

Pension Benefit Guaranty Corporation

77-151

July 21, 1977

REFERENCE:

[*1] 4044 Allocation of Assets

OPINION:

This concerns a letter to * * * of the Pension Benefit Guaranty Corporation (the "PBGC") from * * *, a participant in the terminated * * * (the "Plan"). * * * requested that the PBGC determine whether it is proper for you to charge against Plan assets the legal fees arising from termination of the Plan.

As I understand the pertinent facts, on * * * you submitted a valid Notice of Intent to Terminate the Plan, and on * * * the PBGC issued a Notice of Sufficiency. In a letter dated * * * informed you and * * * that he intends to submit a billing statement for approximately * * * for legal services and disbursements arising from termination of the Plan. In his letter * * * stated that he believes you intend to deduct the legal fees from the assets of the Plan's Separate Investment Fund before you distribute the assets to the participants, thereby decreasing the amount of assets available for distribution * * * suggested that these fees may be the responsibility of * * * (the "Employer") and not the responsibility of the Plan.

The PBGC is responsible for carrying out the provisions of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). [*2] Title IV provides that when a plan terminates, the plan administrator must allocate the assets "available to provide benefits" among the priority categories set forth in § 4044. If a terminating plan is not responsible for a particular expense and the plan administrator nevertheless charges the expense against plan assets, he misuses the assets available to provide benefits and thereby violates § 4044 of the Act.

Moreover, if under the plan provisions a plan is not responsible for a particular expense, charging the expense to the plan may violate Title I of the Act. When PBGC discovers possible Title I violations, it ordinarily forwards the matter to the United States Department of Labor ("DOL"), which administers Title I.

In a telephone conversation with * * * of this office, * * * indicated that you wish to avoid the delay that might take place if this matter is referred to the DOL for investigation. Please advise whether you will pay the legal fees out of the Employer's general assets. If you have not so advised us by * * *, we will take appropriate action.

If you have any questions concerning this matter, please feel free to call * * *

Henry Rose
General Counsel