

Pension Benefit Guaranty Corporation

76-116

October 29, 1976

REFERENCE:

[*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate
4062 Liability of Employer in Single Employer Plans

OPINION:

This is in response to your letter of * * * We assume, for purposes of answering the five questions raised in your inquiry, that the subject plan, as of its termination date, will have insufficient assets to pay all guaranteed benefits under the plan.

You asked about the interest rate the Pension Benefit Guaranty Corporation (the "PBGC") currently is using to value plan benefits. Please note that we expect to issue, in the near future, a regulation on the valuation of plan benefits which should give you some guidance on this issue.

You also asked under what circumstances the PBGC will permit the withdrawal of a termination notice. In at least one case we have allowed a plan administrator to withdraw a termination notice on the condition that he furnish us with an affidavit attesting to the fact that (1) all participants will receive full credit, for purposes of benefit accruals and for vesting purposes, for any covered service from the date that accruals and/or vesting were suspended, and that any contributions necessary to cover those retroactive [*2] accruals will be or have been made, or (2) that the plan sponsor has not halted or suspended contributions, accruals, and vesting under the plan, and has no present intention of taking such action. However, we do not have an established policy on this issue.

With respect to your third question, we would like to point out that under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"), when there is an insufficiency or potential insufficiency of assets to pay guaranteed benefits, a trustee is appointed to administer the plan. The PBGC's Board of Directors, upon the recommendation of our Advisory Committee, has adopted a policy that we should become trustee for small (\$10 million or less in plan assets) insufficient terminating plans. As trustee, the PBGC will pay benefits under the plan in accordance with the requirements of Sections 4022 and 4044 of the Act. Thus, although the PBGC has the authority to purchase annuities to provide a plan's guaranteed benefits, it has no present intention of doing so. On the other hand, the employer maintaining a terminating plan that is unable to pay guaranteed benefits as of the termination date, pursuant to Section [*3] 4062 of the Act, is liable (up to the net worth limitations) to the PBGC in an amount equal to the excess of the value of the plan's benefits guaranteed under Title IV as of the termination date over the assets on that date allocable to such benefits. That is, the employer is liable to the PBGC for payments it makes to cover guaranteed benefits. Accordingly, we do not believe that the PBGC will be agreeable should an employer want to purchase annuities to provide a plan's guaranteed benefits in order to satisfy its employer liability under the Act.

If your client amends its plan to convert it into a profitsharing plan this will result in a plan termination under Title IV. Thus, pursuant to Section 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 Section 3(34) of the Act] constitutes a plan termination. The method of paying employer liability you have suggested in question four is an unacceptable procedure for satisfying an employer's liability upon a plan termination under the Act.

Finally, the answer to your fifth question is yes. Liability is determined under Section 4062 irrespective [*4] of the adoption or effective date of the plan.

I hope this information is of assistance to you.

Joseph J. Bryer
Assistant General Counsel