

Pension Benefit Guaranty Corporation

75-87

December 10, 1975

REFERENCE:

[*1] 4021(b)(12) Plans Covered. Partial Individual Account Plans
4041(f). Termination by Plan Administrator. Application of Termination Procedures Upon Amendment to Individual Account Plan
4043(b)(8) Reportable Events. Mergers, Consolidations & other Transfers of Plan Assets

OPINION:

This is in response to your letters of June 20 and October 8, 1975 and telephone conversations with *** concerning the ***

As I understand the pertinent facts, approximately 260 *** have adopted as their separate pension plans the terms (with certain modifications) of the *** Plan. One *** presently has a defined benefit plan *** It is not connected in any way with the *** Plan. The *** intends to adopt a defined contribution version of the *** Plan ("the New *** Plan"). All assets of the Old *** Plan would be transferred to the single trust maintained by the Trustees of the *** Plan. The provisions of the agreement by which the *** adopts the *** Plan would state that each participant in the New *** Plan would receive a benefit not less than that which he would have received if the Old Plan had remained in existence, i.e., if he had continued to accrue benefits under the Old [*2] *** Plan, if he had continued to advance on the vesting schedule of the Old *** Plan, and if he had retired pursuant to the Old *** Plan. Participants entering the New *** Plan who had not been participants in the Old *** Plan would not have such a "floor" under their benefits.

You asked whether the facts described above would constitute a termination of the Old *** Plan pursuant to Section 4041(f) of the Employee Retirement Income Security Act of 1974 (the "Act").

In this regard, you noted that Sections 4021(b) (12) and 3(35) of the Act recognize that some qualified pension plans may have both defined benefit and individual account characteristics, with only the defined benefit "portions" of the plans being insured under Title IV of the Act. You suggested, therefore, that this principle should lead to the conclusion that the Old *** Plan had not terminated. You cited in support of this suggestion my letter of April 9, 1975 to *** of your firm.

As I indicated in my letter to *** plans with both defined benefit and individual account characteristics in effect are two plans for the purposes of Title IV of the Act. Thus, in my opinion, the proposed adoption of [*3] the New *** Plan does not constitute a termination, despite Section 4041(f) of the Act, because accruals, vesting and contributions with respect to participants in the Old *** Plan in effect will continue for presently covered employees, because I understand that the New *** Plan will be subject to the minimum funding standards of the Act and because you have indicated that the agreement by which the *** adopts the *** Plan will provide that upon the New *** Plan's termination, all of those assets attributable to the defined benefit subaccounts will be allocated pursuant to Section 4044 of the Act. However, the *** proposed actions would constitute a "reportable event" as described in Section 4043 (b) (8) of the Act and would have to be reported to this Corporation as required by Section 4043(a) of the Act. This notice of a reportable event should be sent to *** and should contain the following information:

- (1) Copy of New *** Plan and trust agreement;
- (2) Copy of Old *** Plan and trust agreement with amendments;
- (3) New *** Plan balance sheet;
- (4) Old *** Plan balance sheet;
- (5) Joinder agreement.

If you have any questions concerning the reportable [*4] events filing procedures, you should contact ***

If I can be of any further assistance, please feel free to contact me.

Henry Rose
General Counsel