

Pension Benefit Guaranty Corporation

79-5

March 28, 1979

REFERENCE:

[*1] 4007(a). Payment of Premiums. Due Dates
29 CFR 2602 Payment of Premiums

OPINION:

This is in response to your letter to Matthew M. Lind, Executive Director of the Pension Benefit Guaranty Corporation (the "PBGC"), concerning the liability of the Pension Plan of * * * (the "Plan") for payment of insurance premiums to the PBGC, under Section 4007(a) of the Employee Retirement Income Security Act of 1974.

You specifically asked whether the Plan must pay premiums for certain retirees whose Plan benefits are to be provided pursuant to an insurance contract. Under the PBGC's Premium Payment Regulation, 29 C.F.R. § 2602.1 et seq. (1977), a plan is not liable for premium payments for any "former employee or retiree to whom an insurance company has made an irrevocable commitment to pay the benefits to which the individual is entitled under the plan."

As I understand the facts, the Trustee of the Plan entered into a contract (the "Contract") with the * * * Life Insurance Company * * * to purchase annuities for certain named retirees entitled to benefits under the Plan. Subsequently, * * * Life and * * *, the employer, agreed that each month * * * Life would transfer to * * * an amount equal [*2] to all annuities payable for that month, and that * * * would pay each annuitant his or her monthly benefit. The annuitants are unaware of the fact that their benefits are funded through the Contract, and certificates describing the annuities purchased have not been issued to the annuitants.

We view the aforementioned exclusion from participant status of certain former employees and retirees as being based on a novation concept, wherein an insurer takes the place of a pension plan with the consent of the beneficiaries. Under the facts of this case, we think that such consent has not been obtained, and that, therefore, * * * Life has not made an irrevocable commitment to the annuitants to pay their benefits under the Plan. Accordingly, the Plan must pay premiums to the PBGC for the annuitants covered by the Contract. (I note that Section 4.1 of the Contract provides that * * * Life shall issue certificates to annuitants receiving benefits under the Contract. In the event that such certificates are issued, the PBGC would reconsider the position taken in this letter.)

I hope I have been of assistance. If you have any questions, please contact * * *, the attorney assigned to [*3] this case, at (202) 254-3010.

Henry Rose
General Counsel