When multiemployer plan participants work outside of their union local jurisdiction, they can continue to earn pension credit and maintain health coverage if a reciprocity agreement is in place. This article describes reciprocity agreements and explores their legality.
Understanding Reciprocity Agreements

by Michael A. Evans and Jamie L. Reyes-Jones
Staying consistently employed in some industries, particularly construction, often requires workers to be mobile. In the building trades, when work is slow in one geographic area, a worker may be able to find work in his or her trade in a different geographic area.

But what happens to health and retirement benefits if the traveling worker is a participant in a multiemployer plan? If the worker’s home local union has a reciprocity agreement in place, the participant will earn retirement credit and maintain health coverage while working outside of the local’s geographic jurisdiction.

Reciprocity agreements allow participants to sidestep the eligibility requirements (vesting for retirement plans and hours of service for welfare plans) typically required to become a participant in new plans. As such, reciprocity agreements allow participants in multiemployer plans portability and flexibility when pursuing work across the country.

Types of Reciprocity Agreements

There are two basic types of reciprocity agreements:

1. **Money-follows-the-man reciprocity.** When participants work outside of their home jurisdiction, the employer remits contributions to the funds located where work is performed (away funds). Typically, the employer is signatory to a collective bargaining agreement that requires contributions to the away funds. After receiving the employer contributions, the away funds send the money to the funds affiliated with the participant’s home local (home funds). The home pension funds then award credit to the participant, and the home welfare fund provides coverage based on the contributions received from the away funds.

2. **Pro-rata reciprocity.** This method applies only to defined benefit (DB) pension funds. Unlike money-follows-the-man reciprocity, no money is forwarded from the away fund to the home fund. Instead, the away fund recognizes the eligibility and vesting credit earned by the participant with the home fund. Therefore, a participant can immediately begin earning pension credit with the away fund without having to satisfy its eligibility and vesting requirements. This is critical because a traveler who only works temporarily in an away jurisdiction may otherwise never meet these requirements. When participants retire, they will receive two pension checks: one from the home fund and another from the away fund.

Requirements for Reciprocity

Before any type of reciprocity occurs, the home and away funds must enter into a reciprocity agreement that details the terms of the arrangement. Typically, reciprocity agreements are entered into between funds sponsored by locals of the same international union. Some international unions have drafted model reciprocity agreements to facilitate reciprocal transfers between their affiliated locals. The plan documents of all affected funds must permit reciprocity. This may require plan amendments to accommodate the reciprocity agreement. Finally, in the case of a money-follows-the-man reciprocity agreement, participants also typically complete a form authorizing that contributions made on their behalf be sent back to their home funds.

Legality of Reciprocity Agreements

Reciprocity between multiemployer plans existed before the enactment of the Employee Retirement Income Security Act (ERISA) in 1974. Despite the comprehensive scope of ERISA, reciprocity agreements are only tangentially referenced in the law itself. Nevertheless, multiemployer plans have continued to openly use reciprocity agreements after the enactment of ERISA. This begs the question, however: What is the legal authority that supports the use of reciprocity agreements?

The legislative history of ERISA treats reciprocity agreements favorably. In discussing the provision that became Section 4234(c) of ERISA, the House Committee on Education and Labor wrote: “The committee believes that it is important to encourage expansion of reciprocals to enhance pension portability.”

Moreover, the Internal Revenue Service (IRS) Multiemployer Plan Examination Guidelines specifically reference the use of reciprocity agreements amongst plans. The guidelines define a reciprocity agreement as an “agreement between two funds or plans to allow an employee’s covered employment in another plan’s jurisdiction to be credited towards a benefit in the employee’s Home Plan.” Nowhere in the guidelines does it state that reciprocity agreements are unlawful. Instead,
the guidelines say exactly the opposite: “Multiemployer plans may enter into Reciprocity Agreements with other multiemployer plans.”

Courts have enforced the terms of reciprocity agreements. While multiemployer plans are not required to enter into reciprocity agreements, if they choose to do so, courts will require that the plans comply with ERISA and the terms of the agreement. In this regard, courts have held that pension benefits earned pursuant to a pro-rata reciprocity agreement are subject to ERISA vesting requirements. Likewise, a court has held that partial pension credits earned pursuant to a pro-rata reciprocity agreement were accrued benefits under ERISA that could not be retroactively taken away. If any monies are retained by the away fund in a money-follows-the-man reciprocity arrangement (such as pursuant to a funding improvement plan or rehabilitation plan), individuals may retain their status as participants in the away funds. Courts also have prohibited the modification of reciprocity agreements unless the plan followed the procedures outlined in the agreement regarding modification. The authors are not aware of any court cases finding that reciprocity agreements are per se illegal.

**Defined Benefit/Defined Contribution Reciprocity**

One issue that can arise when dealing with reciprocity agreements is whether a DB pension plan can enter into a reciprocity agreement with a defined contribution (DC) pension plan. In other words, can contributions to a DC plan be reciprocated to a DB plan and vice versa? The issue of DB/DC reciprocity has arisen more frequently in recent years, given the funding problems experienced by some DB plans and the reluctance of some employers to enter into a contributory obligation with DB plans.

DB/DC reciprocity can arise in a number of scenarios. One such situation is when an individual's home local provides only a DB pension plan. When work in the home local is slow, the individual goes out of town to work in the jurisdiction of another local that only provides a DC retirement plan. If the DB and DC plans were prohibited from entering into a reciprocity agreement, the participant would not earn any credit with his home DB plan while working as a "traveler." Without reciprocity, this participant would lose the portability and flexibility afforded to other multiemployer plan participants.

**PBGC Opinion Letters Have Considered DB/DC Reciprocity**

The Pension Benefit Guaranty Corporation (PBGC) has indirectly dealt with the issue of reciprocity between DB and DC plans. In Opinion Letter 85-22 (September 11, 1985), a money-follows-the-man reciprocity agreement was established between a DB plan and DC plan. A contributing employer made contributions to the DC plan, which were then reciprocated to the DB plan pursuant to the reciprocity agreement. The issue considered by PBGC was whether the DC plan or the contributing employer would be subject to any of the minimum funding requirements or withdrawal liability associated with the DB plan because of the contributions reciprocated to the DB plan. PBGC opined that the DC plan itself would not be subject to withdrawal liability pursuant to the reciprocity agreement. However, PBGC left open the issue of whether employers who contributed to the DC plan would be subject to

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the DB plan’s withdrawal liability. PBGC considered that unanswered issue in Opinion Letter 89-2 (February 14, 1989). In the letter, PBGC found that generally having contributions transferred pursuant to a reciprocity arrangement would not subject an employer to withdrawal liability from the receiving fund. However, the agency left the door open that in some circumstances a reciprocity agreement could make an employer a contributing employer to the receiving fund. In this regard, Opinion Letter 89-2 reads: “[T]he PBGC believes that the recurrent transfer of relatively large amounts under a reciprocity agreement could suggest the existence of an obligation to contribute . . . ”

Despite having explicitly considered the issue of DB/DC reciprocity, nowhere did PBGC state that this arrangement was unlawful. Indeed, if DB/DC reciprocity was improper, PBGC never could have reached the underlying issue answered by the opinion letters: the responsibility for withdrawal liability from the participating DB plan.

IRS Multiemployer Plan Examination Guidelines Do Not Prohibit DB/DC Reciprocity

Nothing in the IRS Multiemployer Plan Examination Guidelines prohibits DB/DC reciprocity. Instead, several provisions of the guidelines imply the opposite conclusion. As noted above, the guidelines read: “Multiemployer plans may enter into Reciprocity Agreements with other multiemployer plans.”12 Another limitation in the guidelines is the requirement that “[t]he terms of the plan document must state that the plan may enter into a Reciprocity Agreement.”13 It is important to note that the guidelines do not require that plans entering into reciprocity agreements must be of the same type (i.e., DB or DC), only that each must be a multiemployer plan and that the plan documents permit the reciprocity.

The guidelines are written very broadly to give plans wide latitude in developing reciprocity agreements that will best suit plan participants and beneficiaries. In fact, the guidelines indicate: “There are many varieties of Reciprocity Agreements.”14 Moreover, they state: “We encounter many variations of [the money-follows-the-man and pro-rata methods] because plan administrators design them to meet their specific needs.”15 Such leeway reasonably includes DB/DC reciprocity.

Implications

The authors are not aware of anything in the law that prohibits DB/DC reciprocity agreements. Instead, PBGC expressly acknowledged this practice more than 30 years ago. Despite having the opportunity to do so, PBGC has never indicated that the practice of DB/DC reciprocity is unlawful. Likewise, the IRS Multiemployer Plan Examination Guidelines do not expressly prohibit DB/DC reciprocity.

Conclusion

Given the limited guidance on reciprocity agreements, there is wide latitude between multiemployer plans to craft terms that best suit their participants, so long as the reciprocity agreements clearly set out how reciprocity between the plans will work and are carefully drafted to ensure that the terms of the agreement do not conflict with the terms of the plan document for each of the signatory plans. Reciprocity agreements are a useful tool for multiemployer benefit plans as well as their participants and contributing employers. For multiemployer plans, these agreements permit a constant stream of employer contributions even when work in the geographi-

**takeaways**

- Reciprocity agreements allow multiemployer plan participants to continue earning credit toward retirement plans and receiving health care coverage when working outside of their local union jurisdiction.
- The two basic types of reciprocity agreements are money-follows-the-man reciprocity and pro-rata reciprocity.
- ERISA does not specifically address reciprocity agreements, but IRS guidelines reference their use. Courts also have enforced the terms of reciprocity agreements.
- The issue of whether defined benefit pension plan contributions can be reciprocated to defined contribution retirement plan and vice versa has arisen frequently in recent years. It appears that such reciprocity is permissible.
cal area may be slow. Reciprocity agreements also provide portability and flexibility for multiemployer plan participants. They can seek out work without the fear that they will lose health care coverage or fail to earn pension credits toward retirement. Based on the available legal authority, it appears that reciprocity is permissible even between DB and DC retirement plans.

Endnotes

1. For instance, ERISA §4234(c) states that a reciprocity agreement does not constitute an asset transfer between multiemployer plans. 29 USC §1414(c).
6. See Smith v. Contini, 205 F.3d 597, 605 (3rd Cir. 2000) (holding that pro-rata pension benefits earned pursuant to reciprocity agreements were subject to normal ERISA vesting requirements).
9. See Phillips v. Teamsters Local 639 Employers Health & Pension Trust, 79 F Supp. 2d 847, 852 (N.D.Ohio 2000) (finding that modifications to partial pension policy were unenforceable where plan failed to follow the procedures for modification found under the reciprocity agreement).
10. 29 USC §1084 governs minimum funding standards for multiemployer plans.
11. Withdrawal liability is a debt owed by employers that withdraw from a defined benefit pension fund that has unfunded vested benefits. 29 USC §1381, et seq. In the building and construction industry, a complete withdrawal occurs only if the employer ceases to have an obligation to contribute to the fund but the employer continues to perform work (or, within five years, resumes performing work) in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required. 29 USC §1383(b)(2).