

Pension Benefit Guaranty Corporation

78-4

March 23, 1978

REFERENCE:

[*1] 4044(d)(2) Allocation of Assets. Distribution of Residual Assets Attributable to Employee Contributions

OPINION:

This is in response to your letters of September 9, 1977 and February 15, 1978, to the Pension Benefit Guaranty Corporation (the "PBGC") on behalf of the * * * and in confirmation of your telephone conversations with * * * of this Office.

In your letters and telephone conversations with * * * you suggested the following method for determining and distributing those excess assets of the * * * Retirement Plan for Salaried Employees (the "Plan") which are attributable to employee contributions and requested the PBGC to determine whether such method satisfies the requirements of Section 4044(d)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1344(d)(2) (Supp. V, 1975).

(1) The excess attributable to employee contributions will be determined by multiplying the amount remaining after the satisfaction of all Plan liabilities by a fraction, the numerator of which is net employee contributions and the denominator of which is the sum of contributions made by * * * over the life of the Plan and the amount used as the numerator. For purposes of this letter, [*2] net employee contributions equals total employee contributions over the life of the Plan minus the amount of employee contributions returned to those employees who withdrew from the Plan prior to the date of termination and prior to obtaining a vested right to a benefit derived from employer contributions.

(2) The excess attributable to employee contributions will be divided among those employees and former employees who had a positive contribution balance on the date of termination. For purposes of this letter, a positive contribution balance exists when an employee's contributions to the Plan exceed the payments actually made to that employee under the terms of the Plan.

(3) An individual's share of the excess attributable to employee contributions will be determined by multiplying the amount determined in (1) by a fraction, the numerator of which is that individual's total contributions to the Plan and the denominator of which is the total contributions to the Plan of all individuals described in (2).

The PBGC currently is developing the policies and procedures necessary to implement Section 4044(d)(2). However, rather than making Plan participants wait for the development [*3] of PBGC procedures, the PBGC is willing to permit the immediate distribution of excess Plan assets upon a reasonable basis, as suggested in your letters and your conversations with * * * However, you understand that we cannot give you any assurance as to the result of litigation by a Plan participant for a different allocation of such assets.

Henry Rose
General Counsel