

Pension Benefit Guaranty Corporation

77-144

May 20, 1977

REFERENCE:

[\*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate

OPINION:

Thank you for your letter of May 4, in which you ask about the disposition of individual life insurance policies held by terminating pension and profit-sharing plans. As you know, the Pension Benefit Guaranty Corporation (the "PBGC") administers Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), which covers most private defined benefit pension plans. This discussion relates only to plans covered under Title IV.

Under § 4041(a) of ERISA the administrator of a terminating covered plan cannot make payments pursuant to the plan's termination procedure during the 90-day period following the plan's proposed termination date, unless the plan administrator receives a notice of sufficiency from the PBGC. Upon receipt of such a notice, the plan administrator must allocate and distribute the plan's assets in accordance with Title IV and the PBGC's implementing regulations.

During the 90-day period, however, the trustees retain responsibility for managing the plan's assets, prudently and with due regard for their fiduciary responsibilities. The decision to invest in individual life [\*2] insurance policies is a question of asset management, as is the decision to convert such investments to cash by taking policy loans.

Under PBGC's proposed regulations for valuing insurance policies that are plan assets, the asset value of an individual life insurance policy will ordinarily be its cash surrender value. Title IV of ERISA does not prevent a trustee from converting such an investment into cash, as long as the asset value is not thereby diminished.

\* \* \* plan may obtain a maximum loan on each participant's individual life insurance policy, and then transfer the policy to the individual. The proceeds of the policy loan and any additional plan assets would be allocated and distributed as required by Title IV. The PBGC believes the procedure you describe is a desirable means to enable participants to retain their life insurance protection. As the full cash value of the insurance policy will be retained by the plan, such a transfer is permissible under Title IV.

You also asked whether the trustee must repay outstanding policy loans before transferring a policy to the covered participant. In fact, as already indicated, the policies can only be distributed to the participants [\*3] prior to an allocation under Title IV if their cash value is retained by the plan. Therefore the trustee should not repay outstanding loans, unless the distribution is made pursuant to the final asset allocation.

Enclosed for your information is a copy of the PBGC's proposed regulation on valuation of insurance contracts. I hope this information is of assistance.

Henry Rose  
General Counsel