

2000-1      §4211 (b)  
                 §4211 (c)  
                 §4214 (a)  
                 §4214 (b)  
                 §4220 (a)  
                 §4220 (c)  
29 C.F.R. §4211.11(a)

[PBGC Letterhead]

January 27, 2000

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation ("PBGC") concerning the application of certain provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), to a proposed change in a multiemployer pension plan's withdrawal liability allocation method where the effect of that change would be to eliminate withdrawal liability for the remaining employers who contribute to that plan.

You represent that the Plan currently uses an alternate allocation method, based on the "attributable" or "direct attribution" method as set forth in 29 U.S.C. § 1391(c)(4) (1994 and Supp. III 1997). The PBGC approved the Plan's current allocation method on October 18, 1992. The Plan is fully funded and will continue to be so for the foreseeable future. Since the effective date of MPPAA, 40 employers have withdrawn from the Plan, leaving 16 contributing employers. There are currently no outstanding withdrawal liability assessments. The aggregate unfunded vested benefits, for withdrawal liability purposes, as of December 31, 1997, was zero. You expect that the aggregate unfunded vested benefits for withdrawal liability purposes will continue to be zero for the foreseeable future.

You further represent that the Plan's trustees are concerned that under the Plan's current alternate allocation method, an employer with a significant number of retirees or past service credits may have withdrawal liability even though the Plan as a whole has zero unfunded vested benefits. As a result, the Trustees are considering a change of the withdrawal liability

allocation method to either the "one pool" or "twenty pool/presumptive" method. We assume you refer to the "rolling-5" and "presumptive" methods, respectively. 29 U.S.C. § 1391(b), (c)(3). For withdrawals in 1999, the withdrawal liability for all employers under the Plan would be zero using either of these methods.

As a general rule, an amendment authorized by MPPAA becomes effective only if the PBGC approves the amendment or fails to disapprove the amendment within 90 days after it receives notice and a copy of the amendment from the plan sponsor. 29 U.S.C. § 1400(a). The PBGC is to disapprove such an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. 29 U.S.C. § 1400(c). The PBGC has determined that multiemployer pension plans, with the exception of certain pension plans covering employees in the building and construction industry, may without the PBGC's approval adopt by amendment any of the statutory allocation methods. 29 C.F.R. § 4211.11(a). Therefore, if the Plan's trustees elect to change the current alternate allocation method to a statutory allocation method described in 29 U.S.C. § 1391(b) or (c)(2)-(4), and the Plan is not a construction industry plan, the Plan's trustees may amend the Plan to adopt the change without PBGC approval.

You should also note that such a change may not be applied retroactively without the employer's consent. 29 U.S.C. § 1394(a). Such an amendment must also be applied uniformly with respect to each affected employer, and notice of the amendment must be given to each employer who has an obligation to contribute under the Plan and to all employee organizations representing employees covered under the Plan. 29 U.S.C. § 1394(b).

You asked whether the PBGC would consider the proposed change in the Plan's withdrawal liability allocation method to be a violation of the trustees' fiduciary duties. The PBGC's regulatory authority is limited to the application of Title IV of ERISA, whereas fiduciary questions arise under Title I of ERISA. We therefore do not express any view whether the proposed change in the Plan's withdrawal liability allocation method would implicate the trustees' fiduciary duties under Title I.

The Pension and Welfare Benefit Administration ("PWBA"), within the United States Department of Labor, is charged with the interpretation and enforcement of the fiduciary responsibility provisions of Title I of ERISA. Should you desire PWBA's opinion with respect to the trustees' fiduciary concerns, I suggest you

write to Robert J. Doyle, Director of Regulations and Interpretations, Pension and Welfare Benefit Administration, United States Department of Labor, 200 Constitution Avenue, N.W., Room N-5669, Washington, D.C. 20210.

I trust this response has been informative. If you have any questions, please feel free to call Ralph L. Landy of my staff at (202) 326-4020, extension 3090.

Sincerely,

/ s /

James J. Keightley  
General Counsel