

July 1, 1975

Dear :

This is in response to your inquiry of December 30, 1974, which was addressed to and which has been referred to this Office for reply.

You state that Insurance Agency, Inc. has obtained bonding from either the Life and Casualty Company or The Insurance Company for the fiduciaries of qualified profit sharing and pension plans administered by Insurance Planning Agency, the partners of which are the principal shareholders of the insurance agency.

You request an exemption under section 412(e) of the Employee Retirement Income Security Act of 1974 (ERISA) in the event the Department of Labor determines that the above bonding arrangement is prohibited under the provisions of section 412(c).

Section 412(c) provides as follows:

"It shall be unlawful for any person to procure any bond required by subsection (a) 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 control or significant financial interest, direct or indirect."

Congress definitely found danger of harmful results in the situations described in section 412(c) so much so that it forbade bonds contracted for under such circumstances. Accordingly, an exemption may not be granted under section 412(a) from the prohibitions contained in section 412(c).

The Secretary has issued a temporary regulation (29 CFR 2555) which, pending issuance of a permanent bonding regulation under section 412 of ERISA, incorporates by reference most of the bonding regulations issued under the Welfare and Pension Plans Disclosure Act (WPPDA) and makes them applicable to plan officials under ERISA.

Pending the issuance of permanent regulations with respect to Section 412, a fiduciary is not required to be bonded unless he handles funds or other property of an employee benefit plan. "Handling" occurs whenever the duties or

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activities of a plan official are such that there is a risk that such funds or other property could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others.

Enclosed herewith is a compilation of regulations and interpretive bulletins issued under the WPPDA. In the absence of specific details concerning the relationship between Insurance Planning Agency and the various plans it administers it is not possible to state that a violation of section 412(c) does not exist. However, your attention is directed to 29 CFR 485 of the enclosure, particularly Example 1 under 485.4, which may have direct application to your inquiry.

Sincerely,