

Pension Benefit Guaranty Corporation

78-2

February 21, 1978

REFERENCE:

[*1] 4044(d)(1) Allocation of Assets. Distribution of Residual Assets to Employer

OPINION:

This is in response to your letter to this Office requesting an opinion regarding whether certain language contained in a pension plan document relating to the residual assets of that plan meets the requirement of § 4044(d)(1)(C) of the Employee Retirement Income Security Act of 1974 (the "Act") with respect to the reversion of residual assets to an employer.

As we understand the facts, the plan contains the following language:

"The Employer shall not be entitled to recover any part of his contributions to the Trust, except as may be provided in Section 7.02 hereof."

Section 7.02 of the plan provides in pertinent part that:

"The Company shall have no beneficial interest in the Trust Fund, either during its continuance or upon termination of this Trust, except in the event that, at time of termination, there remains a surplus of funds, after all liabilities have been funded."

Act § 4044(d)(1) provides in pertinent part that:

Any residual assets of a plan may be distributed to the employer if -

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied.

(B) the distribution [*2] does not contravene any provision of law, and * * *

(c) the plan provides for such a distribution in these circumstances. (emphasis added).

Based on a careful review of the plan language and the legislative history of Act § 4044, we conclude that the quoted language does meet the requirements of Act § 4044(d)(1). Thus, once all liabilities of the Plan have been satisfied, we would not object to a reversion of residual assets to the employer in this case.

We trust this responds to your inquiry.

Henry Rose
General Counsel