

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 83-40A  
Sec. 103

AUG 11 1983

Mr. Daniel J. McCarthy  
Milliman & Robertson, Inc.  
Two Pennsylvania Plaza  
New York, NY 10001

Dear Mr. McCarthy:

This is in response to your request for an opinion concerning the application of certain annual reporting requirements under the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence concerning ERISA has resulted in a delay in responding to you.

Specifically, you have requested an opinion as to whether certain procedures, described below, for the reporting and valuing of assets deposited with an insurance company in a Guaranteed Investment Contract (GIC) under which both principal and interest would be guaranteed and the accumulated fund payable in a lump sum at the end of a stated period are in accordance with existing reporting requirements of ERISA. With respect to your request, you indicate that in certain situations the amount deposited with an insurer in a GIC represents assets transferred from another insurer's Immediate Participation Guarantee (IPG) or Deposit Administration (DA) contract. Under such circumstances, the former insurer usually assesses a market value adjustment charge against the contractholder account before transferring the assets. By way of example, you indicate that a contractholder might have \$1 million with Insurance Company A under an IPG or DA contract, whereas the actual amount transferred to Insurance Company B after the market value adjustment charge could be about \$750,000 to \$800,000 in the current economic climate.

Where a market value adjustment is made upon the withdrawal of funds from an IPG or DA contract with one insurer and those funds are deposited under a GIC with another insurer, you inquire as to the permissibility, under the current reporting requirements, of basing the guaranteed interest rate and maturity date on the actual amount transferred while reporting the fund balances on the Schedule A of the annual return/report (Form 5500), relative to the GIC, to reflect the amortization, over the specified guaranteed period of the GIC, of the former insurer's market value adjustment charge. In this regard, you have provided the following example:

Employer E has an IPG contract with Insurance Company A. On 1/1/82 the accumulated fund under the contract is \$1,000,000. On 7/1/82 Employer E decides to transfer the then accumulated fund of \$1,045,000 to Insurance Company B. Before making the transfer, Insurance Company A assesses a market value charge of \$209,000; hence the actual amount transferred to Insurance Company B is \$836,000.

Insurance Company B, under its GIC, guarantees to pay principal plus 15% interest compounded annually at the end of five years. The lump sum payable on 7/1/87 is

\$1,681,495 ( $=\$836,000 \times [1.15^5]$ ).

On Schedule A of Form 5500 Insurance Company B would report year-end fund balances assuming that the unreduced balance of \$1,045,000 on 7/1/82 was accumulated at an annual compounded interest rate of 9.98% such that the accumulated fund on 7/1/87 will also equal \$1,681,495.

Any withdrawals by Employer E (i.e., prior to 7/1/87) would be subject to a market value adjustment in accordance with the existing procedures of Insurance Company B at the time of withdrawal.

According to the exhibits accompanying your request, the Schedule A (completed based on information reported by Insurance Company B) and the annual return/report (Form 5500) of the above plan, for the 1982 plan year, would, under your proposal, indicate on items 6(b)(v) and 14(n)(i), respectively, "unrealized appreciation" of \$199,398 (i.e., the difference between \$896,510 [the actual amount transferred on 7/1/82 of \$836,000 + 60,510 interest] and \$1,095,908 [the unreduced assets of \$1,045,000 on 7/1/82 + 9.98% interest compounded annually]). This amount, i.e., \$199,398, then would be amortized as "unrealized depreciation" in subsequent years over the fixed period of the GIC.

Under the method of reporting proposed in your letter, the plan in the above example would, based on information reported by Insurance Company B, be reporting on its Schedule A of the Form 5500 relative to the GIC a balance at policy year end of \$1,095,908 (item 6(e)). On the plan's Form 5500 for the 1982 plan year, the plan would be reporting a net increase in assets of \$95,908 (item 14(o)) and net assets at plan year end of \$1,095,908 (item 14(q) and item 13(m)). In the absence of the amortization of Insurance Company A's market value adjustment charge, the same plan would be reporting assets on its Schedule A of only \$896,510 at policy year end (item 6(e)), and on its Form 5500 would, among other things, be reporting a net realized loss on the sale or exchange of assets of \$209,000 (item 14(e), column b), a net decrease in assets for the year of \$103,490 (item 14(o)) and net assets at plan year end of \$896,510 (items 14(q) and 13(m), column b). Similar disparities between the actual assets and the reported assets would exist for the fixed period of the GIC, or until such time the plan withdrew its funds from the GIC.

With the enactment of ERISA, Congress specifically provided for the reporting of plan financial and other information on an annual basis. The availability of this information is intended to enable both plan participants and the Agencies responsible for administering ERISA to monitor the financial condition of employee benefit plans on an annual basis. Because investments are the primary source of benefit payments, the manner in which investments are valued and reported can significantly affect an assessment of a plan's financial condition and ability to pay benefits when due. It is the view of the Department that a method of reporting, such as that proposed in your letter, under which the value of assets is inflated and under which actual losses or other adjustments to the value of plan assets are amortized over a determined number of years would not adequately reflect the plan's annual financial condition. 'Such reporting would not, in the view of the Department, provide plan participants or the administering Agencies with a complete and accurate picture of the financial status of a plan as of the end of any given plan year. For these reasons, we are unable to find that the method of reporting described in your letter is consistent with the purposes of title I of ERISA or the annual reporting requirements thereof as set forth in section 103 and the regulations issued thereunder (29 C.F.R. §2520.103-1 et seq.).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure including section 10 thereof relating to the effect

of advisory opinions.

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs