

Pension Benefit Guaranty Corporation

75-84

August 21, 1975

REFERENCE:

[*1] 4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
4043(b)(6) Reportable Events. Inability to Pay Benefits
4082(c). Effective Date; Special Rules. Applicability of Title IV to Multiemployer Plan Terminations

OPINION:

This Corporation has carefully studied the request of the * * * that we guarantee benefit payments to certain retirees upon the Fund's decision temporarily to suspend those payments. We are concerned about the severe cash shortage facing the Fund and about the hardships retired * * * will suffer if they lose their \$30.00 monthly pensions. But the statute we administer, while giving the Corporation discretion to guarantee some multiemployer plan benefits prior to January 1, 1978, does impose limits upon us. Under the Act, the Corporation has determined, we cannot lawfully grant your application in its present form because the benefit suspension you contemplate is not an insurable event. The Corporation has also determined that the Act does not ordinarily authorize guarantees in a permanent cessation of benefits to a group of plan participants even though that cessation may appropriately be characterized as a "partial termination." Finally, we have concluded that, even [*2] if we had the power to do so we would not, as a matter of discretion, guarantee benefits in that kind of "partial termination" during the § 4082(c)(2), "discretionary," period before the Act's guarantees become generally applicable to multiemployer plans. In light of these determinations, we have decided not to approve your application in its present form but to afford you a reasonable opportunity to amend your request to one for benefits in a full termination. The reasons underlying our substantive determinations follow.

As indicated, we do not believe that a temporary benefit suspension is an insurable event. Rather, it is a "reportable event," see § 4043(b)(6), which authorizes the Corporation to terminate a plan pursuant to § 4042(a). Nor, in our view, are "partial terminations" generally insurable.

Literally, of course, the guarantee provisions of Title IV are not applicable to "partial terminations." On the contrary, where the statute authorizes the payment of benefits, it refers to ". . . a plan which terminates . . ." Act §§ 4022(a); 4082(c)(2). By contrast, in § 4043(b), the statute refers explicitly to both terminations and partial terminations. That section demonstrates [*3] Congress's understanding of the distinction between partial and full terminations and Congress's resort to explicit language to make its purpose clear when it wished to cover both in the same operative section. Furthermore, provisions of the Act other than §§ 4022(a) and 4082(c)(2), (the guarantee provisions) describe and specify the Corporation's response to certain "partial terminations," see § § 4043(b)(3), 4062(e) and 4063. Had Congress intended that partial terminations would be generally insurable, these provisions would not have been necessary.

The statutory purpose generally to limit guarantees to full terminations is not only apparent on the face of the statute; it is also evidenced by the Act's legislative history. Thus, the House version of the Act provided expressly for the payment of guaranteed benefits upon "the complete or partial termination" of plans. H.R. 2, 93d Cong., 2nd Sess. § 403 (February 28, 1974). (Emphasis supplied.) The bill reported by the Senate Committee on Labor and Public Welfare, S. 4, 93d Cong., 1st Sess. § 402(a) (April 18, 1973) provided termination insurance for "complete or substantial terminations." (Emphasis added.) But the [*4] bill adopted by the Senate and sent to Conference provided such insurance only for "a plan which terminates . . ." H.R. 2, 93d Cong., 2nd Sess. § 422(a) (March 4, 1974). It appears that the Conference Committee followed the Senate bill, rather than the House bill, on this point. Thus, we conclude, the Congress considered and rejected a proposal to make partial terminations generally insurable.

We have carefully considered your contention, supported by the view of one authoritative spokesman, * * * that Congress conferred special power upon us to pay benefits in partial terminations in the period before the guarantee provisions become generally applicable to multiemployer plans. The statute does not appear to reflect that view. Indeed, as you are aware, both § § 4022(a) and 4082(c)(2) (which gives PBGC discretion to pay benefits in multiemployer plan terminations prior to 1978) describe the insurable event in precisely the same terms. Accordingly, we have concluded

that § 4082(c)(2) gives us discretion to pay benefits only in "terminations" which would be insured under other provisions of the Act but for the delay imposed by § 4082(c)(1).

Even if we were satisfied that the [*5] broader view of our power under § 4082(c)(2) is correct, as a matter of discretion, we would not pay benefits in multiemployer plan partial terminations under § 4082(c). We do not believe that it would be appropriate to insure plans which terminate now in circumstances in which insurance would have to be denied to plans which terminate after December 31, 1977. In addition, that course might prompt a spate of applications from plans which, rather than revise their benefit structures or increase contributions, as your fund has, will terminate a group of retirees, and apply for insurance on their behalf. We do not believe that, in giving us discretion to pay benefits prior to January 1, 1978, Congress intended thus to enlarge the scope of the multiemployer plan program. Hence, the Corporation has decided not to grant your application in its present form as a matter of discretion, as well as, because the Corporation does not believe that such a course would be lawful.

As we have stated, we will consider an amended application for benefits upon a full termination of the Fund, if you decide to submit such an application. We understand that in deciding upon your next step, it would [*6] be helpful if we responded to that portion of your application which requests a general waiver of employer liability. The Corporation has determined not to grant such blanket waivers. Rather, we will consider each contributing employer's situation separately and grant a waiver of reduce liability where the facts warrant relief. See § 4004(f)(4). If you so request, we will make an advance determination concerning each contributing employer within a reasonable time after you supply the necessary information concerning that employer.

The Corporation's Board of Directors has approved the policies underlying the determinations referred to above. Should you wish to discuss the substance of any or all of these decisions with me and members of my staff in connection with the formulation of amendments to your pending requests, we will be happy to meet with you at your convenience.

Steven E. Schanes
Executive Director