

Pension Benefit Guaranty Corporation

75-33

December 22, 1975

REFERENCE:

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

OPINION:

This letter will confirm our telephone response to your letter of August 23, 1975, wherein you ask three questions: (1) whether the Pension Benefit Guaranty Corporation (hereinafter the "PBGC") will guarantee "basic" benefits promised in the \* \* \* Employees' Retirement Plan (hereinafter the "Plan") in the event the Plan terminates without sufficient assets to pay those benefits; (2) whether the death benefits provided by Sections 11.1 and 11.2 of the Plan would be guaranteed by the PBGC; and, (3) whether participants in the Plan may receive benefits thereunder prior to reaching the age of 65 should the PBGC terminate the Plan.

Section 4021(a) of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act") provides mandatory coverage of pension plans which are tax qualified and not excluded under § 4021(b) of the Act. Based on our examination of the Plan document submitted, we believe that the Plan is not excluded under § 4021(b) of the Act and would therefore be covered for insurance purposes, provided it "is, or has been determined . . . to be, a plan described in . . ." § 401(a) (2) of the Internal Revenue [\*2] Code. Act § 4021(a) (2). See Id., § 4022.

In answer to your question about coverage of death benefits, whether the PBGC will guarantee death benefits provided in Sections 11.1 and 11.2 of the Plan depends upon the circumstances. An annuity payable pursuant to Sections 11.1 and 11.2 of the Plan to the surviving beneficiary of a participant who died before the Plan terminates will be guaranteed by the PBGC up to the statutory maximum. See Act § 4022(b) (3), Guaranteed Benefits Regulation 29 CFR § § 2605.2, 2605.4(a) (1), (a) (2) (i) and (b). Death benefits for surviving beneficiaries of a participant who died before retirement but after the Plan terminates would not be guaranteed by the PBGC. Id., § § 2605.5(a) and 2605.6(a). However, where a retired participant dies after Plan termination, the death benefit provided in the Plan would be guaranteed. See Id., § § 2605.2, 2605.3 and 2605.6.

With respect to your last question on early retirement, the PBGC will guarantee the payment of early retirement benefits to participants pursuant to the Plan provided that on the date of Plan termination, each participant has satisfied all Plan requirements except the submission [\*3] of an application, actual retirement, or the completion of a required waiting period. Id., § 2605.6(a). The amount of benefit that is guaranteed by the PBGC under early retirement provisions cannot exceed the amount which is actuarially equivalent to a straight life annuity based on credited service on the date of Plan termination payable at the normal retirement age of 65. Id., § 2605.4(a) (1).

We hope that we have answered your inquiry. Should you have further questions, please feel free to write us.

George B. Driesen  
Deputy General Counsel