

Pension Benefit Guaranty Corporation

91-4

May 3, 1991

REFERENCE:

[\*1] 4041(b) Termination by Plan Administrator. Notice of Sufficiency.  
4062 Liability of Employer in Single Employer Plans.

OPINION:

I write in response to your request for the views of the Pension Benefit Guaranty Corporation ("PBGC") on a plan sponsor's liability under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") for the benefit liabilities in a terminated plan that were provided to plan participants through the distribution of irrevocable commitments purchased from an insurance company. In the situation you describe, several plan sponsors terminated defined benefit plans in standard terminations. Pursuant to ERISA § 4041(b)(3), 29 U.S.C. § 1341(b)(3), the plan administrators distributed plan assets by purchasing irrevocable commitments (annuity contracts) issued by an insurance company. Recently, the insurance company has been placed in conservatorship, and the monthly benefits of annuitants are being reduced by thirty percent. You ask whether the sponsors of the plans in which these annuitants were formerly participants have any liability for these benefits. [\*2]

Under Title IV, termination of a plan that is sufficient for benefit liabilities is completed upon final distribution of plan assets in payment of those benefit liabilities. See generally ERISA § 4041(b) and the regulations issued thereunder. The plan administrator is required, in distributing plan assets, to purchase irrevocable commitments from an insurer to provide the benefit liabilities under the plan, or, in accordance with the provisions of the plan and any applicable regulations, to otherwise fully provide the benefit liabilities under the plan. ERISA § 4041(b)(3). Assuming the plan administrator distributes to participants the correct amount, in the proper form, the terminated plan's benefit liabilities are satisfied for purposes of Title IV. (Similarly, the distribution of plan assets in the correct amount and proper form extinguishes the PBGC's guarantee obligation. n1) Consequently, in the situation you describe, the former plan sponsors of the terminated plans would have no liability, under Title IV of ERISA, for plan benefits that have been satisfied through the purchase of irrevocable commitments. n2

n1 A copy of our opinion addressing PBGC's obligations under Title IV in this situation is attached.

n2 We note, however, that it has been reported in the press that several plan sponsors are nevertheless agreeing to stand behind annuities purchased from the insurance company mentioned in your letter. PBGC believes laudatory actions of this nature should be encouraged. [\*3]

Our view would of course be different if an error was made in the distribution. If a participant did not receive his or her full plan benefit, or was simply missed in the distribution of plan assets, the plan, and therefore the plan sponsor, would continue to be liable. And in the event the error remained uncorrected, the PBGC would ultimately be responsible. See ERISA § 4041(b)(4).

Moreover, the selection of an annuity provider and certain other acts associated with a plan termination are subject to the fiduciary provisions of Title I of ERISA. See March 13, 1986 DOL letter to John N. Erlenborn, 13 Pens. Rep. 472 (BNA) (1986). We do not address issues arising under Title I of ERISA in this letter. Questions relating to liability under Title I should be addressed to the Department of Labor.

Please contact Charles Vernon of my staff if you have further questions about this matter.

Carol Connor Flowe  
General Counsel