

Pension Benefit Guaranty Corporation

76-81

June 14, 1976

REFERENCE:

[*1] 4044(d)(1) Allocation of Assets. Distribution of Residual Assets to Employer

OPINION:

This is in response to your letter of May 6, 1976 concerning the return of residual assets of * * * * * (the "Plan") to the * * * (the "Company").

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (the "Act") provides, in pertinent part, that:

"Except as provided in . . . section . . . 4044 (relating to termination of insured plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries . . ."

In this regard, § 4044(d)(1) of the Act provides:

"Any residual assets of a plan may be distributed to the employer [maintaining the plan] if -

- (A) all liabilities of the plan to participants have been satisfied,
- (B) the distribution does not contravene any provision of law, and
- (C) the plan provides for such a distribution in these circumstances."

Article XI, Section 4 of the Plan provides, in part, that:

"In the event of termination of this Agreement, . . . the Company may . . . terminate the Plan by action of its Board of Directors; provided, however, [*2] that no such action shall operate to recapture for the Company any contributions or payments previously made to the Fund, nor to adversely affect any benefits otherwise payable to retired Employees . . . to the extent the assets of the Fund are sufficient to provide such benefits . . ."

Article XII, Section 6 of the Plan, provides:

"In the event of the termination of this Agreement, no part of the corpus or income of the Fund can be used for, or diverted to, purposes other than the exclusive use of the beneficiaries and employees covered by the Plan."

In light of the foregoing, we conclude that the Plan does not provide for a return of residual Plan assets to the Company. Accordingly, the Act requires that all Plan assets be used for the benefit of Plan participants and their beneficiaries, and none may revert to the Company.

Henry Rose
General Counsel