

Pension Benefit Guaranty Corporation

82-28

October 15, 1982

REFERENCE:

[*1] 4041(b) Termination by Plan Administrator. Notice of Sufficiency
4044 Allocation of Assets

OPINION:

This is in response to your letter requesting a ruling from the Pension Benefit Guaranty Corporation ("PBGC") that the method of distribution proposed for the above-referenced defined benefit pension plan ("Plan") is acceptable under Title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. § 1301 et seq. (1976 and Supp. IV 1980).

The Plan was terminated, effective December 10, 1981, in conjunction with a change in the nature of the plan sponsor's retirement program for employees through the establishment of a defined contribution plan. The Plan administrator has received qualifying bids which indicate that the current cash value of the insurance contract used to fund the Plan is adequate to purchase all accrued benefits. Under the terms of the Plan, any excess assets after satisfaction of all liabilities revert to the plan sponsor.

The insurance company has offered to make payments on discontinuance of the group annuity contract over a period of five years which are substantially larger in aggregate than would be available in a single-installment [*2] cash-out of the group annuity contract. To take advantage of the substantially greater amounts available over the five-year term, the Plan administrator has offered participants an election. They may receive a distribution of their benefits in the normal form of a paid-up annuity or in the form of payments over a five-year term to the individual's account in the employer's defined contribution plan. The employer has also waived its right to recover excess assets so that all amounts in excess of allocated benefit payments will be distributed to participants. All participants have taken the five-year payment option. Consistent actuarial assumptions based on PBGC's tables have been used in calculating benefits. We assume all participants will be fully vested in the amount of any "roll-over".

PBGC will consider the election by participants to transfer their benefits to a defined contribution plan under the circumstances described above to be a distribution of all plan assets for purposes of Title IV of ERISA, including the cessation of liability for premiums payable to the PBGC. See PBGC Opinion Letter No. 76-70. Please note that the amount of excess assets allocable to participants [*3] (both active and terminated vested) is determined under 29 C.F.R. § 2618.30-32, 46 Fed. Reg. 49845 (October 8, 1981) (copy enclosed) based on the ratio of an individual's benefits in priority categories 2-6 to total benefits in the same categories, unless the Plan administrator seeks and receives approval of an alternative method.

I trust this will help you.

Henry Rose
General Counsel