

# AMERICAN FEDERATION OF MUSICIANS AND EMPLOYERS' PENSION PLAN

## UPDATE TO REHABILITATION PLAN

**June 2018**

The Rehabilitation Plan contribution schedule has been updated to require a 10% increase in the rate of contributions to the American Federation of Musicians and Employers' Pension Plan (the "Fund"), as described in greater detail below. This increase is in addition to the 9% additional contribution previously required by the original 2010 Rehabilitation Plan. This means for all successor collective bargaining agreements, the contribution rate for contributions made on scale wages must increase by 10%, to 110% of the current contribution rate.

1. Required effective date of change

This increase must be included in the successor to any collective bargaining agreement (or extension of that collective bargaining) that expires on or after August 1, 2018.

This increase must be effective on the effective date of the successor agreement (but no later than the Automatic Effective Date described below).

Example: A collective bargaining agreement expires on December 31, 2018. On April 1, 2019, the bargaining parties agree to an agreement with a retroactive general effective date of January 1, 2019. The effective date of the increase must be no later than January 1, 2019.

Example: A collective bargaining agreement expires on December 31, 2018. On April 1, 2019, the bargaining parties agree to an agreement with an effective date of April 1, 2019. The effective date of the increase must be no later than April 1, 2019.

### *Treatment of Extensions*

Any extension agreed to on or after August 1, 2018 will be disregarded in determining the expiration date of a collective bargaining agreement in effect on July 31, 2018 for purposes of the required contribution increase.

Example: On July 31, 2018, a collective bargaining agreement provides that it expires on September 30, 2018. On August 1, 2018, the bargaining parties agree to extend the collective bargaining agreement's term through October 31, 2019. Because the extension was agreed to on or after August 1, 2018, the collective bargaining agreement is treated as expired on September 30, 2018 for the purposes of the requirement to increase the contribution rate.

If an expired collective bargaining agreement was extended prior to August 1, 2018 and the extension expires by its terms on a specific calendar date on or after August 1, 2018, the contribution increase will not be required until the extension expires (or, if earlier, the effective date of the successor agreement).

Bargaining parties must submit to the Fund Office by August 15, 2018 documentation evidencing the existing extension.

If an expired collective bargaining agreement was extended prior to August 1, 2018 but the extension does not expire by its terms on a specific calendar date (for example, it extends until a new collective

bargaining agreement is reached), the agreement will be deemed to have expired on August 1, 2018 for the purposes of the required increase.

#### *Agreements Without Specific Expiration Dates*

If a collective bargaining agreement or extension in effect on July 31, 2018 does not expire on a specific calendar date, it will be deemed to have expired on August 1, 2018 for the purposes of the required increase.

If a collective bargaining agreement, by its terms, automatically renews for an additional term absent notice to the contrary, it will be deemed to have expired the day before the next automatic renewal date for the purposes of the required increase.

#### *Already Expired Agreements*

If a collective bargaining agreement or extension expired prior to August 1, 2018 but a successor agreement or extension has not been agreed to prior to August 1, 2018, the collective bargaining agreement or extension will be deemed to have expired on August 1, 2018 for the purposes of the required increase.

#### *Contributions for Non-Collectively Bargained Employees*

In the case of an employer that contributes to the Fund on behalf of non-collectively bargained employees in accordance with a participation or other agreement with the Fund, the contribution increase will be required immediately following the expiration of the participation agreement in effect on July 31, 2018.

#### *New Use/Reuse of Media Content*

In the case of a new use or reuse of media content for which the contribution rate remains governed by an expired collective bargaining agreement, the contribution increase will take effect on February 1, 2019.

#### *Contracts Agreed to Prior to July 1, 2018 Subject to Ratification*

If the bargaining parties of an agreement that expires on or after August 1, 2018 have agreed to the terms of a successor agreement prior to July 1, 2018, but the successor agreement is still subject to ratification, then the successor agreement will not be subject to the 10% increase as long as it is ratified prior to September 1, 2018. The 10% increase will instead apply to the next successor or extension after that one.

Bargaining parties must submit to the Fund Office by August 15, 2018 documentation evidencing the bargaining parties' agreement and the scheduled date for ratification.

## 2. Automatic Effective Date

The required increase will automatically take effect on the date that is 180 days after the expiration or deemed expiration of the collective bargaining agreement or extension, if the bargaining parties (or the parties to the participation agreement, in the case of non-collectively bargained employees) have not agreed to the required increase by that date.

### 3. Amount of increase

The increase is a 10% increase in the contribution rate in effect when the collective bargaining agreement expires, including any previous negotiated increases (including previous increases required by the Rehabilitation Plan). The final rate derived is rounded to the nearest hundredth of one percent.

Example: If an expiring collective bargaining agreement provides for an 8.72% contribution rate (8.0% being the original contribution rate and 0.72% being the 9% increase previously required by the Rehabilitation Plan), the successor agreement must contain a rate of at least 9.59% (8.72% x 110%).

The increase in contribution rate required by this Update applies to contributions based on scale wages. It does not apply to contributions that are not based on scale wages or do not result in increased benefits under the Fund's plan of benefits.

#### *Turkus Award*

To the extent an employer's contributions are calculated as set forth in the arbitration award of Burton Turkus (the "Turkus Award"), the required contribution amount will be (i) 100% of the contributions calculated as set forth in the Turkus Award (but no less than 100% of the minimum contribution rate set forth in the employer's collective bargaining agreement) plus (ii) 19.9% of the minimum contribution rate set forth in the employer's collective bargaining agreement (which represents the cumulative 9% and 10% increases on the minimum).

#### *Single Engagements*

For employers or bandleaders (if the bandleader is the payor) who have in the past submitted one or more single engagement agreements, the contribution rate in any new single engagement agreement must be at least 10% higher than the rate specified in the wage scale book for the applicable Local Union or, if none, in the last single engagement agreement submitted for the period prior to August 1, 2018.

### 4. Effect on Benefits

Amounts paid to the Fund as a result of the 10% increase in the contribution rate will be used solely to improve the financial health of the Fund. Those amounts will not be considered when calculating a pension benefit and therefore will not increase future benefit payments to participants.

Example: Assume a participant has scale wages of \$5,000, the expiring collective bargaining agreement provides for an 8.72% contribution rate (8.0% being the original contribution rate and 0.72% being the 9% increase previously required by the Rehabilitation Plan), and the new successor agreement contains a rate of 9.59% (8.72% x 110%). In that case, the employer will pay contributions of \$479.50 (\$5,000 x 9.59%), but the participant's benefit amount earned in the year of the successor agreement will be based on contributions of \$436.00 (\$5,000 x 8.72%).

### 5. New Employers

A new contributing employer to the Fund under a new collective bargaining agreement will be required to pay the contribution rate set forth in the new collective bargaining agreement. However, 9.09%<sup>1</sup> of the

---

<sup>1</sup> The June 22, 2018 version of this Update rounded this percentage to 9.1%. This is the precise number.

contribution rate (which is equivalent to the 10% increase for existing employers) will not be considered when calculating a pension benefit and therefore will not increase benefit payments to participants. As described below, it will also generally be disregarded in determining the amount of, and payment schedule for, withdrawal liability.

If a new contributing employer to the Fund becomes obligated under an existing collective bargaining agreement for which the 10% increase is effective, the employer will be required to pay the full contribution rate (including the portion representing the 10% increase) in the collective bargaining agreement. The portion of the contributions representing the 10% increase will not be considered when calculating a pension benefit and therefore will not increase benefit payments to participants.

#### 6. Delinquent Contributions and Withdrawal Liability

A contributing employer's failure to contribute to the Fund timely at the new rate required by this Update to the Rehabilitation Plan (once effective) will subject the contributing employer to the remedies imposed on delinquent employers. The failure will also subject the contributing employer to excise taxes (equal to 100% of the unpaid contributions) as provided under the Pension Protection Act of 2006. Additionally, this may result in a determination by the Board that the employer has failed to maintain (and thus has withdrawn from) the Fund, in which case such employer will then be subject to withdrawal liability.

Employers should note that the 10% increase in the contribution rate is considered required by the Rehabilitation Plan under Section 432(g)(3) of the Internal Revenue Code. Therefore, generally speaking, for withdrawal liability purposes, the increase in the contribution rate is disregarded in determining the allocation of unfunded vested benefits to an employer used to determine the employer's withdrawal liability. It is also disregarded in determining the employer's highest contribution rate for the purposes of determining the payment schedule for withdrawal liability in the event of a withdrawal.

#### 7. Decreases in Contribution Rates Not Permitted

The Board previously announced that the contribution rates in any collective bargaining agreement may not be decreased. Accordingly, the contribution rate in a collective bargaining agreement may not be decreased to avoid application of the contribution rate increase under the Rehabilitation Plan. See this link for further information regarding the Fund's policies in this regard: (<http://afm-epf.org/RateReduction.aspx>).