

**WESTERN STATES OFFICE AND PROFESSIONAL  
EMPLOYEES PENSION FUND**

**DELINQUENT REPORTING AND LATE CONTRIBUTION POLICY**

**Effective June 8, 2022**

**1. Statement of Purpose and Authority.**

The Board of Trustees (“Board”) of the Western States Office and Professional Employees Pension Fund (“Fund”) adopt this Delinquent Reporting and Contribution Policy (“Policy”) to establish uniform rules and procedures for (a) identifying delinquent reports and late contributions; and (b) assessing and collecting related liquidated damages, interest and collection costs.

**2. Statement of Authority.**

This Policy is adopted pursuant to the Board’s express and implied authority to identify and collect employer contributions and/or plan assets pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended; (b) common law; (c) applicable employer participation agreements; and (d) the Trust Agreement (“Trust”) for the Western States Office and Professional Employees Pension Fund, including but not limited to Trust Article X.

**3. Administration and Collection Agent.**

**3.1 Administration.** The Board directs the Fund’s third party administrator to administer this Policy and to serve as the Collection Agent under this Policy. The Collection Agent is responsible for (a) determining when reports and/or contributions is/are late; (b) notifying employers; (c) determining liquidated damages, interest and collection costs; and (d) initiating collection actions.

**3.2 Administrator and Collection Agent.** The current Collection Agent is:

BeneSys Inc.  
PMB #116, 5331 S Macadam Avenue, Suite 258  
Portland, OR 97239-3871  
Telephone: 503-222-7694  
Fax: 503-228-0149

**4. Policy.** Reporting shall be made, and contributions shall be paid, to the Fund as required for the applicable contribution: monthly contributions required pursuant to a collective bargaining agreement and supplemental employer contributions; quarterly withdrawal liability payments.

- 4.1 **Determination.** The Administrator shall determine when employer reports and/or contributions are late pursuant to the following schedule:

<u>Due Date</u>	<u>Action</u>
20 <sup>th</sup> day of the month	<u>Late Reporting.</u> Reports are late if received after this date. "Reports" include the reporting of all hours worked, and contribution rates, for all covered participants for all payroll periods ending during the previous month.
20 <sup>th</sup> day of the month	<u>Late Contributions.</u> Contributions paid after this date are late. "Contributions" include the payment of contributions for all payroll periods ending during the previous month.
30 <sup>th</sup> day of the month	<u>Delinquent Contributions.</u> Contributions paid after this date are delinquent. "Contributions" include the payment of contributions for all payroll periods ending the previous month.

- 4.2 **Assessment.** The Administrator shall assess liquidated damages and/or interest on late or delinquent reports and contributions, which shall become a debt owing to the Fund, pursuant to the following schedule:

<u>Action</u>	<u>Assessment</u>
Late Reporting	Liquidated damages assessed equal to the great of: (a) 20% (twenty percent) of the delinquent contributions or (b) \$50.
Late Contributions	Interest from the due date until paid at the lower of: (a) the maximum interest rate permitted by law or (b) the prime rate plus 2% per annum.
Delinquent Contributions	Liquidated damages assessed equal to the greater of: (a) 20% (twenty percent) of the delinquent contributions or (b) \$50.
Interest on Liquidated Damages	Interest from assessment until paid at the lower of: (a) the maximum interest rate permitted by law or (b) the prime rate plus 2% per annum.

**4.3 Employer Notifications.** The Administrator shall send a demand letter to the employer notifying the employer of late or delinquent reports or contributions, and liquidated damages and interest, if applicable, pursuant to the following schedule:

<u>Action</u> _____	<u>Any time after:</u> _____
1 <sup>st</sup> demand letter sent	the 5 <sup>th</sup> day of the month following the date a report is late and/or contributions are late or delinquent.
2nd demand letter sent	the 30 <sup>th</sup> day after the date of the first demand letter, if the employer has not made payment, provision for payment or an adequate response.
Referral to Fund Legal Counsel	10 days after the second demand letter, if the employer has not made payment, provision for payment or an adequate response.

**4.4 Demand Letters.** Demand letters shall inform the employer of the amount owed, including liquidated damages and/or interest calculated through a specified payment date.

**4.5 Referrals.** At any time, the Administrator may refer any Collection Matter under this Policy directly to Fund Legal Counsel for collection, without sending both demand letters under section 4.3. At any time, the Administrator and/or Fund Legal Counsel may refer any Collection Matter under this Policy directly to the Board for further action without sending both demand letters under Section 4.3. As used in this Policy the phrase “Collection Matter” shall include any action authorized under this Policy, including but not limited to, late reporting, late contributions, liquidated damages, interest and/or collection issues.

**4.6 Waiver Policy.**

**4.6.1. Interest on Late Contributions.** Interest on late contributions shall not be waived under this section unless approved by the Board.

**4.6.2 Liquidated Damages – Waiver by Administrator.** The Administrator may waive a liquidated damages assessment (and associated interest) at the Administrator’s discretion if:

- (a) for late monthly contributions, the employer has not been late and/or delinquent in the last 12 months and:
  - (1) the liquidated damages do not exceed ten dollars (\$10.00); or
  - (2) the employer requests the waiver in writing stating reasonable grounds.
- (b) for late withdrawal liability contributions, the employer has not been late and/or delinquent in the last 12 months and the liquidated

damages do not exceed \$1500.

**4.6.3 Liquidated Damages – Waiver by Board.** The Board may waive, at the Board’s discretion, a liquidated damages assessment (and associated interest) for any type of contribution if: (a) the employer requests the waiver in writing stating reasonable grounds; and (b) the Administrator has either waived a liquidated damages request by the employer in the past 12 months or denied the employer’s waiver request.

- (a) All decisions by the Board regarding a waiver request are final.
- (b) All waivers approved by the Board are conditioned on the following requirements:
  - (1) the employer shall not have any late contributions in the 12 month period following the date the waiver is approved; and
  - (2) if the employer has late contributions within the 12 month period, the waiver shall be null and void and the employer shall be responsible for all previously waived amounts, including interest from the waiver date.

**4.6.4 Email Vote.** The Administrator is authorized to send any request for the Board to waive interest and/or liquidated damages under this section, including requests to waive liquidated damages on last withdrawal liability payments in excess of \$1500, to the Board by email vote.

**4.7 Reporting.** The Administrator shall provide a monthly report showing late reporting, contributions and assessments owed by any employer to the Board. This report is included in the monthly Trustee information packet.

**4.8 Collection Actions.**

**4.8.1 Referred Matters.** The Administrator shall refer the following matters to Fund Legal Counsel for collection: (a) matters referred under section 4.3 and section 4.5; (b) any delinquency over 60 days, unless there are mitigating circumstances; and (c) any delinquency when the accumulated amount of liquidated damage penalty for an employer equals or exceeds \$400.00, unless there are mitigating circumstances.

**4.8.2 Collection Costs.** The employer shall be responsible for the following costs if a matter is referred to Fund Legal Counsel for collection: (a) liquidated damages; (b) interest; and (c) all collection costs. “Collection Costs” shall mean all costs incurred by the Fund to collect the debt, including court costs, reasonable attorney’s fees and reasonable audit fees. Attorney’s fees and audit fees shall be payable whether or not legal proceedings shall be instituted to collect the debt. Attorney’s fees paid by the Fund shall be presumed to be reasonable.

**4.8.3 Fund Legal Counsel Authority.** Fund Legal Counsel shall have full authority to negotiate a settlement with the employer to obtain the

maximum return at the minimum expense for the Fund. In negotiating the settlement, Fund Legal Counsel shall have the authority to waive liquidated damages and Collection Costs. In addition, Fund Legal Counsel shall have the authority to waive an interest assessment with the consent of the Co-Chairs, but only to the extent the interest charged under this policy exceeds the Fund's rate of return for the applicable period.

**4.8.4 Legal Action.** A collection lawsuit shall not be filed for an amount less than \$1,000 (including contributions, interest, liquidated damages and collection costs), unless approved by the Board. Interest shall accumulate on the amount owed and shall be billed to the employer. Legal action shall be filed after the total amount due exceeds the \$1,000 threshold.

5. **Board's Authority.** The Board may, interpret, modify, amend, suspend or terminate this Policy at any time.
6. **Adoption.** This amended Policy was adopted at a Board meeting held on June 2, 2022, and is effective as of that date.

**WESTERN STATES OFFICE AND PROFESSIONAL EMPLOYEES PENSION FUND**

*Suzanne Mode*

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Suzanne Mode, Co-Chair

Date signed: 7/14/2023 | 7:15 PM EDT

*Pati Piro-Bosley*

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Pati Piro-Bosley, Co-Chair

Date signed: 7/13/2023 | 5:07 PM EDT