
29 C.F.R. § 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 “handling” 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.

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