

Pension Benefit Guaranty Corporation

76-91

July 9, 1976

REFERENCE:

[*1] 4041(f). Termination by Plan Administrator. Application of Termination Procedures Upon Amendment to Individual Account Plan

OPINION:

This is in response to your request for a determination as to whether a proposed amendment to the * * * (the "Plan") would constitute a termination of the Plan under § 4041(f) of the Employee Retirement Income Security Act of 1974 (the "Act"). Section 4041(f) of the Act provides that a plan covered by Title IV shall be treated as terminated upon the adoption of an amendment to the plan that results in the plan's exclusion from coverage under § 4021(b)(1).

The Plan provides a defined benefit pension (§ IV. A of the Plan). Assuming the Plan is tax qualified, it does not come within any of the exclusions from coverage in § 4021(b) of the Act and is therefore covered by Title IV of the Act.

Section 5 of the proposed amendment, which restates the Plan, provides that the benefit for participants who terminate employment with either 120 months of credited participation, or 300 months of service credits (as defined in the plan prior to its amendment) and at least 25 months of credited participation shall be the greater of the following two amounts:

1. employee [*2] contributions, employer contributions in excess of \$50 monthly and employer contributions of \$50 monthly, or * * *
2. employee contributions, employer contributions in excess of \$ 50 monthly and the benefit the participant would have received under the plan if the proposed amendment had not been made.

Under Section 5 of the proposed amendment, benefits for all other participants, including those who become participants in the plan after February 1, 1975 will be computed under alternative 1 above.

Section 5 of the amended plan provides that eligible participants will receive a benefit no less than that provided by the Plan as if it had not been amended. Thus, the amended plan preserves the Plan's defined benefit. The amended plan would not be excluded under § 4021(b)(1) of the Act because it does not provide for "benefits based solely upon the amount contributed to the participant's [individual] account." Act § 3(34). Since the amended plan is not excluded under Act § 4021(b)(1), the proposed amendment to the Plan would not result in the Plan's termination under § 4041(f) of the Act.

I hope this is helpful.

Henry Rose
General Counsel