

Pension Benefit Guaranty Corporation

75-32

December 31, 1975

REFERENCE:

[*1] 4044 Allocation of Assets

OPINION:

This is in response to your letter dated November 19, 1975. You expressed concern that under the proposed allocation of assets regulation (6 CFR proposed part 2608), the pensions of retired participants which you state are fully guaranteed under your plan would be subject to reduction.

From the information contained in your letter and the copy of a portion of your plan enclosed therewith, it appears that upon retirement a participant is given a certificate from the insurance carrier with which the plan is maintained which evidences his right to a pension. It further appears, based on the provisions of section 17.2 of the Plan, that in the event of termination the obligation to provide the pension is not an obligation of the employer, and furthermore, that the pension of the retiree is not affected by termination of the plan. You state in your letter that, in effect, the pension of the retired participant is guaranteed by the insurance company, but that the assets necessary to fund the pension remain assets of the plan for several actuarial computations.

Generally, where a plan purchases an annuity for a retiree, retains no further interest, either legal [*2] or equitable, in the annuity and transfers plan assets to the insurance company to purchase the pension, those assets are no longer considered plan assets for purposes of the allocation of assets required under § 4044 of the Employee Retirement Income Security Act of 1974. (the "Act"). (But see, Act § 4045 providing for the recapture of certain distributions from a plan within 3 years of its termination.) However, where the assets necessary to fund the annuity are retained by the plan, they remain assets of the plan, and, accordingly, are subject to the Act's § 4044 allocation procedure. (Act, § 4044(a).) Whether in that case the annuities of the participants would be jeopardized depends upon the provisions of the plan and the provisions of the contract with the insurance carrier.

I trust this is responsive to your inquiry. I enjoyed meeting you, and please let me know if we can be of further assistance.

Henry Rose
General Counsel