

§ 2580.412-13

greater than \$500,000 by virtue of these regulations. (See § 2580.412-17.)

§ 2580.412-13 The meaning of “funds” in determining the amount of the bond.

The amount of the bond depends on the amount of “funds” “handled”, and shall be sufficient to provide bonding protection against risk of loss through fraud or dishonesty for all plan funds, including other property similar to funds or in the nature of funds. As such, the term “funds” shall be deemed to include and be equivalent to “funds and other property” of the plan as described in § 2580.412-4. With respect to any item of “funds or other property” which does not have a cash or readily ascertainable market value, the value of such property may be estimated on such basis as will reasonably reflect the loss the plan might suffer if it were mishandled.

§ 2580.412-14 Determining the amount of funds “handled” during the preceding reporting year.

(a) The amount of funds “handled” by each person falling within the definition of administrator, officer, or employee (or his predecessors) during the preceding reporting year shall be the total of funds subject to risk of loss, within the meaning of the definition of “handling” (see § 2580.412-6), through acts of fraud or dishonesty, directly or in connivance with others, by such person or his predecessors during the preceding reporting year. The relationship of the determination of the amount of funds “handled” to the determination of who is “handling” can best be illustrated by a situation that commonly arises with respect to executive personnel of a plan, where a bank or corporate trustee has the responsibility for the receipt, safekeeping, physical handling and investment of a plan’s assets and the basic function of the executive personnel is to authorize payments to beneficiaries and payments for services to the corporate trustee, the actuary and the employees of the plan itself. Normally, in any given year, only a small portion of the plan’s total assets is disbursed, and the question arises as to whether an administrator or executive personnel are “han-

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dling” only the amounts actually disbursed each year or whether they are “handling” the total amounts of the assets. The answer to this question depends on the same basic criterion that governs all questions of “handling”, namely, the possibility of loss. If the authorized duties of the persons in question are strictly limited to disbursements of benefits and payments for services, and the fiscal controls and practical realities of the situation are such that these persons cannot gain access to funds which they are not legitimately allowed to disburse, the amount on which the bond is based may be limited to the amount actually disbursed in the reporting year. This would depend, in part, on the extent to which the bank or corporate trustee which has physical possession of the funds also has final responsibility for questioning and limiting disbursements from the plan, and on whether this responsibility is embodied in the original plan instruments. On the other hand, where insufficient fiscal controls exist so that the persons involved have free access to, or can obtain control of, the total amount of the fund, the bond shall reflect this fact and the amount “handled” shall be based on the total amount of the fund. This would generally occur with respect to persons such as the “administrator”, regardless of what functions are performed by a bank or corporate trustee, since the “administrator” by definition retains ultimate power to revoke any arrangement with a bank or corporate trustee. In such case, the “administrator” would have the power to commit the total amount of funds involved to his control, unless the plan itself or other specific agreement (1) prevents the “administrator” from so doing or (2) requires that revocation cannot be had unless a new agreement providing for similar controls and limitations on the “handling” of funds is simultaneously entered into.

(b) Where the circumstances of “handling” are such that the total amount of a given account or fund is subject to “handling”, the amount “handled” shall include the total of all such funds on hand at the beginning of the reporting year, plus any items received during the year for any reason,

such as contributions or income, or items received as a result of sales, investments, reinvestment, interest or otherwise. It would not, however, be necessary to count the same item twice in arriving at the total funds "handled" by a given person during a reporting year. For example, a given person may have various duties or powers involving receipt, safekeeping or disbursement of funds which would place him in contact with the same funds at several times during the same year. Different duties, however, would not make it necessary to count the same item twice in arriving at the total "handled" by him. Similarly, where a person has several different positions with respect to a plan, it would not be necessary to count the same funds each time that they are "handled" by him in these different positions, so long as the amount of the bond is sufficient to meet the 10 percent requirement with respect to the total funds "handled" by him subject to risk or loss through fraud or dishonesty, whether acting alone or in collusion with others. In general, once an item properly within the category of "funds," has been counted as "handled" by a given person, it need not be counted again even though it should subsequently be "handled" by the same person during the same year.

§ 2580.412-15 Procedures to be used for estimating the amount of funds to be "handled" during the current reporting year in those cases where there is no preceding reporting year.

If for any reason a plan does not have a complete preceding reporting year, the amount "handled" by persons required to be covered by a bond shall be estimated at the beginning of the calendar, policy or other fiscal year, as the case may be, which would constitute either the operating year or the reporting year of the plan, whichever shall occur first, as follows:

(a) In the case of a plan having a previous experience year, even though it has no preceding reporting year, the estimate of the amount to be "handled" for any person required to be covered shall be based on the experience in the previous year by applying the same standards and criteria as in a plan which has a preceding reporting year.

Similarly, where a plan is recently established, but has had, at the time a bond is obtained, sufficient experience to reasonably estimate a complete year's experience for persons required to be bonded, the amount of funds to be "handled" shall be projected to the complete year on the basis of the period in which the plan has had experience, unless, to the knowledge of the plan administrator, the given period of experience is so seasonal or unrepresentative of the complete year's experience as not to provide a reasonable basis for projecting the estimate for the complete year.

(b) Where a plan does not have any prior experience sufficient to allow it to estimate the amount "handled" in the manner outlined in paragraph (a) of this section, the amount to be "handled" by the administrators, officers and employees of the plan during the current reporting year shall be that amount initially required to fund or set up the plan, plus the amount of contributions required to be made under the plan formula from any source during the current reporting year. In most cases, the amount of contributions will be calculated by multiplying the total yearly contribution per participant (required by the plan formula from either employers, employees, employer organizations or any other source) by the number of participants in the plan at the beginning of such reporting year. In cases where the per capita contribution cannot readily be determined, such as in the case of certain insured plans covered by the Act, the amount of contributions shall be estimated on the amount of insurance premiums which are actuarially estimated as necessary to support the plan, or on such other actuarially estimated basis as may be applicable. In the case of a newly formed profit-sharing plan covered by the Act, if the employer establishing the plan has a previous year of experience, the amount of contributions required by the plan formula shall be estimated on the basis of the profits of the previous year. The amount of the bond shall then be fixed at 10 percent of this calculation, but not more than \$500,000. A bond for such amount shall be obtained in any form