

Pension Benefit Guaranty Corporation

75-34

November 28, 1975

REFERENCE:

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

OPINION:

This letter is written in response to your letters dated October 2, October 3, and October 28, 1975, and in light of the conference held at our Offices Friday, November 21, 1975.

You have asked us whether PBGC would view as invalid a waiver of a vested, deferred benefit pursuant to an election available individually to each employee and negotiated at arms length for the participants in a pension plan by their collective bargaining representative. In that context, PBGC will not consider a plan to be liable for a pension where this Corporation is satisfied that, at a reasonable time prior to termination, a participant, pursuant to state law, has waived his right to a deferred, vested benefit for a reasonable and adequate consideration. PBGC would consider such a waiver valid if the Corporation is satisfied that the transaction was free from coercion of any kind and that the participant was fully advised of the substance of the benefit and of its present value, and of the value of the consideration he was receiving before he exercised the election. In the event a court rules the election invalid, of course, PBGC would assert [*2] its rights under Section 4062 of the Act against the employer.

The views expressed in this letter, relate only to Title IV of the Employee Retirement Income Security Act of 1974 and are expressed on behalf of this Corporation only. The consequences of this transaction under the Internal Revenue Code and under Title I of the Act are, of course, matters of concern to the Internal Revenue Service and the Department of Labor. We do not purport to speak on their behalf.

Henry Rose
General Counsel