

Pension Benefit Guaranty Corporation

81-22

July 29, 1981

REFERENCE:

4063 Liability of Substantial Employer for Withdrawal

OPINION:

This is in reference to your letter regarding the division of assets of the Employees' Retirement Plan of the * * * (the "Plan"). You ask whether Section 4063 of the Employee Retirement Income Security Act of 1974 ("ERISA") applied to that transaction and whether the Pension Benefit Guaranty Corporation ("PBGC") will require the posting of a bond or the placing of funds in an escrow account pursuant to that section.

As we understand the facts, the Plan was a tax-qualified defined benefit pension plan maintained by three unrelated contributing employers. You indicated that the assets constituting the Plan trust fund were split between those assets attributable to benefits earned for service rendered to the * * * ("College"), one of the Plan sponsors, and those assets attributable to benefits earned for services rendered to the * * * ("Center") and the * * * ("Foundation"), the other two Plan sponsors. After the division of Plan assets, there were two retirement plans in existence. The terms of the plan sponsored by the College are identical to those of the plan sponsored by the Center and the Foundation. Both plans [*2] are identical in substance to the Plan.

You indicated also that on July 1, 1979, the date of the asset division, Plan assets were sufficient to pay all vested accrued Plan benefits. It is apparent from the actuarial reports you submitted to us that as of July 1, 1980, the assets held by each of the resulting plans were sufficient to satisfy all vested accrued benefits attributable to the respective plans. You stated that the Plan administrator has sought and received a favorable ruling from the Internal Revenue Service regarding the division of Plan assets. Finally, you informed us that plan participants in each of the resulting plans will be entitled to receive a benefit after the division that is equal to or greater than the benefit to which the participants were entitled before the division of assets. It is thus apparent from these circumstances that the interests of Plan participants are not in jeopardy.

Since, as you have represented, on the date of the asset division, Plan assets were sufficient to pay all vested accrued benefits and the assets of the resulting Plans continue to be sufficient to satisfy all vested accrued benefits, the purposes underlying ERISA Section [*3] 4063 - the protection of the Plan and its participants - have been assured. Therefore, responding to your inquiry, no escrow account or bond is required.

We trust that this answers your inquiry.

Henry Rose
General Counsel