

Pension Benefit Guaranty Corporation

77-148

June 23, 1977

REFERENCE:

[*1] 4041 Termination by Plan Administrator
4044 Allocation of Assets

OPINION:

This responds to *** inquiry, as modified by *** letter and accompanying memorandum, concerning the form in which benefits will be distributed under the Retirement Pension Plan for Employees of *** (the "Plan").

*** states in his memorandum that your client, the Plan sponsor and administrator, proposes to offer to all participants, whether or not they are in retirement status as of the date of termination,

the option of receiving their distribution (1) by the purchase of an insurance company annuity, (2) by receiving in a lump sum an amount equal to the full present value of the pension, or (3) by receiving monthly over a period of five years an amount equal to the full present value of the pension.

You request that the Pension Benefit Guaranty Corporation (the "PBGC") authorize your client to implement this proposed distribution even though it does not comply with the requirement set forth in Paragraph 3 of the Plan Administrator's Certification of Sufficiency. Paragraph 3 states that "[e]ach participant or beneficiary in pay status has had or will have his or her benefit provided through a full paid-up [*2] annuity contract from an insurance company."

The proposed distribution implements Section X of the Plan, which provides that upon termination and liquidation of the Plan, the Plan's benefit liabilities

... shall be satisfied, upon the direction of the Pension Committee ... in the manner set forth in clause (a) or (b) below or by a combination thereof:

(a) By distribution of the allocated amounts of each Member and his beneficiary and contingent annuitant in cash, in one lump sum or in installments with interest for not more than five (5) years; or

(b) By the purchase of annuity contracts providing the retirement benefits to which Members and their beneficiaries and contingent annuitants are entitled under the Plan; such annuity contracts to be of such type as the Pension Committee shall determine, provided, however, that in no event shall such annuity contracts provide for guaranteed annuity payments for a period exceeding the life expectancy of the Member or 20 years, whichever is the longer.

Upon termination of a pension plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"), a participant's benefit payable as an annuity under [*3] the provisions of a plan must be distributed in the form of an insured annuity, unless the participant elects an optional form of benefit distribution provided under the Plan. In the present case, the Plan explicitly provides that upon termination and liquidation of the Plan, a retiree may be offered optional forms of distribution as alternatives to an insured annuity. Accordingly, the requirement set forth in Paragraph 3 of the Certification of Sufficiency does not apply in the present case. Enclosed is a modified Certification of Sufficiency for your client's signature.

Based on the above, in addition to offering to each participant the option of receiving guaranteed benefits in the form of a paid-up insured annuity, the Plan also may offer to each participant the optional forms of benefit distribution that are provided by the Plan. Prior to making an election, each participant must be notified in writing that if he elects to receive his benefit other than as an annuity, the benefit will not be guaranteed by the PBGC.

I trust this is of assistance. If you have any further questions please do not hesitate to call *** of my staff, at **
*

Henry Rose
General Counsel

