

Pension Benefit Guaranty Corporation

76-90

July 9, 1976

REFERENCE:

[*1] 4044 Allocation of Assets

OPINION:

This is in response to your letter asking what distribution options must be offered to participants upon the termination of the * * * Retirement Plan (the "Plan").

As I understand the pertinent facts, * * * (the "Company") has adopted an amendment to the Plan which changes it to a profit-sharing plan. Because the adoption of such a plan amendment constitutes a termination under section 4041(f) of the Employee Retirement Income Security Act of 1974 (the "Act"), a termination notice was submitted to the PBGC. The Plan has sufficient assets to pay at least all non-forfeitable benefits under the Plan. The Company does not want to offer each participant the option of receiving a paid-up annuity or a lump-sum payment. Rather, the Company intends to amend the profit-sharing plan, effective April 1, 1976, to provide for the transfer of all of the Plan assets into the profit-sharing trust, with each participant's benefit under the Plan segregated into an annuity contract or a fixed income account.

The allocation requirements of section 4044 are complied with in a situation wherein there is a proposed transfer of the assets of a covered plan to an individual [*2] account plan, (such as a profit-sharing plan), if each participant is given the option of receiving the allocable share of the plan assets to which he or she is entitled as a paid-up annuity or, if provided for in the plan, in a lump-sum payment, instead of having those assets transferred to the individual account plan. Accordingly, the Company's prospective amendment will not satisfy the allocation requirements of section 4044.

Additionally, in order to insure that the rights and/or obligations of Plan participants and the PBGC have been clearly delineated, prior to the distribution of the Plan assets, the plan administrator should have each participant complete an Election and Release Form. ("form")

We do not have a standard form. However, we will accept such a form, prepared by you, if it includes the following information, stated in easily understandable language: The available election options; the amount of each; the value of the benefits attributable to the amount of any assets transferred to the profit-sharing trust (or any lump-sum payment) is not guaranteed by the Pension Benefit Guaranty Corporation. In addition, the form should contain a release of the PBGC of any [*3] and all liability to pay guaranteed benefits under the Plan which should be completed only by participants electing any form of distribution other than the purchase of a fully paid-up annuity. The form must be executed individually by each participant and submitted to the PBGC.

We trust this answers your inquiry.

Henry Rose
General Counsel