INDUSTRY FUND SEMINAR

MATERIALS

SMACNA

2020

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ATTACHED MATERIALS

I. INTRODUCTION

A. DEFINITION

An "industry fund" is an entity established to provide funding for activities that are intended to benefit a given industry. Financing is achieved through contributions by individual employers within the industry, generally, based upon the number of hours worked by their employees. The obligation to make those contributions is set forth in the collective bargaining agreement for that geographical area.

B. BENEFITS OF INDUSTRY FUND FINANCING

One significant benefit is that continuous financial support is assured for the term of the agreement, because a provision calling for industry fund contributions in a labor agreement is court enforceable. An additional benefit is that such a method of financing allows the costs of activities that benefit the industry to be spread over the contractors that benefit from those activities, in a manner that is arguably proportionate to the benefits derived by each individual contractor.

C. IMPORTANCE OF PROPER ADMINISTRATION

A number of legal and potential contractual issues are involved in the proper administration of industry funds. Failure to observe these legal issues can result in civil liability of trustees and the sponsoring organization, loss of tax exempt status for the fund, as well as elimination of the fund.

II. INDUSTRY FUNDS UNDER FEDERAL LAW

A. LABOR LAW

1. The Labor Management Relations Act

a. Section 302(a)(2) of the Labor Management Relations Act (LMRA) prohibits an employer from making any payments to an employee or a representative of an employee (a union). It provides:

> ". . . it shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, advisor, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value . . . to any labor organization or any officer or employee thereof . . ."

b. The purpose of this prohibition is to prevent bribery and improper influence between employers and employee representatives.

c. A willful violation of this provision subjects the employer and union to criminal sanctions, including imprisonment for up to five years and/or a fine of up to $10,000.

In addition to the general legal prohibition on making payments or delivering things of value to unions and union representatives, federal law has imposed obligations to file reports with the government, disclosing even those payments that are permissible. The purpose behind these reports are twofold: to alert the government to potentially unlawful payments, and to disclose potential conflicts of interest to union members.

2. Legality of Industry Funds under Section 302

a. An Employer Administered Industry Fund Does Not Violate 302.

It has been firmly established that industry funds are lawful. In Mechanical Contractors v. Plumbers Union, 167 F. Supp. 35, 42 LRRM 2707 (E.D.Pa., 1958) the court addressed the legality, under Section 302(a)(2) of the LMRA, of collectively bargained contributions to employer administered trusts, as well as trusts jointly administered by unions and employers.

The court held that a contract provision requiring an employer to contribute to an industry fund administered by employers was lawful and enforceable. That decision involved contributions to a fund established for the following purposes:

(i) Payment of management's costs for conducting labor relations activities on an industry-wide basis;

(ii) Public relations;

(iii) Public education;

(iv) Promoting stability of relations between labor and management; and

(v) Paying the costs of arbitration and the adjustment of grievances.

The reason why a payment to an employer administered industry fund is not prohibited by Section 302 is obvious. Section 302 only prohibits payments to a union, or its representatives, and a payment to an employer administered fund is not a payment to a union.

b. A Jointly Administered Industry Fund Violates Section 302.

(i) Early Case Law

(a) The broad prohibitory language of Section 302 has been interpreted literally, so that industry funds that were jointly administered by union and employer representatives were found unlawful.

(b) The rationale of courts was that since Section 302 specified what types of jointly trusteed funds are lawful, the omission of Industry Funds meant that a jointly trusteed Industry Fund were unlawful.

(ii) The 1978 Amendments to Section 302 – The Labor Management Cooperation Act

(a) In 1978, Congress amended Section 302, to include the following exceptions to the prohibitions contained in the statute. The amendment permits:

> ". . . money or other things of value paid by an employer to a plant, area or industry wide labor management committee established for one or more of the purposes set forth in Section 5(b) of the Labor Management Cooperation Act of 1978."

(b) The purposes set forth in Section 5(b) of the Labor Management Cooperation Act of 1978 are broadly stated:

> ". . . improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their job including improving communication with respect to subject of mutual interest and concern."

The statute also sets forth the following activities which could be financed by employer contributions to such a committee:

i) To improve communications between representatives of labor and management;

ii) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

iii) To assist workers and employees in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

iv) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area or industry;

v) To enhance the involvement of workers in making decisions that affect their working lives; and

vi) To expand and improve working relationships between workers and managers.

(c) The additional exceptions to Section 302 provided by the 1978 amendments brought into question whether or not jointly administered industry funds would be lawful. Those arguing in favor of the lawfulness of jointly administered industry funds claimed that the activities of the typical industry fund could fit within the broad purposes of the Labor Management Cooperation Act of 1978. However, the contrary argument is based on the following:

i) All previous attempts to enact legislation authorizing the joint trusteeing of industry funds failed to pass;

ii) The legislative history of the Labor Management Cooperation Act of 1978 is silent with respect to the issue of industry funds; and

iii) Some of the typical uses of industry fund monies arguably fall outside the congressionally stated purposes of the amendment.

(d) To date, no reported decision subsequent to the 1978 amendment to Section 302 has considered the issue of the legality of jointly administered industry funds. This issue has become largely academic. Many labor-management cooperation committees have been established (with joint trusteeships) to carry on activities that are similar to those being conducted by the typical industry fund. Legal counsel is unaware of any

successful challenge to such a fund on the sole basis that by being jointly trusteed, the fund violates Section 302. While it is still important that any labor-management cooperation committee be carefully structured and administered to comply with the Labor Management Cooperation Act of 1978, the fact that such funds are jointly trusteed, and conduct activities that are similar to those conducted by many industry funds, should not be of concern.

3. Industry Funds Under the National Labor Relations Act

a. Non-Mandatory Subject of Bargaining

It has long been held that contributions to an industry fund are a non-mandatory subject of bargaining. For example, in Local 80, Sheet Metal Workers, 161 NLRB No. 7, 63 LRRM 1261 (1966), the National Labor Relations Board held that a union's insistence to the point of impasse over a proposal for an industry fund was improper:

"We agree with the General Counsel's contention that respondent Local 80 violated Section 8(b)(3) of the Act by insisting upon inclusion of the industry promotion fund provision in a collective bargaining agreement . In prior cases, the Board has expressly ruled that industry promotion funds are non-mandatory subjects of bargaining which may be proposed by the parties during negotiation, but not insisted upon as a condition to entering into a collective bargaining agreement."

b. Reasoning

The reason that such contributions are not considered mandatory subjects of bargaining is that they do not constitute "wages, hours, or a term or condition of employment." NLRB v. Detroit Resilient Floor Decorators, Local 2265, (Mill Floor Covering, Inc.), 53 LRRM 2311 (1963). In order to be a mandatory topic of bargaining, an issue must have more than a tenuous or indirect relationship to such matters.

c. Effect

The practical effect of industry fund contributions being regarded as non-mandatory subjects of bargaining depends on whether the parties have a Section 8(f), or a Section 9(a) bargaining relationship. An 8(f) bargaining relationship is one arising in the construction industry where there is no proof that the union represents a majority of employees. A Section 9(a) relationship is one where the union has been certified as bargaining representative following an NLRB election, or, where the

employer has recognized the union as majority representative of employees, based upon either an offer to provide, or the actual furnishing of proof, that it represents a majority of employees, or, if the bargaining relationship is outside of the construction industry.

In a Section 9(a) relationship, neither party can insist to the point of impasse over the incorporation of an industry fund provision in the collective bargaining agreement. That means that, as a practical matter, the contractors having such a relationship may have no method of continuing an industry fund if the union is adamantly opposed to it. Also note that if your labor agreement has Article X, Section 8, the NJAB has, as a matter of policy, declined to impose non-mandatory subjects of bargaining over the objection of either party because of related legal concerns.

The situation is somewhat different in the context of an "8(f) Pre-Hire" bargaining relationship. In that setting, the contractors may lawfully insist that an industry fund will be part of any agreement, and may take the position that without an industry fund, there will never be a contract. This is due to the fact that in an 8(f) relationship, neither party is subject to the traditional obligation to bargain in good faith, and may insist to the point of impasse over non-mandatory items.

However, in either an 8(f) or 9(a) relationship, the obligation to contribute to the fund must be enforced through a court action, and not an NLRB charge, as the Board unfair labor process cannot be used to enforce a non-mandatory term in a collective bargaining agreement. For example, in American Thoro-Clean, 125 LRRM 1115 (1987), the Board held that an employer does not commit an unfair labor practice by unilaterally discontinuing contributions to an industry fund. Thus, although the obligation to contribute to the fund may be enforced through a lawsuit in court, it may not be enforced by an unfair labor practice with the NLRB.

Because of the non-mandatory character of such contributions, at least one regional office of the Board has determined that the Association has no duty under the National Labor Relations Act (as opposed to contract language requiring such disclosure) to provide information to the union concerning expenditures of the fund. While the union has a right to that information under the Standard Form of Union Agreement, that right may only be enforced through the grievance procedure, and ultimately through the courts, and not through an unfair labor practice charge with the NLRB.

B. TAX ISSUES

1. Tax Exempt Status.

a. Properly organized and operated, industry funds are entitled to tax exempt status under Section 501(c)(6) of the Internal Revenue Code as "business league," so long as the fund is not organized for profit, and no part of its net earnings inure to the benefit of any member or individual.

b. Regulations adopted by the IRS define a "business league" as:

"... an Association of persons having some common business interest, the purpose of which is to promote such common business interest and not to engage in a regular business of a kind ordinarily carried on for profit. . . . Its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons."

c. To qualify for tax exempt status as a business league or trade Association, an industry fund must be organized to promote some common interest of the Association, and must not engage in a regular business of a kind ordinarily conducted for profit. Omaha Livestock Traders Exchange v. U.S., 244 F. Supp. 384 (D.C. Neb. 1965).

d. Failure to comply with the Code requirements for tax exempt status will subject the fund's net income to tax, and may require it to pay tax on an amount greater than its overall net income for a given year, because of the Code's disallowance of certain deductions to such entities. For example, § 277 of the I.R.C. disallows net operating loss carry backs to entities which do not qualify as tax exempt.

e. The critical inquiries in determining whether an organization qualifies as a business league is whether the organization operates of business ordinarily carried on for profit, or performs substantial services for its individual members. If a trade association provides members with a service or product, of which the members otherwise would obtain in the normal course of their business, and the association provides it at a lower cost, it may be said that the association is providing a particular service to its members.

(i) For example, the operation of an emergency loan plan, insurance plans, hotel discounts, car lease programs and similar arrangements have led to the loss of tax exempt status. See e.g. Associated Master Barbers and Beauticians of America, Inc. v. Commissioner, 69 TC 53 (1977).

(ii) As an application of this principle, a local region of the IRS has taken the position that an Industry Fund, which provided drug

testing and physical examinations to employees of contributors, was providing a particular service to its members, and therefore, such activities were not appropriate. NOTE: Different local regions of the IRS have arrived at different conclusions on this issue. This inconsistency makes it difficult to give advice as to whether such activities may be conducted by an industry fund.

(iii) The same result occurred with an association that provided administrative services for members of a multi-employer bargaining unit, to keep track of the hours worked by employees so that their vacation pay and guaranteed income could be computed. The IRS concluded that these services were essentially commercial in nature.

(iv) The IRS also concluded that an association which represented its members in collective bargaining with a union was providing a particular service by managing a group health and welfare plan for a fee.

(v) However, the line between permissible and impermissible activity is not always clear. An organization which conducted collective bargaining for its members was found to have properly established a loan fund, to assist members experiencing financial difficulties during a strike.

f. However, the fact that an industry fund earns some income, or benefits individual members of the Association, will not disqualify it, so long as such earnings or benefits are incidental to the fund's primary exempt activities. Oklahoma Cattle-men's Association v. U.S., 310 F. Supp. 320 (W.D. Okla. 1969).

2. Obtaining Tax Exempt Status - Formalities.

a. The fund should seek a determination of tax exempt status by submitting IRS Form 1024, as well as any state tax forms that may be required. The application to the IRS should be accompanied by a copy of the applicable collective bargaining agreement that provides for contributions to the industry fund, the applicable trust agreement, the identity of the trustees, a description of the activities to be conducted by the fund, as well as the anticipated financials for the industry fund for a three year period.

b. Once the industry fund's application has been approved, it must thereafter file an IRS Form 990 [an informational return] annually, if its gross receipts in a tax year are in excess of $25,000. A penalty of $20.00 per day, not to exceed the lesser of $10,500 or 5% of the organization's gross receipts, may be assessed for a late filing unless

there is a reasonable cause for the delay. The penalty increases to $105.00 per day, not to exceed $53,000, if the organization's gross receipts exceed $1,067,000.

c. Observing these and other formalities are important. The trustees of the Fund must meet at regular intervals, and formal minutes of those meetings must be maintained. The Fund must also maintain accurate financial records regarding the revenues flowing to the Fund, and the use of those revenues. Failure to do so can result in loss of tax exempt status, and the imposition of significant penalties.

3. Permissible Activities of Tax Exempt Organizations.

Apart from the foregoing general principles, specific guidance may be offered on activities typically financed by industry funds.

a. Advertising.

(i) There are three significant issues when industry funds are used to conduct promotional activities. First, the advertising must benefit all contributors, and not just Chapter members. Second, the advertising may be of benefit to individual contractors only to a "minor" degree. Third, the advertising should not be the major purpose that industry funds are utilized for. The failure to observe these principles could result in loss of tax exempt status.

(ii) Advertising promoting the entire industry is a permissible expenditure. Washington State Apples, Inc. 46 B.T.A. 64, (1942). For example, advertising which promotes the entire sheet metal industry in a particular geographic area would be permissible, as would be advertisements "on behalf of the sheet metal contractors supporting the area industry fund."

(iii) Advertising which promotes the entire industry, but which also contains the name of the local Chapter, or individual contractors, is an appropriate expenditure, so long as the advertising only promotes the products or services of individual contractors to a "minor extent." Rev. Rul. 55-44, 1955-2 C.B. 258.

(iv) Advertising containing only the names of individual contractors constitutes an improper use of industry fund monies, since it primarily benefits individual members.

(v) The degree to which advertising impermissibly benefits individual contractors is a fact question, and resolution of the

issue depends on the circumstances of each individual case. For example, the IRS has held that advertising which encompassed 60% of an organization's overall budget, and which included the names of individual members listed in the phone directory as members of the organization, as well as one newspaper advertisement listing their individual names, did not jeopardize the tax exempt status of the organization when the individual members reimbursed the organization for their share of the costs of the advertising. Rev. Rul. 67-344, 1967-2 C.B. 299. However, in another case, the IRS held that an organization was not entitled to tax exempt status where 50% of its overall budget was devoted to advertising which promoted the services and products of individual members. Rev. Rul. 56-65, 1956-1 C.B. 199.

(vi) In the area of advertising, the following considerations are recommended:

(a) While no specific percentage is automatically guaranteed to pass IRS scrutiny, it is the opinion of SMACNA legal counsel that advertising on behalf of the industry, which also identifies individual contractors, constituting 5% or less of the organization's overall operating budget, should not affect the tax exempt status of the organization.

(b) If advertising promoting individual members, as well as the industry, exceeds 5% of the total budget, the individual members should reimburse the fund for the advertising costs on a pro rata basis.

(c) Advertising that benefits individual members which exceeds 20% of the organization's operating budget may lead to challenge of its tax-exempt status, regardless of whether or not individual members reimburse the organization for the advertising costs. In this regard, consideration should be given to creating an advertising fund as a taxable entity, since the tax liability burden may be slight in relation to the advantages and flexibility of this type of arrangement.

(vii) Advertising funds may be spent to promote a certain segment of the overall industry. For example, advertising may be structured to benefit the residential segment of the industry. However, trustees should be aware of their duty to expend trust funds in a manner intended to benefit the industry as a whole.

Accordingly, a disproportionately large amount of promotional monies should not be allocated to one segment of the industry at the expense of others.

(viii) If an Association wishes to advertise just on behalf of members, Association dues may be used to finance those activities.

b. Trade Shows, Conventions, and Meeting Expenses.

(i) The conducting of trade shows, conventions, seminars or similar meetings are permissible uses of industry funds. American Institute of Interior Designers, v. U.S., 208 F. Supp. 201, 10 A.F.T.R. 2d 5824 (N.D. Cal. 1962).

(ii) Paying the expenses of individuals to attend conventions, seminars or meetings on behalf of the industry as a whole is a permissible use of industry fund contributions. This means that the payment of such expenses cannot be limited to Chapter members, as industry funds must be utilized to benefit the industry as a whole. If such a limitation is desired, Association funds should be considered as the means of financing such activities.

In some cases, a small contractor might make contributions to the industry fund that are less than the contractor's expenses of attending such an event. The trustees may link the level of reimbursement to the level of contributions by the contractor, so that payment is available to all contributors, but only in an amount that is reasonable, in light of their contributions.

c. Lobbying Activities.

(i) Provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) limit the deductibility of expenses for direct lobbying at the state or federal level.

(ii) Lobbying is defined very broadly under the Act. It includes any effort to influence legislation through communication with any member of a legislative body, or with any government official or employee who might participate in the formulation of legislation. This definition includes participation in a political campaign on behalf of a particular candidate, attempts to influence the general public with respect to legislative matters, and direct communications with elected officials in an attempt to influence their actions or positions on such matters.

There is, however, an exception for "local" legislative efforts. Expenses related to such activities will still be deductible. Local legislative activity are those confined to city councils, and similar local governing bodies.

(iii) There is also a de minimis exception. The Act does not eliminate the deduction for direct lobbying expenditures of less than $2,000. However, once the de minimis amount of $2,000 is exceeded, then all lobbying expenses, including the original $2,000, become non-deductible.

(iv) The monitoring of legislative activities, with no attempt to influence legislation, is not subject to the Act. *See* 26 C.F.R. § 1.162-29(c)(3). However, if the monitoring is followed up with attempts to influence legislation, then the deductibility will be lost as to the amounts expended in monitoring.

This enactment does not affect expenditures for things such as an annual legislative conference. Such activities do not typically involve lobbying, but rather, are primarily educational in nature.

(v) This Act is applicable to SMACNA Chapters, state Associations, as well as industry funds.

(vi) The organization is given two options in dealing with lobbying expenses. If the organization conducts lobbying activities, it may elect to pay a "proxy tax" on amounts expended for such lobbying activities, at the top corporate rate [currently 35%]. In the alternative, the organization must notify its members that the portion of their dues allocable to lobbying will be non-deductible. This notice must be provided to each member at the time that Association dues are assessed. The notice must specify the portion of dues that the organization expects will be allocable to lobbying activities in that particular year.

d. Educational and Training Programs.

Educational programs are an appropriate use of industry fund monies. Such programs should be made available to all contributors to the industry fund, in order to direct the benefit of such programs to the industry as a whole. A limitation of such programs to Chapter members would be inappropriate.

Depending on the type and scope of the training provided, it is possible for the Industry Fund to become an ERISA plan, on the basis that " . . . apprenticeship or other training programs . . ." are being supported by

the Industry Fund. Such training programs are subject to ERISA, which could result in the Fund having to comply with its requirements, most notably, those pertaining to the filing of annual reports.

e. Publications.

Publication activities have long been recognized by the IRS as related to an organization's tax-exempt purposes. Thus, the development of technical manuals, and other documents identifying specifications for particular products for use by architects, engineers, and governmental agencies may properly be paid for out of industry fund contributions.

As noted earlier, industry funds cannot be utilized for the benefit of individuals. A strict application of this principle would mean that there can be no price differential in the cost charged for such publications to members and non-members. However, a reasonable price differential may be justified in cases where the Association has contributed substantial resources to the development of such publications through the services of volunteers. Care should be exercised in this area, as an impermissible differential could lead to the ultimate sanction-loss of tax exempt status by the fund.

f. Labor Relations.

Negotiating and administering a collective bargaining agreement covering a multi-employer unit benefits the entire industry, and thus, is a proper expenditure of industry fund monies. Rev. Rul. 65-164, 1965-1 C.B. 238.

g. Recruiting.

The use of industry funds to assist in recruiting new people into the Sheet Metal Industry is also an appropriate expenditure of trust monies. Such things as career day programs in high schools, and scholarships, represent examples of proper expenditures in this area.

h. Research.

Research and testing in areas concerning the Sheet Metal Industry are proper fund expenditures.

i. Payment of Association Dues.

Payment of Association dues out of industry fund contributions are proper if permitted by the governing trust documents, so long as the

activities of the Association are consistent with the permissible use of industry fund monies.

C. ANTI-TRUST ISSUES

1. General.

Although other legal issues are usually more significant when industry fund administration is analyzed, occasionally, the operation of such funds also gives rise to anti-trust issues. This results from the fact that such funds presumptively involve joint activities by businesses, which are intended to impact competition. It appears that recently, there has been renewed interest by the Justice Department with respect to contract language providing for industry fund contributions.

2. Examples.

a. Restrictions on the Availability of Services.

(i) If an industry fund restricts the availability of certain essential services only to industry fund contributors, potential anti-trust issues may arise. For example, if industry funds were used to produce technical manuals that would be offered for sale to contractors, a restriction on the sale of such manuals only to industry fund contributors could conceivably present an anti-trust issue. That would be more likely if access to the manuals was essential to comply with performance standards, building codes, and the like.

(ii) When confronted with such restrictions, courts have generally analyzed whether the non-member has been denied access to an essential facility or service. That involves a determination of whether access is actually necessary if one wishes to compete, and whether substantially equivalent services could be obtained from an alternate source. Frequently, this will involve a balancing of the anti-competitive impact of the restriction, versus the justification for the restriction.

(iii) Many restrictions have withstood analysis. However, an outright refusal to permit a non-contributor to obtain a particular service may raise an anti-trust issue. Resolution of that issue may be in question if the denial of access greatly impedes a company's ability to compete in the marketplace, and there is no reasonable alternative available.

b. Conspiracies to Mandate Industry Fund Contributions.

(i) Obviously, Associations can conduct their activity only with the financial support of contractors. Because those activities may be viewed as an unnecessary expense by some contractors, there is a temptation on their part to attempt to avoid contributing to the local industry fund. At times, this has given rise to efforts to impose industry fund contributions on unwilling contractors. In extreme settings, this can present anti-trust issues.

(ii) In 1982, the Fourth Circuit Court of Appeals decided NECA, Inc. vs. National Constructors Association. In that case, the court held that an agreement between NECA and the IBEW, requiring that all electrical industry contracts provide for a contribution to the Electrical Industry Fund, could constitute a price fixing scheme in violation of the anti-trust laws.

(iii) NECA and the IBEW had a practice of entering into national agreements, the terms of which were to be incorporated in local collective bargaining agreements between NECA Chapters, and IBEW Locals. The parent organizations also reserved the right to approve or veto all collective bargaining agreements entered into by their respective local members. In 1976, the two national organizations entered into an agreement, providing that industry fund contributions were to be required in all collective bargaining agreements entered into by any IBEW Local.

This prompted a lawsuit by the National Constructors Association, which contended that the requirement of industry fund contributions forced NCA members to incur additional costs, even though they were not members of NECA. NCA claimed that the industry fund provisions were imposed in order to destroy the competitive advantage that non-members held over those contractors belonging to NECA. It relied upon statements to that effect that were made during a NECA convention.

(iv) The court agreed with NCA, and enjoined NECA and the IBEW from enforcing the industry fund provision with respect to non-NECA members.

(v) In T.W. Elec. Service, Inc. v. Pacific Elec. Contractors Ass'n (1987), electrical contractors challenging a mandatory fund contribution provision in a trade association-union contract

were unsuccessful. The Ninth Circuit Court of Appeals held that the provisions at issue were not a *per se* violation of the Sherman Act because they did not require all contractors in the industry to contribute to the fund, but rather only those employers who were members of the trade association. A more limited fund contribution provision may still present anti-trust concerns where circumstantial evidence indicates "the existence of a broader conspiracy to require all contractors to contribute to the Fund."

c. Current Issues.

(i) SMACNA has been advised that recently, the Justice Department has been scrutinizing agreements between Associations and unions which require every employer to contribute to the Industry Fund, or pay an equivalent amount to a jointly trusted fund, such as the JATC.

While the union may independently take such a position at the bargaining table, when it enters into an agreement to do so with the Association, a potential antitrust issue arises.

III. APPROPRIATE STRUCTURE

A. SEPARATION OF INDUSTRY FUND AND CHAPTER

1. No legal requirement - While it is desirable that the Chapter or Association and the Industry Fund have a separate formal legal existence, there is actually no legal requirement that they be structured in that fashion. Rather, other considerations dictate that such a structure should be established.

2. Desired structure - Observance of this principle usually means that the Chapter should be established as a corporation, and that the Industry Fund be a properly established trust under state law.

3. No adverse tax impact - As both the Chapter and the Industry Fund will be tax-exempt under 501(c)(6) of the Internal Revenue Code, if properly established and operated, there obviously is no tax consideration either favoring, or disfavoring separate status. Rather, the benefits flow from the other issues discussed in (B) below.

B. ADVANTAGES OF SEPARATE STRUCTURE

1. Satisfaction of contractual restrictions on the use of Industry Funds

a. Limitations Under the Standard Form.

In those areas that have adopted Article VIII, Section 13(a) of the Standard Form of Union Agreement, Industry Funds can only be used for the following purposes: industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, programs serving to expand the market for the services of the industry, improve the technical and business skills of employers, stabilize and improve employer-union relations, and improve the employment opportunities for employees.

While these activities are broad, they do not encompass all of the activities that the Association may be involved in. As explained below, having an Industry Fund and a Chapter with separate legal identities is essential to satisfy these limitations, while at the same time, permitting the Chapter to perform necessary range of services on behalf of the Industry.

b. Interplay with the Administrative Service Fee.

By having a separate legal existence, and appropriately utilizing an administrative service fee (typically ten to fifteen percent of the actual cost of services provided by the Chapter), the Chapter will then accumulate funds that are not subject to the contractual limitations set forth in the Standard Form.

This is due to the fact that the administrative service fee becomes an asset of the Chapter, subject only to the limitations imposed upon Chapter activities. Limitations set forth with respect to Industry Fund contributions will no longer be applicable.

2. Reserves

a. Because of the requirements of the Standard Form with respect to the periodic furnishing of financial information to the Union, it is unwise to build up reserves in the Industry Fund. Large reserves may lead the union to the conclusion that:

(i) the Industry Fund is over funded, and that a reduction in the contribution level is in order;

(ii) it is not being aggressive enough carrying on activities to benefit the Industry;

(iii) that the reserves should be put to some other use that the Union favors.

b. Through the use of an Administrative Service Agreement, a fee can be imposed with the result that all reserves will be built up in the

Association. Within some reasonable limits, the amount of the administrative service fee may be adjusted from time to time, so that the service fee will simultaneously build up reserves without exceeding the available revenue of the Industry Fund to accomplish that result.

3. Disclosure of information

a. Article VIII, Section 13(c) of the Standard Form obligates the Fund to provide written reports, detailing the nature of activities supported by the Industry Fund, on a semi-annual basis.

On an annual basis, the Union must also be furnished a balance sheet, and detailed statement of the receipts and disbursements of the Fund. In addition, the Fund must provide such other detailed information as may be requested by the business manager.

b. Clearly, the objective is to fulfill these requirements, while at the same time, keeping the financial records of the Association generally free from any disclosure obligation. Proper use of an Administrative Service Agreement will keep some matters out of the realm of the information that is required to be provided to the Union.

IV. DOCUMENTS RELATING TO INDUSTRY FUNDS

A. THE COLLECTIVE BARGAINING AGREEMENT

1. Generally.

A provision in a collective bargaining agreement, requiring an hourly contribution to the fund, is an indispensable component of the fund, as it creates a court enforceable obligation to provide financial support for fund activities.

Contract provisions relating to industry funds may, in addition to providing for the level of contributions, often times indicate the general purposes for which the contributions will be used. Obviously, it is in the Association's interest that provisions in the labor agreement permit the broadest possible range of activities that are consistent with what is permitted by law.

2. Provisions in the Standard Form.

a. The Standard Form of Union Agreement contains the following language regarding contributions to the Industry Fund of the United States:

"ARTICLE VIII, SECTION 12(a). Contributions provided for in Section 12(b) of this Article will be used to promote programs of

industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the sheet metal industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support and improve the employment opportunities for employees. No part of any such payments, however, shall be used for any other purpose except as expressly specified above.

(b). The Employer shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS) the hourly contribution rate established by the IFUS trustees. The IFUS trustees shall notify the Sheet Metal Workers' International Association of any changes to the established contribution rate prior to such change becoming effective. The Employer shall contribute said amount for each hour worked on and after the effective date of this Agreement by each employee of the Employer covered by this Agreement. Payment shall be made on or before the 20th date of the succeeding month and shall be remitted to IFUS, 4201 Lafayette Center Drive, Chantilly, Virginia 20151 – 1219, or for the purpose of transmittal, through ____(Name of local remitting organization)___
.

(c). The IFUS shall submit to the Sheet Metal Workers' International Association not less than semi-annually written reports describing accurately and in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the IFUS shall include in such written report a financial statement attested to by a certified public accountant containing its balance sheet and detailed statement of annual receipts and disbursements. Further specific detailed information in regard to IFUS activities or its receipts and/or expenditures shall be furnished to the Sheet Metal Workers' International Association upon written request.

(d). Grievances concerning use of IFUS fund for purposes prohibited under Section 12(a) or for violations of other subsections of this Section may be processed by the Sheet Metal Workers' International Association directly to the National Joint Adjustment Board under the provisions of Article X of this Agreement. In the event such proceeding results in a deadlock, either party may, upon ten (10) days notice to the other party, submit the issue to final and binding arbitration. The Arbitrator shall be selected by the Co-Chairmen of the National Joint Adjustment board. The Arbitrator shall be authorized to impose any remedial order he deems appropriate for violation of this Section, including termination of the employer's obligation to

contribute to the IFUS. The authority of the Arbitrator is expressly limited to a determination of a deadlocked issue under this Section, (Section 12, Article VIII), and no other.

b. The Standard Form of Union Agreement also contains the following recommended language concerning local industry fund contributions:

SECTION 13(a). Contributions provided for in Section 13(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote and support and improve the employment opportunities for employees. No part of any such payments, however, shall be used for any other purpose except as specified above.

(b). The Employer shall pay to the _____ (Name and address of local industry fund) _____ the hourly contribution rate established by the trustees of such local industry fund. The trustees of the local industry fund shall notify the local union of any changes to the established contribution rate prior to such change becoming effective. The Employer shall contribute said amount for each hour worked on and after the effective date of this Agreement by each employee of the Employer covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month.

(c). The fund shall furnish to the Business Manager of the Union, not less often than semi-annually, written reports describing in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. One time per year, the Fund shall include in such written report, a statement attested to containing its balance sheet and detailed statement of receipts and disbursements. Further specific detailed information in regard to Fund activities or its receipts and/or disbursements shall be furnished to the Business Manager of the Union upon his written request.

(d). Grievances concerning use of local industry fund monies to which an employer shall contribute for purposes prohibited under Section 13(a) or for violations of other subsections of this Section shall be handled under the provisions of Article X of this Agreement. The National Joint Adjustment Board shall be authorized to impose any remedial order for violation of this Section, including termination of the employer's obligations to contribute to the local industry fund."

Section 14. The Union and Employer recognize that the contributions provided in Sections 12(b) and 13(b) of this Article support activities that benefit the entire sheet metal industry. It is essential that Employer support these activities, even though it may be performing sheet metal work under the provisions of a separate project agreement or maintenance agreement.

Therefore, hours worked for purposes of determining the contributions required under Sections 12(b) and 13(b) of this Article shall include all hours worked by each employee of the Employer under any project agreement or maintenance agreement, unless specifically excluded by the terms of a written addendum that is negotiated by the Contractors' Association and the Local Union that are parties to this Agreement.

B. SUMMARY OF RESTRICTIONS ON INDUSTRY FUND ACTIVITIES UNDER THE STANDARD FORM

1. As can be seen, the Standard Form not only provides for industry fund contributions, but also, restricts the uses of industry fund monies. Under it, national and local industry funds may only be used for the following purposes:

a. Programs of industry education

b. Training

c. Negotiation and administration of collective bargaining agreements

d. Research

e. Promotion to expand the market for the services of the sheet metal industry

f. Improve the technical and business skills of employers

g. Stabilize and improve employer-union relations

h. To promote, support, and improve the employment opportunities for employees.

Under the Standard Form, it is improper to use industry fund contributions for <u>any</u> purpose other than those listed above.

C. COMMON SENSE CONSIDERATIONS REGARDING INDUSTRY FUND EXPENDITURES

1. Because industry funds are a non-mandatory topic of negotiations, the Association cannot compel the union to include industry fund contributions in

the contract, if the parties have a Section 9 relationship. If the union wants to eliminate the fund at contract expiration, it may be able to.

Further, the National Joint Adjustment Board has not imposed an industry fund contribution over the objections of a party in the context of a proceeding under Article X, Section 8. The union may also grieve any use of industry fund contributions that it believes to be improper, and seek to eliminate the fund as a remedy for the violation.

2. All of these factors require that the Association be careful in financing specific activities through industry fund contributions. The Association should scrupulously avoid financing any activity that has an "anti-union" flavor. If there are activities that are even questionable in terms of what is permitted under the industry fund, they should be financed through Association dues instead.

3. It is absolutely essential that the Association maintain financial records that will clearly establish that industry fund monies have only been used for permissible purposes.

4. In addition to these safeguards, it is important for the Association to periodically share information with the union that demonstrates the value of the industry fund to the membership.

D. TRUST AGREEMENT

1. General Guidelines.

A formal trust agreement is generally utilized for the proper establishment of an industry fund. The trust agreement must govern a number of issues. The following should be addressed:

a. Scope and Purpose.

The scope and purpose of the trust agreement should be broad enough to permit all of the activities that are reasonably anticipated, but still remain consistent with any restrictions provided in the labor agreement. It may be appropriate for the trust to have a "catch all" provision, permitting "any proper and legal activity that may benefit the industry as a whole." Periodic review should be made to determine if all programs sponsored by the fund fall within the scope and purposes of the trust agreement, as well as any limitations set forth in the labor agreement.

b. Selection of Trustees.

The selection of trustees may be accomplished either by appointment by the local Chapter, or by an election whereby all contributors, including non-members of the Association, make the selection. It may be preferable to allow all contributors to participate in the selection, since experience indicates that this may lead to non-members becoming sufficiently interested in industry affairs to eventually become Chapter members.

It is also important to understand that if the Association controls the selection of all of the trustees, it may be required to file financial statements that are consolidated with those of the Industry Fund. (This issue is discussed in greater detail under VI, Consolidation of Financial Statements.)

c. Eligibility to Serve as Trustee.

It is appropriate to limit eligibility to those with a genuine stake in the industry, such as owners or officers of contributing contractors. Because of Section 302, it is appropriate to provide that agents, officers, and active members of the SMWIA area ineligible to serve as trustees.

d. Trustees Term of Office.

It is recommended that the term of office of the trustees be limited to a set number of years, rather than having a term that is indefinite in duration. Such an approach allows periodic review of trustee performance, together with the opportunity to change trustees. Their terms should be staggered to provide some continuity in the trustees. The agreement should also set forth the type of conduct that will justify the removal of trustees from office.

e. Contribution Changes.

The agreement should be drafted so that it is unnecessary to amend the trust document each time that the contribution rate is adjusted. The agreement may provide that contributions shall be in the amount determined by the trustees, to be consistent with the A-08-11 Standard Form of Union Agreement.

f. Trustees Duties and Powers.

The trust agreement should set out in detail the powers and duties of the trustees. This should include the power to receive and disburse contributions consistent with trust purposes, to enter into appropriate contracts, to collect past due contributions, to hold property, hire attorneys and consultants, to amend or modify the trust, and to make payments to other funds that have the same purposes.

g. Liability and Indemnification of Trustees and Administrators.

The trust agreement should specifically limit the personal liability of trustees and/or fund administrators to actions constituting gross or willful misconduct, and should require that the trust indemnify these individuals for liability due to actions not rising to that level of culpability. The trust may require that the trustee and/or administrator post a bond covering his or her performance.

h. Collection of Past Due Contributions.

The trust agreement should specify when contributions are considered delinquent, and should provide that employers will be liable for the costs of collection, including reasonable attorney's fees, with regard to delinquent payments to the trust fund. It may also provide for late penalties and interest.

i. Modification or Termination.

The trust agreement should provide a mechanism for modifying or terminating the trust. As discussed below, the union need not and should not be a party to the modification process. Just because an industry fund is the beneficiary of a provision in the collective bargaining agreement does not mean that the union must also be party to the trust agreement.

j. Disposition of Funds on Termination.

The trust agreement should contain a provision regarding the disposition of trust funds in the event the trust is terminated. The fund should be allowed to continue to apply the monies for the purposes specified in the trust agreement, or transfer the funds to another tax exempt fund with like purposes, rather than repay contributing employers. Repaying contributing contractors can create serious tax issues while it is being terminated.

k. Parties to the Agreement.

The agreement should be entered into and executed by the Trustees of the Industry Fund, or the trustees and the Chapter. Again, the union need not and should not be made a party to the trust agreement.

2. Model Trust Agreement.

A suggested industry fund trust agreement is attached as an example of the type of document that may be used to establish an industry fund at the local level. Due to the specific requirements of state trust law, it is recommended

that the advice of local counsel be sought in developing the actual trust agreement.

E. ADMINISTRATIVE SERVICE AGREEMENT

1. Purpose.

The industry fund may be called on by the union to demonstrate that contributions are expended only for appropriate purposes. The fund will be in a much better position to do so if certain formalities are observed that will leave a paper trail, demonstrating that industry fund monies have been used appropriately.

For that reason, it is important that the industry fund enter into a written agreement with the Association, specifying the activities that the trust is requesting the Association to conduct.

The agreement should require periodic reports from the Association, demonstrating how industry fund contributions have been expended, and should require that appropriate financial information be shared with the fund.

2. Administrative Service Fee.

It is entirely appropriate for the Association to receive a fee, usually in the amount of ten to fifteen percent of the overall funds transmitted to the Association, as compensation for conducting these services. This allows the Association to build up reserves, which is preferable to the situation where the industry fund itself has reserves. For a variety of reasons, it is not recommended that the administrative service fee be reflected as a separate line item on financial statements. Rather, it should be factored in while determining the cost of activities performed for the fund. If the industry fund contracts for labor relations services that will require the Association to expend $100,000 annually, it is appropriate to price those services at $115,000, for example, with the Association spending $100,000 to conduct those activities, and retaining the unused $15,000 as an administrative service fee.

3. Sample Agreement.

A sample Administrative Service Agreement has been attached for use by local Associations and industry funds.

F. CONTINUATION OF SERVICE AGREEMENT

1. Purpose.

As noted, an industry fund is a desirable means of providing continuous financial support for the Association. However, there have been recent

instances where at contract expiration, strikes have occurred, or, the union has refused to agree to a new agreement that includes contributions to the industry fund. This can present a serious challenge to the Association if appropriate safeguards have not been taken.

A "Continuation of Service Agreement" is another type of legally enforceable agreement, whereby contractors agree to provide continued financial support to the Association anytime that industry fund contributions have been interrupted.

2. Format.

A Continuation of Service Agreement is a contract, in which a contractor agrees to pay the Association the same cents per hour contribution that it would have paid to the industry fund. The agreement should require such payments to be made anytime that payments to the industry fund have been interrupted. It should provide that the obligation to make such payments will be enforceable for a specified period of time, with an automatic renewal provision.

3. Effectiveness.

Such agreements have allowed several Chapters to function effectively, despite the elimination of the local industry fund.

To be effective, it is essential that such agreements be in place, prior to any serious threat to the industry fund. That, in itself, may deter the union from seriously challenging the industry fund.

4. Sample Agreement.

A sample Continuation of Service Agreement has been attached to these materials.

G. BYLAW PROVISION PROVIDING FOR CONTINUED FINANCIAL SUPPORT.

As noted, in a 9(a) bargaining relationship, an industry fund's status as a permissive item of negotiations gives the union significant control over that source of funding for Association activities. Even in an 8(f) context, the union's leverage is substantial. For these reasons, the Association should consider adoption of the attached bylaw (Attachment D), which provides for continued financial support in the event that the industry fund is eliminated from the collective bargaining agreement. The advantage of this approach is that the Association's bylaws are not subject to the bargaining process.

V. TRUSTEE LIABILITY

A. GENERALLY

Trustees are fiduciaries, and therefore, are required to administer the trust for the benefit of the trust's beneficiaries. With respect to industry fund trusts, this means that trustees must act solely in the best interests of the industry as a whole, and may not seek to benefit themselves or individual members of the industry to the detriment of others. A breach of this duty, either by action or inaction, gives rise to a cause of action against the trustee by the trust's beneficiaries.

Furthermore, in at least one case, a union was allowed to bring an action against an industry fund and its individual trustees, alleging that certain activities of the fund were improper and inconsistent with the underlying trust agreement, and that they were liable for allowing those improper activities to occur.

B. PARTICULAR DUTIES OF TRUSTEES

While provisions of the trust agreement will provide specific guidance as to the trustee's duties, the following are some generally recognized duties required of trustees.

1. Collect, hold, and manage the assets of the trust estate, and guard against any diminution in value of those assets.

2. Oversee and direct the actions of the fund administrator.

3. Develop and implement policies and procedures for the collection of delinquent contributions.

4. Refrain from any self-dealing, or actions intended to benefit particular individuals.

5. Refrain from undertaking any activity which is not within the stated purposes of the trust, or which may result in the loss of tax exempt status.

6. Develop and maintain records sufficient to establish the tax exempt nature of the fund.

C. DUTIES OF THE INDUSTRY FUND/ASSOCIATION IN APPOINTING TRUSTEES

1. A March 2008 court case delineates the responsibilities of an employer association/industry fund when it appoints trustees to a plan that it sponsors. A local NECA Chapter in Connecticut, together with the Chapter Executive, were sued by the local union for breaches of fiduciary duty with respect to the Chapter's appointment of trustees, and with respect to the activities of the

Chapter Executive as a trustee. Although this case arose in the context of a jointly trusteed benefit plan, its principles are applicable to an industry fund as well.

The basic principles affirmed in the case were as follows:

- By reason of its having the authority to appoint trustees to the plan, the Association is a fiduciary with respect to the role of making such appointments.

- The association has a duty to screen those individuals that it is about to appoint as trustees to a trust fund.

- The association has the duty to monitor the activities of those individuals that it appoints as trustees to the trust fund.

- The association and the trustees that it appoints have to be aware of, and comply with, the trust agreement and all plan documents regarding such appointments.

It is recommended that an association that appoints trustees do an annual survey of those that it appoints. A sample copy of a survey is contained in this outline as Attachment K.

VI. CONSOLIDATION OF FINANCIAL STATEMENTS

A. BACKGROUND

In 1994, the American Institute of Certified Public Accountants issued Statement of Position ("SOP") 94-3, concerning consolidation of financial statements for not-for-profit organizations.

This SOP is a concern to SMACNA Chapters, because in some circumstances, Chapters and industry funds must file consolidated financials. Obviously, this requirement might result in the disclosure of more information than what is desirable, in terms of Association resources and expenditures.

1. Standards.

   a. Under the SOP, consolidation is required if all of the following are present.

      (i) An economic interest of one entity in the other. An economic interest is present where one entity holds or utilizes significant resources that must be used for the purposes of the other, or, one entity is responsible for the liabilities of the other entity.

(ii) Control of one entity by the other. Control is defined as the direct or indirect ability to determine the direction of management and policies through ownership, contract, or otherwise.

(iii) Control over a majority of trustee appointments of one entity by the other.

2. Practical Issues.

a. In many instances, some of these elements will necessarily be present by virtue of how the Chapter and Industry Fund cooperate to provide services. Whether consolidation is required may turn on the level of control exercised in selecting industry fund trustees.

b. However, satisfying these standards by relinquishing Chapter control over the selection of trustees may give rise to serious concerns over the possibility that other organizations may dominate the industry fund.

Careful consideration should be given to these competing interests in determining how to respond to SOP 94-3.

VII. CERTAIN PAYMENTS TO BE DISCLOSED - LM-10 REPORTS

A. LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

1. Overview - This law requires that employers making certain payments or expenditures to a union official file an annual report (LM-10 Employer Report) on an annual basis. Occasionally, issues arise regarding compliance with this requirement when the Association or Industry Fund expends money for certain cooperative activities between labor and management.

a. Filing requirements - The LM-10 report must be filed with the Office of Labor Management Standards, detailing all "payments or expenditures" made to union representatives during the fiscal year.

b. Employer defined

(i) Any "employer" engaged in an industry affecting commerce…

(a) which is an employer within the meaning of any law of the U.S. relating to the employment of any employees; or

(b) any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee;

(c) but, does not include the U.S. or any wholly-owned government corporation.

(ii) …if it engages in certain financial transactions or arrangements with a union, union officer or employee or representative, labor relations consultant, or others.

c. In 2005, the DOL expressly expanded the definition of "employer" to include vendors and service providers to Taft Harley trusts (e.g., investment managers, accountants, lawyers, consultants). The DOL contends that this is not a change in LM-10 reporting requirements. But, it was never anticipated that the DOL would apply the LMRDA in this manner.

d. Currently Taft Hartley Trust Funds are not required to file LM-10 reports for trust fund expenses paid to union trustees. However, service providers to trust funds (such as investment managers or attorneys who pay for something on behalf of a union trustee) are required to file such a report if the amount paid is $250 or more in a year.

e. Not every payment from every employer to any union officer must be reported. Generally, payments from only the following employers are reportable:

(i) An employer whose employees the recipient's union represents or is actively seeking to represent;

(ii) An employer, a substantial part of whose business consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with an employer whose employees the recipient's union represents or is actively seeking to represent;

(iii) An employer that buys from, or sells or leases directly or indirectly to, or otherwise deals with the recipient's union;

(iv) An employer that buys from, or sells or leases directly or indirectly to, or otherwise deals with a trust in which the recipient's union is interested;

(v) An employer in active and direct competition with an employer described in the preceding four subsections;

f. Payments to a union official from an employer actively seeking to establish a business relationship with the official's union, or an affiliated pension plan, would be reportable;

g. A law firm that is on, or actively vying to be included on, a union's list of designated legal counsel, and thus be recommended by the union to the union members, would have to report certain payments to a union official.

h. What must be disclosed - the law requires that any employer that engaged in such a transaction file a report, showing in detail:

(i) The date of the payment;

(ii) The amount of the transaction;

(iii) The name, address and position of the person to whom it was made; and

(iv) A full explanation of the circumstances of the payment.

i. Who must sign the report - The law requires it to be signed by president and treasurer of the reporting entity.

j. Time of filing - The report must be filed within 90 days after the close of the reporting entity's fiscal year.

k. Exclusions for certain payments - The law provides several categories of payments that need not be reported:

(i) Payments made pursuant to a custom or practice under a collective bargaining agreement;

(ii) Payments made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization;

(iii) "Sporadic" or "occasional" gifts, gratuities, or favors of insubstantial value, given under circumstances unrelated to the recipient's status in a labor organization.

(iv) The law does not require disclosure of "money or other things of value paid by an employer to a plant, area or industry wide labor management committee," established pursuant to the Labor Management Cooperation Act of 1978.

B. INDUSTRY FUNDS AND LM-10s

Industry funds are required to file an LM-10 report for any payment made to or on behalf of a union, union officer, agent or other representative, shop steward or employee of the union.

C. WHAT MUST BE REPORTED ON THE LM-10?

1. Any payment, direct or indirect, of money or other thing of value, which may include:

   a. A promise or agreement to pay something;
   b. Loans;
   c. Reimbursed expenses.
   d. Union sponsored charitable events.

   Payments to a separate tax-exempt organization are not reportable, but payments to the union are, even if they ultimately go to the exempt organization.

2. …that is made from an "employer" to a

   a. Union;
   b. Union officer;
   c. Agent or other union representative;
   d. Shop steward;
   e. Employee of the Union;

   …or to a spouse or minor child of any of the above listed individuals.

3. Payments to a union appointed trustee who is not a union officer or employee, even though these individuals do not have to file an LM-30.

4. "De minimis" exclusion for the LM-10:

   To be eligible for the de minimis exemption, all of the following criteria must be met:

   a. Under $250.00
   b. Payments must be occasional and sporadic;
   c. Of insubstantial value; and
   d. Given under circumstances and terms unrelated to recipient's status in a union.

   If the aggregate value of multiple gifts or loans from a single employer to a single union or union official exceeds $250 in a fiscal year, the transactions will no longer be treated as de minimis.

Note: Numerous small gratuities ("infrequent" and/or "sporadic") are not reportable; such as coffee and donuts at bi-weekly meetings.

5. Parties, receptions, and widely attended gatherings.

a. This exception covers any event where;

(i) A large number of persons will attend;

(ii) Both union officials, and a substantial number of people unrelated to the union, attend;

(iii) Union officials are treated the same as other invitees regarding invitations;

(iv) Union officials are treated the same as other invitees at the reception.

Any event that meets these requirements may take advantage of the recordkeeping and reporting exemptions, subject to the following per person cost tests:

b. If the employer spends $20 or less per attendee for all widely attended events held during the year, or

c. If the employer spends less than $125 for <u>one</u> or <u>two</u> widely attended events held during the year.

A recordkeeping and reporting exemption exists for all widely attended gatherings where the employer spends $20 or less per attendee. Events meeting this criteria do not require recordkeeping and do not require reporting on Forms LM-10 or LM-30.

However, if the employer spends more than $20 for an event, and the $125 exemption doesn't apply, the employer must identify and keep records of each attendee who is a union official. In determining the annual LM-10 filing requirement, the employer who does not exceed the de minimis amount for each attendee for a year is not required to file.

Where the employer provides only one or two widely attended gatherings that costs more than $20 per attendee but less than $125 per attendee per event, the employer may take advantage of a recordkeeping and reporting exemption. Thus, no LM-10 filing obligation exists. The number of widely attended gatherings that cost $20 or less during the reporting year does not change the LM-10 reporting obligation.

More than two widely attended gatherings in any year for the same union officials that costs between $20 and $125 per person per event will trigger LM-10 reporting and recordkeeping requirements for all widely attended gatherings held during the year, involving those same union officials with a cost in excess of $20 per attendee.

6. Employers who are uncertain as to the number of widely attended gatherings that will be held during the year, or the likely attendees of these gatherings, should consider maintaining records in the event the exemption is not available because of the number of events held.

7. Form LM-10 and instructions are on the DOL's website.

LM-10 blank form and instructions can be accessed at:

http://www.dol.gov/esa/olms/regs/compliance/GPEA_Forms/blanklmforms.htm

See attached chart ("Attachment A") for a comparison between LM-10s and LM-30s.

VIII. SARBANES-OXLEY

A. Overview

1. In 2002, Congress passed the Sarbanes-Oxley Act in response to various corporate accountability scandals, in which corporate boards failed to protect the interests of its shareholders. A number of corporate officers were accused of deceit in preparation of financial statements, and independent auditors were accused of not preparing accurate financial statements. The Sarbanes-Oxley Act addresses corporate governance, financial disclosure and the practice of public accounting for for-profit corporations. With two limited exceptions, it does not apply to non-profit organizations.

The two exceptions that impact chapters and industry funds are:

a. The Whistleblower provisions of the law require that non-profits, as well as for-profits, avoid retaliation against individuals bringing certain ethical or legal issues to light. Consistently non-profit boards of directors should create a process through which any employee, volunteer, or other person with knowledge of improper actions may bring those concerns to the attention of the Board, outside the normal chain of command. (Attachment G is a Sample Policy)

b. Document Retention - Non-profits, as wells as for-profits, are forbidden from destroying records which could be of use in any investigation once the non-profit becomes aware that an investigation

is contemplated, or underway. (Attachment H is a Sample Document Retention Policy)

Such policies must be adopted for both the Industry Fund, and the Association.

IX. CONFLICTS OF INTEREST

A. IRS Form 990, (which Associations and Industry Funds are required to file each year) was revised in 2006, and then again, in 2008. The revisions are aimed at additional disclosure, financial accountability and conflicts of interest. Initially, in 2006, the Form inquired as to whether or not the organization had adopted a conflict of interest policy.

Most state legislation dealing with non-profit corporations contains some provisions addressing the issue of director conflicts of interest. On a national level, various organizations that either represent, or advise non-profit organizations, have recommended that all non-profits adopt a conflict of interest policy. Attachments I and J provide a Sample Conflicts of Interest Policy and a Sample Disclosure Statement. Such policies should be adopted for both the Industry Fund, and the Association.

ATTACHMENT A

WHAT ARE THE DIFFERENCES BETWEEN THE LM-10 AND THE LM-30?

	LM-30	LM-10
Payment to a labor organization	No	Yes
Payments to clerical or custodial employees	No	Yes
Payments to union spouses and minor children	Yes	No
Payments to unpaid union representatives	No	Yes
Method for determining the value associated with a party attended by a union officer	Consumption	Cost
Who is the filer?	Individual	Company
Method for determining the value of a meal or gift provided by a vendor	Estimate	Actual

ATTACHMENT B

AGREEMENT AND DECLARATION OF TRUST
OF
_____SHEET METAL INDUSTRY FUND

THIS AGREEMENT between (Name of Association) and (Names of Trustees), (hereinafter referred to as "Trustees"), is effective the 1st day of _____ 20____. (NOTE: The Agreement need not be between the Association and the Trustees, it may also be between the individual trustees.)

WHEREAS, the parties to this agreement deem it desirable to establish an industry fund in the Sheet Metal Industry to promote programs which will increase the efficiency of the industry and benefit the public in the geographic area covered by this trust agreement; and

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions by which payments made by various employers to the _____Sheet Metal Industry Fund shall be held and administered.

I. DEFINITIONS

Section 1.1 - "Trust" or "Trust Fund" or "Fund" shall mean the _____ Sheet Metal Industry Fund.

Section 1.2 - "Association" means the SMACNA Chapter of _____, a not-for-profit corporation organized under the laws of _____.

Section 1.3 - "Employer" or "Employers" means any entity or entities that make a contribution to the Fund, pursuant to a collective bargaining agreement, or other written agreement providing for payments to the Fund.

Section 1.4 - "Contributions" means payments by the Employers to the Fund pursuant to a written agreement providing for payments to the Fund. The amount of the contribution shall be determined by the trustees.

II. ESTABLISHMENT, NAME, PURPOSES AND POWERS OF TRUSTEES

There is hereby established a Trust Fund to be known as the _____ Sheet Metal Industry Fund. The Trust Fund is established for the purpose of benefiting the Sheet Metal Industry within the geographic area covered by the collective bargaining agreements providing for contributions to this Trust Fund, and for the following purposes:

(a) To establish, conduct or participate in such educational programs for employers and employees in the sheet metal and air conditioning industry, and the general public, with respect to techniques, ideas and methods, which will improve the industry and increase the contribution that the industry can make to the community;

(b) To formulate programs which will promote harmony between the employers and the employees in the industry so as to avoid the possibility of work stoppages and labor disputes;

(c) To study and institute programs which will make it possible for the industry to be of greater service to the public;

(d) To engage in such public relations, education and advertising programs as are necessary to develop and increase consumer demand so as to maintain maximum job opportunities and steady business activity;

(e) To establish standards within the local industry and improve such standards whenever necessary to keep pace with new developments in the industry, including but not limited to, the development of codes on a local, state and national basis.

(f) To negotiate the terms to be incorporated in the local collective bargaining agreements and addenda thereto; and to facilitate the processing of grievances.

(g) To engage in any proper and legal activity which will increase the efficiency of the local industry and foster good public relations.

(h) To determine the hourly contribution to be made to the Fund by employers.

(i) To pay into another industry fund within the Sheet Metal Industry, provided such other industry fund has received a determination letter from the Internal Revenue Service that it is exempt from taxation pursuant to Section 501(c)(6) of the Internal Revenue Code, and provided further that its purposes and the purpose for which it will use such monies are consistent with the purposes of this Fund.

The foregoing should be considered powers of the Trustees as well as purposes of the Trust Fund and the Trustees are hereby authorized to take any action to accomplish such purposes.

III. GENERAL ADMINISTRATION

Section 3.1 - Trustees - The general administration of the Trust Fund is vested in a board of three trustees and their successors. One trustee will be a current member of the Board of Directors of the Association; the other two trustees may not be current members of the Board of Directors of the Association. A trustee, once elected, who subsequently becomes a member of the Board of Directors of the Association, must resign as a trustee if there would be more than one trustee who is a current member of the Board of Directors of the Association.

Section 3.2 - Eligibility - Any individual who is an owner, partner, or corporate officer of a contributing employer will be eligible to be elected as a Trustee. No trustee shall be an officer, agent, employee, active member, or representative of Sheet Metal, Air, Rail and Transportation Union or any of its local unions.

Section 3.3 - Fiscal Year - The fiscal year of the Trust Fund shall be the calendar year.

IV. ORGANIZATION OF TRUSTEES

Section 4.1 - Election of Trustees - A nominating committee of three individuals shall select qualified candidates for the office of trustee, in conformity with the provisions of this trust agreement. The nominating committee shall consist of one individual appointed by the Chairman of the Board of Trustees, and two individuals appointed by the President of the Association. Employers may nominate additional candidates for the office of trustee at an annual meeting of the employers called for that purpose.

Trustees shall be elected from those candidates nominated at the annual meeting of the employers. At least fourteen (14) days' notice in writing of such annual meeting shall be given to each employer. Each employer may cast one vote in person for each trustee to be elected, such voting not to be cumulative. The candidates receiving the greatest number of votes cast shall be elected trustees. Trustees must execute a written acceptance of this Trust.

Section 4.2 - Term of Office - Trustees shall be elected for terms of three (3) years to replace those trustees whose term of office then expire, except that their initial terms shall be as follows. The term of any trustee shall commence on the day of his election. The term of _____ as trustee shall expire when his successor is elected at the _____ annual meeting of the employers as provided for in section 4.1. The term of _____ as trustee shall expire when his successor is elected at the _____ annual meeting of the employers as provided for in section 4.1. The term of _____ as trustee shall expire when his successor is elected at the _____ annual meeting of the employers as provided for in section 4.1. Trustees may succeed themselves.

Section 4.3 - Resignation, Death, Incapacity or Removal - A trustee may resign by giving thirty (30) days' notice in writing to the chairman and all trustees. In the event of resignation, death or permanent incapacity of any trustee, the President of the Association, subject to the approval of its Board of Directors, shall appoint a replacement to serve the remainder of said trustee's term. Any trustee may be removed by a majority vote of the employers at an annual or special meeting of employers called for that purpose. At least fourteen (14) days' notice in writing of any such special meeting shall be given to each employer.

Section 4.4 - Officers - At the annual meeting of the trustees, they shall elect from among them a chairman and secretary to serve until the next annual meeting of the trustees. The chairman and secretary will commence their duties on the day of their election.

The chairman and secretary shall carry out the duties and responsibilities incidental to these offices. In addition, the secretary shall serve as chairman pro-tem in the absence of the chairman.

The secretary or his designee shall keep an accurate record of the proceedings of all meetings of the trustees and of any actions taken without a meeting. Minutes of all meetings and record of the actions taken shall be transcribed and retained by the trustees.

Section 4.5 - Meetings - The trustees shall meet at least once annually at such time as they may determine. In addition special meetings may be called by the chairman or any two trustees. At least five (5) days' written notice designating a time and place of the annual or any special

meeting shall be given to all trustees. Notice of any meeting is waived by any trustee who attends such meeting. Meetings may be held by telephone conference call.

Section 4.6 - Quorum - A quorum of any meeting shall consist of two trustees.

Section 4.7 - Voting - All decisions of the trustees shall be by majority vote.

Section 4.8 - Action without a Meeting - The trustees may take action of any kind without a meeting, provided that such action is represented by an instrument in writing signed by all of the trustees.

Section 4.9 - Office of the Trustees - The trustees shall establish or designate an office through which the administration of the Trust will be handled; such office shall maintain records, handle correspondence and other administrative duties of the trustees.

V. POWERS AND DUTIES OF TRUSTEES

Section 5.1 - Receipt of Contributions – Unless the hourly contribution to the Trust Fund is specified in the applicable collective bargaining agreement, the trustees shall have full authority to determine the hourly contribution amount required of employers, and to adjust such amount from time to time, so that sufficient resources are available to conduct the activities set forth in Article II. Subject to the provisions of Section 6.1, the trustees shall receive all contributions paid to the Trust Fund by the employers. All contributions so received together with any income therefrom shall be held, managed, and administered in trust pursuant to the terms of this agreement.

Section 5.2 - Disbursements - The trustees shall pay all expenses incurred in the establishment, maintenance, or participation in any of the programs initiated or authorized under Article II of this agreement. At the discretion of the trustees, payments may be made to finance and assist programs established by other organizations, except labor organizations, where the purposes or objectives of such programs are basically the same as those enumerated in Article II. Provided, however, that no payment to finance or assist a program established by any other organization shall be made unless such organization is tax-exempt under Section 501(c)(6) of the Internal Revenue Code of 1954, and no payment shall be made which violates the National Labor Relations Act.

Section 5.3 - Records - The trustees shall keep a record of all their proceedings and acts and shall keep all such books of account, records and other data as may be necessary for proper administration of the Trust Fund. An annual audit or review shall be conducted by a public accountant selected by the trustees. The results of such audit or review shall be made available at the principal office of the Trust for inspection by any interested party, and copies of such audit or review shall be furnished to the Association.

Section 5.4 - Investment - The trustees may invest that portion of the Trust Fund not currently needed for the purposes enumerated in Article II in such securities or such property, real or personal, as the trustees shall deem advisable, including, but not limited to, common or preferred stocks, bonds, and mortgages, and other evidences of indebtedness or ownership. The trustees are authorized in their discretion, to delegate all or any part of the investment powers granted to them by this agreement to any corporation authorized to act as a corporate trustee in any state of the

United States. If such a delegation is made, the trustees may execute an appropriate trust agreement with the corporate fiduciary.

Section 5.5 - Miscellaneous Powers - In addition to those powers conferred elsewhere in this agreement, or by law, the trustees shall have the following powers:

(a) **Purchase of Property**. To purchase, or subscribe for, any security or other property and to retain the same in trust. All securities held in trust shall be deposited for safekeeping in a bank or trust company authorized to transact business in the state of _____.

(b) **Sale, Exchange, Conveyance and Transfer of Property**. To sell, exchange, convey, transfer or otherwise dispose of any securities or other property held by it, by private contract or at public auction. No person dealing with the trustees shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(c) **Exercise Owner's Right**. To vote upon any bonds or other securities; to give general or special proxies or powers of attorney with or without power of substitutions; to exercise any conversion privileges, subscription rights, or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise to participate in corporate reorganizations or other changes affecting corporate security, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held as part of the Fund.

(d) **Registration of Investments**. To cause the securities or other property compromising the Trust Fund or any part thereof to be registered in the name of the Trust or in the name of its nominee with or without disclosure that the same are held in a fiduciary capacity or to take and keep the same unregistered and to retain them or any part of them in such manner that they will pass by delivery; provided, however, that such securities shall always be shown on the books and records of the trustee to be a part of the Trust Fund.

(e) **Retention of Cash**. To keep such portion of the Trust Fund in cash or cash balance as may appear reasonably necessary to meet anticipated cash requirements.

(f) **Employment of Agents and Counsel**. To employ agents, administrators, accountants, attorneys, assistants, and clerical employees selected by the trustees and deemed necessary for the proper administration of the Trust and to rely and act upon information and advice furnished by such agents, experts, and counsel in their respective fields.

(g) **Expenses of Administration**. To pay from the Trust Fund all reasonable fees, expenses, charges, taxes, and salaries connected with the administration of the Trust Fund.

(h) **Retention of Property Acquired**. To accept and retain for such time as they may deem advisable, any securities or other property received or acquired by them as trustees hereunder, whether or not such securities or other property would normally be purchased as investments.

(i) **Execution of Instruments**. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted.

(j) **Power to Sue**. To commence or defend any lawsuit or other proceeding on behalf of the Trust. The cost and expenses, including legal fees, of any such lawsuit or proceeding shall be paid from the Trust Fund as an expense of administration. In appropriate cases, the payment of such costs and expenses may be subject to reimbursement by the opposing party.

(k) **Rules and Regulations**. To establish such rules and regulations relating to the administration of the Trust Fund which the trustees deem necessary and consistent with the terms of this agreement.

(l) **General Power**. To do anything and to perform any act reasonably necessary to the performance of any of their duties under the terms of this instrument.

(m) **Power of Attorney**. To make application to the appropriate federal and state government agencies to have this Trust declared exempt from any federal or state income taxes. In carrying out the power granted herein, the trustees are authorized to execute a power of attorney to such persons and in such form as they deem necessary.

(n) **Appointment of Members of Nominating Committee**. To appoint members of a nominating committee for the purpose of selecting candidates for the office of trustee.

VI. CONTRIBUTIONS

Section 6.1 - Basis - Payments required to be made under the provisions of any collective bargaining agreement or other written agreement requiring contributions to the Trust Fund shall be in such amount per hour as established by the trustees. All payments shall be paid to the trustees at such times as the trustees direct. Provided, that if the collective bargaining agreement or other agreement specifies the hourly contribution to the Trust Fund, the trustees may accept contributions to the Fund in the amount specified in such agreement during its term.

Section 6.2 - Enforcement - The failure of any employer to pay the required amounts within thirty (30) days after the date due shall be a violation of the employer's obligations hereunder. The trustees may take whatever action they deem necessary, including legal action, to enforce delinquent payment. An employer in default for thirty (30) days must pay all expenses of collection incurred by the trustees, including attorneys' fees, and expenses incurred examining wage and payroll books and records. Failure to make the payments when required shall be a violation of this agreement as well as a violation of the collective bargaining agreement. The

remedies for any such breach as provided herein are in addition to and not in lieu of any remedy contained in the collective bargaining agreement for breach of such agreement.

Section 6.3 - Furnishing of Records - In the event there is reasonable cause to believe any employer is not paying the proper amount, the trustees may require such employer to furnish or make available for examination such wage or payroll books and records as are necessary to determine whether the amount paid is correct. The said records may be examined by the trustees or their authorized representative. Demand for such records shall be made upon the employer in writing and such demand shall specify the period of time during which the alleged discrepancy in payment occurred.

In lieu of submitting the foregoing records, an employer may furnish the trustees with a statement from a certified public accountant certifying the employer's individual employees covered by this agreement by name, the number of hours worked by each employee, the amount paid to the Trust Fund for each employee and the amount required to be paid by the employer, for the period of time specified in the trustees' demand for records, provided this shall not limit the right of the trustees to make further examination of such wage and payroll books and records in the event the trustees deem such examination necessary after reviewing certified statements submitted on behalf of the employer.

VII. LIABILITY AND BONDING

Section 7.1 - Limitation of Liability - No trustee shall be liable for any action or failure to act, excepting only liability for his own gross negligence or willful misconduct.

Section 7.2 - Bonding - The trustees shall be bonded in such amounts and in such manner as the trustees may determine, but in no event shall the bond be less than $50,000, or 10% of the funds handled (consisting of annual contributions plus any reserves of the Fund), whichever is greater.

VIII. AMENDMENTS AND TERMINATION

Section 8.1 - Amendments - This agreement may be amended at any time by written agreement between the Association and the trustees. Copies of such amendment shall be delivered to all trustees. (Note: this provision assumes that the trust agreement was entered into by the Association and the Trustees.)

Section 8.2 - Termination - This Trust shall remain in existence so long as contributions are received by it from the sources described herein, except that if in the opinion of the Association and the trustees, the amount of such contributions so received shall be inadequate to accomplish the purposes for which the Trust is created, it may be terminated by mutual consent of the Association and the trustees. In the event the Trust is terminated, the trustees shall proceed to wind up the affairs of the Trust, pay all outstanding obligations, and pay the cost of administration. Any remaining assets shall be applied for the purposes described in Section II of this agreement. The trustees may make application, in the manner provided by law, to any court having jurisdiction of this Trust for instructions as to the manner and means of winding up the Trust, distributing the

assets thereof and for approval of any and all acts in connection therewith. (Note: This provision assumes that the trust agreement was entered into by the Association and the Trustees.)

IX. MISCELLANEOUS

Section 9.1 - Severability - In the event that any portion of this agreement shall be held to be illegal or invalid, such illegal or invalid provision shall be fully severable and shall not affect the remaining provisions of this agreement.

Section 9.2 - Law Governing - Subject to any laws of the United States which may be applicable, all questions relating to the construction, validity, or administration of this agreement shall be determined in accordance with the laws of the State of _____.

WHEREFORE, this Agreement has been executed to be effective as of the day first above written.

_____
(Trustee)

_____
(Trustee)

_____
(Trustee)

ATTACHMENT C
SUGGESTED
ADMINISTRATIVE SERVICE AGREEMENT
between

LOCAL CONTRACTOR ASSOCIATIONS AND LOCAL INDUSTRY FUNDS

The _____ Association, hereinafter referred to as the "association" and the _____ industry fund, hereinafter referred to as the "industry fund" agree that beginning _____, 20___, the association is by this agreement designated by the industry fund to be the administrative agency for the industry fund. This Agreement replaces and acts as a cancellation of any previous Administrative Service Agreement of the parties.

The association will furnish the following administration services to the industry fund: services of the association's staff to serve as the agent-administrator of the trustees of the industry fund; administrative, secretarial and clerical personnel as required; office space and office furniture, fixtures, equipment, supplies, forms, printed materials as may be required; postage, communication services, and such other services as may be required from time to time as being incident to the proper administration of the fund.

Further, the association will develop and administer programs consistent with the purposes of the industry fund trust. These programs will include educational, labor relations, public relations, advertising, industry standards, public service and such others as are consistent with the purposes of the industry fund. The cost of such programs are to be submitted to the trustees for approval.

The association will prepare and submit a budget annually to the industry fund trustees or at such other times as may be deemed appropriate by the trustees. Funds approved by the Trustees for programming will be transferred to the general funds of the association in amounts that will properly fund industry fund trustee approved activities. Funds which are not fully utilized during the fiscal year will be carried forward and applied thereafter to the programs established under this agreement. The association will provide the industry fund trustees with a financial accounting quarterly of industry fund monies received and expended. In the event this agreement is terminated, the funds transferred to the association which have not been utilized will not be subject to refund but will be fully applied thereafter in carrying forward approved programs.

It is contemplated that the members of the association with the support of its staff, along with professional consultants retained from time to time, shall develop and administer approved programs on behalf of the industry and the trust. It is acknowledged that association members serve without compensation for the benefit of the Sheet Metal Industry and, in doing so, contribute a bank of knowledge and expertise not otherwise available to the industry. In consideration of the services to be performed, the industry fund agrees to pay the association a service charge of _____ percent of the approved annual budget.

The fees to be paid to the association for the services required by this agreement shall be considered as part of the approved program and included in the transfer of funds pursuant to the budget submitted.

This agreement shall become effective on the undersigned date and shall continue in effect until the end of the fiscal year and from year to year thereafter, unless written notice of termination is given by either party ninety (90) days prior to the end of this fiscal year or any fiscal year thereafter.

By _____ By _____
(Local Association) (Local Industry Fund)

Dated: _____, 20____

ATTACHMENT D

SUGGESTED ASSOCIATION BYLAW PROVISION
ARTICLE ____
OBLIGATION OF MEMBERS TO PROVIDE CONTINUED FINANCIAL SUPPORT

AUTOMATIC DUES INCREASE

(1) The activities of the Association are supported by membership dues, as well as local and national industry fund contributions made in accordance with the provisions of collective bargaining agreements that have been negotiated pursuant to Article (*insert appropriate bylaw reference*). It is essential that the Association receives continuous financial support even though the obligation to make Industry Fund contributions is interrupted as a result of a labor dispute, including the elimination of such obligation at the insistence of the Union. In the event that the contractual obligation to contribute to the local industry fund, or the Industry Fund of the United States (IFUS), is eliminated, either directly or indirectly, from any such collective bargaining agreement, a member's dues shall automatically be increased by the hourly contribution amount that is equivalent to what the member would pay as industry fund contributions under the terms of such agreement, if such a contractual obligation had remained in effect. Such increased dues shall remain in effect until such increased dues are suspended or modified by action of the Board, and they shall be transmitted to the Association, accompanied by appropriate reporting forms, at such times and in such manner as may be specified by the Board. Any portion of such dues resulting from the elimination of the contractual obligation to contribute to the Industry Fund of the United States shall be remitted to IFUS by the Association on or before the 20th day of the succeeding month, in the manner specified by the trustees of IFUS.

SURVIVAL OF CERTAIN FINANCIAL OBLIGATIONS BEYOND RESIGNATION OF MEMBERSHIP

(2) A past member's obligation to pay dues referenced in (1) shall continue during the term of any such collective bargaining agreement actually in effect on the date that the member tenders its resignation from the Association, and, during the term of any subsequent collective bargaining agreement, contract modification, or extension that is being negotiated by the Association as of the date that such resignation is tendered. This obligation of the member is fixed as of the date that the resignation is tendered, and it shall be discharged by making the dues contributions referenced in (1) through the termination date of the collective agreement, contract modification, or extension that is negotiated by the Association having the latest expiration date.

(3) In the event that there is reasonable cause to believe that a member is not paying the proper amount, the Association may require such employer to make available for examination such records as may be necessary to determine whether the amount paid is correct. The records may be examined by a representative authorized by the trustees. In the event that the Association brings any action to enforce the obligations of this Article, including legal

proceedings in any court, the Association shall be entitled to recover all of its costs, expenses, and attorney's fees in the matter. These remedies shall be in addition to any that may be set forth in the collective bargaining agreement, and the Association need not exhaust any remedies in the collective bargaining agreement prior to the commencement of any legal proceeding.

ATTACHMENT E

CONTINUATION OF SERVICE AGREEMENT

THIS AGREEMENT is entered into by and between the Sheet Metal and Air Conditioning Contractors' National Association, Inc. (hereinafter referred to as "SMACNA"), and the (Name of Local Association) (herein referred to as "Association") and _____, a contractor actively engaged in the Sheet Metal Industry (hereinafter referred to as "Contractor").

WHEREAS, the Contractor is directly and/or indirectly accruing benefits from services performed by SMACNA and (Name of Local Association), and

WHEREAS, the Contractor wishes to assure the continuation of programs to advance the Sheet Metal Industry, and

WHEREAS, Contractor now contributes monetarily to the advancement of the Sheet Metal Industry and wishes to continue making such contributions to the advancement of the Sheet Metal Industry.

NOW, THEREFORE, in consideration of the premises herein and in consideration for the mutual benefits to be received by the parties hereto, it is agreed as follows:

1. Contractor shall pay to the (Name of Local Association) an amount equivalent to the total contribution required by the trustees of the local industry fund and the industry fund of the United States for each hour worked by each employee covered under the Contractor's Collective Bargaining Agreement(s) with the Sheet Metal Workers International Association and/or the local union(s) thereof.

2. Contractor shall remit the contributions required by Paragraph 1 of this Agreement as directed by the Board of Directors of the Association. The Association agrees that from these contributions it shall remit to SMACNA an amount equivalent to the contribution required by the trustees of the Industry Fund of the United States.

3. This Agreement shall remain in full force and effect for a minimum period of three years from the date hereof. Thereafter, this Agreement shall continue for additional periods of one year each unless and until one of the parties shall provide notice of its intention to terminate this Agreement to the other two parties. Such notice must be in writing and deposited in the United States Mail at least ninety (90) days prior to the expiration date of this Agreement and at least ninety (90) days prior to the expiration date of any then current labor agreement between Contractor and SMWIA and/or the local union thereof.

4. This Agreement shall not alter or affect the contractor's present obligation, if any, to continue making contributions to the _____ Industry Fund and/or the SMACNA-IFUS pursuant to any existing labor agreement. The contributions to the associations as required by Paragraphs 1 and 2 of this Agreement shall be suspended during such time that the Contractor is obligated by any labor agreement with the Sheet

Metal Workers International Association/International Association of Sheet Metal, Air, Rail and Transportation Workers or local union thereof to make contributions to said industry fund(s); it being the purpose of this Agreement to assure the uninterrupted payment of such contributions even though the Contractor's obligation under any labor agreement to so contribute is terminated.

5. All contributions paid pursuant to this Agreement shall be utilized by the Board of Directors of _____(Name of Local Association)_____ and SMACNA in accordance with the purposes as provided in the Constitution and By-Laws of the said associations.

6. The Contractor shall receive financial reports from the Association and SMACNA disclosing how the monies have been used for the advancement of the industry.

7. Whenever the contribution requirements of Paragraphs 1 and 2 of this Agreement become effective, the Contractor shall, if not a member of the Association and/or SMACNA, automatically be entitled to become a member of both organizations with attendant rights and privileges and subject to applicable membership duties and responsibilities.

IN WITNESS WHEREOF, the local parties have signed this Agreement this _____ day of _____, 20____.

_____
Name of Local Association

By_____

_____
Name of Contractor

By_____

ATTACHMENT F

I. Financial and Tax Issues

I. Consolidated Financial Statements

In September of 1994, the American Institute of Certified Public Accountants (AICPA) issued Statement of Position 94-3, Reporting of Related Entities by Not-for-Profit Organizations. This statement, which is effective for fiscal years beginning after December 15, 1994, has led some accounting firms to conclude that the consolidation of accounts and activities of related not-for-profit organizations are required if the reporting organization has both (1) control of and (2) an economic interest in the other organization. If the relationship between the Chapter and the local Industry Fund supporting the Chapter meets these requirements, some accountants have advised that the accounts and activities of the Industry Fund would have to be consolidated with those of the chapter beginning with the fiscal year beginning after December 31, 1994. In order to determine whether consolidated financial statements are required, three elements must be considered:

(1) An economic interest by the Chapter in the local Industry Fund

(2) Control of the local Industry Fund by the Chapter

(3) Majority ownership of the local Industry Fund by the Chapter or control of a majority of the trustee appointments to the local Industry Fund by the Chapter.

If only (1) and (2) exist, consolidated financial statements are permitted but not required. If only (1) or (2) exists, consolidated financial statements are prohibited. SOP 94-3 contains the following paragraphs under the heading "Financially Interrelated Not-for-Profit Organizations":

.11 In the case of (a) control through a majority ownership interest by other than ownership of a majority voting interest, as discussed in paragraph .10, or control through a majority voting interest in the board of the other entity and (b) an economic interest in other such organizations, consolidation is required, unless control is likely to be temporary or does not rest with the majority owner, in which case consolidation is prohibited, as discussed in paragraph 13 of FASB Statement No. 94.

.12 Control of the separate not-for-profit organization in which the reporting organization has an economic interest may take forms other than majority ownership or voting interest; for example, control may be through a contract or affiliation agreement. In circumstances such as these, consolidation is permitted but not required, unless control is likely to be temporary, in which case

consolidation is prohibited, as discussed in paragraph 13 of FASB Statement No. 94. If the reporting organization controls a separate not-for-profit organization through a form other than majority ownership or voting interest and has an economic interest in that organization, and consolidated financial statements are not presented, the notes of the financial statement should include the following disclosures (emphasis supplied):

- *Identification of the other organization and the nature of its relationship with the reporting organization that results in control*
- *Summarized financial data of the other organization, including:*
  - *total assets, liabilities, net assets, revenue, and expenses*
  - *resources that are held for the benefit of the reporting organization or that are under its control*
- *The disclosures set forth in FASB Statement No. 57, Related Party Disclosures*

.13 In the case of control and an economic interest, the presentation of consolidated financial statements, as discussed in paragraph .11, or the disclosures, as discussed in paragraph .12, are required. The existence of control or an economic interest, but not both, precludes consolidation, except as stated in the next sentence, but requires the disclosures set forth in FASB Statement No. 57. Entities that otherwise would be prohibited from presenting consolidated financial statements under the provisions of this SOP, but that currently present consolidated financial statements in conformity with the guidance in SOP 78-10, may continue to do so. (Emphasis supplied)

2. General Tax Considerations

Both the Chapter and the local Industry Fund should have applied for and received a determination letter from the Internal Revenue Service that the organizations are tax exempt by reason of Section 501(c)(6) of the Internal Revenue Code. Section 501(c)(6) provides a tax exempt status for organizations that are "***business leagues . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual."*** Despite the fact that an organization is recognized as tax exempt under Section 501(c)(6), it does not mean that all of the income of that organization is necessarily free of income tax liability.

The internal revenue code recognizes that in some cases tax exempt organizations may receive income which is subject to tax. This income is referred to as "unrelated business taxable income" (UBTI).

Generally, gross income or part thereof of an exempt organization is subject to UBTI only if three criteria are present:

(1) The income is derived from the conduct of a trade or business;

(2) The business activity is regularly carried on; and

(3) The conduct of the business activity is not substantially related (other than through the production of funds) to the performance of the organization's exempt function. (I.R.C. § 1.513-1(a))

The tax on UBTI is imposed the gross income subject to taxation, reduced by the deductions directly connected with the production of such income and computed with certain modifications.

3. UBTI and Services Performed by the Chapter

The following is a list of activities that have been found to result in UBTI:

- Obtaining discounts for members from industry suppliers;
- Selling products to members for use in their business;
- Providing insurance coverage to members;
- Advertising which focuses on individual members and member's products;
- Providing job placement services.

The cases and rulings establish that if a particular activity or service performed by the organization relieves the member of the organization of the necessity of securing the services commercially (or performing the service on an individual basis) in order to properly conduct the member's business, resulting in a convenience or economy to the member, the activity or service will be classified as a "particular service" inuring to the benefit of the member and subjecting the organization to UBTI.

The following activities have been found under the circumstances not to result in UBTI:

- An organization which negotiates terms of a uniform labor contract for the entire industry, mediates and settles labor disputes affecting the industry and interprets contracts;

- An organization which operates a bid registry open to all individuals or firms in a particular trade or industry to encourage fair bidding practices within the industry;

- An organization formed by manufacturers of a particular product to conduct a program of testing and certifying the product to establish acceptable standards within the industry as a whole;

- Performing research and disseminating scientific knowledge;

- Engaging in technical research, all of which concerns air conditioning, heating and ventilation and problems faced by that industry;

- Proposing model codes and minimum standards for air conditioning, heating and ventilation;

- Advertising the industry as a whole.

Even though an organization engages in activities which results in unrelated business taxable income, that does not invariably mean that the organization will lose its tax-exempt status, only that it will be liable for an income tax on the UBTI. However, if too great a share of the organization's activities are unrelated to the exempt function of the organization, then the organization could lose its tax exempt status. There is bright line percentage test, but two IRS documents do provide some guidance. In a General Counsel Memorandum issued in 1982, the issue was addressed as to whether or not a trade association, which derived its income primarily from unrelated trade or business, is precluded from exemption under Section 501(c)(6) even though the organization is primarily engaged in exempt activities. The conclusion of the Memorandum was that an organization's source of income is merely one factor to be considered in determining whether the organization is primarily engaged in exempt activities. An organization which receives more than 50% of its income from unrelated trade or business may be exempt under Section 501(c)(6), but only if its other sources of income indicate a meaningful degree of membership support.

In a letter ruling in 1978, the IRS ruled that an association which received 66% to 70% of its gross income from particular services to members, and where between 53% and 67% of its expenses were attributable to the same activities, was not entitled to a tax-exempt status.

4. <u>The Inurement Issue</u>

The net earnings of any Chapter or Industry Fund cannot "inure" to the benefit of any of the members. Unlike the UBTI issue, this is an absolute prohibition, and if inurement is found, then the organization will lose its tax-exempt status.

If a Chapter's activities go beyond those of promoting and benefiting the industry, and extend to providing services to individual members, then it may not be exempt. For example, in *Indiana Retail Hardware Association v. U.S.*, 366 F.2d 998 (1966), the Court held that an association which performed services such as weekly

bookkeeping, quarterly audits, annual preparation of federal income tax returns, and other financial services for its members, was engaged in a particular service for its members and was not entitled to an exemption from income taxation. In that particular case, the very purpose of the organization was such that it could not qualify for a tax-exempt status.

The IRS has to date declined to formulate a precise definition of the term "inurement", pointing out that the presence of inurement is a factual determination to be made based upon the particular circumstances of each case. Obviously, the loss of a tax-exempt status is a drastic result.

There is a way to avoid this potential, however, and that is if the association needs to engage in activities which clearly will inure to the benefit of the member, then those activities should be conducted by a separate legal entity. For example, if the Chapter wishes to advertise not only the industry, but its own members, then a separate entity should be created for that purpose. The members can contribute a separate amount into that fund and that will not jeopardize the tax exempt status of the Chapter. If careful planning takes place, the income will be spent in the year in which it is received. Although the entity that conducts the advertising is not tax-exempt, there will be no income tax consequences, since the expenses will equal the income received.

In those cases where the Chapter wishes to engage in such a program using local Industry Fund contributions, there must be a modification to the collective bargaining agreement that redirects a portion of the Industry Fund contributions to such a program.

5. How to Survive An IRS Audit

(1) Be Prepared - The letter notifying you of the audit will contain a list of documents that the IRS wants to examine. Gather those documents, or copies of them, put them in separate file folders, and when the IRS Agent arrives, give the Agent a quiet place to work. Employees of the Chapter should be advised not to discuss any matters with the IRS Agent. Designate one person in the Chapter office to deal with the Agent, and if the Agent has any questions, ask the Agent to send a letter with the questions so that you can respond in writing. This does not apply to simple questions, but you should exercise judgment in deciding how to respond to a particular question.

(2) Do a self audit ahead of time, and keep routine documents in a file where you can easily get at them. These include:

- **Articles of Incorporation**
- **Bylaws**
- **Minutes of Meetings**
- **Financial Statements**

- **IRS Determination Letter (establishing Tax Exempt Status)**
- **Administrative Service Agreement**
- **Copies of semi-annual Reports to the union**
- **Collective Bargaining Agreements**

(3) Observe Formalities.

- **Be sure every Chapter Meeting and Industry Fund Meeting is documented with minutes**
- **When billing the Industry Fund, the Chapter should provide Administrative Service billings broken out by <u>function</u>**
- **Keep the Chapter files separate from the Industry Fund files**

ATTACHMENT G

_____Whistleblower Policy

General

_____(Insert Name of Association)_____ policies, including its Conflict of Interest Policy, requires directors, officers employees and committee appointees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Employees and representatives of _____, must practice honesty and integrity in fulfilling their responsibilities, and comply with all applicable laws and regulations.

Reporting Responsibility

It is the responsibility of all directors, officers, employees, and committee appointees to report violations, or suspected violations, of policies or law in accordance with this Whistleblower Policy.

No Retaliation

No director, officer, employee, or committee appointee who, in good faith, reports a violation of _____policies or applicable federal or state law, shall suffer harassment, retaliation or adverse employment consequence. A director, officer, employee, or committee appointee who retaliates against someone who has reported such a violation in good faith is subject to discipline, up to and including termination of employment with _____, or termination of their position in _____. This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns within _____ prior to seeking resolution outside _____.

Reporting Violations

Any suspected violations of policies or law are to be reported to the Organization's Compliance Officer, who is the _____(Insert Title)_____.

Compliance Officer

The Organization's Compliance Officer is responsible for investigating and resolving all reported complaints and allegations concerning violations of the Code and, at his/her discretion, shall advise the Executive Committee and/or the Board of Directors.

Confidentiality

Violations or suspected violations may be submitted on a confidential basis by the complainant, or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation, and to remedy the situation.

Handling of Reported Violations

The Compliance Officer will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days. All reports will be promptly investigated, and appropriate corrective action will be taken if warranted by the investigation.

ATTACHMENT H

DOCUMENT RETENTION POLICY

This is the document retention policy of the _____Association ("ASSOCIATION").

ASSOCIATION shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply with contractual or legal requirements. Records and documents outlined in this policy include paper, electronic files (including emails) and voice mail records, regardless of where the document is stored, including network servers, desktop, laptop, and handheld computers, and other wireless devices with text messaging capabilities. Any employee of _____, or any other person who is in possession of records belonging to _____ who is uncertain as to what records to retain or destroy, when to do so, or how to destroy them, may seek assistance from _____ the Document Retention Policy (DRP) manager who is _____.

In accordance with 18 U.S.C. §1519, and the Sarbanes Oxley Act, ASSOCIATION shall not knowingly destroy a document with the intent to obstruct or influence an "investigation or proper administration of any matter within the jurisdiction of any department, agency of the United States…or in relation to or contemplation of such matter or case". If an official investigation is under way or even suspected, document purging must stop, in order to avoid criminal obstruction. In order to eliminate accidental or innocent destruction, ASSOCIATION has the following document retention policy:

TYPE OF RECORD	SPECIFIC RECORD	RETENTION PERIOD
Accounting Records		
	Annual financial statements	Permanent
	Monthly financial statements	3 years
	General ledger	Permanent
	Annual audit records	Permanent
	Journal entries	Permanent
	Special reports	8 years
	Canceled checks	8 years
	A/P paid invoices	7 years
	Business expense records	8 years
	Credit card receipts	3 years
	Cash receipts	3 years
	A/R invoices	8 years
	Data for acquired/divested assets	Permanent

TYPE OF RECORD	SPECIFIC RECORD	RETENTION PERIOD
	Data for nonacquired/nondivested assets	5 years
	Chart of accounts	Permanent
	Inventory records	7 years
	Loan documents	7 years after final payment
	Purchase orders	7 years
	Sales records	7 years
	Stop payment orders	3 years
	Bank reconciliations	3 years
Tax Records		
	Federal tax returns (not payroll)	Permanent
	State & local tax returns	Permanent
	Form 990 & supporting documentation	Permanent
	Form 990-T & supporting documentation	Permanent
	Supporting documentation for taxes	4 years
	City & State excise tax reports & supporting documentation	5 years (or longer if designated by state law)
	Unclaimed property filings & supporting documentation	6 years (or longer if designated by state law)
	1099 forms	8 years
	Magnetic tape & similar records	1 year
	Payroll taxes (W2, W3)	Permanent
	Payroll taxes (Form 941, state withholding forms, state unemployment returns)	8 years (or longer if designated by state law)
Payroll Records		
	Wage rate tables	3 years
	Cost of living tables	3 years
	Wage	6 years
	Salary	6 years
	Payroll deductions	6 years
	Time cards or forms	5 years
	W-2 forms	7 years
	W-4 forms	7 years

TYPE OF RECORD	SPECIFIC RECORD	RETENTION PERIOD
	Garnishments	4 years after termination
	Payroll registers	Permanent
	State employment forms	4 years
	State unemployment tax records	Permanent
	Cancelled payroll checks	7 years
	Deductions register	7 years
	Earnings records	7 years
	Final Payroll Register	Permanent
	Changes or adjustments to salary	7 years
Insurance Records		
	Policies (including expired) Permanent Claims for loss/damage, accident reports, appraisals	5 years
Workplace Records		
	Incorporation records (including Bylaws)	Permanent
	Exec and BOD Meeting minutes	Permanent
	Policy statements	Permanent
	Employee directories	5 years
Legal Records		
	General Contracts	3 years after termination
	Real estate contracts & records	Permanent
	Personal injury records	8 years
	Trademark registration	Permanent
	Copyright registration	Permanent
	Patents	Permanent
	Litigation claims	5 years following close of case
	Court documents & records	5 years following close of case
	Deposition transcripts	5 years following close of case
	Discovery materials	3 years following close of case
	Leases	6 years after termination
Personnel Records		
	Employment applications (persons not hired)	1 year
	Employment applications (persons hired)	3 years following termination of employment

TYPE OF RECORD	SPECIFIC RECORD	RETENTION PERIOD
	Employee resumes & employment history	3 years following termination employment
	Evaluations	3 years following termination of employment
	Promotions, raises, reclassifications & job descriptions	5 years following termination of employment
	Disciplinary warnings, demotion, lay-off & discharge	5 years following termination of employment
	Employment & termination agreements	Permanent
	Beneficiary information	Permanent
	Medical and safety records	6 years
	Accident reports	6 years
	Education assistance	While employed
	Sick leave benefits	While employed
	Retirement plans	Permanent
	Incentive plans (after expiration)	6 years
	Pension plans	Permanent
Technical Materials		
	Manuals	Permanent
	Standards	Permanent
	Correspondence	5 years after manual or standard becomes obsolete
	Invoices to customers	7 years
Other Materials:		
	Independent Contractor Agreements	7 years
	Committee & Task Force Meeting Minutes	Permanent

The retention periods described herein are guidelines. There are circumstances under which a record or document may have to be maintained longer than the guidelines. This will be a decision made by the Document Retention Policy Manager.

Sample Policy for Educational Purposes Only. Legal Counsel should always be consulted when an association or industry fund adopts a policy.

ATTACHMENT I

Conflict of Interest Policy

Of

_____
_____ Association

Policy on Conflicts of Interest
and Disclosure of Certain Interests

This conflict of interest policy is designed to help directors, officers, committee members, task force members, and employees of the _____ Association ("_____") identify situations that present potential conflicts of interest, and to provide _____ with a procedure that, if observed, will allow a transaction to be treated as valid and binding even though a director, officer, committee member, task force member, or employee has or may have a conflict of interest with respect to the transaction. In the event there is an inconsistency between the requirements and procedures prescribed herein, and those in federal or state law, the law shall control. All capitalized terms are defined in this policy.

1. Conflict of Interest Defined. For purposes of this policy, the following circumstances shall be deemed to create Conflicts of Interest:

   A. Outside Interests.

      (i) A Contract or Transaction between _____ and a Responsible Person or Family Member.

      (ii) A Contract or Transaction between _____ and an entity in which a Responsible Person or Family Member has a Material Financial Interest, or of which such person is a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator, or other legal representative.

   B. Outside Activities.

      (i) A Responsible Person competing with _____ in the rendering of services, or in any other Contract or Transaction with a third party.

      (ii) A Responsible Person's having a Material Financial Interest in; or serving as a director, officer, employee, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator, or other legal representative of, or consultant to; an entity or individual that competes with _____ in the provision of services, or in any other Contract or Transaction with a third party.

C. Gifts, Gratuities and Entertainment. A Responsible Person accepting gifts, entertainment, or other favors from any individual or entity that:

(i) does or is seeking to do business with, or is a competitor of _____; or

(ii) has received, is receiving, or is seeking to receive a loan or grant, or to secure other financial commitments from _____;

(iii) is a charitable organization;

under circumstances where it might be inferred that such action was intended to influence or possibly would influence the Responsible Person in the performance of his or her duties. This does not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value that are not related to any particular transaction or activity of _____

D. Serving as a Trustee.

A Responsible Person will not be deemed to have a Conflict of Interest solely by reason of serving as a Trustee of a Trust Fund, which Trust Fund is subject to the Employee Retirement Income Act of 1974 as amended (ERISA), or by complying with his/her fiduciary responsibilities on behalf of said Trust(s), as required by ERISA.

E. Serving as a Director.

A Responsible Person will not be deemed to have a Conflict of Interest solely by reason of serving as a Director of this Association, and complying with his/her fiduciary responsibilities on behalf of this Association.

2. Definitions.

A. A *Conflict of Interest* is any circumstance described in Part 1 of this Policy.

B. A *Responsible Person* is any person serving as an officer, employee, committee or task force member, or member of the board of directors of _____.

C. A *Family Member* is a spouse, domestic partner, parent, child, or spouse of a child, brother, sister, or spouse of a brother or sister, of a Responsible Person.

D. A *Material Financial Interest* in an entity is a financial interest of any kind that, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect a Responsible Person's or Family Member's judgment with respect to transactions to which the entity is a party. This includes all forms of compensation. Anything over $250 would be considered to be a "material financial interest".

E. A *Contract or Transaction* is any agreement or relationship involving the sale or purchase of goods, services, or rights of any kind, the providing or receipt of a loan or grant, the establishment of any other type of pecuniary relationship, or review of a charitable organization by _____ The making of a gift to _____ is not a Contract or Transaction.

3. Procedures.

A. Before board or committee action on a Contract or Transaction involving a Conflict of Interest, a director or committee member having a Conflict of Interest, and who is in attendance at the meeting, shall disclose all facts material to the Conflict of Interest. Such disclosure shall be reflected in the minutes of the meeting.

B. A director or committee member who plans not to attend a meeting at which he or she has reason to believe that the board or committee will act on a matter in which the person has a Conflict of Interest shall disclose to the chair of the meeting all facts material to the Conflict of Interest. The chair of the meeting shall report the disclosure at the meeting, and the disclosure shall be reflected in the minutes of the meeting.

C. A person who has a Conflict of Interest shall not participate in, or be permitted to hear the board's or committee's discussion of the matter, except to disclose material facts and to respond to questions. Such person shall not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.

D. A person who has a Conflict of Interest with respect to a Contract or Transaction that will be voted on at a meeting shall not be counted in determining the presence of a quorum for purposes of the vote. The person having a conflict of interest may not vote on the Contract or Transaction, and shall not be present in the meeting room when the vote is taken, unless the vote is by secret ballot. Such person's ineligibility to vote shall be reflected in the minutes of the meeting. For purposes of this paragraph, a member of the board of directors of _____ has a Conflict of Interest when he or she stands for election as an officer or for re-election as a member of the board of directors.

E. Responsible Persons who are not members of the board of directors of _____, or who have a Conflict of Interest with respect to a Contract or Transaction that is not the subject of board or committee action, shall disclose to the (Officer) of _____, or, if he or she is the one who has the conflict of interest, then to the President of _____ any Conflict of Interest that such Responsible Person has with respect to a Contract or Transaction. Such disclosure shall be made as soon as the Conflict of Interest is known to the Responsible Person. The Responsible Person shall refrain from any action that may affect _____'s participation in such Contract or Transaction.

In the event it is not entirely clear that a Conflict of Interest exists, the individual with the potential conflict shall disclose the circumstances to the Executive Vice President of _____ or if he or she is the one who has the conflict of interest, then to the President of _____, who shall determine whether there exists a Conflict of Interest that is subject to this policy.

4. Confidentiality. Each Responsible Person shall exercise care not to disclose confidential information acquired in connection with such status, or information the disclosure of which might be adverse to the interests of _____. Furthermore, a Responsible Person shall not disclose or use information relating to the business of _____ for the personal profit or advantage of the Responsible Person or a Family Member.

5. Review of Policy.

A. Each new Responsible Person shall be required to review a copy of this Policy and to acknowledge in writing that he or she has done so.

B. Each Responsible Person shall annually complete a disclosure form identifying any relationships, positions, or circumstances in which the Responsible Person is involved that he or she believes could contribute to a Conflict of Interest arising. Such relationships, positions, or circumstances might include service as a director of or consultant to a not-for-profit organization, or ownership of a business that might provide goods or services to _____. Any such information regarding business interests of a Responsible Person or a Family Member shall be treated as confidential, and shall generally be made available only to the Executive Vice President, the President, and any committee appointed to address Conflicts of Interest, except to the extent additional disclosure is necessary in connection with the implementation of this Policy.

C. This policy shall be reviewed annually by each member of the board of directors. Any changes to the policy shall be communicated immediately to all Responsible Persons.

ATTACHMENT J

_____ ASSOCIATION

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Note: In order to be more comprehensive, this statement of disclosure/questionnaire also requires you to provide information with respect to certain parties that are related to you.

These persons are termed "affiliated persons" and include the following:

a. A Family Member who is a spouse, domestic partner, parent, child, or spouse of a child, brother, sister, or spouse of a brother or sister, of a Responsible Person (Note a Responsible Person is any person serving as an officer, employee, committee or task force member, or member of the board of directors of the _____l Association "Association")

b. any corporation or organization of which you (as a Responsible Person), are a board member, an officer, a partner, participate in management or are employed by, or are, directly or indirectly, a debt holder or the beneficial owner of any class of equity securities; and

c. any trust or other estate in which you (as a Responsible Person), have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.

1. NAME OF EMPLOYEE OR BOARD MEMBER: (Please print)

_____

2. CAPACITY: _____board of directors
_____executive committee
_____officer
_____task force member
_____committee member
_____staff (position): _____

3. Have you or any of your affiliated persons provided services (for which you were paid something other than your expenses) or property (other than donated property, charitable contributions dues or contributions pursuant to a collective bargaining agreement) to _____ in the past year?

_____YES _____NO

If yes, please describe the nature of the services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

4. Have you or any of your affiliated persons purchased services or property from _____ in the past year?

_____YES _____NO

If yes, please describe the purchased services or property and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

_____

5. Please indicate whether you or any of your affiliated persons had any direct or indirect interest in any business transaction(s) in the past year to which _____ was or is a party?

_____YES _____NO

If yes, describe the transaction(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

_____

6. Were you or any of your affiliated persons indebted to pay money to _____ at any time in the past year (other than for dues, registration fees, purchase of publications, travel advances or the like)?

_____YES _____NO

If yes, please describe the indebtedness and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

_____

7. In the past year, did you or any of your affiliated persons receive, or become entitled to receive, directly or indirectly, any personal benefits from _____ or as a result of your relationship with _____, that in the aggregate could be valued in excess of $1,000, that were not or will not be compensation or expenses paid on your behalf, directly related to your duties to _____?

_____YES _____NO

If yes, please describe the benefit(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

_____

8. Are you or any of your affiliated persons a party to or have an interest in any pending legal proceedings involving _____?

_____YES _____NO

If yes, please describe the proceeding(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

_____

9. Are you aware of any other events, transactions, arrangements or other situations that have occurred or may occur in the future that you believe should be examined by _____'s board or its designated agent in accordance with the terms and intent of _____'s conflict of interest policy?

_____YES _____NO

If yes, please describe the situation(s) and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

_____

_____

_____

I HEREBY CONFIRM that I have read and understand _____'s conflict of interest policy and that my responses to the above questions are complete and correct to the best of my information and belief. I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with this policy, I will notify [designated officer or director] immediately.

_____ _____ _____

Signature Date

ATTACHMENT K

ANNUAL TRUSTEE SURVEY

The period of time covered by this survey ("Survey Period") is the preceding calendar year and calendar year to date of the signing of this form.

1. Name and address of trustee or director

   _____
   _____
   _____
   _____

2. Name of Trust Fund(s) that you are a trustee of

   _____
   _____
   _____

3. During the Survey Period, did you receive any gifts or gratuities from service providers to the Fund? _____Yes _____No

4. If you answered yes to the preceding question, please identify on a separate schedule the name of the service provider(s) and the nature of the gift(s) or gratuity.

5. Did you attend all of the regularly scheduled trustees meetings during the Survey Period? _____Yes _____No

6. If you answered no to the preceding question, how many meetings did you miss? _____

7. Have you attended any educational training sessions related to your service as a trustee during the survey period? _____Yes _____No If yes, please describe the conferences or training sessions that you attended?

   _____
   _____
   _____

Date: _____ _____
Signature

_____
Print Name