

Pension Benefit Guaranty Corporation

76-22

February 11, 1976

REFERENCE:

[*1] 4021(b)(3) Plans Covered. Church Plans

OPINION:

This is to confirm our telephone conversation of February 4, 1976. In your letter of inquiry to this Corporation, you asked whether several pension plans covering employees of the * * * are subject to Title IV of the Employee Retirement Income Security Act of 1974 (the "Act").

As a general rule, a defined benefit, tax qualified pension plan, not specifically excluded from coverage under Act, § 4021(b) is subject to Title IV of the Act. A church plan as defined in § 414(e) of the Internal Revenue Code of 1954 (the "Code") is excluded from coverage under Title IV of the Act, unless that plan has made an election under § 410(d) of the Code and has notified this Corporation that it wishes to be subject to Title IV. Act § 4021(b)(3). Therefore, if the plans covering employees of the * * * are church plans, they would be excluded from coverage under Title IV, unless they have elected to be covered.

The Internal Revenue Service (the "IRS") has not yet issued regulations under § 414(e) of the Code setting forth the criteria for determining whether a plan is a church plan. Therefore, we are presently unable to determine whether the plans in question [*2] are exempt from coverage as church plans. As we discussed, I will respond substantively to your letter once the IRS regulation has been issued and we are able to determine the status of the plans in question.

Office of the General Counsel