

Pension Benefit Guaranty Corporation

76-97

August 3, 1976

REFERENCE:

[*1] 4082(c). Effective Date; Special Rules. Applicability of Title IV to Multiemployer Plan Terminations

OPINION:

The Pension Benefit Guaranty Corporation (hereinafter referred to as the "PBGC") has reviewed the application of * * * (the "Fund") for the discretionary payment of benefits guaranteed under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"), authorized in § 4082(c) of the Act.

The PBGC has determined, for the reasons stated below, that at the present time the basic statutory conditions in § 4082(c) of the Act authorizing the discretionary payment of guaranteed benefits of the Fund are satisfied. Thus, the PBGC has made the critical policy determinations necessary for it to pay benefits under § 4082(c). In order to expedite a final decision on your application, it is necessary to clarify certain points, specifically, (1) the date of termination of the Fund under § 4048 of the Act; (2) the benefit entitlement of plan participants and the value of the Fund's assets as of the date of termination; (3) the amount of employer liability; and (4) the terms of payment of employer liability, worked out in the context of a review by the PBGC of any new defined benefit [*2] plans to which employers might be contributing before their liability for the Fund's insufficiency has been fully paid.

The Fund is a multiemployer plan to which § 4021 of the Act applies. Section 4082(c)(2) of the Act provides that two conditions must be satisfied before the PBGC may exercise its discretion to pay benefits guaranteed under Title IV with respect to a multiemployer plan that terminates on or after September 2, 1974 and prior to January 1, 1978. First, the plan must have been "maintained during the 60 months immediately preceding the date on which the plan terminates." Act, § 4082(c)(2)(A). The Fund has been in effect for more than 60 months prior to the date of termination and therefore § 4082(c)(2)(A) is satisfied.

The second condition under § 4082(c)(2) of the Act is that the PBGC must determine that payments with respect to the Fund will not "jeopardize the payments the Corporation anticipates it may be required to make in connection with benefits guaranteed under this title with respect to multiemployer plans which terminate after December 31, 1977." Act, § 4082(c)(2)(B). Our staff has attempted to project the effect payment of guaranteed benefits provided [*3] by the Fund will have on the PBGC's ability to guarantee benefits of multiemployer plans which terminate after 1977. Although the PBGC is aware of other potential multiemployer plan terminations, there is only one other case in which an application is now pending for discretionary coverage. Thus, the PBGC at present has no substantial basis for a finding that granting payment of benefits under the Fund would jeopardize the PBGC's ability to pay benefits guaranteed under multiemployer plans that terminate after December 31, 1977. Accordingly, the PBGC has determined, based on the data now available, that in view of the estimated amount of funds needed to make payments for multiemployer plans that terminate after 1977 and the expected income of the statutory revolving fund for multiemployer plans, our ability to guarantee benefits provided under multiemployer plans that terminate after 1977 would not be endangered if we were to extend discretionary coverage to the Fund.

Your attention is called to § 4082(c)(4) of the Act, which contains provisions that may limit the amount of benefit payments that the PBGC may make. Under § 4082(c)(4)(C) of the Act, the PBGC may not make payments [*4] pursuant to a discretionary guarantee that are derived directly or indirectly from amounts borrowed from the Treasury under § 4005(c) of the Act. Accordingly, if the PBGC extends discretionary coverage to the Fund and in the future finds it necessary to borrow money from the Treasury in order to meet its guarantee obligations with respect to multiemployer plans, the PBGC will be required to reduce or terminate payment of guaranteed benefits.

Also, the PBGC is required under § 4082(c)(4)(D) of the Act to reduce or cease discretionary benefit payments if necessary "to avoid jeopardizing the ability of the [PBGC] to make payments of benefits guaranteed under [Title IV] in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans." Based on information presently available, we have determined that payments with respect to the Fund would

not necessitate an increase in premiums for multiemployer plans. If discretionary coverage is extended, the PBGC will periodically review the effect of payment of benefits pursuant to § 4082(c)(2) on the PBGC's ability to make payments in connection with post-1977 multiemployer plan terminations [*5] without increasing the premium rates for multiemployer plans.

The PBGC hopes to resolve these matters promptly. Our representatives will contact you to make the necessary arrangements.

Kenneth L. Houck
Executive Director