

Pension Benefit Guaranty Corporation

75-23

March 11, 1975

REFERENCE:

[*1] 4022(b)(8). Benefits Guaranteed. Five Year Phase-in of Guarantee.

OPINION:

This is in further response to your inquiry regarding the interpretation of Section 4022(b)(8) of the Employee Retirement Income Security Act of 1974, which prescribes the method of phasing-in benefits in existence for less than five years.

The Corporation has identified three potential ambiguities within the language describing the rule and we invite your comments regarding our tentative thinking on them.

Regarding the determination of the first year a benefit has been in effect, the statutory language is quite clear and prevails over arguable conflicts in the legislative history. The 12 months following the later of the plan (or amendment) adoption date or effective date constitutes the "first year" to which the phase-in formula is to be applied.

Recognizing an otherwise potential defeat of the very purpose of phasing-in benefits, we are inclined to interpret the rule as requiring that all benefit increases within a 12-month period be treated as a single benefit increase for purposes of applying the \$20.00 per month limitation in Section 4022(b)(8)(B). Thus a series of amendments within a calendar year would [*2] be cumulated and viewed as a single amendment to the plan for this purpose.

Finally, the 20-percent limitation in Section 4022(b)(8)(A) is to be applied after the Section 4022(b)(3) limitation on the total benefit guarantee is applied to the benefits. Again, this construction of the statutory language is believed to best adhere to the congressional intent and the concept that the rule of one of "phasing-in" benefits.

We apologize for the delay in responding to your inquiry and welcome your views on our tentative approach to the phase-in rule.

Henry Rose
General Counsel