

Pension Benefit Guaranty Corporation

77-131

February 11, 1977

REFERENCE:

[*1] 4067 Arrangements for Payment of Employer Liability
4062 Liability of Employer in Single Employer Plans

OPINION:

This has reference to your letter of * * * concerning the above-mentioned plan (the "Plan"). Your letter was in response to our letter of * * * rejecting your proposal of * * * on behalf of * * * (the "Company"), for payment of its employer liability of * * * plus any outstanding liability of the Plan for services rendered thereto.

You inquire what criteria the Pension Benefit Guaranty Corporation (the "PBGC") applies in making arrangements, pursuant to Section 4067 of the Employee Retirement Income Security Act of 1974 (the "Act"), for the deferred payment of employer liability arising under Section 4062 of the Act.

It is the position of the PBGC that we will exercise our authority under Section 4067 of the Act in appropriate cases. Employer liability payment terms are arranged on a case by case basis after liability is asserted under Section 4062 of the Act. We will allow deferred payments only where a showing is made of hardship or necessity that, in our judgment, make it equitable and appropriate. We regard such deferred payments as a limited accommodation to an employer [*2] whose circumstances are such as would make immediate payment a hardship and whose borrowing capacity through ordinary commercial channels is not adequate to finance the liability.

Moreover, as we have previously indicated to you, interest at an appropriate rate will be charged on the outstanding principal amount of the liability.

Our present policy with respect to both immediate and deferred payment of employer liability arising under Section 4062 is to accept payment only in the form of cash.

If you can provide us with financial information concerning the Company and all trades or businesses (whether or not incorporated) under the same common control, as defined in 26 CFR Part 2612, 41 FR 12302 (March 25, 1976), with the Company, which could document the Company's hardship or necessity for deferred payments, we would review any such documentation. We also would be pleased to discuss with you any such documentation we would need. Please contact * * * to arrange for a meeting to discuss our payment term criteria, specific payment terms, hardship documentation and any other matters you may wish to raise at this time.

Henry Rose
General Counsel