

Pension Benefit Guaranty Corporation

76-70

May 24, 1976

REFERENCE:

[*1] 4041 Termination by Plan Administrator
4044 Allocation of Assets

OPINION:

This is in response to your inquiry as to whether, and under what conditions the PBGC will not object if the trust under the Plan continues in existence following the termination of the Plan under Title IV of the Act.

As we understand the facts, a small corporation (the "Company") maintains a trustee covered plan (the "Plan") which it intends to terminate on or about September 30, 1976. There are five participants in the Plan, two of whom are former employees with deferred vested rights under the Plan. Two of the three active employee participants are the sole shareholders of the Company. The Plan has sufficient assets to pay at least all nonforfeitable benefits under the Plan.

The PBGC would not object to the continuation of the trust under the following circumstances:

1. Each participant is given the right to elect to receive the benefit, to which he or she is entitled: (a) as a paid-up annuity (b) if provided for in the plan, in a lump-sum payment of the assets allocable to his or her benefit, or (c) through a transfer of the assets allocable to his or her benefit to an individual account plan.

2. The Plan [*2] and trust are amended to establish an individual account for each participant electing to leave his or her allocable share of the plan assets in the trust, under which amendment all subsequent gains or losses in the value of trust assets will be fully allocated among the individual accounts.

3. Prior to making the election, each plan participant is notified in writing of the proposed date of termination of the available election options and the amount of each and that the benefits attributable to the amount transferred to the individual account plan (or any lump-sum payment) are not guaranteed by the Pension Benefit Guaranty Corporation.

4. Each participant completes an Election and Release form which provides:

a) I have been given the right to elect the benefit to which I was entitled as a paid-up annuity or if provided for in the plan, in a lump-sum payment equal to the value of such benefit,

b) Alternatively, I have been given the opportunity to elect to transfer the assets allocable to my benefit to an individual account plan,

c) Prior to making my election, I was notified in writing of the proposed date of termination, of the available election options, the amount of [*3] each, and that the benefits attributable to the amount transferred to the individual account plan or the lump-sum payment are not guaranteed by the PBGC,

d) If I elect to leave my allocable share of the plan assets in the trust, I understand that the amount of the benefit which I will eventually receive will depend on the investment experience of the trust in which the assets are being placed and may have a value greater or less than the present value of the benefit under the Plan to which I am entitled.

e) (For participants electing any form of distribution other than purchase of a fully paid-up annuity) I hereby release and relieve the PBGC, its successors and assigns, of any and all liability to pay me guaranteed benefits under the Plan.

5. A copy of the Election and Release form completed by each participant is forwarded to the PBGC.

6. The plan administrator signs a certificate stating that the foregoing conditions have been complied with. Please note that under this procedure, the PBGC will consider retention in the trust of any plan assets to be a distribution of all plan assets for purposes of Title IV of the Act.

If you have any further questions, please feel free [*4] to call Mr. * * * of my staff at (202) 254-4895.

Henry Rose
General Counsel