

Pension Benefit Guaranty Corporation

76-31

March 3, 1976

REFERENCE:

[\*1] 4044 Allocation of Assets

OPINION:

This is in response to our recent conversation in which you expressed the view that all \* \* \* Plan participants currently eligible to elect early retirement benefits should be put into pay status as of November 6, 1975, the date the \* \* \* Pension Plan terminated. In support of this view, you cited Article XIV, Section 4(c)(iv) of the Plan which provides:

(c) In the event that the Plan shall be terminated by an Employing Company, or there shall be a complete discontinuance of Employing Company contributions, the assets then remaining in the Retirement Fund attributable to such Employing Company shall be applied in the following order, among the Plan membership of such Employing Company, all persons in each class being entitled to their respective proportionate shares:

(iv) Provision to Participants who shall at that time be entitled to retire early, and to vested Participants to the extent of their vesting, and their respective contingent annuitants and beneficiaries, of the remainder of the benefits to which they shall be entitled or contingently entitled under the Plan;

The Plan section cited above provides for the allocation of Plan assets upon the termination [\*2] of the \* \* \* Pension Plan. This provision is superseded by section 4044 of the Employee Retirement Income Security Act of 1974 ("ERISA" or "Act"), which prescribes the asset allocation priorities upon the termination of a defined benefit plan. As you may know, section 4044 provides for the allocation of plan assets upon termination of a defined benefit plan; it does not, however, allocate assets to individuals, per se. Thus, the present value of all benefits in each category is ascertained as of the date of the plan termination. This, of course, includes benefits which are not being paid on the date of termination. The value of plan assets as of the termination date is also determined. The necessary amount of plan assets are then allocated or "reserved" to provide for the benefits in each category. Since a participant may have benefits in different priority categories, it is possible that plan assets may prove insufficient to provide for all of an individual's benefit under the plan. Of course, PBGC pays for all insured benefits in each category which are not covered by plan assets.

Basically, the allocation of a plan's assets upon termination is not synonymous with [\*3] an individual's immediate entitlement to receive the benefit that those assets have been allocated to provide. Thus, where a plan provides for deferred, vested benefits, plan assets (where sufficient) will be allocated to provide those benefits. Participants, however, will not be entitled to receive those benefits until a later date. Furthermore, different participants will be entitled to receive their benefits on varying dates, as governed by the applicable plan and statutory provisions.

Under the \* \* \* Plan, participants with early retirement benefits currently in pay status, will continue to receive their benefits, to the extent that there are sufficient Plan funds and to the extent that such benefits are guaranteed by PBGC. Those participants who are entitled to elect early retirement may do so upon application pursuant to Article XI, Section I of the Plan. Those participants may also elect to avoid the benefit reduction attendant upon the commencement of early retirement benefits.

\* \* \* has asked me to respond to some of the questions that have been addressed to him by \* \* \* According to information provided by \* \* \* there are Plan participants who have been on sick leave [\*4] due to disability for a period of time of less than two and one-half years prior to the termination of the Plan. Article III, Section 2 of the Plan provides that a participant may earn Credited Service for any period of not "less than 2 1/2 years." Since the participants in question do not have the requisite 2 1/2 years as required by the \* \* \* Plan, there can be no crediting of the time for Credited Service purposes. \* \* \* has also asked if it is permissible to use the benefit formula contained in the prior \* \* \* pension plan where that formula would provide a larger benefit to the participant. A participant's benefit entitlement is governed by the terms of the \* \* \* Plan to which he belongs, except where limited by the Act. Thus, a participant's benefit is determined by the benefit formula set forth in the current \* \* \* Plan. Article V, Section 2 provides, inter alia, that "the benefits specified in Section (1) above shall in no case be less than the benefit which would have been payable

if the Pre-Existing Plan had been continued without change." Since the pre-existing plan had no provision for either early retirement or deferred vested benefits, benefits provided in the current [\*5] Plan will be greater in such situations. Thus, the only time that the application of the formula contained in the pre-existing plan could have any effect upon the amount of a participant's benefit is where a participant takes a "Normal" retirement or where he retires under the "Nudge" provisions of the current Plan.

It also appears that there is still some question regarding the Nudge provisions of the Plan. Nudge benefit payments are not guaranteed by PBGC. Such benefits will only be paid to the extent that there are Plan assets available.

I hope this explanation and these answers will prove helpful to you. Should you have any further questions please do not hesitate to call me. \* \* \* will continue as the Case Officer on this matter and participant and non-legal questions should, of course, be directed to him.

It was pleasant speaking with you again and I apologize for the delay in sending a formal, written response to your questions.

Staff Attorney  
Office of the General Counsel