

Pension Benefit Guaranty Corporation

76-63

May 6, 1976

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage
4021(b)(6) Plans Covered. Unfunded Plans for Highly Compensated Employees
4021(b)(8) Plans Covered. Excess Benefit Plans

OPINION:

This is in response to your request for reconsideration of our determination that the * * * (the "Plan") is not covered by Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). After reviewing the plan document and your letter of February 21, 1975, it is our conclusion that this Corporation's initial determination of non-coverage is correct.

Section 4021 of the Act sets forth the requirements for coverage by Title IV of the Act. Section 4021(a)(1) provides that plans which have in practice met the requirements for tax qualification, as in effect for the preceding 5 years of the plan, are covered by Title IV. Section 4021(a)(2) provides that a plan which is, or has been determined by the Secretary of the Treasury to be, a plan which meets the requirements of § 401(a) or § 404(a)(2) of the Internal Revenue Code of 1954 (the "Code") is covered by Title IV.

The Plan is an unfunded "pay as you go" plan. It has not been determined by the Secretary of the Treasury to meet § 401(a) or § 404(a)(2) [*2] of the Code, nor does it in fact meet the requirements of those sections. In addition, it has not been tax qualified in practice for the five preceding plan years. Accordingly, the Plan does not meet the requirements of § 4021(a)(1) or § 4021(a)(2) of the Act, and is therefore not subject to Title IV.

In your letter you indicate that an unfunded plan such as yours should be covered under § 4021(a)(1), otherwise § § 4021(b)(6) and 4021(b)(8), which exclude from coverage certain types of unfunded plans, would be superfluous. Those sections exclude unfunded plans which could not be covered by Title IV since they could not be tax qualified. In our view those sections are superfluous.

If I can answer any further questions, please feel free to contact me.

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