

Pension Benefit Guaranty Corporation

77-137

March 30, 1977

REFERENCE:

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

OPINION:

This is in response to your recent letter and accompanying Form PBGC-1 (with attached check for ***), respecting *** (the "Plan"). I understand that you have discussed the subject of your letter with *** of my staff.

You indicated that *** (the "Board") intends to amend an existing defined contribution profit sharing plan (as was in effect as of December 31, 1975) to become, effective January 1, 1976, a defined benefit plan. Toward this end, the Board on November 23, 1976, adopted a defined benefit plan "document" but has not yet adopted a trust agreement; the Board anticipates adopting a trust agreement "sometime prior to September 15, 1977."

In view of the fact that Section 2602.3(e) of this Corporation Regulation on the Payment of Premiums (the "Premium Regulation 41 Fed. Reg. 32740 (1976), prescribes, as the date for the payment of premiums for plans not previously covered by Section 4021 of the Employee Retirement Income Security Act of 1974, 30 days after the later of the plan's "adoption" or the plan's effectiveness with respect to the accrual of future benefits, you asked for our determination of the Plan's [*2] initial due date for the payment of premiums.

In our view, the Plan has not yet been adopted for purposes of the Premium Regulation. Assuming, arguendo, that the Board adopts the Plan's trust agreement on September 14, 1977 and that the Plan substantially meets the requirements for tax qualification on that date, we would consider the Plan to be adopted on September 14, 1977 and the Plan's initial premium payment due date will be no later than 30 days after September 14, 1977.

In view of the above determination, this Corporation will return to you the Plan's Form PBGC-1 filing and will refund to you the amount of premiums paid.

Henry Rose
General Counsel