

Pension Benefit Guaranty Corporation

79-6

April 10, 1979

REFERENCE:

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

OPINION:

This is in response to your letter to this Office raising the question as to whether the Retirement System of the * * * (the "Plan") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") as a "governmental plan" within the meaning of Section 4021(b)(2) of the Act.

Section 4021(b)(2) excludes from coverage any plan "established and maintained for its employees by the Government of the United States . . . or by any agency or instrumentality [thereof]." It appears to us that the Plan is not a "governmental plan," and, therefore covered under Title IV of the Act.

Although Congress granted the * * * its Charter, that fact alone is not determinative of whether the * * * is an instrumentality of the United States. We note that the statute creating the * * * does not designate it a governmental instrumentality. We note also that a number of federal statutes, e.g., the Equal Employment Opportunity Act of 1972 and the Occupational Safety and Health Act of 1970, treat the * * * as a private employer, and that Congress does not appropriate funds for the * * *

There is no evidence that Congress [*2] intended to deprive the employees of the * * * of the protection of Title IV of the Act. If the United States were obligated to fund any insufficiency in the Plan in the event of its termination, we might well view the situation differently.

Henry Rose
General Counsel