



# Summary of Changes for the Multi-Employer Pension Plan Arbitration Rules for Withdrawal Liability Disputes

Amended and Effective January 1, 2020

Below is a summary of changes to the Multi-Employer Pension Plan Arbitration Rules for Withdrawal Liability Disputes which were recently approved by the Pension Benefit Guaranty Corporation (PBGC) and effective on January 1, 2020.

## Revisions Made within Various Sections of the Rules:

- Various sections in the rules have been updated to include that documents can be submitted electronically.
- Various sections in the rules have been updated to add additional time to the due dates.

### Section 7. Initiation of Arbitration

The due date for the Answering Statement has increased to 14 days.

### Section 8. Fixing of Locale

The due date for the locale objections has increased to 14 days.

### Section 11. Appointment from Panel

The following language has been added to this section:

If the parties fail to agree upon any of the persons named, or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, **“the parties can agree to the submission of additional names. If the parties fail to mutually consent to the selection of an arbitrator, either party or both may seek designation and appointment of an Arbitrator in a U.S. district court, consistent with 29 CFR 4221.4 (e).”**<sup>1</sup>

The due date for the List of Arbitrators has increased to 14 days.

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<sup>1</sup> 29 CFR § 4221.4 – Appointment of the arbitrator. (e) *Failure to select arbitrator.* If the parties fail to select an arbitrator within the time prescribed by this section, either party or both may seek the designation and appointment of an arbitrator in a United States district court pursuant to the provisions of title 9 of the United States Code.



## Section 12. Notice of Arbitrator of Appointment

The following language has been added to this section:

Notice of the appointment of the neutral Arbitrator, whether appointed by the parties or by **"the courts"**, shall be mailed or electronically mailed to the Arbitrator by the AAA®.

## Section 13. Disclosure and Challenge Procedure

The following language has been removed from this section:

***"Thereafter, the AAA shall determine whether the Arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive."***

The following language has been added to this section:

***"In the event a party objects within 10 days of a post-appointment disclosure, consistent with 29 CFR 4221.4 (b)<sup>2</sup>, the arbitrator shall withdraw and the AAA shall select a new arbitrator by going back to the selection process. Objections received after 10 days will be determined by the Arbitrator and not the AAA, consistent with 29 CFR 4221.4 (c)<sup>3</sup>, unless the parties mutually agree to have the AAA make the decision."***

The due date for objections to the disclosure has increased to 10 days.

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<sup>2</sup> 29 CFR § 4221.4 – Appointment of the arbitrator. (b) *Disclosure by arbitrator and disqualification.* Upon accepting the appointment, the arbitrator shall disclose to the parties any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration and any past or present relationship with the parties or their counsel. If any party determines that the arbitrator should be disqualified because of the information disclosed, that party shall notify all other parties and the arbitrator no later than 10 days after the arbitrator makes the disclosure required by this paragraph (but in no event later than the commencement of the hearing under § 4221.6). The arbitrator shall then withdraw, and the parties shall select another arbitrator in accordance with paragraph (d) of this section.

<sup>3</sup> 29 CFR § 4221.4 – Appointment of the arbitrator. (c) *Challenge and withdrawal.* After the arbitrator has been selected, a party may request that he or she withdraw from the proceedings at any point before a final award is rendered on the ground that he or she is unable to render an award impartially. The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail (or by any other method that includes verification or acknowledgment of receipt and meets (if applicable) the requirements of § 4000.14 of this chapter) and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. If the arbitrator determines that the circumstances adduced are likely to affect his or her impartiality and have been presented in a timely fashion, he or she shall withdraw from the proceedings and notify the parties of the reasons for his or her withdrawal. The parties shall then select a new arbitrator in accordance with paragraph (d) of this section.



### Section 38. Scope of Award

Reference to 29 CFR 4221.14 (b) (5)<sup>4</sup> has been added to this section.

### Administrative Fee Schedule

The following language has been added:

An Initial Filing Fee is payable in full by the filing party when a claim, counterclaim or additional claim is filed, **“subject to final apportionment by the Arbitrator in the Award”**.

### Fee Apportionment – New Section

**“Under 29 CFR 4221.10<sup>5</sup>, the cost of arbitration shall be borne equally by the parties, unless the arbitrator determines otherwise. 4221.14 (b) (5) also requires alternative procedures to allocate the cost of arbitration in accordance with 4221.10.”**

### Revised Fee Schedule

Amount of Claim	Initial Filing Fee
Above \$0 to \$1,000,000.00	\$2,500.00
Above \$1,000,000.00 to \$5,000,000.00	\$3,750.00
Above \$5,000,000.00	\$5,000.00
Nonmonetary Claims	\$5,000.00

<sup>4</sup> 29 CFR § 4221.14 (b) (5) – **Scope of alternative procedures.** If an arbitration is conducted in accordance with a PBGC-approved arbitration procedure, the alternative procedure shall govern all aspects of the arbitration, with the following exceptions (5) The costs of arbitration shall be allocated in accordance with § 4221.10.

<sup>5</sup> 29 CFR § 4221.10 – **Costs.** The costs of arbitration under this part shall be borne by the parties as follows: **(a) Witnesses.** Each party to the dispute shall bear the costs of its own witnesses. **(b) Other costs of arbitration.** Except as provided in § 4221.6(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan’s assessment of withdrawal liability. **(c) Attorneys’ fees.** The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys’ fees of other parties.



## Additional Fees have been Added:

### Abeyance Fee

Parties on cases held as inactive for one year will be assessed an annual abeyance fee of \$300.00.

### Postponement Fee

A fee of \$150 is payable by a party causing a postponement of any scheduled hearing that is subsequently rescheduled by the AAA.

### Hearing Room Rental

The AAA maintains rental hearing rooms in most offices for the convenience of the parties. Check with the administrator for availability and rates. Hearing room rental fees will be borne equally between the parties.

## Revised Refund Schedule

A minimum fee of \$750 will be not refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- > 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- > 50% of the filing fee will be refunded if the case is settled or withdrawn between 6 and 30 calendar days of filing.
- > 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.