

Pension Benefit Guaranty Corporation

77-172

December 23, 1977

REFERENCE:

[\*1] 4021(a)(1) Plans Covered. Tax Qualification in Practice  
4021(a)(2) Plans Covered. Tax Qualification by IRS Determination

OPINION:

This responds to your request for a determination by the Pension Benefit Guaranty Corporation (the "PBGC") whether defined benefit pension plans established and maintained in the Commonwealth of Puerto Rico are subject to the provisions of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

Section 4021(a)(1) of the Act provides for mandatory plan termination insurance coverage for certain defined benefit pension plans which, in practice, have met the requirements of § 401(a) of the Internal Revenue Code of 1954 (the "Code") for five years preceding termination. The PBGC does not consider the requirement of Code § 401(a) that the trust \* \* \* under the plan be "created or organized in the United States" to be a bar to Title IV coverage under § 4021(a)(1) of the Act provided the plan has in practice otherwise met the tax qualification requirements of the Code. Title IV coverage of Puerto Rican plans is not conditioned upon an election pursuant to § 1022(i)(2) of the Act. Consequently, where a Puerto Rican plan with a non-United States [\*2] trust otherwise has in practice met the tax qualification requirements of the Code for the required period, and is not a plan described in § 4021(b) of the Act, it is subject to Title IV coverage.

Section 4021(a)(2) provides for Title IV coverage of non-trusted plans which are funded by annuity contracts where a plan meets, or the Secretary of the Treasury has determined that a plan meets, the requirements of § 404(a)(2) of the Code. PBGC has determined that where a non-trusted defined benefit annuity plan maintained by a Puerto Rican employer meets, or has been determined by the Secretary of the \* \* \* Treasury to meet, the requirements of Code § 404(a)(2) and the plan is not a plan described in § 4021(b) of the Act, it is subject to Title IV coverage.

We hope this has been of assistance.

Henry Rose  
General Counsel