

Pension Benefit Guaranty Corporation

85-25

October 11, 1985

REFERENCE:

[\*1] Joint Implementation Guidelines

OPINION:

This is in response to your request for the opinion of the Pension Benefit Guaranty Corporation (PBGC) on whether the asset reversion guidelines of May 23, 1984, apply to a transfer of assets and liabilities from a single-employer pension plan to a multiemployer plan, with a resulting termination of the single-employer plan.

In your fact situation, a company that currently maintains a single-employer plan covering its union employees is involved in collective bargaining negotiations over an expired collective bargaining agreement. As part of the negotiations, the company has proposed a termination of its single-employer plan, with a resultant reversion of excess assets to the company (as permitted by the plan document). The union that represents the company's employees is willing to agree to the termination subject to certain conditions, one of which is that the company become a participant in, and transfer assets and liabilities to, a multiemployer pension plan to which the union is already a party. The multiemployer plan in question is fully funded.

As you mention in your letter, the PBGC, in cooperation with the Department of Labor and the Internal [\*2] Revenue Service, has issued asset reversion guidelines to deal with various issues raised in connection with an employer's receipt of surplus assets following the termination of a defined benefit pension plan. It is the agencies' interpretation that an employer cannot invoke the termination and asset distribution provisions of Title IV of the Employee Retirement Income Security Act (ERISA) merely by taking steps that, in form, appear to bring about a termination of a plan, when, in substance, the transaction does not constitute a full termination. Accordingly, the guidelines state the agencies' determination that, among other things, the law requires that the benefits of participants in an ongoing plan following a so-called "spin-off/termination" be fully vested and annuitized.

Exceptions to the application of these provisions depend on the circumstances of a transaction. The transaction you describe, a transfer from a single-employer plan to an ongoing multiemployer plan followed by the termination of the single-employer plan, is not generally a transaction to which the spin-off/termination requirements of the guidelines apply. However, if the transaction lacks a substantial [\*3] business purpose and instead is intended as a means to recover surplus plan assets without satisfying the plan termination requirements of Title IV of ERISA, the PBGC will not recognize the termination under Title IV. A valid plan termination is a prerequisite to a reversion of surplus plan assets to an employer. An intent to circumvent the termination requirements can be indicated by many factors including, but not limited to, the size of the transferor employer relative to the other employers participating in the multiemployer plan, the stability and financial health of the multiemployer plan, and the amount of assets relative to the liabilities that are transferred to the multiemployer plan.

The conclusions set forth in this letter are limited to Title IV of ERISA. Any opinions relating to Title I of ERISA and the Internal Revenue Code must be obtained from the Department of Labor and the Internal Revenue Service, respectively.

I hope this information is of assistance to you. If you have further questions, please contact the attorney handling this matter, \* \* \*, of the PBGC's Corporate Policy and Regulations Department. \* \* \* telephone number is (202) 254-4860.

Edward R. [\*4] Mackiewicz  
General Counsel