

Pension Benefit Guaranty Corporation

81-12

May 13, 1981

REFERENCE:

[*1] 4211 Withdrawal Liability

OPINION:

Thank you for your letter requesting clarification of PBGC's interim regulation on Alternative Allocation Methods (26 C.F.R. Part 2652).

Section 4211(c)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974, as amended, provides that the denominator of the rolling-5 method is --

. . . the total amount contributed under the plan by all employers for the last five plan years ending before the withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed to the plan during those plan years by employers who withdrew from the plan under this section during those plan years.

Section 4211(c)(2)(C)(ii)(II) contains an almost identical denominator for the modified presumptive method.

For purposes of these denominators, § 2652.6(a) of the regulation defines "total amount contributed" to mean "the amounts considered contributed to the plan for the plan year for purposes of section 412(b)(3)(A) of the Internal Revenue Code." Under section 412(c)(10) of the Internal Revenue Code and Treasury regulation § 11.412(c)-12, any contributions made by an [*2] employer within 8 1/2 months after the end of a plan year are considered made for that previous plan year for purposes of minimum funding, without regard to the year in which the employer is obligated to make the contribution under a collective bargaining agreement.

As you suggest in your letter, the definition of "total amount contributed" includes both amounts contributed by all employers for the last five years and "the amount of any contributions owed with respect to earlier periods which were collected in those plan years." The footnote in the preamble to the interim regulation (46 Fed. Reg. at 4895) states that these delinquent contributions should not be included a second time if they have already been treated as amounts paid for the plan year for funding purposes.

I hope this has been of assistance.

Henry Rose
General Counsel