

Pension Benefit Guaranty Corporation

79-2

February 6, 1979

REFERENCE:

4022 Benefits Guaranteed  
29 CFR 2605. Guaranteed Benefits  
4044 Allocation of Assets

OPINION:

This is in response to your request for a ruling on sample election forms which you propose to distribute to each individual who was eligible for pension benefits under the \* \* \* Pension Plan (the "Plan").

The facts, as we understand them, are as follows. \* \* \* (the "Company") and Local \* \* \* AFL-CIO (the "Union") executed a pension agreement establishing the Plan in 1968. The Company closed its plant at. \* \* \* on January 14, 1977, and all participants in the Plan were severed from employment on that day. A Notice of Intent to Terminate the Plan as of February 28, 1977, was received by the pension Benefit Guaranty Corporation ("PBGC") on February 18, 1977.

The Plan (Article II) provides a normal retirement benefit for employees with fifteen years of credited service who are at least age 65, an early retirement benefit for employees with twenty years of credited service who are between ages 55 and 65, and a deferred retirement benefit for employees who are not eligible for normal or early retirement benefits but who have ten years of credited service and are no older than [\*2] age 65.

The Plan (Article VII) also states that unless an employee declines, a lump sum severance benefit will be paid directly by the Company for employees with at least five years of credited service who are not eligible for an immediate pension under the Plan. The Plan (Article II, § (7)) states that any employee who receives a severance award is not eligible for a retirement benefit. Under the present plan document, only persons entitled to a deferred vested benefit could elect the severance benefit and forfeit a pension.

The Company, pursuant to an agreement negotiated with the Union, wishes to offer those participants eligible for normal and early retirement benefits the option of electing a severance payment in lieu of their normal or early retirement benefit. The benefit would be paid in a lump sum, although the Plan does not offer normal or early retirement benefits in that form. In addition, deferred vested participants would have the option to elect the lump sum severance benefit under the terms of the Plan. Each participant would be asked to make a written election of benefits which would also hold harmless the Company, the Union and the PBGC. The election forms [\*3] you submitted, accordingly, would permit employees to elect severance benefits not only in preference to deferred vested benefits, but also in preference to immediate pension benefits.

Since the Plan does not provide for a severance benefit option for those participants eligible for normal or early retirement, the offer of a severance benefit election to such participants would be contrary to the terms and a violation of Section 4044 of Title IV of the Employee Retirement Income Security Act of 1974 which directs the method of allocation of plan assets. Of course, no such objection attaches to benefit election by deferred vested participants that is provided by the Plan.

With respect to your request for our comments on the proposed election form, the PBGC will neither approve nor disapprove the language of the proposed election form. However, the option labeled "Election of Severance Payment" should clearly indicate that the participant is electing to receive a severance payment from the company, and that by making this election the participant understands that he is not entitled to receive the vested benefit which he would otherwise be entitled to receive under the terms of the [\*4] Pension agreement. Furthermore, the same option should clearly indicate both the dollar value of the severance benefit and the method whereby the benefit is computed.

The views expressed in this letter, relate only to Title IV of the Employee Retirement Income Security Act of 1974 and are expressed on behalf of this Corporation only. The consequences of this transaction under the Internal Revenue Code and under Title I of the Act are, of course, matters of concern to the Internal Revenue Service and the Department of Labor. We do not purport to speak on their behalf.

Finally, please note that this agency is the Pension Benefit Guaranty Corporation.

Henry Rose  
General Counsel