

Pension Benefit Guaranty Corporation

75-4

March 20, 1975

REFERENCE:

[*1] 3(17) Definitions. Separate Account
3(34) Definitions. Individual Account Plan
4021(a) Plans Covered. Requirements of Coverage

OPINION:

This is in response to your letter dated March 7, 1975, in which you inquire whether the above-captioned pension plan ("Plan") is covered by the Employee Retirement Income Security Act of 1974 ("Act").

Based on a review of the materials enclosed with your letter, it appears that the Plan provides for a fixed annual annuity (with certain other options) beginning at retirement age as defined in the Plan; the amount of the annuity to be determined by a formula established in the Plan. It further appears that the Plan is funded through the purchase of individual retirement insurance policies and retirement annuity contracts from an insurance company.

Section 4021 of the Act provides mandatory coverage of a defined benefit pension plan which, inter alia, "has been determined by the Secretary of the Treasury to be, a plan described in Section 401(a) of the Internal Revenue Code," provided that the plan is not an individual account plan or a separate account plan.

In the materials enclosed with your letter was an I.R.S. determination dated January 16, [*2] 1968, which found your Plan to meet the requirements of § 401(a) of the Internal Revenue Code.

For purposes of determining coverage under the Act, the term "separate account" refers to "an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited or charged against such account without regard to other income, gains, or losses of the insurance company." (Act § 3(17) 88 Stat. 835.) The term individual account plan refers to a plan in which the level of benefits for each employee may fluctuate up or down depending on the experience of his account.

In your Plan; the level of benefits is apparently fixed by a formula and is not dependent on the experience of each separate insurance policy. The Plan has been determined by I.R.S. to be a qualified plan. Accordingly, on the basis of the information you have supplied, it appears that the * * * is covered by the plan termination insurance provisions of Title IV of the Act.

Steven E. Schanes
Acting Executive Director