

Pension Benefit Guaranty Corporation

77-161

August 30, 1977

REFERENCE:

[*1] 4044 Allocation of Assets

4044(c) Allocation of Assets. Apportionment of Asset Gains & Losses Between Plan & PBGC

OPINION:

This is in response to your letter concerning the termination of * * * (the "Plan"). You requested the Pension Benefit Guaranty Corporation (the "PBGC") to determine that: (1) the increase in the value of the Plan assets after the date of termination should be credited to the * * * plan participants with guaranteed benefits, rather than the PBGC, and (2) participants' benefits may be paid in a lump-sum.

As we understand the pertinent facts, the Plan terminated on * * * There were * * * participants in the Plan. Two of the participants, * * * a substantial owner, and * * * a non-substantial owner, have guaranteed benefits.

As of * * * the Plan had insufficient assets, when allocated in accordance with Section 4044 of the Employee Retirement Income Security Act of 1974 (the "Act"), to discharge when due all the obligations of the plan with respect to basic benefits. The value of the plan assets on * * * was * * * you estimated that the value of the plan assets would be approximately * * * by * * *

You propose that: (1) * * * waive his rights to receive any benefit [*2] payment from the PBGC, n1 (2) * * * be allocated * * * of the increase in the value of Plan assets since * * * n2 (3) * * * be allocated the difference between the increase in the value of the assets since the date of distribution and the * * * allocated to * * * and (4) * * * and * * * receive lump-sum payments of their benefits.

n1 * * * advised the case officer, in a letter dated * * * that he wanted ". . . to waive any and all benefits due [him] from the PBGC as a result of the termination of the [Plan]."

n2 This would enable * * * to receive the total present value of his guaranteed benefit as of * * * Theoretically, * * * would not be receiving his guaranteed benefit from the PBGC. Instead, * * * guaranteed benefit would be payable from the increase in the value of the Plan assets after the date of termination. The PBGC's Division of Actuarial Services has reviewed your proposed asset allocation and has determined that to comply with Section 4044, the Plan assets must be allocated as follows: * * *

The Plan asset insufficiency is * * *

We are unable to accept your proposal. The effect of your proposal is to increase the benefits payable to the substantial owner without [*3] increasing the value of the non-substantial owner's benefits.

Section 4044(c) of the Act requires that, in an insufficient plan, any increases or decreases in the value of plan assets occurring after the plan termination date are to be credited to, or suffered by the PBGC. Therefore, * * * and * * * cannot share the increase in the value of the Plan assets after * * * Consequently, because the Plan is insufficient, the PBGC is required to pay * * * and * * * their guaranteed benefits in the annuity form specified in the Plan, 29 C.F.R. 2605.8(a).

Finally, please note that on * * * of my staff sent to * * * for his signature and * * * signature, an agreement (and copies) appointing the PBGC trustee pursuant to Section 4042 of the Act, of the Plan n3. We understand that the agreement (and copies) has not yet been executed. Assuming these documents are not executed in the near future, the PBGC will consider taking such action as might be appropriate under the circumstances.

n3 The first sentence of paragraph 3 of the recitals should be corrected to indicate that the Plan was adopted, effective * * *

Henry Rose

General Counsel