

Pension Benefit Guaranty Corporation

79-12

September 19, 1979

REFERENCE:

[*1] 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 as to whether the above-referenced pension plan (the "Plan") is exempt from the termination insurance provisions of the Employee Retirement Income Security Act of 1974 (the "Act") under § 4021(b)(13) as a professional service employer.

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 § 1021(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 service.

Section 4021(c)(2)(B) lists some but not all of those individuals who are considered to be "professional individuals." Professional planners, however, are not included in the list. Consequently, our determination of whether such individuals, [*2] 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 would be predominantly intellectual in character. See Labor Management Relations Act, 1947, 29 U.S.C. § 152(12) (1976).

You have advised us that in order to be licensed by the State of New Jersey, a professional planner must pass a test and have a degree in planning, engineering, or architecture, plus two years experience. In our view, * * * a professional planner licensed by New Jersey who owns 100% of the outstanding stock of * * *, Inc., (the "Company"), is [*3] a "professional individual" within the meaning of § 4021(c)(2)(A)(i) of the Act.

Further, the Company is a consulting firm employing professional planners licensed in New Jersey, who assist municipal planning boards principally in the preparation of comprehensive development plans, land use studies and housing surveys. The corporation is exclusively a consulting firm and does no construction work. Based on this description, the Company's "principal business . . . is the performance of professional services" within the meaning of § 4021(c)(2)(A)(ii).

Based on the above information, the Plan would appear to be excluded from coverage under the plan termination insurance provisions by § 4021(b)(13) of the Act.

Henry Rose
General Counsel