

Pension Benefit Guaranty Corporation

76-30

March 8, 1976

REFERENCE:

[*1] 4041(f). Termination by Plan Administrator. Application of Termination Procedures Upon Amendment to Individual Account Plan

OPINION:

This is in response to your letter of November 21, 1975, asking what effect a "roll-over" of a defined benefit plan into a profit sharing or defined contribution plan has on an employer under Title IV of the Employer Retirement Income Security Act of 1974 (the "Act"), and what procedures must be followed in the event of such a "roll-over" or in the event of a complete termination of a defined benefit plan.

With respect to the first question, we assume that you use the term "roll-over" to mean the transfer of the assets of a defined benefit plan to a profit sharing or defined contribution plan. Pursuant to § 4041(f) of the Act, the adoption of a plan amendment which changes a covered defined benefit plan to an individual account plan [as defined in § 3(34) of the Act] constitutes a plan termination. Thus, the "roll-over" of a covered defined benefit plan to an individual account plan could not be accomplished unless the plan administrator complies with the requirements of § 4041, pertaining to voluntary plan termination.

Pursuant to that provision, the plan [*2] administrator must file a notice with the Pension Benefit Guaranty Corporation ("PBGC") at least 10 days prior to the proposed date of plan termination and may not distribute assets pursuant to the plan's termination procedure for a period of 90 days after the proposed termination date unless he receives a Notice of Sufficiency from the PBGC prior thereto. The PBGC will issue a Notice of Sufficiency if it determines that, after allocating the plan's assets in accordance with § 4044, the assets are sufficient to discharge, when due, all obligations of the plan with respect to basic benefits, § 4041(b).

The allocation requirements of § 4044 are complied with in a "roll-over" situation if the participants are given the option of receiving the value of earned benefits to which they are entitled under the defined benefit plan instead of having their earned benefits transferred to their individual accounts under the new plan.

If the assets under the defined benefit plan are insufficient, the employer (or employers) maintaining the plan is liable to the PBGC, pursuant to § 4062 (or § 4064 in the case of a multiemployer plan) for the difference between the value of the plan's guaranteed [*3] benefits on the date of termination and the value of the plan's assets allocable to such benefits on that date. However, this liability cannot exceed 30% of the employer's net worth. The amount of this liability cannot be determined by the PBGC until a plan has terminated, but an employer may approximate his potential liability by computing the value of the plan's vested benefits and of the plan assets. A more precise computation would require an application of the PBGC's regulations on the limitations on guaranteed benefits, 41 FR 6194, (February 11, 1976), and PBGC's proposed regulations on valuation of plan assets, 40 FR 57980 (December 2, 1975), valuation of plan benefits, 40 FR 57982 (December 2, 1975), and allocation of plan assets, 40 FR 51368 (November 5, 1975).

The principles stated above with respect to the requirements of § 4041, the allocation of assets pursuant to § 4044 and the liability of an employer where plan assets are insufficient are applicable both in the case of a "roll-over" which comes within the purview of § 5041(f) and of a complete termination of a defined benefit plan.

We hope this response is helpful to you. Should you desire any additional information, [*4] please do not hesitate to contact us.

Henry Rose
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