

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

PAYROLL AUDIT PROGRAM

Effective August 16, 2023

1. Statement of Purpose

The Board of Trustees (“Board”) of the Western States Office and Professional Employees Pension Fund (“Plan”) adopt the following Payroll Audit Program (“Program”) to assure that a systematic procedure exists to monitor employers’ payroll compliance reporting to the Plan in determining that required contributions are paid to the Plan which assists the Plan in determining that required contributions are paid to the Plan. The Program states the audit programs utilized by the Plan.

2. Relationship With Other Trust Funds

This Program will be administered and conducted jointly with the Office and Professional Employees Welfare Fund.

The participating two funds will create a master list of all mutual participating employers. Employers will be selected from this list. Audit Fees for an audit involving more than one trust fund will be shared on a pro rata basis based on the number of employees reported to each plan.

3. Types of Audits

The Program provides for (a) periodic payroll audits; (b) audits for cause; and (c) audits of withdrawing employers.

a. Periodic Payroll Audits

- (i) The Plan will audit approximately one-fifth of all participating employers each year who are on the master list referred to in paragraph 2, above. The audited employers will be determined randomly each year. Once audited, employers will not be audited again under the Program until all other employers have been audited. However, this will not apply for a withdrawing employer or an audit for cause. If an employer with multiple collective bargaining agreements or different operating units is selected, all employee groups or branches or subsidiaries of that employer participating in the Plan will be audited as determined by the Board.
- (ii) Annually other participating employers, who are not included in (i) above, will be selected for audit by a random procedure. The employers will be divided by size based on the number of employees covered by a collective bargaining agreement as of January 1 of each year. “Large” employers are defined as an employer with 50 or more covered employees. “Small”

employers are defined as an employer with 49 or less employees. "Large" employers will be audited once every 5 years. One-tenth of the "small" employers will be audited every year.

- (iii) New employers will be audited within 12 months of beginning participation in the Plan. This audit will not be included for purposes of the random audits referred to in paragraph (a)(i), above.
- (iv) The auditor will attempt to select employers for audit in a manner that seeks to minimize travel costs (for example, by grouping field appointments on consecutive days with multiple employers).

b. Audits for Cause

Any employer may be audited for cause notwithstanding any other provision of this Program. A request for an audit for cause may be initiated by: any Trustee; the Board; a local union representing employees participating in the Plan; the Plan's legal counsel; or any other knowledgeable person associated with the Plan. The Co-Chairs of the Board shall review and approve all requests for audits for cause (unless the audit is initiated by the Board). The standard for approving an audit for cause shall be whether there is a reasonable basis for believing that the employer is experiencing financial difficulty or misreporting may have occurred.

c. Audits of Withdrawing Employers

All contributing employers which cease participating in the Plan will normally be audited. This requirement may be waived by the Trustees for employers who had only one employee participating in the Plan.

4. Procedures in Conducting an Audit

The following procedures will be utilized in conducting any of the above audits:

- a. The Administrator will notify the employer in writing that it is to be audited and the type of audit that will be conducted.
- b. The auditor will then contact and advise the employer in writing of the documents that must be produced by the employer. The Plan's audit policy recognizes that employers are required to produce the full range of documents required to be produced pursuant to ERISA.
- c. The default method for audits shall be remote audits with the employer submitting the requested documents electronically via the auditor's secure website. However, the auditor shall travel to the employer's office to review the requested documents if the employer refuses to use the auditor's secure website.

- d. The Administrator is directed to contact the applicable local union for assistance in acquiring requested audit documents from the employer prior to referring a compliance issue to the Plan's legal counsel.
- e. The employer will be referred to the Plan's attorney for action if: (1) the auditor is unable to arrange an appointment for the audit within thirty (30) days after writing to the employer; (2) the auditor determines that the employer will not cooperate; and/or (3) the employer fails to timely provide information requested by the auditor. Upon referral, the Plan's attorney is authorized to bring a suit to compel the production of records, documents or witnesses necessary to conduct the audit. The Employer shall be responsible for all audit costs and legal fees if the Plan's attorney files suit.
- f. The Trustees may authorize an employer, which is a local union with a few employees, to conduct a self-audit under the supervision of the Plan's auditor when reasonable under the circumstances;
- g. The initial review test period will be selected from the previous four calendar years to ensure cost efficient review of participating employers. No further audit will be conducted if there are no significant discrepancies in the employer's reporting procedures and, in the auditor's opinion, the reporting procedures appear appropriate. However, if in the initial review, there is a discrepancy or in the auditor's opinion, a further review is required, the auditor will extend the examination as determined by the auditor. The auditor may consult with the Plan's administrator or the Plan's legal counsel in making this decision.

5. Procedures after an Audit is Conducted

- a. The auditor, after conducting the audit, will prepare a report summarizing contributions due and/or the overpayments made by the employer for each month reviewed. The auditor will list individuals who do not appear to be participants in the Plan.
- b. The auditor will provide a copy of the report to the administrator, the employer audited, and the local union whose members were included within the audit.

6. Assessment and Collection of Amounts Owing

- a. The Administrator shall notify the employer of the results of the audit after an audit has been completed and reviewed, and provide a copy to the applicable local union-
- b. The notification shall include an assessment showing: the amount the employer owes, including contributions, interest, liquidated damages and Audit Fees, if applicable; and the date on which the assessment must be paid.
- c. Audit Fees shall include the employer's share of the cost of conducting the audit,

including the auditor's time, expenses and travel costs. Audit Fees shall be included in the assessment in the following circumstances:

- (1) the discrepancy is five percent (5%) or more of the total employer contributions due to the Plan for the audit period;
- (2) the employer cancels a scheduled audit without at least two (2) working days advance notice;
- (3) the employer fails to timely provide requested documents (electronically, by mail or at the employer's offices); or
- (4) the employer's actions necessitate the auditor traveling to the employer's office ~~multiple times~~ more than once to conduct and/or complete the audit.

- d. If the audit reveals an overpayment, the employer may request, in writing, a refund. The request for a refund should be made as soon as reasonably possible, but in no event later than three months after the Employer's receipt of the audit. Contributions made by mistake of fact or law may be refunded. Any intentional overpayment will not be refunded. The determination of whether to grant a refund will be based on a review of all circumstances, including the reasons why the contributions were made, whether the contributions were, in fact, paid by mistake, what benefits were paid or are potentially available as a result of the contributions, the financial impact on the Plan of the contribution returned, and any other factors the Trustees determine to be material. Refunds will be paid only if all underpayments have been paid. If an employer is eligible for a refund, the refund will be reduced by the amount of any costs incurred in processing the refund request or determining the amount to be refunded.
- e. If an audit reveals participation that is unauthorized by the participation agreement, the auditor will refer the matter to the Trustees. The Trustees may, when warranted, pursue the recovery of benefits paid to unauthorized individuals to the extent that the benefits paid exceed the contributions made on behalf of the individual. The Plan may pursue the recovery of improperly paid benefits from either the individual(s) receiving the benefits and/or from the employer that filed improper reports.

7. Waiver of Liquidated Damages, Audit Fees and Attorney Fees

A participating employer may request that the Plan waive interest, liquidated damages, attorney fees and/or Audit Fees as the result of an audit. Only written requests will be considered. The Plan's collection activities will not be suspended during the pendency of a waiver request unless the employer pays the amount of contributions and interest due. Waiver requests will be reviewed by the Board on a case-by-case basis.

8. Report to Board on Payroll Audit Program

The Plan's administrator will provide to the Board a report identifying the individual employers audited, the type of audit conducted, the cost of the audit, the amount of any

delinquencies found, the amount collected, and any other information that the Trustees determine to be material. The Board will regularly review the cost effectiveness of the Program. The Board may enter into agreements with other Plans to share the costs of audits on an equitable basis.

9. **Board Authority**

The Board may interpret, modify, amend, suspend or terminate this Program at any time.

10. **Adoption**

This Program was adopted at a Board of Trustees meeting held on August 16, 2023 and is effective that date.

WESTERN STATES OFFICE AND PROFESSIONAL EMPLOYEES PENSION FUND

Suzanne Mode

Suzanne Mode, Co-Chair

8/24/2023 | 3:52 PM EDT

Executed _____

Pati Piro-Bosley

Pati Piro-Bosley, Co-Chair

Executed _____

8/19/23