

Pension Benefit Guaranty Corporation

83-23

September 23, 1983

REFERENCE:

[*1] 4209(c) De Minimis Rule. Exceptions to De Minimis Rule

OPINION:

This responds to your request for an opinion with regard to the definition of "substantially all" in § 4209(c)(1) and (2) of the Employee Retirement Income Security Act of 1974 ("ERISA") as amended by the Multiemployer Pension Plan Amendments Act of 1980 (the "MPPAA"), and to the related questions you raised.

Section 4209(c)(1) prevents the applicability of the "de minimis" rule "to an employer who withdraws in a plan year in which substantially all employers withdrew from the plan" (emphasis added). Similarly § 4209(c)(2) prevents the applicability of the "de minimis rule" in any case in which "substantially all employers withdrew from the plan during a period of one or more plan years pursuant to an agreement or arrangement to withdraw . . ." (emphasis added). You ask whether "substantially all employers" is measured in terms of the number of employers or the dollar value of the liabilities of those withdrawing.

The MPPAA places the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan and for determining the amount of any liability resulting therefrom [*2] on the plan sponsor. Similarly the plan sponsor, consistent with his or her fiduciary responsibilities, would be initially responsible for determining such questions as the meaning of "substantially all" in § 4209. If a plan sponsor makes any such determination, and the employer objects in any way, ERISA provides in §§ 4219 and 4221 a procedure for resolving the dispute. Thus the PBGC does not interject itself in this process by issuing an opinion on the application of the law to a particular transaction.

Mitchell L. Strickler
Acting General Counsel