

Pension Benefit Guaranty Corporation

75-111

December 29, 1975

REFERENCE:

4022(b)(1) & (8) Benefits Guaranteed. Five Year Phase-in of Guarantee

4044(a)(3) Allocation of Assets. Benefits Payable as an Annuity for Three Years Prior to Termination

OPINION:

This is in response to your letter dated November 16, 1975. You ask whether in allocating plan assets pursuant to § 4044 of the Employee Retirement Income Security Act of 1974 ("ERISA"), plan assets would be allocated to non-guaranteed benefits in priority categories 3A and 3B before allocation to guaranteed benefits in priority categories 4 and 5. The answer is yes. Benefits in priority category 5, however, are not guaranteed. Priority category 4A contains "other benefits . . . guaranteed under" Title IV of the Act, § 4044(a)(4). Priority categories 3A and 3B are not limited to guaranteed benefits, but specifically include "benefits payable as an annuity". Priority categories 3A and 3B further provide a method for determining the benefits assigned thereto, but the method set forth contains nothing which would limit such benefits to guaranteed benefits. Accordingly, this office has concluded that the benefits covered in priority categories 3A and 3B include non-guaranteed [*2] benefits.

You also ask whether insurance protection under Title IV of ERISA for increases in vested benefits required by ERISA, Titles I and II would be phased-in over a 60 month period under the provisions of ERISA, § 4022(b)(8). Under the proposed regulation on insurance limits, 40 F.R. 51373-77, Nov. 5, 1974, all increases in the value of plan benefits, including increases due to adoption of plan amendments to comply with ERISA, Titles I and II, are subject to the phase-in required by § 4022(b)(8).

I trust this has been responsive to your inquiry. If we can be of further assistance, please contact us.

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Staff Attorney