

Pension Benefit Guaranty Corporation

84-8

December 27, 1984

REFERENCE:

[*1] 4203 Complete Withdrawal
4203(b) Complete Withdrawal. Building & Construction Industry Exemption

OPINION:

This responds to your request for the PBGC's opinion concerning withdrawal from a construction industry pension plan within the meaning of Section 4203(b) of ERISA. You have stated that a general contractor was obligated under a collective bargaining agreement to make contributions to a plan for the contractor's common-law employees. At the expiration of the collective bargaining agreement the contractor continues to operate as a general contractor but employs no employees who perform building and construction activities. Rather, all work under the general contractor is performed by subcontractors who may or may not have an obligation to contribute to the plan on behalf of their employees. Specifically you wish to know whether a withdrawal occurs under these circumstances. We conclude that these circumstances alone would not constitute a withdrawal under Section 4203(b).

Under Section 4203(b)(2), a withdrawal from a construction industry plan occurs only if the employer (1) ceases to have an obligation to contribute under the plan and (2) continues to perform work in the jurisdiction [*2] of the collective bargaining agreement of the type for which contributions were previously required by it. Thus, in the situation you describe a withdrawal occurs only if work performed by subcontractors is deemed to be work performed by the general contractor of the same type for which it had previously had an obligation to contribute. In our view this will be the case only if the general contractor would have been obligated to contribute under the terms of its old contract for work performed by subcontractors; i.e., if the old contract were still in force, the general contractor would be liable for contributions based on the subcontractor's work.

Of course, such determinations concerning whether a withdrawal has occurred and the identity of the liable employer are in the first instance the responsibility of the plan sponsor. See Section 4202 of ERISA. Should a dispute arise concerning such a determination, it must be resolved through the statutory dispute resolution process. See Sections 4219 and 4221 of ERISA. Please note that under Section 4212(c) a transaction, a principal purpose of which is to evade or avoid liability, may be disregarded by a plan sponsor in making [*3] its withdrawal liability determination.

I hope this has been of assistance. If you have further questions please contact * * * of my staff at the above address or at 202-254-4873.

Henry Rose
General Counsel