Pension Benefit Guaranty Corporation

81-20

July 15, 1981

REFERENCE:
[*1] 4043. Reportable Events
29 CFR 2617 Determination of Plan Sufficiency & Termination of Sufficient Plans

OPINION:

This is in response to your inquiry as to whether a reportable event occurs under the Pension Benefit Guaranty Corporation's regulation on Reporting and Notification Requirements for Reportable Events, 29 C.F.R. Part 2617, when a parent corporation with a division that maintains a pension plan covered under Title IV sells an incorporated subsidiary that has assets equal to approximately 1/2 of 1% of the parent corporation's assets. You also ask whether the answer would be the same if the corporation sells a division (other than the division covered by the plan) that is the same size as the incorporated subsidiary.

Section 2617.23(a) of the PBGC's reportable events regulation provides in pertinent part that:

. . . a reportable event occurs with respect to a single employer plan of a contributing sponsor with nonforfeitable benefits which are not funded of $1 million or more when--

(1) As a result of a transaction involving a transfer of assets of or an ownership interest in a contributing sponsor--

(i) There is or will be a new contributing sponsor that is not a member of the [*2] controlled group of the previous contributing sponsor;

(ii) The contributing sponsor leaves or will leave the controlled group; or

(iii) The contributing sponsor becomes or will become a member of a different controlled group, except where the new controlled group is or will be the same, but for the addition of another trade or business, as the contributing sponsor's controlled group before the transaction; or

(2) As a result of a transaction involving a transfer by a contributing sponsor of assets of or an ownership interest in another trade or business, the sponsor and that trade or business are or will be no longer part of the same controlled group.

"Contributing sponsor" is defined in § 2617.2 to mean "each trade or business that is obligated to contribute to a plan, whether or not a funding waiver or variance has been granted by the Secretary of the Treasury."

A corporation can be a "trade or business" as that term is used in the definition of "contributing sponsor" and § 261.23(a). A division of a corporation cannot be a "trade or business" as that term is used in those provisions.

Section 2617.23(a) contains a de minimis rule based on the funded status of the [*3] plan. A reportable event under § 2617.23(a) occurs only with respect to a plan that has nonforfeitable benefits which are not funded of $1 million or more. There is no de minimis rule in § 2617.23(a) based on the relative size of the seller and the entity sold.

Accordingly, the sale by a parent corporation with a division that maintains a pension plan with nonforfeitable benefits which are not funded of $1 million or more of an incorporated subsidiary, irrespective of its relative size, results in a reportable event under 29 C.F.R. § 2617.23(a)(2). The sale by the same parent corporation of a division (other than the division covered by the plan) does not result in a reportable event under 29 C.F.R. § 2617.23(a)(2).

I trust this is of assistance to you.

Henry Rose
General Counsel