

Pension Benefit Guaranty Corporation

83-8

March 25, 1983

REFERENCE:

[*1] 4204(a)(1)(B) Sale of Assets. Withdrawal - Posting of Security

OPINION:

This responds to your request for an advisory opinion. The question is whether a purchaser of assets fails to comply with ERISA § 4204(a)(1)(B) in the first plan year after the sale if the purchaser provides to the plan a bond which is in effect only for the first two plan years beginning after the sale of assets, but agrees that for the third - fifth plan years it will renew the bond, purchase a new bond, place an appropriate amount in escrow or obtain an exemption from the bond * * * requirement.

It is our opinion that the failure to provide a bond or other security under § 4204(a)(1)(B) in the first plan year after the sale for the entire five year period provided in § 4204(a)(1)(B) will not, by itself, result in non-compliance with § 4204(a)(1)(B). There is compliance with § 4204(a)(1)(B) as long as there is an appropriate amount of security in place during the five year period. However, if at any time during the five year period the plan does not have such security, then the arrangement does not comply with the requirements of § 4204 of ERISA.

I hope this answers your inquiry. Should you have any questions [*2] concerning this matter please contact * * * of my staff at (202) 254-4895.

Henry Rose
General Counsel