

## **PBGC Approves Revisions to AAA's Withdrawal Liability Arbitration Rules; Employer Fees Reduced**

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For years, steep arbitration fees have made many employers think twice about contesting a questionable withdrawal liability determination. The Pension Benefit Guaranty Corporation's (PBGC) [approval of a lower fee schedule](#) may ease that hurdle.

ERISA, as amended by the [Multiemployer Pension Plan Amendment Act of 1980 \(MPPAA\)](#), requires all disputes between an employer and a multiemployer pension plan concerning a withdrawal liability determination to be resolved by arbitration. Arbitration is conducted under arbitration procedures approved by the PBGC or, absent such procedures, under regulations promulgated by the PBGC.

In 1981, the American Arbitration Association (AAA) promulgated rules known as the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes. These rules were approved by the PBGC in 1985 and subsequently amended (and approved by PBGC) in 1986. The AAA then amended its fee schedule in 2013 and applied to PBGC for approval of the 2013 AAA rules. On December 9, 2019, the PBGC approved a modified version of the AAA's application.

The 2013 AAA Rules significantly increased the fees charged to an employer wishing to contest a withdrawal liability determination. For example, fees charged by the AAA (these do not include the arbitrator's fees) in disputes involving amounts between \$1 million and \$5 million typically exceeded \$10,000 and often hit the \$14,400 maximum. Under the new AAA fee schedule approved by PBGC, these disputes will carry a maximum AAA fee of \$3,750. Similarly, AAA fees for disputes involving amounts over \$5 million (not atypical in today's climate) are reduced from a maximum of \$77,500 to \$5,000 under the new rules. (There are relatively de minimis fees for hearing rescheduling and for matters held in abeyance for over one year under the new rules.) The new rules also clarify that AAA fees, while paid by the party initiating arbitration (e.g., the employer) are to be shared equally (subject to the arbitrator's discretion).

The new rules (which become effective January 1, 2020) also change the default rules for designating an arbitrator where the parties cannot agree on one. Under the AAA's previous rules, the AAA had the authority to designate an arbitrator absent mutual consent by the parties. The new rules adopt the rule from the PBGC's arbitration procedures, whereby either party may seek the designation and appointment of an arbitrator in federal court.

In an area where the law favors the fund in nearly every instance, the new rules may level the playing field by providing less of a financial disincentive for employers faced with a questionable withdrawal liability determination to contest the determination in arbitration.

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