

Pension Benefit Guaranty Corporation

75-27

April 16, 1975

REFERENCE:

[\*1] 4043(b)(5) Reportable Events. Failure to Meet Minimum Funding Standards

OPINION:

This is in response to your letter of March 26, 1975, in which you questioned whether the underfunding of a pension plan prior to the effective date of the minimum funding standards of § 302 of the Employee Retirement Income Security Act of 1974 (the "Act") constitutes a reportable event under § 4043(b) (5) of the Act. Specifically, you advised us that the plan maintained by your client does not become subject to the minimum funding standards until the first plan year beginning after December 31, 1975, and your client is considering presently making contributions smaller than those necessary to meet the now minimum funding standards. Such level of contributions would be, however, legal under the law presently in effect.

It is the determination of the Pension Benefit Guaranty Corporation that your client's underfunding of his pension plan prior to the effective date of § 302 of the Act does not constitute a reportable event under § 4043(b) (5). This conclusion is based on the express language of the latter provision, which states, in pertinent part, that a reportable event occurs "when the plan fails to meet [\*2] the minimum funding standards under . . . Section 302 of this Act." Since a plan cannot fail to meet the minimum funding standards of section 302 until these standards are in effect, it follows that no reportable event can occur until that time.

Henry Rose  
General Counsel