

Pension Benefit Guaranty Corporation

75-26

February 10, 1975

REFERENCE:

[*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate
4041(b) Termination by Plan Administrator. Notice of Sufficiency
4044(a) Allocation of Assets. Requirement of Following Statutory Allocation Provisions
4082(b). Effective Date; Special Rules. Applicability of Title IV to Plan Terminations Occurring Between July 1, 1974 and September 2, 1974

OPINION:

This is in response to your request for the position of the Pension Benefit Guaranty Corporation on the appropriate manner of holding or allocating trust funds pending a determination of asset sufficiency under Section 4041(b) of the Employee Retirement Income Security Act of 1974 (the "Act"). We regret that, due to the press of other business, we have not been able to respond until now.

Section 4041(a) of the Act requires that "for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under Subsection (b). Upon receiving such a notice, the plan administrator may proceed with the termination the plan in a manner consistent with this [*2] subtitle." You have filed for coverage pursuant to Section 4082(b) of the Act, which provides for the guarantee of benefits for plans terminating after June 30, 1974 and before the date of enactment of the Act. Pending receipt of a notice of asset sufficiency by the Corporation, distributions of monthly benefits to retirees in pay status prior to termination of the plan is permissible. No distribution pursuant to the termination procedure of the plan, however, may be made. The allocation of assets of plans qualifying for pre-enactment coverage need not be in accordance with the priority categories prescribed by Section 4044 of the Act.

We hope this is of assistance.

Steven E. Schanes

Acting Executive Director