

## §1495-E. Surety bonding

**1. Bond required; minimum amount; duration.** Each application for a license under section 1495-D must be accompanied by evidence of a surety bond, in a form approved by the administrator, in an amount equal to the total of all local, state and federal tax payments and unemployment insurance premiums processed by the payroll processor on behalf of employers in this State in the 3-consecutive-month period of highest volume during the previous calendar year or \$50,000, whichever is greater, but not to exceed \$500,000. The bond must designate the administrator as payee. The bond paid to the administrator may be used for the purposes of the administrator and for the benefit of any employer who may have a cause of action against the payroll processor. The terms of the bond must run continuously until cancelled and the aggregate amount of the bond must be maintained at all times during the licensing period.

[PL 2005, c. 278, §4 (AMD).]

**2. Modification of bond requirement.** The administrator, within the administrator's discretion, may modify terms and conditions specified in subsection 1 or may permit submission of an irrevocable letter of credit or other alternative form of security so as to ensure the maximum practicable or appropriate protection for employers.

[PL 2005, c. 500, §3 (AMD).]

**2-A. Alternative security; Payroll Processor Recovery Fund.** The Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation, referred to in this subsection as "the fund administrator," shall administer the Payroll Processor Recovery Fund, established in section 980-D and referred to in this section as "the fund." Participation in the fund must be made available to any payroll processor that is not a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A or a wholly owned subsidiary of such a supervised financial organization. The fund administrator may increase the fund, replenish the fund and seek reimbursement for the fund administrator's initial deposit into the fund through annual or special assessments against payroll processors using the fund. Before being eligible to participate in the fund, a payroll processor must provide a \$10,000 surety bond or irrevocable letter of credit in a form acceptable to the fund administrator. Assessments into the fund must be in amounts equal to 1% of the balance of bond coverage required pursuant to this section. An initial deposit into the fund must be made by the fund administrator in an amount not less than 1/2 of the maximum amount of a surety bond or other security required pursuant to subsection 1. All amounts assessed by the fund administrator must be paid into the fund until the fund reaches the maximum amount of a surety bond or other security required pursuant to subsection 1, after which time assessments must be equally divided between payments into the fund and payments to the fund administrator until the fund administrator is reimbursed for the fund administrator's initial deposit into the fund. If an employer's loss due to a participating payroll processor's failure to pay taxes or unemployment insurance premiums is demonstrated to the satisfaction of the fund administrator, the fund administrator shall require release of funds to the fund administrator for the benefit of the employer. If employer losses exceed the maximum amount recoverable pursuant to this subsection, funds are distributed to employers on a pro rata basis, based on the magnitude of the demonstrated loss. In the event an initial claim is made against the fund, any other claims arising within 45 days of the initial claim must be treated as having arisen on the same day as the initial claim for purposes of allocating recoveries to affected employers. Total funds released as a result of the failure of any one payroll processor to pay taxes or unemployment insurance premiums may not exceed 50% of the current fund balance. Fund proceeds must be used only for recovery of unpaid taxes and unemployment insurance premiums and may not be used for any other purpose.

[PL 2005, c. 500, §4 (NEW); PL 2007, c. 273, Pt. B, §6 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]

**3. Cancellation notification.** A surety company issuing a bond pursuant to this section shall immediately notify the administrator when that bond is cancelled or terminated or lapses. The notice

must include the name and address of the payroll processor and the amount of the bond. The cancellation, termination or lapse is not effective until at least 30 days after the administrator receives notice.

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

**4. Exceptions.** A payroll processor that does not have the authority to access, control, direct, transfer or disburse a client's funds is not subject to this section. A payroll processor that arranges for the transfer of funds from an employer's account directly to taxing authorities for payment of the employer's taxes is not subject to this section, as long as the payroll processor is not authorized to arrange for the transfer of funds for any other uses or to any other accounts. The administrator may construe this subsection through issuance of an advisory ruling or through rules adopted pursuant to section 1495-F.

[PL 2005, c. 278, §4 (AMD).]

#### SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF). PL 2005, c. 278, §4 (AMD). PL 2005, c. 500, §§3,4 (AMD). PL 2007, c. 273, Pt. B, §6 (REV). PL 2007, c. 273, Pt. B, §7 (AFF). PL 2007, c. 695, Pt. A, §47 (AFF).

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