

PBGC Adopts AAA's Amended Withdrawal Liability Arbitration Rules

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Beginning January 1, 2020, the American Arbitration Association (AAA) will: (i) reduce filing fees charged to parties initiating arbitrations of withdrawal liability disputes; (ii) change how costs of arbitrations are allocated among the parties to the disputes; and (iii) amend the process for resolving arbitrator selection disputes.

The new filing fees are modest in comparison to the fee schedule proposed to the Pension Benefit Guaranty Corporation (PBGC) by the AAA in 2013—which imposed a flexible and final fee schedule that in some cases could result in filing fees that were higher by tens of thousands of dollars than the AAA's original 1986 filing fees.

Although the PBGC had not approved the AAA's 2013 request to increase fees, the AAA has been applying the 2013 fee schedule to this point. After the PBGC received commentary that was critical of the AAA's 2013 fee schedule, the AAA submitted a *revised* proposal containing a filing fee schedule (removing the flexible and final fees contained in the AAA 2013 fee schedule). On December 10, 2019, the PBGC adopted the revised proposal (the "2019 Rules").

2019 Rules: New Filing Fee Schedule:

Disputes below \$1 million.....	\$2,500 filing fee
Disputes equal to \$1 million but less than \$5 million.....	\$3,750 filing fee
Disputes equal to \$5 million or more.....	\$5,000 filing fee

In addition to AAA's initial filing fee, parties that proceed to arbitration will still have to pay other costs associated with the arbitration, such as the arbitrator's fees. While an employer that initiates arbitration will be required to cover the upfront filing fee, the 2019 Rules provide, subject to the arbitrator's discretion, that arbitration costs will be borne equally between the parties.

The 2019 Rules will also allow the parties to seek appointment of an arbitrator by a federal district court in the event they are unable to agree on an arbitrator through the AAA mutual selection process. Under the old rules, the AAA resolved such disputes by appointing an arbitrator if one was not mutually selected.

Also, after the parties receive post-appointment disclosures from an arbitrator who they have mutually selected, either party has 10 days to seek automatic removal of the appointed arbitrator. In the event of an automatic removal, the AAA will select a new arbitrator using the initial AAA mutual selection process.

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