

Pension Benefit Guaranty Corporation

83-2

January 12, 1983

REFERENCE:

[*1] 4044 Allocation of Assets

OPINION:

This responds to your inquiry whether it is proper to charge against assets of the referenced pension plan (the "Plan") the legal and actuarial fees arising from termination of the Plan.

The pertinent facts, as they have been presented to us, are as follow. On * * *, a valid Notice of Intent to Terminate the Plan was filed with the PBGC. The Plan has sufficient assets, when allocated in accordance with Section 4044 of the Employee Retirement Income Security Act of 1974 ("ERISA"), to pay for all benefits guaranteed by Title IV of ERISA.

However, on * * *, the Pension Benefit Guaranty Corporation (the "PBGC") notified you that a Notice of Sufficiency could not be issued. The basis for the * * * letter was an initial finding that the proposed allocation under ERISA Section 4044(a) was improper in that the expenses of Plan termination were to be paid for with Plan assets and in that the Plan did not permit such payment.

We have examined the Plan provision cited to support the initial finding that Plan terms forbid use of Plan assets to pay for termination-related expenses. We have concluded that payment of such expenses with Plan assets is not inconsistent [*2] with Plan terms.

The pertinent Plan provision is found in Plan Article IX, which is entitled "Funding." It provides:

No contribution shall be required by any Participant. The Employer shall pay the full cost of providing the benefits under this Plan and shall pay any and all other costs required for the operation of this Plan. [Plan Section 9.7.]

Over the life of the Plan, administrative costs have consistently been taken by the insurer from Plan assets, and actuarial computations include a five percent loading for administrative expenses. The five percent charge is in addition to that amount needed to fund benefits under the Plan.

We believe that Plan Section 9.7 can reasonably be interpreted to provide simply that the Plan is a non-contributory pension plan - i.e., that no employee contributions are required or permitted. Therefore a Notice of Sufficiency will be issued forthwith.

Please note that Plan assets should not be used for payment of certain expenses incurred primarily for the benefit of the employer and not the Plan - e.g., legal and actuarial expenses incidental to the employer's request to the Internal Revenue Service to issue a waiver of the minimum funding requirements of ERISA and the Internal Revenue Code.

I hope this response is helpful to you.

Sincerely,

Henry Rose
General Counsel