Pension Benefit Guaranty Corporation

83-24

October 17, 1983

REFERENCE:
[*1] 4007 Payment of Premiums
4044 Allocation of Assets
29 CFR 2617 Determination of Plan Sufficiency & Termination of Sufficient Plans

OPINION:

You have asked whether the administrator of a terminated pension plan, pursuant to a distribution of the plan's assets, may create a special bank account to hold the benefit entitlements of those participants whom it is unable to contact. We have concluded that, subject to the conditions below and the requirements of other applicable law, the creation of such an account and the payment of lump sum entitlements into it may be consistent with a distribution of assets under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA").

The Pension Benefit Guaranty Corporation (the "PBGC") has published a Regulation Determination of Plan Sufficiency and Termination of Sufficient Plans, 29 C.F.R. Part 2617 (the "Regulation"), which covers the procedure to be followed by a plan administrator that distributes the assets of a terminated sufficient plan.

Section 2617.21 of the Regulation provides that

"[w]ithin 90 days after the date of the Notice of Sufficiency, the plan administrator shall allocate and distribute plan assets in accordance [*2] with [the PBGC's Regulation Allocation of Assets in Non-Multiemployer Plans, 29 C.F.R. Part 2618] by -

(a) Purchasing from an insurer contracts to provide benefits required by § 2617.4(a) [of the Regulation] to be provided in annuity form;

(b) . . ., and

(c) Providing all benefits that are not required by § 2617.4 to be provided in annuity form.

Section 2617.4 of the Regulation requires that participant entitlements under a terminated plan must be paid in annuity form unless either 1) the monthly benefit is less than the smallest monthly benefit amount normally provided by an insurer; 2) the present value of the benefit, determined under applicable PBGC regulations, is $1,750 or less; or 3) the plan provides for an alternative form of distribution, and the plan administrator submits a written statement to the PBGC certifying that, inter alia, the participant elected, in writing, the alternative form of distribution. In a situation such as the one you describe, where the plan administrator is unable to contact a participant to obtain such an election, the third exception does not apply, and thus the participant's entitlement may be paid in a form other than an annuity [*3] only if it is small enough so that one of the first two exceptions is applicable.

You have stated that you have been unable to contact approximately * * * participants for the purpose of making appropriate distributions to them. You have asked whether, in these circumstances, the creation of a special bank account and the payment into it of all benefits payable as lump sums would comply with § 2617.21(c) of the Regulation. We have concluded that § 2617.21(c) does not prohibit distribution in such a manner. Our conclusion is based in part on our understanding that all reasonable efforts to notify participants and beneficiaries of their rights to lump sum payments have been made, that the plan administrator will cooperate with the efforts of any participant or beneficiary who seeks to recover an entitlement after distribution into the special account, that the account will remain in existence for at least the period required by law for trust accounts containing amounts due beneficiaries who cannot be located, and that the expenses and earnings of the special account are to be allocated in a manner consistent with applicable law.

Accordingly, when all lump sum payments to the special [*4] account have been made and all other assets of the plan have been distributed in accordance with the Regulation, the plan administrator may sumbit the appropriate distribution information to the PBGC in accordance with § 2617.23 of the Regulation. Furthermore, the continued existence of the special account will not by itself necessitate the continued payment of premiums to the PBGC under 29

U.S.C. § 1307.

I trust this responds to your inquiry. Please direct any further questions you may have to * * * of may staff at (202) 254-3010.

Henry Rose
General Counsel