

Pension Benefit Guaranty Corporation

77-170

November 30, 1977

REFERENCE:

[*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate
4041(b) Termination by Plan Administrator. Notice of Sufficiency
4063(a) Liability of Substantial Employer for Withdrawal. Notice of Withdrawal of Substantial Employer
4063(d) Liability of Substantial Employer for Withdrawal. Partitioning of Plan

OPINION:

This responds to your request for a determination by the Pension Benefit Guaranty Corporation (the "PBGC") whether a distribution of certain employee contributions upon an employer withdrawal from the above-named plan (the "Plan") constitutes a violation of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). 29 U.S.C. §§ 1301-1382 (Supp. V. 1975). It is your position that a distribution of assets under the facts in this case does not constitute a Title IV violation.

The Pertinent facts, as we understand them, are as follows. The Plan is maintained by several participating employers pursuant to collective bargaining agreements. Under the Plan, benefits are payable to participants without regard to the withdrawal of their respective employer. During * * *, several employers withdrew participation from the Plan. Because the [*2] affected employers are "substantial" employers within the meaning of § 4001(a)(1), 29 U.S.C. § 1301(a)(1), the plan administrator filed notices with the PBGC in accordance with § 4063(a) of the Act. 29 U.S.C. § 1363(a).

Article * * * of the Plan provides for a return of all mandatory employee contributions, plus interest, to employees who leave covered service under the Plan. You state that the plan administrator has not made such distributions to the participants of the withdrawn employers because of the possible applicability of § 4041(a) which prohibits distributions from a terminating plan before the issuance of a notice of sufficiency pursuant to § 4041(b) of the Act. 29 U.S.C. § 1341.

The provisions of § 4041 are applicable only to plans which have terminated or will terminate subject to Title IV of the Act. Under the facts and circumstances presented here, it appears no termination of the Plan is contemplated. Moreover, the employer withdrawals do not constitute terminations under Title IV because no "spinoffs" of assets and liabilities accompanied by a cessation of employer contributions have occurred. Finally, based on the information that has been furnished, the [*3] PBGC has no present basis for invoking § 4063(d) to partition this Plan and terminate the portions attributable to these withdrawing employers.

Based on the foregoing, we find that the provisions of § 4041 of the Act are not applicable to the instant employer withdrawals from the Plan. Consequently, the return of employee contributions pursuant to Article * * * of the Plan to participants of the withdrawn employers does not constitute a violation of § 4041(a).

We hope this is of assistance.

Henry Rose
General Counsel