

EAST BAY DRAYAGE DRIVERS SECURITY FUND
COLLECTION POLICY AND PROCEDURES

(September 30, 2004)

I. PURPOSE AND INTENT

A. This document (hereinafter "Collections Policy") is intended to set forth the general policy and procedures governing the collection of contributions from Employers participating in the EAST BAY DRAYAGE DRIVERS SECURITY FUND (hereinafter "Trust Fund"), and to identify the respective duties and responsibilities for collection of contributions of the Trust Fund's Administrative Manager, and Counsel, and Auditor.

B. The Trustees adopt this Collections Policy to fulfill their responsibility for collection of Employer contributions and other sums that may become due to the Trust Fund under applicable labor agreements and the Trust Fund's Agreement and Declaration of Trust providing for the EAST BAY DRAYAGE DRIVERS SECURITY FUND (hereinafter "Trust Agreement").

C. The Trustees recognize the need to implement a reasonable, diligent, and systematic collection program and to coordinate the collection efforts of the Trustees, the Administrative Manager, Attorney and Auditor.

II. DOCUMENTATION

A. TRUST AGREEMENT

The Trust Agreement contains provisions relating to contribution obligations of Employers, delinquencies to the Trust Fund, and the rights of the Board of Trustees to audit Employers to insure the accuracy of the Employers report and payment of contributions. To the extent that any provision of this Policy is inconsistent with the terms of the Trust Agreement, the terms of the Trust Agreement shall control. All persons involved in the audit/collection efforts of the Trust Fund shall implement this Policy in a manner that is consistent with the terms of the Trust Agreement.

1. The Trust Agreement vests responsibility for the administration of the Trust Fund in the Board of Trustees and provides that the Trustees may promulgate such rules and regulations as may be proper or necessary for the sound and efficient administration of the Trust.
2. The Trust Agreement further provides that "the Trustees shall have the power to demand, collect, receive and hold Employer contributions, and to take all steps and proceedings deemed necessary by such Trustee to effectuate the collection of any monies due the Trust.

B. CONTRIBUTION OBLIGATION

Federal law allows the Trust Fund to accept contributions only if there is a written agreement setting forth the detailed basis upon which payments are to be made to the Fund. The Administrative Manager shall maintain on the Trust Fund's behalf a record of such agreements with each contributing Employer.

1. The Administrative Manager shall review all new, renewed, and/ or modified labor agreements to determine if they meet the requirements for participation in the Trust Fund.

2. In addition to the execution of a contract, each Employer shall execute a Subscription Agreement, the original of which shall be maintained as a record of the Trust Fund by the Administrative Manager, a sample copy of which is attached hereto as Appendix A.
3. Contributions are due on the 10th day of the month. All contribution payments not postmarked by the 25th day of the month are deemed delinquent.
4. The Administrative Manager shall forward a copy of each new and renewed Agreement to Trust Fund Attorney for review and approval. The Trust Attorney shall notify the Trust Administrative Manager that the Agreement is approved and the Administrative Manager shall sign the Trust Acceptance and forward it to the Union and the Employer.
5. The Administrative Manager shall not accept contributions from any Employer who is not signatory to a collective bargaining agreement which meets the criteria for participation in the Trust Fund and who has not executed the appropriate Trust Forms.

III. RESPONSIBILITIES OF THE BOARD OF TRUSTEES

- A. To clearly define the Employer's obligation to pay contributions;
- B. To establish the scope of the collection and audit programs for the Trust Fund;
- C. To define overall Trust policy;
- D. To make, within their complete discretion, reasonable effort to collect all monies owing to the Trust Fund, weighing the amount at issue, the solvency of the employer and the costs of collection.

IV. ADMINISTRATIVE MANAGER

A. GENERAL RESPONSIBILITIES OF THE ADMINISTRATIVE MANAGER

The Administrative Manager is generally responsible for:

1. Implementing the policies of the Board of Trustees as the policies affect the Trust Fund's operations;
2. Notifying Employers and Local Unions regarding policy and procedure changes;
3. Day to day supervisory authority regarding the report and payment of contributions by Employers and collection of any delinquency;
4. Notifying the Trustees of enforcement problems;
5. Accounting for all receipts and disbursements of the Trust Fund;
6. Suspending the eligibility of the delinquent employer's employees for any month in which a delinquency has occurred and not been corrected;
7. Calculating and assessing liquidated damages pursuant to Article VI of the Fund's Trust Agreement;
8. Collecting delinquent contributions and liquidated damages for the first two months of the delinquency;

9. Preparing lists of delinquent Employers for distribution to the Trustees at their regular Board meetings;
10. Coordinating the schedule of and conducting payroll compliance testing program for signatory Employers pursuant to the direction of the Board of Trustees;
11. Arranging for and attending post-payroll compliance testing meetings to review employer responses to the test's findings and conclusions.
12. Responding to bankruptcy notices and assisting Fund counsel in the assertion of claims in bankruptcy in a timely manner;
13. In cases where the delinquency has continued without payment for a period of two calendar months, making timely referral of the delinquency to Fund counsel for further action.

B. RESPONSIBILITIES OF ADMINISTRATIVE MANAGER WITH REGARD TO DELINQUENT CONTRIBUTIONS

It is the policy of this Trust Fund to follow timely and consistent procedures to verify the accuracy of participating Employers' reports and contributions and to collect all delinquent contributions, and other assessments which may be owed to the Trust Fund in accordance with the terms of the Trust Agreement, participating Employers' labor agreements, and the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

1. Employer contributions (and all supporting transmittal information required pursuant to the Fund's Subscriber Agreement) are due by the tenth day of the calendar month following the month in which the work on which the contribution was based was performed.
2. Employer reports and/or contributions, which are not received by the 25th day of the calendar month, are deemed delinquent.
3. Employer reports received without the appropriate Employer contribution are deemed delinquent if not received by the 25th day of the month.
4. Upon determination of the Administrative Manager that an Employer is delinquent due to receipt of a report without the appropriate contribution, a report with an underpayment of contributions, or upon the failure of the Employer to submit a report the Trust Fund, the Administrative Manager shall immediately attempt to telephone the Employer to resolve the delinquency, and shall notify the Local Union and request the local Unions' assistance in contacting the Employer, and attempting to resolve the delinquency.
5. If the matter is not resolved through telephone contact with the Employer, the Administrative Manager shall send a delinquency notice ("Delinquency Notice - 1") to the Delinquent Employer by the last day of each calendar month in which the report and/or contributions is due. The letter shall inform the Employer of the amount of the delinquency, the amount required to cure the delinquency, which shall include a demand for payment of interest at the rate the Internal Revenue Service charges for delinquent tax payments (pursuant to Article VI(d) of the Trust Agreement) and liquidated damages in an amount equal to six percent (6%) of the delinquent contribution.

6. If the Delinquency is not resolved within two weeks of the date of the delinquency the liquidated damages of twelve percent (12%) per annum shall be applied. Employer shall receive a billing statement on the first day of the month, which shall include, in addition to the current months billing, the amount of the delinquent contributions, and an assessment of liquidated damages.
7. If, in response to the "Delinquency Notice - 1", the Employer makes a partial payment the Employer shall receive a billing statement on the first day of the month which shall include, in addition to the current months billing, a notice of underpayment and a demand for payment of all unpaid contributions, interest and an assessment of liquidated damages.
8. If the delinquent amount and liquidated damages are paid prior to the 10th day of the month following the month in which contributions and or reports are due, normal billing shall resume on the 1st day of the following month.
9. If the delinquency has not been resolved by the 10th day of the month following the month in which contributions and/or report are due, the Administrative Manager shall send a second Delinquency Notice ("Delinquency Notice - 2) along with the current month's billing statement advising the delinquent Employer that if all outstanding contributions, interest and liquidated damage assessed in accordance with the Trust Agreement are not received by the 10th day of the following month, the delinquency will be referred to the Trust Counsel to file an action for recovery of all sums due in accordance with section 502(g)(2) of the Employee Retirement Income Security Act ("ERISA"); and
10. If the delinquent amount and liquidated damages are paid prior to the 10th day of the second month following the month in which contributions and or reports are due, normal billing shall resume on the 1st day of the following month.
11. The Administrative Manager shall prepare and distribute a list of delinquent Employers to the Board of trustees at each regularly scheduled Board meeting, which shall indicate the status of all delinquencies since the last Board meeting.

V. PAYROLL COMPLIANCE TESTING POLICY

The Trustees, or their representatives, upon notice to the Employer, shall be permitted at times reasonably convenient to the Employer to make an inspection or audit of the Employers' payroll and employment records, or any other records required by such auditors to attest to the accuracy of the payments by the Employer. The results of such audit may be disclosed to the Trustees, and to agents or representatives of the Trust Fund employed to assist the Trustees in administering this Trust Fund, and shall be available for presentation in any action taken to enforce collection of required payments into this Trust Fund. The costs of said audit shall be deemed a recoverable cost in any legal action for recovery of amounts determined to be due by audit.

VI. AUDIT POLICY

A. Purpose

Employers contribute to the Trust Fund on a self-assessed basis. The purpose of the employer compliance auditing program is to ensure that participating Employers correctly report and pay the proper amount of contributions due the Trust Fund under the terms the collective bargaining agreements to which the Employer is signatory.

B. Auditor

For purposes of this Article the term "auditor" is intended to refer to the person or persons delegated by the Fund's Board of Trustees to perform the audit. As of the date of adoption of this Policy the auditor is the Fund's Administrative Manager.

C. Types of Audits Defined

1. Routine Audits
Routine audits of Employers are initiated by the Administrative Manager's Office, and refer to a program whereby each participating Employer is subjected to an audit approximately once within every three (3) year period, unless circumstances otherwise dictate a shorter period.
2. Ad Hoc Audits
Ad Hoc audits shall mean those audits that are conducted due to special circumstances. These may include:
 - a. The audit of all Employers terminating their collective bargaining agreement, or terminating their business operations. These audits should be conducted as soon as possible after either termination or cessation of business;
 - b. Any other special circumstances as the Board of Trustees deem necessary.
3. Procedures: The audit period of a routine audit shall normally be for a four (4) year period preceding the actual commencement of the audit. The auditor shall conduct routine audits using a one-quarter per year sample (25%) sample. The results of the 25% period sample shall determine further action as indicated below.
4. If the percentage of underpayment is less than 2.5%, the audit shall be concluded and billed;
5. If the percentage of the underpayment is more than 2.5%, the auditor shall proceed to audit the entire period employing no sampling.
6. If the auditor determines that there is a pattern of reporting evidencing a violation of the collective bargaining agreement, the auditor will expand the audit to determine all unpaid contributions resulting from the contract violation.
7. If an overpayment is disclosed, the audit will be concluded.

Note: During the initial audit of each Employer, the auditor will examine two quarters in the latest 18month period as an initial sample. If the underpayment is less than 2.5% the auditor shall conclude the audit on that basis. If, however, the underpayment is 2.5% or more, the auditor shall extend the audit period to cover the last four (4) years preceding the actual commencement date of field work and proceed as above.

8. When an Employer's last audit resulted in a "no change audit", the auditor shall select two (2) quarters in the latest four (4) year period s a limited sample.
9. If the limited sample discloses only "minimal error" in the Employers' reporting procedure, the auditor will conclude the audit on that basis using an abbreviated report format.
10. If the limited sample discloses more than minimal reporting, the auditor will expand the audit to one quarter in each of the four (4) year period. Based upon the results of the expanded audit the auditor will proceed as outlined in sections a through c, above.
11. The audit period of any Ad Hoc audit shall be for the four (4) year period immediately preceding termination of the contribution obligation, or as otherwise determined by the circumstances requiring the audit.
12. If the sampling methods are employed in an audit and the underpayment errors for the sample periods are less than 2.5% the auditor shall conclude the audit based on the sample results.
13. Overpaid Employer contributions create erroneous benefits eligibility for participants who otherwise would not be eligible for benefits. Since having extended eligibility may disadvantage the Plan and incurring the cost of claims and or premiums, any refund or credit shall be computed net of such costs incurred, including reasonable administrative fees. The auditor shall report the results based solely on the contributions overpaid.
14. The auditor will conduct an exit interview. If then available, the estimated amount of the over or under payments and the reasons for over or under payment of contributions will be discussed.
15. Any Employer who undergoes an audit shall be allowed to conduct a self-audit for the sample quarters and/or for the full audit period to contest the results of the audit.
16. The auditor shall consult with the Board of Trustees or Trust Counsel to resolve any questions or problems which may develop
17. Upon receipt of the requested information, the auditor will select the sample quarters to be examined. In the event the Employer is in bankruptcy, the auditor shall, in addition to any other sample period, audit the 180-day period preceding the filing of the petition in bankruptcy. If the Employer has filed a Chapter 11 petition in bankruptcy, the auditor shall also audit the period from the filing of the petition to date.
18. The auditor shall set an appointment with the Employers and, once set, a letter of confirmation shall be sent to the Administrative Office confirming the initial appointment and period being audited.
19. Once the audit is completed, the auditor shall forward the required number of copies of the compliance audit report to the Administrative Office for distribution.

VII. FAILURE TO PROVIDE RECORDS OR RESOLVE THE AUDIT

- A. If the Employer fails to arrange a date, or fails to produce all records the auditor deems necessary for completion of the audit, the auditor shall advise the Administrative Manager who shall then send a notice to the Employer. The notice shall warn the Employer that unless the Employer fully complies with the demand for audit within 30 days of the date of the letter the matter shall be referred to Trust Counsel who shall be authorized to file an action to compel audit.

- B. If the Employer fails to fully comply with the demand for audit within the time provided the Administrative Manager should refer to the matter to Trust Counsel.
- C. Upon receipt of the referral, Trust Counsel shall send an initial demand for compliance within ten (10) days. If a date for audit is not arranged or if the records have not been made available to the auditor with the specified period the Trust Counsel shall be authorized to file an action to compel audit, and the Employer shall pay to the Trust Funds all costs and attorneys fees incurred as a result of the Employer's refusal to permit an audit or refusal to make available all pertinent records.
- D. The Administrative Manager shall distribute the final audit to the Employer and shall advise the Employer that the Employer has thirty (30) days to respond to the audit.
- E. If the Employer challenges the audit finding the Employers response, together with additional information provided by the Employer shall be given to the auditor who will review the response and the additional information, if any, and advise the Administrative Manager of final audit.
- F. After expiration of the thirty (30) day period or after review of the any additional information by the auditor, the Administrative Manager shall prepare a billing to the Employer, which shall provide that the sums determined to be owed, including liquidated damages and interest shall be paid within fifteen (15) days of the billing.

VIII. RESPONSIBILITIES OF LEGAL COUNSEL

- A. Upon receipt of a referral for collection the Trust Counsel shall contact the delinquent Employer by letter advising the Employer that the account has been turned over for collection, and demanding payment within seven (7) days of all sums owed, including unpaid contributions, liquidated damages, interest, costs and attorneys fees.
- B. If the Employer fails to respond and/or acceptable arrangements for payment are not made within fifteen days of demand, the Trust Counsel is authorized to file an action to collect all sums owed in accordance with section 502(g)(2) of ERISA.
- C. If the delinquent Employer files a petition in bankruptcy the Trust Counsel shall monitor the proceedings, determine the appropriate action to be taken, if any, including the filing of adversary proceedings, and shall prepare and file the appropriate proof of claim.
- D. Upon filing of an action the Trust Counsel shall prosecute the full amount of the claim of the Trust Fund to judgment for all sums owed and shall with the authorization of the Trustees institute proceedings to enforce the judgment.
- E. The Trust Fund's Counsel is authorized to enter into settlement negotiations, either orally or in writing with delinquent Employers. Without prior approval of the Board of Trustees, the Counsel may agree to immediate payment of the full amount owed, but any settlement which waives or compromises the amount owed, including liquidated damages, interest, auditor's fees, attorneys' fees or costs, must be approved by the Board of Trustees.
- F. If either prior to or after the entry of judgment an offer of settlement is received from the Employer, the Trust Counsel shall communicate the offer to the Trustees with Trust Counsel's recommendation.

- G. If the Employer requires a payment arrangement the Trust Counsel may negotiate an arrangement in accordance with these Procedures and in full compliance with Department of Labor Prohibited Transaction Exemption 76-1 ("PTE 76-1"). Each proposed payment arrangement must be submitted to the Trustees for their consideration and approval.
- H. Trust Counsel may, based upon the circumstances, determine that an initial demand letter to the Employer is unnecessary based upon information available to the Trust Fund and/or the Trust Counsel. If such a determination is made, the Trust Counsel, without prior notice and demand, may file an action. Trust Counsel shall report on the status of all cases on referral, and all collections since the last Board Meeting at each quarterly meeting of the Board of Trustees

IX. SETTLEMENT PROCEDURES

A. INSTALLMENT PAYMENTS

Any agreement to make payments in installments shall include the amount of the delinquent contribution, liquidated damages, accrued interest, costs and attorneys fees incurred to date by the Trust Fund, and a provisions for payment of interest accruing upon the principal declining balance at the rate of ten percent (10%) per annum during the period in which payments are being made. Each such payment arrangement shall provide for a down payment equal to one-third of the obligation, and a payment term not to exceed one year, unless the financial circumstances of the Employer dictate a smaller down payment, and a longer payment period. The agreement may provide for the waiver of liquidated damages upon the payment of all other sums owed together with interest, which accrued during the period in which payments are made. The payment arrangement must further provide for immediate enforcement of the judgment if all payments to the Trust Fund, including current contributions, are not timely made.

B. DECISION TO ACCEPT LESS THAN THE ENTIRE AMOUNT

- 1. The Board of Trustees may make a decision to accept less than the entire amount owed by the Employer to the Plan.
- 2. The Board of Trustees shall not make such a decision unless it is satisfied of the following:
 - a. Those reasonable, diligent, systematic efforts appropriate under the circumstances have been made to collect the delinquency.
 - b. That the terms of the arrangement or agreement by which less than the entire amount due is accepted are reasonable under the circumstances where the circumstances include the likelihood of collecting the full amount due and the approximate cost of the collection efforts.
- 3. Any arrangement or agreement under which the Trustees agree to accept less than the entire amount due must be in writing and must be signed by the delinquent Employer.

C. DECISION TO CONSIDER CONTRIBUTIONS UNCOLLECTIBLE AND TO TERMINATE COLLECTION EFFORTS

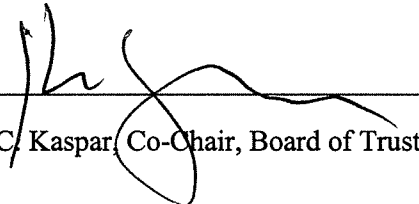
- 1. The Board of Trustees may decide to consider a delinquency un-collectible in whole or in part and to terminate collection efforts.

2. The Board of Trustees shall not make such a decision unless it is satisfied that reasonable, diligent, systematic efforts appropriate under the circumstances have been made to collect the delinquency.
3. The decision of the Trustees to consider any contribution un-collectible and to terminate collection efforts shall be in writing (including, but not necessarily limited to, writing by inclusion in the Fund's minutes, and shall summarize the reasons upon which the decision was made.


D. MISCELLANEOUS

At any stage of the collection process the Board of Trustees shall have the authority to deviate from these Procedures in order to take action necessary to protect the ability of the Plan to recover delinquent and current contributions from an Employer.

ADOPTED THIS 30th DAY OF SEPTEMBER, 2004



Joseph C. Kaspar, Co-Chair, Board of Trustees



Chuck Mack, Chair, Board of Trustees