

Pension Benefit Guaranty Corporation

86-23

October 15, 1986

REFERENCE:

[*1] 4207(a) Reduction or Waiver of Complete Withdrawal Liability. Regulation Authority.
29 CFR 2647 Reduction or Waiver of Withdrawal Liability.

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation (PBGC) regarding the application of the PBGC's regulations issued under Section 4207(a) of the Employee Retirement Income Security Act, as amended (ERISA). Specifically, you ask whether, under 29 CFR § 2647.8(d), a withdrawn employer "otherwise combines with an employer that has an obligation to contribute to the plan from which the first employer withdrew," when the withdrawn employer purchases the assets of a division of another contributing employer.

In the fact situation you present, an employer withdraws from a multiemployer plan, thereby incurring withdrawal liability. Later, the employer acquires the assets of a division of another employer. Before and after this acquisition, the employees in this division are covered by the multiemployer plan and contributions are made on their behalf. The purchasing employer, in combination with the purchased division, meets the requirements for waiver of its withdrawal liability under 29 CFR 2647.4, [*2] but does not meet the additional requirements placed on combined entities by 29 CFR § 2647.8(d).

Section 2647.8(d) governs the waiver of withdrawal liability for an employer who has reentered a multiemployer plan as the result of any consolidating transaction with a contributing employer, e.g., merger, purchase of assets, etc. It permits waiver of withdrawal liability only if the contribution base units of the eligible employer (i.e., the employer after the transaction) in the measurement period equal at least the contribution base units of the employer that did not withdraw in the last plan year ending before the measurement period plus an amount equal to 30 percent of the base year contribution base units of the employer that withdrew. Thus, this test looks to an overall increase in the plan's contribution base units.

Because § 2647.8(d) expressly states that it applies when an employer "merges or otherwise combines" with another employer, this phrase includes the purchase of the assets of the covered operations of another employer as described in your inquiry. The phrase "otherwise combines" casts a broad net to cover those acquisitions and other transactions that cannot be [*3] strictly classified as mergers, but nevertheless have the potential for increasing a withdrawn employer's contribution base units without increasing the contribution base units received by the plan.

If you have further questions, please contact the attorney handling this matter, John Foster, of the PBGC's Corporate Policy and Regulations Department. His telephone number is 202-778-8850.

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General Counsel