

Pension Benefit Guaranty Corporation

82-10

March 26, 1982

REFERENCE:

[*1] 4001(a)(3) Definitions. Multiemployer Plan
4041A Multiemployer Termination
4203 Complete Withdrawal
4219(c)(8) Notice & Collection of Withdrawal Liability - Cessation of Payments

OPINION:

This is in reference to your Notice of Termination concerning the * * * Pension Plan (the "Plan") and to your telephone conversations with * * * of the Office of the Executive Director. You have asked the Pension Benefit Guaranty Corporation (the "PBGC") to authorize the distribution of all Plan assets in full satisfaction of all nonforfeitable benefits under the Plan. You propose to purchase annuities from an insurance company for all participants, other than for those participants whose nonforfeitable benefit has a value less than \$1750. You propose to make a lump sum payment of the entire nonforfeitable benefit under the Plan to those participants whose nonforfeitable benefit has a value less than \$1750.

As we understand the pertinent facts, the Plan is a multiemployer plan, as defined in section 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended (the "Act"). The Plan has terminated under section 4041A(a)(2) of the Act as a result of the withdrawal of every employer from [*2] the Plan (within the meaning of section 4203) or the cessation of the obligation of all employers to contribute under the Plan ("termination by mass withdrawal"). The date of Plan termination is December 11, 1981. The Plan year is the period of twelve calendar months beginning March 1 and ending the last day of February (Plan, section 1.10).

Section 4041A of the Act governs the payment of benefits to participants in terminated plans. Section 4041A(c) provides that the plan sponsor of a plan terminated by mass withdrawal shall -- "(1) limit the payment of benefits to benefits which are nonforfeitable under the plan as of the date of the termination, and (2) pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity, unless the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan."

PBGC authorization of your proposed distribution in full satisfaction of all nonforfeitable benefits under the Plan is not required. To make your proposed distribution, the plan sponsor of the Plan must determine each participant's entire nonforfeitable benefit under the Plan and must ensure that each participant [*3] receives a distribution in a permissible form for such amount. In this regard, we note that the purchase of annuities from an insurance company in satisfaction of nonforfeitable benefits under a multiemployers plan terminated by mass withdrawal constitutes a permissible distribution of plan assets under section 4041A. Similarly, payment of a lump sum to those participants whose entire nonforfeitable benefit under the Plan has a value less than \$1750 also constitutes a permissible distribution of plan assets under section 4041A.

We note that under section 4219(c)(8) "an employer's obligation to make withdrawal liability payments to the plan ceases at the end of the plan year in which plan assets on hand (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the plan, as determined by the corporation." The PBGC has determined that for purposes of section 4219(c)(8), a distribution of plan assets in full satisfaction of all nonforfeitable benefits under the plan establishes that plan assets on hand (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the plan.

We request that if a distribution is made in full satisfaction [*4] of all nonforfeitable benefits under the plan, that the PBGC be notified, within 60 days thereafter, of the date of the distribution. Please send such notification to the Division of Case Classification and Control, Office of Program Operations (542), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. This notification will enable the PBGC to remove the Plan from the PBGC-1 and premium billing mailing list.

Henry Rose
General Counsel

