

Pension Benefit Guaranty Corporation

80-1

January 10, 1980

REFERENCE:

[*1] 4021(b)(2) Plans Covered. Government Plans
4062 Liability of Employer in Single Employer Plans

OPINION:

This is in response to your letter of November 20, 1979, requesting our view of the State of Montana's (the "State") liability with respect to several privately maintained pension plans.

As you have presented the facts, the State has established and maintains the Public Employees Retirement System ("PERS"). By state law all employees must belong to PERS. State law prohibits the State from making contributions to any plan other than the PERS, but allows employees to contribute their own funds to a private pension plan. In addition, you have stated that:

Given two employees, A and B, with equal pay and deductions: if employee A elects to participate in a private plan while employee B does not, employee A's paycheck will be less than employee B's paycheck in an amount equal to the contribution withheld for payment to the private plan.

Specifically you have asked:

- 1) If the State merely withholds and forwards funds that employees have voluntarily designated to be paid to a private pension plan, will the State be deemed a contributing employer under Title IV; and
- 2) Should the State forward [*2] funds to a private plan in excess of amounts designated by employees, would the State then be deemed a contributing employer under Title IV?

Title IV termination insurance covers retirement plans that are defined benefit pension plans. If, as you represent, the employees contributions are paid directly to the private plans as a convenience to the employees, the State is not a contributing employer to those plans, and would have no liability under Title IV in the event the plans are terminated. However, should the State become a contributing employer to any plans that are defined benefit plans, the State could be liable in the event the plan terminated.

We hope this information will assist you. If we can be of any further assistance please contact * * * of my staff at (202) 254-3011.

Henry Rose
General Counsel