

Pension Benefit Guaranty Corporation

78-17

July 17, 1978

REFERENCE:

[*1] 4021(b)(1). Plans covered. Individual Account Plans
4021(b)(12) Plans Covered. Partial Individual Account Plans
4041 Termination by Plan Administrator

OPINION:

This is in response to your request for this Office to reconsider the Pension Benefit Guaranty Corporation's ("PBGC") prior determination that the above referenced Plan is not subject to Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). That determination was based on the grounds that the Plan's profit sharing benefit was excluded from Title IV coverage pursuant to Act § 4021(b)(1) and that the defined benefit portion of the Plan terminated prior to the effective date of Title IV. After reviewing your letter requesting reconsideration and the material in the case file, including the plan document, we conclude that the plan is subject to Title IV of the Act.

Effective January 1, 1969, the Plan, formerly a defined benefit plan, was amended to become a past service pension plan and a future service profit-sharing plan. The Plan provides an individual account (§ § 6.1, 6.2) for each person who become a participant after December 31, 1968 (Article III) and benefits based solely on the amount contributed to [*2] the individual account (§ § 11.1, 11.5), including gains and losses allocated to the account (Article IX). This part of the Plan's benefit is excluded from coverage as an individual account plan. See § § 3(34), 4021(b)(1) and 4021(b)(12) of the Act.

The Plan also provides a defined benefit (§ § 11.1, 11.4) for employees who participated in the prior pension plan as of January 1, 1969 (Article III) and a monthly benefit based on employment up to December 31, 1968 (§ § 11.1, 11.4). If a participant remains in the Plan until he reaches retirement age, he becomes fully vested in his accrued benefit (§ 11.4). The Plan also provides early retirement benefits at age 60 with 10 years of continuous service (§ 11.2). Because of these vesting provisions, participants with pre-1969 non-vested accruals under the defined benefit part of the plan may have become eligible for benefits through accumulation of added years of age and covered service after 1969.

The plan sponsor contributed \$6,700 to the Plan's pension fund on March 15, 1974. Between January, 1974 and the end of August, 1974, the plan sponsor laid off 11 of 28 covered employees, and between October, 1974 and the end of December, [*3] 1974, the remaining 17 covered employees were laid off. All employees, both covered and uncovered, of the plan sponsor had been laid off by the end of December, 1974. On February 24, 1975, the PBGC received a Notice of Intent to Terminate the Plan, executed on February 4, 1975. The Plan as amended explicitly expressed the intent of the plan sponsor to continue the defined benefit portion of the Plan and to make contributions to it. See, Plan, part I, paragraphs 4, 7; § 5.1.

Based on the facts and circumstances of this case, we conclude that the defined benefit portion of the Plan did not terminate before September 2, 1974, and is, therefore, subject to Title IV of the Act.

Henry Rose
General Counsel