

Pension Benefit Guaranty Corporation

74-30

December 16, 1974

REFERENCE:

[\*1] 4023(c) Contingent Liability Coverage. PBGC Optional Program with Private Insurers  
4023(d) Contingent Liability Coverage. Eligibility for Coverage

OPINION:

This letter is written in response to yours dated November 7, 1974 addressed to this Corporation.

Your reading of the statute is substantially correct.

Section 4023(d) provides that "no payment may be made by the Corporation under any insurance provided by it under this Section (pertaining to contingent liability coverage) . . . unless the premiums on such insurance have been paid by the employer and the insurance has been in effect . . . for more than 60 months." The Act directs the PBGC to try "to develop a satisfactory arrangement with private insurers, within 36 months after the date of enactment of this Act" and the Joint Explanatory Statement of the Committee of Conference says "an employer may then pay premiums for the period since the date of enactment, and this period is to be counted toward completion of the five-year payment of premiums requirement." You are also correct in stating that the premiums referred to in the instructions which you have received are, as you state, "premiums paid under the 'basic benefits' insurance [\*2] program."

The conclusion which you have reached inevitably follows: the statute does not currently enable an employer to insure against the risk that if he terminates a covered pension plan that lacks sufficient assets to pay nonforfeitable, basic benefits, he will become liable to this Corporation, if it is required to pay those benefits. It is possible that private carriers may offer insurance against the employer's contingent liability. But the statutory contingent liability insurance is not yet available. However, we are moving forward with the development of a contingent liability insurance system so that it can be ready at an early date.

I trust this answers your inquiry.

Steven E. Schanes  
Acting Executive Director