

SUBCHAPTER I—TEMPORARY BONDING RULES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2580—TEMPORARY BONDING RULES

Subpart A—Criteria for Determining Who Must Be Bonded

Sec.

- 2580.412-1 Statutory provisions.
- 2580.412-2 Plans exempt from the coverage of section 13.
- 2580.412-3 Plan administrators, officers and employees for purposes of section 13.
- 2580.412-4 “Funds or other property” of a plan.
- 2580.412-5 Determining when “funds or other property” belong to a plan.
- 2580.412-6 Determining when “funds or other property” are “handled” so as to require bonding.

Subpart B—Scope and Form of the Bond

- 2580.412-7 Statutory provision—scope of the bond.
- 2580.412-8 The nature of the duties or activities to which the bonding requirement relates.
- 2580.412-9 Meaning of fraud or dishonesty.
- 2580.412-10 Individual or schedule or blanket form of bonds.

Subpart C—Amount of the Bond

- 2580.412-11 Statutory provision.
- 2580.412-12 Relationship of determining the amount of the bond to “handling”.
- 2580.412-13 The meaning of “funds” in determining the amount of the bond.
- 2580.412-14 Determining the amount of funds “handled” during the preceding reporting year.
- 2580.412-15 Procedures to be used for estimating the amount of funds to be “handled” during the current reporting year in those cases where there is no preceding reporting year.
- 2580.412-16 Amount of bond required in given types of bonds or where more than one plan is insured in the same bond.
- 2580.412-17 Bonds over \$500,000.

Subpart D—General Bond Rules

- 2580.412-18 Naming of insureds.
- 2580.412-19 Term of the bond, discovery period, other bond clauses.
- 2580.412-20 Use of existing bonds, separate bonds and additional bonding.

Subpart E—Qualified Agents, Brokers and Surety Companies for the Placing of Bonds

- 2580.412-21 Corporate sureties holding grants of authority from the Secretary of the Treasury.
- 2580.412-22 Interests held in agents, brokers and surety companies.

Subpart F—Exemptions

BONDS PLACED WITH CERTAIN REINSURING COMPANIES

- 2580.412-23 Exemption.
- 2580.412-24 Conditions of exemption.

BONDS PLACED WITH UNDERWRITERS AT LLOYDS, LONDON

- 2580.412-25 Exemption.
- 2580.412-26 Conditions of exemption.

BANKING INSTITUTIONS SUBJECT TO FEDERAL REGULATION

- 2580.412-27 Exemption.
- 2580.412-28 Conditions of exemption.

SAVINGS AND LOAN ASSOCIATIONS SUBJECT TO FEDERAL REGULATION

- 2580.412-29 Exemption.
- 2580.412-30 Conditions of exemption.

INSURANCE CARRIERS, SERVICE AND OTHER SIMILAR ORGANIZATIONS

- 2580.412-31 Exemption.
- 2580.412-32 Conditions of exemption.

Subpart G—Prohibition Against Bonding by Parties Interested in the Plan

- 2580.412-33 Introductory statement.
- 2580.412-34 General.
- 2580.412-35 Disqualification of agents, brokers and sureties.
- 2580.412-36 Application of 13(c) to “party in interest”.

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Subpart A—Criteria for Determining Who Must Be Bonded

§ 2580.412-1 Statutory provisions.

Section 13(a) of the Welfare and Pension Plans Disclosure Act of 1958, as amended, states, in part, that:

Every administrator, officer and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements of this section.

* * * Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others.

§ 2580.412-2 Plans exempt from the coverage of section 13.

Only completely unfunded plans in which the plan benefits derive solely from the general assets of a union¹ or employer, and in which plan assets are not segregated in any way from the general assets of a union or employer and remain solely within the general assets until the time of distribution of benefits, shall be exempt from the bonding provisions. As such, the language “where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer” shall not be deemed to exempt a plan from the coverage of section 13 if the plan is one in which:

(a) Any benefits thereunder are provided or underwritten by an insurance carrier or service or other organization, or

¹For purposes of the exemption discussed in § 2580.412-2, the term “union” shall include “* * * any organization of any kind or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships * * *” (29 U.S.C. 302(a)(3)).

(b) There is a trust or other separate entity to which contributions are made or out of which benefits are paid, or

(c) Contributions to the plan are made by the employees, either through withholding or otherwise, or from any source other than the employer or union involved, or

(d) There is a separately maintained bank account or separately maintained books and records for the plan or other evidence of the existence of a segregated or separately maintained or administered fund out of which plan benefits are to be provided.

As a general rule, the presence of special ledger accounts or accounting entries for plan funds as an integral part of the general books and records of an employer or union shall not, in and of itself, be deemed sufficient evidence of segregation of plan funds to take a plan out of the exempt category, but shall be considered along with the other factors and criteria discussed above in determining whether the exemption applies. Again, it should be noted, however, that the fact that a plan is not exempt from the coverage of section 13 does not necessarily mean that its administrators, officers or employees are required to be bonded. As stated previously, this will depend in each case on whether or not they “handle” funds or other property of the plan within the meaning of section 13 and under the standards set forth in § 2580.412-6.

§ 2580.412-3 Plan administrators, officers and employees for purposes of section 13.

(a) *Administrator.* (1) For purposes of the bonding provisions, the term “administrator” is defined in the same manner as under section 5 of the Act and refers to:

(i) The person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

(ii) In the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether