

Pension Benefit Guaranty Corporation

78-6

April 5, 1978

REFERENCE:

[*1] 4048 Date of Termination

OPINION:

We are writing to you in your capacity as the plan administrator of the * * * (the "Plan").

On April 18, 1977, the Pension Benefit Guaranty Corporation ("PBGC") received a notice of intent to terminate the Plan, dated April 15, 1977. The proposed date of Plan termination in the notice is January 19, 1977.

Under Section 4041(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1341(a), a plan administrator must propose a plan termination date at least 10 days later than the date of the notice.

However, under 29 C.F.R. § 2604, the PBGC Notice of Intent to Terminate Regulation, incomplete notices are voidable at the PBGC's discretion. In this case, the PBGC will not void the notice because of the error concerning the termination date.

Section 4048 of ERISA, 29 U.S.C. § 1348, provides that a plan termination date may be established by agreement between the PBGC and the plan administrator.

Certain facts have been brought to our attention which support a January 19, 1977 Plan termination. On that date, the Plan's sponsor, * * * filed a petition under Chapter XI of the Bankruptcy Act. On the same day, * * * discharged all its [*2] non-supervisory personnel, causing Plan participation to decrease by approximately 70 percent. Further, notice was furnished to all employees that the Plan would terminate on January 19, 1977. Consequently, no employee expected benefit accruals based on service after that date.

Accordingly, under the facts as they are known to us at this time, the PBGC finds January 19, 1977 to be an acceptable Plan termination date.

Henry Rose
General Counsel