



AMERICAN ARBITRATION ASSOCIATION®

Christine L. Newhall  
Senior Vice President  
American Arbitration Association  
One Center Plaza, Suite 300  
Boston, MA 02108  
[NewhallC@adr.org](mailto:NewhallC@adr.org)

November 20, 2015

**Sent via electronic mail: [Perlin.Bruce@PBGC.gov](mailto:Perlin.Bruce@PBGC.gov)**

Bruce Perlin  
Pension Benefit Guaranty Fund  
1200 K Street NW  
Washington, DC 20005

Dear Bruce,

The American Arbitration Association (AAA) is hereby submitting its formal request for PBGC approval regarding the AAA February 2013 fee schedule for the administration of the Multiemployer Pension Plan Arbitration Rules (MEPPA) cases. Enclosed for your review is the AAA's application addressing the requirements in accordance with 29 C.F.R.4221.14.

Thank you for considering the AAA's application and I look forward to hearing from you about next steps in this process. If you have any questions, please feel free to contact me.

Sincerely,

Christine L. Newhall  
Senior Vice President  
American Arbitration Association  
617 695 6015

Enclosures:

2013 Fee Schedule

Application for Approved Arbitration Procedures



#### 4221.14 PBGC – approved arbitration procedures

(c) **Procedure for approval of alternative procedures.** The PBGC may approve arbitration procedures on its own initiative by publishing an appropriate notice in the Federal Register. The sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application shall include:

**(1) A copy of the procedures for which approval is sought:**

Attached is a copy of the AAA February 1, 2013 Fee Schedule for the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes.

**(2) A description of the history, structure and membership of the organization that sponsors the procedures:**

The **American Arbitration Association (AAA)**, is a not-for-profit organization with offices throughout the U.S. as well as abroad. AAA has a long history and experience in the field of alternative dispute resolution, providing services to individuals and organizations who wish to resolve conflicts out of court. The AAA is named in 40 federal statutes and regulations, as well as over 300 state statutes and regulations. The AAA is not a membership organization.

The AAA role in the dispute resolution process is to administer cases, from filing to closing. The AAA provides administrative services in the U.S., as well as abroad through its International Centre for Dispute Resolution (ICDR). The AAA's and ICDR's administrative services include assisting in the appointment of mediators and arbitrators, setting hearings, and providing users with information on dispute resolution options, including settlement through mediation. Ultimately, the AAA aims to move cases through arbitration or mediation in a fair and impartial manner until completion.

Additional AAA services include the design and development of alternative dispute resolution (ADR) systems for corporations, unions, government agencies, law firms, and the courts. The Association also provides elections services as well as education, training, and publications for those seeking a broader or deeper understanding of alternative dispute resolution.

**(3) A discussion of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.**

The American Arbitration Association (AAA) has been administering the cases that fall under the Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes for thirty four (34) years. The rules that have been previously approved by the PBGC are effective June 1, 1981 and revised effective September 1, 1986. The AAA's 1986 MEPPA Rules did not change; the only update made was to increase the administrative fees for handling MEPPA arbitrations from the 1986 fee schedule to the 2013 fee schedule.

The AAA has provided quality administration on this caseload and based on parties and arbitrator feedback, the AAA's service is valued and should continue to be available. However, as a not-for profit organization that receives funding only through the administrative fees earned on cases, we need to ensure that the costs associated with the administration of a particular caseload do not vastly exceed the fees earned.

The fee increase implemented by the AAA was necessary because of the substantial administrative costs and staffing associated with these complex arbitrations. In particular, MEPPA arbitrations are similar to many of the large complex arbitrations administered by the AAA. They tend to be highly contentious, involve large dollar amounts, the parties engage in voluminous discovery, and there can be multiple preliminary calls as well as multiple days of evidentiary hearings, can be pending for long periods of time, involve bifurcated issues and extensive briefing.

The AAA also found it necessary to implement a substantially heightened arbitrator disclosure requirements based on the nature of the MEPPA cases. All of these factors were considered when reviewing the fee schedule and a determination was made to change the fees from the 1986 \$650.00 fee to the 2013 fee schedule. The 1986 fee schedule provided the AAA discretion to set the fee where the net amount in dispute was in excess of \$5 million. Given this level of discretion provided in the 1986 fee schedule, the AAA did set administrative fees equivalent to those reflected in the 2013 fee schedule for cases with claims in excess of \$5 million. In addition, the 2013 fee schedule is the same schedule the AAA has applied to other arbitrations caseloads that are similarly complex.

(d) **Criteria for approval of alternative procedures.** The PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. The PBGC may request comments on the application by publishing an appropriate notice in the Federal Register. Notice of the PBGC's decision on the application shall be published in the Federal Register. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a Federal Register notice.

The American Arbitration Association was founded in 1926, following enactment of the Federal Arbitration Act, with the specific goal of helping to implement arbitration as an out-of-court solution to resolving disputes. This legal framework was passed by Congress and signed by President Calvin Coolidge. The AAA's staff members and neutrals continue to live out the principles on which the Association was founded.

The AAA's official mission statement and vision statement are based on three core values: integrity, conflict management, and service. We have a long term working relationship with the Arbitrators on the MEPPA Panel. In addition to managing this panel, the AAA recruits Arbitrators who meet the criteria established for admission to this panel. The AAA has long held its mediators and arbitrators to strict codes of ethics and model standards of conduct to ensure fairness and impartiality in conflict management. To further ensure the AAA's integrity, however, the Association also developed Standards of Ethics and Business Conduct for its staff, as well as a general Statement of Ethical Principles to expand on its core values as an organization.

Finally, the AAA -- as a not-for-profit organization -- has a core dedication to service, and particularly education, in the field of alternative dispute resolution.

For these reasons, we are seeking the PBGC's approval in support of the AAA's 2013 Fee Schedule.

Thank you for considering our request. If any additional information is needed, please do not hesitate to contact the American Arbitration Association. We look forward to hearing from you about the next steps.

## Administrative Fee Schedule – Revised Effective February 1, 2013

### (i) Standard Fee Schedule

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Final Fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

Amount of Claim	Initial Filing Fee	Final Fee
Above \$0 to \$10,000	\$775	\$200
Above \$10,000 to \$75,000	\$975	\$300
Above \$75,000 to \$150,000	\$1,850	\$750
Above \$150,000 to \$300,000	\$2,800	\$1,250
Above \$300,000 to \$500,000	\$4,350	\$1,750
Above \$500,000 to \$1,000,000	\$6,200	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,200	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,200	\$4,000
Above \$10,000,000	Base fee of \$12,800 plus .01% of the amount above \$10,000,000  Fee Capped at \$65,000	\$6,000
Nonmonetary Claims <sup>1</sup>	\$3,350	\$1,250
Deficient Claim Filing Fee <sup>2</sup>	\$350	
Additional Services <sup>3</sup>		

<sup>1</sup>This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$10,200.

<sup>2</sup>The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.

<sup>3</sup>The AAA may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,800 for the Initial Filing Fee, plus a \$1,250 Final Fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs.

Parties on cases filed under either the Flexible Fee Schedule or the Standard Fee Schedule that are held in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879.

#### **(ii) Refund Schedule for Standard Fee Schedule**

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$350 will not be refunded. For all other cases, a minimum fee of \$600 will not be 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 six 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.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three-arbitrator panel). No refunds will be granted on awarded cases.

Note: The date of receipt of the demand for arbitration with the AAA will be used to calculate refunds of filing fees for both claims and counterclaims.

#### **(iii) Flexible Fee Schedule**

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of

an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid.

If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties.

No refunds or refund schedule will apply to the Filing or Proceed Fees once received.

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

All fees will be billed in accordance with the following schedule:

<b>Amount of Claim</b>	<b>Initial Filing Fee</b>	<b>Proceed Fee</b>	<b>Final Fee</b>
Above \$0 to \$10,000	\$400	\$475	\$200
Above \$10,000 to \$75,000	\$625	\$500	\$300
Above \$75,000 to \$150,000	\$850	\$1250	\$750
Above \$150,000 to \$300,000	\$1,000	\$2125	\$1,250
Above \$300,000 to \$500,000	\$1,500	\$3,400	\$1,750
Above \$500,000 to \$1,000,000	\$2,500	\$4,500	\$2,500
Above \$1,000,000 to \$5,000,000	\$2,500	\$6,700	\$3,250
Above \$5,000,000 to \$10,000,000	\$3,500	\$8,200	\$4,000
Above \$10,000,000	\$4,500	\$10,300 plus .01% of claim amount over \$10,000,000 up to \$65,000	\$6,000
Nonmonetary <sup>1</sup>	\$2,000	\$2,000	\$1,250

Deficient Claim Filing Fee	\$350		
Additional Services <sup>2</sup>			

<sup>1</sup>*This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$3,500 and a proceed fee of \$8,200.*

<sup>2</sup>*The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.*

*For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879. All fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.*

The minimum fees for any case having three or more arbitrators are \$1,000 for the Initial Filing Fee; \$2,125 for the Proceed Fee; and \$1,250 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone, or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

Note: The date of receipt by the AAA of the demand for arbitration will be used to calculate the ninety (90) day time limit for payment of the Proceed Fee.

There is no Refund Schedule in the Flexible Fee Schedule.

©2013 American Arbitration Association, Inc. All rights reserved. These rules are the copyrighted property of the American Arbitration Association (AAA) and are intended to be used in conjunction with the AAA's administrative services. Any unauthorized use or modification of these rules may violate copyright laws and other applicable laws. Please contact 800.778.7879 or [websitemail@adr.org](mailto:websitemail@adr.org) for additional information.