

Pension Benefit Guaranty Corporation

81-37

November 16, 1981

REFERENCE:

[*1] 4021(b)(2) Plans Covered. Government Plans

OPINION:

This is in response to your request for a determination by the Pension Benefit Guaranty Corporation as to whether the above plan (the "Plan") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") by Section 4021(b)(2) of the Act. We have concluded that the Plan is a governmental plan and thus is excluded from coverage by that section.

As you have represented the facts, the * * * (the "Association") is an unincorporated association consisting "of the commissioner, director, superintendent, or other official who by law is charged with the responsibility of supervising the business of insurance within each state, territory, or insular possession of the United States." Officers of the Association must be members or their duly authorized representatives (a duly authorized representative of a member "shall be some person officially connected with his department, who is wholly or principally employed by said department").

Article 2 of the Constitution of the Association states:

The object of this Association shall be to promote uniformity in legislation affecting insurance [sic] to encourage [*2] uniformity in departmental rulings under the insurance laws of the several states; to disseminate information of value to insurance supervisory officials in the performance of their duties; to establish ways and means of fully protecting the interests of insurance policyholders of the various states, territories and insular possessions of the United States; and to preserve to the several states the regulation of the business of insurance.

By letters dated May 23, 1955, and August 30, 1974, the Internal Revenue Service notified the Association of its determination "that the Association is an instrumentality wholly owned by the States the representatives of which comprise its membership." By letter dated May 1, 1969, the Social Security Administration notified the Association of its determination that the Association is an "interstate instrumentality" having the status of a state for purposes of the Social Security Act. By letter dated December 10, 1973, the United States Department of Labor notified the Association of its determination that the Association is a state agency or instrumentality.

Based on the above, we have determined that the Association is a governmental agency [*3] or instrumentality within the meaning of Section 4021(b)(2) and, therefore, that the Plan is not covered by Title IV.

I hope I have been of assistance. If you have any questions, please contact the attorney assigned to this case, * * * at (202) 254-3010.

Henry Rose
General Counsel