

Pension Benefit Guaranty Corporation

76-85

June 21, 1976

REFERENCE:

[*1] 4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
4022(b)(1). Benefits Guaranteed. Five Year Phase-in of Guarantee
4022(b)(8). Benefits Guaranteed. Five Year Phase-in of Guarantee.

OPINION:

This is in response to your letter raising certain questions regarding PBGC's payment of benefits provided by the * * * Supplemental Retirement Plan.

As you may know, under the terms of the Plan, as participants's benefit is calculated on the basis of the final ten-year average of a participant's salary. A participant is entitled to 1/4 percent of that final average for each year of service between age 25-45; for service between ages 45-65 a participant receives 1 1/4 percent for each year of service. Benefits are calculated in this fashion for those participants who are entitled to a deferred, vested benefit, commencing at normal retirement age.

Participants who elect early retirement (including those persons who retire pursuant to the Plan's Nudge provision) have their benefits calculated in a slightly different manner. Benefits are projected on the basis of service to normal retirement age and reduced for each year of retirement prior to age 65. In addition, election of an immediate early [*2] retirement benefit further reduces the benefit amount. Mr. * * * has asked whether benefits calculated pursuant to the early retirement formula will be guaranteed. While it is permissible to calculate benefits in this manner, it should be kept in mind that PBGC does not guarantee benefit amounts excess of the amount accrued for normal retirement. This means that any portion of the benefit amount calculated pursuant to the early retirement formula which exceeds the benefit amount accrued for normal retirement will not be guaranteed.

A review of the * * * Plan shows that Nudge benefits in pay status on the date of Plan termination are guaranteeable-type benefits. Since Nudge benefits are calculated in the same manner as early retirement benefits, that portion of the benefit which is not in excess of the benefit amount accrued for normal retirement will be guaranteed. In addition, that portion of the benefit amount attributable to the use of a less than ten-year final average salary, will also be guaranteed, if it does not exceed the benefit amount accrued for normal retirement.

We have examined the August 26, 1975 Minutes of the Board of Director's Meeting of * * * and the Retirement [*3] Plan Administrative Board's decisions dated November 5, 1975, in order to determine whether benefits under the Plan's Nudge provision granted to participants who remained with * * * until November 6, 1975, are guaranteed by PBGC. It appears from the August 26, 1975 Minutes that an attempt was made to induce persons to remain with * * * until the final adjudication of bankruptcy by amending the Plan to provide that the Nudge formula would be applicable to persons who refrained from retiring until the bankruptcy adjudication, which was also the date of the termination of the plan.

Section 4022(b) of ERISA provides that:

"(1) Except to the extent provided in paragraph (8) -

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(8) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of -

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) \$20 per month, multiplied [*4] by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect."

Thus, the expanded Nudge benefits, provided by any such Plan amendment would be subject to the statutory limitation on the guarantee of benefits, precluding PBGC from paying such benefits.

It further appears that such Nudge benefits only became "nonforfeitable" by reason of the happening of the same event which effected the termination of the Plan, i.e., the adjudication of * * * bankruptcy. The Retirement Plan Administrative Board had determined the * * * adjudication of bankruptcy would terminate the Plan. By the terms of the Plan amendment, it was only the adjudication of bankruptcy and the attendant termination of the Plan which created an entitlement to receive Nudge benefits in those persons who remained in * * * empl until the adjudication. Section 4022(a) of ERISA provides that:

". . . the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when § 4201 applies to it." (emphasis added)

Thus, [*5] PBGC is precluded from guaranteeing any Nudge benefits to which participants are entitled by virtue of the termination of the Plan.

The statutory limitation on the guaranty of benefits, quoted above, also controls the issue of participants with deferred, vested benefits receiving the actuarial equivalent of that benefit prior to attaining 65 years of age. Pursuant to the terms of the * * * Plan, a participant with a deferred, vested benefit, upon reaching the age of 60, may, with the Consent of the Administrative Board, commence the actuarial equivalent of his benefit prior to his normal retirement date at age 65.

This statutory limitation on benefit guarantees is embodied in our regulation on "Guaranteed Benefits", 29 C.F.R., Part 2605, 40 FR 13509 (Sept. 22, 1975). Section 2605.3 of the regulation provides:

". . . the PBGC will guarantee the amount, as of the date of plan termination, of a benefit provided under a plan to the extent the benefit does not exceed the limitations in the Act and in § 2605.4 of this part, if -

(a) The benefit is nonforfeitable under § 2605.6 . . ."

Section 2605.6 provides:

"(a) For the purposes of this part, a benefit payable with respect to a [*6] participant is considered to be nonforfeitable, if on the date of termination of the plan the participant has satisfied all of the conditions required of him under the provisions of the plan to establish entitlement to the benefit, except the submission of a formal application, retirement, or the completion of a required waiting period."

In order for a participant with a deferred, vested benefit to have a nonforfeitable, and thus guaranteeable, benefit of the actuarial equivalent of the normal retirement date benefit to commence prior to age 65, he must have fulfilled the Plan requirements of having attained 60 years of age and of having obtained the consent of the Administrative Board prior to the termination of the Plan.

In prior letters, you had requested that benefit payments for all participants commence as of November 6, 1975, the Plan's termination date. Our letter to you of March 3, 1976 explained that Plan provisions require an application prior to payment of benefits and that Section 4044 of the Act does not entitle participants to immediate benefit payments as of November 6, 1975. The same reasons apply to a benefit commencement date of December 1, 1975.

The issues [*7] involved in the termination of the * * * Plan and the payment of benefits pursuant to Title IV of ERISA are complex. It is hoped that this letter will answer the questions that you have raised. If you feel that a meeting is necessary in order to further clarify the matters discussed above, please contact Mrs. * * *

Henry Rose
General Counsel