

Pension and Welfare Benefits Admin., Labor

§ 2580.412-33

welfare and pension benefit plans covered by the Act.

[34 FR 5158, Mar. 13, 1969. Redesignated at 50 FR 26706, June 28, 1985]

§ 2580.412-28 Conditions of exemption.

This exemption applies only to those banking institutions and trust companies subject to regulation and examination by the Comptroller of the Currency or the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

SAVINGS AND LOAN ASSOCIATIONS
SUBJECT TO FEDERAL REGULATION

§ 2580.412-29 Exemption.

An exemption from the bonding requirements of subsections 13 (a) and (b) of the Welfare and Pension Plans Disclosure Act is granted whereby savings and loan associations (including building and loan associations, cooperative banks and homestead associations) specified in § 2580.412-30 are not required to comply with subsections 13 (a) and (b) of the Act, with respect to welfare and pension benefit plans covered by the Act for the benefit of their own employees, where such a savings and loan association is the administrator of such plans.

[32 FR 6840, May 4, 1967. Redesignated at 50 FR 26706, June 28, 1985]

§ 2580.412-30 Conditions of exemption.

This exemption applies only to those savings and loan associations (including building and loan associations, cooperative banks and homestead associations) subject to regulation and examination by the Federal Home Loan Bank Board.

[32 FR 6840, May 4, 1967. Redesignated at 50 FR 26706, June 28, 1985]

INSURANCE CARRIERS, SERVICE AND
OTHER SIMILAR ORGANIZATIONS

§ 2580.412-31 Exemption.

An exemption from the bonding requirements of subsection 13 (a) and (b) of the Welfare and Pension Plans Disclosure Act is granted whereby any insurance carrier or service or other similar organization specified in § 2580.412-32 is not required to comply

with subsections 13 (a) and (b) of the Act with respect to any welfare or pension benefit plan covered by the Act which is established or maintained for the benefit of persons other than the employees of such insurance carrier or service or other similar organization.

[34 FR 5158, Mar. 13, 1969. Redesignated at 50 FR 26706, June 28, 1985]

§ 2580.412-32 Conditions of exemption.

This exemption applies only to those insurance carriers, service or other similar organizations providing or underwriting welfare or pension plan benefits in accordance with State law.

[34 FR 5158, Mar. 13, 1969. Redesignated at 50 FR 26706, June 28, 1985]

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

SOURCE: 28 FR 14412, Dec. 27, 1963, unless otherwise noted. Redesignated at 50 FR 26706, June 28, 1985.

§ 2580.412-33 Introductory statement.

(a) This part discusses the meaning and scope of section 13(c) of the Welfare and Pension Plans Disclosure Act of 1958 (76 Stat. 39, 29 U.S.C. 308d(c)) (hereinafter referred to as the Act). This provision makes it unlawful “for any person to procure any bond [required by the Act] from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect.” Because the prohibition contained in this provision is broadly stated, it becomes a matter of importance to determine more specifically the types of arrangements intended to be prohibited.

(b) The provisions of section 13 of the Act, including 13(c) are subject to the general investigatory authority of the Director, Office of Labor-Management and Welfare-Pension Reports, embodied in section 9 of the Act. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Labor-Management Services Administrator to reach

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