

# Statement of Policy on Erroneous Payments and Overpayments by Employers

for the

- Southern California Pipe Trades
  - Retirement Fund
  - Health and Welfare Fund
  - Pensioners & Surviving Spouses Health Fund
  - Defined Contribution Fund
  - Christmas Bonus Fund
  
- Landscape, Irrigation and Lawn Sprinkler Industry
  - Defined Contribution Pension Trust Fund
  - Health & Welfare Benefits Trust Fund

## 1. General Policy

This policy has been established to address situations where a contributing employer makes erroneous payments or overpayments to one or more of the abovementioned trusts (the “Trust Funds”), typically made as the result of a mistake of fact or law. The Restated Agreements and Declarations of Trust (“Trust Agreements”) under which the various Funds have been established and maintained provide that the Trustees of the each Fund have the authority to establish policies, rules and procedures which the Trustees determine to be necessary to accomplish the purposes of the Funds, and more specifically they provide that the Trustees or a committee appointed by them have the discretion to adopt rules and procedures concerning employer payments to the Funds. Furthermore, the Trust Agreements provide that no Employer shall receive any refund of contributions made to a Fund except as provided by ERISA; and under no circumstances will any portion of a Fund revert or inure to the benefit of any contributing Employer.

The Funds rely on the employers to make accurate reports and pay contributions consistent with those reports. Benefit credit is earned and benefits are paid to participants based on these reports. Funding, investments, actuarial, plan design and benefit decisions are based on the assets held by each Fund. Participants and beneficiaries make important life decisions regarding work, retirement and medical care based on their reported eligibility and earned credit. The Trustees have determined that delays in requests for refunds of erroneous contributions by employers increases the administrative costs to correct the employer's mistake, makes it more likely that benefits have been paid in reliance on the erroneous contributions, makes it more likely that the Funds have notified participants of their status and eligibility based on the erroneous contributions, and makes it more likely that the Funds have made actuarial and other planning decisions based on financial data which includes the erroneous contributions. The Trustees have determined that both the Funds' financial soundness and the participants' financial wellbeing will be placed in jeopardy if the Funds were to provide to employers unlimited refunds for erroneous contributions or overpayments

made without regard to the passage of time between the date the payment is made and the date the error is discovered or the employer requests the refund. Therefore, the Trustees herein set forth their policy with respect to the refund of erroneous payment or overpayments of employer contributions.

The Trustees hereby find that under certain circumstances, as explained below, a refund to an employer of erroneous payments or overpayments to the Funds, or any one or more of the Funds, may be permitted. It shall be the policy of the Funds that except for the limited refunds permitted under this policy, contributions will not be refunded to any employer, regardless of the reasons for the erroneous payment or overpayment or the failure to request the payment per the requirements set forth below. The interpretation and application of this policy is solely within the authority and discretion of the Trustees. The Trustees retain sole authority and discretion to make any equitable determination in the application of this policy. Any decision the Trustees make with respect to refunding contributions will be final and not subject to appeal or further review. References to Trustees in this policy shall also refer to any subcommittee of Trustees duly appointed or designated by the Trustees.

2. Employer's Responsibilities

It is the employer's responsibility to make accurate reports to the Funds, to perform any internal audit of those contributions in a timely manner so as to discover any errors in time to request a refund under this policy and to carefully review all correspondence from the Southern California Pipe Trades Administrative Corporation or its successors or assigns ("Fund Office") pertaining to the status of the employer's payments to the Funds. Employers should not rely on audits conducted by the Funds to identify erroneous payments or overpayments. Typically these audits occur long after the payments are made, at a time too late to make refunds under this policy.

3. Two-year Limitation

No contributions will be refunded more than two years after the contributions are received by the Fund Office, absent extenuating circumstances or unanticipated equitable considerations as, in their sole discretion, may be determined by the Trustees. This provision should not be construed as a promise or guarantee that contributions will be refunded within the two-year period. Contributions will not be refunded within the two-year period pursuant to paragraph 7 below.

4. Employer Claim Procedure

Any employer requesting a refund of contributions must send a written request to the Fund Office identifying the amount of the contribution that the employer desires to be refunded. If the employer believes the contribution was made in error it must provide an explanation as to the nature of the error. In all cases involving a claim for a refund of erroneous contributions, the employer must conclusively demonstrate that the contributions were made in error. Requests must be addressed to the Administrator of the Funds and mailed or delivered to 501 Shatto Place, 5<sup>th</sup> Floor, Los Angeles, CA 90020.

In lieu of requesting a refund, an employer may request that it be provided a credit to be taken on a subsequent transmittal. The Fund Office or Trustees may, but are not obligated, to grant such a request. If such a request is granted the credit should be taken promptly but in no event will a credit, or refund of the previously granted credit, be allowed two-years after the Fund Office notifies the employer that it may take a credit. If such is the case the credit will be forfeited.

5. Fund Office's Responsibilities

The Fund Office will make a determination as to whether or not the refund should be made in accordance with this policy. The Fund Office may decline to make a determination and refer the refund request to the Trustees or the Trustees' Delinquency Committee for a determination. If the Fund Office makes the determination, the employer may appeal its determination to the Delinquency Committee within sixty (60) days from the date of the denial.

If within two years from the receipt of contributions the Fund Office discovers that an employer has made an erroneous payment or overpayment, it will notify the employer and the employer may thereafter make a request for a refund providing it does so within the two-year period set forth in number 2 above.

6. Effect of Benefits Paid

Notwithstanding any other provision of this policy, no refund shall be made if a participant's receipt of a benefit was based in whole or part in reliance on the contribution for which a refund is requested. For example, if an employee receives a benefit from the Health & Welfare Fund for which the employee would not have been eligible but for the erroneous contribution or overpayment, no refund will be permitted. As another example, if an employee receives a benefit or distribution from the Defined Contribution or Retirement Plan that includes or is based on, in whole or part, the erroneous contribution or overpayment, no refund will be permitted. In addition, a refund may be delayed until the Fund verifies that the affected participant has no outstanding claims that are capable of being submitted to the Fund for payment. The Trustees shall have sole discretion to determine if a refund should be withheld under this provision.

7. Administrative Costs

The Fund may deduct any administrative costs and expenses it incurs to correct and refund an erroneous payment or overpayment, including all accounting fees, legal fees and litigation costs.

8. Ineligible Individuals

If it is determined by the Fund that contributions have been made for an individual who is not entitled or eligible, under the rules of the Fund or under the law, to participate in the Fund, the Fund may refund contributions to the employer who made the contribution without regard to the two-year period. The Fund may deduct from the refund any amount it deems appropriate to reimburse the Fund for all costs or benefit payments it incurred or losses it suffered in connection with this erroneous payment. The individual at issue shall be so notified in writing

with an explanation of the reasons for the determination and will be given the right to appeal prior to the payment of the refund.

9. Participant Service Credit

Any and all service credited to participants based on refunded contributions shall be cancelled.

10. Investment Earnings or Interest

Interest or investment earnings will not be paid to an employer on any refund. Refunds will be reduced by the amount of any investment losses experienced by the Fund while the contributions were held by the Fund.

11. Outstanding Delinquency

No refunds will be made to an employer with an outstanding delinquency, in which case an erroneous payment or overpayment will be held until the delinquency is resolved. No refund will be made to any delinquent employer who is currently on a payment plan with the Fund until the employer's obligations under the payment plan are fully satisfied and all delinquencies under and outside the payment plan are paid in full by the employer.

12. Reciprocity

No contributions will be refunded if the Funds are no longer in possession of the contributions because the contributions have been reciprocated to other benefit plans.

Reciprocal contributions received from benefit funds sponsored by the United Association or affiliates thereof may be refunded without regard to the two-year period upon the Fund's determination that the contributions were sent in error and that the Fund has not paid benefits in reliance on these contributions.

13. Trustee Discretion

The Trustees or any subcommittee thereof may amend or suspend all or any part of these policies and guidelines in their sole and exclusive discretion, as appropriate, regardless of whether there are any refund requests pending, and may apply any amendment or change in policy retroactively to pending requests.

Effective Date: September 1, 2020

Adopted on: \_\_\_\_\_