

§ 2580.412-4

29 CFR Ch. XXV (7-1-04 Edition)

such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

(2) Where by virtue of this definition, or regulations, interpretations or opinions issued with respect thereto, the term embodies natural persons such as members of the board of trustees of a trust, the bonding requirements shall apply to such persons.

(3) However, when by virtue of this definition or regulations, interpretations, or opinions issued with respect thereto, the administrator in a given case in an entity such as a partnership, corporation, mutual company, joint stock company, trust, unincorporated organization, union or employees' beneficiary association, the term shall be deemed to apply, in meeting the bonding requirements, only to those natural persons who:

(i) Are vested under the authority of the entity-administrator with the responsibility for carrying out functions constituting control, disposition or management of the money received or contributed within the definition of administrator, or who, acting on behalf of or under the actual or apparent authority of the entity-administrator, actually perform such functions, and who

(ii) "Handle" funds or other property of the plan within the meaning of these regulations.

(b) *Officers.* For purposes of the bonding provisions, the term "officer" shall include any person designated by the terms of a plan or collective bargaining agreement as an officer, any person performing or authorized to perform executive functions of the plan or any member of a board of trustees or similar governing body of a plan. The term shall include such persons regardless of whether they are representatives of or selected by an employer, employees or an employee organization. In its most frequent application the term will encompass those natural persons appointed or elected as officers of the plan or as members of boards or committees performing executive or supervisory functions for the plan, but who do not fall within the definition of administrator.

(c) *Employees.* For purposes of the bonding provisions the term "em-

ployee" shall, to the extent a person performs functions not falling within the definition of officer or administrator, include any employee who performs work for or directly related to a covered plan, regardless of whether technically he is employed, directly or indirectly, by or for a plan, a plan administrator, a trust, or by an employee organization or employer within the meaning of section 3(3) or 3(4) of the Act.

(d) *Other persons covered.* For purposes of the bonding provisions, the terms "administrator, officer, or employee" shall include any persons performing functions for the plan normally performed by administrators, officers, or employees of a plan. As such, the terms shall include persons indirectly employed, or otherwise delegated, to perform such work for the plan, such as pension consultants and planners, and attorneys who perform "handling" functions within the meaning of §2580.412-6. On the other hand, the terms would not include those brokers or independent contractors who have contracted for the performance of functions which are not ordinarily carried out by the administrators, officers, or employees of a plan, such as securities, brokers who purchase and sell securities or armored motor vehicle companies.

[28 FR 14403, Dec. 27, 1963, as amended at 34 FR 5158, Mar. 13, 1969. Redesignated at 50 FR 26706, June 28, 1985]

§ 2580.412-4 "Funds or other property" of a plan.

The affirmative requirement for bonding persons falling within the definition of administrator, officer or employee is applicable only if they handle "funds or other property" of the plan concerned. The term "funds or other property" is intended to encompass all property which is used or may be used as a source for the payment of benefits to plan participants. It does not include permanent assets used in the operation of the plan such as land and buildings, furniture and fixtures or office and delivery equipment used in the operation of the plan. It does include all items in the nature of quick assets,

such as cash, checks and other negotiable instruments, government obligations and marketable securities. It also includes all other property or items convertible into cash or having a cash value and held or acquired for the ultimate purpose of distribution to plan participants or beneficiaries. In the case of a plan which has investments, this would include all the investments of the plan even though not in the nature of quick assets, such as land and buildings, mortgages, and securities in closely held corporations. However, in a given case, the question of whether a person was "handling" such "funds or other property" so as to require bonding would depend on whether his relationship to this property was such that there was a risk that he, alone or in connivance with others, could cause a loss of such "funds or other property" through fraud or dishonesty.

§ 2580.412-5 Determining when "funds or other property" belong to a plan.

With respect to any contribution to a plan from any source, including employers, employees or employee organizations, the point at which any given item or amount becomes "funds or other property" of a plan for purposes of the bonding provisions shall be determined as described in this section.

(a) Where the plan administrator is a board of trustees, person or body other than the employer or employee organization establishing the plan, a contribution to the plan from any source shall become "funds or other property" of the plan at the time it is received by the plan administrator. Employee contributions collected by an employer and later turned over to the plan administrator would not become "funds or other property" of the plan until receipt by the plan administrator.

(b) Where the employer or employee organization establishing the plan is itself the plan administrator:

(1) Contributions from employees or other persons who are plan participants would normally become "funds or other property" of the plan at the time they are received by the employer or employee organization, except however that contributions made by withholding from employees' salaries shall not be considered "funds or other prop-

erty" of the plan for purposes of the bonding provisions so long as they are retained in and not segregated in any way from the general assets of the withholding employer or employee organization.

(2) Contributions made to a plan by such employer or employee organization and contributions made by withholdings from employees' salaries would normally become "funds or other property" of the plan if and when they are taken out of the general assets of the employer or employee organization and placed in a special bank account or investment account; or identified on a separate set of books and records; or paid over to a corporate trustee or used to purchase benefits from an insurance carrier or service or other organization; or otherwise segregated, paid out or used for plan purposes, whichever shall occur first. Thus, if a plan is operated by a corporate trustee and no segregation from general assets is made of monies to be turned over to the corporate trustee prior to the actual transmittal of such monies, the contribution represented in the transmission becomes "funds or other property" of the plan at the time of receipt by the corporate trustee. On the other hand, if a special fund is first established from which monies are paid over to the corporate trustee, a given item would become "funds or other property" of the plan at the time it is placed in the special fund. Similarly, if plan benefits are provided through the medium of an insurance carrier or service or other organization and no segregation from general assets of monies used to purchase such benefits is made prior to turning such monies over to the organization contracting to provide benefits, plan funds or other property come into being at the time of receipt of payment for such benefits by the insurance carrier or service or other organization. In such a case, the "funds or other property" of the plan would be represented by the insurance contract or other obligations to pay benefits and would not be normally subject to "handling". Bonding would not be required for any person with respect to the purchase of such benefits directly from general assets nor with respect to