

Pension Benefit Guaranty Corporation

75-120

June 12, 1975

REFERENCE:

[*1] 4023(d) Contingent Liability Coverage. Eligibility for Coverage
4023(e) Contingent Liability Coverage. Purchase of Insurance from Private Insurers

OPINION:

This is response to your letter of May 1, 1975 regarding a contingent liability insurance program. Preliminary discussions are being conducted to ascertain whether or not private insurance companies would be willing to participate in a contingent liability program. At this time, however, there has been no positive indication by any individual insurance company of a willingness to participate in such a program.

It should be noted that Section 4023(e) of the Employee Retirement Income Security Act of 1974 (the "Act") provides:

"Nothing in this Section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent of the purchase of such insurance the payment of a reinsurance premium or other reasonable fee . . ."

Thus, nothing precludes an employer from immediately negotiating such coverage with a private carrier. However, [*2] until the PBGC establishes a contingent liability insurance program it will be impossible to determine whether any coverage so purchased meets all the requirements of such a program.

Once the Pension Benefit Guaranty Corporation ("PBGC") establishes a contingent liability program it is precluded from making any payments under such program unless such insurance has been in effect for 60 months. This 60-month requirement as set forth in Section 4023(d) of the Act appears to apply only to contingent liability insurance provided by the PBGC; it would not apply to coverage purchased by the employer from any other person, nor does it apply to basic benefit insurance currently being purchased from the PBGC.

I hope this information proves helpful to you.

Steven E. Schanes
Acting Executive Director