

Pension Benefit Guaranty Corporation

76-56

April 21, 1976

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage

OPINION:

This is in response to your letter of January 30, 1976, supplemented by Mr * * * letter of February 25, 1976, requesting this Corporation's opinion on certain * * * proposed actions concerning an unnamed pension plan (hereinafter "Plan"). Your letter states that the Plan documents were signed in August, 1973, and that an initial payment of * * * \$15,000 was made to an insurance company in 1973, but that no payments were made for 1974 or 1975. Your letter further states that the Plan has not been officially communicated to potential Plan participants and that a request for a determination letter was not submitted to the Internal Revenue Service.

Section 4021(a) of the Employee Retirement Income Security Act of 1974 (hereinafter "Act") provides that one of the prerequisites for coverage under Title IV of the Act is that the pension plan is or has been determined to be a plan described in § 401(a) or 404(a)(2) of the Internal Revenue Code of 1954. One of the requirements of such a plan is that the plan must be communicated to eligible participants. Treas. Reg. § 1.401-1(a)(2) (1975). If, as you indicated, * * * there was no such [*2] communication, then the Plan could not * * * have been tax qualified and, therefore, the Plan would not be covered under Title IV of the Act.

We hope this answers your question. Should you desire a more detailed review and response, please do not hesitate to contact us.

George B. Driesen
Deputy General Counsel