

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

**WITHDRAWAL LIABILITY POLICY**

**EFFECTIVE: JULY 29, 2020**

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**1. Policy Adoption.**

**1.1 Statement of Purpose.**

The Board of Trustees (“Trustees”) of the Western States Office and Professional Employees Pension Fund (“Fund”) adopts this Withdrawal Liability Policy (“Policy”) to establish uniform rules and procedures for:

- a. monitoring Employer contributions to determine if a partial or complete withdrawal has taken place;
- b. determining Withdrawal Liability assessments and Withdrawal Liability Payment Schedules; and
- c. assessing and collecting related liquidated damages, interest and collection costs.

**1.2 Statement of Authority.**

This Policy is adopted pursuant to the Trustees’ authority under: (a) the Employee Retirement Income Security Act of 1974, as amended, and implementing regulations, rulings and case law (“ERISA”); (b) the Multiemployer Pension Plan Amendments Act of 1980 and implementing regulations, rulings and case law (“MPPAA”); (c) common law; (d) applicable Employer participation agreements; and (e) the Fund and the Trust Agreement or the Western States Office and Professional Employees Pension Fund (“Trust”).

**1.3 Application of this Policy.** This Policy is effective for partial and/or complete withdrawals occurring on or after the Effective Date.

**1.3.1 Trustee Authority.** All decisions made by the Trustees under this Policy shall be in the Trustees’ sole discretion.

- a. The Trustees shall determine if and how this Policy applies to specific factual and legal issues as warranted by each situation.
- b. The Trustees shall apply this Policy uniformly with respect to similarly situated Employers and may apply this Policy after taking into account an Employer’s creditworthiness or other special circumstances.

### **1.3.2 Coordination with MPPAA.**

- a. This Policy controls except if a court determines that a specific term is inconsistent with the MPPAA. In that case, the terms of this Policy not affected shall continue to apply and the inconsistent provision shall be resolved by either:
  1. the Trustees exercising their authority to modify this Policy under Section 1.4, below; or
  2. application of the relevant MPPP provisions.
- b. The MPPAA shall apply to the extent this Policy does not address a matter affecting an Employer's Withdrawal Liability.

**1.4 Authority to Modify Policy.** The Trustees may modify this Policy at any time. As used in the preceding sentence the term "modify" includes but is not limited to: interpretation, modification, extension, correction, amendment, suspension or termination. A modification to this Policy shall apply to: (a) withdrawals occurring after the effective date of the modification; and (b) withdrawals occurring prior to the effective date of the modification as determined by the Trustees and to the extent permitted by law.

**1.5 Fund Amendment.** The Fund and Trust is amended to include this Policy and any modification of this Policy under Section 1.4 above.

## **2. Definitions.**

**2.1 Complete Withdrawal.** A "*Complete Withdrawal*" occurs if the Employer permanently ceases to have an obligation to contribute to the Fund or ceases all covered operations under the Fund.

**2.2 Date of Withdrawal.** The "*Date of Withdrawal*" means the date on which the Employer has a complete or partial withdrawal.

**2.3 De Minimus Rule.** The "*De Minimus Rule*" means the rule under ERISA §4209(a). The De Minimus Rule shall not apply if the Employer withdraws in a plan year in which there is a mass withdrawal under ERISA §4209(c).

**2.4 Employer.** An "*Employer*" includes the Employer named in the collective bargaining agreement requiring contributions to the Fund and/or named in the Participation Agreement for the Fund and includes all trades or businesses (whether or not incorporated) under common control under ERISA and the Internal Revenue Code. All members of a controlled group are responsible for the Employer's Withdrawal Liability.

**2.5 Fund Administrator.** The “*Fund Administrator*” shall mean the third party contract administrator hired by the Trustees to administer the Fund. The Fund Administrator may be reached at the following address:

Western States Office and Professional Employees Pension Fund  
c/o BeneSys, Inc.  
5331 S Macadam Avenue, Suite #220  
Portland, OR 97239-3871  
Telephone: (503) 222-7694 Fax: (503) 228-0149

**2.6 Notice.** The “*Notice*” means the Notice of Withdrawal Liability sent to withdrawing Employers pursuant to Section 6 of this Policy. The Notice includes a Withdrawal Liability Payment Schedule detailing the Employer’s quarterly Withdrawal Liability payments.

**2.7 Partial Withdrawal.** A “*Partial Withdrawal*” occurs on the last day of a plan year in which there is either: (a) a 70% contribution base decline under ERISA §4205(b)(1); or (b) a partial cessation of the Employer’s contribution obligation under ERISA §4205(b)(2).

**2.8 Unfunded Vested Benefits.** The term “*Unfunded Vested Benefits*” means the present value of vested benefits less the value of the Plan assets, but not less than zero, as determined by the Fund’s actuary.

**2.9 Withdrawal Liability.** The term “*Withdrawal Liability*” means an Employer’s share of the Fund’s Unfunded Vested Benefits after applying the De Minimus Rule. Withdrawal Liability, once assessed, is a debt owing to the Fund and the total assessed amount shall be treated as plan assets under ERISA, even if the Employer is making installment payments. Withdrawal Liability is “assessed” when the employer receives the Notice.

**3. Withdrawal Liability Rules.**

**3.1 Withdrawal Liability Determination.**

**3.1.1 Actuarial Factors.** Withdrawal Liability and Unfunded Vested Benefits shall be determined by the Fund’s actuary based on actuarial assumptions and methods which: (a) in the aggregate, are reasonable, taking into account Fund experience and reasonable expectations; and (b) in combination, offer the actuary’s best estimate of anticipated Fund experience.

**3.1.2 Allocation.** An Employer’s share of Withdrawal Liability shall be determined under ERISA §4211(b) and applicable PBGC Regulations. Withdrawal liability shall be determined with a February 15<sup>th</sup> cutoff for December hours, if applicable. An Employer’s Withdrawal Liability for a partial withdrawal is a pro rata

portion of the liability the Employer would have incurred for a complete withdrawal.

**3.2 Withdrawal Liability Payment Schedule.** The Employer's Withdrawal Liability Payment Schedule shall be determined pursuant to this Section.

**3.2.1 Cumulative Formula.** An Employer's annual Withdrawal Liability payment shall be determined pursuant to the following formula: (Average Contribution Units) times (Highest Contribution Rate).

- a. The term "Average Contribution Units" means the average annual number of contribution base units (for example "hours worked" or "weeks worked") for the three consecutive plan years during the ten consecutive plan year period, ending before the plan year in which the withdrawal occurs, in which the Employer's obligation to contribute under the Fund are the highest.
- b. The term "Highest Contribution Rate" means the contribution rate at which the Employer had an obligation to contribute under the Fund during the ten plan year period ending with the plan year in which the withdrawal occurs.

**3.2.2 Optional Formula.** An Employer's annual Withdrawal Liability Payment may be determined by the Trustees on a contract by contract basis, rather than on an cumulative basis, so that the annual payment is the sum of the payments determined separately for each contract after applying the formula under Section 3.2.1 above.

**3.2.3 Number of Payments.** The Withdrawal Liability Payment Schedule shall show the level annual payments required to amortize the Employer's Withdrawal Liability using the Fund's actuarial factors. The Employer shall be required to make Withdrawal Liability Payments for the lesser of:

- a. the number of payments showing on the schedule; or
- b. twenty years, except if there is a mass withdrawal under ERISA §4209(c).

**3.2.4 Interest.** Interest for purposes of amortizing an Employer's Withdrawal Liability shall accrue on the first day of the plan year following the year of withdrawal.

### 3.3 **Withdrawal Liability Payments.**

**3.3.1 Installment Payments.** The Employer's Withdrawal Liability payments shall be made as follows, even if the Employer has made a request for review or appeal to arbitration.

- a. The Employer shall make the first installment payment by the later of following dates after receiving the Notice: (1) the first day of next calendar quarter; or (2) 60 days after the date Employer receives the Notice.
- b. The Employer's subsequent payments shall be equal quarterly installment payments (January 1<sup>st</sup>; April 1<sup>st</sup>; July 1<sup>st</sup>; and October 1<sup>st</sup>) pursuant to the Withdrawal Liability Payment Schedule included with the Notice.

**Example:** Employer receives the Notice on May 15<sup>th</sup>. Employer's first payment is July 16<sup>th</sup> (the later of 60 days or the first day of the next quarter). Employer's second installment payment is due September 1, with subsequent installment payments due on the first day of each subsequent calendar quarter.

**3.3.2 Late Payment.** The Fund Administrator shall determine when a withdrawal liability payment is late pursuant to this Policy and the following provisions.

- a. The first withdrawal liability payment is late if the payment is not received by the Fund Administrator by the 20<sup>th</sup> day following the due date for the payment under Section 3.3.1.
- b. A quarterly withdrawal liability payment is late if the payment is not received by the Fund Administrator by the 20<sup>th</sup> day following the first day of the quarter.

**3.3.3 Delinquent Payment.** The Fund Administrator shall determine when a withdrawal liability payment is delinquent pursuant to this Policy and the following provisions.

- a. A withdrawal liability payment is delinquent if the payment is not received by the Fund Administrator by the 60<sup>th</sup> day after receiving notice from the Fund Administrator that the payment is late.
- b. An Employer with a delinquent withdrawal liability payment shall be subject to the Default rules under Section 9.

**3.3.4 Prepayment.** An Employer may prepay the Employer's outstanding unpaid annual Withdrawal Liability payments and accrued interest in whole or in part without penalty.



**3.3.5 Overpayment.** If the Fund determines that the Employer has made an overpayment, the Fund shall:

- a. first determine if the Employer has late (Section 3.3.2), delinquent (Section 3.3.3) or defaulted payments (Section 9) and apply the overpayment to the amount owed; and
- b. second, if there are overpayments remaining refund the overpayment (with interest determined under Section 10) in a lump sum payment.

**4. Employer Withdrawal Liability Information Requests.** All requests for information under this Section by an Employer shall be in writing and directed to the Fund Administrator. The Fund Administrator shall provide a copy of the written request to legal counsel for review before responding. The Fund Administrator shall respond to Employer information requests under this Section as soon as administratively feasible.

**4.1 Information Provided Without Charge.** The Fund will provide the following information in response to a specific request from an Employer without charge:

- a. the Fund’s unfunded vested benefits as of the last day of the prior plan year;
- b. the five year history of contributions ending on the last day of the prior plan year for all employers who have not previously withdrawn; and
- c. the threshold amount under the De Minimus Rule for the current plan year.

**4.2 Information Provided for a Charge.** The Fund will provide an Employer with the following information in response to a specific request from an Employer provided the Employer pays the required amount in advance:

<b>Information Request</b>	<b>Current Charge</b>
An estimate of the Employer’s potential Withdrawal Liability	\$275.00
A final determination of the Employer’s Withdrawal Liability and Withdrawal Liability Payment Schedule, as determined by the Fund Actuary	\$1000.00 (if the Employer paid for an estimate) \$1275.00 (if the Employer did not pay for an estimate)
Information unique to the Employer	reasonable time and expenses as determined by the Fund Administrator and Fund Actuary

**5. Identification of Withdrawing Employers and Assessments.**

- 5.1 Identification.** All Trustees and Fund service providers shall notify the Fund Administrator if the Trustee and/or service provider has reason to believe a contributing Employer has incurred a complete withdrawal or partial withdrawal from the Fund.
- 5.2 Withdrawal Liability Report.** The Fund Administrator shall provide a Withdrawal Liability Report to the Trustees at each Trustee meeting listing:
- a. all Employers that have not submitted monthly reports for three or more consecutive months;
  - b. Employers the Fund Administrator, Trustees and/or Fund service providers have identified as having a complete or partial withdrawal or a possible complete or partial withdrawal; and
  - c. Employers listed above who fall under the De Minimus Rule.
- 5.3 Information Request.** The Trustees, Fund Administrator or any other Fund service provider may request information from an Employer in order to determine whether the Employer has withdrawn from the Fund as follows:
- a. the Employer shall be provided with a copy of this Policy when the information request is made;
  - b. the information request shall be in writing;
  - c. the Employer shall respond within 30 days unless the request provides a longer response period; and
  - d. if the Employer fails to respond to the request within the response period the Trustees may bring an enforcement action to compel compliance with the information request and the Employer shall be liable for all of the Fund's costs, including attorney's fees.
- 5.4 Initial Determination of De Minimus Rule.** The Fund's actuary shall provide the Fund Administrator with the factors for determining the threshold Withdrawal Liability applicable to De Minimus Rule each year, which shall be reviewed by the Fund's actuary. The Fund Administrator shall perform an initial test to determine if these rules apply to the Employers identified to the Trustees under Section 5.2 above.
- 5.5 Assessment Determination.** The Trustees shall determine if an Employer has incurred a complete or partial withdrawal under this Policy after reviewing the Withdrawal Liability Report and any information provided by the Fund's service providers and/or Employers. The Trustees shall notify the Fund Administrator of the Trustees' determination under this Section.

## **6. Employer Notification Procedure**

- 6.1 Fund Administrator.** The Fund Administrator shall provide to the actuary all information deemed relevant by the Fund Administrator and/or requested by the actuary concerning Employers that have incurred a complete or partial withdrawal after receiving notice from the Trustees under Section 5, including but not limited to:
- a. contribution history by plan year for the plan year of withdrawal and the five plan years preceding the plan year of withdrawal;
  - b. contribution history by plan year for each Employer who had withdrawn from the Fund during the same plan year as the withdrawing Employer and the five plan years preceding the plan year of withdrawal;
  - c. contributory hours history of the withdrawing Employer for the ten plan years preceding the plan year of withdrawal; and
  - d. the highest hourly contribution rate required to be paid by the withdrawing Employer during the ten-year period ending with the plan year of withdrawal.
- 6.2 Actuary.** The actuary shall provide the Fund Administrator with a letter detailing the amount of Withdrawal Liability and a Withdrawal Liability Payment Schedule for each withdrawing Employer. A copy of the letter(s) and schedule(s) shall be provided to the Trustees and Legal Counsel.
- 6.3 Employer Letter.** The Fund Administrator shall prepare and send a Notice and the Employer's Withdrawal Liability Payment Schedule to each withdrawing Employer by certified mail, return receipt requested. A copy of the Notice shall be provided to the Trustees and Legal Counsel.
- 6.4 Referral to Legal Counsel.** The Fund Administrator shall refer the following matters to legal counsel: (a) a list of Employers for whom the Notice of Withdrawal Liability is returned, or if the return receipt portion of the certified letter is not signed and returned; and (b) any Employer response to the Notice of Withdrawal Liability other than to begin to make the required installment payments.

## **7. Administrative Review Procedure.**

- 7.1 Sole Procedure.** The review procedure provided in this Policy is the only administrative review procedure available to an Employer that receives a Notice.
- 7.2 Employer Review Application.** An Employer who receives a Notice may file a written review application concerning the Employer's Withdrawal Liability.

- a. The review application must be in the form provided as an attachment to this Policy.
- b. The review application must be timely. A timely application must be received by the Fund Administrator ***no later than 90 days*** after the date on which the Employer receives the Notice.
- c. All of the Employer's Withdrawal Liability payments must be current.
- d. The Employer must agree in writing, as part of the review application, to continue to make Withdrawal Liability payments during the review process.

**7.3 Review Limitations.** The Employer's review application shall be limited to a request that the Trustees review:

- a. a specific matter relating to the determination of the Employer's Withdrawal Liability and the schedule of payments;
- b. any inaccuracy in the determination of the amount of the Withdrawal Liability allocable to the Employer;
- c. additional relevant information provided by the Employer to the Trustees; or
- d. any other information the Trustees agree to consider.

**7.4 Trustee Response.** The Trustees shall notify the Employer in writing of the Trustee's decision concerning matters raised in the Employer's review application after a reasonable review period. The notice shall include a statement of the basis for the Trustee's decision and the reason for any change in the determination in the Employer's Withdrawal Liability and/or Withdrawal Liability Payment Schedule.

**7.5 Additional Review Procedures.** The Trustees may modify these review procedures at any time as provided in Section 1.4 of this Policy. The Fund Administrator, upon the advice of the Plan's Legal Counsel, may extend the 90 day filing deadline in Section 7.2 provided:

- a. the extension does not exceed 60 days;
- b. the extension is needed for the Plan's administrative convenience; and
- c. the extension request is made in writing before expiration of the original 90 day period.

**7.6 Arbitration Prerequisite.** The filing of a review application under Section 7.2 is a prerequisite for an Employer to request arbitration under Section 8 below.

## 8. **Dispute Resolution.**

**8.1 Review Standard.** The Trustees' decisions under this Policy shall be presumed correct unless the party contesting the determination shows by a preponderance of the evidence that the determination was unreasonable or clearly erroneous. The actuary's determination of the Fund's Unfunded Vested Benefits for a plan year shall be presumed correct unless a party contesting the determination shows by a preponderance of evidence that:

- a. the actuarial assumptions and methods used in the determination were, in the aggregate, unreasonable (taking into account the Fund's experience and reasonable expectations); or
- b. the actuary made a significant error in applying the actuarial assumptions and methods.

**8.2 Arbitration Requirement.** All disputes between an Employer and the Trustees concerning Withdrawal Liability under this Policy shall be subject to arbitration pursuant to ERISA §4221, and relevant regulations, administrative rules and case law, provided the arbitration request is timely. An arbitration under ERISA Section 4221 shall proceed in accordance with the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes of the American Arbitration Association.

**8.2.1 Location and Costs.** The Arbitration shall be held in Portland, Oregon. The parties shall share equally the cost of the arbitration, including the arbitrator's fees, and each party shall pay its own attorneys' fees and costs.

**8.2.2 Withdrawal Liability Payments.** The Employer shall continue to make all Withdrawal Liability payments during the arbitration and until the arbitrator issues a final decision with respect to the issues submitted for arbitration. Late Withdrawal Liability payments shall be subject to the rules under Section 3.3. Any necessary adjustments for overpayments or underpayments arising out of the arbitrator's decision shall be reflected in the Employer's subsequent Withdrawal Liability payments.

**8.3 Arbitration Request Deadline.**

**8.3.1 Single Party Arbitration Request.** An arbitration request must be made by either the Employer or the Trustees by notifying the other in writing within 60 days after the earlier of:

- a. 120 days after the date of the Employer's request that the Trustees review any specific matter relating to the Notice under Section 7; or
- b. the date the Employer receives notice of the decision in response to the Employer's request for review under Section 7.

**8.3.2 Joint Party Arbitration Request.** The Employer and the Board of Trustees may jointly initiate arbitration with 180 days after the Employer receives the Notice.

**8.4 Federal District Court.** Upon completion of the arbitration proceedings in favor of one of the parties, any party may bring an action, no later than 30 days after issuance of the arbitrator's award, in the U.S. District Court for the District of Oregon, Portland, Oregon, in accordance with ERISA §4301 to enforce, vacate or modify the arbitrator's award.

**9. Default.** The Trustees may determine that an Employer is in default. An Employer who is in default shall have the outstanding balance of the Employer's Withdrawal Liability immediately accelerated, plus liquidated damages and interest under this Policy.

**9.1 Default Events.**

**9.1.1 Automatic: Delinquent Payments.** An Employer with delinquent withdrawal liability payments under Section 3.3.3 shall be in default, subject to the timing rules below.

**9.1.2 Discretionary: Substantial Likelihood of Default.** The Trustees may determine at any time, even during arbitration, that an Employer is in default because there is a substantial likelihood that the Employer is or will be unable to pay its Withdrawal Liability including, but not limited to, the following events:

- a. the Employer's insolvency or any assignment by the Employer for the benefit of creditors;
- b. the Employer's dissolution;
- c. the Employer's sending a notice of bulk estate;
- d. the issuance of any governmental tax lien or levy against the Employer or against any of the Employer's property unless the

tax lien or levy is discharged, set aside or removed within ten days of the date the lien or levy is issued; or

- e. the sale of the Employer's assets outside of the ordinary course of business unless the sale satisfies the "sale of assets" exception to withdrawal liability under ERISA §4204.

**9.2 Default Procedures.** The following rules shall apply to the Trustees' default determination:

- a. the determination may be made at any time, including at the time the Notice is given;
- b. the determination shall be in writing and sent to the Employer by certified mail, return receipt requested;
- c. the Trustees may determine to accelerate all or a portion of the Employer's withdrawal liability; and
- d. before the default determination is final the Trustees shall give the Employer a reasonable opportunity, not to exceed 30 days, to demonstrate to the satisfaction of the Trustees that the default determination is in error.

**9.3 Default During Review and/or Arbitration.**

**9.3.1 Late Payment Default.** A default under Section 9.1.1 as a result of failure to make timely Withdrawal Liability payments shall not occur until the 61st day after the last of:

- a. expiration of the 90 day period provided in Section 7.2 above and ERISA §4219(b)(2)(A);
- b. expiration of the period for initiation of arbitration under ERISA §4221(a)(1) if the employer requests review under Section 7.2 above of the Employer's Withdrawal Liability determination and/or Withdrawal Liability Payment Schedule; or
- c. issuance of the arbitrator's decision if arbitration is timely initiated either by the Plan, the Employer or both.

**9.3.2 Substantial Likelihood Default.** A default under Section 9.1.2 may occur at any time and shall not be subject to the limitations under 9.3.1, above.

**10. Collection Policy.**


**10.1 Collection Procedures.** The Fund Administrator shall use the Plan's collection procedures applicable to Employer contributions to assess and collect late, delinquent and default withdrawal liability payments, as well as interest and liquidated damages (under Section 10.2, below), collection costs

and attorney fees. To the extent required, the Fund's collection procedure and policy shall be incorporated into this policy.

- 10.2 Interest and Liquidated Damages.** The Fund Administrator shall assess interest and liquidated damages on late (Section 3.3.2), delinquent (Section 3.3.3) and defaulted withdrawal liability payments. Interest shall be determined under 29 CRF §4219.32. Liquidated damages shall be an amount equal to the greater of: (a) interest on any unpaid contributions; or (b) 20% of the amount of unpaid contributions. The amount of unpaid contributions for an Employer in default is the total amount accelerated.
- 11. Reporting.** The Fund Administrator shall provide a monthly report showing actions taken under this policy, including notices issued, Employer responses, contributions, assessments and such other information requested by the Trustees. This report is included in the monthly Trustee information packet.
- 12. Disclosure.** In response to a written request by an Employer the Fund Administrator may disclose: (a) the names of Employers who have been assessed Withdrawal Liability; and (b) the status of any review procedure, arbitration and/or litigation concerning Employers who have been assessed Withdrawal Liability.
- 13. Adoption.** The Co-Chairs were authorized to adopt this revised Withdrawal Liability Policy at a Board of Trustees meeting held on ~~June~~ <sup>July</sup> 29, 2020.

*Signed on behalf of the Board of Trustees:*

\_\_\_\_\_  
Suzanne Mode, Co-Chair  
Date signed: June, 2020

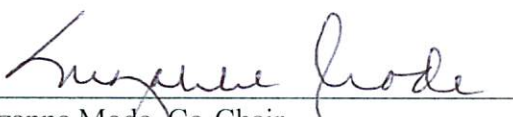
  
\_\_\_\_\_  
Michael Parmelee, Co-Chair  
Date signed: July 30, 2020



and attorney fees. To the extent required, the Fund's collection procedure and policy shall be incorporated into this policy.

- 10.2 **Interest and Liquidated Damages.** The Fund Administrator shall assess interest and liquidated damages on late (Section 3.3.2), delinquent (Section 3.3.3) and defaulted withdrawal liability payments. Interest shall be determined under 29 CRF §4219.32. Liquidated damages shall be an amount equal to the greater of: (a) interest on any unpaid contributions; or (b) 20% of the amount of unpaid contributions. The amount of unpaid contributions for an Employer in default is the total amount accelerated.
11. **Reporting.** The Fund Administrator shall provide a monthly report showing actions taken under this policy, including notices issued, Employer responses, contributions, assessments and such other information requested by the Trustees. This report is included in the monthly Trustee information packet.
12. **Disclosure.** In response to a written request by an Employer the Fund Administrator may disclose: (a) the names of Employers who have been assessed Withdrawal Liability; and (b) the status of any review procedure, arbitration and/or litigation concerning Employers who have been assessed Withdrawal Liability.
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Suzanne Mode, Co-Chair  
Date signed: ~~July~~ <sup>July</sup> 30, 2020

\_\_\_\_\_  
Michael Parmelee, Co-Chair  
Date signed: June, 2020