

Pension Benefit Guaranty Corporation

82-14

April 20, 1982

REFERENCE:

[*1] 4211(b)(3) Withdrawal Liability - Proportional Fraction
4212(a) Obligation to Contribute - Definitions

OPINION:

This responds to your letter pertaining to methods for computing employer withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980 (the "Act"). Your first question concerns the permissibility of using different contribution periods in calculating the numerator and denominator of an employer's fractional share of the amount of a plan's unfunded vested benefits for the last plan year ending before April 29, 1980.

As we understand the facts, employers' obligations to contribute to certain plans are determined at the end of each month. Those contributions are normally paid during the following month (and become delinquent if they are not).

Under these circumstances, an employer that withdraws from such a plan may make its final contributions for a plan year during the following year. You ask whether it is permissible to allocate to a withdrawing employer a fraction of the plan's unfunded vested benefits, using as the numerator the actual cash received from the employer during the plan year, adjusted to account for delinquent contributions.

Section 4211(b)(3) [*2] of the Act states that:

An employer's proportional share of the unamortized amount of the plan's unfunded vested benefits for the last Plan year ending before April 29, 1980, is the product of -

(A) such unamortized amount; multiplied by -

(B) a fraction -

(i) the numerator of which is the sum of all contributions required to be made by the employer under the plan for the most recent 5 plan years ending before April 29, 1980,

The numerator of the employer allocation fraction must be based on the amount of contributions required to be made for the most recent 5 plan years. The amount of contributions required to be made for a period is the sum of the amounts which the employer was obligated to contribute for that period.

Section 4212(a) of the Act defines "obligation to contribute" as

an obligation to contribute arising --

(1) under one or more collective bargaining (or related) agreements, or

(2) as a result of a duty under applicable labor-management relations law, but

Does not include an obligation to pay withdrawal liability under this section or to pay delinquent contributions.

Thus, the numerator in the employer allocation fraction may not be based solely [*3] on cash receipts during a plan year unless the employer, during that year, has fulfilled all its contribution commitments to the plan for that year under applicable collective bargaining agreements and labor-management relations law. (However, the numerator for the plan year should not include any amount received that is attributable to a delinquency in the payment of a previous year's contributions.) The amount of such commitments is to be determined under the provisions of the documents under which the plan is operated, including collective bargaining arguments.

We recognize that it may be difficult to interpret the documents under which a plan is operated to determine the meaning of "contributions required to be made by the employer under the plan" for a period, especially where the plan has not been amended to adopt an allocation method under section 4211. To clarify how the numerator is to be computed

under a particular plan, it may be advisable for a plan amendment or a plan rule to be adopted to state how the phrase is to be construed.

With regard to the denominators of a plan's employer allocation fractions, the Pension Benefit Guaranty Corporation's Regulation Allocating [*4] Unfunded Vested Benefits, 29 C.F.R. § 2642.6, permits the plan several choices for the contribution period to be used in calculating them. The Regulation does not require that the period selected for use in calculating a plan's denominators be the same as that employed in computing its numerators. Your second question is whether the sum of the allocation fractions for a plan, if determined for each contributing employer as of a certain date, will equal one. While such a result is possible, it is not required by the allocation rules. However, the presumptive method, like the other statutory methods for determining an employer's allocable share of a multiemployer plan's unfunded vested benefits, will allocate to employers substantially all of a plan's unfunded vested benefits.

I hope this is of assistance.

Henry Rose
General Counsel