

Pension Benefit Guaranty Corporation

91-2

February 1, 1991

REFERENCE:

[\*1] >4001(a)(8)>  
>4041A(c)(1)>  
4041A(f)(1) Multiemployer Termination. Lump Sum Payments.  
>29 CFR § 2675.12(c)>

OPINION:

You have asked for written information concerning questions posed by your constituent, \* \* \*, in a letter to Mr. James B. Lockhart, III, Executive Director of the Pension Benefit Guaranty Corporation ("PBGC"), a copy of which was sent to you. Your letter was referred to this office, and we apologize for our delay in replying.

\* \* \* letter to Mr. Lockhart concerns an amendment to eliminate certain preretirement survivor annuity ("QPSA") benefits from the Teamsters Local \* \* \* Pension Plan \* \* \* is apparently requesting PBGC approval, under 29 C.F.R. § 2675.17, for the payment of benefits not otherwise permitted under the law and regulations applicable thereto, as discussed below. Accordingly, \* \* \* letter has been referred to our Corporate Policy and Research Department, which considers such requests for exceptions. We will send you a copy of our determination letter, when completed.

The correspondence forwarded by you to us also includes a letter from your constituent, \* \* \*, concerning the amendment eliminating the QPSA and asking [\*2] for information about the PBGC and "vested" benefits. As we understand the facts, the QPSA was eliminated for participants who had not died as of the plan termination date; \* \* \* husband, \* \* \*, was a participant who die on \* \* \*, after the plan termination date; and \* \* \* would have been entitled to receive a survivor annuity beginning on or after \* \* \*, if the plan had not been amended. We hope the following information, giving an overview of the PBGC and of the applicable law, will be of use to you in responding to \* \* \*.

The PBGC is an independent United States government agency established by Congress under the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") to ensure the payment of certain basic pension benefits in private pension plans. The agency is administered by a Board of Directors consisting of the Secretaries of Labor, Treasury, and Commerce, with the Secretary of Labor as Chairman. The Secretary of Labor has delegated the administrative responsibilities of the agency to the Executive Director. In administering the insurance program, the agency is aided by a 7-member Advisory Committee appointed by the President of the United States, the members [\*3] of which represent labor, management, and the general public.

Under ERISA, the PBGC operates two separate insurance programs - the single-employer program and the multiemployer program. The insurance programs are financed through premiums paid by covered pension plans, amounts paid as employer liability when underfunded plans terminate, and income on the investment of those amounts. All administrative costs, including the salaries of agency employees, are paid with agency funds; no taxpayer moneys are used by the agency.

The plans that are covered by the PBGC insurance programs, the circumstances under which a covered plan may terminate, and the manner in which a plan completes the termination are set forth with specificity in ERISA. As a part of its statutory duties, the PBGC interprets the rules for terminating plans and exercises oversight over the operation and closeout of those plans.

The Teamsters Local \* \* \* Plan is a multiemployer plan that is covered by the PBGC multiemployer insurance program. The plan was terminated on \* \* \*, under section 4041A(a)(2) of ERISA by a mass withdrawal of all employers. According to \* \* \* letter, the actuarial valuation for the Teamsters [\*4] Local \* \* \* Plan at \* \* \*, shows that the plan's assets are insufficient to pay the plan's nonforfeitable benefits. According to the Summary of Material Modification dated \* \* \*, the plan sponsor amended the plan to eliminate the QPSA from the plan.

ERISA sections 4041A(c)(1) and 4041A(f)(1) provide that the sponsor of a plan terminated by mass withdrawal may pay only benefits that were nonforfeitable on the date the plan \* \* \* terminated, unless the PBGC authorizes the payment

of other benefits. The PBGC may authorize the payment of benefits other than nonforfeitable benefits only if it determines that the payment "is not adverse to the interest of the plan's \* \* \* participants and beneficiaries generally and does not \* \* \* unreasonably increase the [PBGC's] risk of loss with respect to the plan." Further, if a plan sponsor finds, at the end of any plan year, that the terminated plan's assets are not sufficient to pay when due all of the plan's obligations with respect to nonforfeitable benefits, the plan sponsor must amend the plan to reduce benefits. See, ERISA § 4281(c).

"Nonforfeitable benefits" are not the same as "vested benefits." Benefits become "vested" when a plan participant [\*5] has completed the required number of years of service under the plan, and "vesting" means simply that the participant has the right to receive a retirement benefit even if he or she leaves the service of the employer before retirement age. A benefit, even though "vested", is not considered to be "nonforfeitable" until the participant has met all the plan's requirements for that particular benefit. ERISA section 4001(a)(8). Forfeitability is determined as of the plan's termination date. ERISA section 4041A(c)(1). In the case of a death benefit such as the QPSA in the Teamsters Local \* \* \* Plan, the benefit does not come within the statutory definition of "nonforfeitable" unless the participant died before the plan termination date.

As noted above, ERISA section 4041A(c)(1) generally precludes the payment of nonforfeitable benefits, such as a QPSA for participants who are alive on the plan termination date, without PBGC approval granted pursuant to section 4041A(f)(1). In its regulations, the PBGC has given a blanket approval permitting all terminated plans to pay QPSA's with respect to participants who die after the plan termination date unless, and until, the plan sponsor finds [\*6] that the plan's assets are insufficient to pay nonforfeitable benefits. See, Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal, 54 Fed. Reg. 29025, 29026 (July 11, 1989) (codified as 29 C.F.R. Part 2675); 29 C.F.R. § § 2675.12 and 2675.22. Under the regulations, after determining that plan assets were insufficient to pay for all nonforfeitable benefits, the plan sponsor was required to eliminate that benefit from the Teamsters Local Plan.

Under section 2675.17 of PBGC's regulation, however, upon written application by the plan sponsor, the PBGC may authorize the payment of additional benefits if it finds that the proposed payment meets the conditions in ERISA section 4041A(f)(1). As noted above, we are treating \* \* \* letter as a request for PBGC approval under the regulation of payment of the QPSA benefits and have referred his letter to the appropriate department for its consideration.

We hope this information is helpful to you. If you have any questions, please telephone Renae R. Hubbard of my staff at 202-778-8823.

Carol Connor Flowe  
General Counsel