

Pension Benefit Guaranty Corporation

76-73

June 2, 1976

REFERENCE:

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

OPINION:

In response to your request the Pension Benefit Guaranty Corporation (the "PBGC") has reviewed its determination that the severance benefit provided by * * * (the "Plan") is not a benefit guaranteed under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). We have reexamined the information upon which the PBGC's initial decision was based in light of your presentation at our meeting of May 17, 1976. As a result of this review, the PBGC has reaffirmed its prior determination.

The Plan provides that an employee with five or more years of credited service who terminates employment for any reason is eligible for a severance benefit in lieu of all other benefits under the plan. The benefit is computed by accumulating an annual service credit at 2% interest compounded annually and the full amount is payable upon application by the former employee. The severance benefit also functioned, in part, as a post-retirement death benefit.

As you know, a pension plan may offer a variety of nonforfeitable benefits, which a participant will receive if there are sufficient funds available in the plan to pay for [*2] those benefits. Under Title IV of the Act, the PBGC guarantees the payment of certain pension benefits after termination of a plan to which Title IV applies, but the statute does not authorize the PBGC to guarantee payment of all vested benefits provided by a covered plan. See Act, § 4022(a).

The PBGC Regulation on Guaranteed Benefits, 40 Fed. Reg. 43509 (1975) (the "Regulation"), states that to be guaranteed by the PBGC, a benefit must qualify as a pension benefit, the participant must be entitled to it, and it must be nonforfeitable, as those terms are defined in the Regulation. If a participant of the Plan terminated employment with five or more years of credited service, the severance benefit is a nonforfeitable benefit to which the participant is entitled. However, the benefit is not a pension benefit and therefore is not guaranteed.

A pension benefit is defined as "a benefit payable as an annuity, or one or more payments related thereto . . ." Regulation § 2605.2. Here, the severance benefit is payable only as a lump-sum, and that lump-sum is not related to the Plan's normal retirement benefit payable as an annuity. The benefit is payable upon termination of employment [*3] and not deferred until retirement age. In short, the severance benefit did not provide a pension upon retirement; it provided a lump-sum payment upon termination of employment or death.

We regret that as a result of the Plan's termination without sufficient funds to cover all vested benefits, participants will not receive their severance benefit. However, the PBGC is precluded by § 4022(a) of the Act from paying such benefits.

Henry Rose
General Counsel