

Demystifying ERISA Bonds

What Plan Sponsors Need To Know

The Employee Retirement Income Security Act of 1974 (ERISA) generally requires that every fiduciary of an employee benefit plan and every person who *“handles funds or other property”* of an employee benefit plan, be bonded.

Often referred to as fidelity or fiduciary bonds, the terms are completely interchangeable and refer to fidelity bonds amended to provide protection to the plan against loss by reason of fraud or dishonest acts.

Who needs to be bonded?

ERISA refers to persons who handle funds or other property of an employee benefit plan as “plan officials.” A person is deemed to be “handling” funds or other property of a plan whenever his or her duties or activities are such that there is a risk that the funds or other property could be lost in the event of fraud or dishonest act. General criteria for determining “handling” include:

- Physical contact or power to exercise physical contact or control with cash, checks, or similar property;
- Power to transfer funds or other property from the plan to oneself or to a third party or to negotiate such property for value;
- Disbursement authority or the authority to direct disbursement;
- Authority to sign checks or other negotiable instruments; or
- Supervisory or decision making responsibility over activities that require bonding.

Using these criteria, certain officers, employees, plan committees, service providers and plan vendors need to be considered for bonding. It is important for plan sponsors and fiduciaries to understand the parties involved and the functions they perform in order to make sure appropriate bonding is obtained.

(Continued On Next Page)



RETIREMENT PLAN DESIGN AND ADMINISTRATION

Visit us online @ www.plantech-online.com

PlanTech, LLP • 2205 Cahaba Valley Drive • Birmingham, Alabama • 35242

Phone: 205.980.1603 • Toll Free: 888.723.401K

Demystifying ERISA Bonds

What Type of Coverage is Required?

ERISA section 412 states that the bond must protect the plan against loss by reason of acts of fraud or dishonesty on the part of persons required to be bonded, whether the person acts directly or through connivance with others. This includes, but is not limited to, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, and other acts where losses result. It is important to note that Fiduciary Liability insurance is neither required by nor subject to section 412 of ERISA and differs from the purpose of the bond requirement, which is protection from intentional acts; whereas liability insurance will generally only insure for breaches in fiduciary responsibility.

What Amount of Coverage is Required?

The bond limit required for each person required to be bonded is 10% of the plan assets handled in the previous year, subject to a minimum of \$1,000 or the maximum of \$500,000. The maximum amount increases to \$1,000,000 for plans that hold employer securities, unless the securities are part of a "pool" such as a mutual or index fund.

How Is the Bonding Requirement Enforced?

While there is no monetary or other penalty under ERISA for failure to maintain a fidelity bond, in the past, the Department of Labor has sued to enforce the bonding rules. For plans with less than 100 eligible participants that are taking advantage of ERISA's exemption from an annual independent CPA audit, failure to maintain adequate bond coverage can be costly. For such plans, the exemption is lost and the plan will incur the significant added expense of retaining an independent CPA to provide an opinion annually to be attached to their Form 5500 filing.

For additional information, read ERISA Field Assistance Bulletin #2008-04, available online, or contact your PlanTech administrator.



RETIREMENT PLAN DESIGN AND ADMINISTRATION

Visit us online @ www.plantech-online.com

PlanTech, LLP • 2205 Cahaba Valley Drive • Birmingham, Alabama • 35242

Phone: 205.980.1603 • Toll Free: 888.723.401K

If you have questions about this or any other plan administration topic, call us at 205.980.1603
Toll Free 888.723.401K