

Pension Benefit Guaranty Corporation

77-125

January 25, 1977

REFERENCE:

[*1] 4062 Liability of Employer in Single Employer Plans
4064 Liability of Employers in Multiple Employer & Multiemployer Plans
4044 Allocation of Assets

OPINION:

This is in response to your recent letter to me in which you asked "[w]hether a provision may be placed in a collective bargaining agreement between a union and an employer that makes mandatory the indemnification of the employer by the employees, out of their salary (pursuant to an included payment schedule), for that portion of the 30% liability actually paid by the employer under ERISA § § 4061-4064 due to the termination of a plan."

As you know, this Corporation administers Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"), and it is pursuant to Title IV that the employer who maintained a plan at the time it was terminated, or its successor, is liable to the Corporation for the plan's underfunding of guaranteed benefits. (See § § 4062-4064 of the Act.) It is not within this Corporation's jurisdiction, however, to determine whether a particular provision may be placed in a collective bargaining agreement.

The Pension Benefit Guaranty Corporation has interpreted the Act to prohibit the waiver of benefits guaranteed [*2] by Title IV of the Act by a participant who does not own more than 10% of the employer. To the extent that the proposed indemnification agreement is a prohibited waiver of guaranteed benefits, it may be unenforceable.

Where an employer liable to PBGC and a third party make an indemnity agreement covering employer liability under Title IV this Corporation would not view such an agreement as binding on the PBGC and would seek satisfaction of the statutory liability from the employer that maintained the plan at the time it was terminated, or that employer's successor, as the statute requires.

I hope this is of assistance.

Henry Rose
General Counsel