

Pension Benefit Guaranty Corporation

76-101

August 16, 1976

REFERENCE:

[*1] 4044 Allocation of Assets

4048 Date of Termination

4062(b) Liability of Employer in Single Employer Plans. Amount of Employer Liability

OPINION:

Further to our telephone conversation of July 27, 1976, the following is addressed to your several questions concerning administration of the pension agreement between: * * * and * * * (the "plan").

You initially questioned the basis for your authority to require that plan participants furnish you certain information relating to disability, which information was submitted to or issued by the Social Security Administration. You need this information in order to turn over information we require to value benefits as of the date of termination.

The Pension Benefit Guaranty Corporation ("PBGC") takes the position that, because no valuation for purposes of the Valuation of Benefits regulation, § 2610.4(c), 40 Fed. Reg. 57983 (1975), can be performed without this information, you are clearly required as Plan Administrator to submit such information. However, because the Employee Retirement Income Security Act of 1974 does not specifically authorize a Plan Administrator to obtain the information, the Act does not authorize you to compel its release if [*2] a participant refuses to cooperate with your request. If a refusal occurs, you should note the individual's name, the fact that request was made, and any reason given for the refusal.

Your second inquiry concerns the effect of requiring plan participants to requalify for disability retirement under the terms of the plan document. Specifically you asked whether your contemplated review would extend the date of termination and therefore be inconsistent with a proposed termination date of November 22, 1975. Requalification of disability retirees pursuant to the plan provisions would not revive the plan. However, after reviewing the issue with the General Counsel, I caveat that the results of the review would not affect the amount of employer liability established by § 4062, 29 U.S.C. § 1362 (Supp. IV, 1974), which is based on the insufficiency as of the date of termination.

The reasoning supporting the PBGC's policy is that such a reexamination would encourage an employer to pay benefits without proper qualification contrary to the requirements of a plan document; when the employer decided to terminate the plan, to reduce its liability for the insufficiency generated by excessive [*3] payments; and thereby to put the PBGC in the position of defending the propriety of the reduction should a retiree judicially challenge the reduction.

If you determine to extend contributions and accruals until such time as the review were completed, thereby extending the termination date, the foregoing policy considerations would not apply. The decision is yours to make as Plan Administrator: Extension of the plan to reassess the propriety of payments, with an increased insufficiency for continued contributions and accruals (in addition to any penalties provided by the plan document), must be balanced against the reduction in any insufficiency resulting from reduction of benefits to qualifying levels. Under this procedure the employer, which made the reevaluation, properly would be the party against whom a disability retiree would lodge a challenge to any reduction.

I realize that you were without prior knowledge or reason to know of overpayments and want to attempt an in-depth review of payments as part of the certification procedure. However, benefits have been paid out in circumstances wherein the responsible Plan Administrator knew or had reason to know that payees were nonqualifying, [*4] and the PBGC is not authorized at this late date to allow the employer to adjust its liability.

Please telephone me if you have any further questions.

Christine O. Cook

Attorney

Office of the General Counsel