Pension Benefit Guaranty Corporation

77-171

December 16, 1977

REFERENCE:
[*1] 4021(a)(1) Plans Covered. Tax Qualification in Practice
4021(b)(5) Plans Covered. Employee Contributed Plans

OPINION:

This is in response to your letter concerning a number of plans maintained by local labor unions, which your office represents. You asked whether the plans are covered under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

The plans you described in your letter, which was followed up by a telephone call on December 9, 1977 by * * * of my staff, are maintained by local unions. Pension benefits are paid on the locals' retired officers (and in some cases, employees) who have met the conditions entitling them to a benefit under the plan. The funds are held and the benefits are paid by a bank as trustee. The plans are funded primarily through payment of a portion of the memberships' monthly dues. In some cases, there may be an arrangement whereby an amount it deducted from the dues and directly paid into the plan; however more typically, the dues are paid to the local and paid by it to the plan.

Title IV of the Act covers a plan established and maintained "by any employee organization, or organization representing employees, engaged in commerce [*2] or any industry affecting commerce . . . ." Act, § 4021(a)(1)(B). Thus, assuming the plans you describe meet the tax qualification requirements in § 4021(a), they would be covered under Title IV unless an exclusion in § 4021(b) applied.

You suggested that such plans are excluded under § 4021(b)(5), which excludes from coverage a plan "which has not at any time after the date of enactment of [the] Act provided for employer contributions . . . ." The legislative history indicates that this exclusion was meant to apply to those plans in which the participants are the only contributors to the plan. No elucidation of § 4021(b)(5) exists, but in describing the same exclusion, which is now contained in § 301(a)(5) of the Act, the House Ways and Means Committee noted:

Your committee understands that some plans are based solely on contributions from participating employees, without contributions of employers. In this case, your committee believes it would be inappropriate to make the employer responsible for the contributions of his employees. Consequently, where the plan has not provided for any employer contributions at any time after the date of enactment of the bill, the plan [*3] is to be exempt from the minimum funding standards and the excise tax on underfunding.

H. Rept. No. 93-807, 93d Cong., 2d Sess. 91 (1974) (emphasis supplied). The Conference Committee explanation you cited n1 must be read in light of that explanation: the parenthetical phrase in the Conference Report refers to union plans covering and funded by the membership.

n1 [P]lans which have not provided for employer contributions at any time after the date of enactment are to be exempt from minimum funding rules (i.e., plans of unions funded exclusively by contributions of the union members.)

H. Rept. No. 93-1280, 93d Cong. 2d Sess. 291 (1974).

In the situation you described, the local maintains a plan covering its officers and employees, and in that context, acts as an employer. The funds contributed to the trust, whether paid directly by the local, or indirectly through deductions from amounts due to the local, are employer contributions. Thus § 4021(b)(5) is inapplicable. Assuming no other exclusion applies, the plans are covered under Title IV of the Act.

You also asked about a specific plan to which no contributions were made and under which no participants earned service [*4] for accrual or vesting purposes since 1971. The bank trustee has continued to pay benefits from the remaining funds to persons who retired prior to 1971. Based on these facts, it is our opinion that that plan terminated before enactment of the Act and is not covered under Title IV.

I hope this has been of assistance.

Henry Rose
General Counsel