

Pension Benefit Guaranty Corporation

76-58

April 29, 1976

REFERENCE:

[*1] 4022(a) Benefits Guaranteed. Type of Benefits Guaranteed

OPINION:

This is in response to your letter of December 19, 1975, and subsequent telephone conversations with * * * of my staff, concerning the * * * and * * *. You asked this Office to determine whether the * * * Plan and the * * * Plan (collectively, "the Plans") are subject to the plan termination insurance provision of the Employee Retirement Income Security Act of 1974 (the "Act"); in your opinion, they are not.

Both Plans provide for voluntary employee participation with each participant electing to have a specified amount deducted from his paycheck and credited to his account in either or both of Fund A and Fund C (differing only as to investment media). Income, gains and losses of Fund A and Fund C are allocated to each participant's account. Upon termination of participation for any reason, each participant receives the number of shares of McDonnell Douglas Common stock attributable to him and/or the current dollar balance of his account. Any benefit in the latter form, at a participant's option, may be in the form of an annuity purchased by his employer with the cash the participant otherwise would receive. In my opinion, [*2] the Fund A/Fund C features of the Plans constitute individual account plans as defined in Section 3(34) of the Act and, as a consequence, are not covered by the plan termination insurance provisions of the Act.

Both Plans also provide for additional benefits, from Fund B, to be funded solely by employer contributions. Such contributions to Fund B are required to be made from time to time to fund all payments to participants (from Fund B) on an actuarially sound basis and to provide for payment of all expenses of administering the Plans. Benefits from Fund B are a percentage (50% upon normal, early or disability retirement, death, joining the armed forces or certain layoffs or employer initiated terminations of employment and 25% for any other termination of participation) of the employee's actual contributions to Fund A and Fund C. The * * * Plan, in addition, provides (upon normal, early or disability retirement, death, joining the armed forces or certain layoffs or employer initiated terminations of employment) for a benefit equal to the product of \$5.00 and the number of months of participation in the * * * Plan. Any benefit payable from Fund B, at a participant's [*3] option, may be in the form of an annuity purchased by his employer with the cash the participant otherwise would receive.

Subject to specified limitations, Section 4022 of the Act requires this Corporation to guarantee, upon the termination of a covered plan, all the basic nonforfeitable pension benefits provided under such a plan. To be guaranteed, a benefit provided under a plan generally must be, inter alia, payable in periodic installments and designed to provide income for the life of the participant or for his beneficiaries. (See, Regulation on Guaranteed Benefits, Part 2605, Chapter XXVI, Title 29, Code of Federal Regulations.) The Fund B features of the Plans are not so designed and, therefore, the benefits provided there-under are not guaranteeable under Section 4022 of the Act. Inasmuch as the benefits provided under the Fund B features of the Plans are not guaranteeable by this Corporation under Section 4022 of the Act, the Fund B features also are not subject to the plan termination provisions of the Act.

You have advised * * * that premiums for the Plans were paid to this Corporation for the plan years beginning on December 1, 1975. In view of my conclusion [*4] that the Plans are not covered by the plan termination insurance provisions of the Act, this Corporation will refund the amount of premiums paid.

Henry Rose
General Counsel