

Pension Benefit Guaranty Corporation

89-6

August 8, 1989

REFERENCE:

[*1] 3(34) Definitions. Individual Account Plan Definitions. Individual Account Plan
4021(a)(2) Plans Covered. Tax Qualification by IRS Determination Plans Covered. Tax Qualification by IRS
Determination
4021(b)(1) Plans Covered. Individual Account Plans. Individual Account Plans
4022(b)(1) Benefits Guaranteed. Five Year Phase-in of Guarantee Benefits Guaranteed. Five Year Phase-in of
Guarantee
4022(b)(7) Benefits Guaranteed. Effect of Tax Disqualification Benefits Guaranteed. Effect of Tax Disqualification
>29 CFR 2613.8>

OPINION:

I write in response to your letter requesting that the Pension Benefit Guaranty Corporation ("PBGC") issue a determination concerning the continued coverage of the above-referenced pension plan (hereinafter the "Plan"), under the plan termination insurance provisions of Title IV of the Employee Retirement Income Security Act of 1974, as amended (hereinafter "ERISA"), 29 U.S.C. 1301 et seq. (1982). You amended your original defined benefit plan, which provided for a retirement benefit based on final average monthly salary, so that it is what you describe as a "cash balance" plan (you also provide materials using the terms "cash account [*2] plan" or "general account balance plan"), which provides for a retirement benefit expressed as an account balance. The original plan provided that a participant was entitled to a monthly pension benefit at age 65 equal to the difference between: (1) 2% of final average monthly salary times the participant's years of service and (2) 1-3/4% of the participant's primary Social Security benefit times the participant's years of service. The new Plan provides that a participant's account will be credited with an annual credit equal to 9% of the excess of: (1) the participant's compensation over (2) 12.5% of the contribution and benefit base determined under section 230 of the Social Security Act. The account will also be credited with an annual interest credit of 1% less than the average rate of interest on certain U.S. Government securities, applied to the full amount of the account balance. You have stated that the initial balance under the new Plan will be equal to the actuarial present value of the participant's benefit under the prior Plan, as of the effective date of amendment.

Based on the information provided in your letter, as well as other information you have provided, including [*3] the determination letter issued by the Internal Revenue Service with respect to the Plan, the 1986 Actuarial Valuation of the Plan, revised portions of the Actuarial Valuation, and a copy of the Retirement Plan for Employees of * * *, it appears that, subject to the reservations below, the Plan is covered by the plan termination insurance provisions of Title IV of ERISA.

Section 4022 of ERISA provides, in pertinent part, that the PBGC shall guarantee the payment of all nonforfeitable benefits under a single-employer plan which terminates at a time when ERISA Section 4021 applies to it. Section 4021(a)(2) of ERISA provides that plans which have been determined by the Secretary of the Treasury to meet the requirements of Section 401(a) of the Internal Revenue Code of 1954 are generally covered. You have provided the PBGC with an IRS determination letter which states that your Plan met the requirements of § 401(a) of the Internal Revenue Code. Your Plan therefore appears to meet the requirements of Section 4021(a) of ERISA.

As you have noted, exceptions to this broad coverage are set forth in Section 4021(b) of ERISA, which provides that: "This section does not apply to any plan [*4] -- (1) which is an individual account plan as defined in paragraph (34) of section 3 of this act . . ." Section 3(34) of ERISA defines an individual account plan or a defined contribution plan as:

. . . a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(Emphasis added.) The term "individual account plan" refers to a plan in which the level of benefits for each

employee may fluctuate up or down depending on the experience of the account. In your Plan, the level of benefits is apparently fixed by a formula and is not dependent on the actual experience of each separate account; the interest rate is not tied to the actual investment performance of the Plan's assets, but is based on specific provisions in the Plan document. Therefore, on the basis of the information you have supplied, it appears that the Plan is covered by the plan termination insurance provisions of Title IV of ERISA.

We cannot, however, determine [*5] as yet the extent to which the Plan's benefits will be guaranteed by the PBGC pursuant to the limitations set forth in § 4022(b) of ERISA. As you have noted, Guaranteed Benefits, 29 C.F.R. § 2613.8, provides:

If a benefit which is guaranteed under this part is payable in a single installment or substantially so under the terms of the plan, or an option elected under the plan by the participant, the benefit will not be guaranteed or paid as such, but the PBGC will guarantee the alternative benefit, if any, in the plan which provides for the payment of equal periodic installments for the life of the recipient.

Although the plan provides for optional form of payment as a lump sum in Section 6.4 of the Plan, PBGC does not guarantee the lump sum value of participants' benefits; PBGC guarantees only straight life annuity payments. Furthermore, PBGC's guarantee of plan benefits which are increased by amendment of the plan is subject to phase-in over 5 years; see Section 4022(b)(1) and (7) of ERISA, 29 U.S.C.A. § 1322(b)(1) and (7). We do not in this letter address to what extent the conversion of the Plan effected an "increase in the amount of a benefit" which would be subject [*6] to phase-in.

We also do not address issues arising under Titles I and II of ERISA in this letter. Questions relating to Titles I and II of ERISA should be addressed, as appropriate, to the Department of Labor or to the Internal Revenue Service.

I hope this response has been helpful to you. If you have any further questions concerning this matter, please contact Karen Utiger, the staff attorney assigned to this case, at the above address or at (202) 778-8823.

Carol Connor Flowe, General Counsel