Pension Benefit Guaranty Corporation

85-7

March 4, 1985

REFERENCE:
4044(d) Allocation of Assets. Distribution of Residual Assets

OPINION:

You have requested our opinion whether the transaction described below would be subject to the spinoff/termination requirements of the joint implementation guidelines issued by the Pension Benefit Guaranty Corporation (PBGC), the Department of Labor and the Treasury Department for processing terminations involving asset reversions.

As we understand them, the facts are as follows: C maintains a defined benefit plan for one of its divisions which covers employees in two plants, A with 88 participants and B with 128 participants. The A Plant has been closed while the B Plant continues to operate. Plan assets are sufficient to cover guaranteed benefits, but it is uncertain whether assets will cover all accrued benefits under the plan or whether there will be residual assets. * * * proposes to split the plan into two parts, one for participants associated with the A Plant (the "A part") and one for participants associated with the B Plant (the "B part"). Assets will be allocated to benefits in both the A part and the B part on a termination basis pursuant to IRC § 414(1). Accrued benefits [*2] under the A part will be vested and annuitized. Any surplus assets in excess of the accrued benefits of A and B employees, as calculated on a termination basis using PBGC assumptions, would be allocated to the B part of the plan.

After this transaction, C will terminate the A part of the plan. If residual assets arise in the A part as a result of favorable rates for the purchase of annuity contracts, such residue will be distributed by C to the B part. Except for any residual assets distributed to the B part as described above, under no circumstances will any surplus assets revert to the plan sponsor. C would like to carry out this transaction without vesting employees in the ongoing B part or purchasing annuities for them. C intends to continue the B part of the plan as before.

Among other things, the joint implementation guidelines require the following conditions before a spinoff/termination with surplus asset reversion will be recognized:

(1) The benefits of all employees (including those covered by the ongoing plan) must be fully vested and nonforfeitable as of the date of termination.

(2) All benefits accrued as of the date of termination in the opgoing plan must be [*3] provided for by the purchase of annuity contracts which represent irrevocable commitments for the benefit of each individual participant.

(3) All employees who were covered by the original plan must be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated.

In the instant case, since assets are sufficient to pay all benefits guaranteed by the PBGC, PBGC will recognize the proposed termination, provided the transaction does not weaken the ongoing part of the plan, thereby putting the PBGC and participants at increased risk. In addition, we conclude that the transaction described above does not fall within the purview of the joint implementation guidelines since no assets will revert to the plan sponsor. Accordingly, benefits in the ongoing B portion of the plan are not required to be vested and annuitized.

If you have any further questions, please feel free to contact me.

Thomas Veal, Acting General Counsel, Legal Department