NOTE: This is a model policy for educational purposes only. Fund counsel should always be consulted when a trust fund adopts any written policy.
Model Delinquency Collection Procedures

The following are the Rules and Regulations of the _________________________ Fund (the “Fund”) adopted by the Trustees, which Rules and Regulations are applicable to all employers who contribute to the Fund.

Trustee Policy and Objectives
The Trustees will review at every scheduled meeting all delinquencies and the collection efforts being made by the Administrator and Legal Counsel. In pursuing efforts to collect delinquencies, the Trustees will use the reasonable discretion which they are entitled to exercise under existing law and government regulations.

In order to ensure prompt and accurate reporting and payment of employer contributions as required by the collective bargaining agreements, participation agreements, and any other documents that require contributions to the Fund, as well as applicable state and federal laws, and in exercise of the power and authority bestowed upon them by the Agreement and Declaration of Trust, the Trustees of the hereby adopt the following policies and procedures which shall uniformly apply.

A. Due Dates and Dates of Delinquency
The collective bargaining agreements and participation agreements require that all contributions are due the _____ day of each month on behalf of eligible participants who were on the employer’s payroll on the _____ day of the preceding month. In order to ensure that the contributions are correct in amount, the report forms submitted by the Trustees to the employers must also be submitted with the contributions.

(See Exhibit A for outline of Due Dates and letters of delinquency to be sent.)

B. If the contributions and the report forms are not in the Fund office on or before the due date, the employer shall be delinquent, and the following shall apply:

1. All contributions required to be made on behalf of employees shall become immediately due and payable for all hours worked as of the date of the delinquency, and shall remain continuously due and payable until the default is cured, and all costs of collection are paid by the delinquent employer, including interest, reasonable attorney fees, and liquidated damages, all as permitted by the Trust Agreement, and as set forth below:

   a. Interest: ___ % per year on unpaid contributions. Interest will begin to accrue on the first date of delinquency (the ___ of the month).
   b. Attorney fees: Those fees actually incurred
   c. Liquidated damages: The greater of interest due or ___% of the due and unpaid contributions
   d. Costs: All miscellaneous costs incurred by the Trustees in connection with and directly related to the obtaining of report forms and contributions, including, by way of example, and not of limitation, postage, service fees for service of process, court costs, witness fees, subpoena fees, sheriff’s fees, etc., audit fees as described below, and expert witness fees and expenses that may be incurred in any delinquency collection action.
C. The Fund Administrator shall, immediately upon the occurrence of the delinquency, direct a certified letter (Exhibit B) to the delinquent employer, return receipt requested, with a copy to the union, informing the employer of the delinquency, and outlining the delinquent employer's responsibilities, as set forth above.

D. If the delinquency is not cured within 14 days of that first letter, the Fund Administrator will direct a second letter to the delinquent employer (Exhibit C), certified mail, return receipt requested, informing the delinquent employer that the matter will be referred to Fund Counsel for collection.

E. If the delinquency is not fully cured by receipt of cash, or a check in the Fund office within five (5) days of the close of the applicable calendar month, the Fund Administrator shall send a third letter to the delinquent employer (Exhibit D), assess liquidated damages of ___% and forward the matter to Fund Counsel for collection with written authorization to sue, unless a determination is made by the Fund's Administrator and the Trustees with the advice of the Fund's Legal Counsel, that it is not in the Fund's interest to litigate the delinquency. Any such determination shall be reported to the Board of Trustees at the next regularly scheduled meeting at which delinquencies are reviewed.

F. As soon as practicable after receiving the matter from the Fund Administrator, Fund Counsel shall, without being required to communicate further with the delinquent employer, commence legal action under and pursuant to 29 U.S.C. Section 1132, seeking, in addition to the delinquent contributions, costs, interest, liquidated damages, reasonable attorney fees as set forth above, and appropriate injunctive relief. After referral to Fund Counsel, all communications from the delinquent employer relative to the delinquency shall be with Fund Counsel.

G. Unless specifically authorized by the Board of Trustees, and subject to paragraph E above, Fund Counsel shall not have authority to compromise claims with the delinquent employer. The Trustees shall grant such authority in the following situations.

1. Where a compromise is authorized or required pursuant to any ruling or order in Bankruptcy

2. Where, in the opinion of Fund Counsel, there are serious questions of law or fact which make recovery of the entire amount unlikely

3. In those situations where, in the sole discretion of the Trustees, it is in the best interests of the Fund to compromise claims.

H. Habitual Delinquencies. Employers who, twice within a twelve month period, do not make their required contributions until after receiving the Fund's second delinquency letter or who have been sued by Legal Counsel shall be classified as "habitually delinquent." The Fund will send those employers letters notifying them that if they are delinquent again within the next twelve months, they will immediately be assessed a ___% late payment fee and any delinquency which is longer than five days will result in the Fund’s Counsel being instructed to file suit immediately without any prior notice.
A sample warning letter is included here as Exhibit E.

I. Any payment received from a delinquent employer shall be applied in the sole discretion of the Trustees:
   1. If partial payments are received, interest shall accrue on delinquent balance as of the 1st of each month.
   2. If the delinquent contributions are paid, but not the costs, attorney fees or interest, interest shall continue to accrue thereon.

J. Interest, Penalties, Costs and Attorneys' Fees. Delinquent employers who pay their delinquencies in full within 10 days of the due date of the contribution shall not be assessed interest, liquidated damages, costs or attorneys' fees. Delinquent employers who pay their delinquencies in full after 10 days of the due date, but before a lawsuit is filed, will pay ___% late liquidated damages. Delinquent employers who pay their delinquencies in full on or after the first day of the month following the month in which the payment is due will be liable for interest and liquidated damages. If a lawsuit is filed, delinquent employers will be liable for interest, liquidated damages, costs and attorneys fees.

Employers who arrange prior to a suit being filed to pay their delinquencies over an extended period of time pursuant to a written agreement with the Fund shall be charged interest of ___%, plus an additional charge of $200.00 to cover the cost of collection and preparation of the agreement.

If a lawsuit is filed against an employer, the Fund's Legal Counsel shall recover interest, costs, attorneys' fees, and liquidated damages in an amount equal to the greater of the interest due or ___% of the amount due (which liquidated damages does not include the ___% late payment charge) for which the employer is liable.

Employers who agree to make payment over an extended period of time pursuant to a stipulated order shall be assessed the full amount of interest, costs, attorneys' fees and liquidated damages up to the date when the stipulated order is signed, and only interest for the period thereafter.

K. Extension of Time for Payment. No extension of time in which an employer is required to make a contribution may be granted, unless such extension is set forth in writing and contains the following minimum provisions:

1. Full payment shall be obtained as soon as possible. In no event, however, shall the payment schedule agreed upon extend for more than 24 months.

2. The employer must make his current contributions on time.

3. The agreement extending time shall include a charge for interest at the rate of ___% and a charge for attorneys' fees, if applicable.

4. If the employer fails to make any of its payments, including his current contribution, on time, the full amount of the delinquency shall be due and payable.

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5. Where possible, an attempt shall be made to collect 33 percent of the sum of the delinquency and penalties in the initial payment.

6. Payments shall be allocated to charges that are in addition to principal before allocating the payments to principal.

Upon advice of Legal Counsel, the Administrator (and/or the Trustees) is empowered to modify these provisions if he determines that to do so would promote the Fund’s interest in collecting as much money, with the least expense, possible.

L. Negotiated Settlements. Based upon the advice of Legal Counsel, the Administrator is empowered to authorize resolving a delinquency by accepting less than the full amount of principal due from the employer if the Administrator concludes that it is likely that the Fund will recover a smaller net sum by pursuing collection efforts further. Any such determination shall be reported to the Board of Trustees at their next regularly scheduled meeting at which delinquencies are reviewed.

M. Special Circumstances. In the event that any delinquency represents an immediate threat to the interests of plan participants, the Plan reserves the right to institute legal action at any time after the delinquency is discovered.
Exhibit A

Delinquency Collection Procedure Timetable

(Assuming the due date is the 10th of the month)

<table>
<thead>
<tr>
<th>Month Beginning</th>
<th>Due Date</th>
<th>1st Letter Sent</th>
<th>2nd Letter Sent</th>
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<td>1-7</td>
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Timetable for collection of interest, liquidated damages and attorneys’ fees.

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<th>Due Date</th>
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<th>1st of the month</th>
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<td>Attorney’s fees</td>
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Timetable for habitually delinquent employers.

<table>
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<th>21st</th>
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<tbody>
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</tr>
<tr>
<td>Liquidated Damages</td>
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<tr>
<td>Attorney’s fees</td>
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</tbody>
</table>
Exhibit B

[FUND STATIONERY]

Re: Delinquent Contribution Policy

[Date]

Dear (Delinquent Employer):

As you know, you are obligated to submit monthly reports and payments to this Fund by the ____ of the month following the month in which the work was performed. For example, reports for January are due by February ____. Our records indicate that we have not received payments and/or reports from you for the month of (date).

We request that you immediately submit your overdue reports and payments. If you had no employees for whom you were obligated to make payment to the Fund for a particular month, please indicate that on the report.

Failure to submit the reports and payments is a violation of your collective bargaining agreement and the Trust Agreement of this Fund. Under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Fund is required to collect delinquent contributions and is entitled to collect a ____% late payment fee, interest and attorneys’ fees. You can avoid these charges by immediately sending your reports and payment to the Fund office before ________________, __________20__

Unless you make payment or contact this office right away, we will be compelled to forward your file to our legal counsel, with instructions to file suit against you. This will result in additional costs and attorneys' fees for which you will be liable under the terms of ERISA, the collective bargaining agreement and the Trust Agreement.

We would appreciate your cooperation in this matter. Please call our office if you have any questions.

Sincerely,

Administrator of the
Trust Fund
[Date]

Dear (Delinquent Employer):

Despite our earlier warning, we have still not received your payments and/or reports for the period ending __________________________.

You are in violation of your collective bargaining agreement and the trust agreement establishing this Fund. Under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Fund is required to collect delinquent contributions.

You are liable for the delinquent contributions and a late payment fee of ___%.

You should be further advised if the reports are not filed and contribution not made by _____________________, the Fund will be entitled to collect the late payment fee and interest and the matter will be turned over to our legal counsel for appropriate collection proceedings. ERISA requires courts to award attorneys' fees and liquidated damages plus interest. If suit is instituted, the Fund's regulations require collection of attorneys' fees plus interest and liquidated damages equal to the greater of the interest due or ___% of the amount due.

Sincerely,

Administrator
Exhibit D

Re: Delinquent Contributions Final Letter

[Date]

Dear (Delinquent Employer):

Your contribution and reports to this Fund are now at least twenty-five (25) days overdue. Accordingly, this matter is now being turned over to our legal counsel for appropriate collection proceedings. Under ERISA, courts are required to award attorneys' fees, liquidated damages and interest to the Trust Fund.

This matter will now be handled by:

Name & Address of Attorney

Administrator of the Trust Fund
Exhibit E

[Date]

Dear (Delinquent Employer):

As you know, you are obligated to submit monthly reports and payments to the ____________________________ Fund by the last day of the month following the month when hours are worked.

Our records indicate that in the past 12 months you have been delinquent twice in submitting your contribution reports and payments to the ____________________________ Fund. As a result, the Fund has incurred additional expenses and has declared you as a habitually delinquent employer. This letter is to advise you that any time within a year from the date of this letter that you are again delinquent in making payment, you will be immediately assessed liquidated damages equal to ___% of the amount due, and if payment of the contribution plus the liquidated damages is not made within five days of our assessment, we will instruct our legal counsel to file suit immediately against you without any prior notice to you. A lawsuit will result in additional costs and attorneys' fees for which you will be liable under the terms of ERISA, the collective bargaining agreement and the trust agreement. Courts are required under ERISA to award attorneys' fees, interest and liquidated damages.

We would appreciate your cooperation in making your contributions on a timely basis. Please call our office if you have any questions.

Sincerely,

Administrator