

Pension Benefit Guaranty Corporation

91-5

May 14, 1991

REFERENCE:

[*1] >4041(b)(3)(SEPPA A)>
4044(d) Allocation of Assets. Distribution of Residual Assets
>29 C.F.R. 2618>
>29 C.F.R. 2619.26(a)>

OPINION:

Thank you for your recent inquiry concerning the interest rates that must be used to value benefits that are to be distributed in a lump sum following a standard termination. In your letter, you discuss a number of administrative problems that arise when lump sum benefits are to be valued, or re-valued, on the actual date of distribution. You also note that this can cause problems for participants, particularly when an increase in interest rates causes the amount actually distributed to be less than the estimated amount shown in the notice of plan benefits, which is required by law to be issued to participants at least 60 days before the final distribution. Your letter also suggests some possible alternatives for determining the appropriate interest rate for valuing lump sums in order to close out a plan in a standard termination.

Section 2619.26(a) of the PBGC's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) provides that the valuation date for lump sums is the date of distribution. However, parts of this regulation, [*2] including the lump sum valuation date provision, have been superseded by subsequent changes to ERISA and the Internal Revenue Code.

On August 22, 1988, the IRS issued final regulations implementing Code section 417(e), which was added by the Retirement Equity Act of 1984 in part to prescribe permissible interest rates for lump sum distributions from ongoing plans. Treasury Reg. § 1.417(e)-1(d)(3)(i) describes the date for determining the permissible interest rates as --

either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

Subparagraph (ii) of that paragraph generally allows the plan to provide for determining the interest rate as of any other date within 120 days of the annuity starting date.

The PBGC has determined that, if a plan contains a provision that complies with Treasury Reg. § 1.417(e)-1(d)(3), the interest rate for a lump sum paid on the date of distribution in a standard termination is determined by reading "date of distribution" where "annuity starting date" appears in that provision. If the plan does not contain a provision that complies with the Treasury Regulation, [*3] the interest rate must be determined as of the date of distribution.

The PBGC attempted to make this point on page 8 of the instructions to the standard termination package. As Linda Mizzi of my staff discussed with you in your recent phone conversation, we will rework these paragraphs to make them clearer when we next revise the package.

In your letter, you also ask whether a certain post-termination allocation of trust earnings to participants would be acceptable to the PBGC. If any residual assets attributable to employer (not employee) contributions remaining in the plan after satisfaction of all benefit liabilities may revert to the employer in accordance with ERISA section 4044(d), the PBGC takes no position on how such assets should be allocated among participants if the employer elects instead to distribute such residual assets to participants. If such residual assets may not revert to the employer, § 2618.32(a) of the PBGC's regulation on Allocation of Assets in Non-multiemployer Plans (29 CFR Part 2618) requires that the residual assets be allocated to eligible participants according to the ratio of the value of each participant's benefit liabilities to the total value [*4] of benefit liabilities in the plan.

I hope this information will be helpful to you in closing out plans terminating in a standard termination.

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