

# Dealing With Union Contribution Audits

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Virtually every unionized construction contractor is signatory to a collective bargaining agreement(s) that requires the contractor to make hourly contributions on behalf of its employees to a health and welfare fund, pension fund, and perhaps other funds, such as a training fund (“funds”). Typically, the collective bargaining agreement states that the contractor agrees to be bound by the funds’ trust agreements, and other plan documents, and grants the funds the right to audit the contractor to determine whether the contractor is properly making contributions on behalf of its employees. It also provides for liquidated damages, and interest, and may provide for the payment of the auditor fees. This article explains what to expect if the funds request that you submit to a payroll compliance audit.

## THE AUDIT REQUEST

If you are audited, you will be sent a letter from the funds or the fund’s accountants explaining the purpose of the audit, the time period covered by the audit, and requesting that you contact the auditors so that arrangements for the audit can be made. The audit may take place at your or your accountant’s or attorney’s office, and rarely takes place at the pension auditor’s office.

The audit request is usually accompanied with a list of documents that the auditor seeks to review. These include the following:

- Bank statements
- Cash disbursement journals
- Records of deposit, check registers
- Construction loan data
- Contribution reports to the funds (and other funds)
- Federal income tax returns
- Quarterly federal tax returns (form 941)
- Quarterly unemployment wage reports
- Summary of information returns (1096)
- General ledgers
- Individual employee earnings records
- Payroll journals or registers
- Time cards or timesheets
- Transmittal of income and tax statements (W-3)
- Wage statements (form W-2)
- Workers’ compensation audits
- Credit card statements
- Vendor listings

Once the auditors have reviewed the documents, they will generate an audit report. That report will note whether all contributions have been fully and properly remitted to the funds. It will contain a determination of the amount outstanding that needs



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to be paid to the funds, plus liquidated damages, interest, etc. The auditor’s report may reflect that it is a “preliminary” audit, because there are outstanding issues related to the documents produced.

## RESOLUTION WITH THE FUNDS

Once the audit report is received and reviewed, contact should be made with the fund to resolve the claims for additional payment. This contact may be made by the contractor, its accountant, or attorney. The purpose of this contact is to dispute and resolve any incorrect demands for additional payment. For example, the fund may demand contributions for additional groups of employees who are not in the bargaining unit (e.g., the carpenters’ fund demands payment on office employees who are not covered by the carpenters’ collective bargaining agreement). The fund may or may not ask for additional information or documents to establish the truthfulness of the contractor’s assertions.

Often, the preliminary audit may be substantially reduced at this step. Any adjustments will then be approved by the fund administrator or the Board of Trustees of the fund. If matters cannot be resolved to the parties’ satisfaction, the fund has the option of suing the contractor for the amounts demanded in federal district court. Should the fund prevail in proving additional contributions are due, it will be entitled to liquidated damages, interest, and attorneys fees. However, careful record keeping and a close review of the auditor’s report often lead to an amicable and substantially less expensive resolution of the pension contribution dispute.