

Pension Benefit Guaranty Corporation

75-50

December 2, 1975

REFERENCE:

[*1] 4001(b) Definitions. Employer and Controlled Group

OPINION:

This is in response to your letter of October 31, 1975 requesting an opinion from this Office. You ask whether certain events constitute a plan termination under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

Our opinions are based on the information provided in your letter and in a telephone conversation with * * * of my staff on November 7, 1975.

First, you indicate that a single plan, which shall be referred to as "plan A," is maintained by a parent and its wholly-owned subsidiary. You state that the plan is "terminated as to participants of the subsidiary." The subsidiary has never accounted for more than 10% of the number of plan participants and has never accounted for more than 10% of all employer contributions paid to the plan. Further, benefits are payable under the plan with respect to participants of the subsidiary without regard to its cessation of contributions.

Second, you indicate that a plan, which shall be referred to as "plan B," is maintained by a parent and its wholly-owned subsidiary and that the subsidiary "terminates its participation in the pension plan." The parent in [*2] "plan B" is wholly-owned by the parent in "plan A." The terminating subsidiary accounts for approximately 40% of the number of plan participants and 40% of the employer contributions paid to the plan, but less than 10% of the total participants covered by "plans A and B" and less than 10% of the contributions to "plans A and B." Further, benefits are payable under "plans A and B" to the participants of the subsidiary without regard to its cessation of contributions.

In our view, the events described probably do not constitute Title IV "terminations." See § 4001(b) of the Act. A definitive answer to your questions cannot be given until this Corporation issues regulations under § 4001(b) of the Act, however.

We trust this answer your inquiry.

Henry Rose
General Counsel