

Pension Benefit Guaranty Corporation

76-8

January 15, 1976

REFERENCE:

[*1] 4001(b) Definitions. Employer and Controlled Group

4041 Termination by Plan Administrator

4062(e). Liability of Employer in Single Employer Plans. Closing of Facility Affecting More Than 20% of Plan Participants

4063 Liability of Substantial Employer for Withdrawal

OPINION:

This is in response to your inquiry of December 8, 1975 and subsequent telephone conversation with * * * of our staff. You requested the Pension Benefit Guaranty Corporation ("PBGC") to determine the applicability of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") to the sale by your client of one of its subsidiaries.

As I understand the pertinent facts, * * * and some of its divisions and subsidiaries, all of which are members of a controlled group of corporations within the meaning of Internal Revenue Code § 1563, maintain one trustee pension plan (the "Plan"). Benefits are payable with respect to each participating employee without regard to the cessation of contributions by the entity that employed that participant. That is, the entire trust fund is obligated for the payment of all benefits under the Plan. * * * a wholly-owned subsidiary of * * * and a participating employer in the [*2] Plan, employs approximately 200 of the approximately 6,000 participating employees in the Plan. * * * sold 100% of the stock of * * * on or about November 12, 1975, to a buyer which does not intend to contribute to the Plan. Effective December 31, 1975, the next contribution date, each * * * employee participating in the Plan will be totally vested in his benefits accrued to that date. Such vested benefits will be paid to the * * * participants or held for their benefit by the trustee.

Based on the above facts, the withdrawal of * * * from the Plan does not need to be officially reported to the PBGC under Title IV. These events do not constitute a plan termination and, therefore, do not have to be reported to the PBGC under Section 4041 of the Act. Since all the participating employers in the Plan are under common control, Section 4001(b) treats them as a single employer. Section 4062(e) of the Act is not applicable because less than 20% of the participating employees will be separated from employment. The withdrawal also does not constitute any of the reportable events set forth in Section 4043(b). (Section 4063 would not be applicable since it only applies to "a plan under [*3] which more than one employer contributes;" it does not apply to a single employer plan).

Finally, since the PBGC guarantees the payment of all nonforfeitable benefits under the terms of a plan other than benefits becoming nonforfeitable solely on account of the termination of a plan ("normal vested benefits"), such normal vested benefits of * * * participating employees will be guaranteed by the PBGC upon any ultimate termination of the Plan.

We hope this information is of assistance to you.

Henry Rose
General Counsel