

Pension Benefit Guaranty Corporation

75-30

November 13, 1975

REFERENCE:

[\*1] 4044(c) Allocation of Assets. Apportionment of Asset Gains & Losses Between Plan & PBGC

OPINION:

In your letter dated November 6, 1975, you have asked for our interpretation of Section 4044(c) of the Employee Retirement Income Security Act of 1974.

In reading Section 4044(c), three important questions arise. First, the statute does not make plain whether increases and decreases are to be allocated between the PBGC and the plan in a period beginning on the date the plan is terminated and ending upon the final distribution of the plan assets. Second, the statute does not make plain whether, if a trustee is appointed, increases and decreases in the value of plan assets are to be allocated from the date of appointment of the trustee until the date when the plan assets are finally distributed, or only until the date on which the plan is terminated. The third question that arises is whether the Section applies to sufficient plans, i.e., plans whose assets are determined to be sufficient on the date of termination to discharge when due all the obligations of the plan which are guaranteed under Title IV.

Viewing the language of Section 4044(c) in light of other relevant provisions of Title [\*2] IV and the policies underlying that portion of the Act, we have answered these questions as follows:

(1) Where a trustee is appointed prior to the date of termination of a plan, increases and decreases in the value of the plan's assets occurring during the period between the date of the trustee appointment and the date of plan termination should be allocated between the plan and the Corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the Corporation and the plan administrator in any other case.

(2) Where an insufficient plan is terminated, any increases or decreases in the value of the assets of the plan occurring after the date on which the plan is terminated should be credited to, or suffered by, the Corporation.

(3) Where a sufficient plan is terminated, but no trustee is appointed, increases or decreases in the value of plan assets during the period between the date of termination and the final distribution of plan assets during the period between the date of termination and the final distribution of plan assets should be allocated to the plan alone.

(4) Where a plan is sufficient but a trustee is appointed, the [\*3] increases or decreases in the value of the plan assets should be allocated equitably in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the Corporation and the plan administrator in any other case.

As we read the statute, this last rule is applicable whether or not the plan terminates during the period of the trustee administration.

I trust this answers your inquiry.

George B. Driesen  
Deputy General Counsel