

obligations continues to operate in one form or the other. It would clearly be inappropriate to have a guaranty fund assume the unfunded obligations of a plan terminated in order to transfer the employees into another pension plan or a profit-sharing plan, or pursuant to an agreement between the parties to a collective-bargaining contract, presumably to protect or increase cash wages. It would also seem improper to permit a prosperous corporation to slough off unto a guaranty fund the unfunded pension claims of persons who had been employed in a plant or division (with its own pension plan) shut down for presumably sound business reasons. This would have the effect of increasing the labor costs chargeable to the remaining units of the business, an unfortunate but unavoidable consequence. A firm that purchases another should be expected to assume the pension obligations of the acquired firm, the purchase price reflecting the unfunded liabilities. It is recognized that this requirement might force complete dissolution of a firm or one of its subdivisions because of the unwillingness of the prospective purchaser to assume the unfunded accrued pension obligation of the firm to be acquired. Accrued pension benefits should also be protected when two or more firms merge despite the fact that the merger negotiations might be complicated thereby. The guaranty would seem to be justified when the termination was motivated by financial difficulties verified by the administering agency. Yet this would create an unconscionable distinction between participants in pension plans terminated because of financial exigences and those in plans terminated for other reasons, unless the sponsoring firms undertake to honor out of corporate assets the unfunded benefits accrued to date of termination.

The whole matter would be greatly simplified—with some reduction in the attractiveness of qualifying a plan under Treasury regulations—if the guaranty scheme were established on the basis that the sponsoring firm, or its successor, would have the primary legal responsibility of meeting the cost of the benefits covered by the guaranty, the PGF having only the residual liability. Then it would be possible to define the insured event as the complete termination of a pension plan, without reference to the circumstances surrounding the event. If the sponsoring firm had gone out of business, or was in process of doing so, its obligation to the plan (or the PGF) would be discharged to the extent of available resources in a lump-sum payment. If the firm continued in operation, its obligation could be discharged over a number of years in accordance with the pattern prescribed for the funding of the supplemental liability. (See next section.) In the meantime the PGF would stand ready to assume responsibility for any benefits not ultimately funded by the employer. Unless such a feature can be made part of the guaranty arrangement, it would probably be necessary to define the insured event in terms that would limit the guaranty to plan termination arising out of the final dissolution of the sponsoring firm (or its successor), whether by bankruptcy, insolvency, or voluntary winding up.

Special rules would have to be developed for multiemployer plans, since among other distinguishing characteristics, they have an existence apart from that of any particular employer belonging to the plan. In some industries in which these plans are found, such as the building