

Pension Benefit Guaranty Corporation

76-104

August 27, 1976

REFERENCE:

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

OPINION:

This is in reference to your letter of August 3, 1976 commenting on a form letter used by the Pension Benefit Guaranty Corporation (the "PBGC").

As you know, the PBGC utilizes a special procedure to expedite the processing of certain terminated plans which appear to have sufficient assets to satisfy all guaranteed benefits. The first step under this procedure involves the completion of a Certification of Sufficiency (the * * * "Certification") by the plan administrator. The form letter referred to in your letter is the cover letter which is sent along with the Certification. The cover letter briefly sets forth the steps involved in the procedure including the basic terms of the Certification.

Based on your comments and those from other interested persons the PBGC has revised the Certification, a copy of which is enclosed. As I'm sure you can appreciate, the cover letter to the Certification also will be revised.

The Certification in paragraphs 3, 4 and 7, as revised, now emphasizes, inter alia, not only that distribution of annuity contracts is an acceptable "distribution of Plan [*2] assets" but that the purchase of annuity contracts is the preferred method of distribution.

Your letter correctly states the PBGC's position concerning the distribution of annuity contracts. That is, the PBGC will not approve the purchase and retention by the Trustees of individual or group annuity contracts, as opposed to the distribution to participants. Rather, the PBGC requires that annuity contracts be distributed to participants. It is our opinion that this requirement is the best method of guaranteeing that each participant will receive his or her retirement benefit.

The PBGC does not believe that a Trustee necessarily is better able to judge the best interests of a participant than that participant himself. We also do not believe that a participant necessarily is not as capable as a Trustee of exercising any available options under an annuity contract as and when necessary to suit his own needs. As a general matter, therefore, we believe that a participant should be allowed to decide in what form and in what manner he receives and disposes of his benefit entitlement under a terminated plan. In recognition of the fact that in some cases a Trustee may be better able [*3] to protect and preserve a participant's benefits than that participant himself, however, the PBGC would have no objection if a participant himself chose to receive his benefit in the form of an annuity to be held by a Trustee willing to do so. Furthermore, the PBGC would not prohibit a Trustee, who is concerned that participants will dissipate their retirement benefits, from providing to participants only those annuity contracts which would prevent such dissipation under the terms of the contract.

We hope this information is of assistance to you.

Henry Rose
General Counsel