Screen Actors Guild — Producers Pension Plan

Withdrawal Liability

Policy and Procedures Manual

As provided by the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Trust Agreement of the Screen Actors Guild-Producers Pension Plan (the "Plan"), an employer that withdraws from the Plan in either a complete or a partial withdrawal shall owe and pay withdrawal liability to the Plan. The following summarizes how the Plan determines, calculates and collects withdrawal liability. In the event of any conflict between the information contained herein and the Trust Agreement, the terms of the Trust Agreement will control.

BACKGROUND

ERISA requires multiemployer plans, like the Plan, to assess withdrawal liability against an employer that withdraws from such a plan if unfunded vested benefits ("UVBs")[1] are allocable to the employer at the time of withdrawal. Beginning in 2005, the Plan had UVBs for the first time in its history. Subsequently, the Plan's vested benefits became fully funded, but UVBs reemerged for the period ending December 31, 2008, and it is projected that the Plan will continue to have UVBs for the foreseeable future.

A. DETERMINING THE AMOUNT OF WITHDRAWAL LIABILITY

When an employer withdraws from the Plan, the Trustees must determine the amount of the employer's withdrawal liability that shall be assessed against the employer.

Measuring Unfunded Vested Benefits

Each year, the amount of the Plan's UVBs, if any, is determined by the Plan's actuaries. For this purpose, the actuaries use the actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the Plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the Plan. Using this standard, the value of vested benefits are based on the same actuarial assumptions as those used for the actuarial funding. For the determination of UVBs, the value of assets is the greater of the market value of assets or the actuarial ("smoothed") value of assets.[2]

Allocating Liability Among Employers

The Plan uses the "presumptive method" to determine an employer's allocable share of UVBs.

The presumptive method distinguishes among employers based on when they started participating in the Plan. Each employer is assigned a pro rata share of the Plan's UVBs attributable to the period during which the employer was obligated to contribute to the Plan. This shields new employers somewhat from underfunding that developed before they entered the Plan.

The liability assessed to an employer for a complete withdrawal from the Plan is the employer's pro rata share, as of the end of the plan year preceding the date of withdrawal, of the sum of (1) the unamortized balance of the Plan's initial amount of UVBs (i.e., as of December 31, 2008, the last day of the first year the Plan had any UVBs) plus the unamortized balance of the annual change in UVBs as of the end of each subsequent plan year, and (2) the unamortized balance of reallocated amounts, if any, that would have been payable to the Plan as withdrawal liability for withdrawals in preceding years, except that they were not assessable under certain statutory provisions (e.g., de minimis amounts and withdrawal liability amounts not payable within 20 years) or not collectible. The unamortized

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[1] Unfunded vested benefits are the excess, if any, of the present value of vested benefits over the value of plan assets.

[2] 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 was spread over a period of ten years, rather than five years. This special rule was applied retroactively to plan years commencing on and after January 1, 2009. As of January 1, 2018, the 2008 loss was fully recognized.

balance of each of these two components of withdrawal liability is determined by reducing each figure by 5% of its original amount for each full year from the end of the plan year in which each amount was initially determined through the year preceding the date of the employer's withdrawal.

The De Minimis Rule

The withdrawal liability otherwise allocable to an employer is reduced by the lesser of ¾ of 1% of the Plan's UVBs or $50,000. This is referred to as the "de minimis rule." As a result, if an employer's withdrawal liability is no more than $50,000 (or, if less, ¾ of 1% of the Plan's UVBs), the employer would owe nothing. If an employer's withdrawal liability is over $50,000 but not more than $100,000, then the total would be reduced by the de minimis amount (e.g., $50,000). However, the de minimis amount is reduced dollar-for-dollar by the amount, if any, by which the UVBs allocable to the employer exceeds $100,000, and is phased out completely when the employer's withdrawal liability reaches $150,000.

B. EVENTS TRIGGERING WITHDRAWAL

Complete Withdrawal

Generally, a complete withdrawal occurs when an employer either permanently ceases to have an obligation to contribute to the Plan, or permanently ceases all operations covered by the Plan. Events that could trigger an employer's complete withdrawal (absent the application of the Entertainment Industry Exception, described below) include an employer's (i) terminating its collective bargaining agreement with SAG-AFTRA, (ii) ceasing all operations, or (iii) a sale of assets of the contributing business (unless specific requirements are met). An employer is not considered to have withdrawn solely because it suspends contributions during a labor dispute or files for reorganization under Chapter 11 of the Bankruptcy Code. However, if, during a strike or lockout, all employees are permanently replaced, or the employer's facility is permanently closed, this may trigger a withdrawal.

Partial Withdrawal

Employers that reduce, but do not completely cease, their contribution obligations to the Plan may incur withdrawal liability under a partial withdrawal. An employer triggers a partial withdrawal on the last day of the plan year in which either there is a 70-percent decline in an employer's contribution base units ("CBUs") or there is a partial cessation of the employer's contribution obligation.

There is a **70-percent decline in CBUs** for any plan year if during each plan year in any 3-year testing period the CBUs (i.e., covered earnings, which is how contributions are measured – for this Plan) for which the employer is obligated to contribute to the Plan do not exceed 30 percent of such CBUs for the high base year.

1. The term "3-year testing period" means the period consisting of the current plan year and the immediately preceding two plan years.

2. The CBUs for the high base year is the average number of CBUs for the two plan years for which they were the highest within the five plan years immediately preceding the beginning of the 3-year testing period.

There is a **partial cessation of the employer's contribution obligation** for the plan year upon the occurrence of one of either of 2 scenarios: (1) if, during such year the employer permanently ceases to have an obligation to contribute under one or more, but fewer than all, collective bargaining agreements under which the employer has been obligated to contribute to the Plan, but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location, or to an entity or entities owned or controlled by the employer; or (2) the employer permanently ceases to have an obligation to contribute under the Plan with respect to work performed at one or more, but fewer than all, of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceases.

The amount of liability for a partial withdrawal and the total amount due in a 12-month period with respect to a partial withdrawal are pro rata shares of the amounts determined as if the employer had withdrawn completely, in a manner consistent with the applicable provisions of Sections 4206 and 4219 of ERISA. The amount of the liability cannot be determined until the year following the year of the partial withdrawal because it requires a calculation of the employer's CBUs in such following year.

Special Rule for the Entertainment Industry

There is a special withdrawal liability rule applicable to plans that primarily cover employees in the "entertainment industry" (e.g., theater, motion pictures, radio, television, sound or visual recording, music and dance). An employer that is obligated to contribute to the Plan for work performed in the entertainment industry, primarily on a temporary or project-by-project basis, incurs a complete withdrawal only if the employer ceases to have an obligation to contribute to the Plan and either continues to perform work in the jurisdiction of the Plan of the type for which contributions were previously required, or resumes such work within 5 years after the date the obligation ceased, without renewing its obligation to contribute (the "Entertainment Industry Exception"). Further, employers to whom the Entertainment Industry Exception applies have no liability for a partial withdrawal (unless and until the Pension Benefit Guaranty Corporation issues regulations to the contrary).

Exemption to the Special Rule for the Advertising Industry

ERISA permits a plan to be amended to provide that the Entertainment Industry Exception does not apply to a group or class of employers under the plan. Accordingly, the Trustees of the Plan determined that the Entertainment Industry Exception will not apply to employers in the advertising industry such as advertisers and advertising agenices (other than third-party signatories performing services for advertisers and advertising agencies to whom the Exception does apply) primarily contributing to the Plan under the Commercials Contract. As a consequence, these employers are potentially subject to withdrawal liability upon either a complete or partial withdrawal.

However, the Entertainment Industry Exception does apply to employers in the motion picture industry primarily contributing to the Plan in connection with the employment of performers on theatrical motion pictures, television motion pictures (including those made for free television, basic cable or pay television), motion pictures made for new media exhibition, or motion pictures made for any other medium covered under the SAG-AFTRA Codified Basic Agreement, the SAG-AFTRA Television Agreement, the SAG-AFTRA Television and Basic Cable Animation Agreements, the SAG-AFTRA Network Code of Fair Practice, the SAG-AFTRA Theatrical Low Budget Agreement or any other collective bargaining agreement covering the employment of performers in the same media as those agreements, even if those employers also contribute to the Plan as signatories to the Commercials Contract.

C. NOTICE AND PAYMENT OF WITHDRAWAL LIABILITY

The Plan, through its actuaries, will determine each withdrawn employer's withdrawal liability and the payment schedule, as set forth below, and will send a notice of withdrawal and demand for payment to the withdrawn employer as soon as practicable following the withdrawal. The withdrawn employer must commence payment in accordance with the schedule of payments no later than 60 days after the date of the demand, regardless of whether the employer has requested review or is otherwise appealing the determination of withdrawal liability.

Annual payment amounts must be made in quarterly installments (with additional interest for late payments). The law imposes a 20-year maximum on payment of withdrawal liability (except in the case of a mass withdrawal). Payment ceases when the total liability, including interest, has been paid or after 20 years of withdrawal liability payments (except in the case of a mass withdrawal), whichever is sooner. The employer may also prepay the outstanding amount of its unpaid withdrawal liability payments, plus accrued interest, if any, in whole or in part, without penalty. Interest is included by the Plan at the valuation interest rate.

The annual payment amount is determined in accordance with ERISA § 4219.

Request for Review/Arbitration

An assessment of withdrawal liability by the Plan may be challenged only by filing a written request for review with the Trustees within 90 days of the employer's receipt of the Plan's initial withdrawal liability assessment. After filing a request for review with the Trustees, the employer may initiate an arbitration regarding the assessment by making a formal filing with the American Arbitration Association, as provided below, within 60 days after the earlier of (i) the date that the employer is notified of the Trustees' decision on review; or (ii) 120 days after the date on which the employer requested the review.

Any dispute between an employer and the Plan concerning a determination of withdrawal liability shall be submitted by the employer to arbitration as provided in ERISA § 4221, to be conducted at the Los Angeles office of the American Arbitration Association in accordance with its Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes. The employer is responsible for initiating the arbitration and submitting the required fee.

No issue concerning the computation of withdrawal liability may be submitted for arbitration or otherwise contested unless the matter has first been submitted by the employer to the Trustees for review, as set forth above, in accordance with ERISA § 4219(b)(2). The employer's failure to request review or initiate an arbitration within the deadlines set forth above shall constitute a waiver of the employer's right to contest the withdrawal liability assessment, including the payment schedule, in arbitration or court.

Late Payment and Default

Interest shall be charged on any past due withdrawal liability amount from the date the payment was due to the date it is paid at the rate set by the Trustees from time to time. An employer is in default on its withdrawal liability if the employer fails to pay the past-due installment within 60 days after its receipt of a late payment notice from the Plan.

In addition to an event of non-payment, an employer is in default when the Trustees determine, in their sole and complete discretion, that circumstances indicate that there is substantial likelihood that the employer will be unable to pay the entire amount of its withdrawal liability. Such circumstances include but are not limited to, the following:

- the liquidation, distribution, or transfer by the employer, by any means, direct or indirect, including but not limited to the grant of a security interest, of all or substantially all of the assets of the employer;

- the employer is the subject of a petition under the Bankruptcy Code or any similar proceeding under state law or other federal laws;

- a substantial decline in the employer's business or substantial adverse change in the employer's operating ratios, operating income, and/or operating profits; or

- the employer fails to provide timely information reasonably required by the Trustees to determine whether there is a substantial likelihood that the employer will be unable to pay the entire amount of its withdrawal liability.[3]

The Trustees may determine that an employer is in default – whether in relation to the initial withdrawal liability demand for payment, subsequently-due installments, or the alternative default events set forth above. In the event of default, except as provided by law, the Trustees may demand immediate payment of the balance of the withdrawal liability in a lump sum, plus accrued interest, in lieu of installments.

D. ESTIMATE OF WITHDRAWAL LIABILITY

The Plan Office may receive requests from employers for withdrawal liability estimates. Withdrawal liability estimates will be performed by the Plan actuary. The procedures are as follows:

Not more than once every 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.

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[3] At the time the Plan demands payment of withdrawal liability, or at any time thereafter, the Trustees may require that the employer provide financial information relevant to a determination by the Trustees whether to require that the employer pay the entire amount of the liability in a lump sum, post a bond, provide a letter of credit, or satisfy such other terms and conditions of payment as the Trustees may reasonably require. Such information includes, but is not limited to, annual reports filed with the Securities and Exchange Commission, the results of any audit or other examination of the employer's books and records by an independent certified public accountant, a statement of the employer's assets and any mortgages, liens, or other security interest in said assets, a statement of the employer's net worth, debt to equity ratio, operating ratio, operating income, operating profits, net income and net profits.

The Plan will impose a charge to cover copying, mailing, and other costs of furnishing withdrawal liability estimates. The Plan will notify the requesting employer of this charge, and the requesting employer must pay it prior to the calculation of the estimated withdrawal liability. Currently, the Plan charges $1,500.00 for the costs of furnishing estimates of withdrawal liability.

Because the plan year runs from January 1 to December 31, generally this estimate will be made as if the employer had withdrawn on the December 31 immediately preceding the request. This estimate will be provided within 180 days of the request (or such longer period as permitted by law). Since this information will be of limited utility to employers (because it only applies to withdrawals in a plan year that already ended), an employer can instead request in writing that the Plan provide (subject to the same conditions) the estimated amount of the employer's withdrawal liability if the employer withdrew in the current plan year. In that case, the Plan will provide one as soon as it reasonably can after the necessary information is available.

E. OTHER TERMS AND CONDITIONS

Security

The Trustees may, in their sole and complete discretion, require that an employer, individually or as part of a controlled group, post a bond, or provide the Plan other security for payment of its withdrawal liability, in circumstances indicating that the employer will be unable to pay its future withdrawal liability obligations, including, but not limited to, the following:

- The employer is the subject of a petition under the Bankruptcy Code, or similar proceedings under state or other federal laws;
- Substantially all of the employer's assets are sold, distributed or transferred out of the jurisdiction of the courts of the United States.

Overpayment/Underpayment

If, following review, arbitration or other proceedings, the amount of the employer's withdrawal liability is determined to be different from the amount set forth in the notice and demand, adjustment shall be made by reducing or increasing the total number of installment payments due. If the employer has paid more than the amount finally determined to be its withdrawal liability, the Plan shall refund the excess with interest at the same rate used for overdue withdrawal liability payments.

Controlled Groups

Separate trades or businesses that are "under common control" are treated as one employer – and are together referred to as a "controlled group" -- for purposes of determining, assessing and collecting withdrawal liability. Any reference herein to "employer" means the employer and its controlled group. ERISA imposes joint and several liability on each member of a controlled group.

The trades or businesses in a controlled group can be part of (i) a parent-subsidiary controlled group of corporations, (ii) a brother-sister controlled group of corporations, (iii) a group of trades or businesses under common control, or (iv) a combined group. The specific rules to be applied in determining whether an employer is the member of a controlled group can be found in ERISA § 414(b) and (c) and Section 1563 of the Internal Revenue Code and the regulations thereunder.

Employers are required to provide the Plan with the information necessary for the Plan to confirm the entities in its controlled group, if any.

F. ENFORCEMENT OF WITHDRAWAL LIAIBLITY

In any suit by the Trustees to collect withdrawal liability, including a suit to enforce an arbitrator's award and a claim asserted by the Trustees in an action brought by an employer or other party, if judgment is awarded in favor of the Plan, the employer shall pay to the Plan, in addition to the unpaid withdrawal liability and interest thereon as determined by the Trustees, liquidated damages measured at 20% of the amount owed, and attorneys' fees and all costs.