

Pension Benefit Guaranty Corporation

89-5

August 1, 1989

REFERENCE:

[*1] >4001(a)(8)>

4041A(f)(1) Multiemployer Termination. Lump Sum Payments
4219(c)(1)(D) Notice & Collection of Withdrawal Liability - Payment on Mass Withdrawal
Notice & Collection of Withdrawal Liability - Payment on Mass Withdrawal

>29 CFR 2648>

>29 CFR 2675.12(c)>

>29 CFR 2676>

OPINION:

I am writing in response to your inquiry about the calculation of reallocation liability under 29 C.F.R. pt. 2648 following the termination by mass withdrawal of a multiemployer pension plan (the "Fund") covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended. You asked the Pension Benefit Guaranty Corporation ("PBGC") to confirm "that pre-retirement spouse and lump-sum death benefits and post-retirement lump-sum death benefits are 'forfeitable' and therefore, not to be included in the valuation of the Fund" under section 4219(c)(1)(D) of ERISA and 29 C.F.R. pt. 2676.

Section 4001(a)(8) of ERISA defines "nonforfeitable benefit" as:

a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this Act (other than submission of a formal application, retirement, [*2] completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this Act or the Internal Revenue Code of 1954.

Death of the participant is a condition of entitlement for each of the three types of benefits you described. Under a terminated plan like the Fund (which never provided for mandatory employee contributions), such benefits are nonforfeitable as of the date of plan termination only if the participant died before that date. Accordingly, the benefits about which you inquire are "nonforfeitable benefits" within the meaning of section 4001(a)(8) only if the participant's death occurred before the date of plan termination. Otherwise, the benefits are forfeitable. (The only exceptions to this principle are certain post-retirement lump-sum death benefits that are derived from a reduction of the participant's annuity benefit. These benefits are like other post-retirement survivor benefits in that nonforfeitability [*3] is dependent on the participant's having become entitled to receive an early or normal retirement benefit.)

Under certain circumstances, section 4041A of ERISA limits the payment of plan benefits to benefits which are nonforfeitable under the plan as of the date of plan termination. Section 4041A(f)(1) of ERISA provides that the PBGC may authorize the voluntary payment of benefits which are not nonforfeitable under the terms of a terminated plan, if the PBGC determines that such payment is not adverse to the interests of the plan's participants and beneficiaries generally and does not unreasonably increase the PBGC's risk of loss with respect to the plan. You have indicated that you have not yet determined whether the Fund will be precluded from paying forfeitable benefits by ERISA section 4041A. For your information, the PBGC has granted blanket approval under section 4041A(f)(1), permitting all terminated plans to pay qualified pre-retirement survivor annuities to the extent otherwise permitted by Subtitle E of Title IV. (See PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal, 54 Fed. Reg. 29,025, 29,029 (1989) (to be codified at [*4] 29 C.F.R. § 2675.12(c).))

I hope this information is of help to you. If you have any additional questions, please contact attorney Deborah Bisco, who is handling this matter. Her telephone number is (202) 778-8824.

Carol Connor Flowe, General Counsel