

Pension Benefit Guaranty Corporation

77-163

August 30, 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 responds to your letter informing the Pension Benefit Guaranty Corporation (the "PBGC") that your client, * * * (the "Laboratory"), intends to terminate its participation in * * * (the "Plan"). Your letter raised two questions regarding the coverage of this termination under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

Responding to your first question, the regulation governing the filing of a Notice of Intent to Terminate (the "Regulation") applies to the termination of plans that are not "multiemployer plans" as that term is defined in § 3(37) of the Act. Because the Plan is not a multiemployer plan within the meaning of that provision, if there were no other ground for excluding the instant termination from coverage under Title IV, the Regulation would apply.

Secondly, you inquire whether the Laboratory's participation in the Plan is excluded from Title IV coverage under the § 4021(b)(13) exclusion of any plan * * *

"established and [*2] 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) of the Act provides that a professional service employer is an entity

"(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 . . ."

Your letter states that the laboratory is owned and controlled by * * * a clinical laboratory bio-analyst licensed under * * * law. Section 4021(c)(2)(B) lists some but not all of the individuals who are considered to be * * * "professional individuals." Although the list does not explicitly include clinical laboratory bio-analysts, it does include "licensed practitioners of the healing arts."

In telephone conversations with * * * of this office, * * * explained that clinical laboratory bio-analysts perform chemical, hematological, parasitological, and other clinical tests. These clinical tests relate to the examination and treatment of patients. Based on this description of clinical laboratory bio-analysts, they come within [*3] the category of "licensed practitioners of the healing arts", whom § 4021(c)(2)(B) explicitly designates as professional individuals.

* * * further explained that the Laboratory's business is the performance of general clinical tests and that its staff consists solely of licensed medical technologists and their secretaries. Based on this information, the Laboratory's "principal business . . . is the performance of professional services" within the meaning of § 4021(c)(2)(A)(ii).

Accordingly, the Laboratory's Plan is excluded from Title IV coverage by § 4021(b)(13) of the Act. Plans that are excluded from coverage need not file a Notice of Intent to Terminate with the PBGC, nor obtain PBGC's approval before they terminate.

I hope this is of assistance to you. If you have any further questions, please do not hesitate to contact * * * who may be reached at the above address or by telephone at * * *

Henry Rose
General Counsel