



Title IV: Finance

Chapter TBD: Employer Audits, Records, Delinquencies, and Collections

Article TBD: Payroll Audits, Payroll Records, Statutory Interest, and Penalties

Sec. 1 Purpose

The Board establishes Payroll Audit and Collection Rules to comply with its statutory and fiduciary responsibilities. The Rules are designed to ensure the timely and complete payment of Contributions and the timely submission of Payroll Records to the Fund. These Rules apply to any and all Payroll Audits authorized by the Illinois Pension Code or as otherwise authorized by the Board.

Sec. 2 Definitions

- A. “Audit” or “Payroll Audit” is the review of an Employer’s Payroll Records, as defined herein, by the Board’s Auditor to ensure the Employer’s compliance with its statutory obligations to the Fund.
- B. “Audit Findings” shall include the principal Contributions, late fees, Interest, liquidated damages, costs, and fees, as determined by the Auditor and approved by the Board.
- C. “Contributions” are the required deductions from the Salary of each contributor, member, or teacher (collectively “Member”), as defined by the Rules, by an Employer to be remitted to the Fund. Contributions shall also include any sum “picked-up” by an Employer as agreed to by the Employer and as authorized by the Internal Revenue Code and the Illinois Pension Code.
- D. “Delinquency” or “Delinquent” are Contributions an Employer has failed to remit on a timely basis as required by 40 ILCS 5/17-132 (b), plus any Interest, Late Fees, and Liquidated Damages.
- E. “Due Date” is the 30th calendar day after an Employer’s pre-designated payday as defined by 40 ILCS 5/17-132 (b).
- F. “Interest” shall be the Fund’s then-effective actuarial rate of return as of each Due Date.
- G. “Late Fees” shall be the \$100 per day statutory penalty for each day that a required certification and submission is late as required by 40 ILCS 5/17-132 (b).

- H. “Payroll Records” are the documents containing the information required by these Administrative Rules and Illinois law, including, but not limited to, 40 ILCS 5/17-132 (c).

Sec. 3 Employer Delinquency

An Employer shall be deemed Delinquent if the Employer fails to submit certified Payroll Records or Contributions by the Due Date.

Sec. 4 Payroll Schedule

At least 30 days prior to the first payroll period of a Fiscal Year, an Employer must provide the Fund with a copy of its payroll schedule (the Employer’s payday calendar and the pay period end date calendar) for the Fiscal Year. The Fund will not recognize any change to an Employer’s payroll schedule unless the Employer provides an amended payroll schedule 30 days prior to any change taking effect and no later than the Fiscal Year to which it applies. The Fund, in its sole discretion, may choose to waive the 30 day notice requirement.

Sec. 5 Liquidated Damages, Late Fees & Interest

- A. An Employer that fails to timely submit Contributions by the Due Date is subject to a penalty consisting of Interest which shall accrue on a monthly basis and liquidated damages in the amount of \$100 per day for each day the Contribution is Delinquent not to exceed 20% of the principal Contribution due.
- B. Liquidated damages are mandatory for Delinquent Contributions except for good cause shown in the discretion of the Board.
- C. An Employer that fails to certify and to submit Payroll Records by the Due Date is subject to a Late Fee.

Sec. 6 Payroll Audit Cycle

- A. The Board intends to audit every Employer on a 3-5 year cycle, although Employers with a record of compliance may be audited once every 7 years (“Payroll Audit Cycle” or “Cycle”). The Board shall have the authority outside of the Cycle to conduct a Payroll Audit For Cause, as set forth below, as determined in the Board’s discretion. The Audit period shall be determined by the Board.
- B. The Board shall retain a firm or firms, or designate a Fund employee (each the “Auditor”), experienced with payroll audits and shall establish audit guidelines and protocols which the Board and the Auditor determine are appropriate. Said guidelines are adopted and incorporated herein by reference.

- C. Expenses incurred in the collection of delinquent contributions, including, but not limited to, obtaining Payroll Records, conducting Payroll Audits, and through legal proceedings, including reasonable attorneys' fees, may be assessed against Employers, unless waived for good cause shown as determined by the Board or in accordance with these Rules. The Board will waive the cost of the Payroll Audit if the Audit Findings (including any principal Contributions owed, liquidated damages, Interest, late fees, and attorneys' fees incurred to secure the audit) are less than the cost of the Audit.
- D. The Fund shall also have the right to conduct an Audit within six (6) months after an Employer first becomes obligated to make Contributions or when the Fund has knowledge that an Employer intends to cease operating a charter school.

Sec. 7 “For Cause” Audits

- A. The CFO or the CFO’s designee and the Auditor shall identify to the Board of Trustees and to the Executive Director any Employer that the CFO, the CFO’s designee, or the Auditor concludes should be audited outside the Audit Cycle to determine the Employer’s compliance with 40 ILCS 5/17-132(a “For Cause” Audit). The referral shall provide written details and reasons for such an Audit.
- B. The Finance and Audit Committee shall identify to the Board of Trustees and the Executive Director any Employer that the Finance and Audit Committee concludes should be subject to a For Cause Audit to determine the Employer’s compliance with 40 ILCS 5/17-132
- C. The CFO or the CFO’s designee shall assist the Auditor as requested.

Sec. 8 Random Site Visits by Fund Staff

In addition to any For Cause Audits and Audits pursuant to the Audit Cycle, the Fund may schedule random visits by staff to Employers for the purpose of verifying compliance with Article 17 of the Illinois Pension Code, to provide eligible Members with information and enrollment/designation of beneficiary forms, and to update and verify Member records. The Fund representative shall complete an Employer Information Sheet for each such site visit. Fund staff shall provide a quarterly report to the Finance and Audit Committee on any such school site visits.

Sec. 9 Request for Payroll Records

Upon written request from the Fund’s staff or the Auditor, an Employer shall furnish to the Board, acting through the Auditor, all Payroll Records, as defined in the Administrative Rules, requested in order to determine whether the Employer has fully performed its obligations under the Illinois Pension Code to remit Contributions and to certify and submit Payroll Records.

Sec. 10 Failure to Maintain Payroll Records

The Auditor or the CFO or the CFO's designee shall identify to the Board of Trustees any Employer that has unreasonably failed to obtain, maintain, or provide to the Fund any required Member license/certifications or any Payroll Records required by the Administrative Rules or by Article 17 of the Illinois Pension Code

Sec. 11 Information for Payroll Audits

- A. Payroll Records must be provided for all employees, regardless of job title, location, or services rendered, because a Payroll Audit is not limited to Members for whom an Employer is already contributing to the Fund. A Payroll Audit also encompasses individuals retained by the Employer in any manner other than direct employment, including, but not limited to, as a consultant, a contractor, a subcontractor, or through a third-party vendor.
- B. The Payroll Records required for an Audit include, but are not limited to, the following:
 - 1. Copies of State Unemployment Compensation Returns; Quarterly Federal Tax Returns (IRS Form 941); Yearly Statements for Recipients of Non-Employee Compensation, also known as IRS Form 1099; W-2s; W-3s; and IRS Form 1096;
 - 2. All Payroll Records required by 40 ILCS 5/17-132 (c) of the Code, including, but not limited to: full Social Security Number ("SSN") or any employee identification number used by an Employer; payroll registers; payroll schedules; payroll annual summary reports; hire and termination dates; time cards; licenses/certifications and applications for an ISBE license; background checks performed; and individual earnings records with details of actual hours worked, the type of services performed, purported hourly rates, and salary paid;
 - 3. Copies of reports filed with any other public retirement system or pension fund in Illinois and employee-related reports filed with the Illinois State Board of Education;
 - 4. Check and payroll journals, cash disbursements journals, and general ledgers;
 - 5. A copy of the Charter School Agreement with CPS;
 - 6. Invoices from and contracts with third-party vendors, consultants, contractors, or subcontractors, with supporting documentation;
 - 7. Copies of employment agreements with licensed/certified staff;
 - 8. Records supporting employee contributions and Employer "pick-up;"

9. Personnel records, including contracts of employment and settlement agreements;
10. Agreements with and invoices from affiliated entities and an affiliated entity's Payroll Records;
11. Documents relating to position descriptions and assigned ISBE codes;
12. Supporting documents for the treatment of pre- and post-tax Contributions, including the timeframe for any such change from/to pre-tax to/from post-tax Contributions; and
13. Supporting documents that establish sick day balances on a fiscal year basis.

Sec. 12 Production of Personal Information

The Illinois Personal Information Protection Act ("PIPA") does not prohibit an Employer from providing the Fund with the data necessary for the Fund to conduct a Payroll Audit. As required by PIPA, the requested information, including full SSNs, is for a purpose directly related to the Employer's business and its contractual and statutory obligations to the Fund. ISBE requires the full SSN in order to verify the license/certification of the employee.

Sec. 13 Format for Payroll Records

Payroll Records must be produced to the Fund or to its Auditors in electronic form and in their native format, i.e. in the format in which the records were created, and must be produced via secure file transfer. Portable Document Format (PDF) is not an acceptable format, nor is any document which has been converted from PDF unless that conversion creates a document which is indistinguishable from a document in the native format.

Sec. 14 Access to Records

Fund staff and the Auditor shall have the right to enter upon the premises of any Employer or an affiliated entity upon reasonable notice to examine and copy the Payroll Records of the Employer or affiliated entity, regardless of whether the Payroll Records are contained in written or electronic form. The Fund may issue subpoenas as required to compel production of Payroll Records.

Sec. 15 Audit Disputes

The Fund's Finance & Audit Committee has the authority to address all matters involving disputes regarding the production of Payroll Records and Audit Findings and the assessment of liquidated damages, Interest, and fees and costs. Within 30 days of any Audit Finding, or such other reasonable time as the Board in its sole discretion deems appropriate, the Employer may submit a response to any Audit Finding. If the Employer disputes the Audit Findings, and if the parties agree to postpone litigation, the Employer shall be required to pay one-half of the Audit Findings or the amount that is not in dispute, whichever is greater, while the disputed issues are investigated and a determination is made by the Finance & Audit Committee. If the Finance &

Audit Committee determines that adjustments to the Audit Findings are necessary and appropriate, and that the Employer's earlier payment was greater than the amount which the Employer owes under the final Audit Findings, the Fund shall reimburse the Contributing Employer for the difference.

Sec. 16 Authority to File Suit

The Board is authorized to initiate legal proceedings to compel a Payroll Audit, to require the timely submission of certified Payroll Records, or to collect Delinquent Contributions, liquidated damages, Late Fees, Interest, fees, and costs.

Sec. 17 Fiduciary Control Over Fund Assets

An Employer in possession of Contributions after the Due Date is considered to be holding Fund assets, and thus is a fiduciary over those assets.

Sec. 18 Audit and Collection Procedures

The Fund shall adopt additional procedures to implement these Rules.