

Pension Benefit Guaranty Corporation

77-122

January 11, 1977

REFERENCE:

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

OPINION:

This has further reference to your recent letter and subsequent telephone conversation with * * * of this Corporation's Office of Program Development, concerning the disposition of individual life insurance policies during the period after the date of a covered plan's proposed termination and before its assets have been determined by this Corporation to be "sufficient." Our response only applies to plans funded with individual life insurance contracts, rather than plans funded with group pension contracts.

As we understand the pertinent facts, * * * has issued individual life insurance contracts, each covering a named participant, to a number of plans which are covered under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). These life insurance contracts, held for the benefit of active plan participants, are cancelable by such plans. The individual insurance contracts in such plans are owned by the trustee of each such plan. Some of these covered plans (the "Plans") have submitted, pursuant to Section 4041(a) of the Act, a Notice of Intent to Terminate to the Pension [*2] Benefit Guaranty Corporation (the "PBGC"). As of the proposed termination date of the Plans, no premiums were due on any of the individual life insurance contracts.

You asked which of specified actions you may take with respect to the individual life insurance contracts between the proposed date of termination under Section 4041(a) of the Act and the date on which a Notice of Sufficiency under Section 4041(b) of the Act is issued. We assume that any of the specified actions taken during the aforementioned period will preserve the value of the assets of the Plans, i.e., the value of the Plans' assets will not be diminished. These actions are:

1. Distribute the individual life insurance contracts to the trustees.
2. Transfer the ownership of the contracts to the individual participants after borrowing the entire cash surrender value of each contract and giving the sum of the cash surrender values received to the trustees.
3. Transfer the ownership of the contracts to the employer maintaining the Plan at the time it was terminated after borrowing the entire cash value of each contract and giving the sum of the cash surrender values received to the trustees.

Section 4041(a) [*3] of the Act provides that "for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b)." (Emphasis added). The Congressional Conference Report recommending passage of the Act indicates that the "amount" prohibited by Section 4041(a) from being paid is a benefit under a plan's termination procedure. H.R. Conf. Rep. No. 93-1280, pp. 371-2. The conversion of a plan asset, such as individual life insurance contracts, for value received is not proscribed by Section 4041(a). That is, the conversion of a plan asset from one form (individual life insurance contracts) to another (cash) is permissible prior to the issuance of a Notice of Sufficiency.

Therefore, assuming each individual insurance contract so provides, the PBGC has no objection if the individual life insurance contracts are distributed to the trustees since such action does not represent the distribution of a benefit pursuant to the Plan's termination procedure. Furthermore, since the actions described in paragraphs 2 and [*4] 3, above, which are designed to prevent each participant from losing his or her life insurance protection, represent a conversion of a plan asset and not a benefit distribution pursuant to the Plan's termination procedure, such actions may be taken if the Plan receives the entire value of the individual life insurance contracts, i.e., the cash surrender values and the remaining value of the contracts (such as the amount of the unearned premiums), if any.

The PBGC expresses no opinion concerning the compliance of this procedure with any provision of law other than Title IV of the Act, i.e., the provisions of Titles I and II which are administered by the Department of Labor and the

Internal Revenue Service respectively. Consequently, you may wish to contact these agencies directly to discuss the implications of the proposed actions under Titles I and II.

You also asked whether a plan which has terminated - either by submitting a Notice of Intent to Terminate and being converted by amendment into an individual account plan, as defined in Section 3(34) of the Act, or being converted by amendment into an individual account plan so as to result in a plan termination under Section [*5] 4041(f) of the Act - may transfer the ownership of each individual insurance contract to each named participant prior to receiving a Notice of Sufficiency from the PBGC "if the participants have been given the choice of having the assets of the policy transferred to the new plan, or continuing the policy on a personal basis . . ." This question appears to us to ask whether a participant who has been offered a choice of the form in which his benefit will be paid (satisfied) and has elected to receive his benefit under the terminated plan in the form of an insurance contract, may have that contract distributed to him prior to the time the PBGC issues a Notice of Sufficiency. As mentioned previously, Section 4041(a) of the Act prohibits any distribution of a benefit pursuant to a plan's termination procedure until the PBGC has issued a Notice of Sufficiency. Accordingly, the plan may not transfer ownership of the individual insurance contracts to the participants until the PBGC notifies the plan administrator, pursuant to Section 4041 (b), that "after application of section 4044, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect [*6] to basic benefits"

We hope this information is of assistance.

Henry Rose
General Counsel