

Pension Benefit Guaranty Corporation

79-13

September 28, 1979

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 inquiry whether the above-referenced pension plan (the "Plan") is exempt from the termination insurance provisions of the Employee Retirement Income Security Act of 1974 (the "Act") under § 4021(b)(13) as a professional service employer.

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. (emphasis added).

A professional service employer is any entity owned or controlled by professional 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." Psychologists are included in the list.

In view of the fact that your husband, \* \* \*, is a clinical psychologist and controls [\*2] a majority of the stock of your corporation, the principal service of which is marital and family counseling, the Plan is excluded under § 4021(b)(13) from coverage under the plan termination insurance provisions of the Act.

I am forwarding a copy of this letter to the PBGC Division of the Controller with a request that premiums paid to the PBGC by the Plan be refunded.

Henry Rose  
General Counsel