

# U.S. Multiemployer Pension Plan Withdrawal Liability Basics and Collectibility

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## Introduction

### Multiemployer Plans Differ From Single Employer Plans

Single employer plans and multiemployer plans operate quite differently and are regulated differently.<sup>1</sup> Single employer plans are organized around one company or organization, the plan sponsor. Only the plan sponsor's employees participate in the plan, and the plan sponsor is the only party responsible for funding the plan.

In contrast, multiemployer pension plans are organized around workers—typically unionized workers—of at least two unrelated employers. Plan benefits and employer contributions are subject to collective bargaining between management and labor, and the plan sponsor is a board of trustees that includes representatives from both management and labor.

In general, single employer plans define participants' benefits according to a formula, and the employer is obligated to ensure the plan has sufficient assets to pay the benefits it has promised. When a single employer stops actively participating in a plan, its obligation to fund the benefits that have been earned remains. Complexities and specific rules aside, in the event that an employer is unable to adequately fund the plan, a government agency called the Pension Benefit Guaranty Corporation (PBGC) assumes responsibility for paying the plan's benefits up to the federally mandated per-participant limit.<sup>2</sup>

Multiemployer plans also define participants' benefits according to a formula. However, employers' contributions are defined in collective bargaining agreements. It is fairly common for a plan to have separate collective bargaining agreements with each significant employer. While the plan's benefit levels and funded status generally inform

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<sup>1</sup> Internal Revenue Code §430 sets forth funding requirements for single employer defined benefit pension plans while §§431–432 govern funding rules for multiemployer defined benefit pension plans.

<sup>2</sup> 29 U.S. Code §1302 and accompanying regulations establish the Pension Benefit Guaranty Corporation.

collective bargaining, ultimately the contribution rates may fall short of levels needed to meet the plan’s benefit obligations.

When a multiemployer plan runs short of assets needed to meet current benefit payments, the PBGC provides the plan financial assistance loans to pay benefits up to federally mandated limits. The limits differ from those for single employer plan benefits.<sup>3</sup> While the specifics of PBGC guarantees are beyond the scope of this discussion, it is generally well understood that PBGC guarantees for multiemployer plans are typically significantly lower than plan benefits. In addition, given that plans receiving assistance have already exhausted their assets, the PBGC does not expect the loans to be repaid.<sup>4</sup>

### Withdrawal Liability: The Basic Idea

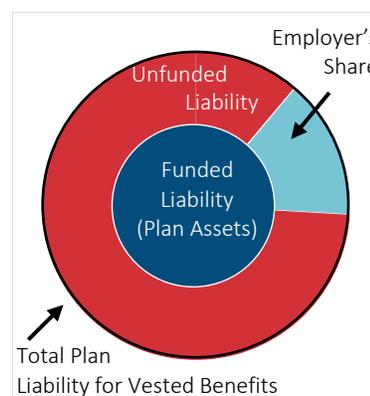
When an employer stops actively participating in a multiemployer plan, the employer is said to withdraw from the plan.<sup>5</sup> If the plan has an unfunded liability, the withdrawing employer may be charged for the unfunded liability that it leaves behind—the withdrawal liability.<sup>6</sup> In general, withdrawal liability is the withdrawing employer’s share of the plan’s unfunded liability (Figure 1).

Only the value of vested benefits is considered because if the entire plan were to stop at the time of the employer’s withdrawal, the plan would owe participants only the vested benefits.<sup>7</sup>

It is generally well known that some multiemployer pension plans are severely financially troubled, and it is less well understood that there are also many financially stable multiemployer plans. Many financially stable plans still have unfunded liabilities but are on a clear path to eliminate their unfunded liabilities. Withdrawal liability applies to all plans that have an unfunded liability, whether they are financially stable or troubled.

Federal law allows various methods for determining withdrawal liability; the methods are different approaches to determining the employer’s share of unfunded liability.<sup>8</sup> To mitigate the withdrawing employer’s burden to pay a large withdrawal liability all at once, the law allows payment over time. In general, the annual payment is intended to approximate the withdrawing employer’s history of annual contributions to the plan.<sup>9</sup> The author’s advisory team observes that actual withdrawal liability payments may be greater than the employer’s history of contributions.

**Figure 1**  
WITHDRAWAL LIABILITY



<sup>3</sup> 29 U.S. Code §§1322a–1322b define multiemployer plan benefit guarantees.

<sup>4</sup> Pension Benefit Guaranty Corporation, *FY 2017 Annual Report*, pp. 41 and 92, and *FY 2017 Projections Report*, p. 7, available at [www.pb.gc.gov](http://www.pb.gc.gov).

<sup>5</sup> This paper explains withdrawal liability for complete withdrawals as covered by 29 U.S. Code §1383. Under certain circumstances, an employer may become liable for a partial withdrawal as covered by 29 U.S. Code §1385. The circumstances under which partial withdrawal occurs and the consequent adjustment to withdrawal liability are complex. Mass withdrawal occurs when all of a plan’s employers stop participating, as covered by 29 CFR §4219. Partial and mass withdrawal are beyond the scope of this paper.

<sup>6</sup> 29 U.S. Code §1381 establishes withdrawal liability.

<sup>7</sup> Vested benefits are the portion of participants’ benefits that are fully owned by the participant; vesting rules are governed by Internal Revenue Code §411. Typically, participants with fewer than five years of service in a plan are not vested.

<sup>8</sup> 29 U.S. Code §1391 and accompanying regulations set forth methods for computing withdrawal liability.

<sup>9</sup> 29 U.S. Code §1399 governs annual withdrawal liability payment computation.

The concepts surrounding withdrawal liability are fairly simple; however, the details and realities are complex. Embedded within them are several instances that may challenge the plan sponsor’s ability to collect a withdrawn employer’s entire share of the plan’s unfunded liability. In addition, the intersection of changing demographic and economic conditions since the advent of the rules has resulted in withdrawal liabilities that may be larger than had been anticipated when the rules were written.

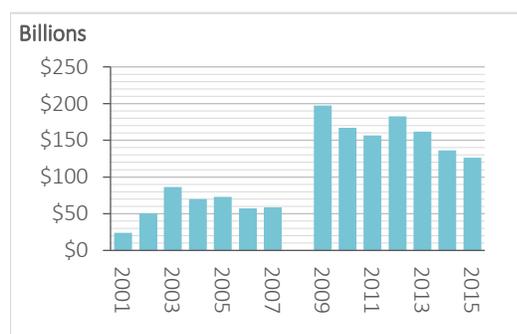
## Withdrawal Liability Growth

### Multiemployer Plan Dynamics

While many multiemployer plans are financially stable, in aggregate, unfunded liabilities among multiemployer plans have grown to be quite large (Figure 2). Reasons for unfunded liability growth are generally beyond the scope of this paper, but include investment market conditions and lack of withdrawal liability collection. At the same time, the number of employers actively participating in the plans has declined. In other words, among some plans, the growing cost of unfunded liabilities is borne by fewer actively participating employers. Consequently, in such plans, the share of unfunded liability borne by each actively participating employer is growing faster than the plan’s unfunded liability is growing. In addition, for plans that determine withdrawal liability using market-related discount rates, withdrawal liability has grown even faster.<sup>10</sup>

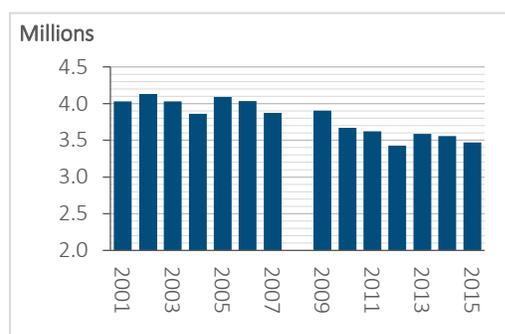
The number of actively contributing employers is reported on the annual Department of Labor Form 5500 filing, but only as far back as 2009. However, when an employer stops participating in a plan, the employer’s employees are no longer active participants. Thus, the number of active participants can give a sort of indication of the number of contributing employers, and the number of active participants is available for earlier years.

**Figure 2**  
AGGREGATE UNFUNDED LIABILITY



Note: 2008 Schedule MB data are not included in the Form 5500 database.

**Figure 3**  
AGGREGATE NUMBER OF ACTIVE PARTICIPANTS



Note that active participants are current employees of actively contributing employers; they are actively earning benefits under the plan. Inactive participants refers to all other participants, including retirees and surviving spouses currently receiving benefits, as well as participants who have earned benefits under the plan but have not yet begun collecting them. This last group of participants includes participants of actively contributing employers (i.e., workers

<sup>10</sup> Unfunded liabilities for Figure 2 use unit credit liabilities computed at the interest rate used for funding (liabilities are estimated if actual values are not available) and the market value of assets. Unfunded liabilities for withdrawal liability purposes may differ; in the current economic environment, they are often greater than the unfunded liabilities presented here.

who changed jobs and are no longer covered by the plan) and participants of withdrawn employers. Participants of withdrawn employers are often referred to as orphaned participants.

Figure 3 shows that the number of active participants in multiemployer plans has generally declined for a number of years. One reason for the declining number of active participants is that some plans no longer cover active employees. However, the author estimates that when one measures by plan liabilities (that is, taking into account plan size) only about 1% of multiemployer plans no longer cover active employees.<sup>11</sup>

It is likely that a more significant factor in the declining numbers of active participants is decreasing union representation. While employment in the private sector grew 13.7% from 2000 to 2017, the portion of employees represented by unions fell 26.0%. In some industries, union representation declined more sharply than others, as Table 1 shows. Union representation among construction workers dropped only about 19% while representation among non-Internet publishing workers plunged more than 50%.<sup>12</sup>

**Table 1**  
**NUMBER OF WORKERS REPRESENTED BY UNIONS**  
 In thousands

Year	All Private Sector Industries		Construction		Transportation and Warehousing		Publishing, except Internet	
	Employed	Represented by Unions	Employed	Represented by Unions	Employed	Represented by Unions	Employed	Represented by Unions
2000	102,808	9.8%	6,944	18.2%	4,389	27.2%	832	8.4%
2017	116,935	7.3%	7,844	14.7%	5,205	18.8%	458	4.1%
Change	+13.9%	-26.0%	-8.8%	-19.2%	+18.6%	-31.0%	-45.0%	-50.7%

Source: Bureau of Labor Statistics, “Historical Data for the Tables of Union Membership, Table 3, Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry,” [www.bls.gov/cps/cpslutabs.htm](http://www.bls.gov/cps/cpslutabs.htm), accessed July 2018.

### Dependency Ratio Trends

Pension plan unfunded liabilities reflect benefits for both active and inactive participants. A multiemployer plan’s contributions, however, depend only on its number of active participants. When the plan’s unfunded liability grows but the number of active participants shrinks, contribution dependency on the number of actives increases. The dependency ratio measures this dynamic: the number of inactive plan participants per active plan participant.

As a plan’s dependency ratio increases, pressure to raise contribution rates or reduce benefits also increases. Increasing contribution rates may incent participating employers to consider withdrawing from the plan. When an employer withdraws, the employer’s workers become inactive participants, and the plan’s dependency ratio increases further.

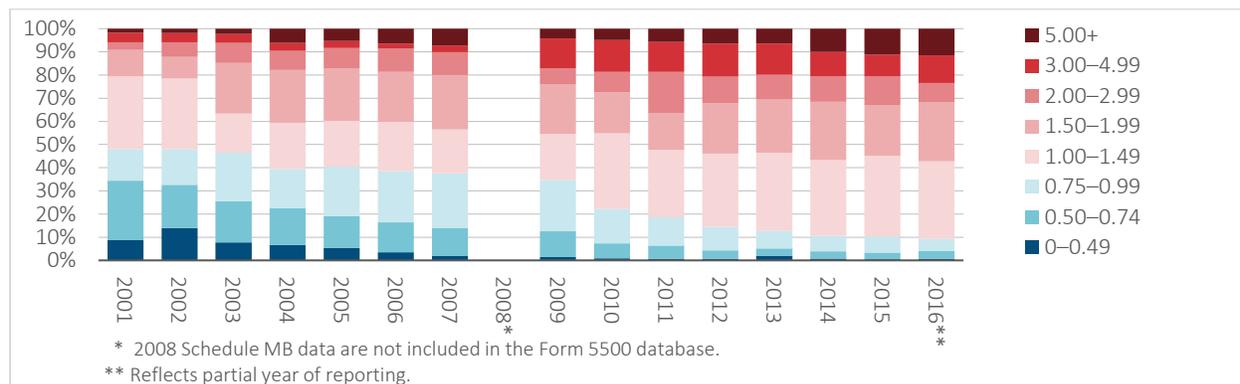
Figure 4 demonstrates how dependency ratios have increased since 2001. While the number of active participants declined, the number of inactive participants grew. In 2001, about half of the plans had dependency ratios of 1.0 or more, meaning they had more inactive participants than active participants. Fewer than 10% of plans had a dependency ratio of 2.0 or more. By 2015, about 90% of the plans had dependency ratios of 1.0 or more, and about 30% of plans had dependency ratios of 2.0 or more. More than 10% of plans had a dependency ratio of 5.0 or more.

<sup>11</sup> Based on data from Department of Labor Form 5500 Schedule MB for 2015, the most recent complete year of data available.

<sup>12</sup> Bureau of Labor Statistics, “Historical Data for the Tables of Union Membership, Table 3, Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry,” [www.bls.gov/cps/cpslutabs.htm](http://www.bls.gov/cps/cpslutabs.htm), accessed July 2018.

As a result of these dynamics, withdrawal liabilities can be quite large. At a recent congressional hearing, one employer with approximately 200 employees in the Central States plan testified that their withdrawal liability had grown to \$1.4 million per active participant, or a total of about \$281 million.<sup>13</sup>

**Figure 4**  
DEPENDENCY RATIO  
PERCENTAGE OF PLANS IN DEPENDENCY RATIO RANGES



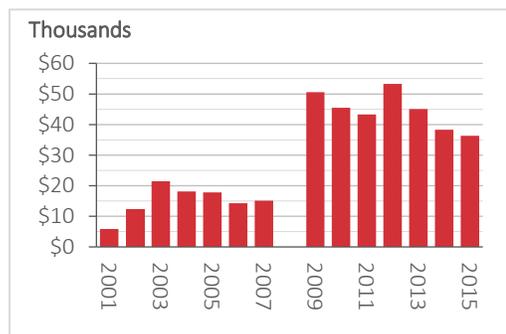
Large withdrawal liabilities affect actively participating employers because, should they withdraw, Financial Accounting Standards require them to disclose the amount of their withdrawal liability. Large withdrawal liabilities can negatively affect their ability to obtain financing. Large withdrawal liabilities also affect plans because, as the Collectibility section will explain, a significant share of withdrawal liabilities is not collected.

**Unfunded Liability per Active Participant**

Similar to using the number of active participants as a proxy to illustrate the decline in employer participation, the amount of unfunded liability per active participant can serve as a proxy to understand how employers’ shares of unfunded liabilities (withdrawal liabilities) have changed (Figure 5).<sup>14</sup>

Across all multiemployer plans on an aggregate basis, the unfunded liability per active participant increased more than sixfold, from about \$5,900 in 2001 to about \$36,300 in 2015. That is roughly equivalent to an increase of nearly 14% per year. During this same period, aggregate unfunded liabilities increased at the equivalent of over 12.5% per year while the active number of participants dropped about 1% per year.

**Figure 5**  
UNFUNDED LIABILITY PER ACTIVE PARTICIPANT



Note: Form 5500 database excludes 2008 Schedule MB.

<sup>13</sup> *Hearing on Employer Perspectives on Multiemployer Pension Plans before the Joint Select Committee on Solvency of Multiemployer Pension Plans*, 115<sup>th</sup> Cong. (June 13, 2018) (statement of Mary Moorkamp Chief Legal and External Affairs Officer, Schnuck Markets).

<sup>14</sup> Unfunded liabilities for Figure 5 use unit credit liabilities computed at the interest rate used for funding (liabilities are estimated if actual values are not available) and the market value of assets. Unfunded liabilities for withdrawal liability purposes may differ; in the current economic environment, they are often greater than the unfunded liabilities presented here.

The aggregate figures are essentially averages. Experience among individual plans has varied, with about half of the plans having seen better experience and the other half having seen worse experience. The following examples show how the unfunded liability per active participant has changed for some selected individual plans, based on publicly available data from Department of Labor Form 5500 filings.

**Aggregate unfunded liabilities per active participant grew sixfold from 2001 to 2015.**

Example 1 and Example 2 illustrate dramatic increases in unfunded liabilities per active participant, while Example 3 illustrates a plan that has not seen such an increase.

**Example 1**

Year	Unfunded Liability	Number of Active Participants	Unfunded Liability per Active Participant
2000	\$ 7,342,796,000	194,460	\$ 37,760
2005	12,616,522,000	157,306	80,204
2010	13,137,389,945	80,961	162,268
2015	33,384,681,622	64,527	517,375

From 2000 to 2015, in Example 1, the unfunded liability increased at an annual rate of 10.6% while the number of active participants dropped at a rate of 7.1% per year. The combined impact resulted in the unfunded liability per active participant growing at a rate of 19.1% per year.

**Example 2**

Year	Unfunded Liability	Number of Active Participants	Unfunded Liability per Active Participant
2000	\$(6,528,744)	6,891	\$ (947)
2005	39,692,142	4,018	9,879
2010	73,065,183	3,894	18,764
2015	96,661,879	1,391	69,491

In Example 2, the plan had a funding surplus in 2000. By 2005, the plan had an unfunded liability, and the number of active participants was less than 60% of the number in 2000. By 2015, the number of active participants had fallen at an annual rate of 10.1% since 2000, while the unfunded liability grew more than 9% per year from 2005 to 2015. The combined effect was an increase in the unfunded liability per active participant of 21.5% annually from 2005 to 2015.

Not all multiemployer plans have seen dramatic increases in their unfunded liability per active participant. In Example 3, the number of active participants in grew at an annual rate of 1.3% from 2000 to 2015, while the plan’s unfunded liability grew more slowly, at a rate of about 0.6% per year during the same period. The plan’s 2015 unfunded liability per active participant is 11% lower than its 2000 level.

**Example 3**

Year	Unfunded Liability	Number of Active Participants	Unfunded Liability per Active Participant
2000	10,994,390	528	20,823
2005	16,148,238	553	29,201
2010	4,873,488	739	6,595
2015	11,982,867	645	18,578

## Collectibility

As previously mentioned, the details and realities surrounding withdrawal liability are complex and include several instances that may challenge the plan sponsor’s ability to collect a withdrawn employer’s share of the plan’s unfunded liability.<sup>15</sup>

### Annual Payment Period Limitations

Annual withdrawal liability payments are computed to approximate the withdrawing employer’s historical annual contribution levels, without regard to the amount of the employer’s withdrawal liability.<sup>16</sup>

Once the annual payment is computed, the actuary determines the number of annual payments required to amortize the withdrawal liability. However, the amortization period can be no longer than 20 years. The employer pays the annual payment for as long as it takes to pay off the withdrawal liability or 20 years, whichever comes first.<sup>17</sup>

**Annual withdrawal liability payments stop after 20 years, even if would take longer to pay the withdrawal liability in full.**

Today, for plans with very large unfunded liabilities and relatively few active employees compared with earlier years, many, if not most, withdrawing employers’ annual withdrawal liability payments are likely to be capped at 20 years. As previously noted, most plans have declining proportions of active employees.

To show the impact on the plan of the 20-year cap on withdrawal liability payments, Example 4 uses a fictitious employer ABC’s withdrawal from a fictitious multiemployer plan. The 20-year cap reduces the withdrawal liability that ABC is assessed to 82% of ABC’s share of the plan’s unfunded liability.

#### Example 4

##### ABC’S WITHDRAWAL LIABILITY PAYMENTS GET CAPPED

	Amount of ABC’s Share of Unfunded Liability Collected	Percentage of ABC’s Share of Unfunded Liability Collected
ABC’s share of unfunded liabilities	\$11,000,000	100%
ABC’s annual withdrawal liability payment is \$800,000. At 7% interest, it would take more than 30 years to pay off \$11,000,000. However, the law limits payments to 20 years. The present value of \$800,000 at the start of each year for 20 years is \$9,068,476.	\$9,068,476	82%

<sup>15</sup> This paper explains withdrawal liability for complete withdrawals as covered by 29 U.S. Code §1383. Under certain circumstances, an employer may become liable for a partial withdrawal as covered by 29 U.S. Code §1385. The circumstances under which partial withdrawal occurs and the consequent adjustment to withdrawal liability are complex. Mass withdrawal occurs when all of a plan’s employers stop participating, as covered by 29 CFR §4219. Partial and mass withdrawal are beyond the scope of this paper.

<sup>16</sup> 29 U.S. Code §1399 governs computation of annual withdrawal liability payments.

<sup>17</sup> 29 U.S. Code §1399(c)(1)(B) limits amortization to the first 20 years of scheduled payments and §1396 exempts the United Mine Workers of America 1974 Pension Plan from the 20-year cap on withdrawal liability payments.

### Withdrawal Liability Settlement

In lieu of the scheduled annual payments, the employer and plan sponsor may agree on other terms and conditions for the satisfaction of the employer’s withdrawal liability.<sup>18</sup> When considering alternative terms and conditions, the plan sponsor is obligated to exercise fiduciary responsibilities and act in the best interest of plan participants.<sup>19</sup> Various circumstances, including potential litigation and employer credit risks, may lead plan sponsors to agree to a reduced withdrawal liability payment. Litigation risk may come into play when the facts and circumstances surrounding a withdrawal are unclear and have a significant impact on the withdrawal liability.

For example, suppose that an employer withdraws but the year in which the withdrawal occurred is unclear. If withdrawal occurred in year one, the withdrawal liability would be one amount, but if it occurred in year two, it would be twice as much. Suppose further that the facts and circumstances surrounding the withdrawal date are murky enough that neither the employer nor the plan sponsor is confident that it would prevail in litigation. Both parties may agree that a reasonable approach would be to split the difference. The author’s advisory team observes that situations with murky facts and circumstances that affect the withdrawal liability amount are not uncommon.

With respect to credit risk, for example, the plan sponsor may prefer a lesser, one-time payment up front over the risk of loss of annual payments should the employer encounter financial difficulty in the future while it owes annual withdrawal liability payments. As another example of credit risk, if the withdrawn employer runs into financial difficulty while it is paying withdrawal liability payments, the employer may negotiate a lesser annual payment. The plan sponsor may agree in hopes that the employer will be likelier to pay more of its total withdrawal liability than it would if the under the original withdrawal liability payment schedule.

Settling withdrawal liabilities involves balancing competing interests. On one hand, the plan needs the employer to pay its fair share to fund participants’ benefits in order to avoid disadvantaging the remaining actively participating employers. On the other hand, if the employer’s fair share is large enough to bankrupt the employer, the employer would be unable to pay it, leaving the remaining employers to pick up the unpaid portion.

**Withdrawal liability payments may be negotiated down.**

Picking up from Example 4, Example 5 and Example 6 demonstrate the impact of two different approaches to settling withdrawal liability payments. These two illustrations result in withdrawal liability assessments that are 68% and 48%, respectively, of ABC’s share of the plan’s unfunded liability.

**Example 5**

	Amount of ABC’s Share of Unfunded Liability Collected	Percentage of ABC’s Share of Unfunded Liability Collected
ABC’s share of unfunded liabilities	\$11,000,000	100%
ABC’s annual withdrawal liability payment is \$800,000. At 7% interest, it would take more than 30 years to pay off \$11,000,000. However, the law limits payments to 20 years. The present value of \$800,000 at the start of each year for 20 years is \$9,068,476.	\$9,068,476	82%
Settlement: ABC pays \$7,500,000 up front (roughly 83 cents on the dollar compared with annual payments).	\$7,500,000	68%

<sup>18</sup> 29 U.S. Code §1404 allows alternative approaches to withdrawal liability payment.

<sup>19</sup> 29 U.S. Code §1002(21)(A) establishes and §1104 outlines fiduciary responsibilities.

**Example 6**

	Amount of ABC's Share of Unfunded Liability Collected	Percentage of ABC's Share of Unfunded Liability Collected
ABC's share of unfunded liabilities	\$11,000,000	100%
ABC's annual withdrawal liability payment is \$800,000. At 7% interest, it would take more than 30 years to pay off \$11,000,000. However, the law limits payments to 20 years. The present value of \$800,000 at the start of each year for 20 years is \$9,068,476.	\$9,068,476	82%
After 2 years of withdrawal liability payments, ABC experiences financial difficulty and negotiates to pay half of the remaining annual withdrawal liability payments. At the point of withdrawal, the present value of 2 years of annual withdrawal liability payments of \$800,000 each plus 18 years of annual withdrawal liability payments of \$400,000 each is \$5,308,070.	\$5,308,070	48%

**Bankruptcy**

If a withdrawing employer is bankrupt or subsequently becomes bankrupt, the employer may not be able to meet its withdrawal liability obligations. The plan sponsor may file a claim for outstanding withdrawal liability in bankruptcy proceedings, along with other creditors. In such situations, the plan rarely receives payment in full.

The author's advisory team observes that in bankruptcies, withdrawal liabilities are often considered unsecured claims, rather than administrative expenses. When settling bankruptcy claims, administrative expenses are entitled to priority over unsecured claims.<sup>20</sup> In addition, in the case of employer liquidation, federal law essentially limits the employer's withdrawal liability to a percentage of the post-liquidation value of the employer.<sup>21</sup>

**Plans rarely receive full withdrawal liability payment from bankrupt employers.**

One relatively high-profile bankruptcy exemplifies the issue of unsecured claims versus administrative expenses. In 2010, Hostess Brands, Inc. (Hostess) was the largest contributor to the Bakery and Confectionery Plan. At the start of 2011, the plan reported an unfunded liability of \$2.1 billion<sup>22</sup> and was certified as neither critical nor endangered funded status. Hostess stopped contributing in July 2011 but was still the third-largest contributor to the plan that year. In 2012, Hostess filed for bankruptcy, the plan reported an unfunded liability of \$3.5 billion<sup>23</sup> and withdrawal liability assessments of \$922 million associated with 14 employers that withdrew during 2011, and the actuary certified the plan as in critical status.<sup>24</sup> During bankruptcy proceedings, the courts found that Hostess's unpaid contributions and withdrawal liability were not entitled to administrative expense priority.<sup>25</sup>

<sup>20</sup> 11 U.S. Code §507 assigns priority to expenses and claims during bankruptcy proceedings.

<sup>21</sup> 29 U.S. Code §1405 defines the limitation on withdrawal liability in the case of employer liquidation.

<sup>22</sup> Unit credit accrued liability computed at 7.50% assumed investment return less the current value of assets.

<sup>23</sup> Unit credit accrued liability computed at 6.50% assumed investment return less the current value of assets. The assumed rate of return was lowered "based on past experience and future expectations."

<sup>24</sup> Department of Labor Form 5500 Schedule R for the Bakery & Confectionery Union & Industry International Pension Fund for 2010, 2011 and 2012.

<sup>25</sup> *Bakery, Confectionery, Tobacco Workers and Grain Millers Int'l Union v. Hostess Brands, Inc.*, United States District Court for the Southern District of New York, Sept. 27, 2013.

In Example 6, ABC ran into financial troubles after two years and negotiated a lower annual withdrawal liability payment. Example 7 shows the impact if ABC had gone out of business after two years and withdrawal liability payments ceased. The plan would have collected only 14% of ABC’s share of the plan’s unfunded liability.

**Example 7**

	Amount of ABC’s Share of Unfunded Liability Collected	Percentage of ABC’s Share of Unfunded Liability Collected
ABC’s share of unfunded liabilities	\$11,000,000	100%
ABC’s annual withdrawal liability payment is \$800,000. At 7% interest, it would take more than 30 years to pay off \$11,000,000. However, the law limits payments to 20 years. The present value of \$800,000 at the start of each year for 20 years is \$9,068,476.	\$9,068,476	82%
After 2 years of withdrawal liability payments, ABC goes out of business and withdrawal liability payments cease. At the point of withdrawal, the present value of 2 years of annual withdrawal liability payments of \$800,000 each is \$1,547,664.	\$1,547,664	14%

Suppose instead that ABC withdrew from the plan because it was going out of business and would be liquidated. During bankruptcy proceedings, the court considered the pension plan’s claim for withdrawal liability to be an unsecured claim. After settling claims of higher priority, the plan collected only 9% of ABC’s share of the plan’s unfunded liability (Example 8).

**Example 8**

	Amount of ABC’s Share of Unfunded Liability Collected	Percentage of ABC’s Share of Unfunded Liability Collected
ABC’s share of unfunded liabilities	\$11,000,000	100%
ABC goes out of business. During liquidation, \$1,000,000 was allocated to the plan’s claim for ABC’s withdrawal liability.	\$1,000,000	9%

**Industry Exemptions**

Because of the nature of the construction and entertainment industries, employers in these industries are generally exempt from paying withdrawal liability if they no longer perform work in the same geographical area.<sup>26</sup> The rationale for this exemption was that industry-specific characteristics would protect plans from weakened contribution bases upon an employer’s withdrawal, in part because employees would normally obtain work with another employer.<sup>27</sup>

**Construction and entertainment industry employers generally do not pay withdrawal liability if they stop working in the plan’s area.**

<sup>26</sup> 29 U.S. Code §1383(b)–(c) outlines industry exemptions.

<sup>27</sup> U.S. General Accounting Office, *Report to the Congress of the United States by the Comptroller General: Assessment of Special Rules Exempting Employers Withdrawing from Multiemployer Pension Plans from Withdrawal Liability*, May 14, 1984.

### Small Withdrawal Liability Exception

Withdrawal liability that is less than \$250,000 may be reduced. It may be waived entirely if it is less than the smaller of \$50,000 or 0.75% (three-quarters of 1 percent) of the plan's unfunded vested benefits.<sup>28</sup> Because most multiemployer plans have benefit liabilities in the tens or hundreds of millions, if not billions, withdrawal liabilities that are small enough to meet this exception would not be significant to most plans.

Small withdrawal liabilities may be reduced or waived.

### Collectibility: Summary

When an employer withdraws from a multiemployer pension plan that has an unfunded liability, federal law provides for the employer to pay withdrawal liability. In general, withdrawal liability is the employer's share of the plan's unfunded liability. However, because of several legal and practical considerations, the withdrawn employer may pay only part or none of the withdrawal liability.

In such cases, it falls to the remaining employers to make up the difference, generally through increased contribution rates or upon their subsequent withdrawal.<sup>29</sup> Typically, when employers must pay higher contribution rates, they have fewer resources available for wage increases. Consequently, it indirectly also falls to the remaining active plan participants to bear some of the cost.

If the plan ultimately fails, the PBGC steps in to provide financial assistance. PBGC assistance is limited to federally mandated amounts.<sup>30</sup> While the specifics of PBGC guarantees are beyond the scope of this discussion, it is generally well understood that PBGC guarantees for multiemployer plans are typically significantly lower than plan benefits.

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Paul B. Dunlap, FSA, EA, FCA, MAAA

<sup>28</sup> 29 U.S. Code §1389 provides for withdrawal liability deductions and waivers and §1396 exempts the United Mineworkers of American 1974 Pension Plan from the small withdrawal liability exception.

<sup>29</sup> Unpaid withdrawal liability also flows through to withdrawal liabilities for subsequent employer withdrawals.

<sup>30</sup> 29 U.S. Code §1322a–1322b define multiemployer plan benefit guarantees.

## About the Society of Actuaries

The Society of Actuaries (SOA), formed in 1949, is one of the largest actuarial professional organizations in the world, dedicated to serving 30,000 actuarial members and the public in the United States, Canada and worldwide. In line with the SOA Vision Statement, actuaries act as business leaders who develop and use mathematical models to measure and manage risk in support of financial security for individuals, organizations and the public.

The SOA supports actuaries and advances knowledge through research and education. As part of its work, the SOA seeks to inform public policy development and public understanding through research. The SOA aspires to be a trusted source of objective, data-driven research and analysis with an actuarial perspective for its members, industry, policymakers and the public. This distinct perspective comes from the SOA as an association of actuaries, who have a rigorous formal education and direct experience as practitioners as they perform applied research. The SOA also welcomes the opportunity to partner with other organizations in our work where appropriate.

The SOA has a history of working with public policymakers and regulators in developing historical experience studies and projection techniques as well as individual reports on health care, retirement and other topics. The SOA's research is intended to aid the work of policymakers and regulators and follow certain core principles:

**Objectivity:** The SOA's research informs and provides analysis that can be relied upon by other individuals or organizations involved in public policy discussions. The SOA does not take advocacy positions or lobby specific policy proposals.

**Quality:** The SOA aspires to the highest ethical and quality standards in all of its research and analysis. Our research process is overseen by experienced actuaries and non-actuaries from a range of industry sectors and organizations. A rigorous peer-review process ensures the quality and integrity of our work.

**Relevance:** The SOA provides timely research on public policy issues. Our research advances actuarial knowledge while providing critical insights on key policy issues, and thereby provides value to stakeholders and decision makers.

**Quantification:** The SOA leverages the diverse skill sets of actuaries to provide research and findings that are driven by the best available data and methods. Actuaries use detailed modeling to analyze financial risk and provide distinct insight and quantification. Further, actuarial standards require transparency and the disclosure of the assumptions and analytic approach underlying the work.

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