

Pension Benefit Guaranty Corporation

76-96

August 2, 1976

REFERENCE:

[\*1] 4021(b)(13) Plans Covered. Professional Service Employer Plans  
4021(c)(2)(A) Plans Covered. Definition of Professional Service Employer

OPINION:

This is in response to your letter of June 22, 1976, wherein you requested our opinion as to whether \* \* \* (the "Plan") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") pursuant to Section 4021(b)(13) of the Act.

Your letter indicates the following. \* \* \* (the "Association"), an association of medical doctors practicing in \* \* \* proposes to terminate the Plan, a defined benefit pension plan it presently maintains. The primary business of the Association is to provide administrative services to Association members. The EBS-1 form filed with the Department of Labor indicates that the Plan has one active participant.

Further, in a telephone conversation on June 29, 1976 with \* \* \* of the Office of the General Counsel, \* \* \* of your Office indicated that the Association is controlled by the medical doctors and that a council, made up of Association members, is elected to operate the Association's business. \* \* \* additionally indicated that the primary purpose of the Association was to [\*2] help member practitioners improve their own service to the public through the use of education and direction to the medical community.

Section 4021(b)(13) of the Act excludes from coverage a plan "established and maintained by a professional service employer which does not at any time after the date of enactment of [the] Act have more than 25 active participants in the plan." Section 4021(c)(2)(A) of the Act provides that a professional service employer is an entity owned or controlled by professional individuals or their executors or administrators and whose principal business is the performance of professional services.

Inasmuch as the principal business of the Association is to provide services which are administrative in nature, namely helping communities recruit physicians, helping universities recruit medical students, organizing scientific educational programs, recruiting physicians to provide needed vaccinations to the communities of \* \* \* lobbying and other such organizational services, and not the performance of professional services, the Plan is not excluded from the coverage of Title IV of the Act.

Since your letter indicates that the Plan is to be terminated, please [\*3] be advised that a Notice of Intent to Terminate must be filed with the PBGC pursuant to Section 4041(a) of the Act. The notice must be filed in the manner prescribed in the regulations promulgated by the PBGC governing procedures with regard to a Notice of Intent to Terminate, part 2604, Title 29 Code of Federal Regulations, a copy of which is enclosed for your convenience.

Should you desire any further information, please contact \* \* \*

Henry Rose  
General Counsel