

Pension Benefit Guaranty Corporation

75-106

November 14, 1975

REFERENCE:

[\*1] 3(34)(35) Definitions. Individual Account Plan. Defined Benefit Plan  
4007(a). Payment of Premiums. Due Dates  
4021. Plans Covered  
4021(b)(1). Plans covered. Individual Account Plans  
4041(f). Termination by Plan Administrator. Application of Termination Procedures Upon Amendment to Individual Account Plan  
4042 Termination by PBGC  
4043(b). Reportable Events. Definition of Reportable Event.

OPINION:

This is in response to your letters and enclosures of August 14 and September 18, 1975, in which you asked whether the Pension Benefit Guaranty Corporation (hereinafter the "PBGC") would guarantee benefits provided by the \* \* \* (hereinafter the "Plan") in the event contributions to the Plan are discontinued as a result of an inability of the parties to the plan to agree on a new collective bargaining agreement. We assume that the discontinuance of contributions would be incident to a termination of the Plan.

We have reviewed the Plan which you characterized as typical of the "Target Benefit" plans you administer. In view of the fact, that the Plan does not provide for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, [\*2] and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account, see Article X, Section 1 of the Plan, the Plan is a defined benefit plan for purposes of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act"). See id. § 4021(a); cf. id. § 3(34), (35). In this regard we note that Article X, Section 1 of the Plan provides for monthly retirement benefits calculated in part by multiplying \$6.20 by the number of Full Credit Years earned. Since the Plan further satisfies the tax qualification requirements of § 4021(a) of the Act and is not excluded under § 4021(b) of the Act, the Plan is covered by Title IV. The amount of benefits guaranteed by the PBGC is subject to the limitations of § 4022 of the Act.

In a telephone conversation between \* \* \* and \* \* \* a question was raised concerning the effect of Article XV of the Plan on the covered status of the Plan. That article permits the Trustees to amend the plan. The fact that the benefit level may be modified by amendment does not alter the Plan's present covered status. If the Plan were amended to eliminate [\*3] the defined benefit feature, the Plan would terminate. See § 4041(f) of the Act. Please note that the adoption of an amendment that reduces plan benefits is a reportable event under § 4043(b)(2) of the Act.

Failure of the parties to agree to continue contributions to the Plan would not affect its covered status. However, at least after January 1, 1978 (see below), should the PBGC determine that the cessation of contributions may reasonably be expected to increase unreasonably the possible long-term loss to the PBGC, or that the Plan is unable to pay benefits when due, the PBGC may apply to an appropriate United States District Court to terminate the Plan under § 4042 of the Act. As you are probably aware, the guarantee provisions of the Act do not become fully effective with respect to multiemployer plans until January 1, 1978. See Act § 4082(b). But this Corporation may, under certain circumstances exercise discretion to guarantee such benefits before that date.

Even if contributions actually cease, § 4007(a) of the Act requires that premiums must continue to be paid to the PBGC until the Plan assets are distributed pursuant to a termination procedure or until a trustee [\*4] is appointed for the Plan under § 4042 of the Act.

If you have any further questions please do not hesitate to contact us.

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Deputy General Counsel

