

Pension Benefit Guaranty Corporation

83-14

June 30, 1983

REFERENCE:

[*1] 4007 Payment of Premiums
29 CFR 2610 Declaration and Payment of Premiums

OPINION:

This is in response to your letter and telephone calls regarding payment of premiums for an individual in certain situations.

The facts, as stated in your letter and telephone conversations are as follows. An individual has credited service under a multiemployer plan, but is not vested. In the plan year in question, the individual works less than 500 hours and thus, under the terms of the plan, does not earn any credited service for the plan year. A "break in service" under the plan occurs when an individual's temporary break in service equals the individual's continuous period of service. In the situation you describe, the individual has not yet incurred a break in service under the plan.

You inquired whether a premium was due for the individual described above for the plan year in which the individual works less than 500 hours.

Under 29 C.F.R. § 2610.5(b), a multiemployer plan is required to pay premiums for "each individual who is a participant in such plan on the last day of the preceding plan year." The term "participant" is defined in 29 C.F.R. § 2610.2. Under 29 C.F.R. § 2610.2(a)(2), a participant [*2] includes:

Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

In the situation describe above, the individual is not currently in employment covered by the plan because he or she worked less than 500 hours. The individual is retaining credited service under the plan for prior years and has not incurred a break in service the greater of one year or the period specified in the plan. Consequently, for the plan year in question, the individual is a participant as defined in 29 C.F.R. § 2610.2(a)(2) for whom a premium would be owed under 29 C.F.R. 2610.5(b).

You also inquired whether a premium would be owned for the individual in the situation described above if the term participant were defined in the plan to exclude such individuals. In that case, the individual would still fall under the definition of participant in 29 C.F.R. § 2610 and therefore would still be a participant for purposes of payment of premiums under [*3] 29 C.F.R. § 2610.

Henry Rose
General Counsel