

informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Labor-Management Services Administrator contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide the Labor-Management Services Administrator in performing his duties unless and until he is directed otherwise by authoritative ruling of the courts or unless and until he subsequently decides that his prior interpretation is incorrect. Under section 12 of the Act, the interpretations contained in this part, if relied upon in good faith, will constitute a defense in any action or proceeding based on any Act or omission in alleged violation of section 13(c) of the Act. The omission, however to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Labor-Management Services Administrator with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Labor-Management Services Administrator with respect to 13(c) are set forth in this part to provide those affected by the provisions of the Act with "a practical guide * * * as to how the office representing the public interest in its enforcement will seek to apply it" (*Skidmore v. Swift & Co.*, 323 U.S. 134, 138).

(c) To the extent that prior opinions and interpretations relating to 13(c) are inconsistent with the principles stated in this part, they are hereby rescinded and withdrawn.

§ 2580.412-34 General.

The purpose of section 13(c), as shown by its legislative history, is similar to a closely related provision contained in section 502(a) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 536; 29 U.S.C. 502(a)). The fundamental purpose of Congress under 13(c) is to insure against potential abuses arising from significant financial or other influential interests affecting the objectivity of the plan or parties in interest in the plan and

agents, brokers, or surety or other companies, in securing and providing the bond specified in section 13(a). As will be explained more fully below, this prohibition, however, was not intended to preclude the placing of bonds through or with certain parties in interest in plans which provide a variety of services to the plan, one of which is a bonding service.

§ 2580.412-35 Disqualification of agents, brokers and sureties.

Since 13(c) is to be construed as disqualifying any agent, broker, surety or other company from having a bond placed through or with it, if the plan or any party in interest in the plan has a significant financial interest or control in such agent, broker, surety or other company, a question of fact will necessarily arise in many cases as to whether the financial interest or control held is sufficiently significant to disqualify the agent, broker or surety. Although no rule of guidance can be established to govern each and every case in which this question arises, in general, the essential test is whether the existing financial interest or control held is incompatible with an unbiased exercise of judgment in regard to procuring the bond or bonding the plan's personnel. In regard to the foregoing, it is also to be pointed out that lack of knowledge or consent on the part of persons responsible for procuring bonds with respect to the existence of a significant financial interest or control rendering the bonding arrangement unlawful will not be deemed a mitigating factor where such persons have failed to make a reasonable examination into the pertinent circumstances affecting the procuring of the bond.

§ 2580.412-36 Application of 13(c) to "party in interest".

(a) Under 13(c), an agent, broker or surety or other company is disqualified from having a bond placed through or with it if a "party in interest" in the plan has any significant control or financial interest in such agent, broker, surety or other company. Section 3(13) of the Act defines the term "party in interest" to mean "any administrator, officer, trustee, custodian, counsel, or

employee of any employee welfare benefit plan or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.”

(b) A basic question presented is whether the effect of 13(c) is to prohibit persons from placing a bond through or with any “party in interest” in the plan. The language used in 13(c) appears to indicate that in this connection the intent of Congress was to eliminate those instances where the existing financial interest or control held by the “party in interest” in the agent, broker, surety or other company is incompatible with an unbiased exercise of judgment in regard to procuring the bond or bonding the plan’s personnel. Accordingly, not all parties in interest are disqualified from procuring or providing bonds for the plan. Thus where a “party in interest” or its affiliate provides multiple benefit plan services to plans, persons are not prohibited from availing themselves of the bonding services provided by the “party in interest” or its affiliate merely because the plan has already availed itself, or will avail itself, of other services provided by the “party in interest.” In this case, it is inherent in the nature of the “party in interest” or its affiliate as an individual or organization providing multiple benefit plan services, one of which is a bonding service, that the existing financial interest or control held is not, in and of itself, incompatible with an unbiased exercise of judgment in regard to procuring the bond or bonding the plan’s personnel. In short, there is no distinction between this type of relationship and the ordinary arm’s length business relationship which may be established between a plan-customer and an agent, broker or surety company, a relationship which

Congress could not have intended to disturb. On the other hand, where a “party in interest” in the plan or an affiliate does not provide a bonding service as part of its general business operations, 13(c) would prohibit any person from procuring the bond through or with any agent, broker, surety or other company, with respect to which the “party in interest” has any significant control or financial interest, direct or indirect. In this case, the failure of the “party in interest” or its affiliate to provide a bonding service as part of its general business operations raises the possibility of less than an arm’s length business relationship between the plan and the agent, broker, surety or other company since the objectivity of either the plan or the agent, broker or surety may be influenced by the “party in interest”.

(c) The application of the principles discussed in this section is illustrated by the following examples:

Example (1). B, a broker, renders actuarial and consultant service to plan P. B has also procured a group life insurance policy for plan P. B may also place a bond for P with surety company S, provided that neither B nor P has any significant control or financial interest, direct or indirect, in S and provided that neither P nor any other “party in interest” in P, e.g., an officer of the plan, has any significant control or financial interest, direct or indirect, in B or S.

Example (2). I, a life insurance company, has provided a group life insurance policy for plan P. I is affiliated with S, a surety company, and has a significant financial interest or control in S. P is not prohibited from obtaining a bond from S since I’s affiliation with S does not ordinarily, in and of itself, affect the objectivity of P in procuring the bond or the objectivity of S in bonding P’s personnel. However, if any other “party in interest” as defined in section 3(13) of the Act, such as the employer whose employees are covered by P, should have a significant financial interest or control in S, S could not write the bond for P, since the employer’s interest affects the objectivity of P and S.