

Pension Benefit Guaranty Corporation

76-72

May 28, 1976

REFERENCE:

[\*1] 4022(a) Benefits Guaranteed. Type of Benefits Guaranteed

OPINION:

This is in response to your letter of April 6, 1976. You ask the effect of the application of Section 13 of \* \* \* (the Plan) on the guaranteed benefits of former employees of \* \* \* which has terminated operations.

Section 13 provides for the cessation of benefits in pay status of participants who violate that Section's prohibitions against certain competitive employment. A copy of said Section is enclosed. As you know, a guaranteed basic benefit under Section 4022 of the Employee Retirement Income Security Act of 1974 (the Act) is a pension benefit which, under the Guaranteed Benefits Regulation, is non-forfeitable and to which a participant is entitled as of the date of plan termination [See 29 C.F.R. § 2605.3, 40 F.R. 43511 (Sept. 22, 1975)]. A benefit in pay status, which is subject to cessation upon occurrence of an event under Section 13 of the Plan, shall not be deemed to be forfeitable solely as a result of a possible future application of such provision, because as of the date of termination the participant had satisfied all the conditions required of him under the provisions of the Plan to establish entitlement [\*2] to the benefit. [See 29 C.F.R. § 2605.6, 40 F.R. 43511 (Sept. 22, 1975)]. Whether the PBGC will honor the application of Section 13 and its effect on eligibility to continue to receive guaranteed benefit payments will be decided at such time as that Section becomes applicable to a participant.

We hope this is of assistance.

Henry Rose  
General Counsel