

**AGMA Health Fund & Retirement Plan  
Policy and Guidelines for Refunds or Credits  
of Employer Contributions  
Made by Mistake of Fact or Law**

**(Effective as of December 13, 2022)**

**I. STATEMENT OF POLICY**

Consistent with Article 4, Section 4.4 of the Agreement and Declaration of Trust establishing the AGMA Health Fund, Article 4, Section 4.4 of the Agreement and Declaration of Trust establishing the AGMA Retirement Plan (collectively referred to as the “Trust Agreements”), and Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), it is the policy of the Board of Trustees (the “Trustees”) of the AGMA Health Fund and Retirement Plan (each referred to as a “Fund” and collectively referred to as the “Funds”) that, except as specifically set forth herein, the assets of the Funds shall never inure to the benefit of any contributing employer to the Funds (“Employer(s)”), and shall be held for the exclusive purpose of providing benefits to participants in the Funds (“Participants”) and the beneficiaries of such Participants, and defraying the reasonable administrative and other expenses of the Funds. However, in accordance with an exception to the above-referenced “exclusive purpose” rule which is set forth in Section 403(c)(2)(A)(ii) of ERISA, the Trustees are not prohibited from returning to an Employer the contributions it made under a good faith mistake of fact or law, as long as the return of contributions is made within six (6) months of the Trustees’ determination that the contributions were made by such mistake. Accordingly, the Trustees are authorized to return mistaken contributions to an Employer pursuant to respective Trust Agreements governing the respective Funds, to the extent permissible by law.

The Trustees of the Funds, therefore, promulgate and adopt this Policy and the guidelines herein, recognizing that the refund or credit of contributions made by a good faith mistake of fact or law is a question properly addressed to the judgment of the Trustees as fiduciaries to the Funds, or to the judgment of their designee. To this end, the Trustees acknowledge that they have a duty to treat contributions that have been made as a result of a good faith mistake of fact or law in a manner that is “solely in the interest of participants and beneficiaries” and in a prudent manner, as required by Section 404 of ERISA. The Trustees of the Funds further acknowledge that it is prudent to treat Employers in a fair and businesslike manner. Fairness to an Employer, who has made a mistaken contribution, in all cases, must be balanced against the effect of returning such contribution upon the Fund which received them. Thus, if the Trustees (or their designee) determine, in their sole and absolute discretion that: (A) the Employer mistakenly paid contributions to any of the Funds; (B) such contributions resulted from a mistake of either fact or law; and (C) a return of the contributions would not adversely affect the financial stability of the Funds or be difficult to retrieve, the Trustees (or their designee) may, in their sole and absolute discretion, return an amount or any portion

thereof, or credit such amount or any portion thereof, against future contributions due from such Employer, in accordance with this Policy and the guidelines herein. In general, a return or credit of mistaken contributions may be made only within six months of the determination by the Trustees or their designee that such mistaken contributions were made and should be either returned or credited, in whole or in part; provided, however, that such mistaken contributions shall not, absent extraordinary circumstances, be returned or credited to an Employer more than twelve (12) months after the date such contributions were due or made, whichever is earlier.

Notwithstanding this Policy, the Trustees have determined certain circumstances in which mistaken contributions will not be refunded or credited to an Employer. For instance, mistaken contributions that have been applied to an amount that already has been distributed to a Participant or other beneficiary cannot be returned or credited, as the Fund no longer possesses the amounts contributed by the Employer. Similarly, contributions that have been used for or have been the basis for the purchase of benefits, insurance or other coverage cannot be returned to Employers. In addition, contributions that have been the basis for benefit or credit eligibility cannot be returned to an Employer absent extraordinary circumstances. Finally, contributions that have been forfeited cannot be returned absent extraordinary circumstances.

In addition, the Trustees recognize that the return of contributions made to a Fund is administratively burdensome because contributions form the basis of a series of government mandated disclosures to Participants, reports to Employers, and funding and benefit valuations and projections. The return of contributions is generally disruptive of this process, and in some cases, may require the preparation, submission, filing and/or distribution of amended reports. The Funds may also be harmed by the return of contributions in connection with investments. Contributions that have been used by the Funds' investment managers may be difficult to retrieve. Retrieval may cause harm to the Funds' actuarial soundness. Because of these burdens, it is the Trustees' policy that interest and/or income earned of any kind, which may be either attributable to, or generated by, such mistaken contributions, whether, directly or indirectly, shall never inure to the benefit of, or be paid or credited to, an Employer. Investment losses, however, may be deducted prior to a refund of any mistaken contributions. Further, an Employer shall not be entitled to unilaterally offset delinquent contributions by an amount it believes to have been a mistaken contribution or overpayment of contributions to a Fund, and no such offset is permitted or valid.

## **II. GUIDELINES AND PROCEDURES**

### **A. General Guidelines and Procedures.**

In view of these circumstances, and pursuant to the provisions of the Trust Agreements, the Trustees adopt the following rules applicable to the refund or credit of Employer contributions made as a result of a good faith mistake of fact or law:

1. No refund or credit of mistakenly made contributions shall be made except to the extent that such refund complies with the requirements of Section 403(c)(2)(A)(ii) of ERISA.
2. The Trustees, or their designee, shall have sole and exclusive authority to determine whether a contribution has been made by a good faith mistake or fact or law and shall have full discretion in applying the Funds' rules regarding the return of mistaken contributions. If the Trustees or their designee discover or otherwise determine that an Employer has submitted false, fraudulent, or unreliable evidence in support of its claim, they may, in their sole and absolute discretion, determine whether, and in what amount if any, a refund or credit shall be issued.
3. Absent extraordinary circumstances and the Trustees' approval, no refund or credit shall be made of mistaken contributions that have been distributed, spent, or which have been relied upon in determining the basis of coverage or eligibility or have been forfeited. In no event, absent extraordinary circumstances, shall contributions be returned if the Employer requested their return more than twelve (12) months after the date on which such contributions were due or made, whichever is earlier, notwithstanding the fact that the Trustees determined the contributions to be made by mistake of fact or law.
4. No refund or credit of mistaken contributions shall be made if, in the discretion of the Trustees, after analysis of the affected Fund's financial condition, investments, and funding methods, a refund or credit of contributions would adversely impact Participants, prejudice the financial position of the Fund at issue, jeopardize its actuarial soundness, or could cause the Fund at issue to incur more than a de-minimis expense as a result of the refund of such mistaken contributions (including, but not limited to, expenses incurred in verifying the overpayment, or processing the refund).
5. Any interest or income of any kind, which may be either attributable to, or generated by, such mistaken contributions, whether, directly or indirectly, shall never inure to the benefit of, or be paid or credited to, an Employer. Any investment losses may be deducted before a refund of mistaken contributions.
6. Contributions may only be returned or credited, in accordance with these guidelines, within six (6) months of the determination by the Trustees or their designee that the contributions were made as a result of a good faith mistake of fact or law.
7. The Trustees may deduct from any authorized refund or credit any reasonable expenses incurred by the Fund at issue as a result of the overpayment and request for return (including, but not limited to, attorneys' fees and cost, accounting, auditing, actuarial and other professional fees or costs, or other administrative expenses) of the mistaken contributions at issue.

8. Employers seeking a refund or credit of overpaid contributions must be fully current in the payment of contributions owed to each of the Funds.
9. The Executive Director is hereby designated by the Trustees to determine whether a refund or credit of mistakenly made contributions shall be made if the refund or credit amount requested by the Employer is \$2,500 or less.
10. Refunds of Employer contributions that the Trustees or their designee have determined shall be granted in accordance with these guidelines (except as set forth under number 3 above) may be issued by the individuals authorized under and pursuant to the provisions of the Funds' Check Writing Procedures and Internal Controls.

**B. Employer Procedures.**

An Employer shall follow the following procedures when it seeks consideration by the Trustees or their designee of a request for a credit or refund of mistaken contributions:

1. The Employer shall have the burden of clearly proving that an overpayment of contributions has occurred; the amount of the overpayment; and that the overpayment was caused by a mistake of either fact or law. In fulfilling this burden, the Employer must, at a minimum, submit to the Trustees all necessary documentation and other evidence that the Employer believes supports its request, as well as any other information, explanation, documentation or evidence that the Trustees or their designee request in connection with their evaluation of the Employer's request. The Trustees and their designee may require any necessary documentation, included but not limited the following items:

- (a) the amount and date of each overpayment;
- (b) the period of time to which each overpayment corresponds;
- (c) the name of the Participant(s) or employee(s) on whose behalf the overpayment was made, the social security number(s) of such Participant(s) or employee(s), and the dates on which the Participant(s) or employees(s) performed work for which contributions were made by the Employer; and
- (d) the Employer's detailed explanation of the mistake of fact or law that caused the mistaken contribution.

2. (a) If the Employer's request is granted by the Trustees or their designee, in whole or in part, the Employer will be advised of the amount to be refunded to the Employer, or the amount of future credit against contributions due that may be taken by the Employer.

(b) If the Employer's request is denied by the Trustees or their designee, the Employer shall have no right to appeal the decision, and the Trustees or their designee shall have no obligation to reconsider the denial of the Employer's request. The Trustees or their designee may, however, in their sole and absolute discretion, reconsider the decision in the event that the Employer presents additional information, documentation or other evidence, not previously available to the Employer and the Employer presents such evidence within thirty (30) days after the later of the date on which the Trustees or their designee have communicated their denial of the Employer's initial request or the earliest date on which such evidence became available. If the Trustees or their designee reconsider their decision and determine to refund or credit any overpayments for mistaken contributions, the date of the Trustees' or designee's determination shall be the date of the decision to grant a refund or credit.

### **C. Funds' Guidelines.**

The Trustees or their designee shall follow the following guidelines when they consider an Employer's request for a credit or refund of mistaken contributions:

1. The amount of a credit or refund, if any, will be determined by the Trustees or their designee in their sole and absolute discretion. The amount of such credit or refund, if any, will be returned to the Employer within six (6) months of the determination by the Trustees or their designee that a mistaken contribution was made and should be either returned or credited, in whole or in part. However, as set forth in item II(A)(3) of this Policy, contributions shall not be returned if the Employer requested their return more than twelve (12) months after the date such contributions were due or made, whichever is earlier, notwithstanding the fact that the Trustees or their designee determined the contributions to be made by mistake of fact or law.

2. The amount of the credit or refund shall be the amount determined by the Trustees or their designee to have been overpaid, less the following:

(a) any expenses incurred by the Fund at issue during or as a result of their consideration of the Employer's request, including but not limited to attorneys' fees and costs, accounting, auditing, actuarial or other professional fees or costs, or other administrative expenses;

(b) any outstanding monies the Employer owes to the Funds, whether for contributions, interest, or any other debt owed for any period;

(c) if the Employer has been delinquent in paying contributions to the Funds in the past, the Trustees may, in their sole and absolute discretion, determine that some or all of the overpayment shall be held by the Funds to offset contributions that have, may or will become due from the Employer and to credit any such overpayments toward any outstanding delinquencies (including interest) to the Funds; and

(d) any payments made by the Funds or other losses incurred by the Funds, which are attributable to the mistaken contributions, or expenses of any kind related thereto, either directly or indirectly.

3. The Trustees or their designee may, in their sole and absolute discretion, issue credits to an Employer in lieu of a refund. However, Employers are not entitled unilaterally to offset their current contribution obligation by the amount of the contribution claimed to have been made as a result of a good faith mistake or fact or law. Employers who attempt such an offset without the permission of the Fund(s) will be considered in default of their respective collective bargaining agreement and the Trust Agreement governing each of the Funds, and all appropriate action will be taken to collect such overdue amounts, together with all penalties, interest, fees and costs in accordance with the Funds' existing delinquency procedures.

4. The Trustees or their designee may also, but are not required to, notify an Employer of a detected or suspected overpayment and of the Employer's opportunity to submit a request for a credit or refund pursuant to the procedures set forth in Section B hereof.

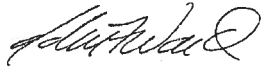
5. This Policy and the guidelines herein may be amended, in whole or in part, at any time by Board of Trustees of the AGMA Health Fund and Retirement Plan.

6. All determinations made and actions taken by the Trustees or their designee pursuant to this Policy and the guidelines herein will be conclusive and binding. Further, any prior determination made by the Trustees or their designee pursuant to these guidelines shall not have any effect on subsequent determinations in accordance with this Policy and the guidelines herein.

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The Trustees of the Funds hereby adopt the foregoing Policy and guidelines governing the refund or credit of Employer contributions made by a good faith mistake of fact or law, effective as of the 13<sup>th</sup> of December, 2022

**On behalf of the AGMA Health Fund and Retirement Plan**



Union Trustee




Employer Trustee

The Trustees of the Funds hereby adopt the foregoing Policy and guidelines governing the refund or credit of Employer contributions made by a good faith mistake of fact or law, effective as of the 13<sup>th</sup> of December, 2022

**On behalf of the AGMA Health Fund and Retirement Plan**

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Union Trustee

  
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Employer Trustee