

## **POLICY ON REDUCTION OF EMPLOYER CONTRIBUTION RATE**

### **Introduction**

The following states the policy of the American Federation of Musicians and Employers' Pension Fund ("Fund") regarding reductions in employer contribution rates. In general, employers are not permitted to reduce their contribution rate or "effective" contribution rate.

Pursuant to the Fund's Trust Agreement (found here <https://afm-epf.org/PlanDocuments/AgreementDeclarationofTrust.aspx>), any collective bargaining agreement, participation agreement, or other written agreement requiring contributions to the Fund (which are referred to collectively as "collective bargaining agreements" or "CBAs") is subject to approval of the Board of Trustees of the Fund.

The Trustees have adopted a policy setting forth the requirements for CBAs to be acceptable, which can be found here: <https://afm-epf.org/Portals/2/AFMDocuments/ProceduresforApprovingCollectiveBargainingAgreements.pdf>

In addition, the Fund's Rehabilitation Plan contains a rule prohibiting certain reductions in contribution requirements.

Finally, as a condition to the Fund's receipt of special financial assistance under the American Rescue Plan Act of 2021, certain decreases in contributions are prohibited by law.

Any CBA that does not comply with the rules of the Fund, including those set forth in this policy, may be rejected by the Trustees, which may result in the employer being assessed withdrawal liability.

### **Policy**

As noted above, there are three rules of which employers should be aware:

#### 1. Special Financial Assistance (SFA) Restrictions

As a result of the Fund's receipt of special financial assistance, the contributions that an employer is required to pay to the Fund for each contribution base unit (which is the unit on which an employer is required to contribute – e.g., if the rate is x% of scale wages, then the contribution base unit is scale wages) cannot be less than that set forth in the employer's collective bargaining or participation agreement in effect on March 11, 2021.

In addition, the definition of contribution base units used for this purpose cannot be different from that set forth in the employer's collective bargaining or participation agreement in effect on March 11, 2021.

This SFA Restriction applies through December 31, 2051. The law provides for exceptions in very limited, specified circumstances, which exceptions require Trustee and, in certain cases, governmental approval.

## 2. Rehabilitation Plan Restrictions

The Fund's Rehabilitation Plan generally requires that the contribution rate be at least 10% higher than the rate in effect at the expiration of the first CBA that expired on or after August 1, 2018. (The original Rehabilitation Plan adopted in 2010 required a rate increase at that time as well.) Thus, the contribution rate cannot be reduced below 110% of the rate in effect under the first CBA that expired on or after August 1, 2018. See the June 2018 Update to the Rehabilitation Plan for more information (found here [https://afm-epf.org/Portals/2/AFMDocuments/RehabUpdate\\_201806.pdf](https://afm-epf.org/Portals/2/AFMDocuments/RehabUpdate_201806.pdf)). The Rehabilitation Plan contains further explanation, including examples, of this requirement to increase the contribution rate.

## 3. Trust Agreement Restrictions

In addition, the Fund has a rule in its Trust Agreement that prohibits reductions in the effective contribution rate below previous levels. See Amendment 11 to the Trust Agreement (see link above).

Specifically, the rate cannot be reduced below the rate that was provided for at the expiration of the CBA in effect on October 15, 2009. If the terms of a CBA (including any predecessor to the CBA) were first in effect after October 15, 2009 (i.e., an agreement's earliest iteration was entered into after October 15, 2009), then the minimum effective contribution rate that is allowed is the rate set forth in the first CBA in effect after October 15, 2009.

The Fund's policy prohibits reductions in contribution rates, but also prohibits reductions in the "effective" contribution rate, which would include, among other things, excluding one classification of musicians from the employer's contribution obligation that was previously included and excluding wages over a certain limit from contributions.

### **Examples**

Please consider the following examples to help understand this policy.

Example 1: An agreement has been in effect, including extensions and successor CBAs, since before October 15, 2009. The contribution rate on October 15, 2009 was 10% of scale wages. The contribution rate is increased by 9% to 10.9% as of April 1, 2011 in compliance with the 2010 Rehabilitation Plan, and by a further 10% to 11.99% as of September 1, 2018 in compliance with the 2018 Update to the Rehabilitation Plan. The contribution rate does not change thereafter, until the CBA effective on September 1, 2025, when the contribution rate is reduced to 9% of scale wages. This amendment is not acceptable because it reduces

the contribution rate below the minimum required by the SFA Restriction (11.99%, the rate in effect on March 11, 2021), the Rehabilitation Plan (11.99%, the rate in effect at the expiration of the first CBA expiring on or after August 1, 2018) and the Trust Agreement (10%, the rate at the expiration of the CBA in effect on October 15, 2009).

Example 2: Assume the same facts as Example 1, but also that the Union and employer agree to increase scale wages by 5%. Assuming the same number of musicians doing the same amount of work, this will result in a larger pension contribution from the employer. However, the agreement is still not acceptable because it reduces the contribution rate from 11.99% to 9%. (By the same token, a reduction in scale wages does not violate the Fund's policy even though it would result in lower pension contributions from the employer, as long as the contribution rate does not decrease and the definition of scale wages is not narrowed.)

Example 3: Assume the same facts as Example 1, except that instead of decreasing the contribution rate, the CBA effective September 1, 2025 provides that contributions will not be paid on scale wages in excess of \$40,000. The agreement is not acceptable because it reduces the effective contribution rate by narrowing the definition of scale wages, which is not permitted under the SFA Restriction or the Trust Agreement.