Withdrawal Liability Plan Amendment for Mergers Involving an SFA-Recipient Plan

A merged plan may adopt its own allocation method in accordance with subpart C of 29 CFR part 4211.[1] In a merger that involves an SFA-recipient plan, the merged plan may satisfy the necessary criteria under § 4262.16(f)(3)(iv) and (v) by adopting the following withdrawal liability plan amendment, contingent on PBGC's approval of the merger, and submitting the amendment with its request for PBGC approval of the merger:

I. General

A. Withdrawal liability for employers that contributed to the SFA-recipient plan pre-merger will be an allocable share of the sum of UVBs from the (1) SFA Pool and the (2) Merged Plan Pool.

B. Withdrawal liability for employers that did not contribute to the SFA-recipient plan pre-merger will be an allocable share of UVBs from the Merged Plan Pool.

II. UVBs in the SFA Pool will consist of SFA Pool vested liabilities less SFA Pool assets

A. SFA Pool Vested Liabilities

1. SFA Pool vested liabilities will initially consist of the vested benefits of the SFA-recipient plan on the last day of the plan year ending on or just before the merger date, valued using 4044 rates consistent with § 4262.16(g)(1).

2. The plan actuary will project future benefit payments associated with the accumulated nonforfeitable benefits of SFA plan participants as of the last day of the plan year ending on or just before the merger date (the SFA-Pool Benefit Projection) through the year the SFA-recipient plan is projected to pay its last dollar of benefit, but not to exceed 100 years (the SFA Projection Period). For purposes of the SFA-Pool Benefit Projection, eligibility service and vesting service are assumed to continue to be earned throughout the SFA Projection Period.

3. During the SFA Projection Period, and until the separate pools have ceased as described in Section VI, SFA Pool vested liabilities will be revalued as of the last day of each plan year following the plan year in which the merger occurs to reflect the remaining annual payments under the SFA-Pool Benefit Projection, using 4044 Rates consistent with § 4262.16(g)(1).

B. SFA Pool Assets

1. SFA Pool assets will initially consist of the assets of the SFA-recipient plan on the last day of the plan year ending on or just before the merger date, including the amount of SFA phased-in consistent with § 4262.16(g)(2).

[1] *See* 29 C.F.R. § 4211.31(a).

2. During the SFA period, SFA Pool assets will be revalued as of the last day of each plan year following the plan year in which the merger occurs by:

   (a) subtracting the annual benefit payment for the year determined under the SFA-Pool Benefit Projection in Section II.A; and

   (b) adding reasonable assumed investment returns on SFA-recipient plan assets; and

   (c) adding any withdrawal liability payments made that are attributable to the SFA Pool.

3. SFA Pool assets as of the revaluation date are adjusted for the amount of SFA phased-in consistent with § 4262.16(g)(2), using the previously determined phase-in schedule.

4. SFA Pool assets may not be less than 0.

C. Investment gains and losses, administrative expenses, employer contributions, and benefit accruals after the last day of the plan year prior to the merger shall not be allocated to the SFA Pool.

III. <u>UVBs in the Merged Plan Pool will consist of Merged Plan Pool vested liabilities less Merged Plan Pool assets</u>

A. The Merged Plan Pool vested benefits each year of the SFA Projection Period shall be the total vested benefits of the Plan minus the remaining benefit payments projected from the SFA Pool under the SFA-Pool Benefit Projection described in Section II.A for that year.

B. The Merged Plan Pool vested liabilities shall be the present value of the Merged Plan Pool vested benefits determined using the merged plan withdrawal liability assumptions.

C. Merged Plan Pool assets shall equal the Plan's total assets at the revaluation date less the amount of SFA assets not phased in as of the revaluation date, minus the assets in the SFA Pool described in Section II.B (already reflecting phase-in adjustment).

IV. <u>Allocation of UVBs to a Withdrawn Employer</u>

A. UVBs from the SFA Pool shall be allocated to a withdrawn employer using an appropriate statutory method.[2]

NOTE: For the SFA Pool, if the Plan adopts any allocation method that requires an allocation fraction, the fraction will be frozen as of the last day of the plan year before the year of the merger.

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[2] *See* the methods described in § 4211(b) (presumptive method), (c)(2) (modified presumptive method), (c)(3) (rolling-5 method), and (c)(4) (direct attribution method) of ERISA.

B. UVBs from the Merged Plan Pool shall be allocated to a withdrawn employer using an appropriate statutory method.

C. If the SFA Pool UVBs in any plan year are less than zero, they shall be deemed to be zero; and assets of the SFA Pool shall not include assets to the extent that they exceed the liabilities in the SFA Pool but instead such assets will be included in the Merged Plan Pool.

V. Cessation of Pools

A. The SFA Pool and the Merged Plan Pool will cease to exist at the later of the end of the tenth plan year after the first plan year in which the plan receives SFA as described under § 4262.12 or the SFA exhaustion year as described under § 4262.16(g), and the pools will consolidate into one. For any employer who withdraws from the Plan at any time beginning with the plan year following such consolidation of the pools, its allocable UVBs shall be calculated using an appropriate statutory method.

B. If before the separate pools cease as described in Section V all employers that contributed to the plan that received SFA before the merger withdraw and the Fund's trustees determine that the UVBs in the SFA Pool are uncollectible, the pools will consolidate into one. For any employer who withdraws from the Plan at any time beginning with the plan year following such consolidation of the pools, its allocable UVBs shall be calculated using an appropriate statutory method.

VII. Mass Withdrawal

Notwithstanding anything herein to the contrary, if all or substantially all Employers withdraw from the Fund, as determined under § 4219(c)(1)(D) of ERISA, that ERISA section and the regulations thereunder will apply to determine the withdrawal liability of each Employer.

VIII. PBGC Approval Required for a Change in Method

Consistent with the requirements of §§ 4262.16 and 4211.22, the Plan shall not modify this method, or adopt any other method, without the advance written approval of the PBGC.