

Pension Benefit Guaranty Corporation

76-47

April 2, 1976

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage
4022(b)(1) & (8) Benefits Guaranteed. Five Year Phase-in of Guarantee
4048 Date of Termination

OPINION:

This is in response to your letter to this Office and our subsequent telephone conversations concerning the * * * Company Pension Plan ("Plan A").

As I understand the pertinent facts, the * * * Company * * * established Plan A in 1961 as a * * * tax-qualified, defined benefit pension plan for its employees. You indicated that although contributions by * * * to Plan A ceased in 1966, accruals and vesting were not * * * interrupted and the fund accumulated prior to 1966 was sufficient to purchase full annuities for each eligible participant at retirement. You also indicated that as of July 15, 1970, * * * failure to make contributions resulted in Plan A's unfunded past service cost exceeding its initial unfunded past service cost, and that therefore, the Internal Revenue Service informed you informally that all participants were required to be fully vested in their accrued benefit * * * to the extent funded and that the assets of Plan A would have to be allocated among those individuals who were participants on that date.

In 1975, * * * [*2] and the union representing its employees entered into an agreement (the "Agreement") "to develop and implement a new trustee funded pension plan" ("Plan B"). As contemplated by the Agreement, Plan B would provide a greater benefit than Plan A. However, monies allocated to a participant from Plan A, as provided above, would reduce his benefit received under Plan B.

In view of these facts, you requested a determination by the Pension Benefit Guaranty Corporation (the "PBGC") as to the extent to which benefits due * * * employees from these plans are guaranteed under Title IV of the Act. In this regard, your letter suggested that Plan B be considered a successor plan to Plan A for purposes of § 4022 of the Act.

It is our understanding that pursuant to Internal Revenue Service Reg. § 1.401-6, a "complete discontinuance of * * * contributions" occurs when the "unfunded past service cost [of a plan] at any time . . . exceed[s] the unfunded past service cost as of the date of the establishment of the plan, plus any past service or supplemental costs added by amendment." Under those regulations, a complete discontinuance of contributions is like a plan termination in that upon its occurrence, [*3] a plan must vest participants in their accrued benefit to the extent the plan is funded, and also allocate plan assets among those participants who have vested rights.

Based on the foregoing, it appears that for purposes of Title IV of the Act, Plan A terminated at the time of the discontinuance, July 15, 1970, or in any event, prior to September 2, 1974. Accordingly, since the Title IV guarantee of benefits would apply in this case only if the plan * * * terminated on or after September 2, 1974, no benefits * * * provided by Plan A are guaranteed under Title IV of the Act.

Your letter indicated that you view Plan B to be a successor plan to Plan A. Plan B, however, is not a successor plan to Plan A since, pursuant to § 4021(a) of the Act, a successor plan is a "continuation" of a predecessor plan and in this case, Plan A having terminated, the required continuity was broken. As a result, since Plan B is not a successor plan to Plan A, it will be subject to the guarantee limitations of § 4022(b)(1)(A), and the phase-in provisions of § 4022(b)(8).

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