

Pension Benefit Guaranty Corporation

81-16

June 8, 1981

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage
4021(a)(1) Plans Covered. Tax Qualification in Practice
4021(a)(2) Plans Covered. Tax Qualification by IRS Determination

OPINION:

This is in response to your inquiry as to whether your retirement arrangement with * * * College was subject to the termination insurance provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"). We have concluded that your arrangement was not covered by those provisions.

Section 4021(a) of ERISA affords termination insurance coverage to a pension plan only if it satisfies certain criteria imposed by the Internal Revenue Code (the "Code") on plans that are to receive particular tax treatment. Under section 4021(a)(2) of ERISA, any plan will satisfy those criteria if it ". . . is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Internal Revenue Code of 1954, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of such Code." Alternatively, under section 4021(a)(1) of ERISA, certain plans will satisfy the criteria if they have ". . . in practice, met the requirements of part [*2] I of subchapter D of chapter 1 of the Internal Revenue Code of 1954 (as in effect for the preceding 5 plan years of the plan) applicable to plans described in [section 4021(a)(2) of ERISA] for the preceding 5 plan years."

The facts, as you have represented them to us, are as follows. In 1975, you entered into an agreement with your employer, * * * "College"), under which it promised to pay you certain amounts of money over a six-year period ending when you became eligible to receive Social Security benefits. These amounts were to be paid out of the College's operating funds. The agreement was not part of a program involving any other persons. The Secretary of the Treasury has never determined your arrangement to be a plan described in either section 401(a) or section 404(a)(2) of the Internal Revenue Code.

In the absence of such a determination by the Secretary of the Treasury, the arrangement you describe may not receive termination insurance coverage unless it is either 1) a plan described in one of the above sections of the Code, or 2) a plan which, in practice, met the Code's requirements applicable to plans described in those sections. It appears that your arrangement [*3] is neither of these.

Internal Revenue Service Regulation § 1.401-1(b)(2) states that "the term 'plan' implies a permanent as distinguished from a temporary program The permanency of the plan will be indicated by all of the surrounding circumstances." In this case the College included only one employee under its program. No information available to us suggests that the College intended the program to continue beyond the time that it fulfilled its obligations to you. We therefore do not believe that your arrangement constituted a pension plan covered by section 4021(a) of ERISA.

I trust this responds to your inquiry. If you have any questions, please feel free to contact * * * of my staff at the above address or at (202) 254-3010.

Henry Rose
General Counsel