

Pension Benefit Guaranty Corporation

76-106

September 3, 1976

REFERENCE:

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

OPINION:

This is in response to your letter of June 29, 1976 in which you asked whether your firm's "Defined Benefit Pension Plan" (the "Plan") is covered under the termination insurance provisions of the Employee Retirement Income Security Act of 1974 (the "Act"). I understand in a subsequent conversation with William Beyer of my staff you asked for an opinion on the application of § 4021(b)(13) of the Act to the Plan. You specifically asked for a comparison of the application of § 4021(b)(13) to two qualified plans, the participants of one consisting solely of a physician and his secretary (the "physician-secretary plan") and the other solely of an independent insurance agent and his secretary (the "insurance agent-secretary plan").

Section 4021(b)(13) of the Act excludes from 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 participants in the plan.

A professional service employer is any entity owned or controlled by professional [*2] individuals, as defined in § 4021(c)(2)(B) of the Act, where both the entity and the professional individuals owning and controlling it are engaged in the performance of the same professional service.

Section 4021(c)(2)(B) lists some but not all of those individuals who are considered to be "professional individuals." Physicians are included in this list and therefore the physician-secretary plan would be excluded from coverage under the termination insurance provisions of the Act.

Insurance agents, however, are not included in the list. Consequently, our determination of whether such individuals, and others not listed, are "professional individuals" depends on an analysis of the services performed and the expertise required to perform them.

In our view, a professional individual generally is one who provides services which require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship or from training in the performance of routine mental, manual or physical processes. The rendering of professional [*3] services generally requires the consistent exercise of discretion and judgment in its performance and would be predominantly intellectual in character.

Although guidelines for defining professional service employers have not yet been developed by this Corporation, an insurance agent would not appear to fit within the foregoing description, and the insurance agent-secretary plan would not appear to be excluded from coverage under the plan termination insurance provisions of the Act.

Henry Rose
General Counsel