

Pension Benefit Guaranty Corporation

77-133

February 18, 1977

REFERENCE:

[\*1] 4044(a)(2) Allocation of Assets. Accrued Benefit Derived from Participant's Mandatory Contributions

OPINION:

You have requested a ruling on whether employer contributions made pursuant to a salary reduction plan constitute mandatory contributions by participants for purposes of the allocation priority in § 4044(a)(2) of the Employee Retirement Income Security Act of 1974 ("Act"). If they do not, you request a ruling on whether certain benefits provided by that plan, discussed more fully below, are to be allocated to the priority category in § 4044(a)(5) of the Act.

For purposes of the allocation priority in § 4044(a)(2) of the Act, § 4044(b)(5) of the Act defines mandatory contributions as follows:

"The term 'mandatory contributions' means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions."

Section 2006 of the Act provides that contributions to a salary reduction plan in existence on June 27, 1974, such as your client's plan, are to be treated at the present time as employer contributions for tax purposes. [\*2]

Accordingly, for purposes of § 4044(a)(2) of the Act employer contributions to a salary reduction plan in existence on June 27, 1974, will not be treated by the PBGC at the present time as mandatory contributions by participants within the meaning of § 4044(b)(5) of the Act.

You have indicated that your client's plan provides that participants with fewer than ten years of service at the time their employment with the employer ceases are to receive an immediate cash payment equal in amount to the total of the salary reduction contributions that have been made on their behalf plus interest thereon. You request a ruling whether such cash payment is a benefit which is to be allocated to the fifth priority category in § 4044(a)(5) of the Act if employer contributions to your client's plan are not treated as mandatory contributions by participants.

Based on the information you have presented, it appears that such cash payment is a benefit which is nonforfeitable under the terms of the plan. It further appears that the benefit is not guaranteeable by this Corporation because it is not related to an annuity. Guaranteed Benefits Regulation, 29 CFR Part 2605. Accordingly, it appears [\*3] that such cash payment is a benefit which is to be allocated to the fifth priority category in § 4044(a)(5) of the Act. Allocation of Assets Regulation, 41 Fed. Reg. 48494 (Nov. 3, 1976).

We trust that this satisfactorily answers your inquiry. Should you have additional questions, please do not hesitate to contact \* \* \* the attorney assigned to this case, who can be reached by telephone at \* \* \*

Henry Rose  
General Counsel