

Pension Benefit Guaranty Corporation

76-50

April 13, 1976

REFERENCE:

[*1] 4006 Premium Rates

OPINION:

This is in response to your letter of December 2, 1975, asking whether an annuitant is a plan participant for purposes of Title IV of the Employee Retirement Income Security Act of 1974 (hereinafter "Act"), where Treasury Regulation § 1.401-4(c)(2) requires the plan to recover a portion of the value of the retiree's annuity under the circumstances set out in the Regulation.

It is our opinion that such a retiree is a plan * * * participant for purposes of Title IV of the Act so long as the conditions set out in subdivision (ii) of the Regulation may become applicable. As you correctly noted in your letter, our regulation defines a participant in pertinent part as "a retiree . . . for whom a fully paid-up immediate or deferred annuity has been purchased . . . if the plan retains a participating interest in the annuity policy." Premium Payment Regulation, 29 C.F.R. § 2602.2, 40 Fed. Reg. 57458 (Dec. 19, 1975). The plan's contingent right to recover a portion of the value of the retiree's annuity is such a participating interest.

We hope that the above answers your question. Should you have additional questions, please feel free to contact us.

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Deputy General Counsel