

Pension Benefit Guaranty Corporation

75-3

April 18, 1976

REFERENCE:

[\*1] 3(7). Definitions. Participant  
4006(a)(3) Premium Rates. Initial Rates

OPINION:

This is in response to your letter dated February 6, 1975 wherein you inquire as to the definition of the term "participant" for the Pension Benefit Guaranty Corporation's purposes. You stated specifically that it was your interpretation that "any retiree or vested terminated retiree with a deferred benefit, would not be considered a participant if there was an annuity certificate delivered to him, written on a 'non-par' basis."

As you know, the Employee Retirement Income Security Act of 1974 (the "Act") provides that a premium of \$1.00 shall be paid "for each individual who is a participant in such (nonmultiemployer) plan at any time during the year . . ." Section 4006(a) (3) (A). The Act provides no exception for plans funded through insurance contracts. Compare Act Section 4062(a) (2). Section 3 (7) defines a participant as "any . . . employee or former employee of employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer . . ."

Thus, so long as a person remains a "participant", that person is counted for purposes [\*2] of payment of premium under the Act. And a participant retains his status as such until his relationship to the plan has been severed. The relationship may be severed by the payment of the participant's total benefit to him in a lump sum. It may also be severed by a triparte transaction whereby a plan purchases an annuity contract from an insurance company on behalf of the participant, if the resultant rights and liabilities are the same as if the plan had paid the participant a lump sum and the participant purchased the annuity himself. In cases where the participant retains a legal claim against the plan for benefits or where the plan retains a participating interest in the policy, including, for example, the receipt of dividends, the plan administrator should count such individuals as participants for premium purposes.

If the arrangement which you describe in your letter fits within the description we have provided above, than the retirees to which you refer would not be participants for purposes of paying premiums. If the provision of "non-par" annuities by a plan does not fit within the arrangement we have described above, we would be happy to further review your question [\*3] if you provide us your definition of "non-par" annuities.

We trust this information has been of assistance to you and we apologize for the delay in responding to your inquiry.

Steven E. Schanes  
Acting Executive Director