

April 5, 1976

Dear :

This is in response to your recent letter in which you request an exemption from the bonding requirements of the Employee Retirement Income Security Act of 1974 (ERISA) as they may be applicable to the above plan.

You state that you have a pension plan which is fully insured. It is your view that it is an unnecessary expense to purchase a fiduciary bond and that Congress did not intend to burden very small businesses with such an item.

The Secretary has issued a temporary regulation (29 CFR 2550.412-1) which, pending issuance of a permanent bonding regulation implementing section 412 of ERISA, incorporates by reference most of the bonding regulations issued under the Welfare and Pension Plans Disclosure Act 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 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.

Your letter does not disclose any details with respect to the manner in which employer or employee plan contributions are made. However, assuming that such contributions are made out the general assets of the employer for purchase of benefits from an insurance carrier, no bonding would be required with respect to such payment nor with respect to the bare existence of the contract obligation to pay benefits. Such arrangements would not normally be subject to bonding except to the extent that monies returned by way of

benefit payments, case surrender, dividends, credits or otherwise, and which by the terms of the plan belonged to the plan were subject to "handling" by plan officials.

Assuming further that annuity payments are made payable to the participant, then bonding would not be required with respect to such payments.

If the foregoing assumptions are correct and bonding is not required, there is no basis for consideration of your request for an exemption. Accordingly, in the absence of further word from you, no action will be taken in connection with your request.

Sincerely,