

Pension Benefit Guaranty Corporation

86-22

October 14, 1986

REFERENCE:

[\*1] 4211(b) Withdrawal Liability - Presumptive Method  
4211(b) Withdrawal Liability - Allocation by Amendment  
4211(c)(5) Withdrawal Liability - PBGC Approval of Alternative Methods

OPINION:

This is in response to your request for the opinion of the Pension Benefit Guaranty Corporation (PBGC) with regard to three questions concerning the statutory methods for allocating a multiemployer pension plan's unfunded vested benefits to withdrawing employers under section 4211 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Section 4211(b) describes an allocation method called the "presumptive method" that is to be used by any plan (other than a plan described in section 4211(d)) unless the plan is amended to adopt a different method. Section 4211(c)(2), (c)(3), and (c)(4) describe three alternative allocation methods that may be adopted by plan amendment; section 4211(c)(5) provides for the adoption of methods other than those described in the statute. ERISA does not explicitly provide for the adoption of the presumptive method by a plan that is using another allocation method.

Section 4211(c)(5) gives the PBGC authority to regulate the adoption of modifications to the four [\*2] statutory methods described in section 4211(b), (c)(2), (c)(3), and (c)(4), and the adoption of allocation methods other than the four statutory methods. Section 4220 subjects to PBGC approval any plan amendment authorized by sections 4201-4219 of ERISA, other than amendments that are covered by section 4211(c)(5).

The PBGC has exercised its authority under ERISA section 4211(c)(5) by issuing its Interim Regulation on Allocating Unfunded Vested Benefits (29 CFR Part 2642). The PBGC has also issued a regulation on Procedures for PBGC Approval of Plan Amendments (29 CFR Part 2677) pursuant to ERISA section 4220. The latter regulation exempts from its approval procedures any plan amendment for which the PBGC has granted a class approval. On September 25, 1984 (49 FR 37686), the PBGC published a class approval of any plan amendment that adopts one of the three alternative allocation methods described in section 4211(c)(2), (c)(3), or (c)(4) of ERISA.

Your first question is whether a plan using one of the four statutory allocation methods must get PBGC approval to adopt a different statutory method. If the new method is one of the three alternative methods described in section 4211(c)(2), [\*3] (c)(3), and (c)(4), no approval need be obtained because the adoption of any of those three methods is covered by the class approval of September 25, 1984. If the new method is the presumptive method described in section 4211(b), no approval need be obtained because the amendment is not one described either in section 4211(c)(5) or elsewhere in sections 4201-4219, and therefore the PBGC has no authority to regulate or disapprove the amendment. It is not important which allocation method is being used before the change, or even whether the method in use before the change is one of the statutory methods or some other method.

Your second question is whether the adoption of an allocation method that is a combination of two or more of the statutory methods would require PBGC approval. A hybrid method combining features of two or more of the statutory methods is not itself a statutory method. Thus the adoption of a hybrid method is allowable, if at all, only under ERISA section 4211(c)(5) and the Interim Regulation on Allocating Unfunded Vested Benefits. That regulation permits certain amendments to a plan's allocation method without PBGC approval, but the adoption of a hybrid method [\*4] is not among the amendments so allowed. Accordingly, the adoption of a hybrid method would require PBGC approval. As with your first question, it is not important what the plan's allocation method is before the change.

Your third question is whether a particular allocation method is a statutory method. We assume that the point of this question is whether PBGC approval is needed to adopt the method. The method, described in a motion adopted by the plan trustees and enclosed with your request, provides that the plan adopt:

the two-pool method for computing withdrawal liability as set forth in Section 4211(c)(2) of ERISA as amended

by the Multiemployer Pension Plan Amendments Act of 1980 and that an employer's allocable share of the liability for unfunded vested benefits be determined by using ten years instead of five years for determining the contribution numerator and denominator as provided under Section 4211(c)(5)(C).

Thus your question is whether the use of a ten-year fraction with the allocation method described in section 4211(c)(2), instead of the five-year fraction described in that section, changes the method in such a way that it may be adopted only with PBGC approval. [\*5]

As noted above, the adoption of the allocation method described in section 4211(c)(2) does not require PBGC approval. Section 4211(c)(5)(C) of ERISA permits a plan to be amended to use ten-year rather than five-year fractions in its allocation method "[u]nless the [PBGC] by regulation provides otherwise." The PBGC has not adopted any restrictions on amendments under section 4211(c)(5)(C). Accordingly, such amendments may be made without PBGC approval.

If you have any further questions about this matter, you may call Deborah C. Murphy of the PBGC's Corporate Policy and Regulations Department at 202-956-5050 (after October 13: 202-778-8850).

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