Pension Benefit Guaranty Corporation

75-35

January 13, 1976

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

OPINION:

This is in response to your recent inquiry concerning the * * * Employee's Pension Trust (the Plan). You have asked whether borrowing by Plan participants against their policies in excess of the amount permitted to be borrowed by the terms of the Plan would result in the payment of benefits by the Pension Benefit Guaranty Corporation (PBGC) for which the company would be liable upon the termination of the Plan.

Assuming that the excess borrowing does not result in the loss of the Plan's tax qualification, the Plan is covered under Section 4021(a) of Title IV of the Employee Retirement Income Security Act of 1974 (the Act).

Under the Act, the PBGC insures paricipants in a covered pension plan against the possibility that they will not receive non-forfeitable, "basic" benefits provided by a plan in the event the employer terminates it without having funded those non-forfeitable, basic benefits. That is, the PBGC guarantees, within limits specified in the Act, all non-forfeitable benefits under the plan other than those benefits which become nonforfeitable solely because of the termination of the Plan. Thus, nonforfeitable [*2] benefits are determined on the basis of a participant's vested interest on termination of employment.

The Plan provides, in section 8.2, that a terminated participant "shall be entitled to receive the cash value of any insurance or annuity policy issued on his life and held by the Trustees for his benefit." That section also provides for the transfer of "complete ownership of all policies then held for his benefit" to the participants. Since some participants have loans outstanding against their policies, unless there is anything to the contrary in the insurance policies, the PBGC will consider cash value to mean net cash value, i.e. cash surrender value less indebtedness, for the purposes of determining a participant's vested interest. The transfer to a participant on termination of the Plan of his insurance policy will result in the distribution of his entire vested interest under the Plan. Therefore, no basic benefits will have to be paid by the PBGC and, accordingly, no employer liability can be imposed.

I trust this answers your inquiry.

Henry Rose
General Counsel