

Pension Benefit Guaranty Corporation

80-7

May 21, 1980

REFERENCE:

4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate
4041(c) Termination by Plan Administrator. Inability to Determine Sufficiency
4048 Date of Termination

OPINION:

The above-captioned matter has been referred to the Office of the General Counsel.

The Plan sponsor submitted a Notice of Intent to Terminate dated November 26, 1979, proposing a retroactive termination date of December 31, 1978. On April 8, 1980, you submitted a document designated "Second Amendment to the * * * Inc. Pension Plan" which purports to terminate the Plan effective December 31, 1978.

Section 4041(a) of the Employee Retirement Income Security Act ("ERISA") provides for a proposed date of plan termination no earlier than 10 days after the receipt of the Notice of Intent to Terminate by the PBGC. PBGC received your Notice of Intent to Terminate on November 30, 1979. You have submitted no information to suggest that the * * * termination date for the Plan should be earlier than ten days subsequent to that date, or December 10, 1979.

We are in receipt of your letters dated April 8, 1980 and February 19, 1980. In your letter dated February [*2] 19, 1980, you state that benefit accruals were "deemed" to have ceased for the Plan on December 31, 1978. In your letter of April 8, 1980, you state that the Plan's benefits would be calculated as if accruals had ceased on December 31, 1978 and would be distributed as soon as you had received a favorable determination letter from a District Office of the Internal Revenue Service. You suggest that distribution of plan assets is appropriate since the 90-day period provided in ERISA § 4041(c) has expired; the plan administrator has not received a notice provided therein; and the plan administrator will not agree to an extension of the 90-day period.

Indulging the assumption that the plan sponsor's action in November, 1979 amounted to a plan amendment ceasing accruals after December 31, 1978, PBGC does not agree with your position that benefit accruals may be retroactively reduced for purposes of computing participants' benefits under § 4044 of Title IV of ERISA.

In addition, accrued benefit reductions violate Title I and Title II of ERISA I.R.C. § 411(d)(6); Section 204(g) of ERISA; Treas. Reg. § 1.411(d)-3(b). The only exception to this prohibition is I.R.C. § 412(c)(8), Section [*3] 302(c)(8) of ERISA, which applies to plan amendments enacted during the Plan year in which they are made retroactively effective. Revenue Ruling 79-325. In this connection we refer you to Revenue Procedure 79-18 which requires prior approval by the National Office of the IRS for the I.R.C. § 412(c)(8) amendment before a determination letter qualifying a plan upon termination is given validity.

On the information you have presented to us, the distribution you propose would result in an improperly reduced benefit to all participants of the Plan. In fact, it appears that with the crediting of the proper accruals the plan is insufficient as of the December 10, 1979 date of termination.

A distribution that does not comply with Section 4044 of ERISA violates Title IV of ERISA. PBGC is authorized to redress violations of Title IV of ERISA including violations of Section 4044 of ERISA. Section 4003(e)(1) of ERISA. Further, lump sum distributions from an insufficient plan violate PBGC Reg. § 2605.8(a) except to the extent provided in § 2605.8(b)(1).

* * * is the attorney assigned to this case. He will be contacting you shortly. [*4]

Henry Rose
General Counsel