

contributing employer in one or more facilities of such employer before funding of the * * * liabilities * * *

This type of thinking appears to be a throwback to the concept of a partial termination expressed in IRS regulations in language similar to the above-quoted passage. The IRS was concerned that an employer, in anticipation of a complete termination of his pension plan, might engage in a massive discharge of employees—through individual lay-offs or closing down of specific operations—thus increasing the share of the plan assets that would be available for the officers, supervisors, and highly compensated employees. To forestall such action, the IRS introduced the concept of the partial plan termination, which has the effect of vesting all accrued benefits of the employees involved. In a real sense, the concept was introduced as a substitute for reasonable vesting provisions in the plan at a time when vesting through plan provisions was not as common as it is today.

The most baffling difficulties conjured up in connection with a pension guaranty scheme are concerned with the rights of individuals who lose their jobs while the pension plan to which they belonged continues in operation. The job loss could result from the elimination of specific positions or the closing down of an entire plant, division, or subsidiary. The problem, if there is one, is lack of adequate vesting. If the pension rights of the displaced employees were vested, they would retain a claim to benefits enforceable in due course against the assets of the plan. If the plan itself were eventually to terminate with insufficient assets, unsatisfied claims would be met by the guaranty fund. Thus, the definition of the insured event should not be complicated—perhaps to the point of utter uselessness—by an effort to meet another problem that is not an inherent part of the guaranty scheme. The vesting problem would be largely solved if legislative proposals now being readied by the administration were to be adopted. The remaining discussion assumes that any pension guaranty would apply only to benefit claims arising out of a plan that has terminated in its entirety.

The definitional problem would be further simplified if it could be assumed that a plan termination was always an incident to the final dissolution of the sponsoring firm. This, of course, is not the case. Most firms (more than 80 percent according to the BLS study of terminations) continue in full operation, usually in their original form, after terminating their pension plans. In some of these cases (about one-fourth according to the BLS study), the discontinuance stems from financial difficulties. In the other cases a variety of causes may be at work. Some of the more common reasons, other than financial difficulties, why a pension plan might be discontinued are (1) sale or merger of the sponsoring firm, (2) transfer of the employees to another pension plan, (3) substitution of a profit-sharing plan or other form of deferred compensation for the pension plan, (4) closing of a plant or other subdivision that had its own pension plan, and (5) desire of the sponsoring firm to protect or improve its profit position, and (6) mutual agreement by the parties to a collective-bargaining contract. There are undoubtedly cases where the firm ostensibly goes out of business only to reopen under another name or in another form.

There is serious doubt concerning the propriety—and feasibility—of invoking a pension guaranty when the firm that created the pension