

Pension Benefit Guaranty Corporation

76-107

September 7, 1975

REFERENCE:

[\*1] 4044 Allocation of Assets

OPINION:

This is in response to your request that the Pension Benefit Guaranty Corporation (the "PBGC") permit the terminated \* \* \* Retirement Plan (the "Plan") to allocate its assets otherwise than in accordance with Section 4044 of the Employee Retirement Income Security Act of 1974 (the "Act"). You proposed that three participants, including yourself, be allocated less than the amount allocated pursuant to Section 4044 of the Act.

Section 4044 itself does not permit waivers of allocable amounts. However, the PBGC would not object if you, as a substantial owner as that term is defined in Section 4022(b)(6) of the Act, waive part of your accrued benefits. This would result in more assets being made available for allocation to other participants.

Also, there is no prohibition in Title IV of the Act against you or any other participant, after receiving your allocable share of Plan assets, from transferring all or part of that distribution to other participants. However, you may wish to consult the Internal Revenue Service or private tax counsel with respect to the possible income tax ramifications.

In your letter you stated that you intended to transfer the [\*2] Plan assets to the \* \* \* Defined Contribution Plan. You should be aware that the allocation requirements of Section 4044 are not satisfied upon termination of a sufficient plan unless participants are given the option of receiving their allocable share of the Plan's assets as a paid-up annuity and are given notice of the PBGC's position that any participant who elects a form of distribution other than an annuity no longer is protected by the termination insurance provisions of the Act.

Henry Rose  
General Counsel