

Pension Benefit Guaranty Corporation

75-31

December 12, 1975

REFERENCE:

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

OPINION:

This is a confirmation of your telephone conversation with \* \* \* of my staff on August 29, 1975.

\* \* \* of the Pension Benefit Guaranty Corporation (hereinafter the "PBGC") telephoned you on July 23, 1975, and inquired about the status of the Plan Administrator's compliance with our letter of June 11, 1975. The Plan Administrator, \* \* \* had referred us to you. You stated that you were representing \* \* \* regarding the substance of our letter of June 11, 1975, and indicated that "complexities of the new law" were causing delays in effecting the adjustments in benefit distributions which we requested, but that you would contact either \* \* \* of the PBGC, before July 25, 1975, with your position and proposal for accomplishing the above-mentioned adjustments.

I am advised that you informed \* \* \* on August 29, 1975, that the distributions made by the Plan on January 3 and 21, 1975 were neither in violation of applicable law nor in conflict with the Plan provisions. The Plan's receipt of a favorable determination letter from the Internal Revenue Service regarding the Plan termination constitutes, in [\*2] your view, an "approval" of the distributions. This is so, you argue, due to an "exception" allowed by the Internal Revenue Service for certain distributions which might otherwise violate § 401(a)(4) of the Internal Revenue Code; the approval of the Plan termination by the Internal Revenue Service is, in your opinion, a granting of the "exception."

You should be aware that any "approval" letter issued with respect to a request for a determination upon termination is subject to the proposed distributions being in compliance with § 4044 of the Act. To the extent reallocations are required pursuant to § 4044 of the Act the "approval" letter is not valid. Furthermore, IRS determination letters are effective, to the extent that they are, only with respect to tax matters. Such letters relate only to the approval of the form of a plan under the Internal Revenue Code and are "not an opinion on the effect of other federal or local statutes." [See IRS Rorm 5378 (12/71).] Section 4044 of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act") creates substantive rights which are enforceable without regard to tax consequences. See Act, § § 502, 4003(e)(1).

If our understanding [\*3] of your present position is correct, it would appear that you are no longer agreeable to taking steps to remedy the apparent violations of Title IV discussed in our letter of June 11, 1975. If that is not correct, please let me know immediately. Unless we hear from you within 12 days of the date of this letter, we will feel free to take appropriate action to effectuate the Plan's compliance with the Employee Retirement Income Security Act of 1974.

Henry Rose  
General Counsel