CTPF Administrative Rules
Delinquencies and Waiver of Delinquencies/Collection Actions/Settlements

The CTPF Administrative Rules and Regulations shall be amended to include the following Rules:

<u>Title</u>

Chapter

<u>Article #: Delinquencies and Waiver of Delinquencies/Collection Actions/Settlements</u>

Sec. 1 Delegation of Authority. The Board of Trustees delegates to the Chief Financial Officer ("CFO") or the CFO's designee, working with the Internal Audit Director, the Chief Legal Officer ("CLO"), and Board Counsel, the responsibility to identify Delinquent Employers and to implement collection and Payroll Audit procedures authorized in these Administrative Rules. The CFO shall provide a quarterly report to the Finance and Audit Committee, detailing the billing of Employers, the status of Employer Delinquencies, and the assessment of interest, liquidated damages ("LDs"), and statutory penalties. The CFO shall provide a monthly report to the Finance and Audit Committee on the status of all Payroll Audits being conducted.

Sec. 1.1 Allocation and Billing of Delinquencies by Charter Holder and Pay Date. As a general matter, Delinquencies will be determined and billed on a charter holder basis (as opposed to a per school or per campus basis for multi-campus charter holders). However, for charter holders with multiple schools, campuses, or groups that do not share a single pay date schedule, Delinquencies will be determined on a per pay date schedule basis within that charter holder (e.g. a multi-campus charter holder that has two, different schedules of pay dates amongst its schools and/or campuses could have late payroll record and pension contribution submissions for each of those pay date schedules, as opposed to only for the charter holder as a whole).

Sec. 2 Billing for Delinquencies

The Fund shall send an invoice to an Employer within 10 business days after the Due Date of any Delinquent Contribution. The invoice shall state the estimated amount of the overdue Employee Contributions and shall notify the Employer of the statutory penalties, LDs, and the interest which will be due depending on the date of payment in full. The total estimated amount due or the actual amount owed shall be referred to herein as the "Delinquency." The Fund shall send an updated invoice, including updated statutory penalties, LDs, and interest estimated to be due, and any

additional Delinquencies incurred since the date of the last invoice, every 30 days thereafter, unless the matter has been referred to either the CLO or to outside counsel for demand letters and/or litigation. Fund staff may take such other actions as to assist in the collection of a Delinquency.

Sec. 3 Referral of Delinquent Employers. A Delinquency of less than $15,000 shall be pursued by Fund staff in accordance with this Administrative Rule. The CFO shall notify the Finance and Audit Committee, the Internal Audit Director, CBO, and the CLO of (a) any Employer that is Delinquent for more than 60 days for an amount that is estimated to be greater than $15,000, (b) any Employer that is Delinquent for over 90 days, and (c) any Employer that has failed to certify Payroll Records for any three payroll periods in a fiscal year.

- Within 10 business days of the notification, the CLO shall send a demand letter, setting forth the estimated Employee Contributions sum due, plus the estimated statutory penalties, LDs, and interest which will be due depending on the date of payment in full.

- Within 30 days of the date of the demand letter, the Employer may submit documents contesting the invoiced amount but statutory penalties and interest will continue to accrue on any Employee Contribution determined to be due. Staff shall respond within a reasonable time, not to exceed 30 days, to the submitted documents and adjust the invoice as appropriate.

- The Employer has 30 days from the date of the demand letter to pay the invoiced amount, with a calculation of final interest, LDs, and statutory penalties due to be invoiced by the Fund subsequent to payment. If the Fund reduces the invoiced amount, the Fund will refund the appropriate sum to the Employer. If the Employer submits documents contesting the invoiced amount, the Employer has 30 days from the date of the Fund's response to pay the invoiced amount, as adjusted, if applicable.

- An Employer may propose to enter into a settlement agreement, acknowledging the total amount due, with payment to be made under a repayment plan with interest and subject to approval in accordance with these Administrative Rules.

Delinquencies greater than $25,000 shall be referred to the Board of Trustees.

A report on all Delinquencies shall be provided to the Board of Trustees at each Regular Meeting.

Table 1

Delinquency	**Action Taken**
Delinquency less than $15,000	
- 0-90 days late	CFO to note delinquency and send invoice within 10 business days of late payment and every 30 calendar days thereafter unless referred to the CLO or to outside counsel.
- More than 90 days late	Refer to Finance and Audit Committee, Internal Audit Director, CBO, and CLO.

Delinquency more than $15,000	
- 0-60 days late	CFO to note delinquency and send invoice within 10 business days of late payment and every 30 calendar days thereafter unless referred to the CLO or to outside counsel.
- More than 60 days late	Refer to Finance and Audit Committee, Internal Audit Director, CBO, and CLO.
Delinquency more than $25,000	Refer to Board of Trustees

Sec. 4 Executive Director's Authority. All references to the Executive Director in this Section shall include the Executive Director's designee.

Sec. 5 Basis for Repayment Plans/Litigation Settlements. These Administrative Rules are designed to establish a process for the Fund's "reasonable, diligent and systematic effort" to collect the full amount owed by an Employer. However, the Board may compromise and settle a Delinquency if such a compromise or settlement is in the best interest of the Fund.

For example, under circumstances establishing the Employer's financial hardship, the Fund may not be able to recover immediately the full amount owed because of the financial condition of the Employer. These circumstances may justify the Board, in the exercise of its sole discretion, providing for a repayment plan or to compromise the Delinquency due.

The Board shall also consider and assess the following factors before settling the Delinquency owed or providing a repayment plan, including pursuant to an agreed court order, including, but not limited to:

- The Fund's ability to collect a judgment;

- The risk of the Employer ceasing operations;
- The strengths and weaknesses of the Fund's legal case to collect;
- The cost of litigation or continued litigation and the likelihood of reimbursement of the Fund's fees and costs pursuant to statute;
- The time needed to resolve the dispute and the effect, if any, of the delay on the Members and the Fund.

All settlements of Delinquencies greater than $50,000 shall be approved by the Board or its designee and shall be in writing.

Sec. 6 Failure to Report Members or Submit Payroll Records. The Board may authorize the filing of a lawsuit if the Board concludes that an Employer has not reported all licensed/certified Teachers on a timely basis, has failed to provide Payroll records on a timely basis, or has failed to repay any Delinquent Contributions, liquidated damages, Statutory penalties, Interest, fees, or costs.

Sec. 7 Waiver of Interest, Liquidated Damages, and Statutory Penalties

A. A Newly Hired Member's First Payroll Period. Statutory penalties, interest, and LDs for Contributions due for a newly hired Member's first pay period with an Employer may be waived for good cause shown provided the Employer pays the entire Employee Contribution due within 30 days of the Due Date.

B. De Minimis Interest, Liquidated Damages, and Statutory penalties. If the Executive Director determines that a Delinquency was caused by a clerical or arithmetical error or if the Delinquent Employer has an established record showing good faith efforts to comply with Section 17-132 of the Code, the Executive Director or the Executive Director's designee has the discretion and authority to waive certain interest, LDs, and owed by an Employer up to a total of $500 in any Fiscal Year, an amount which the Board considers under certain circumstances to be "de minimis." A waiver will not be granted if the Employer is Delinquent for Employee Contributions at the time of the waiver.

C. **Interest, Liquidated Damages, and Late Fees Resulting from Fund System Unavailability.** The Executive Director may waive interest, LDs, and related statutory penalties that the Executive Director determines resulted from periods of Employer Reporting System downtime other than regularly scheduled unavailability for which Employers received prior notice.

D. **Non-De Minimis Interest, Liquidated Damages, and Statutory Penalties.** Upon application for a waiver filed by an Employer, the Board of Trustees or its designee has the discretion to waive, in whole or in part, for good cause, if the Delinquent Employer has an established record showing good faith efforts to comply with Section 17-132, any interest, LDs, and statutory penalties owed by an Employer, provided there are no outstanding Employee Contributions due at the time of the waiver.

Sec. 8 Remedial/Repayment Agreements. In accordance with these Administrative Rules, the Board of Trustees or its designee may enter into a remedial agreement/repayment schedule with a Delinquent Employer, and may take additional actions as the Board of Trustees may determine is appropriate. The Fund shall consider, *inter alia*, the age and pattern of an Employer's Delinquency in evaluating the likelihood that a remedial agreement/repayment schedule will be successful. An Employer that defaults in a material manner on a repayment plan shall not be eligible for another repayment plan for a minimum of three (3) Fiscal Years.

A. **Delinquencies less than $50,000.** Provided the Employer's Delinquency is less than

$50,000 total, the Executive Director is authorized to enter into a written agreement with an Employer providing that the Employee Contributions, interest, LDs, and statutory penalties may be paid over a period not to exceed 180 days from the date of the agreement, with interest accruing on the declining balance during the repayment period. The Executive Director may waive statutory penalties and LDs, in whole or in part, conditioned on the Employer's compliance with the repayment agreement. The repayment agreement shall require timely, certified Payroll Records. Statutory penalties and LDs shall be reinstated in full if the Employer defaults under the repayment agreement.

B. Delinquencies greater than $50,000. The Finance and Audit Committee may enter into a repayment agreement under such terms and conditions as it determines appropriate.

Sec. 9 Adjustments to Repayment Plans. If the Executive Director or the Finance and Audit Committee, in accordance with Section 8 above, concludes that a Delinquent Employer has made a good faith effort to reduce a Delinquency (e.g. through substantial partial payments) pursuant to a repayment agreement but is unable to pay the Delinquency in full as set forth in a repayment agreement, the Executive Director or the Finance and Audit Committee may approve an extended repayment plan. The Executive Director or the Finance and Audit Committee may waive, for good cause in accordance with these Administrative Rules, accrued statutory penalties and LDs in whole or in part. The repayment agreement shall require repayment of the Employee Contributions due in full, with interest accruing at the Fund's applicable actuarial rate of investment return, within a maximum of 18 months from the date of the agreement. Any statutory penalties and LDs waived at the outset shall be reinstated if the Employer defaults under the extended repayment agreement. The Board may notify CPS of a Charter School's Delinquency and may arrange for payment of the Delinquency, in whole or in part, directly from funds CPS would otherwise distribute to the Charter School.

Sec. 10 Statutory Restrictions on the Settlement and Collection of Delinquencies. For CTPF to be qualified as tax-exempt under the Internal Revenue Code, it must be impossible to divert the Fund's corpus or income other than for the exclusive benefit of the Members and their beneficiaries. A trust is not a qualified trust under IRC Section 401 unless the law creating the Fund provides that benefits may not be assigned or alienated, and the Illinois Pension Code so provides. Generally, unless authorized by 40 ILCS 5/1-110(a), any transaction between the Fund and an Employer constitutes a prohibited transaction. A non-prohibited transaction must meet the exclusive benefit and the non-assignment or alienation requirements of the Pension Code and Section 401 of the IRC. Employee Contributions, interest, LDs, and statutory penalties due to the Fund are Fund assets as of the Due Date.

Sec. 11 Contribution Receivables Report. The staff shall develop and implement an aged Contribution Receivables report.

Sec. 12 Crediting Payments Against Delinquencies.

A. **All Employers Other Than Multi-Campus Charter Schools**- All payments received by the Fund from any Employer other than a multi-campus charter holder (defined in sub-section (B), below), other than the payment of specifically-designated Contributions submitted for a specifically-designated payroll period, shall be applied to satisfy or reduce the Employer's obligations to the Fund in the following order:

1. all payments will be applied first to any outstanding Contributions, starting with the earliest (i.e. longest outstanding) pay period;
2. once an Employer is up-to-date on all Contributions, any payment shall be first applied to the outstanding amounts due for the earliest delinquent payroll period; if an Employer's obligation for the earliest payroll period is not satisfied in full as a result of the payment, then the payment for that earliest period shall be applied first to any interest due, next to the statutory penalties due, and then to the LDs due;
3. once all Delinquencies, including interest, LDs, and statutory penalties have been satisfied, then payment shall be applied to any costs, including collection and attorneys' fees incurred by the Fund relating to the Delinquency;
4. once all Delinquencies, including interest, late fees, LDs, and costs have been satisfied, then payment shall be applied to the Employer's account.

In certain cases, and in the exercise of its discretion, the Trustees may apply payments received from an Employer in an order different from the order stated above. Any deviation from the above-stated order does not constitute a waiver of the Administrative Rules.

B. Multi-Campus Charter Holders- For purposes of this Rule, a multi-campus charter holder includes any charter holder with multiple schools, campuses, or groups. All payments received by the Fund from an individual campus, school, group, charter school manager, or the charter holder (collectively, the "Payor") for a multi-campus charter holder who is a delinquent Employer, other than (i) the Payor's payment of specifically-designated Contributions submitted for a specifically-designated campus, school, or group for a specifically-designated payroll period , or (ii) the Payor's payment of specifically-designated interest, late fees, LDs, or costs for a specifically-designated campus, school, or group for a specifically-designated payroll period, shall be applied to satisfy or reduce the multi-campus charter holder's obligations to the Fund in the following order:

1. all payments will be applied first to any outstanding Contributions, starting with the earliest (i.e. longest outstanding) pay period;
2. once a multi-campus charter holder is up-to-date on all Contributions, any payment shall be first applied to the outstanding amounts due for the earliest delinquent payroll period; if a multi-campus charter holder's obligation for the earliest payroll period is not satisfied in full as a result of the payment, then the payment for that earliest period shall be applied first to any interest due, next to the statutory penalties due, next to the LDs due;
3. once all Delinquencies, including interest, LDs, and statutory penalties have been satisfied, then payment shall be applied to any costs, including collection and attorneys' fees incurred by the Fund relating to the Delinquency;
4. once all Delinquencies, including interest, late fees, LDs, and costs have been satisfied, then payment shall be applied to the account(s) for which the overall payment was being made.

In certain cases, and in the exercise of its discretion, the Trustees may apply payments received from a Payor in an order different from the order stated above. Any deviation from the above-stated order does not constitute a waiver of the Administrative Rules.

The above provisions permitting Payors for multi-campus charter holders to designate payments for a specific campus, school, or group are for administrative convenience only. The multi-campus charter holder is ultimately responsible for all Contributions and Delinquencies.