

Pension Benefit Guaranty Corporation

75-92

July 30, 1975

REFERENCE:

[\*1] 4043(b)(3) Reportable Events. Decrease in Participants  
4044 Allocation of Assets

OPINION:

This is in response to your letter of April 21, 1975, wherein you asked, inter alia, whether a reportable event has occurred under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act"), and whether the provisions of § 4044 of ERISA apply in the following situation:

1. An employer has sold one of its divisions. The employees of the sold division were covered under the seller's pension plan. The buyer will not continue the pension plan in effect.
2. The seller's pension plan provides that the sale of one of its divisions under the above circumstances will result in a partial termination of the pension plan with respect to employees in the sold division. In such a case the seller's plan further provides that the share of the plan assets allocable to the employees of the sold division will be distributed to them in the same manner as if the plan had totally terminated.

Section 4043 of ERISA lists reportable events. Three such events may be applicable to the situation described above. The first, which is mentioned in your letter, is contained in § 4043(b)(3) [\*2] of ERISA. It requires notice to the PBGC "when the number of active participants in a plan is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year." If your client's sale of its division results in a reduction in the number of plan participants equal to or greater than that in § 4043(b)(3) of ERISA, a reportable event has occurred.

Section 4043(b)(4) of ERISA may also apply. It requires notice to the PBGC "when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of § 411(d)(3) of the Internal Revenue Code of 1954 . . . ."

Section 4043 reportable events aside, § 4062(e) may also apply to the situation you describe. It requires that an employer who ". . . ceases operations at a facility in any location, and, as a result . . . more than 20 percent of the total number of his employees who are participants . . . are separated from employment . . ." be treated ". . . as if he were a substantial employer under a plan under which more than one employer makes contributions [\*3] . . ." See generally § 4063, 4064, and 4065, cited in § 4062(e). If the division's sale meets the requirements of § 4062(e), the plan administrator should notify this Corporation by letter. See Act, § 4063.

You have also asked whether § 4044 of ERISA applies to the distribution of plan assets upon a "partial" termination. That question, unfortunately, has not been decided. Our present thinking is that § 4044 does govern, and we are actively exploring the matter with officials of the Internal Revenue Service. We hope to have the answer shortly. We suggest you write or telephone this Office in about thirty days so that we can apprise you of the status of the matter at that time.

We have asked officials of the Department of Labor whether, as you ask, the Department requires notice of a partial termination. They have advised us that, at present, no notice is required.

Finally, we regret the delay between your inquiry and this response. That delay reflects our hope, vain, as it turned out, that the question you asked concerning § 4044 could be resolved fast enough for a timely response.

George B. Driesen  
Deputy General Counsel