

Pension Benefit Guaranty Corporation

75-48

November 19, 1975

REFERENCE:

[*1] 4021. Plans Covered

OPINION:

In your letter of October 28, 1975, you asked for the rationale behind the requirement that fully insured defined benefit plans pay premiums to the Pension Benefit Guaranty Corporation (the "PBGC").

In our view, the statute requires such payments. Section 4021 of the Act defines the scope of ERISA's mandatory termination insurance provisions. With thirteen enumerated exceptions, see § 4021(b) of the Act, compulsory coverage extends to any employee pension benefit plan that has met Internal Revenue Code requirements governing "qualified" plans for the preceding five years. There is no exception for plans funded by the purchase of insurance or annuity contracts, and § 4007(a), requiring "the Plan Administrator of each plan . . ." to pay premiums makes no such exception, either.

By contrast, elsewhere in Title IV Congress has accorded special treatment to "insured" plans. Section 4062 of the Act makes employers liable to the PBGC for the amount of a terminated plan's asset insufficiency. But that section expressly insulates employers from such liability "to the extent . . . arising out of the involency of an insurance company with respect to an insurance contract," [*2] S.4062(a)(2). This provision demonstrates that Congress was fully aware of the existence of "insured" plans when it enacted Title IV, but did not choose to exempt them from coverage. Of course, even insurance-funded plans represent some risk for the PBGC, which would be obligated to pay benefits upon termination if an insured plan had failed to pay premiums if the insurer were insolvent, or if the plan promised benefits in excess of the values in the policies. From a broader perspective, we note that unlike traditional private insurance programs, Title IV of ERISA is not based strictly on familiar insurance concepts. Thus, the initial premium a plan must pay is not related to the risk that it will terminate or to its underfunding, if any. Furthermore, participants are insured whether or not the plan has paid premiums. Act § 4007(d).

Fairly read, the statute seems to contemplate a scheme whereby the entire universe of covered plans provides revenues to protect participants in plans which are not fully funded from the risk of termination. While I can understand that those who are responsible for fully funded, insured plans may feel that insurance is unnecessary, it does not [*3] strike me as inappropriate for Congress to have required all covered plans to assist in financing the program.

I trust that this letter answers your inquiry.

George B. Driesen
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