

Pension Benefit Guaranty Corporation

77-142

May 2, 1977

REFERENCE:

[\*1] 4044(b)(4) Allocation of Assets. Reallocations by Secretary of the Treasury

OPINION:

This is in response to your inquiry about the effect of the Internal Revenue Service's (the "IRS") determination that partial terminations had occurred in a plan that had previously received a notice of sufficiency from the Pension Benefit Guaranty Corporation (the "PBGC").

The plan in question is \* \* \* (the "Plan"), PBGC Case No. \* \* \* which was issued a notice of sufficiency by the PBGC on \* \* \*. As we understand the pertinent facts, after the Plan received the PBGC notice of sufficiency the IRS determined that, pursuant to Section 411(d)(3) of the Internal Revenue Code, partial terminations had occurred on August 1, 1974 and August 1, 1975. This IRS determination necessitated the inclusion of additional participants in the allocation of Plan assets.

No Plan participant's benefit is in priority categories 1 through 4A, as defined in Section 4044(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Each Plan participant's benefit is in either category 5 or 6, as defined in Section 4044 of ERISA. Section 4044(b)(4) of ERISA authorizes IRS to re-allocate benefits in categories 4B, 5, [\*2] and 6, and the IRS determination that partial terminations had occurred caused a re-allocation of Plan benefits in categories 5 and 6 in this case. The plan administrator is obligated to submit to PBGC a copy of the final distribution made of Plan assets. Other than such submission, no further notifications are required by the PBGC in this case.

Because under Section 4022 of ERISA there are no guaranteed Plan benefits, no employer liability arises from the new allocation, and the PBGC has no obligation to provide additional funds for benefit payments.

Henry Rose  
General Counsel