

MO-KAN CONSTRUCTION INDUSTRY SUBSTANCE ABUSE FUND

FIRST RESTATED

APPEAL PROCEDURES

Pursuant to the authority of the Program Agreement of the Mo-Kan Construction Industry Substance Abuse Fund as amended, effective December 15, 2005 the Trustees appointed an Appeal Committee of the Trustees to review and resolve appeals of certain Fund actions by Fund Participants and established Appeal Procedures for a Participant to seek review of Fund actions. Said Appeal Procedures are amended and restated effective December 12, 2006 in the within "First Restated Appeal Procedures".

I. Objectives of Appeal Procedures

These Appeal Procedures are intended to provide a Participant of the Fund with a full, fair and prompt administrative review of certain Fund actions affecting the Participant. These Appeal Procedures are intended to afford such a Participant with the opportunity to obtain all relevant facts and information relating to Fund actions that are the subject of an appeal. These Appeal Procedures are intended to provide a reasonable opportunity for such a Participant of the Fund to present evidence related to disputes regarding certain actions of the Fund, as described below, so that such disputes may be addressed without resort to litigation and the costs associated thereto to both the Participant and the Fund.

II. Fund Actions Subject to Appeal

The following actions of the Fund will be subject to appeal to the Appeal Committee of the Fund:

1. A Participant's failure to comply with procedures and requirements of the Program Agreement.
2. The accuracy of test results.
3. A positive test for a Participant's failure to comply with testing procedures (including but not limited to a refusal to test).
4. A positive test for a Participant's possession of a counterfeit Drug Card.
5. A positive test and assessment of costs to a Participant for adulterated or substituted specimens.
6. A positive test due to non-contact by a Participant.

7. A positive test resulting in a Participant's placement in a Watch Block category.
8. A positive test resulting in the suspension of a Participant's Drug Card for ninety (90) days.
9. A positive test resulting in the permanent revocation of a Participant's Drug Card and the permanent expulsion of a Participant from the Program.

III. Composition of Appeal Committee

The Appeal Committee of the Fund shall include one (1) Labor and one (1) Employer Trustee. One (1) Alternate Labor Trustee and one (1) Alternate Employer Trustee will be designated to serve on the Appeal Committee in the event of a conflict of interest or inability to serve related to the respective Labor and/or Employer Trustee(s) on the Appeal Committee.

The Trustee members of the Appeal Committee shall serve a one (1) year term, from January 1 through December 31 of each year and shall be appointed by a majority of the Trustees.

IV. Appeal Request

Any Fund action identified above in Section II of these Appeal Procedures will result in a written notice of such Fund action to be mailed by the Fund Office to the affected Participant by regular and certified mail to the last known address of the Participant in the possession of the Fund Office. Each Participant shall have a duty to inform the Fund Office of any change in address for purposes of allowing the Fund Office to provide notice to the Participant regarding any such Fund action.

In order to exercise appeal rights, a Participant must provide a written appeal request that is received by the Fund Office within thirty (30) days from the date the Participant received the notice from the Fund Office regarding the Fund action.

V. Review and/or Hearing

The Participant may request review of Fund action with or without a hearing involving the testimony of witnesses. The Appeal Committee reserves the right to make reasonable credibility determinations regarding any documentary or testimonial evidence presented for review or at the hearing.

The review and/or hearing will be conducted or otherwise completed in accordance with the Appeal Committee Hearing Schedule, unless additional time is necessary for the availability of documents and/or witnesses. Such Schedule will be established each December for the following year and will provide for a deadline by which a Participant's written appeal request must be received in order to be scheduled for consideration on the next hearing date.

The procedural rights of a Participant regarding the Appeal will include:

1. Upon request to the Fund Office, to receive access to records, information and documents forming the basis for the Fund's action.
2. To submit documents, records, comments and other information to the Appeal Committee.
3. To a full and fair review of all comments, documents, records and other information relevant to the issues on Appeal.
4. To be represented by legal counsel at the Appeal Hearing.
5. To present testimonial and documentary evidence.
6. To question witnesses of the Fund.
7. To obtain a copy of a transcript or recording of the Appeal Hearing and all evidence presented at the Appeal Hearing.

The Appeal Committee will render its decision on the Appeal within fifteen (15) days after the completion of the review and/or hearing. The decision of the Appeal Committee will be in writing and will provide the Participant with sufficient detail of the reasons for the decision to explain the basis for the decision.

VI. Effect of Appeal or Failure to Appeal

The Appeal Procedures described above must be followed and exhausted by the affected Participant before the Participant may institute any judicial or other review of the Fund's action, unless the Fund and/or the Appeal Committee fails to substantially comply with these Appeal Procedures, as stated above.

VII. Discretion and Authority of Appeal Committee/Standard of Review

The written decision of the Appeal Committee shall otherwise be final, binding and conclusive and will be subject to review only for the Appeal Committee's abuse of its discretion that resulted in a decision that was arbitrary and capricious, as provided below.

In carrying out their responsibilities, the Appeal Committee shall have discretion and authority to interpret the terms of the Plan Agreement and the Agreement and Declaration of Trust, and to interpret any facts relevant to the determination of issues on appeal. Decisions by the Appeal Committee of the Fund will be afforded deference in any judicial or other review of its decisions pursuant to the discretion delegated to the Appeal Committee by the Board of Trustees of the Fund. Any interpretation or determination made under that discretionary authority will be given full, final and conclusive effect, unless it can be shown that the interpretation or determination resulted in a decision that was arbitrary and capricious.

These First Restated Appeal Procedures were approved and adopted by the Trustees of the Mo-Kan Construction Industry Substance Abuse Fund at a Trustees meeting held December 12, 2006.