Pension Benefit Guaranty Corporation

85-13

May 28, 1985

REFERENCE:
 [*1] 4203(d) Complete Withdrawal. Trucking Industry Exemption
4205 Partial Withdrawals
4206 Adjustment for Partial Withdrawal
4208 Reduction of Partial Withdrawal Liability

OPINION:

This responds to your request for PBGC's opinion concerning calculation of partial withdrawal liability. Specifically you note that the allocation fraction under Section 4206 of ERISA is computed as a ratio of contribution base units rather than contributions. You suggest that the allocation may thus be "disproportionate," and you ask whether the PBGC proposes to resolve the problem.

You correctly note that where one segment of an employer's operations contributes at a lower rate than other segments, its partial withdrawal liability share, computed under Section 4206 using a ratio of contribution base units, will be greater than if a ratio of contributions were used.

The legislative history does not disclose why Congress chose to base the pro-ration fraction on contribution base units rather than contributions. However, the use of such a measure is fully consistent with its use under Section 4205 to define a 70% contribution decline for purposes of determining a partial withdrawal and with its use under Section [*2] 4208 to determine whether a reduction of partial withdrawal liability is permitted. The PBGC has no authority to alter this provision by regulation.

Your second question involves whether a specific pension plan is a "trucking industry" plan within the meaning of Section 4203(d). As we understand it that plan has taken the position that it is not. It is the PBGC's policy not to take a position or interfere with such a determination. Rather, if a dispute over this should arise, its resolution is left to the dispute resolution process described in Sections 4219 and 4221.

I hope this has been of assistance. If you have further questions please contact * * * of my staff at the above address or (202) 254-4873.

Edward R. Mackiewicz
General Counsel