

Pension Benefit Guaranty Corporation

75-67

November 10, 1975

REFERENCE:

[*1] 4043(b)(3) Reportable Events. Decrease in Participants

OPINION:

* * * has asked me to respond to your letter to him of September 24, 1975, in which you asked how § 4043(b)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") should be read in light of * * * published statement that plans need not notify the Pension Benefit Guaranty Corporation ("PBGC") of reportable events occurring before September 2, 1974. Section 4043(b)(3) requires notice to PBGC when the number of active participants in a plan drops below 80% of the number at the beginning of the plan year, or below 75% of the number at the beginning of the previous plan year. You asked whether plans must report such declines when the beginning of either plan year was a date earlier than September 2, 1974.

September 2, 1974 is the day on which ERISA became law and the PBGC came into being. Except for certain plans terminating after June 1, 1974, PBGC has no authority or responsibility with regard to pension developments that took place prior to the date ERISA became effective. PBGC does insure qualified defined benefit plans terminating at any time after September 2, 1974 and is entitled to notice under § 4043 of [*2] ERISA whenever any of a number of events takes place that may signal a plan termination in the near future. Congress believed that a 20% drop in active participation over one year, or a 25% drop over two years, could be such a signal. The "event" is the specified decline in participation; the beginning of either plan year is simply a reference point for measuring the decline.

Therefore, if a plan has experienced no decline in active participants since September 2, 1974 no reportable event has occurred, even if current active participation is less than 75% of the level at the beginning of the previous plan year. If the plan has experienced any drop in active participation since the Act's effective date, and that drop brings the plan's total number of active participants below the specified levels as of either of the earlier two dates, a reportable event has occurred and PBGC must be notified.

If you have any further questions with regard to this issue, please contact * * * of this Office.

Henry Rose
General Counsel