SFA Merger FAQs for Practitioners

Withdrawal Liability Modifications Under 29 C.F.R. § 4211.36(d)

Hypothetical Scenario

A building and construction industry plan that received SFA ("Plan A") merges into a building and construction industry plan that did not receive SFA ("Plan B") on December 31, 2026. Both Plan A and Plan B are calendar year plans. An employer that contributed to Plan A withdraws from the merged plan during the plan year ending December 31, 2028.

The table below shows the historical required contributions[1] for: (1) the withdrawing employer, (2) the remaining employers from Plan A, and (3) all other remaining employers for the five-year period ending at the end of the merged plan's initial plan year (December 31, 2027). The first four rows (2023 – 2026) show required contributions for the component plans prior to the merger and the fifth row (2027) shows the required contributions for the initial plan year of the merged plan.

Plan Year Ending December 31	Withdrawing Employer	Remaining Plan A Employers (Aggregate)	Plan B Employers (Aggregate)
2023	$110,000	$440,000	$5,000,000
2024	$103,000	$412,000	$5,000,000
2025	$100,000	$400,000	$5,000,000
2026	$97,000	$388,000	$5,000,000
2027	$90,000	$360,000	$5,000,000

Because the employer is withdrawing in the first plan year following the initial plan year, the allocated share of unfunded vested benefit liability ("UVB") is the sum of prior plan UVB and adjusted initial plan year UVB. The prior plan UVB and adjusted initial plan year UVB each have different allocation ratios, as described below.

Assuming the prior plan UVB from Plan A as of December 31, 2026, is $10,000,000 and the withdrawing employer's share of this prior plan UVB is $2,500,000. $2,500,000 is the amount of withdrawal liability that would have been assessed to

[1] Excludes certain contribution rate increases as specified under the Multiemployer Pension Reform Act of 2014.

the withdrawing employer had the merger not taken place, and the withdrawal occurred in the plan year ending December 31, 2027.

Adjusted Initial Plan Year UVB Allocation Ratio under 29 C.F.R. § 4211.36(d)(1) & (2)

Under § 4211.32(b)(2), the withdrawing employer's allocated ratio of the adjusted initial UVB is the proportion of its allocated share of prior plan liabilities to the total prior plan liabilities allocated to employers not withdrawn as of the end of the initial plan year.

In comparison, under § 4211.36(d)(1) & (2), the withdrawing employer's allocated ratio of the adjusted initial UVB is the proportion of its total required contributions for the five-year period ending December 31, 2027 (the last day of the initial plan year) to the total required employer contributions over this same period; this ratio is 1.82%.[2]

<u>Examples</u>

The following examples illustrate how the § 4211.36(d)(1) & (2) modifications reduce volatility in the withdrawing employer's post-merger withdrawal liability assessment across a range of scenarios, as compared to the allocation method specified under § 4211.32.

Examples 1 and 2 show how these modifications may mitigate the effects of discontinuing the § 4262.16 withdrawal liability conditions in the merged plan (i.e.

[2] The withdrawing employer's total required contributions for the five-year period ending December 31, 2027 amount to **$500,000** (= $110,000 + $103,000 + $100,000 + $97,000 + $90,000); the remaining SFA employers total required contributions for the five-year period ending December 31, 2027 amount to **$2,000,000** (= $440,000 + $412,000 + $400,000 + $388,000 + 360,000); all other remaining employers total required contributions are $25,000,000 (=5 * $5,000,000);

$$\frac{\$500{,}000}{(\$500{,}000+\$2{,}000{,}000+\$25{,}000{,}000)} = 1.82\%$$

4044 interest rates and SFA phase-in) which would tend to lower the employer's withdrawal liability assessment after the merger.

Example 3 shows how these modifications may insulate the employer from disproportionate increases in withdrawal liability resulting from adverse experience in the merged plan during the initial plan year.

Example 1 – Assumption: as of December 31, 2026, the Plan A UVB is $0.

Adjusted Initial UVB

The merged plan's initial plan year UVBs as of December 31, 2027, is $0. The adjusted initial plan year UVB, as calculated under § 4211.32(b)(2), is therefore ($10,000,000), determined as follows:

> $0 initial plan year UVBs – $10,000,000 SFA "Prior Plan" UVBs – $0 Non-SFA "Prior Plan" UVBs = ($10,000,000)

Under § 4211.32(b)(2)(i)-(ii), the adjusted initial UVB is allocated based on the ratio of the withdrawing employer's Prior Plan UVB to the total UVB. This ratio is 25% (= $\left[\frac{\$2{,}500{,}000}{\$10{,}000{,}000+\$0}\right]$).

By contrast, under § 4211.36(d)(1) & (2), the adjusted initial UVB is allocated based on the ratio of contributions over the five-year period ending December 31, 2027. This ratio is 1.82%, as explained above.

Total Allocated UVB

For the withdrawing employer, the allocated adjusted initial UVB under § 4211.32 and § 4211.36(d)(1) & (2) is determined as follows:

	§ 4211.32	§ 4211.36(d)(1) & (2)
Allocated "Prior Plan"	$2,500,000	$2,500,000
Allocated Adjusted Initial	($10,000,000) * 25% = ($2,500,000)	($10,000,000) * 1.82% = ($182,000)

Total Allocated	$0	$2,318,000

The withdrawing employer's total allocated UVB is completely eliminated under the § 4211.32 allocation method but is only reduced by 7% from the Prior Plan allocated UVB under the § 4211.36(d)(1) & (2) allocation method.

<u>Example 2</u> – Assumption: as of December 31, 2026, the Plan B UVB is $40,000,000.

<u>Adjusted Initial UVB</u>

The § 4211.32 initial UVB as of December 31, 2027, for the merged plan is $28,000,000. The adjusted initial plan year UVB is therefore ($22,000,000) determined as follows:

> $28,000,000 initial plan year UVBs - $10,000,000 SFA "Prior Plan" UVBs - $40,000,000 Non-SFA "Prior Plan" UVBs = ($22,000,000)

Under § 4211.32, the adjusted initial UVB is allocated based on the ratio of the withdrawing employer's Prior Plan UVB to the total UVB; this ratio is 5% (= $\left[\frac{\$2,500,000}{\$10,000,000+\$40,000,000}\right]$).

Under § 4211.36(d)(1) & (2), the adjusted initial UVB is allocated based on the ratio of contributions over the five-year period ending December 31, 2027. This ratio is 1.82% shown above.

<u>Total Allocated UVB</u>

For the withdrawing employer, the allocated adjusted initial UVB under § 4211.32 and §4211.36(d) is determined as follows:

	§ 4211.32	§ 4211.36(d)(1) & (2)
Allocated "Prior Plan"	$2,500,000	$2,500,000
Allocated Adjusted Initial	($22,000,000) * 5% = ($1,100,000)	($22,000,000) * 1.82% = ($400,400)

Total Allocated	$1,400,000	$2,099,600

Here, the withdrawing employer's total allocated UVB is reduced by 44% from the Prior Plan allocated UVB under the § 4211.32 allocation method but is only reduced by 16% from the Prior Plan allocated UVB under the § 4211.36(d)(1) & (2) allocation method.

<u>Example 3</u> – Assumption: as of December 31, 2026, the Plan B UVB is $0.

<u>Adjusted Initial UVB</u>

The § 4211.32 initial UVB as of December 31, 2027, for the merged plan is $40,000,000 as a result of unfavorable investment experience during the initial plan year. The adjusted initial plan year UVB is therefore $30,000,000 determined as follows:

> $40,000,000 initial plan year UVBs - $10,000,000 SFA "Prior Plan" UVBs - $0 Non-SFA "Prior Plan" UVBs = $30,000,000

Under § 4211.32, the adjusted initial UVB is allocated based on the ratio of the withdrawing employer's Prior Plan UVB to the total UVB; this ratio is 25% (= $\left[\frac{\$2{,}500{,}000}{\$10{,}000{,}000+\$0}\right]$).

Under § 4211.36(d)(1)&(2), the adjusted initial UVB is allocated based on the ratio of contributions over the five-year period ending December 31, 2027. This ratio is 1.82% as shown above.

<u>Total Allocated UVB</u>

For the withdrawing employer, the allocated adjusted initial UVB under § 4211.32 and §4211.36(d) is determined as follows:

	§ 4211.32	§ 4211.36(d)(1)&(2)
Allocated "Prior Plan"	$2,500,000	$2,500,000
Allocated Adjusted Initial	$30,000,000 * 25% = $7,500,000	$30,000,000 * 1.82% = $546,000

Total Allocated	$10,000,000	$3,046,000

Here, the withdrawing employer’s total allocated UVB increases by 300% from the Prior Plan allocated UVB under the § 4211.32 allocation method but is only increases by 22% from the Prior Plan allocated UVB under the § 4211.36(d)(1) & (2) allocation method.