

Pension Benefit Guaranty Corporation

76-40

March 19, 1976

REFERENCE:

[*1] 4043(b)(3) Reportable Events. Decrease in Participants
4043(b)(8) Reportable Events. Mergers, Consolidations & other Transfers of Plan Assets
4044(a) Allocation of Assets. Requirement of Following Statutory Allocation Provisions

OPINION:

I am in receipt of your letter to * * *, dated December 31, 1975, and the letter from * * * dated January 23, 1976, both of which raise a question concerning the application of § 4043 and 4044 of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act") to the defined benefit pension plan maintained by * * *

* * * letter presents a hypothetical situation which he states is typical of the type of situation in which * * * may find itself. A parent corporation has two wholly-owned subsidiaries, one of which has four divisions. A single pension plan covers employees in three of the divisions of one subsidiary and employees of the other subsidiary. The plan has maintained and continues to maintain a separate account for each division of the first subsidiary and for the second subsidiary in such a manner that the three divisions and the subsidiary are treated as four separate employing units, each maintaining a separate pension plan.

Specifically, [*2] the separate account of each employing unit is afforded the following treatment:

1. An actuarial valuation is made based only on the employee data of the individual employing unit;
2. Actuarial experience is separately determined;
3. Employee and employer contributions made with respect to the employing unit are credited only to the unit's separate account;
4. Experience gains and losses are separately amortized;
5. Benefit payments, refunds, and so forth are charged to the separate account;
6. The assets of the separate accounts are maintained in a commingled trust.

The essence of this arrangement, as stated in * * * letter, is that the ability of each employing unit's separate account to pay benefits rests entirely on the assets accumulated in that account. This arrangement, in our view, constitutes four separate pension plans. Consequently, the sale of an employing unit which maintains a separate account and the transfer of the assets in that separate account from the commingled trust to a separate trust would not constitute a reportable event under § 4043(b) (3) or (8) of the Act. The effect of such sale and transfer would simply be a formal partitioning of the [*3] employing unit's separate plan from the unified administration to which that separate plan had previously been subject.

Similarly, the sale of an employing unit and the transfer of assets in its separate account are not events which, in themselves, require that an allocation of assets be performed under § 4044 of the Act. Such an allocation would be required only if, after the sale and transfer, the plan represented by the separate account were to terminate. At the time, the assets to be allocated pursuant to § 4044 would be those credited to the separate account.

We hope this is of assistance. At your request, we will be happy to discuss this matter further.

Henry Rose
General Counsel