

Pension Benefit Guaranty Corporation

90-3

April 24, 1990

REFERENCE:

[*1] 4022 Benefits Guaranteed.
>4022A>
4061 Benefit Payments by PBGC.
>29 CFR Part 2613>

OPINION:

Your letter of March 31, 1990, to Secretary of Labor Elizabeth Dole, concerning the security of pension annuities purchased from insurance companies, has been referred to me for a response.

The Pension Benefit Guaranty Corporation (PBGC), which administers the pension plan termination insurance program established by Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), does not guarantee pension annuities purchased from an insurance company. Once a plan has distributed plan assets to participants and beneficiaries through the purchase of annuity contracts or other form of distribution, the PBGC's guarantee is extinguished. The subsequent failure of an insurance company that issued pension annuities is not an insurable event under Title IV of ERISA.

However, the fact that the PBGC does not guarantee pension annuities does not mean that participants are unprotected. Although Title IV does not contain express provisions regarding the selection of an insurer, a plan administrator's selection of an insurance company is subject to the fiduciary [*2] provisions of Title I of ERISA. These provisions are enforced by the Pension and Welfare Benefits Administration (PWBA) within the Department of Labor. Individual participants and beneficiaries may also sue to redress a violation of these provisions.

Moreover, in the PBGC's 15 years of existence, we know of no participant or beneficiary who has lost benefits because of default by an insurance company on annuity policies purchased upon retirement or plan termination. Insurance companies are subject to state regulation, and 45 states have guarantee arrangements that were established to protect policies sold by insurers. In the one case in which there was a major problem, Baldwin-United of Arkansas, the insurance industry and the state, which at that time had no guaranty fund, stepped in and ensured that all policy holders were paid in full.

In light of the fact that the states, not the federal government, regulate insurance companies, your questions relating to a specific insurance company are best directed to the insurance commissioner of your state.

I hope this response is helpful to you. If you have any further questions or concerns, please contact staff attorney Jo Burns. [*3] She can be reached by calling (202) 778-8824 or by writing to her at the above address.

Carol Connor Flowe
General Counsel