

January 15, 1976

Dear :

This is in response to your letter of October 10, 1975, to in which you inquire whether an insurance company which sells a group insurance policy to a company to fund one of the company's employee benefit plans also can sell to the company the bond required by section 412(a) of the Employee Retirement Income Security Act of 1974 (the Act).

Section 406(a)(1)(A) of the Act prohibits, among other things, the direct or indirect sale of any property, including a bond required by section 412(a) of the Act, between a plan and a party in interest. However, the sale by an insurance company of a group insurance policy to an employer to fund an employee benefit plan would not alone cause the insurance company to become a party in interest to the plan. Therefore, in the absence of any indication that the insurance company is a party in interest-- for example, that the insurance company provides services to the plan in addition to the sale of the insurance policy-- the prohibitions of section 406 would not apply to the sale of a bond in the circumstances you describe.

You also inquire as to the applicability of section 412(c) of the Act to the sale by an insurance company of a bond required by section 412(a) to a policyholder, where a director of the insurance company is also a director of the policyholder.

As you are aware, section 412(c) makes it unlawful to procure any bond required by section 412(a) "from any... company... in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect." Whether the requisite control or interest is present in this case is a factual question and your letter does not provide sufficient information with respect to the relationship between the two companies for that determination to be made.

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Since a temporary regulation under section 412(e) of the Act, 29 CFR §2550.412-1 (40 FR 2003, January 10, 1975), incorporates by reference the substance of the regulations adopted under section 13 of the Welfare and Pension Plans Disclosure Act, (WPPDA), you may find the WPPDA regulations helpful in interpreting section 412(c), particularly 29 CFR 485.4(b) and (c) and example (2) therein. Copies of the above regulations are enclosed for your information.

Sincerely,