

## **Building Service 32BJ Benefit Funds Audit Program**

Collection of employer contributions is accomplished through a self-reporting system, *i.e.* employer invoices are based upon information reported by employers to the Funds. Accordingly, in order for the Fund Trustees to fulfill their fiduciary obligation to make certain that all employees entitled to benefits pursuant to their collective bargaining agreements are being reported, they have established an audit program. In order to ensure compliance and accomplish it in an equitable manner, the Trustees have determined to audit all contributing employers on a three year cycle. Each employer will be audited for every contribution period. All payroll audits are done by the accounting firm of Schultheis & Panettieri (“Auditor”)

### **Frequency**

Frequency of audits will be determined based on past audit compliance.

- Zero findings - return audit in three years.
- Less than 5% findings - return audit in two to three years.
- More than 5% findings - return audit in one to two years.
- While the Funds will normally schedule audits once every three years, employers who wish to be audited more frequently *e.g.* annually or when there is a change in managing agent may do so by calling Schultheis & Panettieri at 631-273-4778.

### **Periods to be covered**

Current audits begin where the prior audit left off. Attempts are made to limit audits to periods of no more than three years. The statute of limitations for audits is six years from when the findings are discovered.

### **Compliance Audit Program**

**A. Types of audits.** The Funds’ compliance audit program will include two components; regular audits performed on selected employers to confirm that the employers are making accurate reports and remitting all amounts required by their collective bargaining agreements and audits performed for cause (*e.g.*, in aid of enforcement proceedings or to investigate assertions that employees’ work periods or wage deferrals have not been reported or remitted properly to the Funds).

**B. Employers’ Duty to Cooperate with Auditor.** Employers are required, pursuant to their collective bargaining agreements, the Funds’ trust agreements and collection policy to cooperate with the Auditor by promptly providing all records that are requested to permit the Auditor to make a determination regarding the accuracy, completeness and timeliness of the employers’ reports and remittances to the Funds.

**C. Interest.** In all cases, interest will be charged beginning as of the original due date of each delinquency found on the audit. The rate of interest as specified in the Funds' Collection Policy is 9% per annum (.75% per month). Accordingly, it is extremely important that audit findings be resolved and paid as soon as possible. Employers would save a significant amount of interest by immediately paying audit findings they do not dispute.

The above is taken directly from Section IV of the Funds' Collection Policy. The entire Collection Policy can be viewed on the Funds' Employer Website.

## **Audit Process**

### **Request for Records**

The Auditor will send a letter and follow up with a call to the employer. The employer should respond by scheduling an audit appointment or providing its records electronically to the Auditor's secure ShareFile site. The records requested by the Auditor will be those necessary for the Auditor to determine whether the employer is reporting and remitting contributions for all employees for whom it is required to do so pursuant to its collective bargaining agreement with the union or participation agreement with the Funds. A list of the documents normally required by the Auditor is set forth below. As the audit proceeds, the Auditor may require additional records and supporting documentation. Every effort is made to educate the employer as to exactly how the audit will be conducted. Meetings are set up either in person or via phone to address concerns that the employer may have, whether it be with front line staff or upper management. It would be extremely helpful for employers to notify the Funds' Audit Department by calling 212-388-3354 option # 3, to let the Funds know whom it would like to be notified regarding audits. Delays and misunderstandings may be held to a minimum, especially with respect to large employers and managing agents, if those employer representatives with decision making authority are kept abreast of ongoing audits.

The following records will normally be requested by the Auditor:

**Complete Payrolls.** These are needed to verify the accuracy of employer remittances to the Funds.

**Payroll Tax filings.** These are needed to verify the completeness of the payrolls.

**Employers' Complete Roster Including Job Titles and Dates of Hire.** These are needed to help determine if and when remittances should have been made for employees who were not reported. It is to the employer's advantage to submit this information since, for the most part; it would be used to reduce findings.

**Cash Disbursement Journals.** These are needed to determine whether certain non-payroll disbursements should have been included in payrolls.

### **Field Appointment Visit**

Once the Auditor has compiled the necessary information and has produced findings, he will make every effort to review the preliminary findings with the employer on a timely basis. This is often referred to as an "exit interview."

If there is not sufficient time to review the preliminary findings on the audit appointment date, the Auditor will ask the employer if it would like to schedule a follow-up appointment to review the deficiencies.

In the cases where the employer is not available for an exit interview, it will be provided with a copy of the preliminary findings along with a timeline as to when the Auditor's report will be submitted. The Auditor will follow up with the employer prior to the deadline provided in the email before finalizing the audit. If the employer is responsive, the Auditor will continue to work with it to resolve any outstanding issues. The exit interview includes a focus on helping employers understand how to avoid the identified issues in the future.

### **Common Types of Audit Findings**

A. Employer did not report because employee is considered to be a part-time or relief person but worked a sufficient number of days or hours per week to require contributions.

B. Vacation relief person working beyond five months. Contributions are required in most contracts 90 days after the five month vacation relief period for Health, Legal and Training. The five month vacation relief period is included in the waiting period for Pension and SRSP contributions. This is the rule in virtually all New York City contracts. Other contracts that provide for vacation relief employees without benefits may have different requirements. Employers should look at their own contracts.

C. Payroll shows that employee was hired earlier than the reported date of hire. If for example, an employee is first reported for Health, Legal and Training on July 1<sup>st</sup> and payroll shows that he was hired January 1<sup>st</sup>, the Auditor will (assuming there is a 90 day waiting period) require contributions for April through June.

D. Non-union employee performing bargaining unit work.

### **Delays**

The Funds' trust agreements and collection policy require that interest at the rate of 9% per annum be assessed on all audit findings from the date of accrual (time when the contributions on unreported employees should have been made). Accordingly, employer delays will cause substantial increases in the amount of interest assessed. When employers receive a letter from the Auditor requesting information and setting up an appointment, they should provide the requested information and set up the appointment as soon as possible.

Employers should always have a knowledgeable representative conduct an exit interview with the Auditor as soon as it reviews the preliminary findings, which should be done right away. Once the Auditor's report is issued, it should be reviewed promptly. The employer should promptly pay whatever portions of the audit it agrees is owed. This will cut off the accrual of interest. Employers are often reluctant to pay even what they admit they owe thinking that holding back the money will give them leverage in negotiating a settlement. It won't and the result will be a much higher interest bill.