

Pension Benefit Guaranty Corporation

85-6

February 1, 1985

REFERENCE:

[*1] 4006(a)(3)(B) Premium Rates. Rates prescribed by regulation

OPINION:

This is in response to your recent request that the Pension Benefit Guaranty Corporation (the "PBGC") reconsider its previous determination, made in a letter dated * * * by Mitchell L. Strickler, the Deputy General Counsel of the PBGC, with respect to the payment of pension plan termination insurance premiums within the factual context of * * * unusual pension plan structure. Specifically, you have asked that we reconsider our position that a pension plan, otherwise obligated to pay premiums to the PBGC, must pay a premium for an individual active participant even when a premium has been paid for that individual by a different plan maintained by the same employer.

As you described the situation, * * * maintains a number of pension plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § § 1301-1461 (1982), in which nearly all past and present * * * employees participate (the "Basic Plans"), as well as several other covered pension plans in which only * * * salaried employees participate (the "Salaried Plans"). As a result of this plan structure, each [*2] individual participant actively accruing benefits in one of the Salaried Plans is also accruing benefits in one of the Basic Plans, and will eventually become eligible to receive cumulative benefits from both. Indeed, of the * * * participants in the Basic Plans, * * * also participate in the Salaried Plans.

As you are aware, the PBGC is empowered by Section 4006(a)(3)(B) of ERISA, 29 U.S.C. § 1306(a)(3)(B), to prescribe by regulation the extent to which the Title IV insurance premium may be charged "more than once for any plan year to an individual participating in more than one plan maintained by the same employer. . . ." The PBGC has done so through its regulatory definition of the phrase "participant", at 29 C.F.R. § 2610.2 (1984), as modified by a Notice published by the PBGC in the Federal Register at 45 Fed.Reg. 47423 (July 15, 1980). In that Notice, the PBGC announced that, for plan years beginning after December 31, 1979, all participants in a plan, whether actively earning service credit or not, must be counted for premium purposes, regardless of whether they are also participants in other plans maintained by the same employer. Moreover, the instructions to the PBGC-1 [*3] premium payment form were revised in 1981 to delete the language which suggested an interpretation inconsistent with the modified regulation. Thus, the "exception" you note in your letter no longer exists.

Your reference to the Aggregate Payments Limitation (29 C.F.R. § 2621.3(b)) and your argument that the application of that limitation under the particular facts of * * * pension plan structure warrants a modification of the existing rules with regard to premiums might be persuasive if the PBGC's premium rates were risk or experience related. As you are aware, they are not. Therefore, each * * * plan in which an individual participant is actively earning service credit is required to pay a premium for that individual.

Consequently, your request that premiums be paid only once for participants service in two or more plans maintained by the same employer cannot be granted. Should you have any questions or additional comments, please contact * * * the attorney handling this matter, at the above address or at (202) * * * 254-3010.

Thomas Veal
Acting General Counsel