

Pension Benefit Guaranty Corporation

76-3

January 8, 1976

REFERENCE:

[*1] 4044(a) Allocation of Assets. Requirement of Following Statutory Allocation Provisions

OPINION:

This is a confirmation of your recent telephone conversation with * * * of my staff and earlier conversations with * * * of this Corporation.

You indicated that you are representing the Plan Administrator concerning the Notice of Termination submitted on behalf of the * * * Pension Plan. You stated that the Plan Administrator does not recognize an early retirement entitlement as to * * * and intends to pay additional benefits to two former employees who have been paid their benefit claims in full.

Based on evidence presented to this Corporation, we believe that the assets allocable to * * * pursuant to the termination procedure must be based on her status as an early retiree. Furthermore, Plan participants whose benefits claims have been fully satisfied prior to the date of Plan termination are not to be allocated assets pursuant to Section 4044(a) of the Employee Retirement Income Security Act of 1974 (the "Act").

If our understanding of your present position is correct, it would appear that you are not agreeable to allocating assets in accord with Section 4044 of the Act. If that is not [*2] correct, please let me know immediately. You are advised that any distributions not in accord with Section 4044 constitute violations of the Act. Unless we hear from you within 14 days of the date of this letter, we will feel free to take appropriate action to effectuate the Plan's compliance with the Act.

Henry Rose
General Counsel