Pension Benefit Guaranty Corporation

77-162

August 30, 1977

REFERENCE:
[*1] 4022 Benefits Guaranteed
29 CFR 2605. Guaranteed Benefits

OPINION:

This responds to your various inquiries to the Pension Benefit Guaranty Corporation (the "PBGC") whether certain pension plan benefits may be paid in a lump sum upon the termination of the above-named plan (the "Plan"). We conclude that the benefits in question are guaranteed under Title IV of the Employee * * * Retirement Income Security Act (the "Act") and would be included in the allocation of assets required under § 4044 of the Act. Therefore, the benefits in question may be paid in a lump sum only upon receipt of a notice of sufficiency from the PBGC. The reasons for this determination follow.

As we understand the pertinent facts, a portion of a prior profit-sharing plan was merged with the Plan sometime in * * * The Plan is a defined benefit plan within the meaning of § 3(35) of the Act. Under the Plan, former participants in the profit-sharing plan were guaranteed their "profit-sharing benefit" from the prior plan. That benefit is identified in § 1.01.(i) of the Plan as a participant's balance under the profit-sharing plan as of * * * plus interest compounded at the annual rate of 5% from such date to the date [*2] of benefit payments under the Plan. Accordingly, the "profit-sharing benefit" is a definitely determinable benefit.

In * * *, the remaining employees at the * * * facility of the * * * were * * * separated from service. Thereafter, on * * * the Plan terminated.

Under the terms of the Plan a participant entitled to a * * * profit-sharing balance may receive this benefit in the form of an annuity or "optional retirement benefit" following prior written application by him and approval by the employer. See, Plan § 5.05.

As you know, the PBGC guarantees the payment of certain benefits upon termination of a pension plan covered by Title IV of the Act. The PBGC regulation on guaranteed benefits, 29 CFR § 2605, states, that to be guaranteed, a benefit must (1) be "nonforfeitable" (2) the participant must be entitled to the benefit within the meaning of 29 CFR § 2605.5 and (3) the benefit must qualify as a "pension benefit" within the purview of 29 CFR § 2605.3(b).

In the instant case, the "profit-sharing benefit" is a "nonforfeitable benefit" to which participants are entitled because the participants have satisfied all conditions required under the Plan to establish an entitlement [*3] to the benefit. See 29 CFR § § 2605.6, 2605.6.

The benefit is also a "pension benefit" as defined by 29 CFR § 2605.1. A "pension benefit" is ". . . a benefit payable as an annuity, or one or more payments related thereto . . . ." See, 29 CFR § 2605.1. Because the Plan provides for the * * * optional annuity benefit in lieu of the profit-sharing * * * benefit, the profit-sharing benefit is related to an annuity and therefore a "pension benefit" within the meaning of 29 CFR § 2605.1. Accordingly, because the profit-sharing benefits meet the requirements of 29 CFR § 2605, they are guaranteed under Title IV of the Act.

The guaranteed benefit regulations provide that the PBGC will not guarantee or pay a lump sum benefit as such, but will instead pay the alternative annuity benefit under the Plan. See, 29 CFR § 2605.8. Accordingly, if the Plan is insufficient, the "profit-sharing benefit" guaranteed by PBGC may not be paid as a lump sum.

We hope this has been of assistance to you. If you have any additional questions, please do not hesitate to contact * * * the attorney assigned to this matter, who can be reached at the above address or by telephone at * * *

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