

Pension Benefit Guaranty Corporation

77-147

May 24, 1977

REFERENCE:

[*1] 4062(e). Liability of Employer in Single Employer Plans. Closing of Facility Affecting More Than 20% of Plan Participants
4063 Liability of Substantial Employer for Withdrawal
4064 Liability of Employers in Multiple Employer & Multiemployer Plans
4065 Annual Report

OPINION:

This is in response to your request that the Pension Benefit Guaranty Corporation ("PBGC") rule on the application of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") to a sale of assets by * * * to * * *

The facts presented by you are as follows. * * * maintained the * * * Pension Plan For Salaried Employees (the "Plan"). The Plan is subject to Title IV of the Act. An actuarial report issued with respect to the Plan indicates that as of * * * Plan assets were sufficient to provide all benefits guaranteed under Title IV of the Act. * * * proposes to purchase substantially all of * * * assets. In addition, pursuant to Article 12 and Schedule 12.1(1) of the purchase agreement dated * * *, as of the closing date of the sale * * * will be substituted as the employer for * * * under the terms of the Plan. * * * will also agree to assume and pay all liabilities and obligations of * * * existing [*2] under the Plan in respect of periods after the closing date. The closing date of the sale was scheduled for * * *. After the sale * * * expects to continue * * * operations and to employ at least 80% of * * * former employees.

The issues presented are whether § 4062(e) of the Act applies to the proposed transaction, thus subjecting * * * to potential employer liability under § § 4063, 4064 and 4065 of the Act, and whether * * * will be liable to the PBGC pursuant to § 4062(a) of the Act if the Plan subsequently is terminated.

We have determined that § 4062(e) of the Act does not apply to the proposed sale, and * * * will therefore not be treated as a substantial employer subject to liability under § § 4063, 4064 or 4065 of the Act. Further, if as of the closing date of the sale, the Plan had sufficient assets to provide all benefits guaranteed under Title IV of the Act, the PBGC would not impose liability under § 4062(a) of the Act against * * * if the plan subsequently terminates with insufficient assets to pay guaranteed benefits. The information submitted by you, however, does not indicate whether as of the closing date of the sale the Plan had sufficient assets to provide [*3] guaranteed benefits. We are therefore unable to state whether the PBGC would impose liability against * * *, in the event of the Plan's subsequent termination with insufficient assets.

I hope this is of assistance.

Henry Rose
General Counsel