

Pension Benefit Guaranty Corporation

75-44

December 8, 1975

REFERENCE:

[*1] 4021(b)(2) Plans Covered. Government Plans

OPINION:

This is in response to your letter of November 11, 1975, in connection with an inquiry by * * * You Asked this Corporation's position as to the applicability of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act") to pension plans which are maintained, but not established, by public agencies or political subdivisions.

Section 4021(b)(2) of the Act provides that Title IV does not apply to any plan

established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act . . .

The legislative history indicates that this exemption from the general provisions of Title IV was provided because it was believed that "the ability of the governmental entities to fulfill their obligations to employees through their taxing powers is an adequate substitute for termination insurance." S. Rep. No. 93-383, 93d Cong., 1st Sess., 81 (1973). To construe the word "established" [*2] strictly would, therefore, frustrate the intent of Congress in providing the exemption. The Congressional rationale for § 4021(b)(2) indicates that the exemption should be applied to the situation presented when a governmental entity takes over a plan. Therefore, it is the position of the Pension Benefit Guaranty Corporation that, generally, a pension plan maintained by a public agency or political subdivision which has been taken over from a private business is excluded from the provisions of Title IV.

I hope this is of assistance.

Steven E. Schanes
Executive Director