

Pension Benefit Guaranty Corporation

80-16

September 23, 1980

REFERENCE:

1015(f) (IRC § 414) Definitions & Special Rules. Multiemployer Plan
4021(a) Plans Covered. Requirements of Coverage
4022(b)(2) Benefits Guaranteed. Successor Plan

OPINION:

This is in response to your request for our opinion with respect to the status of the Pension Plan to be put into effect between A Company and Local Unions No. * * * ("A Plan") under the Employee Retirement Income Security Act of 1974 ("ERISA"). Specifically, you inquire whether the A Plan would be a "successor plan" within the meaning of sections 4021(a) and 4022(b) of ERISA.

You have informed us that there is currently in effect a multiemployer plan (the "Plan") as described in Section 414(f) * * * the Internal Revenue Code of 1954, which is covered under * * * le IV. The Plan is maintained by, and covers employees of, * * * Company ("A"), * * * Company ("B"), and * * * Company ("C"). A * * * Company is a division of * * * Company, Inc. ("D").

D, B, C, and the Union have agreed to split the Plan into separate plans and to increase the benefit levels under these plans. Each separate plan will cover retired, deferred vested and active participants in the Plan who were or are employed by the [*2] employer who will maintain the separate plan. Each separate plan will assume the liabilities of the Plan attributable to the separate plan's participants. You have stated that the Plan's assets at present exceed the vested benefits thereunder and that Plan assets will be distributed to the separate plans in proportion to the Plan's accrued liabilities which will be assumed by the separate plans.

You have informed us that Plan participants whose rights as retirees or deferred vested employees derive solely from service with former contributing employers will receive paid-up annuities in connection with the split up.

The question has been raised whether the A Plan (and, similarly, each of the other two separate plans) would * * * a "successor plan" within the meaning of Sections 4021(a) and 4022(b) of ERISA so that for purposes of the phase-in of guaranteed benefits in the event of the subsequent termination of the A Plan, the time the A Plan will have been in effect would include the time the Plan was in effect. You have indicated that the Union originally requested that the Plan remain in existence to insure that certain Plan benefits "will be fully guaranteed by the PBGC" in [*3] the event of a subsequent termination.

Section 4022(b)(2) provides that, for purposes of the phase-in of guaranteed benefits, the time a successor plan has been in effect includes the time a previously established plan was in effect. Section 4021(a) provides, in pertinent part, that "a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided." In the instant case, after the split up, the A Plan will cover all the employees employed by A that were covered under the Plan. Accordingly, in our view the A Plan will cover a group of employees which includes substantially the same employees as a previously established plan.

Regarding the second element of the successor plan test, one of the factors the PBGC considers in determining whether a plan provides "substantially the same benefits" as a previously established plan is whether it assumes the defined benefit liabilities from the previously established plan. Article VI of the A Plan agreement provides for a transfer to and assumption of all the defined benefit liabilities of the Plan [*4] attributable to A employees; to this extent the second element of the successor plan test is met.

Based on the facts and circumstances of this case, we conclude that the A Plan will constitute a successor plan for purposes of Title IV of ERISA.

I trust that the above has answered your inquiry. If you have any other questions, please contact * * * of this Office

at (202) 254-4873.

Henry Rose
General Counsel