

Pension Benefit Guaranty Corporation

81-1

January 28, 1981

REFERENCE:

[\*1] 4403

OPINION:

This is in reference to your recent letter and your December 23, 1980 telephone conversation with Gerald E. Cole, Assistant Executive Director for Policy and Planning, and David Weingarten, of my staff.

Your letter raises several questions concerning sections 4063, 4201 through 4225, and 4403 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (the "Act"). I understand, however, that as a result of your telephone conversation with Messrs. Cole and Weingarten, you now have only one question for which you would like a written response. You asked about the impact of an election under section 4403 with respect to a prior employer withdrawal that, at the time of the withdrawal, was subject to the new employer withdrawal liability provisions in sections 4201 through 4225 of the Act.

Section 4403 provides that before September 26, 1981, certain plans may elect not to be treated as multiemployer plans. Section 4403(c) provides that such an election is effective as of September 26, 1980. Therefore, if a plan makes a legally effective section 4403 election, the plan would not be treated as a multiemployer plan [\*2] as of the date of the employer withdrawal. Accordingly, the employer withdrawal would not be subject to the new employer withdrawal liability provisions. However, the employer withdrawal may be subject to section 4063.

I trust this information is of assistance.

Henry Rose  
General Counsel