Screen Actors Guild – Producers Pension Plan

Withdrawal Liability

Policy and Procedure Manual

March 2015

Background and General Policies

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), requires assessment of withdrawal liability to an employer that withdraws from a Defined Benefit Plan, like the Screen Actors Guild-Producers Pension Plan (the Plan), if the Plan has "unfunded vested benefits"[1] at the time of withdrawal. Beginning in 2005, the Plan did have unfunded vested benefits for the first time in its history. Subsequently, the Plan's vested benefits became fully funded, but unfunded vested benefits re-emerged at December 31, 2008 and it is projected that the Plan may continue to have unfunded vested benefits for the foreseeable future. Therefore, it is necessary for the Plan to determine whether an employer that withdraws from the Plan is liable for its share of unfunded vested benefits.

The law provides that an employer's withdrawal liability is based on the unfunded vested benefits as of the end of the plan year preceding withdrawal. For example, the withdrawal liability for employers who withdrew during the 2014 calendar year must be based on the unfunded vested benefits as of December 31, 2013.

Each year, the determination of the amount, if any, of unfunded vested benefits will be determined by the Plan's actuaries. Determination of the value of vested benefits is based on the same actuarial assumptions as those used for the actuarial funding valuation with respect to rates of investment return, mortality, and retirement age. For the determination of unfunded vested benefits, the value of assets is the greater of the market value of assets or the actuarial ("smoothed") value of assets.

1. Ten Year Smoothing

The Trustees elected to apply the special asset valuation rule to the Plan under the Pension Relief Act of 2010 for purposes of determining withdrawal liability. As permitted under Internal Revenue Code Section 431(b)(8)(B), the asset valuation method was changed so that the difference between the expected and actual return for the 2008 Plan Year is spread over a period of ten years, rather than five years. This special rule was applied retroactively to the Plan Year beginning January 1, 2009.

2. Has a Withdrawal Occurred?

A complete withdrawal from the Plan occurs when an employer (a) permanently ceases to have an obligation to contribute under the Plan, or (b) permanently ceases all covered operations under the Plan. Examples of situations that could trigger withdrawal include when a company terminates the collective bargaining agreement, ceases all operations, or files for bankruptcy.

[1] "Unfunded Vested Benefits" are the excess, if any, of the present value of vested benefits over the value of Plan assets. For this purpose, the value of Plan assets is the greater of the market value of actuarial value of assets, or the actuarial ("smoothed") value of assets.

3. The "Entertainment Industry Exception"

Under the law, an employer that has withdrawn from a plan with unfunded vested benefits normally has an obligation to pay for its share of the unfunded vested benefits once the obligation is assessed by the plan after the employer withdraws. However, in the entertainment industry, a plan may take the approach that a withdrawing employer who prior to the withdrawal contributed to the plan for work performed on a temporary or project-by-project basis (like some entertainment industry work) does not have an obligation to pay for its share of the plan's unfunded vested benefits unless that employer either continues to work after its withdrawal in the industry on a non-union basis, or returns to work in the industry on a non-union basis within five years. This is known as the "Entertainment Industry Exception."[2] The Trustees of the Plan have adopted the Entertainment Industry Exception for determining withdrawal liability for those employers engaged in work on a temporary or project by project basis. Fixed facility employers which don't work on a temporary or project by project basis are not governed by the exception, and may be subject to withdrawal liability.

As a result of the entertainment industry exception, a withdrawing employer is not automatically liable to the Plan for withdrawal liability. Only if that entertainment industry employer either continues to work in the industry on a non-union basis, or re-enters the industry on a non-union basis within five years, or is a fixed facility, will that employer be liable. Thus, an employer that completely shuts down its operations may be determined to not have withdrawal liability.

An employer is considered to be working in the industry if that company continues to produce projects covered by a union contract, either directly or indirectly through a signatory. Therefore, for example, in the advertising industry, if an advertiser who is signatory to a SAG-AFTRA contract ceases being a signatory and instead contracts with a signatory or non-signatory advertising agency to perform the work, it is possible that the withdrawing advertising agency would have withdrawal liability.

4. The De Minimis rule

The law permits pension plans to excuse an employer from any withdrawal liability if the amount owed is "de minimis." The Plan Trustees have adopted such a "de minimis" rule. As a result, if the withdrawal liability is calculated to be less than $50,000, the de minimis deductible eliminates any withdrawal liability. Between $50,000 and $150,000, and the de minimis deductible reduces the amount of assessed withdrawal liability.

Each year, the actuary will estimate the amount of employer contributions that will result in an employer's potential withdrawal liability falling below the de minimis deductible. For example, for 2014,

---

[2] ERISA Section 4203(C)(1)[Entertainment Industry] provides that: If an employer has an obligation to contribute under a plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, and if the plan primarily covers employees in the entertainment industry, a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under the plan, and the employer (a) continues to perform work in the jurisdiction of the plan of the type for which contributions were previously required, or (b) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

if the employer's contributions are less than $11,750 per year for each of the ten years prior to 2014, the actuary determined that there cannot be any withdrawal liability for a 2014 withdrawal, due to the de minimis rule.

5. Allocation of Withdrawal Liability

The allocation method adopted by the Plan shall be that set forth in Appendix A.

6. Payment of Withdrawal Liability

Employers are obligated by law to pay the assessed withdrawal liability even if they don't agree with the assessment, are in the process of reviewing the underlying determinations and/or calculations, or are disputing the assessment. The law establishes annual payment amounts to be paid in quarterly installments, unless the Plan has established some other schedule. The law imposes a 20-year maximum on withdrawal liability payments. Payment of an employer's withdrawal liability is permitted to be by lump sum, or quarterly installments for up to twenty (20) years with interest. Payment ceases when the total liability, with interest, has been paid or after 20 years of withdrawal liability payments, whichever is sooner. Interest is included by the Plan at the valuation interest rate.

The annual payment amount is determined by multiplying:

1. The highest contribution rate the employer was obligated to pay during the last 10 plan years, including the year of withdrawal, by
2. The employer's average contribution base (covered earnings) in the three consecutive plan years (within the 10 plan years preceding withdrawal) in which its contribution base was highest.

7. Controlled Group Rules

ERISA Section 4001(b)(1) provides that "For purposes of this title, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer." ERISA Section (3)(5) defines the term "employer" as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan and includes a group or association of employers acting for an employer in such capacity."

In addition to imposing withdrawal liability on the direct employer that withdraws from a multiemployer plan, ERISA imposes joint and several liability on all related parties, as of the date of withdrawal, based on (1) a parent-subsidy controlled group of corporations, (2) a brother-sister controlled group of corporations, (3) a group of trades or businesses under common control, or (4) a combined group. The specific rules to be applied in determining whether or not an employer is the member of one or more of the four groups can be found in ERISA sections 414(b) and (c) and section 1563 of the Internal Revenue Code and the regulations thereunder. A parent-subsidy controlled group of corporations consists of a parent company, any subsidiary that is at least 80% owned by the parent company, and any company further down the chain that is owned at least 80% by one or more other entities in the chain. A brother-sister controlled group of corporations refers to a corporation together with one or more additional corporations where the same 5 or fewer people own collectively (1) at least 80% of the stock of each corporation in the group and (2) more than 50% of the common ownership in each entity in the group. A group of trades or businesses under common control applies the parent-subsidy and brother-sister rules to unincorporated businesses so that, for example, if the same individual owns 90% of Corporation A and 85% of Corporation B, the two entities would be considered to be a group of trades of businesses under common control. Finally, a combined group refers to a group of entities which consists of both a parent-subsidy controlled group and a brother-sister controlled group. Where the assets of a direct employer are insufficient to pay the assessed withdrawal liability, the Plan will determine whether or not other entities can be held jointly and severally liable for the payment of the withdrawal liability pursuant to the rules described in this section.

Procedures

Inasmuch as the Plan has unfunded vested benefits, the Plan Office may receive requests from employers for withdrawal liability estimates, or may need to assess withdrawal liability to a withdrawn employer. Withdrawal liability calculations for either purpose will be performed by the Plan actuary. The procedures are as follows:

A. **Employer Requests for Estimates**

Not more than one time every twelve (12) months, an employer may request an estimate of its liability by writing to the Plan's Chief Executive Officer, 3601 West Olive Avenue, 2nd Floor, P.O. Box 7830 Burbank, CA 91510-7830. The Plan will notify the requesting employer of associated costs for calculating withdrawal liability estimates.

Upon receipt of the request, the Plan Office will forward it to the Plan's actuary and legal counsel along with the following information in an Excel file or on a form provided by the actuary:

1. Employer's name
2. Year-by-year covered earnings[3] on which Pension Plan contributions were made by or for, the employer for the 10-year period preceding the year of withdrawal. For example, if the employer withdraws in 2014, covered earnings must be provided for 2004 through 2013.
3. Highest Pension Plan contribution rate applicable to the employer for each year in item 2, plus the year of withdrawal. If more than one rate applied during a year, only the highest rate is required (e.g., if the contribution rate in the contract increased during a calendar year or if both Commercial and TV/Theatrical participants were employed by the employer).
4. Year-by-year contributions by the employer for a ten year period through the year preceding the year of withdrawal.

[3] Covered earnings are gross reportable earnings that have been reported either directly or indirectly through a signatory

In order to identify the covered earnings to be used for calculation of Withdrawal Liability, Plan staff will first identify if the requesting company has subsidiaries or alternate names under which earnings have been reported. The Plan will then identify if the company reports earnings to the Plan directly as a signatory entity, indirectly through another signatory entity, or both. The Plan will include all earnings under both scenarios, as a signatory company is liable for withdrawal liability on all covered earnings whether reported directly or indirectly to the Plan. The Plan will include the wages reported by year based on payroll period ending date as well as including the calculated contributions paid based on those wages.

In addition, the Plan will identify any outstanding audit claims which include unpaid contributions. If outstanding claims are for multiple service allocation contracts, the contributions due are based on the Commercial Allocation Guidelines or based on Commercial Allocation Subcommittee direction. Any outstanding collection matters are included as part of the information that is sent to the Plan actuary for estimation calculations.

The actuary will calculate the estimated withdrawal liability, and send a letter or email to the Plan Office within five business days with the results and supporting exhibits that provide details of the calculation and the data on which the calculation is based. The key result will include the amount of withdrawal liability, the annual withdrawal liability payment, and the period required to amortize the withdrawal liability. A sample of the Withdrawal Liability Calculation Summary is attached as Appendix B.

B. Notification of employers of their possible withdrawal liability

On a yearly basis, Plan staff will generate a list of employers that have ceased making contributions to the Plan. A questionnaire (Appendix C) will be sent to the employer to identify if the employer has withdrawn. If the employer does not respond to the Plan questionnaire, the Plans will proceed to determine whether a withdrawal has occurred, and whether withdrawal liability could be assessed. Based on the employer's response and Plan direction, the Plan's actuary will calculate the contribution threshold for any employer who has ceased making contributions in that calendar year. The Plan will then determine whether that employer's potential withdrawal liability exceeds the de minimis amount. Those employers whose potential withdrawal liability exceeds the de minimis amount will be notified by the Plan that they may have a legal obligation to pay to the Plan withdrawal liability

C. Assessment of withdrawal liability

1. The Plan will assess withdrawal liability against any company whose aggregate contributions exceed the threshold number and who continues to work on a non-union basis in the industry, or who returns to the industry within five years on a non-union basis. The calculation of the amount of withdrawal liability will be calculated by the Plan's actuaries on the same basis as was described for Employer Requests for Estimates outlined above.
2. As noted above, for any employer who has ceased making contributions and whose potential withdrawal liability exceeds $50,000, the Plan will send an assessment letter at the time it becomes aware of the withdrawal, notifying the employer that the employer is obligated to pay

the assessed amount if the employer continues to work in the industry on a non-union basis, or continues to engage in such work within five years.

3. The Plan may consult with SAG-AFTRA, employers or any other entity to determine whether an employer that has withdrawn from the Plan has continued to work in the industry on a non-union basis, or has returned to the industry within five years on a non-union basis.

Appendix A
The Plan's Method for
Allocating Withdrawal Liability

The Plan determines the amount of the liability of an employer that has completely withdrawn on the basis of the statutory method defined in Section 4211(b) of ERISA. This method is known as the "presumptive method."

The liability assessed to an employer for complete withdrawal from the Plan is determined as the sum of the unamortized balances, as of the end of the Plan Year preceding withdrawal, of the employer's prorated shares of each of the following:

- The Plan's unfunded liability, if any, for vested benefits as of December 31, 2008 (the first year the Plan had unfunded vested benefits for withdrawal liability);

- The change in the Plan's unfunded liability for vested benefits as of the end of each subsequent Plan Year (to the end of the Plan Year preceding withdrawal); and

- Reallocated amounts that would have been payable to the Plan as withdrawal liability payments for withdrawals in preceding years, except that they were nonassessable under certain statutory provisions or not collectible.

Unamortized Balances: The unamortized balance of each of these three sources of the assessment liability is determined by reducing each figure by 5% of its original amount for each full year from the end of the Plan Year as of which the charge was originally determined to the end of the Plan Year immediately preceding withdrawal.

Initial Amounts: The Plan's unfunded liability, if any, for vested benefits as of December 31, 2008 is determined by subtracting the value of Plan assets from the value of vested benefits under the Plan.

Annual Changes: As an example, change in the Plan's unfunded liability for vested benefits as of December 31, 2009 is determined as follows:

- By determining the Plan's unfunded liability, if any, for vested benefits as of December 31, 2009 (the value of the Plan's vested benefits less the value of its assets on that date), and

- By subtracting 95% (that is, the unamortized balance) of the Plan's unfunded vested liability as of December 31, 2008, if any.

Appendix A
The Plan's Method for
Allocating Withdrawal Liability

The change in the Plan's unfunded liability for vested benefits as of the end of any subsequent Plan year is determined as follows:

- By establishing the Plan's unfunded liability for vested benefits as of the end of that Plan Year, and

- By subtracting the total of (a) the unamortized balance of the unfunded liability for vested benefits as of December 31, 2008 and (b) the unamortized balance of each previous annual change after December 31, 2009.

(If the Plan had no unfunded liability for vested benefits as of the end of a year, the unfunded liability is zero for that year.)

A positive change represents an unfunded liability for vested benefits *greater* than the total of the unamortized balances and is therefore an addition to potential liability assessments for future withdrawals. A negative change represents an unfunded liability for vested benefits *lower* than the total of unamortized balances and is therefore a credit against amounts that would otherwise determine potential liability assessments for future withdrawals.

Reallocated Uncollectibles. The total amount, if any, of unfunded liability for vested benefits determined in any Plan Year after December 31, 2008 to be nonassessable or noncollectible with respect to employers that withdrew, is established as an amount to be prorated among each of the participating employers as an additional withdrawal liability amount. Nonassessable amounts consist of amounts deducted under the *de minimis* rule (sec. 4209 of ERISA), amounts not payable because of the 20-year limit (sec. 4219(c)(1)), and amounts not payable because of the limitations in the event of sale of all of the employer's assets (sec. 4225). Noncollectible amounts consist of amounts that are noncollectible for reasons arising out of cases under the federal bankruptcy law or similar proceedings.

Each annual amount of the reallocable nonassessable and noncollectible amount is written down by 5% of the original amount for each full year from the date as of which it was originally determined to the end of the Plan Year preceding withdrawal.

Fresh Start under the Pension Protection Act of 2006. Effective for withdrawals in 2007 and later, if the Plan has no unfunded liability for vested benefits following a year in which the Plan did have unfunded liability for vested benefits, then the unamortized portion of each annual change in unfunded liability for vested benefits is set to $0.

Proration to the Employer. The unamortized portion of the initial amount of unfunded liability for vested benefits, each annual change in the unfunded liability for vested benefits, and each annual reallocable amount is prorated to each employer, for determining the amount of its liability in the event of its complete withdrawal, on the basis of the ratio of the employer's obligated contributions to the Plan to the total employer contributions to the Plan during the 5 years ending with the end of the Plan Year as of which each of the amounts was determined.

Appendix A
The Plan's Method for
Allocating Withdrawal Liability

The total of employer contributions with respect to a 5-year period is reduced by any contributions otherwise included in the total that were made by a significant employer that withdrew from the Plan in or before the Plan Year in which the change or reallocation arose, and by any other employer to which a notice of withdrawal liability was sent by the Plan within the 5-year period.

A "significant employer" means:

- An employer that contributed, in any one Plan Year of the relevant period, at least 1% of total employer contributions to the Plan for that year, as determined for purposes of the relevant denominator or, if lower, $250,000 and

- Any other employer that was a member of an employer association, a group of employers covered by a single collective bargaining agreement with SAG-AFTRA or a group of employers covered by agreements with SAG-AFTRA , if the contribution obligations of substantially all members of the group ceased in a single Plan Year and the group's aggregate contributions to the Plan in any one Plan Year of the relevant period totaled at least 1% of total employer contributions to the Plan for the year or, if lower, $250,000.

De Minimis. Each withdrawal liability assessment is the total of the unamortized balances of the allocated amounts, as defined above, less a *de minimis* deductible. The deductible is $50,000 (but not more than ¾ of 1% of the Plan's unfunded liability for vested benefits). This deductible amount is reduced, dollar for dollar, by the amount by which the total of charges prorated to the employer exceeds $100,000.

Appendix C
Sample Employer Notification of Potential Withdrawal Liability

DATE

COMPANY NAME
ADDRESS
CITY, STATE ZIP
Attn: **CONTACT NAME**

RE: Withdrawal Liability

Dear Sir/Madam:

The Multiemployer Pension Plan Amendments Act of 1980 requires the assessment of withdrawal liability to an employer that withdraws from a defined benefit plan if the plan has unfunded vested benefits[1] at the time of withdrawal. For the year of **YEAR**, the Screen Actors Guild – Producers Pension Plan ("The Plan") had unfunded vested benefits which require us to assess withdrawal liability to companies that withdraw in **FOLLOWING YEAR**.

The Trustees of the Plan have adopted the "Entertainment Industry Exception" such that withdrawal liability may not be assessed to certain employers unless that employer either continues to work in the industry on a non-union basis, or returns to work in the industry on a non-union basis within five years. In addition, please note that an employer is considered to be working in the industry if that company contracts out work to non-signatory companies and a company may be assessed withdrawal liability should this situation occur.

The Plan has identified that your company may be obligated to pay withdrawal liability. The Plan is requesting information from your company in order to assess whether withdrawal liability is owed. Please provide the required data by completing the form provided on page 2 of this letter and returning it to my attention within 15 business days. If the Plan does not hear back from you, we will need to assume that a withdrawal has occurred and that withdrawal liability will be assessed.

Should you wish to expedite the return or if you have any questions, please email **WLInquiries@sagaftraplans.org**.

Thank you for your prompt attention to this matter.

Sincerely,

Contribution Management Department

[1] "Unfunded Vested Benefits" are the excess, if any, of the present value of vested benefits over the value of Plan assets. For this purpose, the value of Plan assets is the greater of the market value of actuarial value of assets, or the actuarial ("smoothed") value of assets.

Appendix C
Sample Employer Notification of Potential Withdrawal Liability

SCREEN ACTORS GUILD – PRODUCERS PENSION PLAN

Company Name: ____

1. Has your company completely ceased operations?

____

If so, effective when? ____

2. Does your company continue to work in the industry on a non-union basis?

____

3. Does your company anticipate returning to work in the industry?

____

If yes, will the company be working on a non-union basis?

____

4. Does your company currently contract out work to non-signatory companies?

____

____
Company

____
Address

____
City, State and Zip

____
Print Name and Title

____
Signature of Authorized Representative *

____
Date

* *I certify under penalty of perjury that the foregoing is true and correct.*

♦ *Please submit this form within 15 business days of the date of this letter to the Screen Actors Guild – Producers Pension Plan, 3601 West Olive Avenue, Burbank, CA 91505-4662 Attention: CMD Manager or by email to: WLInquiries@sagaftraplans.org*