

Pension Benefit Guaranty Corporation

93-1

February 16, 1993

REFERENCE:

[*1] 4007(a) Payment of Premiums. Due Dates.
29 CFR 2610 Declaration and Payment of Premiums.

OPINION:

I write in response to your letter dated April 27, 1992, requesting an opinion concerning the payment of premiums by the Retirement Plan for * * * ("Pension Plan") for the plan year commencing on March 1, 1992, under Section 4007 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C.A. § 1307 (West 1985 & Supp. 1992). Specifically, you seek the Pension Benefit Guaranty Corporation's ("PBGC") opinion as to whether the Pension Plan owes premiums to the PBGC even though a standard termination filing was made in February 1991, and all assets were distributed in 1991 pursuant to the first six categories of Section 4044(a), 29 U.S.C.A. § 1344(a).

As we understand the facts, between February and June 1991, all Pension Plan participants received their benefit under the Pension Plan in either a lump sum distribution or an irrevocable commitment in the form of a group annuity contract from an insurance company. In addition, you explain that surplus assets remained after all benefits of the Pension Plan were [*2] allocated and distributed under the first six categories of Section 4044(a), 29 U.S.C.A. § 1344(a), and that at least a portion of the surplus was attributable to employee contributions. You indicate that the Retirement Board of * * * has not distributed any of the surplus attributable to employee contributions because of the uncertainty arising from a pending lawsuit between the pension plan sponsor and pension plan participants over the entitlement to the surplus.

PBGC explicitly addressed your situation in the preamble to PBGC's July 10, 1989, amendment to 29 C.F.R. § 2610, stating:

A number of plan professionals have asked the PBGC whether it is necessary for a plan to distribute excess assets in order for the premium obligation to cease accruing. Under section 4007(a) of ERISA and § 2610.25(e) of the proposed rule, the obligation to pay premiums continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs first. For purposes of this rule, a plan's assets are considered distributed pursuant to a termination procedure upon the distribution of all assets [*3] that must be allocated to Priority Categories 1 through 6 of ERISA section 4044(a), irrespective of whether there are any assets to be allocated and distributed under ERISA section 4044(d).

Payment of Premiums; Final Rule, 54 Fed. Reg. 28,951 (1989) (codified at 29 C.F.R. § 2610.25(e)).

Since PBGC has clearly stated that premiums cease accruing once assets are distributed in Priority Categories 1 through 6 of ERISA section 4044(a), PBGC would not require the Retirement Board or the Pension Plan to make a premium filing for plan year 1992 with the PBGC since Pension Plan assets were distributed in 1991.

I hope that this letter is of assistance to you. If you have further questions, please feel free to contact Henry Talavera of my staff at (202) 778-8822.

Carol Connor Flowe, General Counsel