NOTE: This is a sample model rule for educational purposes only. Fund counsel should always be consulted when a trust fund adopts any written policy.
Rules and Regulation of the _________________________ Fund Regarding Employer Audit Procedures

The following are the Rules and Regulations of the _________________________ _________________________ Fund (the “Fund”) adopted by the Trustees, which Rules and Regulations are applicable to all employers who contribute to the Fund.

I. Identification of Employers Who Will be Audited

The Trustees recognize that many different circumstances can lead to a conclusion that an audit of a particular contributing employer by the Fund may be warranted. The purpose of employer audits is not to harass a contributing employer, but to provide reassurance to the Trustees that they are fulfilling their fiduciary duty with respect to the Trust Fund by ensuring that all proper contributions are in fact being made to the Fund.

The following criteria will be utilized to determine which employers in the Funds will be selected for audit. These criteria are not necessarily in order of priority:

A. Employers who are delinquent for two or more months in a twelve-month period.

B. Employers who have experienced a change in ownership whether by sale of assets or by sale of stock.

C. Employers who have closed one or more locations, or have filed for protection under the bankruptcy laws.

D. Knowledge of specific factual circumstances about an employer which would indicate that an audit is warranted. Such facts and circumstances will be disclosed to all of the Trustees at a regular trustees’ meeting, and the full board of trustees must vote to approve the audit.

E. Periodic random audits will be performed of all employers. Selection of employers from time to time to be audited shall be random and as recommended by the Administrator of the Fund. Priority for selection shall be given to those employers who may have been delinquent from time to time (but who do not necessarily fulfill the criteria listed in A above).

II. Types Of Audits To Be Performed

The auditors for the Fund will be requested to perform either a "Spot" or "Full" audit. A Spot audit is one in which some, but not all, of the employer's records are examined by random selective basis. A Full audit is one in which all of the employer's records are examined with respect to all of the potential participants of the Fund employed by the employer. Should the auditors be instructed to perform a Spot audit, and should that Spot audit disclose any facts or circumstances which would lead the Fund’s auditors to conclude that the employer is not complying with the provisions of the collective bargaining agreement with respect to contributions, the auditor shall recommend to the Trustees that a Full audit be conducted and, upon approval of the Trustees, a Full audit shall be conducted.
Unless otherwise instructed by the Trustees, facts and circumstances triggering an audit as described in paragraphs A, B and C under I above shall result in Full audits. If the circumstances triggering the audit are described in paragraphs, D or E above, the audit shall be a Spot audit, unless otherwise determined by the Trustees.

III. Audit Period
The period audited shall be one year, unless Trustees dictate otherwise. In instances in which the Trustees decide not to audit a particular employer at least once during a year period, the period of the audit shall be determined by the Trustees based on the particular facts and circumstances.

IV. The Following Are The Procedures To Be Utilized By This Health & Welfare Fund And Its Auditors In Conducting An Audit Of A Contributing Employer:

A. Once an employer has been identified for a Fund audit, the Administrator of the Fund shall write the employer a letter, sending him a copy of these Rules and Regulations, informing the employer than an audit will be conducted and advising the employer that the Administrator will be contacting the employer by telephone to arrange the time and place for the audit.

B. Certain questions in the form attached hereto as Exhibit A shall be mailed to the employer at the time the letter referred to above is sent out. The employer shall respond to the questions in writing.

C. Within two weeks following the sending of the letter described above, the Administrator will contact the employer and arrange for a specific time convenient to the employer and the Fund's auditors for the audit to be conducted.

D. The employer will be requested to provide a space for the Fund's auditor to work at the employer's place of business or office and to provide the necessary personnel and records for the audit to be completed during one visit by the Fund's auditor. If it is anticipated that the audit cannot be completed in one visit, the times of the visits will be scheduled such that the audit will take place over as brief a period of time as possible in order to avoid duplication of work. The same personnel of the Fund's auditor shall be used throughout the entire audit to preserve continuity and consistency.

E. If the auditor has any specific questions regarding information that will be needed for the audit, the questions will be submitted in writing in advance to the employer. The employer will make available to the Fund's auditor during the conducting of the audit those personnel who have access to the information needed by the auditor to complete the audit. In larger operations, it is anticipated that there will be more than one such individual. For example, there may be an individual from the payroll department who can identify payroll records and payroll practices while another individual from the management of the company can identify those who are covered by the collective bargaining agreement and those who are not.
F. It is anticipated that the physical work necessary at the employer’s location will be completed within 45 days from the date that the letter is sent out to the employer, and the audit report will be mailed to the Administrator for distribution to the Trustees no later than 75 days after the first letter has been sent to the employer.

V. Information to be Examined
In some instances employers will object to the information request of the auditor because the employer believes that the request goes beyond the bounds of what is required (in the employer’s opinion) to conduct a proper audit. Specifically employers may be asked to supply payroll records of employees that are not covered by the collective bargaining agreement. In addition, sometimes the auditor will request the disbursements journal or a review of expense checks of the employer. While these types of requests have been reviewed by the courts, the courts have consistently upheld the ability of the trust fund to request and review this material. For example, the United States Supreme Court, in 1985, stated:

The Fund is authorized, in implementation of its fiduciary duties, to conduct an audit that is no broader in scope than necessary to achieve its objective and no more extensive than the scope of the Trustees’ authority. To this end, the production of payroll records for all employees, including those employees not covered by the CBA, may legitimately be required to insure that an employer’s determination of employee’s covered or non-covered status, is correct.

VI. Payroll Audit Expenses
The audited employer will pay all accountant’s fees incurred in making the audit, but not to exceed an amount equal to the delinquency uncovered. If an audit discloses underpayment, the contributing employer will be assessed interest and liquidated damages also, in accordance with Fund Rules and Regulations for Delinquency Collections.

VII. Timing
It is anticipated that the physical work necessary at the employer’s location will be completed within 45 days from the date that the letter is sent out to the employer, and the audit report will be mailed to the Administrator for distribution to the Trustees no later than 75 days after the first letter has been sent to the employer.
Questions to be Answered by the Employer, in Writing, Prior to the Payroll Audit

1. Does your company have a copy of the collective bargaining agreement with ________________ Union covering the audit period?

2. Are employees contributed on from the first date of the month following their hire date?

3. Are there any classes or groups of employees on which you do not contribute?

4. Do all employees use manual or electronic time records? Are these time records available to our auditors?

5. Do the time records indicate vacation and other time off?

6. Do employees sometimes work in different job classifications? If so, how is this indicated in the payroll records?

7. What payroll records are used to prepare the contribution reports?

8. We need to determine the following information on all employees:
   a. Full name
   b. Social Security Number
   c. Job classification
   d. Starting date
   e. Hours worked for each payroll period in the audit period

   Can you supply this information? If not, please indicate what information you cannot supply.

9. Are the Federal 941 forms for the audit period available?

10. On what date may our auditors start their audit? What time of day may/or should they start?

11. To whom do you want our auditors to direct questions during the audit?

Exhibit "A" to Rules and Regulations
Regarding Audit Procedures