

Pension Benefit Guaranty Corporation

75-113

December 3, 1975

REFERENCE:

[*1] 3(35) Definitions. Defined Benefit Plan
4021(a) Plans Covered. Requirements of Coverage
4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
4022(b)(7) Benefits Guaranteed. Effect of Tax Disqualification
4048 Date of Termination

OPINION:

This letter is in response to your inquiry of October 2, 1975, and the October 16 telephone conversation of * * * of this office with your associate, * * *

The pertinent facts, as I understand them, are as follows: your client ("client") commenced contributions to a multiemployer plan ("Plan") prior to 1968. In 1968, Client, as the sole remaining participating employer, reduced its contributions to the Plan, and transferred all active employees to an independent plan. By 1970, Plan assets had been entirely expended. Contribution receipts were not sufficient to provide the full pension benefits to participants. Consequently, benefits were pro-rated in proportion to contribution receipts. In succeeding years, benefit payments have fallen to as low as 20% of the amount originally scheduled. * * * has stated that to his knowledge this reduction in Plan benefits was not made pursuant to Plan amendment.

You are of the opinion that the Plan is not [*2] subject to insurance premiums or insurance coverage under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") which the Pension Benefit Guaranty Corporation ("PBGC") administers. You contend that the Plan has ceased to be a defined benefit plan, that the Plan was effectively terminated in 1970 or 1968, and that the Plan is no longer an IRS qualified plan. Any one of these points, if legally sound, would be sufficient to exempt the Plan from ERISA Title IV coverage. Each of these points is analyzed in turn below.

You first claim that the Plan ceased to be a defined benefit plan because benefit payments were reduced in proportion to contributions.

ERISA § 3(35) defines the term "defined benefit plan" as any pension plan "other than an individual account plan" If your Client's Plan was not amended to change the form of the promised benefit, the reduction in the amount of that benefit would not change the plan's classification from "defined benefit" to "individual account." A reduction in employer contributions which forces a reduction in benefits does not affect insurance coverage status. Thus, such a reduction, if it occurred after the passage of [*3] ERISA, would be a "reportable event" implying that covered status would be unaffected. See § 4043(b). In short, benefit reduction does not affect Plan coverage in your Client's case.

In your point numbered 2 you suggest that, given the Plan's original defined benefit status, Plan operations were effectively terminated in 1970 when benefits were first reduced, well before the effective date of termination insurance coverage.

As noted above, the Plan is a "defined benefit plan." As such, it is covered by termination insurance under ERISA § 4021, so long as it does not fall within any of the exceptions to that Section.

In your point numbered 3 you suggest that the Plan actually terminated in 1968 when accruals and vesting ceased.

PBGC treats pension plans in which all vesting, accruals, and employer contributions ceased prior to July 1, 1974, as having been terminated. This is not the case, however, for plans to which contributions are still made, albeit in an amount reduced prior to July 1, 1974. In such event PBGC must weigh the facts surrounding the plan's financing on a case-by-case basis, before a decision is reached. Thus, without additional information, we are not in a [*4] position to determine whether or not the plan had terminated.

In Point number 4 you state that although Client's Plan was originally IRS qualified, there is some question's whether

it has met the IRS requirements since it was amended in 1968.

Under ERISA § 4022(a), the PBGC is directed to guarantee the payment of all non-forfeitable benefits of a plan to which ERISA § 4021 applies. This is limited, however, by the provision that pension benefits which accrue after the time the Secretary of Treasury determines that a plan is no longer "qualified" are not covered by termination insurance (§ 4022(b)(7)).

Referring to § 4021, we note that termination insurance coverage is extended to any plan which for a plan year "is, or, has been determined by the Secretary of the Treasury" to be qualified (Emphasis added). Since your Client's Plan has previously been determined to be qualified and since a § 4022(b) (7) determination of loss of qualified status has not occurred, PBGC termination insurance continues to guarantee the payment of non-foreitable benefits.

Finally, you request advice as to whether insured benefits would be measured by the original defined benefit which was [*5] discontinued in 1970 or by the benefit level provided on September 2, 1974.

Plan termination insurance is intended to guarantee nonforfeitable benefits "under the terms of a plan . . .," Act, § 4022(a), subject to limitations expressed in ERISA § 4022(b). If the 1970 reduction in the benefit level was not made pursuant to a Plan amendment and if no amendment had since modified that benefit level, then insured benefits would be measured by the pre-1970 level, since this is the level in effect under the terms of the Plan as of termination. See § 4022(a). If a Plan amendment has subsequently reduced benefits, this would be the level insured by PBGC. It should be noted that a plan amendment adopted after September 1, 1974, which decreases benefits is an ERISA § 4043(b) (2) "reportable event."

I trust this explanation will prove helpful to you. Should you wish further information, you may telephone * * * in my office at 202-254-4873.

Henry Rose
General Counsel