

Pension Benefit Guaranty Corporation

89-3

April 18, 1989

OPINION:

[*1]

I write in response to your letter requesting the opinion of the Pension Benefit Guaranty Corporation (the "PBGC") as to whether the reallocation liability described in § 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and 29 C.F.R. pt. 2648 applies: (1) to an employer that withdrew from a multiemployer plan (the "Plan") in the 1986 Plan year when the Plan terminates before the last day of the 1988 Plan year; and (2) to an employer that withdrew in the 1986 Plan year when the Plan terminates on the last day of the 1988 Plan year.

ERISA § 4219(c)(1)(D) requires that, upon a mass withdrawal from a multiemployer plan, there be a complete allocation of the total unfunded vested benefits of the plan. This allocation is to be consistent with rules issued by the PBGC. These rules are provided in 29 C.F.R. pt. 2648. Section 2648.3(c) of these rules identifies employers that, upon a mass withdrawal, are allocated the remaining unfunded vested benefits ("reallocation liability") after their initial liability and any redetermined liability have been assessed:

An employer shall be liable for reallocation liability if the employer withdrew pursuant [*2] to an agreement or arrangement to withdraw from a multiemployer plan from which substantially all employers withdrew pursuant to an agreement or arrangement to withdraw, or if the employer withdrew after the beginning of the second full plan year preceding the date of plan termination from a plan that terminated by the withdrawal of every employer. . . .

Thus, in the case of a mass withdrawal termination, each employer that withdrew in the year of the Plan's termination or during the two Plan years that precede the Plan year in which termination occurs is subject to reallocation liability. Accordingly, if the Plan terminates on any day during the 1988 Plan year, including the last day, reallocation liability applies to each employer that withdrew in the 1986 Plan year.

I hope this information is of assistance to you. If you have further questions, please contact the attorney handling this matter, John Foster, at (202) 778-8850.

Carol Connor Flowe
General Counsel