

Pension Benefit Guaranty Corporation

77-154

July 21, 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 is to inform you that * * * (the "Trust") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") because the Trust is maintained by a professional service employer and has fewer than twenty-five participants.

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 participants 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 administrators 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 [*2] individuals" and the list includes "public engineers".

The category "public engineers" includes all "licensed" or "registered" engineers. Your submissions to the PEGC indicate that a registered engineer owns at least 80% of * * * (the "Employer"). Accordingly, the Employer is a corporation "owned or controlled" by a professional individual within the meaning of § 4021(c)(2)(A)(i).

It is our understanding that the "biggest part" of the Employer's business is to provide consulting engineering services. If so, the Employer's "principal business . . . is the performance of professional services" within the meaning of § 4021(c)(2)(A)(ii). Further, in your earlier letter to * * * you stated that the Employer has never had more than four employees since the time it was incorporated.

Based on the above, it appears the Trust is excluded from Title IV coverage by § 4021(b)(13) of the Act. If you have any further questions, please feel free to contact * * *

Henry Rose
General Counsel