

**EMPLOYER GUIDELINES FOR PARTICIPATING IN
THE NATIONAL ELEVATOR INDUSTRY BENEFIT PLANS**

The rules and regulations on reporting and remitting contributions to the National Elevator Industry Pension Fund, National Elevator Industry Health Benefit Plan, Elevator Constructors Annuity and 401(k) Retirement Plan, National Elevator Industry Educational Program and the Elevator Industry Work Preservation Fund.

As of December 1, 2024

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EMPLOYER GUIDELINES FOR PARTICIPATING IN THE NATIONAL ELEVATOR INDUSTRY BENEFIT PLANS

INTRODUCTION

The purpose of the Employer Guidelines for Participating in the National Elevator Industry Benefit Plans (“Employer Participation Guidelines”) is to assist Employers that are bound to the terms of Collective Bargaining Agreements with the International Union of Elevator Constructors (“IUEC”) or IUEC Local Unions, and/or Participation Agreements with the Boards of Trustees of the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, the Elevator Constructors Annuity and 401(k) Retirement Plan, the National Elevator Industry Educational Program and the Elevator Industry Work Preservation Fund (collectively, the “Boards of Trustees of the NEI Benefit Plans”), to understand the requirements for remitting, reporting and making contributions to the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, the Elevator Constructors Annuity and 401(k) Retirement Plan, the National Elevator Industry Educational Program and the Elevator Industry Work Preservation Fund (collectively, the “NEI Benefit Plans” or “Plans”).

This booklet has been prepared for your use as a convenient reference. It is not a contract. To the extent that anything contained herein conflicts with the plan documents or trust agreements of the NEI Benefit Plans, those documents will control. The plan documents and trust agreements for the NEI Benefit Plans are available for review from the Executive Director of the National Elevator Industry Benefit Plans (“Executive Director”).

Please note that a separate booklet, “Guidelines for IUEC Local Unions Participating in the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, and the Elevator Constructors Annuity and 401(k) Retirement Plan Pursuant to Participation Agreements” (“Local Union Guidelines”), describes the remittance and reporting requirements for IUEC Local Unions.

If you have any questions concerning your remittance reporting and contribution requirements or other questions, please contact the Benefits Office. The toll free number and the address are noted on the cover page.

Respectfully,

July, 2023

The Boards of Trustees of the
National Elevator Industry Pension Fund
National Elevator Industry Health Benefit Plan
National Elevator Industry Educational Program
Elevator Constructors Annuity and 401(k) Retirement Plan
Elevator Industry Work Preservation Fund

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I. Collective Bargaining Agreements and Participation Agreements

As an Employer who is bound by a Collective Bargaining Agreement¹ with the IUEC or an IUEC Local Union, you are obligated to make certain fringe benefit payments to the NEI Benefit Plans on behalf of your Employees who work under that Collective Bargaining Agreement.

In limited circumstances, an Employer also may make contributions on behalf of certain Employees who may not be bargaining unit employees or who may not perform bargaining unit work. An Employer's contribution obligations for these Employees (*e.g.*, Owners, spouses of Owners, Relatives of Owners, Bargaining Unit Alumni, and certain supervisory employees of Employers) are set forth in Participation Agreements between the Employers and the Board of Trustees of one or more the NEI Benefit Plans. The Employer Participation Guidelines also apply to these Participation Agreements. Templates of the NEI Benefit Plans' Employer Participation Agreements are available on the NEI Benefit Plans' Website or will be provided to an Employer upon request.

Federal law requires Employers to make contributions to the NEI Benefit Plans in conformity with the terms of:

- their Collective Bargaining Agreements with the IUEC or an IUEC Local Union;
- if applicable, the terms of their Participation Agreements with the Boards of Trustees of one or more of the NEI Benefit Plans;
- the trust agreement and plan document of each NEI Benefit Plan; and
- the rules and regulations adopted by the Boards of Trustees of the NEI Benefit Plans in accordance with each Plan's trust agreement and plan document.

II. Contributions to the NEI Benefit Plans

Timely payments are required in the amounts specified in your Collective Bargaining Agreement and, if applicable, your Participation Agreement to:

- The National Elevator Industry Pension Fund ("Pension Plan") to provide retirement benefits and related benefits to eligible Employees who retire under the terms of the Pension Plan.
- The National Elevator Industry Health Benefit Plan ("Health Benefit Plan") to provide health and related benefits for eligible Employees, retirees and their eligible dependents.
- The Elevator Constructors Annuity and 401(k) Retirement Plan ("Annuity 401(k) Plan") to provide additional retirement benefits to eligible Employees.²

¹ For purposes of these Employer Participation Guidelines, a Project Labor Agreement (or "PLA") that requires an employer to contribute to any of the NEI Benefit Plans is treated as a Collective Bargaining Agreement.

² Generally, employers bound by the terms of collective bargaining agreements with Elevator Constructors Union No. 1 of New York and New Jersey ("Local 1") are not required to contribute to the Elevator Constructors Annuity and 401(k) Retirement Plan on behalf of members of Local 1 working in Local 1's geographic jurisdiction. However, these Employer Participation Guidelines are applicable to employers bound by the terms of collective bargaining agreements with Local 1 to the extent such collective bargaining agreements require the employers to contribute to the National Elevator Industry Pension Fund, National Elevator Industry Health Benefit Plan, the National Elevator Industry Educational Program and/or the Elevator Industry Work Preservation Fund on behalf of Local 1 members working in Local 1's geographic jurisdiction.

- The National Elevator Industry Educational Program (“NEIEP”) to provide a program of training and continuing education for Elevator Constructor Mechanics, Helpers and Apprentices.

III. ERISA Funds, Non-ERISA Funds and the Benefits Office

(A) The ERISA Funds.

The Pension Plan, Health Benefit Plan, Annuity 401(k) Plan and NEIEP are multiemployer plans established pursuant to Federal law and are approved as tax exempt organizations by the Internal Revenue Service (“IRS”). The Pension Plan and Health Benefit Plan are each governed by a Board composed of ten Trustees, five appointed by the IUEC and five appointed by The National Elevator Industry, Inc. (“NEII”). The Annuity 401(k) Plan is governed by a Board composed of ten Trustees, five appointed by the IUEC and five appointed by Otis and NEII. NEIEP is governed by a Board composed of ten Trustees, five appointed by the IUEC and five appointed by NEII. Each of these multiemployer plans is established under a separate agreement and declaration of trust. The Boards of Trustees of the Pension Plan, Health Benefit Plan, Annuity 401(k) Plan and NEIEP administer each plan in accordance with their plan’s agreement and declaration of trust as well as other governing documents. Each of these funds is governed by the federal law known as the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

(B) Non-ERISA Fund: The Elevator Industry Work Preservation Fund.

The Elevator Industry Work Preservation Fund (“EIWPF”), first established in Article XX of the 1997-2002 Standard Agreement, is authorized by Section 6(b) of the Labor-Management Cooperation Act of 1978 and Section 302(c)(9) of the Taft-Hartley Act. This fund is not governed by ERISA.

(C) The Benefits Office.

The Pension Plan employs an Executive Director to manage the day-to-day operations of the administrative offices of the Pension Plan, Health Benefit Plan and Annuity 401(k) Plan (the “Benefits Office”). The Benefits Office also provides certain administrative functions for NEIEP and EIWPF. The Annuity 401(k) Plan also contracts with Empower Retirement, LLC and Great West Trust Company, LLC (collectively “Empower”) to serve as record keeper and custodian for the Annuity 401(k) Plan.

The Benefits Office files the reports for the Pension Plan, Health Benefit Plan and Annuity 401(k) Plan that are required under Federal law, including reports to the U.S. Department of Labor (“DOL”), the IRS and the Pension Benefit Guaranty Corporation. In order to meet reporting requirements, the Benefits Office must have your Employer Identification Number (EIN). Please include your company’s EIN on the Report Form on which your company reports any contributions to the Benefits Office.

IV. Participation and Contribution Rules

(A) Participation Rules under the Collective Bargaining Agreement

(1) *In General.*

Employer contributions are required to the NEI Benefit Plans on all hours worked by Mechanics, Assistant Mechanics, Helpers, Apprentices and Probationary Apprentices subject to the limited exception set forth below in subsection (2).

Subject to the limited exception set forth below in subsection (2) and to the exception for employees covered by a collective bargaining agreement with Local 1 as discussed in footnote 2 above, an Employer must permit all Mechanics, Assistant Mechanics, Helpers, Apprentices and Probationary Apprentices to elect to make pretax 401(k) Deferrals and after-tax Roth Contributions to the Annuity 401(k) Plan.

(2) *Initial Participation of Probationary Apprentices.*

- (a) Generally, contributions are due on hours worked by a Probationary Apprentice, as that term is defined in the Collective Bargaining Agreement, on the first day of the month after the Probationary Apprentice has completed at least 100 hours of employment in each of six 30-day periods as measured from the Probationary Apprentice's initial date of hire ("Industry Date"). The six 30-day periods do not have to be consecutive. However, a Probationary Apprentice who fails to establish initial eligibility within 18 months of his or her Industry Date and who later reenters the industry as a Probationary Apprentice will have his or her initial eligibility determined based on his or her reentry Industry Date, and only those hours worked after such reentry date will be taken into account for purposes of determining whether the Probationary Apprentice has completed at least 100 hours of employment in each of six 30-day periods
- (b) If a Probationary Apprentice does not meet the hours requirement in (a) but the Probationary Apprentice completes 1,000 hours of work within a period of 12 consecutive months, contributions on behalf of that Probationary Apprentice will be due on hours worked by the Probationary Apprentice and the Probationary Apprentice's participation will begin on the first day of the calendar month following such 12 consecutive month period.

(B) Contributions to the **Pension Plan** on behalf of Employees Covered by a Participation Agreement.

The following persons are eligible for coverage under the Pension Plan pursuant to a Participation Agreement accepted by the Pension Plan's Board of Trustees. Employer Contributions made on behalf of such persons shall be in accordance with the Pension Plan's Trust Agreement, the Pension Plan document, rules and regulations established by the Pension Plan's Board of Trustees including these Employer Participation Guidelines and the Participation Agreement entered into by the Employer and the Pension Plan's Board of Trustees.

(1) *Employer Contributions on behalf of Owners, Officers and Other Officials of the Employer.*

- (a) The minimum hours reporting requirements set forth in (i) and (ii) below apply to an Owner and to an Owner's spouse who *performs bargaining unit work*. For purposes of participation in the Pension Plan, an Owner is someone who holds, either directly or indirectly, more than 0.5% of the stock of an incorporated Employer, or holds, either directly or indirectly, more than 0.5% of the ownership interest in an Employer that is a limited liability company.

The minimum hours reporting requirements set forth in (i) and (ii) below also apply to an officer or other official of the Employer if that officer or official *performs bargaining unit work*, and provided the Employer is a corporation or a limited liability company.

Owners of Employers that are sole proprietorships or partnerships may not participate in the Pension Plan. An individual who does not perform bargaining unit work may not participate in the Pension Plan under this provision.

(i) *General Minimum Hours Rule.*

Except as provided in (ii) below, the Employer must contribute to the Pension Plan on the Employee's behalf the *greater* of 160 hours³ a month, or the number of hours in a month the Employee performs bargaining unit work.

³ The requirement that an Employer report a minimum of 160 hours to the Pension Plan on behalf of a Participant who is an Owner, spouse of an Owner, officer or other official of an Employer generally applies regardless of any hours reported to the Pension Plan by other Employers on that Participant's behalf.

(ii) *First and Last Calendar Months of Employment with an Employer.*

In the first or last calendar month of employment with an Employer, the Employer should contribute to the Pension Plan for each hour of work actually performed by an Owner or an Owner's spouse if another Employer has also reported hours on that person's behalf in that same month.

In the last month of employment with an Employer, the Employer should contribute to the Pension Plan for each hour of work actually performed by an Owner or an Owner's spouse if that person retires as of the month immediately following the month he or she ceased working for the Employer.

See Appendix I (Reporting Requirements for Relatives) for special reporting requirements for Relatives of Owners or spouses of Owners.

(2) *Employer Contributions on behalf of Former Owners, Officers and Other Officials of an Employer.*

If an Employee or the Employee's spouse was an Owner, as that term is defined in paragraph (B)(1) above, or if an Employee was an officer or other official of an Employer which was a corporation or a limited liability company, and as a result of an acquisition, merger or consolidation between that Employee's Employer and another Employer, the Employee, or the Employee's spouse, is no longer an Owner, or such Employee is no longer an officer or other official of his or her Employer, the Employee will be eligible to continue to participate in the Pension Plan if, immediately prior to such acquisition, merger or consolidation, the Employee was participating in the Pension Plan as an Owner, spouse of an Owner, or officer or other official in accordance with Section (B)(1) above.

See Appendix I for special reporting requirements for a Relative of a former Owner, spouse of a former Owner, or former officer or other official in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the former Owner, spouse of the former Owner, former officer or other official does not exercise any control over the hours of employment of the Relative employed by the Employer.

A former Owner, spouse of a former Owner, former officer or other official participating in the Pension Plan under this subsection (B)(2) will no longer be eligible to participate in the Pension Plan under this subsection if he or she:

- (a) becomes employed by the Employer in a category of work covered by a Collective Bargaining Agreement; or
- (b) changes Employers after December 31, 2009 unless the change of Employers is due to an acquisition, merger or consolidation between the Employee's old and the new Employer.

(3) *The 180-Day Participation Rule.*

The Pension Plan permits continuation of participation during the 180 day period immediately following a change in an Employee's employment with his Employer to a position that is not eligible for participation in the Pension Plan. The Employer must notify the Benefits Office of the change in position on the Monthly Report Form for the month in which the change occurs. No penalties will be applied to the Employer for continuing the Employee's participation in the Plan during this 180 day period. If the Employer fails to notify the Benefits Office of the change in position, the enforcement penalties in Article VI, Penalties for Coverage of Non-eligible Employees, will apply. This provision may only be used by an Employee once during any 36 month period. During this 180 day period, the Employer must contribute to the Pension Plan on the Employee's behalf the *greater* of 160 hours a month, or the number of hours the Employee works in a month.

(4) *Bargaining Unit Alumni Participation Rule.*

The Pension Plan provides for participation of *bargaining unit alumni*. Under the Bargaining Unit Alumni Participation Rule, the Employer of an Employee who is no longer working in the bargaining unit agrees to continue contributing to the Pension Plan on the Employee's behalf.

To participate as a bargaining unit alumni:

- (a) the Employee must have been a member of the bargaining unit on or after June 30, 1994;
- (b) the Employee must have accrued at least 5 years of vesting service in the Pension Plan while a member of the bargaining unit;
- (c) the Employee must have been reported for at least 8,500 hours as a member of the bargaining unit on Employer Monthly Report Forms;
- (d) the Employee cannot participate in any other retirement, pension, annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan;
- (e) the Employee's Employer enters into a Participation Agreement with the Pension Plan Trustees with respect to such Employee within 180 days of the Employee's change in employment to a position that is not eligible to participate in the Plan or 180 days of the date the Trustees determine that the Employee has ceased to be eligible for continued participation in the Plan as a collectively bargained Employee;
- (f) any individual employed by any Employer as a non-bargaining unit Employee at any time between January 1, 1994 and July 1, 1994 will not be able to participate in the Plan unless he works as a bargaining unit Employee after June 30, 1994 for at least 12 consecutive calendar months and earns a minimum of 1,700 Hours of Future Benefit Service during that 12-month period; and
- (g) the Employer must make contributions on behalf of the "bargaining unit alumni" Employee for the *greater* of 160 hours a month, or the number of hours the Employee works in a month.

See Appendix I for special reporting requirements for a Relative of a bargaining unit alumni in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Employee covered by the bargaining unit alumni rule does not exercise any control over the hours of employment of the Relative employed by the Employer.

(5) *Employer Contributions on behalf of Grandfathered Employees.*

Employers may contribute to the Pension Plan on behalf of a Grandfathered Employee pursuant to the "Grandfathered Employee Rule" set forth in the arbitration award of Arbitrator Scheinman dated February 26, 2009 (the "Non-Eligible Employee Arbitration").

A "Grandfathered Employee" is an Employee of an Employer:

- (a) who on March 13, 2006 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement but was participating in the Pension Plan even though he or she was not then employed in a category of work covered by a Collective Bargaining Agreement;
- (b) who at some time prior to March 13, 2006 was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and therefore at that time was a proper and eligible Participant in the Pension Plan;
- (c) who on January 10, 2007 was age 45 or older;

- (d) who was identified by his or her Employer in the Employer's response to the Supervisor Survey issued by the Benefits Office soon after the Non-Eligible Employee Arbitration as a Non-eligible Employee currently participating in the Pension Plan;
- (e) who does not participate in any other retirement, pension, annuity or deferred compensation plan of his or her Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan;
- (f) who on October 1, 2009 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement; and
- (g) whose Employer continues to make contributions to the Pension Plan in accordance with the Non-Eligible Employee Arbitration as long as the Grandfathered Employee remains in his position. The Employer must contribute to the Pension Plan for the *greater* of 160 hours a month, or the number of hours the Employee works in a month.

See Appendix I for special reporting requirements for a Relative of a Grandfathered Employee in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Grandfathered Employee does not exercise any control over the hours of employment of the Relative employed by the Employer.

A Grandfathered Employee will permanently lose his or her status as Grandfathered Employee if he or she:

- (a) becomes employed by his or her Employer in a category of work covered by a Collective Bargaining Agreement, or
- (b) changes Employers after December 31, 2009 unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

(C) Contributions to the **Health Benefit Plan** on behalf of Employees Covered by a Participation Agreement.

The following persons are eligible for coverage under the Health Benefit Plan pursuant to a Participation Agreement accepted by the Health Benefit Plan's Board of Trustees. Employer Contributions made on behalf of such persons shall be in accordance with the Health Benefit Plan's Trust Agreement, the Health Benefit Plan document, rules and regulations established by the Health Benefit Plan's Board of Trustees including these Employer Participation Guidelines and the Participation Agreement entered into by the Employer and the Health Benefit Plan's Board of Trustees.

(1) *Employer Contributions on behalf of Owners, Officers and Other Officials of the Employer*

- (a) Minimum hours reporting requirements as set forth in (i) and (ii) below apply to an Owner and to an Owner's spouse who *performs bargaining unit work*. For purposes of participation in the Health Benefit Plan, an Owner is someone who holds, either directly or indirectly, more than 0.5% of the stock of an incorporated Employer, or holds, either directly or indirectly, more than 0.5% of the ownership interest in an Employer that is a limited liability company.

The minimum hours reporting requirements set forth in (i) and (ii) below also apply to an officer or other official of the Employer if that officer or official *performs bargaining unit work*, and provided the Employer is a corporation or a limited liability company.

Owners of Employers that are sole proprietorships or partnerships may not participate in the Health Benefit Plan. An individual who does not perform bargaining unit work may not participate in the Health Benefit Plan under this provision.

- (i) *General Minimum Hours Rule.*

Except as provided in (ii) below, the Employer must contribute to the Health Benefit Plan on the Employee's behalf the *greater* of 165 hours⁴ a month, or the number of hours in a month the Employee performs bargaining unit work.

(ii) *First and Last Calendar Months of Employment with an Employer.*

In the first or last calendar month of employment with an Employer, the Employer should contribute to the Health Benefit Plan for each hour of work actually performed by an Owner or an Owner's spouse if another Employer has also reported hours on that person's behalf in that same month.

In the last month of employment with an Employer, the Employer should contribute to the Health Benefit Plan for each hour of work actually performed by an Owner or an Owner's spouse if such person retires as of the month immediately following the month he or she ceased working for the Employer.

See Appendix I (Reporting Requirements for Relatives) for special reporting requirements for Relatives of Owners or spouses of Owners.

(2) *Employer Contributions on behalf of Former Owners, Officers and Other Officials of an Employer.*

If an Employee or the Employee's spouse was an Owner, as that term is defined in paragraph (C)(1) above, or if an Employee was an officer or other official of an Employer which was a corporation or a limited liability company, and as a result of an acquisition, merger or consolidation between that Employee's Employer and another Employer, the Employee, or the Employee's spouse, is no longer an Owner, or such Employee is no longer an officer or other official of his or her Employer, the Employee will be eligible to continue to participate in the Health Benefit Plan if, immediately prior to such acquisition, merger or consolidation, the Employee was participating in the Health Benefit Plan as an Owner, spouse of an Owner, or officer or other official in accordance with Section (C)(1) above.

See Appendix I for special reporting requirements for a Relative of a former Owner, spouse of a former Owner, or former officer or other official in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the former Owner, spouse of the former Owner, former officer or other official does not exercise any control over the hours of employment of the Relative employed by the Employer.

A former Owner, spouse of a former Owner, former officer or other official participating in the Health Benefit Plan under this subsection (C)(2) will no longer be eligible to participate in the Health Benefit Plan under this subsection if he or she:

- (a) becomes employed by the Employer in a category of work covered by a Collective Bargaining Agreement, or
- (b) changes Employers after December 31, 2009 unless the change of Employers is due to an acquisition, merger or consolidation between the Employee's old and the new Employer.

(3) *The 180-Day Participation Rule.*

The Health Benefit Plan permits continuation of participation during the 180 day period immediately following a change in an Employee's employment with his Employer to a position that is not eligible for

⁴ The requirement that an Employer report a minimum of 165 hours to the Health Benefit Plan on behalf of a Participant who is an Owner, spouse of an Owner, officer or other official of an Employer generally applies regardless of any hours reported to the Health Benefit Plan by other Employers on that Participant's behalf.

participation in the Health Benefit Plan. The Employer must notify the Benefits Office of the change in position on the Monthly Report Form for the month in which the change occurs. No penalties will be applied to the Employer for continuing the Employee's participation in the Health Benefit Plan during this 180 day period. If the Employer fails to notify the Benefits Office of the change in position, the enforcement penalties in Article VI, Penalties for Coverage of Non-eligible Employees, will apply. This provision may only be used by an Employee once during any 36 month period. During this 180-day period, the Employer must contribute to the Health Benefit Plan on the Employee's behalf the *greater* of 165 hours a month, or the number of hours the Employee works in a month.

(4) *Employer Contributions on behalf of Grandfathered Employees.*

Employers may contribute to the Health Benefit Plan on behalf of a Grandfathered Employee pursuant to the Grandfathered Employee Rule set forth in the Non-Eligible Employee Arbitration award.

A "Grandfathered Employee" is an Employee of an Employer:

- (a) who on March 13, 2006 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement but was participating in the Health Benefit Plan even though he or she was not then employed in a category of work covered by a Collective Bargaining Agreement;
- (b) who at some time prior to March 13, 2006 was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and therefore at that time was a proper and eligible Participant in the Health Benefit Plan;
- (c) who on January 10, 2007 was age 45 or older;
- (d) who was identified by his or her Employer in the Employer's response to the Supervisor Survey issued by the Benefits Office soon after the Non-Eligible Employee Arbitration as a Non-eligible Employee currently participating in the Health Benefit Plan;
- (e) who on October 1, 2009 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement; and
- (f) whose Employer continues to make contributions to the Health Benefit Plan in accordance with the Non-Eligible Employee Arbitration as long as the Grandfathered Employee remains in his position (*i.e.*, a monthly contribution determined by multiplying the Employer's hourly contribution rate then payable to the Health Benefit Plan on behalf of its bargaining unit employees by 165).

See Appendix I (Reporting Requirements for Relatives) for special reporting requirements for a Relative of a Grandfathered Employee in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Grandfathered Employee does not exercise any control over the hours of employment of the Relative employed by the Employer.

A Grandfathered Employee will permanently lose his or her status as Grandfathered Employee if he or she:

- (a) becomes employed by his or her Employer in a category of work covered by a Collective Bargaining Agreement, or
- (b) changes Employers after December 31, 2009 unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

(5) *Employer Contributions on behalf of Supervisory or Superintendent Employees.*

Employers may contribute to the Health Benefit on behalf of a limited number of the Employer's Supervisory and Superintendent Employees. For purposes of this special rule, a "Supervisory or Superintendent

Employee” of an Employer is an Employee of the Employer, other than a collective bargaining employee, to whom collective bargaining employees have a direct reporting relationship.

A Supervisory or Superintendent Employee of an Employer who otherwise may fail to meet the requirements of Grandfathered Employee participation (See subsection (C)(4) above) may continue to participate in the Health Benefit Plan following his or her participation under the 180-Day Participation Rule (See subsection (C)(3) above) in accordance with this special participation rule only if:

- (a) The Supervisory or Superintendent Employee participates in the Health Benefit Plan under the 180-Day Participation rule immediately prior to participating in the Health Benefit Plan pursuant to this special participation rule;
- (b) In general, no more than five Supervisory or Superintendent Employees of the Employer may begin participation under this special rule during the calendar year. However, during the “ramp up” period in which the Employer is first reaching the limit of 15 Supervisory or Superintendent Employees, in the event a Supervisory or Superintendent Employee ceases to be covered under this rule during a calendar year for any reason, the Employer may replace that individual with another Supervisory or Superintendent Employees in that year, and such Supervisory or Superintendent Employee shall not be taken into account for purposes of this calendar year limit;
- (c) No more than a total of 15 Supervisory or Superintendent Employees of the Employer are participating in the Health Benefit Plan under this special rule at any time;
- (d) The Supervisory or Superintendent Employee’s Employer continues to make contributions to the Health Benefit Plan on behalf of the Employee. The amount of such monthly contribution is determined by multiplying the Employer’s hourly contribution rate then payable to the Health Benefit Plan on behalf of its bargaining unit employees by 165; and
- (e) The Supervisor or Superintendent Employee’s Employer has submitted a signed Participation Agreement to the Health Benefit Plan for any Employee participating under this special rule.

The termination of a Supervisory or Superintendent Employee’s participation in the Health Benefit Plan under this Section (C)(5) shall be in accordance with the following rules:

- Termination of Employment or Transfer.
Supervisory or Superintendent Employee’s participation under this Section (C)(5) shall cease on the earlier of: (1) the date the Employee leaves employment with the Employer; or (2) the end of the month in which the Employee moves to another non-covered position with the Employer if, upon assuming that position, he or she ceases to be a Supervisory or Superintendent Employee as defined above or otherwise ceases to be a Supervisory or Superintendent Employee.
- Employer’s Termination of the Participation Agreement with Respect to the Employee.
In the case of an Employee who continues to be a Supervisor or Superintendent Employee as defined above, such Employee’s participation under this Section (C)(5) shall cease as of the effective date of termination of the Participation Agreement with respect to that Employee, where the effective date of termination is not earlier than the last day of a month which is at least 45 days after the date the Benefits Office receives notice from the Employer of termination of the Participation Agreement with respect to the Employee.

The penalty provisions of Chapter VI below will govern in the event an individual who an Employer designates as a Supervisor or Superintendent Employee fails to meet the eligibility requirements for participating in the

Health Benefit Plan as a Supervisor or Superintendent Employee; provided, the individual is otherwise not eligible to participate in the Health Benefit Plan.

(D) Contributions to the **Annuity 401(k) Plan** on behalf of Employees Covered by a Participation Agreement.⁵

The following persons are eligible for coverage under the Annuity 401(k) Plan pursuant to a Participation Agreement accepted by the Board of Trustees of the Annuity 401(k) Plan. Contributions made on behalf of such persons shall be in accordance with the Annuity 401(k) Plan's Trust Agreement, the Annuity 401(k) Plan document, rules and regulations established by the Annuity 401(k) Plan's Board of Trustees including these Employer Participation Guidelines and the Participation Agreement entered into by the Employer and the Annuity 401(k) Plan's Board of Trustees.

(1) *Contributions on behalf of Owners, Officers and Other Officials of the Employer.*

- (a) The minimum hours reporting requirements as set forth in (i) and (ii) below apply to an Owner and to an Owner's spouse who *performs bargaining unit work*. For purposes of participation in the Annuity 401(k) Plan, an Owner is someone who holds, either directly or indirectly, more than 0.5% of the stock of an incorporated Employer, or holds, either directly or indirectly, more than 0.5% of the ownership interest in an Employer that is a limited liability company.

The minimum hours reporting requirements as set forth in (i) and (ii) below also apply to an officer or other official of the Employer if that officer or official *performs bargaining unit work*, and provided the Employer is a corporation or a limited liability company.

Owners of Employers that are sole proprietorships or partnerships may not participate in the Annuity 401(k) Plan. An individual who does not perform bargaining unit work may not participate in the Annuity 401(k) Plan under this provision.

(i) *General Minimum Hours Rule.*

Except as provided in (ii) below, the Employer must contribute to the Annuity 401(k) Plan on the Employee's behalf the *greater* of 160 hours a month, or the number of hours in a month the Employee performs bargaining unit work.

(ii) *First and Last Calendar Months of Employment with an Employer.*

In the first or last month of employment with an Employer, the Employer should contribute to the Annuity 401(k) Plan for each hour of work actually performed by an Owner or an Owner's spouse if another Employer has also reported hours on that person's behalf in that same month.

In the last month of employment with an Employer, the Employer should contribute to the Annuity 401(k) Plan for each hour of work actually performed by an Owner or an Owner's spouse if that person retires as of the month immediately following the month he or she ceased working for the Employer.

See Appendix I (Reporting Requirements for Relatives) for special reporting requirements for Relatives of Owners or spouses of Owners.

⁵ For purposes of this Section (D), "contributions" include Employer contributions to an Employee's Annuity Account, Employee pretax 401(k) Deferrals to his or her 401(k) Account, and Employee after-tax Roth Contributions to his or her Roth Account. To the extent permitted by the Annuity 401(k) Plan documents and federal law, any Employee for whom an Employer agrees to make Employer contributions to the Annuity 401(k) Plan under this Section (D), shall have the right to make 401(k) Deferrals to his or her 401(k) Account and Roth Contributions to his or her Roth Account.

(2) *Contributions on behalf of Former Owners, Officers and Other Officials of an Employer.*

If an Employee or the Employee's spouse was an Owner, as that term is defined in paragraph (D)(1) above, or if an Employee was an officer or other official of an Employer which was a corporation or a limited liability company, and as a result of an acquisition, merger or consolidation between that Employee's Employer and another Employer, the Employee, or the Employee's spouse, is no longer an Owner, or such Employee is no longer an officer or other official of his or her Employer, the Employee will be eligible to continue to participate in the Health Benefit Plan if, immediately prior to such acquisition, merger or consolidation, the Employee was participating in the Annuity 401(k) Plan as an Owner, spouse of an Owner, or officer or other official in accordance with Section (D)(1) above.

See Appendix I for special reporting requirements for a Relative of a former Owner, spouse of a former Owner, or former officer or other official in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the former Owner, spouse of the former Owner, former officer or other official does not exercise any control over the hours of employment of the Relative employed by the Employer.

A former Owner, spouse of a former Owner, former officer or other official participating in the Annuity 401(k) Plan under this subsection (D)(2) will no longer be eligible to participate in the Annuity 401(k) Plan under this subsection if he or she:

- (a) becomes employed by the Employer in a category of work covered by a Collective Bargaining Agreement, or
- (b) changes Employers after December 31, 2009 unless the change of Employers is due to an acquisition, merger or consolidation between the Employee's old and the new Employer.

(3) *The 180 Day Participation Rule.*

The Annuity 401(k) Plan permits participation during the 180 day period immediately following a change in an Employee's employment with his Employer to a position that is not eligible for participation in the Plan. The Employer must notify the Benefits Office of the change in position on the Monthly Report Form for the month in which the change occurs. No penalties will be applied to the Employer for continuing the Employee's participation in the Plan during this 180 day period. If the Employer fails to notify the Benefits Office of the change in position, the enforcement penalties in Article VI, Penalties for Future Coverage of Non-eligible Employees, will apply. This provision may only be used by an Employee once during any 36 month period. During this 180 day period, the Employer must contribute to the Annuity 401(k) Plan on the Employee's behalf the *greater* of 160 hours a month, or the number of hours the Employee works in a month.

(4) *Contributions on behalf of Grandfathered Employees.*

Contributions may be made to the Annuity 401(k) Plan on behalf of a Grandfathered Employee pursuant to the Grandfathered Employee Rule set forth in the Non-Eligible Employee Arbitration.

A "Grandfathered Employee" is an Employee of an Employer:

- (a) who on March 13, 2006 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement but was participating in the Annuity 401(k) Plan even though he or she was not then employed in a category of work covered by a Collective Bargaining Agreement;
- (b) who at some time prior to March 13, 2006 was employed by an Employer in a category of work covered by a Collective Bargaining Agreement and therefore at that time was a proper and eligible Participant in the Annuity 401(k) Plan;

- (c) who on January 10, 2007 was age 45 or older;
- (d) who was identified by his or her Employer in the Employer's response to the Supervisor Survey issued by the Benefits Office soon after the Non-Eligible Employee Arbitration as a Non-eligible Employee currently participating in the Annuity 401(k) Plan;
- (e) who does not participate in any other retirement, pension, annuity or deferred compensation plan of his Employer unless the Employer's bargaining unit Employees are also eligible to participate in the plan;
- (f) who on October 1, 2009 was employed by an Employer in a classification other than in a category of work covered by a Collective Bargaining Agreement; and
- (g) whose Employer continues to make contributions to the Annuity 401(k) Plan in accordance with the Non-Eligible Employee Arbitration as long as the Grandfathered Employee remains in his position. The Employer must contribute to the Pension Plan for the *greater* of 160 hours a month, or the number of hours the Employee works in a month.

Appendix I (Reporting Requirements for Relatives) for special reporting requirements for a Relative of a Grandfathered Employee in the event such Relative performs bargaining unit work for the Employer unless the Trustees find, on request of the Employer, that the Grandfathered Employee does not exercise any control over the hours of employment of the Relative employed by the Employer.

A Grandfathered Employee will permanently lose his or her status as Grandfathered Employee if he or she:

- (a) becomes employed by his Employer in a category of work covered by a Collective Bargaining Agreement, or
- (b) changes Employers after December 31, 2009, changes Employers, unless the change of Employers is due to an acquisition, merger or consolidation between the old and the new Employer.

(E) Employer Contributions to NEIEP.

Employer Contributions on behalf of Owners, Officers and Other Officials of the Employer.

Minimum hours reporting requirements as set forth in (1) and (2) below apply to an Owner or Owner's spouse who *performs bargaining unit work*. For purposes of this Section (E), an Owner is someone who holds, either directly or indirectly, more than 0.5% of the stock of an incorporated Employer, or holds, either directly or indirectly, more than 0.5% of the ownership interest in an Employer that is a limited liability company.

Minimum hours reporting requirements as set forth in (1) and (2) below also apply to an officer or other official of an Employer if that officer or official *performs bargaining unit work*, and provided the Employer is a corporation or a limited liability company.

(1) *General Minimum Hours Rule.*

Except as provided in (2) below, the Employer must contribute to NEIEP on the Employee's behalf the *greater* of 160 hours⁶ a month, or the number of hours in a month the Employee performs bargaining unit work.

(2) *First and Last Calendar Months of Employment with an Employer.*

⁶ The requirement that an Employer report a minimum of 160 hours to NEIEP on behalf of a Participant who is an Owner, spouse of an Owner, officer or other official of an Employer generally applies regardless of any hours reported to NEIEP by other Employers on that Participant's behalf.

In an Owner's (or spouse of an Owner's) first month of employment with an Employer, the Employer may contribute to NEIEP for each hour of work actually performed by that Owner; provided, that Owner's prior Employer reported hours on his or her behalf in that same month.

In an Owner's (or spouse of an Owner's) last month of employment with an Employer, the Employer may contribute to NEIEP for each hour of work actually performed by the Owner; provided, that Owner's subsequent Employer reported hours on his or her behalf in that same month or such Owner retires effective the month immediately following the month he or she ceased working for the Employer.

See Appendix I (Reporting Requirements for Relatives) for special reporting requirements for Employees performing bargaining unit work who are Relatives of an Owner of their Employer.

(F) Notification of Termination of Contributions on Behalf of Owners, Spouses of Owners, Officers or Other Officials of an Employer.

If an Employer ceases to make contributions to the NEI Benefit Plans on behalf of an Owner, spouse of an Owner, officer or other official of that Employer because such Owner, spouse of an Owner, officer or other official ceases to perform bargaining unit work, the Employer must promptly notify the Benefits Office in accordance with this Section (F).

(1) *In General.*

In the event an Employee who participates in the NEI Benefit Plans as an Owner, spouse of an Owner, officer or other official of an Employer ceases to perform bargaining unit work, such Employee is required to submit to the Benefits Office an Owner's Declaration of Termination of Participation. A completed Owner's Declaration of Termination of Participation must be received by the Benefits Office on or before the date the Employee's Employer submits its Monthly Report Form.

(2) *Engaging in Bargaining Unit Work after Termination: Special Health Benefit Eligibility Rule for Owners, Spouses of Owners, Officers and Other Officials.*

(a) An Owner, spouse of an Owner, officer or other official of an Employer whose participation under the Health Benefit Plan is terminated in accordance with this Section (F) may reestablish his or her eligibility for benefits under the Health Benefit Plan as an Owner, spouse of an Owner, officer or other official of an Employer in accordance with subsection (C)(1) above after a period of termination of 24 months or more.

(b) An Owner, spouse of an Owner, officer or other official of an Employer whose participation under the Health Benefit Plan is terminated in accordance with this Section (F) who again engages in bargaining unit work as an Owner, spouse of an Owner, officer or other official of an Employer after a termination period of fewer than 24 months, may again participate in the Health Benefit Plan in accordance with subsection (C)(1) above and may reestablish eligibility for benefits under the Health Benefit Plan provided his or her Employer remits an initial contribution to the Health Benefit Plan in addition to the contribution required under subsection (C)(2) above. This initial contribution shall equal the *lesser* of:

(i) the amount the Employee's Employer would have been required to contribute under subsection (C)(1) had the Employee engaged in bargaining unit work during the six (6) months immediately prior to the month the Employee again engages in bargaining unit work as an Owner, spouse of an Owner, officer or other official of that Employer (such gross amount shall be offset by the total of any amounts paid to the Health Benefit Plan for COBRA Continuation Coverage for the Employee and/or his eligible dependents plus the total of any amounts remitted on behalf of the Employee to the Health Benefit Plan by another Employer during such six-month period); or

- (ii) the amount the Employee's Employer would have been required to contribute under (C)(1) had the Employee not terminated his Participation under (C)(2) (such gross amount to be offset by the total of any amounts paid to the Health Benefit Plan for COBRA Continuation Coverage for the Employee and/or his eligible dependents plus the total of any other amounts remitted on behalf of the Employee to the Health Benefit Plan by another Employer during such period).

(G) Notification of Inactive Employer Status.

An Employer that ceases to perform bargaining unit work must promptly notify the Benefits Office of the Employer's Inactive Status and submit an Inactive Employer Affidavit in accordance with this Section (G).

(1) An Employee who participates in the NEI Benefit Plans as an Owner, spouse of an Owner, officer or other official must submit an Owner's Declaration of Termination of Participation at the time his or her Employer submits an Inactive Employer Affidavit.

(2) If an Employee who is an Owner, spouse of an Owner, officer or other official of an Employer ("Employer A"):

(a) works for another Employer ("Employer B") that makes contributions to the NEI Benefit Plans on the Employee's behalf, and;

(b) Employer A is inactive and submitted an Inactive Employer Affidavit, then

Employer A does not have to make contributions to the Health Benefit Plan on behalf of the Employee; provided the Employee, with respect to Employer A, submitted to the Benefits Office an Owner's Declaration of Termination of Participation.

V. Remittance Reporting and Payment Procedure

(A) In General.

The Boards of Trustees of the NEI Benefit Plans have established remittance reporting and payment procedures for Employers in accordance with the terms of the Collective Bargaining Agreements, Participation Agreements and Trust Agreements. As described below, there are separate reporting and payment procedures for monthly and weekly reporting.

(B) Monthly Hours Reporting and Payment Procedure.

(1) *Reporting by Mail.*

For all NEI Benefit Plans, Employers that report by mail will receive a Monthly Report Form and a Remittance Advice Form to complete each month for each Local Union in which the Employer's Employees work. The name, Social Security Number, job title, job title effective date, hours worked, vacation/holiday hours, and non-vacation and vacation earnings data for each Employee of the Employer must be entered on the first Monthly Report Form the Employer submits to the Benefits Office. Each subsequent Monthly Report Form the Benefits Office sends to that Employer will include each of its Employee's name, Social Security Number, job title, and job title effective date already printed on the report. The total amount due the NEI Benefit Plans each month in contributions will equal the number of hours reported on the Employer's Monthly Report Form, multiplied by the applicable fringe benefit contribution rate (printed on the report). The Remittance Advice Form must accompany an Employer's contribution payment.

An Employer will receive a separate Monthly Report Form for any Owner, spouse of Owner or Relative (see Appendix I, Section (A)) for whom the Employer contributes to the NEI Benefit Plans in addition to the Monthly Report Form used to report hours for non-Owner Employees. The Monthly Report Form for Owners, spouses of Owners and Relatives requires the Employer to provide the name, Social Security

Number, job title, job title effective date, hours worked, vacation/holiday hours, and non-vacation and vacation earnings data for each Owner, spouse of Owner or Relative reportable on this form. The minimum number of hours required to be reported on behalf of an Owner, spouse of an Owner or Relative for each NEI Benefit Plan is listed at the top of the corresponding column on this Monthly Report Form.

(2) *Electronic Reporting.*

The records of the NEI Benefit Plans are maintained on a computer system which is compatible with many automated payroll systems. Employers that utilize an automated payroll system can supply the information required by the NEI Benefit Plans electronically through the NEI Benefit Plans' Employer Online Contributions Portal ("Employer Portal"). The Employer Electronic Reporting Specification Form can be supplied by the Benefits Office upon request or can be downloaded from the Employers section of our website (www.neibenefits.org). Employers are required to file timely with the Benefits Office all of the information contained in the Monthly Report Form each month regardless of the format of the Employer's report.

- (3) An Employer's Monthly Report Form (or complete monthly electronic report) and contribution payment must be **received** by the Benefits Office no later than the 15th calendar day of the month following the month covered by the report. If the 15th calendar day falls on a federal holiday or weekend, the report is due the next business day. A Monthly Report Form (or complete monthly electronic report form) must be submitted every month, even if the Employer did not employ any Employees in a particular month. If an Employer did not employ any Employees in a particular month, the Employer should mark "No Hours Worked" and return the Monthly Report Form (or submit a monthly electronic report showing no hours reported) to the Benefits Office by the date the report is due; otherwise, the Benefits Office will estimate contributions due based on hours worked in the previous months and the Employer's record will show a delinquency.
- (4) Employers must include only those reportable hours worked or otherwise reportable during the reporting period. Employers must not combine reportable hours worked from different reporting periods with those reportable hours during the present reporting period. Reportable hours worked by an Employee in prior reporting periods which were inadvertently omitted from the reports covering those periods and any other correction or comment relating to monthly reports of hours worked which have already been filed with the Benefits Office, should be noted by separate letter (and the necessary fringe benefit contribution payment made, if applicable) to the Benefits Office. Any such letter from the Employer should state the basis for the claimed adjustment to a prior report. Employers must not attempt a correction by adjusting (or "netting out") a subsequent report of hours worked. Any adjustments may only be made by the Benefits Office. Failure to follow this procedure may result in the Employer being considered delinquent for the month for which the Employer attempted to make an adjustment.
- (5) Corrections to a Social Security Number or Local Union number can be made directly on the Monthly Report Form or on a separate sheet of paper attached to the Monthly Report Form (or, if applicable, the Employer's monthly electronic report).
- (6) Each Employee's current job title and appropriate effective date needs to be reported on each Monthly Report Form (or, if applicable, the Employer's monthly electronic report). Any change in an Employee's job title and effective date of change needs to be reported on the Monthly Report Form (or electronic report) for the month in which the change occurs.

One of the following two digit codes that accurately classifies the Employee's job title needs to be used to identify an Employee's current job title:

- 10 Mechanic in Charge
- 11 Mechanic/Journeyman (Including Adjustors, Local Representatives, and Temporary Mechanics)
- 12 Apprentice (Including 1st, 2nd, 3rd, and 4th year)

- 13 Helper
- 14 Probationary
- 20 Owner
- 30 Supervisor "Grandfathered Employee"
- 31 Supervisor during a 180-day trial period
- 32 Supervisor Pension Only (Pension Plan Alumni Election)
- 33 Former Owner or Spouse of Former Owner
- 34 Supervisory or Superintendent Employee (Health Benefit Plan Only)

- (7) Contributions for the following compensation components are to be made as follows:
- (a) **All regular hours worked.** (*But see also* Sections (B), (C), (D) and (E) of Article IV, above, which set forth special reportable hours rules for certain Employees of the Employer.)
 - (b) **Overtime Hours.** A contribution based on actual reportable hours worked is required for those hours beyond 40 hours per week. For example, if an Employee worked 40 hours straight time and worked 8 hours overtime, you must report and contribute 48 hours for such Employee.
 - (c) **Travel Time.** Travel time incurred during the course of regular working hours shall be contributed on as hours worked. Travel time incurred on overtime call-backs is also to be contributed on as hours worked. Except for overtime call-backs, travel time outside the course of regular working hours generally is not considered hours worked for which contributions to the NEI Benefit Plans are required. The Employer must keep proper records to document the nature of travel time. To the extent the provisions of this paragraph V.(A)(7)(c) is inconsistent with the terms of the Employer's Collective Bargaining Agreement, the terms of the Employer's Collective Bargaining Agreement shall control.
 - (d) **Paid Vacations and Paid Holidays.** No contribution is to be made to the NEI Benefit Plans for these hours/days during which an Employee does not work. However, the Employer must report these hours/days according to the instructions in these Guidelines, as they are applied toward the Employee's eligibility for coverage by the Health Benefit Plan.
- (8) **Leave under Family and Medical Leave Laws.** When an Employee takes a leave of absence under the Family and Medical Leave Act of 1993 or an analogous state family and medical leave law (collectively, "FMLA") and the Employee is not otherwise entitled to extended benefits under the terms of the Health Benefit Plan's Summary Plan Description, an Employer must immediately notify the Benefits Office of the Employee's name, Social Security Number, beginning and anticipated end date of the FMLA leave, and, to the extent permitted by law, the reason for the FMLA leave. Employers will receive a separate monthly report for the Employee while the Employee is on the FMLA leave. The Employer must submit the report to the Benefits Office as provided in these Guidelines. However, contributions on behalf of an Employee on FMLA leave are only due to the Health Benefit Plan (plus 3.5 cents per hour withholding), at the rate of 160 hours per month. When the Employee's FMLA leave ends, the Employer must recommence the normal reporting procedure for the Employee, that is, contributions to all the NEI Benefit Plans as specified in these Guidelines. For purposes of this subsection (8), "analogous state family and medical leave law" shall mean any state family and medical leave law that requires the Employer to maintain an Employee's health coverage while the Employee is on leave.
- (9) Employers must not interline the names of Employees. If an Employee for whom contributions are due is not listed on the pre-printed Monthly Report Form the Employer receives for a month, the Employer must insert the Employee's name and other applicable information on the first blank line on the form. If the Monthly Report Form is full, then the Employer should submit the information on a separate sheet of paper. The added Employees will be pre-printed on the Employer's future Monthly Report Forms.

- (10) The specific beginning and ending dates covering the reporting period must be entered on the Monthly Report Form. The report is intended to cover a 4-5 week monthly period.
- (11) Reportable hours for each Employee, for the period covered by the Monthly Report Form, are to be entered in the "Constructor" column. Reportable hours for Probationary Apprentices who are not yet eligible for benefits (See Article IV(A) above) are to be reported in the "Probationary" column each monthly reporting period even though no contribution is due the NEI Benefit Plans on their behalf. Vacation/Holiday hours, that is, hours paid though not worked, are to be reported in the designated column even though no contributions are due on such hours. Hours are to be sub-totaled at the bottom of each page and totaled, on the Monthly Report Form, for each Local Union in which the Employer's Employees performed reportable hours of work.
- (12) Earnings for each Employee, for the period covered by the report, are to be entered in the "Earnings for report period excluding vacation earnings" column and/or the "Vacation earnings" column.
- (a) "Earnings" for the report period excluding vacation earnings represent earnings as defined as W-2 compensation, excluding vacation earnings, with any deferrals, including 401(k) Deferrals and Roth Contributions, added back.
- (b) "Vacation Earnings" represents earnings associated with vacation pay with any deferrals, including 401(k) Deferrals and Roth Contributions, added back. For Employees covered under a Collective Bargaining Agreement, vacation pay must be paid by the 15th of July and January for the vacation accrued from January 1st through June 30th and July 1st through December 31st respectively. If the 15th calendar day of the month falls on a federal holiday or weekend, the Monthly Report Form and payment is due the next business day.
- (13) The total number of Constructor hours worked and fractions thereof (reported in 0.25, 0.50 and 0.75 hour increments) by all of an Employer's Employees is to be multiplied by the total contribution rate per hour printed on the Monthly Report Form. This calculation is to be made separately for each Local Union in which an Employer's Employees performed covered work.
- (14) If applicable to an Employee's status, an Employer must note the appropriate letters appearing in brackets next to the Employee's name on the Monthly Report Form: Laid-Off (LO), Quit (QT), Disabled (DIS), Deceased (DECD), Terminated (TER), Retired (RET) or Transferred to Salaried Employment (SE). New hires should be noted as (NEW) next to the Employee's name.
- (15) The Monthly Report Form must be dated and signed by a duly authorized person. The signer's title, telephone number and e-mail address must also be noted. By signing the Monthly Report Form, the authorized signer is certifying the following:
- (a) the Employer is confirming that the remitted contributions are for Employees eligible to participate in each of the NEI Benefit Plans.
- (b) the Employer is acknowledging that the Employer understands the penalties for making contributions on behalf of Non-eligible Employees. (See Article VI below.)
- (c) the Employer is aware that any false information reported on the Monthly Report Form may subject the Employer and the authorized signer to federal criminal prosecution.
- Employers reporting electronically will need to sign an Employer Certification form during the implementation and testing period certifying the above.
- (16) The Remittance Advice Form (for Employers that use the Monthly Report Form and pay by mail) requires the Employer to identify every Local Union in whose jurisdiction Employees work and to report the

contributions due on behalf of Employees in each such Local Union, as well as the total amount due in contributions. One check for the total amount of contributions due, not including 401(k) Deferrals and Roth Contributions, which are to be remitted separately, for a reporting period must be made payable to “NEI Benefit Plans” and mailed along with the Remittance Advice Form to 19 Campus Blvd., Suite 200, Newtown Square, PA 19073-3288. The Monthly Report Form should be addressed and sent to, 19 Campus Boulevard, Suite 200, Newtown Square, PA 19073-3288.

- (17) With respect to all contributions **except for 401(k) Deferrals and Roth Contributions** to the Annuity 401(k) Plan, the Remittance Advice Form and check for the total amount due must be mailed to and **received** by the Benefits Office no later than the 15th calendar day of the month following the month covered by the Remittance Advice Form. If the 15th calendar day of the month falls on a federal holiday or weekend, the Monthly Report Form and payment is due the next business day. Important Note: The LATE RECEIPT of contributions can be avoided by the wire transfer of the monies due the NEI Benefit Plans from an Employer’s bank to the NEI Benefit Plans’ bank. The necessary information to effectuate a wire transfer is as follows:

ACH or EDI ROUTING NUMBER & NAME: 021000018 Bank of New York Mellon
FED WIRE ROUTING NUMBER & NAME: 021000018 Bank of New York Mellon
PAYEE: NEI Benefit Plans a/c# 9143833
PAYOR: Employer’s Name, City & State
SPECIFICATIONS: Wire Amount and breakdown by Local Union Numbers, if applicable.

(C) Reporting and Payment Procedures for 401(k) Deferrals and Roth Contributions to the Annuity 401(k) Plan.

(1) *Reporting by Mail.*

An Employer that conducts remittance reporting by mail will receive a Weekly Report Form for Employee pretax 401(k) Deferrals (“Weekly Report Form: 401(k) Deferrals”) and a separate Weekly Report Form for Employee After-Tax Roth Contributions (“Weekly Report Form: Roth Contributions”).

An Employer’s Weekly Report Form: 401(k) Deferrals requires the Employer to provide, with respect to each Employee who elects to make 401(k) Deferrals, the Employee’s name, Social Security Number, deferral type, deferral rate, and amount of 401(k) Deferrals for the period reported and pay date.⁷ Similarly, an Employer’s Weekly Report Form: Roth Contributions requires the Employer to provide, with respect to each Employee who elects to make Roth Contributions, the Employee’s name, Social Security Number, deferral type, deferral rate, and amount of Roth Contributions for the period reported and pay date. The back of each of these Weekly Report Forms has complete reporting instructions.

(2) *Electronic Reporting.*

The records of the NEI Benefit Plans are maintained on a computer system which is compatible with many automated payroll systems. Employers that utilize an automated payroll system can supply the information required by the NEI Benefit Plans electronically through the NEI Benefit Plans’ Employer Online Contributions Portal (“Employer Portal”). The Employer Electronic Reporting Specification Form can be supplied by the Benefits Office upon request or can be downloaded from the Employers section of our website (www.neibenefits.org). Each week, Employers are required to file timely with the Benefits Office all of the information contained in the Weekly Report Form: 401(k) Deferrals and Weekly Report Form: Roth Contributions regardless of the format of the Employer’s report.

⁷ Do not submit contributions meant for the Elevator Constructors Union Local No. 1 Annuity and 401(k) Fund to the NEI Annuity 401(k) Plan.

If an Employer currently reports to the Benefits Office electronically, the Benefits Office will provide the Employer with the electronic reporting specifications for 401(k) Deferral and Roth Contribution reporting (*i.e.*, current 401(k) Deferrals, Roth Contributions, earnings and vacation earnings information).

An Employer that reports to the Benefits Office electronically, but does not report through the Employer Portal, may provide compensation information with respect to each Employee who makes 401(k) Deferrals and/or Roth Contributions on a weekly basis.

- (3) An Employer's Weekly Report Form: 401(k) Deferrals and Weekly Report Form: Roth Contributions (collectively, "Weekly Report Forms") (or, for Employer's reporting electronically, weekly electronic reports) must be **received** by the Benefits Office no later than 7 calendar days following the day in which the Employer deducted the amounts of the 401(k) Deferrals and/or Roth Contributions from an Employee's pay. If the 7th day falls on a federal holiday or weekend, the Weekly Report Forms (or weekly electronic reports) are due the next business day. Once an Employee of an Employer makes an elective 401(k) Deferral to the Annuity 401(k) Plan, the Employer must submit a Weekly Report Form: 401(k) Deferrals every week thereafter on behalf of such Employee. Similarly, once an Employee of an Employer makes an elective Roth Contribution to the Annuity 401(k) Plan, the Employer must begin submitting a Weekly Report Form: Roth Contributions every week thereafter on behalf of such Employee.

Weekly Report Forms must be submitted even if the Employer did not employ any Employees that particular week; in which case, the Employer should enter "zero" in the "Amount of 401(K) Deferral" column of the Weekly Report Form: 401(k) Deferrals and "zero" in the "Amount of Emp Roth 401(k) Contribution" column of the Weekly Report Form: Roth Contributions and return the Weekly Report Forms to the Benefits Office by the date the reports are due. Otherwise, the Employer's record will show a delinquency.

- (4) An Employer must include on its Weekly Report Forms only those 401(k) Deferrals and/or Roth Contributions deducted from the Employee's pay during the reporting period. An Employer must not combine 401(k) Deferrals or Roth Contributions deducted from different reporting periods with those reportable during the present reporting period. 401(k) Deferrals and/or Roth Contributions deducted from an Employee's pay during prior reporting periods which were inadvertently omitted from the Weekly Report Forms covering those periods and any other correction or comment relating to Weekly Report Forms of 401(k) Deferrals or Roth Contributions which have already been filed with the Benefits Office, should be noted by separate letter (and the total 401(k) Deferral and/or Roth Contribution payment made, if applicable) to the Benefits Office. An Employer's letter should state the basis for the claimed adjustment to a prior Weekly Report Form. An Employer must not attempt a correction by adjusting (or "netting out") a subsequent report of 401(k) Deferrals or Roth Contributions. Any adjustments may only be made by the Benefits Office. Failure to follow this procedure may result in an Employer being considered delinquent for the week for which it attempted to make an adjustment.
- (5) Corrections to a Social Security Number or Local Union number can be made directly on the Weekly Report Forms or on a separate sheet of paper attached to the applicable Weekly Report Form.
- (6) Employers must not interline the names of Employees. If an Employee for whom 401(k) Deferrals are due is not listed on the pre-printed Weekly Report Form: 401(k) Deferrals (or if an Employee for whom Roth Contributions are due is not listed on a preprinted Weekly Report Form: Roth Contributions), an Employer should insert the Employee's name and other applicable information on the first blank line on the applicable form. If a Weekly Report Form is full, then the Employer should submit the information on a separate sheet of paper. The Employee names the Employer adds on the Weekly Report Form: 401(k) Deferrals (or Weekly Report Form: Roth Contributions) will be pre-printed on future reports.
- (7) The specific beginning and ending dates covering the reporting period must be entered on the Weekly Report Forms. Each Weekly Report Form is intended to cover a one-week period.

- (8) For purposes of determining timely payment of 401(k) Deferrals and Roth Contributions, the “Pay Date” on the Weekly Report Forms represents the date the Employer paid its Employees for the weekly payroll periods reported.
- (9) Generally, Employees have the option to make 401(k) Deferrals and/or Roth Contributions in flat dollar amounts or as percentages of compensation as documented on the Employee’s Pretax 401(k) and After-Tax Roth Contribution Enrollment/Deferral Change Form. Employees, if eligible, also have the ability to make “Catch Up” contributions, either through a separate election or by having the Catch Up contribution automatically commence when the Employee has reached the otherwise applicable deferral limit. For Employers that do not have a pre-approved deferral agreement form for the Annuity 401(k) Plan, the Annuity 401(k) Plan’s standard “Pretax 401(k) and After-Tax Roth Contribution Enrollment/Deferral Change Form” must be used. Blank forms are available and can be downloaded from the “Forms” page of our website (www.neibenefits.org/resources/forms/).
- (10) (a) Pretax 401(k) Deferrals for each Employee, for the period covered by the Weekly Report Form: 401(k) Deferral are to be entered in the “Amount of Employee 401(K) Deduction” column.
- (b) After-tax Roth Contributions for each Employee, for the period covered by the Weekly Report Form: Roth Contributions, are to be entered in the “Amount of Emp Roth(K) Deduction” column.
- (11) The Weekly Report Forms must be dated and signed by a duly authorized person. The signer’s title, telephone number and email address must also be noted. By signing the Weekly Report Forms, the authorized signer is certifying the following:
- (a) the Employer is confirming that the remitted contributions are for Employees eligible to participate in the Annuity 401(k) Plan.
- (b) the Employer is aware that any false information reported on the Weekly Report Forms may subject the Employer and the authorized signer to federal criminal prosecution.
- Employers reporting electronically through the Employer Portal will need to sign an Employer Certification Form during the implementation and testing period certifying the above.
- (12) An Employer’s Weekly Report Forms should be addressed and sent to 19 Campus Blvd., Suite 200, Newtown Square, PA 19073-3288.
- (13) An Employer that conducts remittance reporting by mail will also receive a weekly “Remittance Advice: Pretax 401(k) Deferrals” form and a separate weekly “Remittance Advice: After-Tax Roth Contributions” form. The Remittance Advice: Pretax 401(k) Deferrals form requires the Employer to identify every Local Union in whose jurisdiction Employees perform work covered under the Collective Bargaining Agreements, and to report the total 401(k) Deferrals on behalf of Employees in each such Local Union as well as the total amount due in 401(k) Deferrals. Similarly, the Remittance Advice: After-Tax Roth Contributions form requires the Employer to identify every Local Union in whose jurisdiction Employees perform work covered under the Collective Bargaining Agreements, and to report the total Roth Contributions on behalf of Employees in each such Local Union as well as the total amount due in Roth Contributions.
- (14) Employers shall make a weekly payment for total 401(k) Deferrals and a **separate** weekly payment for total Roth Contributions (either by check, wire, ACH or EDI). If the Employer’s payments are by check, the checks will be payable to “Elevator Constructors Annuity and 401(k) Retirement Plan.” And the checks, along with the Employer’s Remittance Advice: 401(k) Deferrals form and Remittance Advice: Roth Contributions form, should be mailed to 19 Campus Blvd., Suite 200, Newtown Square, PA 19073-3288.
- (15) 401(k) Deferrals and Roth Contributions remittances are to be received by the Benefits Office as soon as the 401(k) Deferrals and Roth Contributions can be reasonably segregated from the Employer’s assets, but

401(k) Deferrals and Roth Contributions must be received by the Benefits Office no later than 7 calendar days following the day in which the amounts were deducted from an Employee's pay. If the 7th day falls on a federal holiday or weekend, the 401(k) Deferrals and Roth Contributions remittances are due the next business day.

- (16) Electronic payment information for 401(k) Deferrals and Roth Contributions to the Annuity 401(k) Plan is as follows:

ACH or EDI ROUTING NUMBER & NAME: 021000018 Bank of New York Mellon

FED WIRE ROUTING NUMBER & NAME: 021000018 Bank of New York Mellon

PAYEE: NEI Benefit Plans a/c# 0009143833

PAYOR: Employer's Name, City & State

SPECIFICATIONS: Wire Amount and breakdown by Local Union Numbers, if applicable.

(D) Employer's Obligation to Report Compensation.

An Employer is required to report the compensation of Owner-Employees and Relatives (as that term is Defined in Appendix I) to the Benefits Office. Failure to provide compensation information for Owner-Employees or Relatives to the Benefits Office upon request may result in the loss of benefits; the forfeiture of Employer contributions made on behalf of such Owner-Employees or Relatives plus earnings on such contributions, and may require one or more of the NEI Benefit Plans to report the matter to the IRS and to take other corrective actions as prescribe by the Internal Revenue Code or as otherwise prescribed through guidance issued by the IRS.

For Relatives, compensation is defined as all remuneration, excluding Terminal Vacation Pay, for which a W-2 statement is issued.

For an Owner-Employee of a corporation or limited liability company which is taxed as a corporation, compensation is defined as all remuneration, excluding Terminal Vacation Pay, for which a W-2 statement is issued. For an Owner-Employee of a limited liability company which is taxed as a partnership or sole proprietorship, compensation is defined as Earned Income under the Internal Revenue Code.

An Employer which is a corporation or limited liability company, which is taxed as a corporation, and makes Employer contributions to the Annuity 401(k) Plan on behalf of an Owner-Employee or a Relative is required to report compensation of an Owner-Employee immediately upon request to the Benefits Office. In the event an Employer fails to pay an Owner-Employee or a Relative any W-2 reportable compensation or fails to report that compensation upon request to the Benefits Office, said Employer contributions plus earnings on such contributions may be subject to forfeiture.

In the event an Employer's contributions to the Annuity 401(k) Plan made on behalf of an Owner-Employee or Relative exceed the annual addition limits prescribed by the Internal Revenue Code and underlying regulations, Employer contributions in excess of the Owner-Employee's or Relative's reported compensation may be subject to forfeiture.

VI. Penalties for Coverage of Non-eligible Employees

This Article VI of the Employer Participation Guidelines relates to penalties that may be assessed against Employers that make contributions on behalf of an employee after that employee loses eligibility in the Pension Plan, Health Benefit Plan and Annuity 401(k) Plan because that Employee ceases to perform covered work for the Employer. This Section VI has been added to these Guidelines to implement the Non-Eligible Employee Arbitration award.

- (A) "Non-eligible Employee"

For purposes of this Article VI, a “Non-eligible Employee” is an employee of an Employer who:

- (1) was previously employed by an Employer in a category of work covered by a Collective Bargaining Agreement;
- (2) ceased to work in a category of work covered by a Collective Bargaining Agreement; and
- (3) otherwise fails to meet—
 - (a) in the case of Pension Plan participation, the requirements of subsections (B)(2),(3),(4) or (5) of Article IV of these Employer Participation Guidelines;
 - (b) in the case of Health Benefit Plan participation, the requirements of subsections (C)(2),(3),(4) or (5) of Article IV of these Employer Participation Guidelines, and
 - (c) in the case of Annuity 401(k) Plan participation, the requirements of subsections (D)(2),(3) or (4) of Article IV of these Employer Participation Guidelines.

(B) Non-eligible Employee Participation Determined as a Result of a Payroll Audit

If, as a result of a payroll audit of an Employer, the Trustees learn that the Employer has made contributions to one or more NEI Benefit Plans for one or more Non-eligible Employees, the following penalties will be imposed:

- (1) All improper contributions will be forfeited,
- (2) The Employer must pay an amount equal to the total benefits paid by the Plans on behalf of Non-eligible Employees and their covered dependents, and
- (3) In the discretion of the Trustees, monetary penalties up to but not exceeding:
 - (a) First offense: 25% of annual contributions for the Non-eligible Employees
 - (b) Second offense: 50% of annual contributions for the Non-eligible Employees
 - (c) Third and subsequent offenses: \$10,000 for each offense and the Employer may be subject to an annual payroll audit.

All Non-eligible Employees identified in a payroll audit are considered to be a single offense.

(C) Non-eligible Employee Participation Determined Other Than as a Result of a Payroll Audit

If the Trustees determine that an Employer has made contributions to one or more NEI Benefit Plans for Non-eligible Employees, other than a determination made as a result of the coverage of Non-eligible Employees identified in a payroll audit of the Employer, the Boards of Trustees in their discretion shall determine which, if any, of the penalties set forth in Section (B) above are appropriate and should be applied. In making their determination of which, if any, of the penalties set forth in Section (B) are appropriate and should be applied, the Trustees shall take into account the circumstances under which it was discovered that the Employer had made contributions to one or more NEI Benefit Plans for each such Non-eligible Employee and such additional factors as they consider appropriate, including but not limited to the following factors:

- (a) The period of time that the Employer made contributions to one or more of the of the NEI Benefit Plans for each such Non-eligible Employee,
- (b) The period of time elapsed from the time the Employer learned that it had made contributions to one or more of the NEI Benefit Plans for each such Non-eligible Employee until the Employer ceased contributions to the Plans for such Non-eligible Employee,
- (c) The period of time elapsed from the time the Employer learned that it had made contributions to one or more of the NEI Benefit Plans for each such Non-eligible Employee until the Employer advised the Benefits Office that it had made contributions to one or more of the Plans for each such Non-eligible Employee and the

circumstances as to why it had made contributions to one or more of the Plans for each such Non-eligible Employee, and

- (d) The past history, if any, of the Employer in making contributions to one or more of the NEI Benefit Plans for Non-eligible Employees.

VII. Delinquency Procedure

The Boards of Trustees are charged by Federal law with the responsibility to collect all monies due the NEI Benefit Plans, including delinquent contributions. The Trustees have the right to take all legal steps to collect all amounts due the NEI Benefit Plans. The Boards of Trustees of the respective NEI Benefit Plans have established the Procedures for Collecting Delinquent Contributions for the National Elevator Industry Pension Plan, Health Benefit Plan, Educational Fund, and the Elevator Industry Work Preservation Fund and the Board of Trustees of the Annuity 401(k) Plan have established the Collection Procedures for Employers Participating in the Elevator Constructors Annuity and 401(k) Retirement Plan (collectively, the "Delinquency Procedures"), which authorize such action as is necessary to collect delinquent contributions and related amounts.

(A) Monthly Hours Reporting.

- (1) An Employer's Monthly Report Form is to be received by the Benefits Office and an Employer's contribution remittances are to be received by the NEI Benefit Plans' bank no later than **the 15th calendar** day of the month following the month covered by the Monthly Report Form. If the 15th calendar day of the month falls on a federal holiday or weekend, the Monthly Report Form and payment is due the next business day. If an Employer's Monthly Report Form and/or payment is not received on time, the following will occur:
 - (a) the Benefits Office will send a statement notifying the delinquent Employer of the delinquency and that interest and liquidated damages may be assessed;
 - (b) the IUEC will be notified of the Employer's delinquency; and
 - (c) Legal counsel of the NEI Benefit Plans ("Legal Counsel") will be notified of the Employer's delinquency.
- (2) If an Employer's payment is not received by the 15th calendar day of the month following the contribution due date, the delinquent Employer will be referred to Legal Counsel for appropriate legal action. Notwithstanding the above, the Executive Director may immediately refer to Legal Counsel any delinquency should the particular situation warrant it.
- (3) Legal Counsel will contact the delinquent Employer and attempt to resolve the delinquency. If a delinquency is not resolved, Legal Counsel is authorized to take whatever legal action it deems appropriate to collect the monies due the NEI Benefit Plans. This includes but is not limited to the following:
 - (a) the filing of mechanic's liens and claims against performance bonds;
 - (b) the filing of claims against Miller Act Bonds (on federal jobs) or Little Miller Act Bonds (on applicable state jobs);
 - (c) the filing against state contractor bonds; and
 - (d) any other legally enforceable method available to the NEI Benefit Plans.
- (4) The Trustees may file suit in Federal Court to collect any amounts due the NEI Benefit Plans. Under ERISA, the Boards of Trustees of the NEI Benefit Plans are authorized to file suit on behalf of the NEI Benefit Plans against delinquent Employers in the Federal District Court for the Eastern District of Pennsylvania located in Philadelphia regardless of where the delinquent Employer is located. If judgment is entered in favor of the NEI Benefit Plans, Federal law and each NEI Plan's Trust Agreement require the court to award the NEI

Benefit Plans all of the unpaid contributions *plus* interest, liquidated damages, court costs and attorney's fees.

- (5) If a delinquent Employer fails to remit Monthly Report Forms and contributions for any given month, then the Benefits Office will estimate the amount due from that Employer for that month in accordance with each NEI Benefit Plan's Trust Agreement.
 - (6) In accordance with the Delinquency Procedures, the Chair and Co-Chair of the Pension Plan and Health Benefit Plan may authorize Legal Counsel to negotiate settlement agreements with delinquent Employers. However, any settlement agreement negotiated by Legal Counsel will be subject to Trustee approval; the Boards of Trustees of the NEI Benefit Plans have delegated the authority to approve any such settlement agreement to the Chair and Co-Chair of the Pension Plan and Health Benefit Plan. In addition to delinquent contributions, these settlements may include attorney's fees and costs, interest and liquidated damages.
 - (7) Interest is charged in monthly increments on contributions not received by the required due date. If all amounts due (delinquent contributions and interest) are not received by the 15th of the next month, an additional month's interest will be charged on the total due. If the 15th calendar day of the month falls on a federal holiday or weekend, the Monthly Report Form and payment is due the next business day. Interest will continue to accrue in monthly increments until the amounts due the NEI Benefit Plans are paid in full. Interest will then be billed by the Benefits Office. Interest on delinquent Employer contributions will be charged at the rate established by the IRS for underpayment of taxes.
 - (8) An Employee's benefit eligibility under the Health Benefit Plan will terminate when the Employee's Employer fails to make the required contributions to the Benefits Office when due. This means that the Health Benefit Plan will not provide benefits to an Employer's Employees (or their dependents) if the Employer is two months delinquent in the payment of required contributions. An Employer's failure to pay contributions is not a "qualifying event" under COBRA; therefore, COBRA continuation coverage will not be available to the delinquent Employer's Employees or their dependents.
 - (9) An Employee's benefit eligibility (and the benefit eligibility of such Employee's otherwise eligible dependents) under the Health Benefit Plan will be restored retroactively if the Employer pays the entire amount due for all delinquent periods including any applicable interest and damages due.
 - (10) The Trustees may assess liquidated damages on delinquent contributions up to twenty percent (20%) of the amount due.
- (B) Weekly Reporting: Timely Remittance of Employee 401(k) Deferrals and Roth Contributions to the Annuity 401(k) Plan.
- (1) An Employer's Weekly Report Forms and its payments of its Employees' 401(k) Deferrals and Roth Contributions must be received by the Benefits Office as soon as the 401(k) Deferrals and Roth Contributions can be reasonably segregated from the Employer's assets, but 401(k) Deferrals and Roth Contributions must be received no later than seven (7) calendar days following the day in which the Employer deducted such amounts from an Employee's pay. If the 7th day falls on a federal holiday or weekend, the Employer's Weekly Report Forms and its payments of its Employees' 401(k) Deferrals and Roth Contributions are due the next business day. If Weekly Report Forms and/or payments are not received on time, the following will occur:
 - (a) the Benefits Office will send a statement notifying the delinquent Employer of the delinquency; and
 - (b) the IUEC will be notified of the Employer's delinquency.
 - (2) If an Employer fails to remit Employee 401(k) Deferrals or Roth Contributions by the **15th calendar day** of the month following the remittance due date, the delinquent Employer will be referred to Legal Counsel

for appropriate legal action. Notwithstanding the above, the Executive Director may immediately refer to Legal Counsel any delinquency should the particular situation warrant it.

- (3) Legal Counsel will contact the delinquent Employer and attempt to resolve the delinquency. If a delinquency is not resolved, Legal Counsel is authorized to take whatever legal action it deems appropriate to collect the monies due the Annuity 401(k) Plan. This includes but is not limited to the following:
 - (a) the filing of mechanic's liens and claims against performance bonds; and
 - (b) the filing of claims against Miller Act Bonds (on federal jobs) or Little Miller Act Bonds (on applicable state jobs); and
 - (c) the filing against state contractor bonds; and
 - (d) any other legally enforceable method available to the Annuity 401(k) Plan.
- (4) The Trustees of the Annuity 401(k) Plan may file suit in Federal Court to collect any amounts due the Annuity 401(k) Plan under this Section (B). Any claims relating to an Employer's failure to pay timely Employee 401(k) Deferrals or Roth Contributions may be brought in conjunction with suits brought under Section (A)(4) above. Under ERISA, the Trustees of the Annuity 401(k) Plan are authorized to file suit for claims relating to an Employer's failure to pay timely Employee 401(k) Deferrals or Roth Contributions in the Federal District Court for the Eastern District of Pennsylvania located in Philadelphia regardless of where the delinquent Employer is located. If judgment is entered in favor of the Annuity 401(k) Plan, Federal law and the Annuity 401(k) Plan's Trust Agreement require the court to award the Annuity 401(k) Plan all of the unpaid Employee 401(k) Deferrals and Roth Contributions plus interest, liquidated damages, court costs and attorney's fees.
- (5) In accordance with the Delinquency Procedures, Legal Counsel may be authorized by the Chair and Co-Chair of the Health Benefit Plan and Pension Plan to negotiate settlement agreements with delinquent Employers, including settlements related to Employee 401(k) Deferral and Roth Contribution delinquencies. However, any settlement agreement negotiated by Legal Counsel will be subject to approval by the Trustees of the Annuity 401(k) Plan. In accordance with the Delinquency Procedures, the Trustees of the Annuity 401(k) Plan have delegated the authority to approve any such settlement agreement to the Chair and Co-Chair of the Pension Plan and Health Benefit Plan. In addition to delinquent Employee 401(k) Deferrals and Roth Contributions, these settlements may include attorney's fees and costs, interest and liquidated damages.
- (6) Interest/lost earnings on an Employee 401(k) Deferrals or Roth Contributions is charged in daily increments on 401(k) Deferrals or Roth Contributions not received by their due date. Interest/lost earnings will continue to accrue in daily increments until the amounts due the Annuity 401(k) Plan are paid in full. Said interest/lost earnings will then be billed by the Benefits Office. Until the Employer has paid the entire principal amount of late 401(k) Deferrals and/or Roth Contributions, interest/lost earnings will be charged at the greater of:
 - (a) interest calculated at the underpayment rate established by the IRS for underpayment of taxes or
 - (b) the rate of return of the 401(k) investments alternative that earned the highest rate of return among the investment alternatives provided by the Annuity 401(k) Plan during, or in the month prior to, the period of the delinquency.

In the event the Employer pays the entire principal amount of late 401(k) Deferrals and/or Roth Contributions but fails to pay assessed interest/lost earnings, interest will continue to accrue on such interest/lost earnings based on the underpayment rate established by the IRS for underpayment of taxes as of January 1st of the year the entire principal amount is paid by the Employer.

Interest/lost earnings shall be allocated among the affected individual participants of the Annuity 401(k) Plan.

- (7) The Trustees may assess liquidated damages on delinquent 401(k) Deferrals and Roth Contributions up to twenty percent (20%) of the amount due.
- (8) In accordance with the terms of the Annuity 401(k) Plan's Trust Agreement, Employers that do not remit Employees' 401(k) Deferrals or Roth Contributions by the due date may be held personally responsible as fiduciaries of the Annuity 401(k) Plan for withholding Plan Assets.
- (9) Delinquent 401(k) Deferrals and Roth Contributions are reported to the DOL and the IRS each year as part of the Annuity 401(k) Plan's Form 5500 Annual Report. An Employer that fails to remit 401(k) Deferrals or Roth Contributions by the due date may be responsible for an excise tax due to the IRS. It is the Employer's responsibility to file IRS Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with respect to its delinquent contributions.

VIII. Provision of Documents and Data

Under the terms of the Trust Agreements governing the NEI Benefit Plans, the Trustees are charged with maintaining the qualified tax exempt status of each Plan. Both IRS and DOL regulations require each Plan to provide certifications or documentation that the Plan meets certain requirements under ERISA and the Internal Revenue Code. The NEI Benefit Plans are required to obtain certain documentation or certifications such as compensation data, W-2 records or other information from Employers in order to meet the requirements of ERISA and the Internal Revenue Code. Employers are required to provide necessary documentation or data to the Benefits Office upon request in order for the Trustees to meet these requirements and obligations. Employers that fail to provide such data or documentation for a plan year or period of plan years may have their participation in one or more of the NEI Benefit Plans, or the participation of their employees in one or more of the NEI Benefit Plans, suspended or terminated effective on the last day of the last plan year prior to the earliest plan year for which the data or documentation was requested. In the event an Employer fails to provide necessary documentation or data as described above to the Benefits Office for an individual on whose behalf the Employer made contributions to the Annuity 401(k) Plan, such contributions may be forfeited at the discretion of the Trustees of the Annuity 401(k) Plan in accordance with the terms of the Annuity 401(k) Plan.

IX. Payroll Audits of Employer Records

(A) Payroll Audits (In General)

As fiduciaries under ERISA, the Trustees are obligated to insure that all contributions due the NEI Benefit Plans are reported accurately and collected. Therefore, the Trustees have instituted the Payroll Audit Guidelines for the National Elevator Industry Pension Fund, the National Elevator Industry Health Benefit Plan, the Elevator Constructors Annuity and 401(k) Retirement Plan, the National Elevator Industry Educational Program and the Elevator Industry Work Preservation Fund ("Payroll Audit Guidelines"). Under Payroll Audit Guidelines, all Employers whose names appear on the delinquency lists prepared by the NEI Benefit Plans' Executive Director as delinquent for two or more consecutive months in the preceding 12 months will be audited. Also, all newly signatory Employers will be audited at the end of the first 12-month period as a signatory Employer. Generally, employer payroll audits will be conducted on a geographic regional basis. In addition to the Employers subject to audit under these procedures, Employers will be selected for audit on a random basis. The Trustees, or by delegation, the Chair and Co-Chair of the Pension Plan and Health Benefit Plan, may also select Employers for audit. It is intended that each Employer will be audited periodically even if the Employer has not been delinquent in making contributions.

Once an Employer is selected for audit, the Benefits Office will notify the Employer in writing. An independent Certified Public Accountant selected by the Trustees will contact the Employer to make necessary arrangements to conduct the payroll audit. The Employer shall provide the Auditor with all payroll records and other required data which will enable the auditor to perform an accurate and complete payroll audit of the Employer's compliance with the NEI Benefit Plans' reporting requirements in accordance with the applicable Agreed Upon Procedures for Performing Payroll Audits of Contributing Employers ("Agreed Upon Audit Procedures") established by the Trustees and appended to the Payroll Audit Guidelines. It is considered the responsibility of each Employer to maintain all appropriate records needed to substantiate the propriety of reporting, hours and paying contributions to the Plans.

If, as a result of the payroll audit, the Employer owes additional contributions, the Employer will be notified of this discrepancy by Legal Counsel or by the Benefits Office. If the delinquency, as revealed by the payroll audit, equals or exceeds 5% of the contributions made by the Employer during the audit period, then the Employer must also pay all costs associated with the payroll audit. Additional contributions due to any of the NEI Benefit Plans as a result of the payroll audit shall be assessed interest calculated from the original due date of the contributions. The interest is to be considered part of the delinquency amount found to be due the NEI Benefit Plans. If the Trustees of the NEI Benefit Plans must file suit to conduct a payroll audit or to collect a delinquency revealed by an audit, the NEI Benefit Plans will also seek from the Employer all of the costs and attorney's fees.

(B) Initial Employer Appeals of Payroll Audits.

Delinquencies identified on a payroll audit generally are governed by the provisions of Section VII ("Delinquency Procedure") of these Guidelines. However, where the Employer disputes the findings of the auditor and the Employer and the auditor cannot resolve the dispute, the Employer may file an appeal with the Trustees of the findings of the payroll audit, subject to the following requirements:

- (1) The Employer's appeal shall be sent to the Benefits Office within sixty (60) days after the Employer's receipt of the findings of the payroll audit.
- (2) The Employer's appeal of the findings of the payroll audit should be in writing and should contain specific information as to why the Employer believes that all or part of the findings are incorrect.
- (3) Notwithstanding an Employer's compliance with (1) and (2) above, the Trustees may refuse to consider any Employer's initial appeal if, during the pendency of the Employer's initial appeal, the Employer is found to have failed to comply with the remittance reporting and payment procedures set forth in Section V ("Remittance Reporting and Payment Procedures") of these Employer Participation Guidelines.

The Employer's appeal generally will be reviewed by the Boards of Trustees of the Pension Plan, Health Benefit Plan and Annuity 401(k) Plan at their regular joint-meeting immediately following the receipt of the Employer's appeal unless the appeal is received within thirty (30) days of the date of the meeting. If the appeal is received by the Benefits Office within thirty (30) days of the date the meeting, the Trustees may defer review of the appeal until their second regular meeting following receipt of the appeal. However, if the Trustees determine that special circumstances require a further extension of time for processing the Employer's appeal, the Trustees may delay consideration of the Employer's appeal until the third regular meeting following the date the Benefits Office receives the appeal. If such an extension of time is required, the Benefits Office will notify the Employer in writing of the extension. If special circumstances require the Trustees to delay consideration of the Employer's appeal beyond the third regular meeting following the date the Benefits Office receives the appeal, the Employer will be notified in writing and an extension of time to consider the appeal will be obtained through mutual consent of the Employer and the Trustees.

If in reviewing the Employer's appeal, the Trustees determine that additional information is needed in order

for the Trustees to make a determination with regard to any part of the appeal, the Employer must submit such additional information no later than thirty (30) days prior to the Trustees' regular meeting next following the regular meeting at which the Employer's appeal was initially reviewed by the Trustees. The Employer's appeal will again be reviewed by the Trustees at the regular meeting next following the regular meeting at which the Employer's appeal was initially reviewed by the Trustees. If the Employer does not submit any additional information, the Trustees shall review the appeal based on the information initially submitted by the Employer.

An Employer may withdraw its appeal of a payroll audit at any time. Moreover, during the period an Employer's initial appeal under this Section (B) or subsequent appeal under Section (C) is pending with the Trustees, the provisions of Section VII of these Employer Participation Guidelines relating to the accrual of interest shall apply to all contributions, 401(k) Deferrals and Roth Contributions the Trustees find due and owing after consideration of the Employer's appeal(s). Finally, nothing in subsections (B) or (C) of this Article IX should be construed to foreclose an Employer from engaging in settlement negotiations with the NEI Benefit Plan's Legal Counsel in accordance with Article VII during the period the Employer's appeal is pending with the Trustees.

(C) Subsequent Employer Appeals

If in reviewing the Employer's appeal—

- the Trustees determine that additional information is not needed and also determine that all, or a portion, of the Employer's appeal should be denied, or
- the Trustees determine that additional information is needed and, based on the information available to the Trustees at the regular meeting next following the regular meeting at which they reviewed the Employer's initial appeal, the Trustees determine that all or part of the Employer's appeal should still be denied,

the Employer may file a subsequent appeal **but only if:**

- (1) The Employer first pays to the NEI Benefit Plans the amount determined by the payroll audit to be due to the NEI Benefit Plans, plus accrued interest (other than such amounts, if any, that relate to the portions of the Employer's appeal which have been granted by the Trustees).
- (2) The subsequent appeal by the Employer includes additional information which the Employer believes supports its position. If the Employer does not submit such additional information with its request for subsequent appeal, the Trustees will not consider a subsequent appeal and the decision previously reached by the Trustees will be considered final and non-appealable.

The Trustees may refuse to consider an Employer's subsequent appeal if, during the pendency of the Employer's subsequent appeal, the Employer fails to comply with the remittance reporting and payment procedures set forth in Article V above.

If upon review of an Employer's subsequent appeal the Trustees determine that part, or all, of the Employer's appeal should be granted, then the amount the Employer paid to the NEI Benefit Plans with respect to the portion, or all, of the Employer's appeal which has been granted shall be paid back to the Employer. Such payment will be without interest or investment return on the payment. If upon review of an Employer's subsequent appeal the Trustees determine that part, or all, of the Employer's appeal should still be denied, the portion of the amount paid to the Plans with respect to the part, or all, of the Employer's appeal which has been denied shall not be returned to the Employer and shall remain in the Plans.

X. Refund of Erroneous Contributions

In accordance with the terms of the NEI Benefit Plans' Trust Agreements and federal law, the Trustees of the Pension Plan, Health Benefit Plan and Annuity 401(k) Plan have established procedures that allow for the refund, credit or offset of erroneous overpayments to those Plans under limited circumstances. The National Elevator Industry Pension Plan, National Elevator Industry Health Benefit Plan and the Elevator Constructors Annuity 401(k) Retirement Plan Procedures for Processing Employer Appeals of Payroll Audits and Requests for Refunds, Credits and Offsets of Erroneous Contributions ("Procedures for Refunds, Credits and Offsets of Overpayments") set forth Trustees rules and regulations governing the refund, credit and offset of erroneous employer contributions, which are summarized below.

- (A) Once contributions are made to the NEI Benefit Plans, subject to the requirements of Article VI (Penalties for Coverage of Non-eligible Employees), and of Article XI (Payroll Audits of Employer Records), the Trustees have complete discretion to determine whether they may be returned to an Employer, to the extent permitted by ERISA, the Internal Revenue Code and the NEI Benefit Plans' Trust Agreements. Except as otherwise provided in Section (B) below, to consider a refund of erroneous contributions, the Trustees must receive a written request for the refund within one year after the Employer's payment of the contribution (the "One-Year Rule"). Retention by the Trustees of contributions mistakenly made on behalf of a Non-eligible Employee or otherwise, will in no way affect the eligibility or ineligibility of any Employee for benefits from the NEI Benefit Plans.
- (B) Notwithstanding Section (A) above, and only to the extent permitted by ERISA and the Internal Revenue Code, the Trustees have complete discretion to determine whether a refund, crediting or offset of contributions made by an Employer by a mistake of law or fact is appropriate if such erroneous contributions were made by the Employer during an Employer's payroll audit period and such erroneous contributions were first identified during the payroll audit. To consider a refund of erroneous contributions under this Section (B), the Trustees must receive a written request for the refund within 60 days after the Employer's receipt of the findings of the payroll audit.
- (C) Any refund of an erroneous contribution will be without interest. All of the NEI Benefit Plans' costs and expenses resulting from the Employer's erroneous contributions may be deducted from any refund, credit or offset. These deductions will include the administrative costs of correcting the mistake, any uncollected benefits paid in reliance on the erroneous contributions, or the cost of collecting such benefits, the expenses of any litigation resulting from the adjustment of any Employees' medical or pension eligibility to reflect the refunded contributions, and all other costs and losses to one or more of the NEI Benefit Plans attributable to the erroneous contributions. In the event erroneous contributions were first identified during a payroll audit, any refund of erroneous contributions shall be reduced by the cost of the payroll audit if, under procedures established by the Trustees, the Employer is found to have had underreported contributions during the payroll audit period and the amount of underreported contributions, *without regard to the Employer's erroneous contributions*, would have required the Employer to pay the cost of such payroll audit.

XI. Any Questions?

If you have any questions regarding the foregoing, do not hesitate to contact the Benefits Office.

Appendix I - Reporting Requirements for Relatives

(A) Definitions

(1) Relative

For purposes of this Appendix I, and where otherwise referenced in these Employer Participation Guidelines, a “Relative” is an Employee who performs some bargaining unit work and is:

- a relative *other than a spouse* of an Owner of his or her Employer
- a relative of an Employee who is a former Owner, officer or other official of his or her Employer
- a relative of an Employee of his or her Employer who participates in the Pension Plan as a bargaining unit alumni
- a relative of a Grandfathered Employee of his or her Employer

A Relative includes:

- a parent of an Owner or the Owner’s spouse,
- a brother or sister of the Owner or of the Owner’s spouse,
- a child of the Owner and/or of the Owner’s spouse, or
- a grandchild of the Owner and/or of the Owner’s spouse.

(2) Owner-Employee

Solely for purposes of this Appendix I, an “Owner-Employee” is an Employee who participates in the NEI Benefit Plans under the terms of these Employer Participation Guidelines as an Owner, spouse of an Owner, an officer or other official of an Employer (See Article IV(B)(1), (C)(1), (D)(1) and (E)(1)).

(B) Reporting Hours for Relatives

(1) NEI Benefit Plans other than the Health Benefit Plan

Except as provided in subsection (2) below, if an Employer *substantiates* the hours reported to the NEI Benefit Plans on behalf of Relatives in accordance with the *Substantiation Requirements* set forth below, the Employer shall report the *actual hours worked by a Relative*. However, if the NEI Benefit Plans’ auditor, while conducting a payroll audit, concludes that the Employer has failed to substantiate the hours reported to the Plans for Relatives, the Employer will be assessed additional contributions up to the 160 hour minimum to the Pension Plan, Annuity 401(k) Plan, NEIEP and EIWPF for any month in which the reported hours were less than the 160 hour minimum.

(2) Health Benefit Plan

If an Employer *substantiates* the hours reported to the NEI Benefit Plans on behalf of Relatives in accordance with the *Substantiation Requirements* set forth below, the Employer shall report the *actual hours worked by a Relative*. However, if the NEI Benefit Plans’ auditor, while conducting a payroll audit, concludes that the Employer has failed to substantiate the hours reported to the NEI Benefit Plans for Relatives, the Employer will be assessed additional contributions up to the 165 hour minimum to the Health Benefit Plan for any month in which the reported hours were less than the 165 hour minimum.

The Boards of Trustees reserve the right to change these rules at any time upon which appropriate notice of the change will be given.

(C) Substantiation Requirements for Relatives

This Section (C) sets forth the Substantiation Requirements that if followed by the Employer will permit the Employer to report actual hours worked by a Relative rather than the 160 hour minimum as described in subsection (B)(1) (in the case of the Pension Plan, Annuity 401(k) Plan, NEIEP and EIWPF) or the 165 hour minimum in subsection (B)(2) (in the case of the Health Benefit Plan).

In order to report only actual hours a Relative worked in employment covered by a Collective Bargaining Agreement, an Employer must:

- (1) Keep detailed records that are created at approximately the same time the Relative performs the work for the Employer and that are maintained by the Employer for at least five (5) years. The detailed records must document:
 - (a) The total hours worked by the Relative for the Employer,
 - (b) The number of hours worked by the Relative that is work covered by the Collective Bargaining Agreement and a description of each different type and amount of bargaining unit work performed, and
 - (c) The number of hours worked by the Relative that the Employer believes is not work covered by the Collective Bargaining Agreement and a description of each different type of non-bargaining unit work performed.

If the Employer does not satisfy these Substantiation Requirements, the Employer must report and make contributions on the applicable minimum reportable hours as prescribed in Section (B)(1) and (B)(2) above. If the Employer does not keep appropriate records which properly document the hours and work performed by Relatives, or if the Employer refuses to permit a timely payroll audit by the NEI Benefit Plans, the Employer must report and contribute on the applicable minimum reportable hours as prescribed in Section (B)(1) and (B)(2) above. The NEI Benefit Plans may require the reporting of and payment of contributions for the minimum contributions retroactively.

Appendix II - Contact Information

National Elevator Industry

Benefit Plans

19 Campus Blvd., Ste. 200
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Executive Director

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Contribution Questions

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National Elevator Industry

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National Director

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Elevator Industry Work Preservation Fund

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