

Pension Benefit Guaranty Corporation

76-71

May 26, 1976

REFERENCE:

[\*1] 4043(b)(2) Reportable Events. Amendment Decreasing Benefits  
4048 Date of Termination

OPINION:

This is in response to your letter to Mr. \* \* \* of the Pension Benefit Guaranty Corporation (the "PBGC") and subsequent telephone conversation with \* \* \* of my staff concerning the \* \* \* Retirement Plan (the "Plan").

As I understand the pertinent facts, the Plan is a tax-qualified, defined benefit pension plan maintained by \* \* \* (the "Company") for its employees. You indicated in your letter that, effective December 31, 1975, the Plan was amended to increase benefit levels, to fully vest all participants in their accrued benefit, and to cease further accruals. As a result of these amendments, you received a determination letter from the Internal Revenue Service (the "IRB") stating that although the Plan was curtailed, the Plan's tax-qualification would not be affected. Your letter indicated that, pursuant to IRS regulations governing curtailments, the Company will continue to make the contributions required by Internal Revenue Code § 412 to fully fund the Plan. You indicated, however, that as the result of substantial appreciation, the fair market value of the Plan's assets exceeded the present [\*2] value of all accrued benefits, and that therefore, no further funding was anticipated.

In light of the foregoing, you requested a determination by the PBGC in regard to whether, for purposes of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"), the amendments described above either resulted in a plan termination or constituted a reportable event. You also requested information concerning whether participants in the Plan are considered "active participants" in a qualified plan for purposes of IRC § 219 which would prevent them from establishing Individual Retirement Accounts ("IRA's").

Based on the information you provided, it is the opinion of this Office that although the Plan was amended to cease further accruals, since all participants in the Plan were fully vested in their accrued benefit and since the Company will continue to make contributions to the Plan to the extent required under IRC § 412, that the amendments to the Plan did not cause the Plan to terminate for purposes of Title IV of the Act. However, the Plan amendment which ceased further accruals by Plan participants is an event described in § 4043(b)(2) of the Act, which, pursuant to § [\*3] 4043(a), must be reported to the PBGC by the plan administrator within 30 days after its occurrence. In this regard, we will accept your letter of January 27, 1976, in satisfaction of this requirement.

The PBGC's role in relation to IRA's is limited to the provision of ". . . advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts . . ." and evaluating the desirability ". . . of transferring amounts representing an employee's interest in a qualified plan to an . . . [IRA] upon the employee's separation from service with an employer." (Act, § 4009, emphasis added.) Since your question concerns whether the Internal Revenue Code permits certain individuals to establish IRA's, you may wish to request a ruling from the IRS on this question.

Henry Rose  
General Counsel