

Pension Benefit Guaranty Corporation

76-23

February 12, 1976

REFERENCE:

[*1] 4001(a)(3) Definitions. Multiemployer Plan
4006 Premium Rates
4064 Liability of Employers in Multiple Employer & Multiemployer Plans

OPINION:

This is in response to your inquiry as to whether premium payments must be made to the Pension Benefit Guaranty Corporation ("PBGC") by the plan administrator of the * * * and * * * (the "Plan").

Based on a review of the Plan document, we have determined that the Plan is a defined benefit plan inasmuch as it promises a defined benefit at retirement. The Plan provides a monthly benefit of "(a) \$150 for pensions commencing prior to January 1, 1966; (b) \$200 for pensions commencing on or after January 1, 1966; (c) \$350 for pensions commencing on or after October 1, 1968." Under Section 4021(b)(1) of the Employee Retirement Income Security Act of 1974 (the "Act") the principal exception to PBGC's coverage is the "individual account plan." The term "individual account plan" or * * * "defined contribution plan" refers to those types of employee benefit plans where each individual's retirement benefit is determined solely by reference to the amount accumulated in that participant's account. Most other plans are defined benefit plans. See Act Section [*2] 3(35). Clearly the Plan is not an individual account plan since benefits are not * * * determined solely by the amount in a participant's account.

With certain other enumerated exceptions, under Section 4021(a) of the Act PBGC covers defined benefit plans that meet the requirements of the Internal Revenue Code. Assuming this Plan is tax qualified and does not fall within any of the * * * exceptions enumerated in Section 4021(b) of the Act, it is subject to the plan termination insurance provisions under Title IV of the Act.

Accordingly, it is necessary for you to pay premiums for this Plan, using the three enclosed Premium Payment Declaration and Annual Report Forms. Premium payments are owed this Corporation for the partial plan year in effect September 2, 1974 and ending September 30, 1974, for the plan year * * * commencing October 1, 1974 and for the plan year commencing October 1, 1975. The payment of premiums is mandatory, not optional. Your attention is directed to page 4 of the enclosed PBGC-1 packages concerning interest and late payment charges.

If your plan is a multiemployer plan it is proper for you to pay at the rate of \$.50 per year per participant as provided [*3] by Section 4006 of the Act. The Plan is a "multiemployer" plan as defined by Section 4001(a)(3) of the Act and Section 414(f) of the Internal Revenue Code of 1954 if it is a plan to which more than one employer is required to contribute, which provides that benefits are payable with regard to each participant without regard to the cessation of contributions by the employer of any participant, which is maintained pursuant to a collective bargaining agreement and is a plan under which no employer makes over 50 percent of the aggregate contributions for any plan year.

In clarification of points 5 and 7 of the September 25, 1975 memorandum of your meeting with * * * please he advised that Section 4064 of the Act defines the liability of an employer upon termination of a multiemployer plan as that employer's pro-rata share of the aggregate plan liabilities based on plan contributions required in the five plan years prior to termination. Responsibility for such liabilities extends to any employer who, at any time within the five years preceding the date of termination, made contributions under the plan. Liability is limited to 30 percent of an employer's net worth.

In clarification [*4] of point 6, the provisions of Title IV of the Act relating to plan termination insurance, generally became effective September 2, 1974. However, Section 4082(c) provides that insurance coverage of a terminated multiemployer plan is discretionary with this Corporation until January 1, 1978. Nevertheless, as indicated in * * * letter to you the plan administrator would be required to notify this Corporation in the event that a reportable event occurs under Section 4043(b)(2) of the Act relating to a reduction in a participant's benefit.

We hope this is of assistance in fulfilling the Plan's obligations under the Act. If you have any questions concerning the foregoing, please feel free to contact * * * of my staff.

Henry Rose
General Counsel