

Pension Benefit Guaranty Corporation

94-5

September 27, 1994

REFERENCE:

[*1] 4211 Withdrawal Liability
>29 CFR 2644.2(d)>

OPINION:

I write in response to your letter requesting clarification of PBGC Opinion Letter 90-2 to the extent it addresses calculation of unfunded vested benefits for purposes of section 4211 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). There, we wrote that the value of unfunded vested benefits cannot be modified retroactively if the plan's actuary later finds an error in its calculation. Any adjustment to the value of the unfunded vested benefits would have only a prospective impact. Therefore, if faulty assumptions resulted in an understatement of unfunded vested benefits, employers who were underassessed withdrawal liability as a result would not generally be subject to an additional assessment.

You ask us to reevaluate that issue with respect to a mathematical or computational error that results in a withdrawal liability overpayment. You assert that a computer program used to generate an actuarial valuation was flawed so that the valuation did not correctly reflect the plan's actuarial assumptions. The trustees of the plan do not wish to change any of the assumptions or data used for purposes of determining [*2] withdrawal liability. They wish only to run the same assumptions and data through corrected software. The corrected calculations will result primarily in reduced assessments, and the trustees do not intend to increase assessments even for the few employers whose withdrawal liability was understated because of the computer error. In particular, you have asked whether the trustees may refund a withdrawal liability overpayment resulting from such an error where the employer did not, or can no longer, request review and/or arbitration of the original assessment.

In Opinion Letter 90-2, we were referring to errors relating to mistaken or varying data or actuarial assumptions, rather than errors that are purely mathematical or computational in nature. Moreover, we assumed that the Trustees were considering additional assessments for underpayments, rather than refunds for overpayments, based on these errors.

Under applicable PBGC regulations, a plan sponsor is required to refund any amount of withdrawal liability paid by an employer that is subsequently determined to be an overpayment during the review and arbitration process. 29 C.F.R. § 2644.2(d). Because the purpose of this [*3] requirement is to encourage withdrawal liability payments to the plan while the liability is in dispute, the regulation does not require the refund of any amount determined to be an overpayment after the expiration of the time for review and arbitration. PBGC Opinion Letter 86-11 (May 13, 1986). Similarly, however, nothing in the regulation or in Title IV of ERISA precludes the refund of a withdrawal liability overpayment.

Of course, any such refund of a withdrawal liability overpayment must come within an exception to the exclusive benefit rule of Title I of ERISA, which provides that the assets of a plan are to be used for the exclusive benefit of plan participants and beneficiaries and shall never inure to the benefit of an employer. ERISA § 403(c); 29 U.S.C. § 1103(c). See also IRC § 401(a)(2). The Department of Labor has responsibility for interpreting ERISA § 403(c). We understand that you have requested the Department of Labor's opinion. We also note that the Department of Treasury has proposed regulations on this subject. Prop. Treas. Reg. 1.401(a)-3, 48 Fed. Reg. 10374 (1983). We will defer to their views on this issue.

I hope this letter is of assistance. [*4] If you have any additional questions, please contact D. Bruce Campbell of my staff at the above address or at (202) 326-4123.

Carol Connor Flowe
General Counsel