

Pension Benefit Guaranty Corporation

87-13

November 23, 1987

REFERENCE:

[*1] 4231 Mergers & Transfers Between Multiemployer Plans
4231(c) Mergers & Transfers Between Multiemployer Plans - Requirements of Section
4235(g) - Definitions
29 CFR 2615 Reporting & Notification Requirements for Reportable Events
29 CFR 2672

OPINION:

We are writing in response to your request for advice from the Pension Benefit Guaranty Corporation ("PBGC") regarding a transaction involving two multiemployer plans. According to your request, one of the plans is a defined benefit plan (the "DB Plan") and the other is a defined contribution plan (the "DC Plan").

Your request states that a new local union has been established to represent a number of employees who have heretofore been participants in the DB and DC Plans. You state that, as a consequence, the number of active participants in the DB and DC Plans is decreasing, contributions to the plans have decreased, and some employers have withdrawn. The boards of trustees of the DB Plan and the DC Plan have therefore voted to merge the DC Plan into the DB plan. You have asked us several questions in connection with this transaction.

You first ask whether "reportable event" reports must be submitted to the PBGC with respect to the decline [*2] in the number of participants covered by the Plans or with respect to the merger and transfer of assets. Under § 2615.1(b) of the PBGC's Regulation on Reporting and Notification Requirements for Reportable Events (29 CFR § 2615.1(b)(1981)), the PBGC does not require reportable event reports for multiemployer plans. In addition, no reportable event report is required for the DC Plan because, according to your request, it is an individual account plan, and pursuant to section 4021(b) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), it is therefore excluded from coverage under Title IV of ERISA.

You next ask whether 120 days' notice of the merger must be given to the PBGC under ERISA section 4231 and whether the PBGC will make a determination under section 4231(c) as to whether the merger satisfies the requirements of section 4231. Section 4231 of ERISA and the PBGC's Regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR Part 2672 (1983)) apply only to mergers and transfers where, both before and after the transaction, all plans involved are multiemployer plans covered under Title IV of ERISA. Because the DC Plan is not covered under [*3] Title IV, the 120-day notice requirement of section 4231 does not apply to the merger of the DC and DB Plans, and the PBGC will not make a determination under section 4231(c) regarding the merger.

Finally, you ask whether the change in collective bargaining representative is a "certified" change that triggers an obligation to transfer assets under ERISA section 4235. Under section 4235(g)(2), a "certified change of collective bargaining representative" is a change of collective bargaining representative certified under the Labor-Management Relations Act or the Railway Labor Act. The PBGC does not certify changes in collective bargaining representatives. Consequently, whether such a change occurred is a factual question that the PBGC cannot answer. Of course, as noted above, the DC Plan is not subject to Title IV of ERISA, and therefore is not subject to the requirements of section 4235 in any event.

The foregoing comments relate only to issues arising under Title IV of ERISA. Your request raises other issues as well. We suggest that you consult with the Department of Labor regarding questions under Title I of ERISA and with the Internal Revenue Service regarding questions [*4] under the Internal Revenue Code of 1986. If you have any questions regarding this letter, please call Deborah C. Murphy of this Office at 202-778-8850.

Gary M. Ford
General Counsel