining unit work performed, and
  - (c) The number of hours worked by the Relative that the Employer believes is not work covered by the Collective Bargaining Agreement and a description of each different type of non-bargaining unit work performed.
- (2) The Employer must timely agree to permit the Funds to perform a payroll audit of the records of the Employer including in instances when the pattern or amount of hours reported gives the Trustees reason to believe that the Employer is not correctly contributing for Relative or is abusing any of the Funds' eligibility or other rules. The Employer will be obligated to pay the payroll audit fee if the contributions owed to the Funds are 5% or more of total contributions for the period audited.

If the Employer does not satisfy these Substantiation Requirements, the Employer must report and make contributions on the applicable minimum reportable hours as prescribed in Section B.(1) above. If the Employer does not keep appropriate records which properly document the hours and work performed by Relatives, or if the Employer refuses to permit a timely payroll audit by the Funds, the Employer must report and contribute on the applicable minimum reportable hours as prescribed in Section B.(1) above. The Funds may require the reporting of and payment of contributions for the minimum contributions retroactively.

#### E. Employer's Obligation to Report Compensation

An Employer is required to report the compensation of Owner-Employees and Relatives to the Benefits Office. Failure to provide compensation information for Owner-Employees or Relatives to the Benefits Office upon request may result in the loss of benefits; the forfeiture of Employer contributions made on behalf of such Owner-Employees or Relatives plus earnings on such contributions, and may require one or more of the Funds to report the matter to the Internal Revenue Service and to take other corrective actions as prescribe by the Internal Revenue Code or as otherwise prescribed through guidance issued by the Internal Revenue Service.

For Relatives, compensation is defined as all remuneration, excluding Terminal Vacation Pay, for which a W-2 statement is issued.

For an Owner-Employee of a corporation or limited liability company which is taxed as a corporation, compensation is defined as all remuneration, excluding Terminal Vacation Pay, for which a W-2 statement is issued. For an Owner-Employee of a limited liability company which is taxed as a partnership or sole proprietorship, compensation is defined as Earned Income under the Internal Revenue Code.

An Employer which is a corporation or limited liability company, which is taxed as a corporation, and makes Employer contributions to the Annuity 401(k) Plan on behalf of an Owner-Employee or a Relative is required to report compensation of an Owner-Employee immediately upon request to the Benefits Office. In the event an Employer fails to pay an Owner-Employee or a Relative any W-2 reportable compensation or fails to report that compensation upon request to the Benefits Office, said Employer contributions plus earnings on such contributions may be subject to forfeiture.

In the event an Employer's contributions to the Annuity 401(k) Plan made on behalf of an Owner-Employee or Relative exceed the annual addition limits prescribed by the Internal Revenue Code and underlying regulations because an Owner-Employee's or Relative's reported annual compensation is less than the contributions made to the Annuity 401(k) Plan, Employer contributions in excess of the Owner-Employee's or Relative's reported compensation may be subject to forfeiture.

**Appendix II - Contact  
Information**

**National Elevator Industry  
Benefit Plans**

19 Campus Blvd., Ste. 200  
Newtown Square, PA 19073-3288  
[www.neibenefits.org](http://www.neibenefits.org)

Executive Director

Robert O. Betts, Jr.  
610-325-9100 ext. 2200  
610-557-4600 (fax)  
[rbetts@neibenefits.org](mailto:rbetts@neibenefits.org)

Contribution Questions

Jeff MacWilliams  
800-523-4702 ext. 2608  
610-557-4619 (fax)  
[jmacwilliams@neibenefits.org](mailto:jmacwilliams@neibenefits.org)

Jeff S. Meitzler  
800-523-4702 ext. 2308  
610-557-4538 (fax)  
[jmeitzler@neibenefits.org](mailto:jmeitzler@neibenefits.org)

**National Elevator Industry  
Educational Program**

11 Larsen Way  
Attleboro Falls, MA 02763-1068  
800-228-8220  
508-699-2495 (fax)  
[www.neiep.org](http://www.neiep.org)

National Director

John J. O'Donnell  
[jodonnell@neiep.org](mailto:jodonnell@neiep.org)

**Elevator Industry Work Preservation Fund**

7154 Columbia Gateway Dr.  
Columbia MD, 21046  
410-312-1474  
410-312-1473 (fax)  
[www.eiwpf.org](http://www.eiwpf.org)

National Director

Allen Spears  
[aspears@eiwpf.org](mailto:aspears@eiwpf.org)

**Massachusetts Mutual Life Insurance  
Company**

1295 State Street  
Springfield, MA 01111-0001  
800-743-5274  
[www.massmutual.com/iuec](http://www.massmutual.com/iuec)