

Pension Benefit Guaranty Corporation

76-99

August 5, 1976

REFERENCE:

[\*1] 4044(a) Allocation of Assets. Requirement of Following Statutory Allocation Provisions

OPINION:

This is in reference to your request for a ruling on whether the beneficiary of a death benefit provided by the Plan, whose entitlement to the death benefit arose prior to Plan termination but who has not yet been paid, shares in any way in the income earned by the Plan's trust assets since the date of Plan termination. It is our opinion that such beneficiary may not share in that income.

The death benefit at issue here is a liability of the Plan which arose prior to its termination. Section 5.03 of the Plan provides that the beneficiary is entitled to receive upon the death of the insured participant (1) the face value of the insured participant's life insurance policy, and (2) a portion of the Auxiliary Investment Fund allocable to the insured participant, determined as of the preceding anniversary of the Plan's effective date. Thus, the amount of benefits which such beneficiary is entitled to receive under the terms of the Plan is fixed as of the date of the participant's death and is not dependent on the investment experience of the Plan assets after the death of the insured participant. [\*2]

We are unable to find any provision in the Plan which would require the payment of interest on unpaid death benefits. Furthermore, there is no provision in Title IV of the Employee Retirement Income Security Act of 1974 (hereinafter "Act") which requires that interest be paid on an unpaid liability of the Plan which arose prior to termination. Therefore, neither the Plan nor Title IV of the Act requires that the beneficiary of the unpaid death benefit shares in the income of Plan assets earned after termination or that interest is to be paid on the unpaid death benefit.

This Corporation does not have any objection to the payment of interest in an appropriate case. However, in this case § 14.02 of the Plan provides that the participants are vested upon termination in the entire Auxiliary Investment Fund and any miscellaneous funds held by the Plan's trustees. Thus, any payment of interest from Plan assets on the unpaid death benefit would necessarily diminish the amount of assets available to provide benefits to participants and thereby reduce the amount of benefits to which participants are entitled under the terms of the Plan. Accordingly, in this case we cannot approve the [\*3] payment of interest from Plan assets on the unpaid death benefit.

It is unfortunate that this problem has arisen. However, we note that the death occurred two months before the Plan terminated and could have been paid then. Furthermore, this Corporation has not specifically prohibited its payment; such payment would not have been a payment in accordance with the Plan's termination procedure prohibited by § 4041(a) of the Act during the pendency of the termination notice.

If you should have additional questions, please do not hesitate to contact \* \* \* the attorney assigned to this matter. He can be reached by telephone at \* \* \*

Henry Rose  
General Counsel