

**DELINQUENCY, AUDIT AND OTHER PAYMENT PROCEDURES
RESTATED JULY 1, 2016**

**ADOPTED BY THE TRUSTEES OF THE
KENTUCKY LABORERS DISTRICT COUNCIL HEALTH AND WELFARE FUND AND
KENTUCKY LABORERS DISTRICT COUNCIL JOINT APPRENTICESHIP AND TRAINING TRUST FUND**

In order to coordinate the collection of delinquent employer contributions and/or over/underpayment of employer contributions and/or participant self payments, the respective Trustees of the Kentucky Laborers District Council Health and Welfare Fund and the Kentucky Laborers District Council Joint Apprenticeship and Training Trust Fund (herein sometimes referred to collectively as "Funds") have agreed to the establishment of a Central Collection Unit (herein referred to as "CCU").

To effectuate that purpose, and in accordance with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA), the following written guidelines have been prepared setting forth the procedures, policies and documents to be utilized in this program.

It is the intent of the Trustees that the implementation of this program will result in reasonable, diligent and systematic efforts being made to collect all contributions due and owing to the Funds.

I. DUTIES OF THE CCU

Ascertainment of Delinquent Employers

A. Monthly Contributions

The Welfare Fund and Training Fund provide benefits to members of various Local Unions affiliated with the Kentucky Laborers District Council throughout the State of Kentucky. Collective bargaining agreements require that monthly fringe benefit contributions be made to the Funds by employers who are bound to said collective bargaining agreements.

1. Construction Employers:

Contributions are due on the tenth (10th) day of the month (herein referred to as "Deposit Month") following the month during which an eligible employee worked or received wages under the collective bargaining agreement. If contributions are not postmarked by the twentieth (20th) day of the Deposit Month, the employer is deemed in violation of the collective bargaining agreement and the trust agreements incorporated therein.

2. NonConstruction Employers and Employers (Construction or NonConstruction) who are Signatory to a NonBargaining Unit Agreement:

Contributions are due and payable on or before the tenth (10th) day of the month immediately preceding the Eligibility Month for which the contributions are being paid. Contributions postmarked on or after the eleven (11th) day of the month immediately preceding the Eligibility Month for which the contributions are being paid will be considered delinquent.

B. Delinquency Reports

Local Unions shall prepare and send to the CCU an Activity Report of (a) employers who worked in the jurisdiction during the current reporting period and (b) employers who worked in the previous month but who are

no longer working in the particular area of said Local Union. The Activity Reports shall be due no later than the seventh (7th) day of the month following the work month.

The CCU shall enter all employer reports and, on a monthly basis following the Deposit Month, prepare a delinquency report of all employers who had reported in the previous month but who appear delinquent in their current monthly contributions. The delinquency report shall include not only employers who have failed to file work reports but also employers who have failed to remit the full payment owed to the Funds. The Activity Reports provided by the Local Unions will be referred to in the CCU's preparation of the delinquency report.

The CCU shall then distribute, and if requested review, the delinquency report at the regular monthly meeting of the Kentucky Laborers District Council. Any updates from the delegates to the District Council will be noted on the CCU's report and referred to the CCU for further action as may be required under these guidelines.

NOTE: Contributions received will first be applied to any monies already owed for delinquent and/or underpaid contributions. Should there be a balance remaining after the previous debt obligations have been met, the monies will then be applied to the contributions owed for the corresponding Work Month Report for which those monies were sent. If there is still a balance owed on that corresponding Work Month Report after such application is made, the Employer will be considered underpaid for that report. The Employer will receive written notification of the actions taken and any amounts still owed.

Notification to Delinquent Employers

The CCU shall send a series of letters to delinquent employer(s) in the following order:

A. Delinquency or Underpayment Letter to Employer

A Delinquency or Underpayment Letter will be mailed to the employer following reconciliation of reports from the Deposit Month and receipt of the Local Unions' Activity Reports.

1. Delinquency Letter:

If the employer has failed to send in a contribution report and monies owed, he will be sent a Delinquency Letter which will state that if the contribution report and monies owed are not paid within fifteen (15) days of the date such notification was sent, the Fund Attorney will be notified to proceed with the filing of a lawsuit. The employer will also be advised that liquidated damages and interest will be assessed upon receipt of the contribution report and monies owed. Copies of this letter will be sent to the appropriate local union(s) and the Kentucky Laborers District Council.

2. Underpayment Letter:

If the employer has submitted a contribution report without monies or if the monies are "underpaid", he will be sent an Underpayment Letter which will state that if the monies owed are not paid within fifteen (15) days of the date such notification was sent, the Fund Attorney will be notified to proceed with the filing of a lawsuit. Copies of this letter will be sent to the appropriate local union(s) and the Kentucky Laborers District Council.

B. Notification to Fund Attorney

In the event the contributions are not received within fifteen (15) days after the mailing of the Delinquency or Underpayment Letter to the employer, a Notification to the Fund Attorney shall be sent. This letter will advise the Fund Attorney to proceed with the filing of a lawsuit. Copies of this letter will be sent to the employer, the appropriate local union(s) and the Kentucky Laborers District Council.

If the employer pays the monies owed after the Notification to Fund Attorney has been sent, a Notice of Contributions Paid shall be sent to the Fund Attorney to advise him to revise his records accordingly. Copies of this letter will be sent to the employer, the appropriate local union(s) and the Kentucky Laborers District Council.

Waiver of Delinquency Notifications and Immediate Filing of Lawsuit

In the event an Employer has been delinquent, has failed to pay contributions and penalties owed and has filed bankruptcy, and the owners or principals of that company then open a company under another name and tax identification number who then immediately becomes delinquent in the submission of contributions, the Trustees may choose to waive the first (1st) Delinquency Notification and proceed immediately to filing a lawsuit against that new Employer.

Notification to Employers for Late Payment of Contributions

A. Liquidated Damages and Interest will be assessed for late payment of contributions as follows:

1. Construction Employers:

Contributions postmarked by the depository bank on or after the 21st day of the Deposit Month will be considered delinquent. Liquidated Damages and Interest will be assessed on any contributions received by the depository bank on or after the first (1st) day of the second (2nd) month following the Work Month. The CCU will notify by letter any employer whose contributions are received by the depository bank on or after the first (1st) day of the second (2nd) month following the Work Month that liquidated damages in the amount of 10% of unpaid or late paid contributions and plan interest at the rate of 10% per annum have been assessed against that employer.

2. NonConstruction Employers and Employers (Construction or NonConstruction) who are Signatory to a NonBargaining Unit Agreement:

Contributions postmarked on or after the eleven (11th) day of the month immediately preceding the Eligibility Month for which the contributions are being paid will be considered delinquent. Liquidated Damages and Interest will be assessed on any contributions received by the depository bank on or after the first (1st) day of the Eligibility Month for which the contributions are due. The CCU will notify by letter any employer whose contributions are received by the depository bank on or after the first (1st) day of the Eligibility Month for which the contributions are due that liquidated damages in the amount of 10% of unpaid or late paid contributions and plan interest at the rate of 10% per annum have been assessed against that employer.

B. Liquidated Damages / Interest Letter

The CCU will prepare and mail a Liquidated Damages / Interest Letter to any employer whose contributions are not timely remitted, advising the employer that liquidated damages and interest have been assessed on the late payment. The letter will further state that if the monies owed are not received within fifteen (15) days of the date such notification was sent, the Fund Attorney will be notified to proceed with the filing of a lawsuit. Copies of this letter will be sent to the appropriate local union(s) and the Kentucky Laborers District Council.

C. Notification to Attorney

If payment of the liquidated damages and interest is not received within fifteen (15) days after the mailing of the Liquidated Damages / Interest Letter to the employer, a Notification to the Fund Attorney shall be sent. This letter will advise the Fund Attorney to proceed with the filing of a lawsuit. Copies of this letter will be sent to the employer, the appropriate local union(s) and the Kentucky Laborers District Council.

If the employer pays the monies owed after the Notification to Fund Attorney has been sent, a Notice of Liquidated Damages / Interest Paid shall be sent to the Fund Attorney to advise him to revise his records

accordingly. Copies of this letter will be sent to the employer, appropriate local union(s) and the Kentucky Laborers District Council.

II. LATE FILING ASSESSMENTS

Liquidated damages in the amount of ten (10%) percent of the unpaid contributions and plan interest at the rate of ten (10%) percent per annum will be assessed against any delinquent employer who is sent a Delinquency or Underpayment Letter. Such liquidated damages and plan interest will also be applicable to late payment of contributions.

Except in instances when legal action has commenced, the CCU will notify an employer, in writing and as provided for above, that liquidated damages and plan interest have been assessed for any contributions which are either delinquent or which have been remitted late. These letters will specify the amount of liquidated damages and plan interest owed to each Fund and will direct the employer to remit separate checks for those assessments to the CCU. Should the late filing assessments remain unpaid after fifteen (15) days from the date of the CCU's letter, the matter will be referred to the Fund Attorney for action in the same manner as any delinquent contribution; provided however that any employer who owes liquidated damages and plan interest in the total amount of \$75.00 or less shall not be referred to the Fund Attorney for further action.¹

III. AUDIT PROCEDURES:

The CCU shall review all employers to whom Delinquency Letters have been sent and also review information received from the respective Local Unions relating to such delinquent employers. The Trustees shall have the right to audit and may audit, any employer who is (a) habitually late in the remittance of fringe benefit contributions and/or (b) two (2) or more months delinquent.

The CCU shall notify the Funds' Auditor as to those employers to be audited.

Upon receipt of the audit authorization letter, the auditor shall advise the employer by letter of the pending audit. The auditor shall then contact the employer to arrange the time and place of the audit. Reasonable efforts shall be made by the auditors to schedule audits in such a way as to minimize travel and other out-of-pocket expenses. Copies of all correspondence between the auditor and the employer shall be sent to the CCU and the Fund Attorney.

If an employer refuses to produce complete payroll books and records, the auditor shall promptly notify, in writing, the CCU who shall then contact the Fund Attorney. The Fund Attorney shall take the necessary steps, up to and including the filing of a lawsuit, to compel production of the payroll documents. Likewise, if the auditor has any difficulty in scheduling the audit, written notice of the problem shall be promptly given to the CCU. Appropriate action shall then be taken, including the possible filing of a lawsuit.

If the employer provides the necessary payroll data, the auditor shall conduct the audit in accordance with generally accepted accounting standards. Upon completion of the audit, the auditor shall prepare an audit report and submit that report together with a cover letter summarizing his findings to the CCU along with a statement of services rendered. The CCU shall review the completed audit, calculate the applicable penalties, including the costs of the audit, and forward a demand letter and copy of the audit report to the employer. Should an employer dispute any of the auditor's findings, the matter will be handled by the auditor or the Fund Attorney, as circumstances so warrant.

¹ CCU will not refer the matter to the Fund Attorney until the liquidated damages and plan interest total \$75.00. The Fund Attorney will proceed with filing lawsuit when these penalties accrue to at least \$600.

The Fund Attorney is authorized to enter into an installment payment plan with a delinquent employer, provided such payment plan meets the following guidelines:

- A. The amount to be paid by the employer is to be exactly the total amount of contributions due plus penalties and audit costs.
- B. The time in which the total amount is to be paid will be no longer than six (6) months
- C. Each settlement will be conditioned upon the employer's payment of all current contributions as they become due. Failure to make current contributions and/or an installment payment shall void any payment plan established pursuant to these guidelines and all unpaid amounts shall become immediately due and owing and subject to legal action.
- D. Any agreement in accordance with the foregoing guidelines must be reached within ten (10) days or the matter shall be considered for legal action.
- E. Any installment agreement shall include a \$500 administrative fee.
- F. A delinquent employer shall be allowed only two (2) installment payment plans every five (5) years.

IV. LEGAL PROCEEDINGS

Upon receiving written notification from the CCU that an employer has failed to remit unpaid contributions or liquidated damages and interest owed by the fifteen (15) day deadline, the Fund Attorney shall file a lawsuit in the appropriate division of the United States District Court. In such action, the Trustees shall seek judgment for all unpaid contributions, liquidated damages, plan interest, audit costs, attorney fees, costs of the action, and post-judgment interest.

If the Fund Attorney is authorized to file suit to compel an audit, the employer shall be immediately notified that litigation will be instituted against the employer, unless the employer contacts the Fund Attorney to schedule the audit within seven (7) days.

Should an employer appeal the payment of liquidated damages and interest owed for delinquent contributions or otherwise, the CCU shall refer the matter to the Delinquency Committee or the Trustees for resolution. In the event the Delinquency Committee or the Trustees refer such matter to the Fund Attorney for litigation, said lawsuit will be filed in the most appropriate Court within the State of Kentucky.

V. OVERPAYMENTS / UNDERPAYMENTS

Upon proper documentation, all overpayments for employer contributions, or self-payments to the Welfare Fund, shall be refunded by the CCU with an accompanying letter of explanation. No adjustments to future employer reports or self-payments will be permitted. Overpayments of less than \$5.00 will not be refunded. Employers who have overpaid contributions must send a written request to the CCU for refund of the overpayment within six (6) months of the date the overpayment occurred. If the written request is not received by the CCU by that deadline, the overpayment will not be refunded to the employer. If a timely notice of overpayment is made, the Fund Office will investigate the claim. If the claim is determined to be valid, then within sixty (60) days the Fund Office will make the necessary repayment.

Underpayment of employer contributions will be handled in the same manner as delinquent employer contributions. Underpayment of participant self-payments to the Welfare Fund will generate a letter from the CCU to the participant, advising the participant that he must submit a cashier's check or money order for the underpaid amount within fifteen (15) days of the date of written notification of the underpayment. Should the participant fail to remit the underpaid amount by the due date, or should the participant continue to underpay, the self-payment(s) will be returned, eligibility will be terminated, and the participant will be given his appeal rights.

Underpayments will be handled the same as delinquent contributions and the procedure for Delinquency Letters referred to hereinabove will be applied; provided, however, that underpayments of less than \$5.00 in any given month will be "written off" and no Delinquency Letters will be mailed to the employer by the CCU.

Liquidated damages and interest will be applied to underpayments in the same manner as with delinquent contributions.

VI. PROCEDURES IN THE EVENT OF RETURNED CHECKS

Should the CCU be advised by its depository bank that an employer, or a participant who is making self-payments to the Welfare Fund, has remitted a check that has been returned for insufficient funds, the matter shall be treated as a delinquent contribution in the case of an employer or as an underpayment in the case of a participant.

If an Employer has remitted a check for contributions owed that is subsequently returned for insufficient funds and if the Fund is then charged fees for that returned check, the Employer will be required to reimburse the Fund for such fees.

If an Employer has remitted a check that is returned for insufficient funds, the Employer must make payment for those monies owed in the form of a Cashier's Check or Money Order. If a Participant has remitted a check for self payment that is returned for insufficient funds, the Participant must make payment for those monies owed in the form of a Cashier's Check or Money Order.

VII. BONDING

The delinquent employer shall, at the request of the Trustees of the Funds, be required to post a fringe benefits performance bond in the following amount to insure that the Employer's future payments to the Funds will be made on a timely basis:

1 through 9 employees:	\$ 5,000.00
10 through 14 employees:	\$10,000.00
15 through 19 employees:	\$15,000.00
20 through 24 employees:	\$20,000.00
25 through 29 employees:	\$25,000.00
30 or more employees:	\$30,000.00

The employer shall be notified by certified mail, return receipt requested, that it must immediately post the fringe benefits performance bond in the amount specified and that the employer shall provide proof of bonding to the CCU within fifteen (15) days following receipt of the notice to the employer.

The foregoing procedures shall be effective July 1, 2016.




TRUSTEES OF THE
KENTUCKY LABORERS DISTRICT COUNCIL HEALTH AND WELFARE FUND

UNION TRUSTEES:










EMPLOYER TRUSTEES:

TRUSTEES OF THE
KENTUCKY LABORERS DISTRICT COUNCIL JOINT APPRENTICESHIP
AND TRAINING TRUST FUND

UNION TRUSTEES:

EMPLOYER TRUSTEES:

