

Pension Benefit Guaranty Corporation

77-150

July 1, 1977

REFERENCE:

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

OPINION:

This is to inform you that the Pension Plan of * * * (the "Plan") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") because the Plan is maintained by a professional service employer and has fewer than twenty-five participants.

Section 4021(b)(13) of the Act excludes from Title IV 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.

Section 4021(c)(2)(A) defines the term "professional service employer" as

. . . any proprietorship, partnership, corporation, or other association or organization, (i) owned or * * * controlled by professional individuals, or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services

Section 4021(c)(2)(B) lists some of the individuals who are considered to be [*2] "professional individuals" and the list includes physical scientists.

The category "physical scientists" includes chemists. Your letter to * * * Case Officer, indicates that the three owners of * * * (the "Employer") are analytical chemists who hold degrees in chemistry or chemical engineering. Accordingly, the Employer is a * * * corporation "owned or controlled by professional individuals" within the meaning of § 4021(c)(2)(A)(i).

Your letter to * * * further states:

The Company is engaged in sampling and analyzing minerals, ores, metals, coal and water. Samples are customarily analyzed for purity or composition by analytical chemists in a laboratory which the Company maintains, and practically all of the Company's revenues are derived from its professional services. The analysts performing the testing require advanced special training in chemistry and testing procedures. . . .

Based on this description, the Employer's "principal business . . . is the performance of professional services" within the meaning of § 4021(c)(2)(A)(ii).

Accordingly, it appears the Plan is excluded from Title IV coverage by § 4021(b)(13) of the Act, and the Pension Benefit Guaranty Corporation [*3] therefore is closing its files on this case.

I trust this is of assistance. If you have any further questions, please call * * * of my staff, at * * *

Henry Rose
General Counsel