

Pension Benefit Guaranty Corporation

84-1

January 4, 1984

REFERENCE:

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

OPINION:

This is in response to your inquiry regarding the spin-off of assets and liabilities of the * * * Pension Plan and the * * * Pension Plan, pursuant to * * * plan of reorganization, submitted to the United States District Court for the District of Columbia on December 16, 1982 and approved by the court, with modifications, on August 5, 1983. Under the terms of the reorganization plan, * * * will, as of January 1, 1983, divest itself of certain business operations. Those operations will be handled by seven new regional holding companies and a central services organization owned in equal part by the seven holding companies. The remaining business operations of * * * will remain with * * *. Each of the eight new companies that result from the plan of reorganization will be allocated pension plan assets and liabilities from the former * * * plans proportionately. Each of the eight new companies will establish two new plans, one for management and one for nonmanagement employees, substantially similar to the former * * * plans.

Your first question is whether the above described facts constitute a termination of [*2] the * * * Pension Plan or the * * * Pension Plan. It is our view that there is no termination for purposes of Title IV of the Employee Retirement Income Security Act, as amended ("ERISA"). After the spinoffs, the former * * * plans will still be ongoing, although covering substantially fewer employees, and the participation, vesting, accrual and funding standards of Title I will continue to apply. In addition, it is our understanding that the former * * * plans will still be qualified under the Internal Revenue Code, and the premium requirements of Title IV will continue to apply.

Your second question relates to the payment of premiums by the * * * plans and the plans of the new companies created by the plan of reorganization. The instructions to the PBGC Form 1 do not contemplate the divestiture situation and you ask for guidance with respect to the participant count for each plan. Generally, premiums are paid with respect to each participant of a plan, counted as of the last day of the last plan year prior to the year for which the premium payment is being made.

Because the * * * plans are calendar year plans, that count would be made as of * * * the day prior to the effective [*3] date of the divestiture. As of * * *, however, the plan of reorganization contemplates the creation of 18 new plans, all of whose participants would have been counted for purposes of the * * * plans' premium payment. The general rule, though, would seem to require that each new plan pay premiums for the 1984 plan year, using a participant count as of January 1, 1984. This result is not intended, either under the terms of the statute or the implementing regulations. It would result in double counting and double payment of premiums for the participants covered under these plans. Accordingly, in order to effectuate the intent of the premium requirements in Section 4007, each of the 20 plans which will exist as of January 1, 1984 -- the two * * * plans and the two plans of each of the seven regional holding companies and the central services organization -- will be liable for premiums for the 1984 plan year based on a participant count as of January 1, 1984.

I hope that this response has been helpful to you. If you have any further questions, please feel free to contact me.

Henry Rose
General Counsel