

## Pension Benefit Guaranty Corporation

## § 4211.32

of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter.

### **§ 4211.24 Special rule for certain alternative methods previously approved.**

A plan may not apply to any employer withdrawing on or after November 25, 1987, an allocation method approved by the PBGC before that date that allocates to the employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

## **Subpart D—Allocation Methods for Merged Multiemployer Plans**

### **§ 4211.31 Allocation of unfunded vested benefits following the merger of plans.**

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 4211.32 through 4211.35, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 4211.32. In addition, a merged plan may adopt any of the modifications prescribed in § 4211.36 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in the building and construction industry shall use the presumptive allocation method prescribed in § 4211.32. However, the plan may, with respect to employers that are not construction industry employers within the meaning

of section 4203(b)(1)(A) of ERISA, adopt, by amendment, one of the alternative methods prescribed in §§ 4211.33 through 4211.35 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or any of the modifications to the statutory presumptive method set forth in § 4211.12.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Code shall use the rolling-5 allocation method prescribed in § 4211.34, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 4211.32 through 4211.35 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 4211.37.

### **§ 4211.32 Presumptive method for withdrawals after the initial plan year.**

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and

(3) The employer's proportional share of the unamortized amounts of the re-allocated unfunded vested benefits (if any) as determined under paragraph (d) of this section.

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities (determined under paragraph (b)(1) of this section) and the employer's share of the adjusted initial plan year unfunded vested benefits (determined under paragraph (b)(2) of this section), with such sum reduced by five percent of the original amount for each plan year subsequent to the initial year.

(1) *Share of prior plan liabilities.* An employer's share of its prior plan's liabilities is the amount of unfunded vested benefits that would have been allocable to the employer if it had withdrawn on the first day of the initial plan year, determined as if each plan had remained a separate plan.

(2) *Share of adjusted initial plan year unfunded vested benefits.* An employer's share of the adjusted initial plan year unfunded vested benefits equals the plan's initial plan year unfunded vested benefits, less the amount that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year, multiplied by a fraction—

(i) The numerator of which is the amount determined under paragraph (b)(1) of this section; and

(ii) The denominator of which is the sum of the amounts that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year.

(c) *Share of annual changes.* An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested for the plan years ending after the end of the initial plan year is the sum of the employer's proportional shares (determined under paragraph (c)(2) of this section) of the unamortized amount of the change in unfunded vested benefits (determined under paragraph (c)(1) of this section)

for each plan year in which the employer has an obligation to contribute under the plan ending after the initial plan year and before the plan year in which the employer withdraws.

(1) *Change in plan's unfunded vested benefits.* The change in a plan's unfunded vested benefits for a plan year is the amount by which the unfunded vested benefits at the end of a plan year, less the value as of the end of such year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year, exceed the sum of the unamortized amount of the initial plan year unfunded vested benefits (determined under paragraph (c)(1)(i) of this section) and the unamortized amounts of the change in unfunded vested benefits for each plan year ending after the initial plan year and preceding the plan year for which the change is determined (determined under paragraph (c)(1)(ii) of this section).

(i) *Unamortized amount of initial plan year unfunded vested benefits.* The unamortized amount of the initial plan year unfunded vested benefits is the amount of those benefits reduced by five percent of the original amount for each succeeding plan year.

(ii) *Unamortized amount of the change.* The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by five percent of such change for each succeeding plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the plan year in which the change arose and the four preceding full plan years; and

(ii) The denominator of which is the total amount contributed under the plan (or under employer's prior plan) for the plan year in which the change

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arose and the four preceding full plan years by all employers that had an obligation to contribute under the plan for the plan year in which such change arose, reduced by any amount contributed by an employer that withdrew from the plan in the year in which the change arose.

(d) *Share of reallocated amounts.* An employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits, if any, is the sum of the employer's proportional shares (determined under paragraph (d)(2) of this section) of the unamortized amount of the reallocated unfunded vested benefits (determined under paragraph (d)(1) of this section) for each plan year ending before the plan year in which the employer withdrew from the plan.

(1) *Unamortized amount of reallocated unfunded vested benefits.* The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the sum of the amounts described in paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section for the plan year, reduced by five percent of such sum for each succeeding plan year.

(i) *Uncollectible amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under title 11, United States Code, or similar proceedings, with respect to an employer that withdrew after the close of the initial plan year.

(ii) *Relief amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 4209, 4219(c)(1)(B), or 4225 of ERISA with respect to an employer that withdrew after the close of the initial plan year.

(iii) *Other amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible or unassessable for other reasons under standards not inconsistent with regulations prescribed by the PBGC.

(2) *Employer's proportional share.* An employer's proportional share of the

amount of the reallocated unfunded vested benefits with respect to a plan year is computed by multiplying the unamortized amount of the reallocated unfunded vested benefits (as of the end of the year preceding the plan year in which the employer withdraws) by the allocation fraction described in paragraph (c)(2) of this section for the same plan year.

### § 4211.33 Modified presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over fifteen years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share (determined under paragraph (c)(2) of this section) of the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, reduced by the amount of the plan's unfunded vested benefits as of the close of the initial plan year (determined under paragraph (c)(1) of this section).