

Pension Benefit Guaranty Corporation

81-19

July 1, 1981

REFERENCE:

[\*1] 4001(b) Definitions. Employer and Controlled Group  
4203 Complete Withdrawal  
4204 Sale of Assets  
4225 Limitation on Withdrawal Liability

OPINION:

This is in response to your letter requesting general guidance concerning the potential withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA") of a construction contractor who sells a trade or business in the construction industry.

Your first two questions appear to relate to the applicability of the "sale of assets exception" in Section 4204 to the construction industry complete withdrawal provisions of Section 4203(b) and to the limitations on withdrawal liability in Section 4225. You pose the case of a construction contractor contributing to a construction industry plan who makes an arms-length sale of all the assets of the business. We assume that the seller is not under common control with any other trades or businesses under Section 4001(b) of ERISA.

In the case of a construction industry plan, a complete withdrawal occurs, per ERISA Section 4203(b)(2), if:

"(A) an employer ceases to have an obligation to contribute under the plan, and

"(B) the employer --

"(i) continues to perform work in the jurisdiction [\*2] of the collective bargaining agreement of the type for which contributions were previously required, or

"(ii) resumes such work within 5 years after the date on which the obligation to contribute under the plan ceases, and does not renew the obligation at the time of the resumption.

In the case that you have presented, it appears that after the sale of the assets of the business the seller would not continue to perform work in the jurisdiction of the collective bargaining agreement, so that there would not be a complete withdrawal under Section 4203. Since there is no withdrawal under Section 4203, there is no need to consider the application of Section 4204 or Section 4225.

Your final inquiry is whether our answer would be different if the seller owned two companies in a controlled group relationship and sold one of them. We assume that one company would be in the construction industry, but you have not supplied us with facts concerning the business of the other company or its relation to the construction industry plan. Accordingly, we do not have sufficient information to respond.

I hope we have been of assistance.

Henry Rose  
General Counsel