

Pension Benefit Guaranty Corporation

99-1

June 3, 1999

REFERENCE:

[*1] >4006(a)(3)(E)>

OPINION:

I write in response to your request that the PBGC clarify how the variable-rate premium requirements of section 4006 of the Employee Retirement Income Security Act of 1974 (ERISA) apply to a multiple-employer plan. n1 Specifically, you ask whether you should base variable-rate premium determinations for a multiple-employer plan on the funding status of the plan as a whole or on the status of funding accounts maintained for individual contributing employers pursuant to section 413(c) of the Internal Revenue Code (IRC). We conclude that variable-rate premium determinations for a multiple-employer plan are governed by the funding status of the plan as a whole.

n1 A multiple-employer plan is a single-employer plan for purposes of Title IV of ERISA (even though it has multiple unrelated contributing employers). See the definition of "multiple-employer plan" in 29 CFR § 4001.2 of the PBGC's regulations.

Your question arises because the variable-rate premium provisions in the statute refer to two terms--"unfunded current liability" and "full funding limitation"--that are defined in other statutory provisions, dealing with plan funding. n2 Although the two definitions do [*2] not themselves distinguish between multiple-employer plans and other single-employer plans, IRC section 413(c) contains special requirements for applying plan funding rules generally to multiple-employer plans. In light of the requirements of section 413(c), you are uncertain whether the variable-rate premium provisions operate the same way for multiple-employer plans as they do for other single-employer plans.

n2 Under ERISA section 4006(a)(3)(E)(ii) and (iii)(I), the amount of the variable-rate premium is based on "unfunded current liability" as defined in ERISA section 302(d)(8)(A) (which is substantially identical to IRC section 412(l)(8)(A)). ERISA section 4006(a)(3)(E)(iv) provides an exemption from the variable-rate premium based on the "full funding limitation" defined in IRC section 412(c)(7) (which is substantially identical to ERISA section 302(c)(7)).

Under ERISA section 4006(a)(3)(E)(ii), the variable-rate premium is \$ 9 per \$ 1,000 of "unfunded vested benefits under the plan" (emphasis supplied), and the exemption from the variable-rate premium in section 4006(a)(3)(E)(iv) operates if "contributions to the plan" are not less than the full funding limitation [*3] (emphasis supplied). The statutory language thus indicates that the variable-rate premium and the full funding limit exemption are based on the funding status of a plan as a whole.

This is consistent with the purpose of PBGC premiums, which is to fund the termination insurance program under Title IV of ERISA. Under sections 4022, 4044, and 4061 of ERISA, the PBGC's insurance obligations are, as you point out, based on the funding status of a plan in its entirety, even if the plan is one that maintains separate funding accounts for individual contributing employers.

Accordingly, it is the PBGC's opinion that section 4006 is to be read as referring to the unfunded current liability and full funding limitation of a plan as a whole, even if section 413(c) requires, for other purposes, that they be determined employer-by-employer. Thus, a multiple-employer plan is to determine its unfunded vested benefits for purposes of calculating its variable-rate premium, and determine whether it qualifies for the full funding limit exemption from the variable-rate premium, in the same way as a plan that has a single contributing employer.

If you have any further questions about this matter, please [*4] contact Deborah C. Murphy of my office at 202-326-4024.

James J. Keightley
General Counsel