Pension Benefit Guaranty Corporation

94-2

July 26, 1994

REFERENCE:
[*1] 4007 Payment of Premiums
4007(a) Payment of Premiums. Due Dates
4007(b) Payment of Premiums. Penalties and Interest

OPINION:

You have requested an opinion from the Pension Benefit Guaranty Corporation ("PBGC") whether interest and penalties assessed by PBGC for the late payment of premiums due under section 4007 of the Employee Retirement Income Security Act of 1974 ("ERISA") can be paid from the assets of a multiemployer pension plan or must be paid by the plan trustees personally or by the plan's sponsoring organizations or employer(s).

You state that your client, the board of trustees of a multiemployer pension plan, discovered that the plan's prior trustees and/or administrator had failed to count the number of plan participants accurately and, therefore, failed to pay the correct amount of premiums to PBGC within the time required by law. As a result, PBGC assessed interest and penalties of approximately $ 1,000.

ERISA section 4007(a) and (b) provide that --

(a) The designated payor of each plan shall pay the premiums imposed by the [PBGC] under [Title IV of ERISA] with respect to that plan when they are due. . . .

(b) If any basic benefit premium is not paid when it is due[,] [*2] the [PBGC] is authorized to assess a [penalty]. . . . If any premium is not paid by the last date prescribed for a payment, interest . . . shall be paid. . . .

ERISA section 4007(e)(1) provides that, in the case of a multiemployer plan, the term "designated payor" is the plan administrator. Thus, the plan administrator has the duty to ensure that PBGC premiums are paid in a timely fashion. Because the obligation to pay penalties and interest is triggered by a failure to make premium payments, the plan administrator has the duty to ensure the payment of penalties and interest as well. n1

n1 Section 4007(b) and (c) support this conclusion by authorizing the designated payor to apply for penalty waivers and authorizing the PBGC to bring a civil action for "the amount of the premium[,] penalty, and interest" if the designated payor fails to pay a premium when due.

Although the plan administrator has the duty of ensuring these payments are made, the payments -- including penalties and interest -- may be paid from plan assets. This point is made clear in the conference committee report on ERISA.

The plan is to be liable for both the premiums for coverage of benefits and for [*3] any penalty assessed for failure to pay premiums. Besides the penalty, the [PBGC] may also charge interest . . . for unpaid premiums that are past due.

H.R. Conf. Rep. No. 1280, 93d Cong., 2d Sess. 365 (1974), reprinted in 1974 U.S.C.C.A.N. 5038, 5145. Of course, the payments may also be paid from other sources, such as the individual assets of the plan administrator or trustee or funds of a contributing employer.

This letter does not address issues that may be raised under Title I of ERISA by a trustee's or plan administrator's failure to pay PBGC premiums in a timely manner. You may wish to consult with the Department of Labor, which has responsibility for the interpretation and enforcement of the provisions of Title I, if you have any questions concerning such issues.

If you have any further questions regarding this matter, please call Denise Yegge of my staff at (202) 326-4124.

Carol Connor Flowe

General Counsel