

Pension Benefit Guaranty Corporation

76-113

September 29, 1976

REFERENCE:

[*1] 4003(f) Investigatory Authority; Cooperation with other Agencies; Civil Actions Maintainable against PBGC
4044(a) Allocation of Assets. Requirement of Following Statutory Allocation Provisions
4044(d) Allocation of Assets. Distribution of Residual Assets

OPINION:

This is in reference to your letter of August 23, 1976, as supplemented by your telephone conversation of August 27, 1976, with Mr. James Bow of my staff. You ask our opinion on three matters: (1) whether the Pension Benefit Guaranty Corporation ("PBGC") will issue a Notice of Sufficiency for the Plan; (2) whether the PBGC would agree to a scheme of distribution whereby benefits expressly payable under the Plan would be distributed, but the excess assets of the Plan would be withheld from distribution until any present and future cases involving § 4044(d)(1) issues for other plans are judicially resolved; and, (3) whether the PBGC would be willing to submit issues concerning the entitlement to the excess assets to arbitration.

A Certification of Sufficiency was sent on May 10, 1976, to * * * for the Plan administrator's signature and return to the PBGC. When that Certification is executed and returned, there does not appear to [*2] be any reason why the PBGC will not promptly issue a Notice of Sufficiency for the Plan. I have been informed that you will advise * * * that the Certification should be executed and returned to the PBGC. Therefore, it appears that the issuance of the Notice of Sufficiency will not be a further problem.

Upon the PBGC's issuance of a Notice of Sufficiency for the Plan, § 4041(a) of the Employee Retirement Income Security Act of 1974 ("Act") provides that the Plan administrator may commence distribution of Plan assets in a manner consistent with § § 4041-4048 of the Act. Such distribution ordinarily must be completed within 90 days after the date of issuance of the Notice of Sufficiency.

If the Plan administrator feels that there is sufficient uncertainty concerning the proper recipients of the excess assets of the Plan, judicial remedies to clarify the proper distribution are available to the Plan administrator. The employer also has similar remedies. The PBGC would not consider the distribution requirements violated if, for example, benefits expressly payable under the Plan were distributed to the participants and the excess assets deposited with a court as part of an interpleader [*3] action filed within the 90 day period, because a clear and definite arrangement would thus have been made for the prompt disposition of excess assets. Therefore, in view of the remedies available to the employer and the Plan administrator, we think a choice should be made promptly between pursuing those remedies or complying with Title IV as we have previously set forth.

Finally, since § 4003(f) of the Act specifies the forum for resolution of issues raised by PBGC determinations, it seems inappropriate to submit them to arbitration.

I trust that the above has answered your inquiry. If there are additional questions, please do not hesitate to contact Mr. James Bow, who has been assigned to this matter. He may be reached by telephone.

Henry Rose
General Counsel