

Pension Benefit Guaranty Corporation

87-12

October 27, 1987

REFERENCE:

[*1] 4211(e) Withdrawal Liability - Reduction
4219(c)(1)(D) Notice & Collection of Withdrawal Liability - Payment on Mass Withdrawal
4224 Alternate Method for Payment

General
4232 Transfers to Single Employer Plan

General
29 CFR 2648

OPINION:

This is in response to your request for guidance from the Pension Benefit Guaranty Corporation (PBGC) regarding a proposed transfer of benefit liabilities from a multiemployer plan to a single-employer plan, not accompanied by a transfer of assets. In connection with the transfer, all participants (including retirees and terminated vested employees) of the transferor plan who work or last worked for the employer would cease to be participants in the transferor plan and would become participants in the transferee plan.

The first question you raise is whether withdrawal liability may "be waived in favor of a different arrangement." We assume you are referring to withdrawal liability of the employer to whose plan the transfer would be made. Section 4211(e) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), provides that --

[i]n the case of a transfer of liabilities to another plan incident to an employer's withdrawal or partial withdrawal, [*2] the withdrawn employer's liability under this part shall be reduced in an amount equal to the value, as of the end of the last plan year ending on or before the date of the withdrawal, of the transferred unfunded vested benefits.

This provision reflects the fact that a transfer of vested benefit liabilities (to the extent not offset by a transfer of assets) reduces a plan's unfunded vested benefits much the same as a payment of withdrawal liability.

In addition, we note that, under section 4224 of ERISA, --

[a] multiemployer plan may adopt rules providing for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules are consistent with [ERISA]

Further, plan fiduciaries have general authority to compromise disputed claims, abandon worthless claims, and otherwise conduct the plan's affairs so as best serve the interests of participants and beneficiaries. For example, as stated by Senator Williams, for himself and Senator Javits, during consideration of the Multiemployer Pension Plan Amendments Act of 1980 (which added sections 4201-4225 to ERISA) on August 26, 1980:

We do not intend to restrict plan sponsors' prudent exercise of [*3] judgment in administering the withdrawal liability provisions generally. It is expected that plan trustees will need to make practical collection decisions which are consistent with their fiduciary duties and characteristic of any responsible creditor concerned with maximizing the total ultimate recovery at supportable costs. Thus, for example, where it is prudent and in the participants' interest, plan trustees may decide to settle a withdrawal liability dispute for less than the full amount claimed, to cooperate with the employer's other creditors in a contractual or court-supervised renegotiation of the employer's indebtedness, or even to forego the assessment or further collection of liability where it is apparent from the circumstances that the costs involved would exceed the amount likely to be recovered.

(126 Cong. Rec. 23288 (1980).) Going beyond section 4211(e), therefore, it is clear that withdrawal liability may "be waived in favor of a different arrangement" if, in the circumstances of a particular case, such action is consistent with ERISA and, in particular, the fiduciary responsibilities of the trustees waiving the liability. The PBGC does not determine whether [*4] particular arrangements are appropriate in particular cases.

The next question you raise is whether --

a company [may] be irrevocably released from withdrawal liability if something should happen to the company or the company plan in the future, or if there is a termination of [the multiemployer plan] by mass withdrawal of all contributing employers.

Again, we assume you are referring to the employer to whose plan the transfer would be made. It is not apparent how withdrawal liability might be triggered by what happens to the company or its plan in the future. If a single-employer plan terminates within five years after it receives a transfer of liabilities from a multiemployer plan, the multiemployer plan may have a liability to the PBGC under section 4232 of ERISA. However, such an event would not give rise to withdrawal liability on the part of the employer since it would not constitute a withdrawal. The termination of the single-employer plan would, instead, expose the employer to possible termination liability to the PBGC and to the plan participants and beneficiaries under section 4062 of ERISA.

If, following a transfer of liabilities to a withdrawing employer's plan, [*5] the employer's withdrawal is determined to have been part of a mass withdrawal (or to have occurred within the same year as a mass withdrawal), the employer may become liable to the multiemployer plan for additional amounts (over and above its initial withdrawal liability) under section 4219(c)(1)(D) of ERISA and the PBGC's regulation on Redetermination of Withdrawal Liability Upon Mass Withdrawal (29 CFR Part 2648).

Two other questions you raise are whether the trustees of the transferor plan are "being put at risk if the proposed arrangement results in a greater contribution requirement for other employers" and whether the proposed arrangement would "establish a precedent that would have to be followed for other employers." These questions are outside the scope of Title IV of ERISA.

Finally, you ask --

assuming that each pensioner and participant executes a release to the [multiemployer plan] absolving [that plan] of any liability for pension benefits (e.g. in the event that the employer's [single-employer plan] terminates with insufficient assets to pay participants a pension) does such release in fact absolve [the multiemployer plan] of any liability to these participants and [*6] pensioners.

This question is also outside the scope of Title IV. However, as noted above, the transferor plan may be liable to the PBGC under section 4232 of ERISA if the transferee plan terminates with insufficient assets within five years after the transfer, and that liability cannot be released by the participants.

The foregoing comments are limited to those aspects of your request that fall within the scope of Title IV of ERISA. You may wish to seek guidance from the Department of Labor regarding questions of fiduciary responsibility under Title I of ERISA. If you wish to discuss this matter further, you may call Deborah C. Murphy at 202-778-8850.

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