Pension Benefit Guaranty Corporation

88-4

March 25, 1988

REFERENCE:
[*1] 4006(a)(3)(A) - Current Rates
29 CFR 2610.2 - Premiums; Definitions

OPINION:

This letter is in response to your request that the PBGC issue an opinion regarding whether a PBGC premium must be paid for a participant in the * * * (the "Plan") even though no contributions to the Plan are likely to be required for that participant because of a floor offset arrangement with * * * (the "ESOP").

From your letter, it is our understanding that the Plan is a defined benefit plan covered by the PBGC's insurance program under ERISA. The Plan is coordinated with the ESOP so that the Plan's basic benefit is reduced by the annuity equivalent of the participant's projected ESOP account. You project that the ESOP account will fully offset the benefit defined by the Plan so that no contributions will need to be made to the Plan for many, if not all, of the Plan's participants. You contend that premiums to the PBGC should not be required for participants whose benefits are fully offset by the contributions made to the ESOP.

ERISA § 4006(a)(3)(A), as amended by Section 9331 of the Pension Protection Act, Subtitle D of Title IX of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. [*2] 1330 (December 22, 1987), provides that the annual premium rate for single-employer plans is "$ 16.00 for each individual who is a participant in such plan during the plan year", plus additional sums for plans with unfunded vested benefits. Under PBGC regulations, any individual who is "earning or retaining credited service under the plan" is a plan participant. See 29 C.F.R. § 2610.2. Clearly, the individuals covered by the Plan are participants within the meaning of 29 C.F.R. § 2610.2. Accordingly, pursuant to ERISA § 4006(a)(3)(A), an annual premium must be paid for each individual who is covered by the Plan.

Your argument that the Plan should not be obligated to pay premiums because the risk to the PBGC is minimal or nonexistent simply does not stand up to legal scrutiny. As noted above, Congress imposed a fixed premium of $ 16 per participant plus an adjustable risk-related premium. Thus, in this case, the Plan would have to pay a premium of at least $ 16 per participant, regardless of the risk the Plan poses to the PBGC.

I hope this letter adequately answers your inquiry. If you have further questions concerning this matter please contact John Sutter of this office [*3] at the above address or (202) 778-8823.

Gary M. Ford
General Counsel