

Pension Benefit Guaranty Corporation

76-36

March 10, 1976

REFERENCE:

[\*1] 4062(a) Liability of Employer in Single Employer Plans. Applicability  
4064 Liability of Employers in Multiple Employer & Multiemployer Plans

OPINION:

The Department of Labor has referred to this Corporation your request for a response to the letter (enclosed herewith) of your constituent, \* \* \*

\* \* \* objecting to the imposition of employer liability under § 4062 and 4064 of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act") upon termination of a \* \* \* union-negotiated pension plan.

Congress was aware of the existence of union-negotiated pension plans. S. Rep. No. 383, 93d Cong., 1st Sess. 81 (1973). Section 4021(c)(1) of the Act specifically provides coverage of a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit, e.g., a collectively bargained plan that pursuant to § 302(c)(5)(B) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c)(5)(B), requires joint administration of the plan and its funds by the employers and employees. S. Rep. No. 383, 93d Cong., 1st Sess. 81 (1973).

The legislative histories of the Act and predecessor bills to the Act indicate that Congress [\*2] carefully considered the question of imposing liability on employers upon termination of a pension plan with insufficient funds to pay insured benefits. H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 375-376(1974). Employer liability was imposed, in part, to deter the employer from being "more generous in promising pension benefits to meet labor demands than would be the case if it knew that the benefits would have to be paid for entirely out of the assets of the employer." S. Rep. No. 383, 93d Cong., 1st Sess. 87 \* \* \* (1973). Sections 4062 and 4064 of the Act further this aim by imposing employer liability for terminating insufficient plans without regard to whether the employer has made all required contributions to the plan. See H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 376, 380 (1974).

Your constituent also refers to § § 413 and 4971 of ERISA. We believe that he meant § § 413 and 4971 of the Internal Revenue Code which is not administered by this Corporation. We have, therefore, taken the liberty of forwarding your constituent's letter to the Internal Revenue Service for reply.

\* \* \* has forwarded for responses an identical letter from \* \* \* We have provided to both [\*3] of you the explanation contained herein and have advised the \* \* \* that you also have forwarded \* \* \* letter.

We trust that this letter answers your inquiry. Should you wish any additional information, we would be most happy to provide it.

Kenneth L. Houck  
Executive Director