

Pension Benefit Guaranty Corporation

77-135

March 9, 1977

REFERENCE:

[*1] 4022(b)(1) & (8) Benefits Guaranteed. Five Year Phase-in of Guarantee
29 CFR 2621 Limitation on Guaranteed Benefits

OPINION:

This is in response to your inquiry in the above matter.

You indicate that the Plan has been amended to vest all participants in the amount of their accrued benefits to the extent funded as of December 31, 1974, on which date accruals ceased (by reason of an earlier plan amendment). Plan benefits will continue to be funded in accordance with the minimum funding requirements of the Employee Retirement Income Security Act of 1974 (the "Act"). The amendment was necessary to maintain the continued tax-qualification of the plan, which, by reason of the cessation of accruals, is treated as "curtailed" by the Internal Revenue Service. You ask whether the cessation of accruals constitutes a termination under Title IV of the Act.

The cessation of accruals does not constitute a termination under Title IV of the Act on the basis of the above-stated facts.

You ask whether any increase in vested benefits arising as a consequence of the amendment, which was required by the IRS, is guaranteed under Title IV of the Act and, if so, whether this is an increase in the plan benefits [*2] or a new benefit, and, thus, subject to the phase-in requirements of Sections 4022(b)(1) and (8) of the Act.

Any increased vesting in the accrued benefits which became effective as of the date of accrual cessation is guaranteeable under Title IV of the Act. However, such increased vesting attributable to the amendment is a benefit increase, the guarantee of which is subject to phase-in under Sections 4022(b)(1) and (8) of the Act [See 29 C.F.R. § 2609.]. The phase-in of a benefit increase commences on the later of its effective date or adoption date. Here the amendment was adopted on March 31, 1976 and effective on December 31, 1974. Thus, the phase-in of any increase attributable to the amendment commences on March 31, 1976.

If you have any questions regarding this matter, please call * * * of my staff at * * *. We hope this is of assistance.

Henry Rose
General Counsel