

Pension Benefit Guaranty Corporation

83-17

August 1, 1983

REFERENCE:

[*1] 4207 Reduction or Waiver of Complete Withdrawal Liability

OPINION:

This responds to your letter concerning Section 4207 of the Employee Retirement Income Security Act. Specifically, you inquire whether an employer that withdraws from a plan and subsequently renews its obligation to contribute to the plan would continue to be subject to withdrawal liability, and if so, whether the "trust fund is empowered to waive any withdrawal liability in such a circumstance".

In our view, plans have authority to adopt reasonable rules governing collection of withdrawal liability, including abatement. This authority is subject to the terms of regulations to be issued by PBGC under Section 4207 in the event that an employer who has withdrawn from the plan subsequently resumes covered operations or renews an obligation to contribute under the plan.

Congress also recognized that the PBGC would require time to develop the regulations -- more than 60 of them -- that it is specifically required or authorized to promulgate under the Multiemployer Pension Plan Amendments Act of 1980 * * * ("Multiemployer Act"). In order not to delay the effective functioning of the 1980 amendments, Congress provided in Section [*2] 405(a) of the Multiemployer Act:

if the way in which any [Multiemployer Act] amendment will apply to a particular circumstance is to be set forth in regulations, any reasonable action during the period before such regulations take effect shall be treated as complying with such regulations for such period.

Therefore, pending the issuance of PBGC regulations, plans may adopt reasonable rules to waive or reduce withdrawal liability when a withdrawn employer reenters the plan. Such rules must include whatever restrictions or conditions are contained in PBGC's regulations under Section 4207 beginning on the effective date of such regulations.

I hope this response is helpful to you.

Henry Rose
General Counsel