

Pension Benefit Guaranty Corporation

76-118

November 8, 1976

REFERENCE:

[*1] 4021(a)(2) Plans Covered. Tax Qualification by IRS Determination

OPINION:

This is in response to your letter requesting a determination by the Pension Benefit Guaranty Corporation (the "PBGCC") as to whether the termination of the * * * the "Plan") is covered under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

As I understand the pertinent facts, the * * * (the "Company") established the Plan in 1966 and received a letter of qualification from the Internal Revenue Service. The information you provided indicated that although the Company made contributions to the Plan each year (except 1970 and 1974) until the Plan's termination in * * * the Company's annual contributions after 1969 were below the amount required to satisfy the Internal Revenue Code's minimum funding standard. As a result, by November 1973, the unfunded past service cost of the Plan exceeded the initial unfunded past service cost of the Plan.

Based on the foregoing, you indicated that after November 1973, the Plan was not qualified under § 401 of the Internal Revenue Code and that, therefore, the Plan's termination is not covered under Title IV of the Act.

Section 4021(a) of the Act provides [*2] that a plan is covered by Title IV's termination insurance provisions if the plan was in existence on September 2, 1974 and "has been determined by the Secretary of the Treasury to be a plan described in § 401(a) of the Internal Revenue Code" In this regard, once a plan is determined to be qualified by the Internal Revenue Service, it is considered to be so qualified for purposes of Title IV until that qualification is specifically revoked. Based on the information you provided, it appears that the Internal Revenue Service did not revoke the Plan's qualification prior to the Plan's termination. Accordingly, since the Plan was qualified for purposes of Title IV on the date of its termination, the Plan is covered under Title IV and its termination is subject to Title IV's termination procedures.

Henry Rose
General Counsel