

Pension Benefit Guaranty Corporation

78-24

October 27, 1978

REFERENCE:

[\*1] 29 CFR 2605. Guaranteed Benefits  
4022(a) Benefits Guaranteed. Type of Benefits Guaranteed  
4044 Allocation of Assets

OPINION:

This is in response to your letter requesting reconsideration of our opinion of May 23, 1978, concerning the treatment to be accorded benefits payable to the beneficiaries of \* \* \* We stated that \* \* \* death benefit must be treated as a liability that arose prior to the plan termination and as such is payable out of plan assets prior to the allocation of assets under Section 4044 of the Employee Retirement Income Security Act ("ERISA"). We have considered the arguments raised in your letter of June 19, 1978, but must reaffirm our earlier opinion.

You have characterized the death benefit here as an annuity that is subject to the limitations applicable to guaranteed benefits. Section 2605.3 of the regulations provides that a benefit is guaranteed if (a) the benefit is nonforfeitable; (b) the benefit qualifies as a pension benefit; and (c) the participant is entitled to the benefit. The \* \* \* death benefit is not guaranteed because it does not qualify as a pension benefit. Section 2605.2 defines a pension benefit as "a benefit payable as an annuity . . . which payments [\*2] . . . provide a substantially level income to the recipient." The thrust of the guaranteed benefits regulation is the protection and maintenance of nonforfeitable retirement income for participants and their dependant survivors. Most pension plans are built around a level annuity commencing at retirement and payable for the life of the participant. Some plans, however, have provisions (e.g., integrated benefits) or retirement options (e.g., joint and survivor annuities) that result in payments that are not level over the lifetime of the participant. The definition of a pension benefit in the final regulation reflects these plan variations by providing for "substantially" level income.

The fundamental concept of a guaranteed benefit is that of a life income for a retired participant. Survivor benefits are guaranteed if they relate to the retired participant's pension benefit. Some plans provide that if a participant dies prior to retirement, the survivor is entitled to a pension. If such death benefits are in pay status when the plan terminates, they are guaranteed. Similarly, a disability benefit is guaranteed because it provides income maintenance for a participant. Payments [\*3] in a lump-sum (or substantially so) provide no assurance of on-going income and therefore do not conform to the fundamental concept of a guaranteed benefit. The \* \* \* death benefit was payable, at the election of the employer, in a lump sum or in up to five annual installments. While such payments might meet the regulation's definition of an annuity, they were not intended as maintenance income for the recipients and certainly do not provide a substantially level income for the beneficiaries. The payment terms were simply an administrative and financial convenience for the employer.

You further contend that the \* \* \* benefit, whether or not it is guaranteed, is subject to the Section 4044 allocation. According to your analysis of ERISA's legislative history, the only permissible reduction of plan assets before application of the allocation rules is "for investment liabilities such as mortgages and commercial borrowings."

Section 4044(a) provides that, in the event of the termination of a defined benefit plan, the assets of the plan that are available to provide benefits shall be allocated among the participants and beneficiaries of the plan in accordance with defined priorities. [\*4] The phrase "available to provide benefits" is not further defined in the statute, and the legislative history provides only limited guidance in interpreting the phrase. However, references to plan liabilities in the legislative history indicate that assets needed to satisfy obligations that arose prior to the plan's termination are not to be considered available for allocation on the date of termination. It is our view that benefits due before the date of termination are such obligations and must be met from plan assets before the Section 4044 allocation. \* \* \* died two years prior to the proposed date of termination of the \* \* \* (the "Plan"). Subsection 6.4 of the Plan's Death Benefits section provides that if a participant dies prior to retirement but after reaching retirement age, his beneficiaries would receive the actuarial reserve of his retirement income. Thus, at death, a liability arose against the Plan for a fixed amount

(i.e., his actuarial reserve) and the Plan assets needed to satisfy that liability should have been earmarked. The fact that the Plan Administrator chose to pay the death benefit in installments rather than in a lump sum does not change the nature [\*5] of the liability.

It is, therefore, our opinion that the assets needed for the \* \* \* benefit are not "available to provide benefits" and must be deducted from the Plan's assets before the Section 4044 allocation is undertaken. We understand that the litigation regarding the \* \* \* life insurance benefit has been settled. The parties have agreed that \* \* \* already received by the beneficiaries shall be credited against the death benefit. Thus, the amount still owed the beneficiaries by the Plan is to be reduced by \* \* \*

Please do not hesitate to contact us if you have further questions or comments.

Mitchell L. Strickler  
Deputy General Counsel