

Pension Benefit Guaranty Corporation

75-19

January 9, 1975

REFERENCE:

[*1] 4021(b)(9) Plans Covered. Substantial Owner Plans
4021(b)(13) Plans Covered. Professional Service Employer Plans
4022(b)(6) Benefits Guaranteed. Phase-in of Guarantee for Substantial Owners

OPINION:

This is a confirmation of the recent telephone call to you by * * * of our staff regarding your request for an interpretation of certain provisions of Title IV of the Employee Retirement Income Security Act of 1974.

The outer limits of the Section 4021(b)(13) exclusion of certain "professional service employers" from the coverage of Title IV are yet to be delineated. It is clear that professional individuals includes those listed in the Act; although the Act states that "professional individuals" are not limited to that list, the Pension Benefit Guaranty Corporation has not yet had an instance where we found an individual to be a professional individual who was not on the statutory list. We are also inclined to believe that the Act's requirement that the professional service employer must be owned or controlled by professional individuals contemplates that they be in the same profession. We also have other facets of the problem under consideration; if you have a specific question about the [*2] subject, we would be happy to try to assist you. We have suggested that where there is doubt as to coverage, it may be desirable for a plan to pay premiums in order to avoid or minimize liability for interest and late payment charges; if it is later determined that the plan is not covered, there will be an opportunity to obtain a refund.

A plan meets the definition of Section 4021(b)(9), which excludes a plan "which is established and maintained exclusively for substantial owners as defined in Section 4022(b)(6)", if the plan in practice has covered only substantial owners and contemplates their exclusive coverage for the applicable premium payment period. For purposes of determining whether an individual is a substantial owner of more than 10 percent in value of either the voting stock of a corporation or of all of its stock, Section 4022(b)(6) provides that the constructive ownership rules of Section 1563(3) of the Internal Revenue Code apply. That subsection of the Code contains the standards for attribution of ownership by spouses, children, grandchildren, parents and grandparents.

As to your other questions; A plan which provides for an individual account for each participant [*3] and for benefits based solely upon the amount contributed to the participant's account is excluded from the coverage of Title IV. If such a plan provides for fixed minimum benefit, that defined benefit part of the plan is covered by Title IV. Defined benefit plans funded by insurance contracts are not excluded from coverage. See enclosed press release.

Defined benefit plans which cover only stockholders owning more than 10 percent of the stock, or which are established by professional corporations and cover fewer than 26 active participants are excluded from coverage by Sections 4021(b)(9) and 4021(b)(13), respectively.

We hope this is of assistance and apologize for the delay in responding by letter to your questions.

Henry Rose
General Counsel