

Pension Benefit Guaranty Corporation

77-128

February 4, 1977

REFERENCE:

[*1] 4021(b)(9) Plans Covered. Substantial Owner Plans

OPINION:

This is in response to your letter of * * * and our conference with * * * of * * *, wherein you requested a determination by the Pension Benefit Guaranty Corporation that * * * (the "Plan") is excluded from coverage by Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") by reason of § 4021(b)(9) of the Act.

You indicated that since the date of enactment of the Act, the sole participant of the Plan continuously owned more than 10 percent of the outstanding stock of * * * and more than 10 percent of the outstanding stock of * * * and that each corporation, throughout this period, had outstanding only one class of stock. You further stated that another individual, not a substantial owner, participated in the Plan before the enactment of the Act, but that only the present participant participated after the date of enactment and is entitled to be credited with service or receive any benefit under the Plan.

On the basis of the facts herein, the Plan is excluded from coverage under Title IV of the Act. Since on the subsequent to September 2, 1974, the only participant entitled to be credited with service or receive [*2] any benefit under the plan has continuously fallen within the definition of a "substantial owner" under § 4022(b)(6)(A)(iii) of the Act, the Plan is excluded from coverage by Title IV of the Act by reason of § 4021(b)(9) of the Act.

Henry Rose
General Counsel