

Pension Benefit Guaranty Corporation

87-9

August 24, 1987

REFERENCE:

[*1] 4006 Premium Rates
29 CFR Part 2610 Declaration and Payment of Premiums

OPINION:

This is in response to the issues raised in your letter of July 27 to * * * concerning PBGC premiums in Social Security integrated plans. As I understand it, your question is whether premiums are payable for participants in an integrated excess plan where their service will not result in a unit of credit for accrued benefit purposes because the plan is a "true unit credit plan" and their compensation is below the minimum compensation level. It is the view of the PBGC that premiums are required in a plan year for employees who are participants in a plan, even though they are neither accruing benefits nor entitled to service credits for accrual purposes because their compensation is below the minimum compensation level in an excess plan.

Your letter recognizes that the instructions for PBGC Form 1 provide that the participant count must include employees who may not be accruing benefits because their compensation is below the minimum compensation level in an integrated excess plan. You postulate that such employees are included in the participant count, although they are not currently accruing benefits, as a [*2] protection for the PBGC from large amounts of benefit liability that could occur if such employees moved above the minimum compensation level and became entitled to accrued benefits based on full service. You then ask whether or not, in an integrated unit credit plan, where accrued benefits are not based on total service but only on each year's credited service, premiums should be payable for those employees below the covered compensation level.

Implicit in your question is the assumption that the PBGC premium payment obligation reflects the traditional "risk spreading" insurance concept. The PBGC's termination insurance, however, is not comparable to traditional insurance programs. Under section 4006 of ERISA, the initial premium payment obligation is unrelated to the risk at plan termination and does not "buy" protection. On the contrary, the PBGC must guarantee benefits even if premiums have not been paid (see section 4007(d) of ERISA), and the guarantee is not limited to benefits accrued or service credits earned during a year when premiums have been paid (see 29 CFR Part 2613).

Section 4006 of ERISA gives the PBGC discretion to establish per capita premiums or risk-related [*3] premiums, and the PBGC has, by regulation (29 CFR Part 2610), chosen to exercise that authority so as to base premiums exclusively on the number of participants in a plan. As a result, premiums must be paid on behalf of all individuals coming within the plan's definition of "participant", notwithstanding the absence of a guaranteed pension benefit for each participant or the risk of future exposure. The PBGC premium regulation does not distinguish between types of covered plans, or the ultimate risk that each may present.

As you know, the Administration has proposed to the Congress legislation that would establish a variable-rate premium for the single-employer plan termination insurance program. Under that legislation, a flat-rate per capita premium charge would continue for all plans, irrespective of risk or exposure, and an additional premium charge would be imposed on larger plans (those with 100 or more participants) on a basis that reflects the possible exposure of the PBGC, i.e., the funding status of the plan and the risk of plan termination. As under the current premium provisions, there would be no adjustment for risk with respect to individual benefits or types [*4] of plans.

I hope this information is useful to you.

Royal S. Dellinger
Deputy Executive Director