

whether a particular labor organization is excepted from the application of section 502(a) is to be made at the beginning of each of its fiscal years on the basis of the total value of all its property at the beginning of, and its total financial receipts during, the preceding fiscal year of the organization.

**§ 453.4 Trusts (in which a labor organization is interested) within the coverage of section 502(a).**

Section 3(1) of the Act defines a *trust in which a labor organization is interested* as:

\* \* \* a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

Both the language and the legislative history<sup>4</sup> make it clear that this definition covers pension funds, health and welfare funds, profit sharing funds, vacation funds, apprenticeship and training funds, and funds or trusts of a similar nature which exist for the purpose of, or have as a primary purpose, the providing of the benefits specified in the definition. This is so regardless of whether these trusts, funds, or organizations are administered solely by labor organizations, or jointly by labor organizations and employers, or by a corporate trustee, unless they were neither created or established by a labor organization nor have any trustee or member of the governing body who was selected or appointed by a labor organization.

**§ 453.5 Officers, agents, shop stewards, or other representatives or employees of a labor organization.**

With respect to labor organizations, the term "officer, agent, shop steward, or other representative" is defined in section 3(q) of the Act to include "elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and or-

ganizers who exercise substantial independent authority)". Other individuals employed by a labor organization, including salaried non-supervisory professional staff, stenographic, and service personnel are "employees" and must be bonded if they handle<sup>5</sup> funds or other property of the labor organization.

**§ 453.6 Officers, agents, shop stewards or other representatives or employees of a trust in which a labor organization is interested.**

(a) *Officers, agents, shop stewards or other representatives.* While the definition of the collective term "Officer, agent, shop steward, or other representative" in section 3(q) of the Act is expressly applicable only "when used with respect to a labor organization," the use of this term in connection with trusts in which a labor organization is interested makes it clear that, in that connection, it refers to personnel of such trusts in positions similar to those enumerated in the definition. Thus, the term covers trustees and key administrative personnel of trusts, such as the administrator of a trust, heads of departments or major units, and persons in similar positions. It covers such personnel, including trustees, regardless of whether they are representatives of or selected by labor organizations, or representatives of or selected by employers,<sup>6</sup> and such personnel must be bonded if they handle

<sup>5</sup>For discussion of "handle", see § 453.8.

<sup>6</sup>See the contrast between section 308 of S. 1555 as passed by the Senate ("All officers, agents, representatives, and employees of any labor organization engaged in an industry affecting commerce who handle funds of such organization or of a trust in which such organization is interested shall be bonded \* \* \*") and section 502 of the Act as finally enacted. The change between the two versions originated in the House Committee on Education and Labor. Prior to the reporting of the bill (H.R. 8342) by that Committee, a joint subcommittee of that Committee held extensive hearings, during the course of which witnesses including President Meany of the AFL-CIO criticized the bonding provision of the Senate bill on the ground that it required only union personnel of joint employer-union trusts to be bonded. (See Record of Hearings before a Joint Subcommittee of the Committee on Education

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<sup>4</sup>Daily Cong. Rec., pp. 5858-59, Senate, April 23, 1959.

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funds or other property of the trust within the meaning of section 502(a).

(b) *Independent institutions not included.* The analogy to the definition of the term “officer, agent, shop steward, or other representative,” when used with respect to a labor organization, shows that banks and other qualified financial institutions in which trust funds are deposited are not to be considered as “agents” or “representatives” of trusts within the meaning of section 502 and thus are not subject to the bonding requirement, even though they may also have administrative or management responsibilities with respect to such trusts. Similarly, the bonding requirement does not apply to brokers or other independent contractors who have contracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.

(c) *Employees of a trust in which a labor organization is interested.* As in the case of labor organizations, all individuals employed by a trust in which a labor organization is interested are “employees,” regardless of whether, technically, they are employed by the trust, by the trustees, by the trust administrator, or by trust officials in similar positions.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

### § 453.7 “Funds or other property” of a labor organization or of a trust in which a labor organization is interested.

The affirmative requirement for bonding the specified personnel is applicable only if they handle “funds or other property” of the labor organization or trust concerned. A consideration of the purpose of section 502 and a reading of the section as a whole, including provisions for fixing the amount of bonds, suffice to show that the term “funds or other property”, as used in this section of the Act, encom-

and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, pp. 1493-94, 1979.

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passes more than cash alone but that it does not embrace all of the property of a labor organization or of a trust in which a labor organization is interested. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures and office and delivery equipment used in the operations of a labor organization or trust. It does, however, include items in the nature of quick assets, such as checks and other negotiable instruments, government obligations and marketable securities, as well as cash, and other property held, not for use, but for conversion into cash or for similar purposes making it substantially equivalent to funds.

### § 453.8 Personnel who “handle” funds or other property.

(a) *General considerations.* Section 502(a) requires “every” person specified in its bonding requirement “who handles” funds or other property of the labor organization or trust to be bonded. It does not contain any exemption based on the amount of the funds or other property handled by particular personnel. Therefore, if the bonding requirement is otherwise applicable to such persons, the amount of the funds or the value of the property handled by them does not affect such applicability. In determining whether a person “handles” funds or other property within the meaning of section 502(a), however, it is important to consider the term “handles” in the light of the basic purpose which Congress sought to achieve by the bonding requirement and the language chosen to make that purpose effective. Thus, while it is clear that section 502(a) should be considered as representing the minimum requirements which Congress deemed necessary in order to insure the reasonable protection of the funds and other property of labor organizations and trusts within the coverage of the section, it is equally clear from the legislative history<sup>7</sup> and the language used

<sup>7</sup>House Report No. 1147, 86th Congress, 1st Session, p. 35; Daily Cong. Record 16419, Senate, Sept. 3, 1959; Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on S. 505, S. 748, S. 76, S. 1002, S. 1137, and S. 1311, 86th Congress, 1st Session, p. 709.