

Pension Benefit Guaranty Corporation

77-169

November 28, 1977

REFERENCE:

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

OPINION:

This is in reference to the request of \* \* \* regarding the coverage under Title IV of the Employee Retirement Income Security Act of 1974 (the Act) of the participation of the \* \* \*) and the \* \* \* of the \* \* \* in the \* \* \* (the Plan).

As we interpret the Plan document \* \* \*, the Plan is maintained by the \* \* \*, the \* \* \*, \* \* \* Associations and similar institutions, all employer contributions are commingled, and all amounts payable by the Plan are a general charge upon all assets of the Plan.

You inquired whether the participation of the \* \* \* and \* \* \* constitutes a governmental plan under Section 4021(b)(2) of the Act and whether, upon termination of the Plan, Section 4044 of the Act applies to \* \* \* and \* \* \* participation.

It appears that there is no question that the participation of the other employers is not excluded from Title IV coverage.

Regardless of whether the \* \* \* and \* \* \* are government instrumentalities within the meaning of \* \* \* Section 4021(b)(2) of the Act, their participation in a plan maintained by more than one employer, some of which are not governmental entities, precludes the application of the governmental [\*2] plan exclusion under Section 4021(b)(2) of the Act. If the Plan terminates, Section 4044 would apply to the entire Plan.

Accordingly, premiums are due for the participants of the Plan employed by the \* \* \* and \* \* \*, as well as the participating employees of the other employers maintaining the Plan, assuming that the Plan is not otherwise excluded from Title IV coverage.

We hope this is of assistance and will be happy to discuss any questions that you may have.

Henry Rose  
General Counsel