

Pension Benefit Guaranty Corporation

86-12

May 23, 1986

REFERENCE:

[\*1] 4206(b)(1) Adjustment for Partial Withdrawal. Reduction of Liability for Subsequent Withdrawal  
4219(c)(1)(E) Notice and Collection of Withdrawal Liability. Partial Withdrawal Liability Payments

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation regarding the application of sections 4206(b)(1) and 4219 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), to the computation of the annual payments owed by an employer that has incurred successive partial withdrawals.

Your letter presents as an example an employer that has experienced two partial withdrawals under section 4205(a)(2), the first in 1983 and the second in 1984. You note that section 4219(c)(1)(E) clearly provides the proper method for calculating the annual payment for the first partial withdrawal. You observe, however, that if that same method is used for calculating the annual payment for the second partial withdrawal, the total of the two annual payments may, of a period, exceed the annual payments the employer would have owed for a complete withdrawal. You suggest two alternative methods of calculating the annual payment for the second partial withdrawal [\*2] that would avoid this result.

We agree that section 4219(c)(1)(E) can be read to require, under certain circumstances, total annual partial withdrawal liability payments that exceed the annual payments that the employer would have been required to make for a complete withdrawal. However, as you observe, this result seems inconsistent with the legislative history on annual partial withdrawal liability payments. We are therefore not prepared to say at this time that the proper interpretation of section 4219(c)(1)(E) would produce this result.

We are planning to issue a proposed regulation that would address the proper method for calculating annual payments for partial and complete withdrawals following a partial withdrawal. Section 4224 of ERISA provides that:

A multiemployer plan may adopt rules providing for other terms and conditions for the satisfaction of an employer's withdrawal liability if such rules are consistent with this Act and with such regulations as may be prescribed by the [PBGC].

Pending the PBGC's issuance of regulations on the manner in which annual payments for withdrawals following partial withdrawals are determined, plans may thus adopt rules under section [\*3] 4224 to avoid anomalous situations that might otherwise result from the application of section 4219(c)(1)(E) so long as those rules are consistent with ERISA. After the PBGC issues its regulations, the plan's rules must also be consistent with those regulations.

I hope this has been of assistance. If you have further questions please contact the attorney handling this matter, Steven Rothenberg, of the Corporate Policy and Regulations Department. His telephone number is (202) 956-5050.

Edward R. Mackiewicz  
General Counsel