

Pension Benefit Guaranty Corporation

77-145

May 24, 1977

REFERENCE:

[*1] 4021(b)(13) Plans Covered. Professional Service Employer Plans
4021(c)(2)(A) Plans Covered. Definition of Professional Service Employer
4021(c)(2)(B) Plans Covered. Definition of Professional Individuals

OPINION:

This letter addresses the question whether either the prior or the present pension plan maintained by your client, the *** (the "Employer"), is covered by Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

Section 4021 (b)(13) of the Act excludes from Title IV coverage any plan:

"established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participant in the plan."

Section 4021 (c)(2)(A) defines the term "professional service employer" as

". . . any proprietorship, partnership, corporation, or other association or organization, (i) owned or controlled by professional individuals or by executors or administrate of professional individuals, (ii) the principal business of which is the performance of professional services . . .

Section 4021 (c)(2)(B) lists some of the individuals who are considered to be "professional individuals". With respect to individuals [*2] not explicitly included in the list, the determinat whether they are professionals depends on an analysis of the services that they perform and the education and skill required perform them.

Based on information provided in your submissions to the Pension Henefit Guaranty Corporation (the "PBG C") and in telephone conversations that you and *** had with *** of this office, it appears that the Employer is controlled by *** in the field of bio-mechanics. *** possesses a Bachelor's Degree in physics and a Master's Degree with emphasis on operations analysis. He has had extensive research and teaching experience in the field of bio-mechanics and has authored many articles and books in the field. Based on this description, *** is a "professional individual" within the meaning of § 4021(c)(2)(A)(i) of the Act.

It further appears that the Employer's principal business is to provide consulting services in bio-mechanics and the related fields of forensic physics, traffic reconstruction and injury analysis, and automotive and traffic safety. The Employer provides these services to Federal, state, and local government agencies, private attorney and insurance companies, and clients [*3] in private industry. Based on this description, the Employer's "principal business . . . is the performance of professional services" within the meaning of § 4021 (c)(2)(A)(ii).

Accordingly, it appears that both the prior plan and the present plan maintained by the employer are excluded from Title IV coverage by § 4021 (b)(13) of the Act.

If you have any further questions, please feel free to contact ***

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