

Pension Benefit Guaranty Corporation

80-13

June 20, 1980

REFERENCE:

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 certain pension plans for employees in the field of advertising and public relations (the "Plans") are exempt from the termination insurance provisions of the Employee Retirement Income Security Act of 1974 (the "Act") under § 4021(b)(13) as professional service employers. For the reasons stated herein, the Plans appear not to be excluded from Title IV coverage by § 4021(b)(13).

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 [*2] service.

Section 4021(c)(2)(B) lists some but not all of those individuals who are considered to be "professional individuals." Those who provide advertising and public relations services, 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.

As stated in PBGC Opinion Manual letter 76-106, 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 services generally requires the consistent exercise of discretion and judgment in its performance and usually would be predominantly intellectual in character.

Those who provide advertising and public relations services would not appear to fit within the foregoing description of [*3] "professional individual." Although advertising and public relations require a high degree of skill, they do not require a prolonged course of specialized intellectual instruction. Therefore, the Plans would not appear to be excluded from coverage under the plan termination insurance provisions of the Act. However, you have not submitted to us facts with respect to a particular case, and we have reached our conclusion based on a general understanding of the activities of firms in these fields. If you wish to resubmit the question with additional information which you feel would meet the criteria discussed herein, you are invited to do so.

If you have any questions please contact * * * of this Office at the above address or at (202) 254-3010.

Henry Rose
General Counsel