

Pension Benefit Guaranty Corporation

75-86

June 12, 1975

REFERENCE:

[*1] 4041 Termination by Plan Administrator
4082(a) Effective Date; Special Rules. Effective Date of Title IV

OPINION:

This is in response to your letters concerning the termination of the above-captioned pension plan. You stated that * * * and * * * reached agreement on a new contract in August 1974, that the terms of the agreement were embodied in a Memorandum of Understanding executed on or about August 12, 1974, that the formal contract was executed shortly thereafter, and that the contract was effective as of May 21, 1974. Pursuant to the terms of the contract, the company's existing tax qualified defined benefit Pension plan was to be terminated on April 1, 1975 and the assets of the plan distributed to the participants in * * * accordance with the terms of the plan. The company would then adopt the provisions of the * * * Pension Fund (a multi-employer plan) and commence contributions to that plan. You stated in a phone conversation with * * * of this office on June 4, 1975 that the original plan was indeed being * * * terminated and assets were to be distributed to participants, and that the plan was not being merged into the * * * plan. You questioned whether, given the fact that [*2] the termination of the first plan was required under the terms of a collective bargaining agreement entered into prior to the enactment of the Employee Retirement Income Security Act of 1974 (the "Act"), the plan termination would be subject to the provisions of sections 4041 and 4062 of the Act.

It appears from the information you have provided us that the first plan is a covered plan under section 4021 of the Act. Therefore, its termination is subject to the provisions of section 4041 and, since it is a portenactment termination, section 4062. This is so despite the fact that the termination results from a contract entered into prior to the enactment of the Act. Pursuant to section 4082(a), the provisions of Title IV take effect on the date of enactment of the Act. There is no exception to this rule with respect to terminations which were planned or contractually agreed to prior to that date. Moreover, Title IV applies to the termination even though the employer is adopting a new pension plan. Thus, all terminations of covered plans on or after September 2, 1974 are subject to Title IV of the Act.

Therefore, pursuant to section 4041, the plan administrator must file a [*3] notice of proposed termination with this Corporation, and the assets of the plan may not be distributed pursuant to the plan termination procedure until this Corporation issues the plan administrator a notice of sufficiency.

Henry Rose
General Counsel