

Pension Benefit Guaranty Corporation

76-64

May 7, 1976

REFERENCE:

[*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate

OPINION:

This is to provide you with written answers to several questions you raised during your meeting with * * * Staff Attorney, in our office. Your fact situation involved the pension plans of a parent and its subsidiary. The subsidiary's plan was overfunded and the parent's assumedly underfunded.

First, is there any exception for clearly sufficient plans, to the rule that any use of an overfunded plan's assets to pay liabilities of an underfunded plan would be a transfer of assets subject to § § 208, 1015 and 1021 of ERISA? The PBGC does not have jurisdiction in a case such as yours where a multiemployer plan is not involved.

Second, in the case of a pending termination, several participants have filed for early retirement. In light of § 4041, may payments be made to these individuals during the 90-day period following the date of the proposed termination? Section 4041(a) prohibits the plan administrator from making any payment "pursuant to the termination procedure" for the 90-day period following the proposed termination date for the plan unless he receives a notice of sufficiency prior to the [*2] expiration of that period. This prohibition does not bar payments which do not arise out of the plan termination. Therefore, it is proper to make payments to participants who were entitled to a benefit prior to termination, i.e. because the benefit was in pay status on date of termination or the participant had satisfied, by the date of termination, all conditions of the plan necessary to establish his right to the benefit, other than application for the benefit or satisfaction of a waiting period described in the plan.

I trust this answers your questions. Mr. * * * tells me that he enjoyed your meeting and appreciated your questions and comments.

John H. Falsey
Supervisory Attorney