

Pension Benefit Guaranty Corporation

80-4

April 2, 1980

REFERENCE:

4006 Premium Rates

4007 Payment of Premiums

29 CFR 2602 Payment of Premiums

OPINION:

Your request for a premium refund for the * * * Employee Retirement Plan (the "Plan") has been referred to this office for response.

As I understand the facts, the Plan is a multiple employer plan covering the employees of a number of agencies. There were 1248 Plan participants as of October 31, 1978, the last day of the 1977-78 Plan year. This was the participant count on which the premium paid the Pension Benefit Guaranty Corporation ("PBGC") for the 1978-79 Plan year was based. Effective November 1, 1978, 767 employees terminated participation in the Plan when four participating agencies withdrew from the Plan and adopted their own separate plans. Also, effective November 1, 1978, 78 new employees became participants, for a total loss to the Plan on that date of 689 participants. You have requested a refund of the premiums paid for the 1978-79 Plan year for these 689 participants.

The PBGC regulation on Payment of Premiums, 29 C.F.R. § 2602 (1979), bases the premium for the current plan year on the number of plan participants on the last day of the prior plan year. [*2] This "snapshot approach" was intended to simplify the computation and reporting of annual premiums for the benefit of plan administrators and employer-sponsors.

The regulation was promulgated pursuant to Section 4006(a)(5) of the Employee Retirement Income Security Act of 1974, which gives the PBGC latitude in selecting the participant count date for a premium rate based on "the number of participants in a plan." The regulation became final only after written comments by the public were considered. Those comments strongly endorsed the rule that based premiums on the participant count on the last day of the prior plan year.

Since the premium in question was correctly computed under the PBGC regulations, the requested refund is precluded. The "snapshot approach" of the regulations would, similarly, preclude the inclusion of the 78 new employees in the count of participants for the 1978-79 Plan year.

This determination that the Plan is not entitled to a refund of a portion of the premiums paid for the 1978-79 Plan year is subject to reconsideration under our regulation on Administrative Review, a copy of which is enclosed. Also enclosed is a notice explaining the administrative [*3] reconsideration process.

Lawrence Maslan
Director
Office of Financial Operations