

§ 2580.412-16

the plan desires on all persons who are administrators, officers, or employees of the plan and who “handle” funds or other property of the plan.

§ 2580.412-16 Amount of bond required in given types of bonds or where more than one plan is insured in the same bond.

(a) As indicated in § 2580.412-10, the Act permits the use of blanket, schedule and individual forms of bonds so long as the amount of the bond penalty is sufficient to meet the requirements of the Act for any person who is an administrator, officer or employee of a plan handling funds or other property of the plan. Such person must be bonded for 10 percent of the amount he handles, and the amount of the bond must be sufficient to indemnify the plan for any losses in which such person is involved up to that amount.

(b) When individual or schedule bonds are written, the bond amount for each person must represent not less than 10 percent of the funds “handled” by the named individual or by the person in the position. When a blanket bond is written, the amount of the bond shall be at least 10 percent of the highest amount handled by any administrator, officer or employee to be covered under the bond. It should also be noted that if an individual or group or class covered under a blanket bond “handle” a large amount of funds or other property, while the remaining bondable persons “handle” only a smaller amount, it is permissible to obtain a blanket bond in an amount sufficient to meet the 10 percent requirements for all except the individual, group or class “handling” the larger amounts, with respect to whom excess indemnity shall be secured in an amount sufficient to meet the 10 percent requirement.

(c) The Act does not prohibit more than one plan from being named as insured under the same bond. However, any such bond must allow for recovery by each plan in an amount at least equal to that which would be required if bonded separately. This requirement has application where a person or persons sought to be bonded pursuant to the requirements of section 13 have “handling” functions in more than one plan covered under the bond. Where

such is the case, the amount of the bond must be sufficient to cover any such persons having functions in more than one plan for at least 10 percent of the total amount “handled” by them in all the plans covered under the bond. For example, X is the administrator of two welfare plans run by the same employer and he “handled” \$100,000 in the preceding reporting year for Plan A and \$500,000 in the preceding reporting year for Plan B. If both plans are covered under the same bond, the amount of the bond with respect to X shall be at least \$60,000 or ten percent of the total “handled” by X for both plans covered under the bond in which X has powers and duties of “handling” since Plan B is required to carry bond in at least the amount of \$50,000 and Plan A, \$10,000.

(d) Additionally, in order to meet the requirement that each plan be protected, it shall be necessary that arrangement be made either by the terms of the bond or rider to the bond or by separate agreement among the parties concerned, that payment of a loss sustained by one of such insureds shall not work to the detriment of any other plan covered under the bond with respect to the amount for which that plan is required to be covered. For example, if Plan A suffered a loss of \$30,000 as described above and such loss was recompensed in its entirety by the surety company, it would receive \$20,000 more than the \$10,000 protection required under section 13, and only \$30,000 would be available for recovery with respect to further losses caused by X. In a subsequently discovered defalcation of \$40,000 by X from Plan B, it would be necessary that the bond, rider, or separate agreement provide that such amount of recovery paid to Plan A in excess of the \$10,000 for which it is required to be covered, be made available by such insured to, or held for the use of, Plan B in such amount as Plan B would receive if bonded separately. Thus, in the instant case, Plan B would be able to recover the full \$40,000 of its loss. Where the funds or other property of several plans are commingled (if permitted by law) with each other or with other funds, such arrangement shall allow recovery to be attributed proportionately to the

amount for which each plan is required to be protected. Thus, in the instant case, if funds or other property were commingled, and X caused a loss of these funds through fraud or dishonesty, one-sixth of the loss would be attributable to Plan A and five-sixths of the loss attributable to Plan B.

(e) The maximum amount of any bond with respect to any person in any one plan in \$500,000, but bonds covering more than one plan may be required to be over \$500,000 in order to meet the requirements of the Act, since persons covered by such a bond may have “handling” functions in more than one plan. The \$500,000 limitations for such persons applies only with respect to each separate plan in which they have such functions. The minimum bond coverage for any administrator, officer, or employee “handling” funds or other property of a plan is \$1,000 as respects each plan in which he has “handling” functions.

§ 2580.412-17 Bonds over \$500,000.

The Labor-Management Services Administrator, 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.” Any requirement for bonding in excess of \$500,000 shall be according to such other regulations as may be prescribed.

Subpart D—General Bond Rules

§ 2580.412-18 Naming of insureds.

Since section 13 is intended to protect funds or other property of all plans involved, bonds under this section shall allow for enforcement or recovery by those persons usually authorized to act for such plans in such matters. In most cases, the naming of the plan or plans as insured will provide for such recovery. Where it is not clear that such recovery will be provided, however, a rider shall be attached to the bond or separate agreement made among the parties concerned to make certain that any reimbursement collected under the bond will be for the benefit and use of the plan suffering a loss. Such rider or

agreement shall always be required as respects any bond (a) where the employer or employee organization is first named joint insured with one or more plans, or (b) two or more plans are named joint insureds under a single bond with the first named acting for all insureds for the purpose of orderly servicing of the bond.

§ 2580.412-19 Term of the bond, discovery period, other bond clauses.

(a) *Term of the bond.* The amount of any required bond must in each instance be based on the amount of funds “handled” and must be fixed or estimated at the beginning of the plan’s reporting year, that is, as soon after the date when such year begins as the necessary information from the preceding reporting year can practicably be ascertained. This does not mean, however, that a new bond must be obtained each year. There is nothing in the Act that prohibits a bond for a term longer than one year, with whatever advantages such a bond might offer by way of a lower premium. However, at the beginning of each reporting year the bond shall be in at least the requisite amount. If, for any reason, the bond is below the required level at that time, the existing bond shall either be increased to the proper amount, or a supplemental bond shall be obtained.

(b) *Discovery period.* A discovery period of no less than one year after the termination or cancellation of the bond is required. Any standard form written on a “discovery” basis, i.e., providing that a loss must be discovered within the bond period as a prerequisite to recovery of such loss, however, will not be required to have a discovery period if it contains a provision giving the insured the right to purchase a discovery period of one year in the event of termination or cancellation and the insured has already given the surety notice that it desires such discovery period.

(c) *Other bond clauses.* A bond shall not be adequate to meet the requirements of section 13, if, with respect to bonding coverage required under section 13, it contains a clause, or is otherwise, in contravention of the law of the State in which it is executed.