

Pension Benefit Guaranty Corporation

76-9

January 14, 1976

REFERENCE:

[\*1] 4001(b) Definitions. Employer and Controlled Group

OPINION:

This is in response to your letter of September 23, 1975, concerning the application of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") to plans established by parent corporations in concert with wholly owned subsidiaries.

Specifically, you sought advice regarding the effect of ERISA §4001(b), which states that businesses under "common control" are to be treated as a single employer for purposes of Title IV, on the determination of whether a plan termination has occurred under the hypothetical situation presented in your letter. In the hypothetical you presented, a corporation and its nine wholly owned subsidiaries established a common plan subject to Title IV. The 1000 employees covered by the plan are equally divided among the corporations, such that, upon the liquidation of one subsidiary, only 100 of the 1000 employee-participants are separated from employment. You suggest that under ERISA §4001(b), this apparently should not be considered a plan termination. Confirmation of this opinion is sought, as well as clarification of the effect Pension Benefit Guaranty Corporation regulations, issued pursuant [\*2] to §4001(b) authorization, will have on this matter.

The hypothetical correctly concludes that corporation and its wholly owned subsidiaries would be treated as a single employer under §4001(b). Although PBGC has not yet adopted regulations under that section, it currently appears that such regulations when adopted would treat your hypothetical as describing a single employer.

Yet, the treatment of a parent-subsidary corporate group as a single employer does not resolve the question of whether your hypothetical presents a Title IV plan termination. As you are no doubt aware, an employer may maintain a number of separate pension plans although assets from each are managed in a single fund. Thus, in a corporate scheme such as you describe, the PBGC must determine whether the pension vehicle is actually a single plan, or merely a single fund through which the separate plans of the parent and each subsidiary are managed. In the latter case, the liquidation of a subsidiary may well effect a pension plan termination.

A determination whether the common plan described in your hypothetical is one plan or a combination of a number of plans would be made by PBGC based on the facts and [\*3] circumstances of each case. Some of the significant considerations would include portability of pension credits between members of the corporate group and, in the event the subsidiary is liquidated, the availability of plan assets to satisfy plan liabilities -- whether all plan assets are available to satisfy the liabilities of the plan to the liquidated corporation's employees, or, in contrast, whether only that portion of the plan assets attributable to the subsidiary's contributions are available.

I trust this explanation will prove helpful to you. Should you wish further information, you may telephone \* \* \* of this office at

Henry Rose  
General Counsel