

Pension Benefit Guaranty Corporation

76-13

February 8, 1976

REFERENCE:

[*1] 4082(a) Effective Date; Special Rules. Effective Date of Title IV

OPINION:

This is in response to your letter of January 8, 1976 requesting further information regarding the payment of employee pensions pursuant to the * * *

As you know, the Employee Retirement Income Security Act of 1974 ("ERISA" or "Act") sets forth new legal obligations and requirements in the area of pension law. The * * * Plan was terminated on August 31, 1974, prior to the enactment of ERISA on September 2, 1974. ERISA protections are not available to participants of plans which terminated prior to the enactment of the law. Thus, neither the vesting, funding or insurance provisions of the law are applicable to the * * * Pension Plan.

This means that whatever funds are currently available to pay pensions are the only funds that will ever be available to fund employee pensions, unless * * * decides voluntarily to supplement the funding of the * * * Pension Plan.

The Pension Benefit Guaranty Corporation is not aware of any Internal Revenue Service Ruling which would prevent an employer from terminating a pension plan where there have been employee contributions to the plan. In such circumstances, however, the employer [*2] normally would be constrained to return employee contributions upon termination of the plan.

You are correct in assuming that had the * * * Pension Plan been terminated after the enactment of ERISA, the Act's provisions would have been applicable in this case. The Act's provisions are not retroactive, however, and there was and is no obligation for an employer to continue his plan so that employees would have the benefits of ERISA protections. While the termination insurance provision did have a limited retroactive effect, this effect was limited to certain specific situations. As we discussed in our previous letter, the termination of the * * * Pension Plan did not meet the statutory requirements for pre-enactment termination insurance coverage.

Under the terms of the * * * Pension Plan, employees who withdrew their contributions forfeited their rights to any future pension benefits, even if those benefits were vested (Article VI of Plan Document). You have asked if it is possible for those employees who have withdrawn their contributions to return them to the pension plan and thus receive their pensions. Since PBGC does not have jurisdiction over this plan you should discuss [*3] the return of such contributions with * * * As it is their obligation to administer this Plan, it would be up to them to decide whether or not employees can return their withdrawn contributions to the Plan and receive benefits.

In addition, in your letter of January 19, 1976, you ask why employee contributions are being returned to vested employees. It is our understanding of the state of the law prior to the enactment of ERISA, that participants of terminated plans were only vested to the extent that the plan was funded at the time of termination. Further, a "funded" plan did not mean a plan with sufficient assets to pay all benefits upon plan termination.

I hope this explanation is helpful to you.

Steven E. Schanes
Executive Director