

Pension Benefit Guaranty Corporation

84-3

February 14, 1984

REFERENCE:

[*1] 4043(a). Reportable Events. Requirement of Notice
4043(b)(7) Reportable Events. Substantial Owner Distributions
29 CFR 2615 Reporting & Notification Requirements for Reportable Events

OPINION:

This is in response to your request for an advisory opinion as to whether annuity payments to a substantial owner by an ongoing plan which will total \$10,000.00 or more within successive 24-month periods during the substantial owner's lifetime must be reported to the PBGC anew for each such 24-month period.

In your letter you state that in settlement of the substantial owner's request for a lump sum distribution from the * * * Pension Benefit Plan (the "Plan"), the substantial owner's retirement benefit will be provided as follows: 1) assignment of life insurance policies on the substantial owner's life (which have been held by the plan) with a cash value of \$28,000.00; 2) a monthly annuity of \$1,151.60; 3) a \$10,000.00 payment on * * *, * * * and * * *. You state further that after the distribution of the life insurance policy and the first \$10,000 payment unfunded vested benefits of the Plan would be approximately \$100,000. The settlement has been reported to PBGC as a reportable event under Section [*2] 4043(b)(7) of the Employee Retirement Income Security Act of 1974 ("ERISA"); 29 U.S.C. § 1343(b)(7).

Section 4043(b)(7) as interpreted in 29 C.F.R. § 2615.18(a) requires that distributions to a participant who is a substantial owner be reported to PBGC if (1) the distributions have a value of \$10,000 or more within a 24-month period; (2) the distributions are not made due to the participant's death; and * * * (3) immediately after the distributions, the plan has * * * nonforfeitable benefits which are not funded. Under § 4043(a) of ERISA such a reportable event must be reported to the PBGC within 30 days after the plan administrator knows or has reason to know that the reportable event has occurred. Under 29 C.F.R. § 2615.18(b) the 30 day notice requirement is waived unless: (1) the substantial owner receives a distribution, or distributions, of \$10,000 or more within a 12-month period; and (2) the amount distributed exceeds the amount of the maximum guaranteeable benefit for a substantial owner for the year in which the distribution or last distribution in a series was made. The conditions for waiver are not met in this case.

As indicated above, PBGC has been notified that there [*3] will be annuity payments to the substantial owner during his lifetime which will be in excess of \$10,000 for successive 24-month periods. In our view 29 C.F.R. § 2615.18(a) was not intended to require the filing of repetitive reportable event notices with respect to subsequent 24-month periods in which such payments are made.

I hope this information is of assistance to you.

Henry Rose
General Counsel