

Pension Benefit Guaranty Corporation

76-42

March 23, 1976

REFERENCE:

[*1] 4041 Termination by Plan Administrator

OPINION:

This is in response to your letter of February 10 and our telephone discussions of March 1 and 8, 1976, regarding the * * * Pension Plan (the "Plan"). You indicate that the employer, * * * desires to cease employer contributions and benefits accruals under the Plan. Further, you indicate that * * * as plan administrator, intends to terminate the * * * as trustee of the Plan and thereafter hold assets in a wasting trust for the benefit of plan participants.

The Pension Benefit Guaranty Corporation ("PBGC") considers the cessation of contributions and benefit accruals under a plan to constitute a plan termination. Therefore, if the Plan is a plan covered by Title IV of the Employee Retirement Income Security Act of 1974, (the "Act"), the plan administrator must file a notice of intent to terminate with this Corporation. The notice must propose a date of termination which may not be less than 10 days after the filing and, for a period of 90 days after the proposed termination date, the plan administrator shall make no distribution pursuant to the termination unless he receives a notice of sufficiency from this Corporation prior to the expiration [*2] of the 90-day period. See Act § 4041. Further, the notice must be filed in the manner prescribed in the regulations promulgated by PBGC governing procedures with regard to a notice of intent to terminate, Part 2604, Title 29, Code of Federal Regulations, a copy of which is enclosed for your convenience.

The issue of permitting a wasting trust to be maintained by the employer as part of the termination procedure for sufficient plans is presently under review by the Corporation. PBGC has adopted the interim position that wasting trusts are permissible in the case of sufficient plans provided participation by plan participants is wholly voluntary. Accordingly, if a plan participant does not choose to participate in the wasting trust, the Plan must make other arrangements to provide earned benefits to such participant. One arrangement approved in the past by this Corporation is the purchase of a fully paid annuity.

I hope this answers your question. Should you have additional questions, please direct them to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N. W., Washington, D.C. 20006.