

# RESOLUTION TO AMEND PARTICIPATION IN THE PLANS OF THE RETIREMENT FUND

Your YMCA's Federal Tax I.D. Number \_\_\_\_\_

**Please Read the IMPORTANT INFORMATION on Page 2 before Completing this Form**

At a meeting of the Board of Directors of the (insert the name of your YMCA) \_\_\_\_\_, held on \_\_\_\_\_, 20\_\_\_\_, properly called and a quorum being present, the following *Resolution* was adopted:

*RESOLVED: That the (insert the name of your YMCA) \_\_\_\_\_ ("YMCA"), hereby agrees that:*

1. The YMCA is a member in good standing, chartered and designated by the National Council of the Young Men's Christian Associations of the United States with YMCA Association Number \_\_\_\_\_; and
2. The YMCA will continue to participate in the Young Men's Christian Association Retirement Fund ("Retirement Fund") Retirement Plan ("Retirement Plan") under the Constitution, Bylaws, and resolutions of the Retirement Fund and the terms, conditions, and resolutions of the Retirement Plan and this Resolution as currently constituted and as may be amended from time to time; and
3. The YMCA will continue to enroll all eligible employees in the Retirement Plan on a timely basis; make timely contributions; notify the Retirement Fund of all pertinent changes affecting the YMCA and its employees; and file appropriate reports as may be required from time to time; and
4. The YMCA will continue to: (a) participate in the Young Men's Christian Association Retirement Fund Tax-Deferred Savings Plan ("Savings Plan"); (b) inform all new employees immediately after hire and all employees at least once a year, regardless of their age or hours worked, of the opportunity to contribute to the Savings Plan on a pre-tax basis (excluding Social Security and Medicare taxes) through payroll deduction and rollover contributions; (c) take all necessary steps to effectuate the enrollment of all employees who elect to participate in the Savings Plan; (d) remit timely contributions and other payments to the Retirement Fund; and
5. The YMCA's participation in and responsibilities under the Retirement Plan and Savings Plan will continue until such time as the YMCA's Board of Directors adopts a resolution to discontinue participation in the Retirement Plan, but only upon **three (3) months prior written notification** to the Board of Trustees of the Retirement Fund; and
6. The YMCA will amend participation in the Retirement Plan and Savings Plan effective \_\_\_\_/\_\_\_\_/\_\_\_\_ (mm/dd/yyyy).
7. With respect to the Retirement Plan, the YMCA selects **one combination** of YMCA and Employee share by **checking only one box** below (contribution rates are based on each participant's compensation):

8%		9%		10%		11%		12%							
Employee	YMCA	Employee	YMCA	Employee	YMCA	Employee	YMCA	Employee	YMCA						
<input type="checkbox"/>	0%	<input type="checkbox"/>	8%	<input type="checkbox"/>	0%	<input type="checkbox"/>	9%	<input type="checkbox"/>	0%	<input type="checkbox"/>	11%	<input type="checkbox"/>	0%	<input type="checkbox"/>	12%
<input type="checkbox"/>	1%	<input type="checkbox"/>	7%	<input type="checkbox"/>	1%	<input type="checkbox"/>	10%	<input type="checkbox"/>	1%	<input type="checkbox"/>	10%	<input type="checkbox"/>	1%	<input type="checkbox"/>	11%
<input type="checkbox"/>	2%	<input type="checkbox"/>	6%	<input type="checkbox"/>	2%	<input type="checkbox"/>	9%	<input type="checkbox"/>	2%	<input type="checkbox"/>	9%	<input type="checkbox"/>	2%	<input type="checkbox"/>	10%
<input type="checkbox"/>	3%	<input type="checkbox"/>	5%	<input type="checkbox"/>	3%	<input type="checkbox"/>	8%	<input type="checkbox"/>	3%	<input type="checkbox"/>	8%	<input type="checkbox"/>	3%	<input type="checkbox"/>	9%
		<input type="checkbox"/>	6%	<input type="checkbox"/>	4%	<input type="checkbox"/>	7%	<input type="checkbox"/>	4%	<input type="checkbox"/>	7%	<input type="checkbox"/>	4%	<input type="checkbox"/>	8%
				<input type="checkbox"/>	6%			<input type="checkbox"/>	5%	<input type="checkbox"/>	7%				



## SIGNATURES

We certify that this is a true and correct copy of the *Resolution* adopted by the YMCA's Board of Directors on the aforementioned date.

### Chairperson of the Board of the YMCA:

► Sign Name \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

### President/CEO or Executive Director of the YMCA:

► Sign Name \_\_\_\_\_ Print Name \_\_\_\_\_ Date \_\_\_\_\_

## IMPORTANT INFORMATION

- A. This *Resolution to Amend Participation in the Plans of the Retirement Fund* is to be adopted by the Board of Directors of the YMCA prior to the effective date to change. The YMCA may terminate participation in the plans sponsored by the Retirement Fund by submitting a *Resolution to Discontinue Participation* to the Retirement Fund **at least three (3) months in advance** of the termination date, which must be the first day of a month.
- B. If the YMCA wishes to make any change that would result in employees either starting or increasing withholdings from their compensation or a decrease in the YMCA's contributions, the YMCA must notify its employees in writing **at least forty-five (45) days in advance** via first class mail or hand delivery, as required by Section 204(h) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The YMCA is required to forward a copy of the Section 204(h) Notice to the Retirement Fund.
- C. Included with this *Resolution* are: (i) *Notice to All YMCAs of Delinquent Employer Contribution Collection Procedures as of July 1, 2006*; and (ii) *Timing of Remittance: ERISA Regulations* information sheet summarizing the obligation of YMCAs to make timely contributions of employee-withheld contributions to the plans sponsored by the Retirement Fund. The YMCA acknowledges that it has also been provided a copy of the *Constitution and Bylaws of the YMCA Retirement Fund*, the Retirement Plan document, and the Savings Plan document. All of these publications are available at [www.yretirement.org](http://www.yretirement.org).
- D. This *Resolution* is to be adopted by the Board of Directors of the YMCA at a properly called meeting, with a quorum of its members present.
- E. The YMCA is required to be a member in good standing of the National Council of the YMCA of the USA before and during its participation in the plans sponsored by the Retirement Fund. If a YMCA is no longer a member in good standing of the National Council, its participation in the Retirement Plan and Savings Plan will be terminated.
- F. This election may only be changed **once per Plan year (period beginning July 1 and ending on the following June 30)** by completing a *Resolution to Amend Participation* and sending it to the YMCA Retirement Fund **at least sixty (60) days in advance** of the effective date of the change. All contributions must be remitted to the Retirement Fund for each payroll period of the YMCA.
- G. This *Resolution* is to be certified by the YMCA's Chairperson of the Board of Directors and the Chief Executive Officer (President, Executive Director, etc.) or persons authorized by the Board to act on their behalf.
- H. This *Resolution* shall supercede all other *Resolutions* regarding the YMCA's participation in the Plans sponsored by the Retirement Fund.

**If you have any questions, please call our Customer Service Department at 800-RET-YMCA, 8:45am-6:00pm Eastern Time**

## NOTICE TO ALL YMCAS OF DELINQUENT EMPLOYER CONTRIBUTION COLLECTION PROCEDURES AS OF JULY 1, 2006

The YMCA Retirement Fund requires timely contributions from participating YMCAs. In the event of a delinquency in the remittance of employer contributions from participating YMCAs, the Retirement Fund will perform the steps described below to ensure that the Retirement Fund has a reasonable, diligent and systematic procedure for the collection of employer contributions. Please note that this Notice does not apply to the timely remittance of participant contributions (amounts withheld from employee pay or made by an employee) to the Retirement Fund.

Employer contributions by YMCAs are required to be transmitted to the Retirement Fund no later than the 15th business day of the month following the month to which the contributions relate. For example, contributions with respect to amounts accrued in July of 2008 should be remitted to the Retirement Fund no later than August 21, 2008 (the 15th business day of August). Therefore, contributions that are not remitted to the Retirement Fund by such date are delinquent. Delinquent contributions later remitted to the Retirement Fund must include all accrued interest, compounded on a monthly basis, that would have been credited had the contributions been remitted on time.

It is the Retirement Fund's long-standing practice to collect such delinquent contributions. The Retirement Fund over the years has developed collection procedures to ensure consistent, reasonable, and systematic collection of employer contributions. The Retirement Fund contacts the YMCA when the 15th business day deadline is missed to determine why the contribution was not remitted timely and to seek collection of the contributions. If contributions are not made, the procedure escalates to sending personal letters to the CEO of the YMCA, sending letters to the chairman of the YMCA's Board of Trustees, and reporting delinquencies to the YMCA of the USA national office and to the YMCA Network Consultant of the YMCA of the USA who is assigned to the YMCA. Coincident with these initial steps to collect delinquent contributions, each quarter the Benefits Committee of the YMCA Retirement Fund's Board of Trustees is provided with a report of the past due contributions regarding each delinquent YMCA.

After evaluation, the Retirement Fund will take such action as it determines appropriate, in the interest of the Retirement Fund and affected participants and beneficiaries, to collect delinquent contributions. Such action may include (i) extending the time period for making the applicable delinquent employer contributions or permitting the delinquent payment to be made in periodic payments, or (ii) considering a contribution as uncollectible and terminating efforts to collect such contribution, in which case the delinquent employer shall be expelled from the Retirement Fund and may only re-participate after all contributions and interest are paid and after satisfaction of any other conditions the Retirement Fund may impose. In both cases, the Retirement Fund will take into account the relevant facts and circumstances, including but not limited to, the costs expected to be incurred, and the benefit to be derived, by the Retirement Fund in connection with a proposed course of action to collect delinquent contributions.

In the event that the Retirement Fund is successful in contacting the employer obligated to make a delinquent payment, the Retirement Fund may determine in its sole discretion, after making such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect the delinquent contribution and based on a variety of factors (as described below), to extend the time period for the employer to make the delinquent contribution or to permit the delinquent contribution to be made in periodic payments (in all such cases including interest equal to what such amounts would have earned in the participants' accounts had they been contributed timely). In either such case, the employer would be required to enter into a written agreement to abide by the Retirement Fund's determination of its liability, and then comply with a payment schedule. This agreement would in no way impact the potential imposition of any excise taxes under Section 412 of the Internal Revenue Code.

Alternatively, the Retirement Fund may determine in its sole discretion, after making such reasonable, diligent and systematic efforts as are appropriate under the circumstances to collect the delinquent contribution, that it is prudent to consider the delinquent contribution as uncollectible and to terminate efforts to collect such contribution. Such determination would be set forth in writing and would in no way absolve the employer of any continuing liability such employer may have concerning the making of such contributions with respect to (1) the employees on whose behalf the contributions were to be made; or (2) satisfaction of the minimum funding requirements and other applicable requirements of the Internal Revenue Code, and the enforcement of same by the applicable regulatory authorities. Moreover, such determination would mean that the delinquent employer shall be expelled from the Retirement Fund and may only re-participate after all contributions and interest are paid and after satisfaction of any other conditions the Retirement Fund may impose.

In making a determination in connection with the delinquent contribution collection procedures described in the preceding paragraphs, the Retirement Fund will consider such factors as it deems relevant under the circumstances, which factors may include:

- The reason for the delinquency (staff turnover, inadvertent oversight or continued failures)
- The response of the YMCA upon notice of delinquency
- The financial condition of the YMCA
- The history of delinquency of the YMCA
- The economic conditions for the local community, county and state in which the YMCA is located
- The generally applicable economic conditions, including those within the locality of the YMCA employer

In addition to the foregoing, the Retirement Fund may, as it deems appropriate, expel a delinquent YMCA employer and preclude it from all future participation in the Retirement Fund's plans or pursue a civil action against a delinquent YMCA employer to collect contributions.

Set forth below are the Retirement Plan provisions that address YMCA contribution compliance:

### 14.3 YMCA Plan Compliance

(a) Each Participating YMCA agrees to participate in the Retirement Plan in accordance with the Constitution and Bylaws of the YMCA Retirement Fund, the provisions of the Retirement Plan and the terms of its Participation Agreement now in effect and as may be amended from time to time. Subject to due notice from the Board, failure of a YMCA to make the payments required to be made for its participants to the Retirement Plan in accordance with the provisions of the Retirement Plan shall, in the discretion of the Board result in termination of the participation of such YMCA in the Retirement Plan, provided, however, any termination of participation by a YMCA shall in no way excuse or otherwise forgive or release such YMCA from its obligation to the Retirement Plan and the Fund for all amounts (including, but not limited to, outstanding contributions) due from such YMCA with respect to its participation in the Retirement Plan.

(b) Participation by each Participating YMCA includes, but is not limited to, timely enrolling its eligible Employees, making timely contributions, notifying the Board of all name changes, salary changes, and other pertinent changes, and filing appropriate reports as may be required from time to time. (Emphasis Added).

(c) Each Participating YMCA agrees to allow auditors selected by the Board or officers or employees of the Retirement Fund to examine the books and records of the YMCA upon notice by the Board to determine whether the YMCA is participating in accordance with the Constitution and Bylaws of the Retirement Fund and the provisions of the Retirement Plan and applicable law.

(d) Should a YMCA or Participating YMCA fail to participate in the Retirement Plan in accordance with the Constitution and Bylaws of the Retirement Fund and the provisions of the Retirement Plan, and applicable law and should such failure result in the Retirement Fund, the Retirement Plan, the Board, or an officer or employee of the Retirement Fund being made or threatened to be made a party to any action or proceeding whether civil or criminal, said YMCA or Participating YMCA shall indemnify and hold harmless the Retirement Fund, the Retirement Plan, the Board, and each officer and employee of the Retirement Fund against any liabilities, damages, costs, judgments, fines, amounts paid in settlement and reasonable expenses, including attorney's fees, as a result of such action or proceeding or any appeal therein. The foregoing shall not be exclusive of any other rights to which the Retirement Fund, the Retirement Plan, the Board, and each officer or employee of the Retirement Fund may be entitled as a matter of law, and the indemnification hereby provided by YMCAs and Participating YMCAs shall be in addition to and not a limitation of any other right, privilege or power the Retirement Fund, the Retirement Plan, the Board, and each officer or employee of the Retirement Fund may lawfully exercise with respect to the same.



# Timing of Remittance

## *ERISA Regulations*

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***This important notice outlines legal requirements for the timely remittance of employee-withheld contributions as well as employer contributions.***

*The YMCA Retirement Fund sponsors two plans: The YMCA Retirement Fund Retirement Plan and the YMCA Retirement Fund Tax-Deferred Savings Plan. In 2004, the YMCA Retirement Fund was successful in having federal legislation enacted which protects important aspects of our plans:*

- *Recognition of our plans as church plans,*
- *The right to continue commingling the assets of the Retirement Plan with those of our Tax-Deferred Savings Plan for investment efficiency purposes and,*
- *Permission to continue to convert participant account balances into life annuities for retiring employees (known as self-annuitization, which only defined contribution church plans can do).*

*As a result of the legislation's enactment, effective July 1, 2006, the Retirement Plan elected into certain provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").*

### **ERISA Regulations**

Department of Labor ("DOL") regulations under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") require that employee contributions (amounts withheld from an employee's pay) be treated as plan assets as of *the earliest date on which such contributions can reasonably be segregated from the employer's general assets. Such regulations also provide that in no event shall that date be later than the 15th business day of the month following the month in which the amounts would otherwise have been payable to the employee.* (DOL Reg. Section 2510.3-102 and DOL Field Assistance Bulletin 2003-2). The purpose of the DOL regulations is to assure that employers are not using employee funds for non-retirement purposes or unnecessarily delaying the remittance of contributions.

### **What YMCAs Need to Know**

To comply with ERISA, YMCAs participating in the Retirement Plan are required to remit employee-withheld contributions to the Retirement Fund as soon as reasonably possible following the date that amounts are withheld from employee paychecks, but in no event later than the 15th business day of the month following the month in which amounts would otherwise have been payable to the employee. For example, if contributions are withheld from employee paychecks on July 15, the YMCA is required to remit such employee contributions to the Retirement Fund as soon as reasonably possible but no later than the 15th business day of August. The "as soon as reasonably possible" standard will depend upon the facts and circumstances of the YMCA, including whether they have electronic payroll systems and computer capabilities or manual systems to transmit contributions, as well as the number of YMCA branches that need to be coordinated and whether an outside payroll provider is utilized.

### **What YMCAs Need to Do**

YMCAs need to remit employee-withheld contributions after every payroll.

## The Basics

ERISA regards employee-withheld contributions as plan assets as of *the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which amounts would otherwise have been payable to the employee*. This is important because failure to remit such contributions on time may be viewed as a "prohibited transaction," and may result in significant excise taxes and penalties. In this context, the "prohibited transaction" may constitute an impermissible loan between the Retirement Plan and the YMCA. The method to correct a prohibited transaction is by undoing the transaction (contributing the employee amounts and related earnings). In addition, the transaction may need to be reported to the IRS (on IRS Form 5330) and an excise tax penalty any other penalties may be due.

Funds withheld from an employee's pay are considered plan assets and cannot be diverted for any purpose other than to be remitted to the Retirement Fund to be credited to the employee's accounts under the Retirement Plan for the exclusive benefit of the employee. The Retirement Fund will be required to report late contributions to the IRS on the annual information return filed for the Retirement Plan. Using plan assets for any other purpose, including the cash flow needs of the employer, could result in criminal liability.

## If Employee-Withheld Contributions are not Remitted to the Fund ASAP

If employee-withheld contributions are not remitted to the Retirement Fund on time per DOL regulations as described above, the YMCA is still obligated to remit the contributions to the Retirement Fund, and may also be required to file IRS Form 5330 and pay a **15% excise tax** penalty of the amount involved to the IRS. Failure to correct the prohibited transaction, to file the Form 5330 and to pay the penalty tax by the time it is due, or by the time a deficiency notice is received from the IRS, may subject the YMCA to a **100% excise tax** penalty. Under DOL regulations, a 10-business day extension may be available if certain specific requirements are met, including notifying all participants, the DOL, and obtaining a performance bond.

## Employer Contributions are Due on the 15th Business Day

Employer contributions by YMCAs to the Retirement Plan must be sent to the Retirement Fund by the 15th business day after the end of the month to which such employer contributions relate. If a YMCA fails to remit employer contributions in a timely manner, the YMCA must pay all contributions plus interest (at the applicable interest rates) to the Retirement Fund. In addition, the YMCA may be required to complete IRS Form 5330 and pay a **15% excise tax** penalty.

## Failure to Comply May Result in Expulsion

Failure to comply with the timely remittance of either employee-withheld contributions or employer contributions to the Retirement Fund could result in appropriate action being taken against a non-complying YMCA, including expulsion from participation in the plans of the Retirement Fund.

## Where Can I Get More Information?

If you have any questions about this notice or wish to discuss faster methods for sending contributions, please call our Finance Department at 800-RET-YMCA or email [info@ymcaret.org](mailto:info@ymcaret.org).