

by employers or employee organizations or by withholding from employee's salaries are not segregated from the general assets of the employer or employee organization until payment for purchase of benefits from an insurance carrier or service or other organization. No bonding is required with respect to the payment of premiums or other payments made to purchase such benefits directly from general assets, 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, cash surrender, dividends, credits or otherwise, and which by the terms of the plan belonged to the plan (rather than to the employer, employee organization, insurance carrier or service or other organization) were subject to "handling" by plan administrators, officers or employees.

Subpart B—Scope and Form of the Bond

§ 2580.412-7 Statutory provision—scope of the bond.

The statute requires that the bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of a plan administrator, officer, or employee, directly or through connivance with others.

§ 2580.412-8 The nature of the duties or activities to which the bonding requirement relates.

The bond required under section 13 is limited to protection for those duties and activities from which loss can arise through fraud or dishonesty. It is not required to provide the same scope of coverage that is required in faithful discharge of duties bonds under the Labor-Management Reporting and Disclosure Act of 1959 or in the faithful performance bonds of public officials.

§ 2580.412-9 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in handling

of funds as delineated in § 2580.412-6. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the state in which the act is committed, a court would afford recovery under a bond providing protection against fraud or dishonesty. As usually applied under state laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts. For the purposes of section 13, other fraudulent or dishonest acts shall also be deemed to include acts where losses result through any act or arrangement prohibited by title 18, section 1954 of the U.S. Code.

§ 2580.412-10 Individual or schedule or blanket form of bonds.

Section 13 provides that "any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class". Any form of bond which may be described as individual, schedule or blanket in form or any combination of such forms of bonds shall be acceptable to meet the requirements of section 13, provided that in each case, the form of the bond, in its particular clauses and application, is not inconsistent with meeting the substantive requirements of the statute for the persons and plan involved and with meeting the specific requirements of the regulations in this part. Basic types of bonds in general usage are:

(a) *Individual bond.* Covers a named individual in a stated penalty.

(b) *Name schedule bond.* Covers a number of named individuals in the respective amounts set opposite their names.

(c) *Position schedule bond.* Covers each of the occupants of positions listed in the schedule in the respective amounts set opposite such positions.

(d) *Blanket bonds.* Cover all the insured's officers and employees with no schedule or list of those covered being necessary and with all new officers and

employees bonded automatically, in a blanket penalty which takes two forms—an aggregate penalty bond and a multiple penalty bond which are described below:

(1) The aggregate penalty blanket bond such as the Commercial Blanket Bond; the amount of the bond is available for dishonesty losses caused by persons covered thereunder or losses in which such person is concerned or implicated. Payment of loss on account of any such person does not reduce the amount of coverage available for losses other than those caused by such person or in which he was concerned or implicated.

(2) The multiple penalty bond such as the Blanket Position Bond giving separate coverage on each person for a uniform amount—the net effect being the same as though a separate bond were issued on each person covered thereunder and all of such bonds being for a uniform amount.

NOTE: For the purpose of section 13, blanket bonds which are either aggregate penalty or multiple penalty in form shall be permissible if they otherwise meet the requirements of the Act and the regulations in this part.

Bonding, to the extent required, of persons indirectly employed, or otherwise delegated, to perform functions for the plan which are normally performed by “administrators, officers, or employees” as described in § 2580.412-3(d) may be accomplished either by including them under individual or schedule bonds or other forms of bonds meeting the requirements of the Act, or naming them in what is known under general trade usage as an “Agents Rider” attached to a Blanket Bond.

Subpart C—Amount of the Bond

§ 2580.412-11 Statutory provision.

Section 13 requires that the amount of the bond be fixed at the beginning of each calendar, policy or other fiscal year, as the case may be, which constitutes the reporting year of the plan for purposes of the reporting provisions of the Act. The amount of the bond shall be not less than 10 per centum of the amount of funds handled, except that any such bond shall be in at least the amount of \$1,000 and no such bond

shall be required in an amount in excess of \$500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of \$500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in the regulations in this part. With respect to persons required to be bonded, section 13 shall be deemed to require the bond to insure from the first dollar of loss up to the requisite bond amount and not to permit the use of deductible or similar features whereby a portion of the risk within such requisite bond amount is assumed by the insured. Any request for variance from these requirements shall be made pursuant to the provisions of section 13(e) of the Act.

§ 2580.412-12 Relationship of determining the amount of the bond to “handling”.

A determination of whether persons falling within the definition of administrator, officer or employee are required to be bonded depends on whether they “handle” funds or other property. Determining the amount of the bond is an aspect of the same process in that it requires a determination of what funds or other property are being handled or what amounts of funds or other property are subject to risk of loss with respect to the duties or powers of an administrator, officer or employee of a covered plan. Once this calculation is made, the required amount for which that person must be covered by a bond, either by himself or as a part of a group or class being bonded under a blanket or schedule bond, is not less than 10 percent of the amount “handled” or \$1,000, whichever is the greater amount, except that no such bond shall be required in an amount