

Pension Benefit Guaranty Corporation

80-21

November 25, 1980

REFERENCE:

[*1] 4007 Payment of Premiums
29 CFR 2602 Payment of Premiums

OPINION:

Thank you for your letter of August 12, 1980. You have asked that we determine if premiums must be paid for those employees of * * * Corporation * * * who are ineligible for benefits from the * * * Pension Trust (the "Plan") because their compensation falls below the Plan integration level.

You point out that an employee who is excluded because his or her compensation is below the Plan integration level is not defined as a participant under the terms of the Plan. However, you note, such an employee receives credited service for every year of employment - including those years in which compensation is below the integration cutoff - when the employee becomes eligible.

The Pension Benefit Guaranty Corporation's (the "PBGC") regulation, Payment of Premiums, 29 C.F.R. 2602, requires that premiums be paid "for each individual who is a participant . . . on the last day of the preceding plan year." 29 C.F.R. 2602.5(a)(1). Section 2602.2 of that regulation defines participant to include "an individual currently accruing benefits or retaining or earning credited service under the terms of the plan . . ." 29 C.F.R. 2602.2(a). As [*2] you point out in your letter, the benefit formula of the Plan provides that each employee working for * * * (or any company under common control with * * * (a "Controlled Company")) is to receive credited service for every plan year in which he or she accumulates 1,000 Employment Hours (defined as hours for which pay is received). Such an employee is earning credited service. Accordingly, premiums must be paid for each employee who accumulates 1,000 Employment Hours with or a Controlled Company.

You refer in your letter to our recent publication in the Federal Register which provided notice of a change in our interpretation of the term "participant" as defined in 29 C.F.R. 2602.2. That change related solely to the instance where an employee participated in more than one covered plan maintained by the same employer. That change does not relate to the question you have raised. Premiums are and have been due for each employee who accumulates 1,000 Employment Hours with * * * or a Controlled Company for each plan year since the date of enactment, September 2, 1974.

If you have any questions with regard to your prior premium declarations, you should contact * * * Office of Financial [*3] Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

I hope this letter has been of assistance to you. Should you have any questions, please contact * * * of my staff at the above address or (202) 254-3010.

Mitchell Strickler
Acting General Counsel