Pension Benefit Guaranty Corporation

85-18

July 24, 1985

REFERENCE:
[*1] 4219(c)(3) Notice and Collection of Withdrawal Liability. Annual or Quarterly Payment Schedule

OPINION:

On January 4, 1985, we wrote to you expressing our opinion as to the correct interpretation of certain provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") about which you had raised questions. Our opinion was published as Opinion Letter 85-1. We have decided that we should clarify some statements in our opinion because they may be misleading.

One of the questions you raised concerned the meaning of the phrase "equal installments" in ERISA section 4219(c)(3). We opined that withdrawal liability payments made more or less frequently than quarterly should have a present value equal to the present value of the quarterly payments called for by the statute. To illustrate this concept, we gave an example in which the annual withdrawal liability payments were $12,000 and the quarterly payments under section 4219(c)(3) were accordingly $3,000. We then discussed a monthly payment schedule and made the following statements:

". . . Since the payments would be more frequent than quarterly, the amount of each monthly payment would be reduced by an appropriate interest [*2] factor. Instead of paying exactly $1,000 each month for three months to yield a quarterly payment of $3,000, the employer would pay somewhat less than $1,000 each month so that the present value of the stream of monthly payments is equal to the present value of a stream of quarterly payments of $3,000 each.

"Similarly, to the extent the employer made payments less frequently than on a quarterly basis, the amount of each individual payment would be increased by an appropriate interest factor."

These statements assume that the quarterly payments would be made at the end of each quarter, and that the monthly payments (made during the quarter) would thus result in the plan's receiving payment in advance. Similarly, they assume that payments made less often than quarterly would be made in arrears. Typically, however, the situation is the reverse. The first monthly payment will be made on the date when the first quarterly payment would have been due, and the plan will thus receive payment in arrears. On the other hand, if payments are less frequent than quarterly, the first payment will be more than the plan would have received on the same date under a quarterly schedule, [*3] so the plan will be getting paid in advance.

Whether payments to be made other than quarterly should be reduced or increased to make them actuarially equivalent to the quarterly payments specified in the statute depends not on whether they are more or less frequent than quarterly but on whether they result in the plan's receiving payment earlier or later than it would have on a quarterly schedule.

Accordingly, we are revising that portion of Opinion Letter 85-1 quoted above to read as follows:

". . . If the first monthly payment in each quarter were to be made on the date when the quarterly payment for that quarter would otherwise have been due, the plan would be receiving payment more slowly than under a quarterly schedule. Instead of paying exactly $1,000 each month ($3,000 per quarter), the employer would pay somewhat more than $1,000 each month so that the present value of the stream of monthly payments is equal to the present value of a stream of quarterly payments of $3,000 each.

"Similarly, suppose that the plan rules called for semi-annual payments. If the payment for each six-month period were to be made on the date when the first quarterly payment for that six-month [*4] period would otherwise have been due, the plan would be receiving payment more quickly than under a quarterly schedule, and the employer would pay somewhat less than $6,000 each six months."

I hope this makes our earlier opinion letter clearer. If you have any questions about this letter, please call or write * * * of our Corporate Policy and Regulations Department. * * * telephone number is * * *.

Edward Mackiewicz
General Counsel