Pension Benefit Guaranty Corporation

86-24

October 31, 1986

REFERENCE:
[*1] 4213 Actuarial Assumptions
4213(c) Actuarial Assumptions. Unfunded Vested Benefits - Definition

OPINION:

This is in response to your request for the opinion of the Pension Benefit Guaranty Corporation (PBGC) as to the proper method of determining withdrawal liability under the Employee Retirement Income Security Act of 1974 (ERISA) in the case of a multiemployer pension plan that provides optional ancillary benefits in addition to the basic benefits. Specifically, you ask what actuarial assumptions should be used to determine the amount of unfunded vested benefits on which withdrawal liability is based, and whether the calculation of unfunded vested benefits should take into account "vested" ancillary benefits and assets "attributable" to them.

The ancillary benefits in question are provided only for the employees of employers that make specified payments to the plan in addition to the contributions required of them to support the basic benefits. However, we understand that the ancillary benefits are payable from the same general fund as the basic benefits.

The term "unfunded vested benefits" is defined in section 4213(c) of ERISA as the value of nonforfeitable benefits under the plan, [*2] less the value of the assets of the plan. The term "nonforfeitable benefit" is defined in section 4001(a)(8) of ERISA. Although that provision does not explicitly mention either basic or ancillary benefits, it is the PBGC's opinion that the term is intended to apply only to basic benefits. Therefore, ancillary benefits, whether "vested" or not, should not be taken into account in determining unfunded vested benefits. On the other hand, where all plan assets are in a single fund for the payment of all benefits, there is no basis for excluding any part of the assets from the determination of unfunded vested benefits. The full amount of plan assets, whether derived from contributions for basic benefits or from additional payments made for ancillary benefits, is to be subtracted from the value of nonforfeitable (basic) benefits to arrive at unfunded vested benefits.

You indicate that the plan has been computing unfunded vested benefits for withdrawal liability purposes using the PBGC's interest assumption for terminated trusteed single-employer plans and question whether this is appropriate, since these assumptions "are not for multiemployer plans and . . . generate lower liabilities," [*3] and since the assumptions are not the same as those used for purposes of section 412 of the Internal Revenue Code of 1954 (the Code).

There is no requirement that the actuarial assumptions used to determine withdrawal liability be the same as those used for purposes of section 412 of the Code. Section 4213(b) of ERISA states merely that

> [i]n determining the unfunded vested benefits of a plan for purposes of determining an employer's withdrawal liability . . ., the plan actuary may . . . rely on the most recent complete actuarial valuation used for purposes of section 412 of the . . . Code . . . .

(Emphasis supplied.) This is a permissive, not a mandatory, provision. Thus, the fact that the assumptions used to compute withdrawal liability are not the same as those used under section 412 of the Code does not of itself make those assumptions improper.

Section 4213(a) of ERISA permits the PBGC to issue regulations prescribing actuarial assumptions to be used in calculating withdrawal liability. No such regulations have been issued. In the absence of such regulations, section 4213(a) requires simply that

> [w]ithdrawal liability . . . shall be determined by each plan on the [*4] basis of . . . actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan . . . .

The PBGC is not in a position to advise actuaries what assumptions are appropriate in each individual case. In particular, the PBGC cannot advise you whether and, if so, how the actuarial assumptions used to determine withdrawal liability under the plan should take into account the plan's experience in receiving and making payments under its ancillary benefit provisions and expectations about its anticipated experience.

If you have any further questions about this matter, you may call Deborah C. Murphy of the PBGC's Corporate Policy and Regulations Department at 202-778-8850.

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