



ERISA BONDING REQUIREMENTS

The Employee Retirement Income Security Act of 1974 (ERISA) requires that every employee benefit plan obtain a fidelity bond to protect the plan against theft of plan assets by fiduciaries and other “plan officials”. The bond must cover all plan fiduciaries who handle plan assets. This includes not only the **Plan Trustee(s)** but also the company’s officers, employees and third parties who handle plan funds or who oversee that process. It is an ERISA fiduciary duty to assure that the plan is properly bonded.

Since the bonding requirement applies to all persons who “handle” plan assets, the key question is: What does it mean to “handle” plan assets? A person is considered to “handle” assets if he /she has:

- Physical contact or possession of plan assets
- Power to withdraw or otherwise gain access to plan assets
- Power to transfer plan assets
- Power to negotiate for value any plan asset
- Authority to disburse plan assets (i.e. pay benefits to eligible participants)
- Authority to sign or endorse checks or negotiable instruments with respect to plan funds
- Supervisory authority over any other person who has authority or power to any of the above

The bond must meet specific requirements:

- The amount must be fixed at the beginning of each plan year in an amount that is not less than 10% of the plan assets as of the beginning of the plan year
- The minimum bond required is \$1,000
- The maximum bond required is \$500,000 (with certain exceptions)
- The plan must be named in the bond as an insured
- The bond may not include a deductible
- The bonding company must be on the Treasury Department’s Circular 570 list of approved surety companies. The list can be obtained at <http://www.fms.treas.gov/c570/c570.html>

For plans that hold employer securities (i.e. an ESOP) the maximum bond required is \$1,000,000.

A small plan (one with fewer than 100 participants) that holds *non-qualifying* plan assets may be required to obtain an independent audit unless it meets additional bonding requirements. If the non-qualifying assets held by the plan represent more than 5% of the total plan assets, the amount of the bond must not be less than the value of such assets (without regard to the bonding limits under the normal ERISA bonding rules). Generally, an asset may be considered a non-qualifying asset if its value cannot be readily determined on an established market (i.e. an interest in a limited partnership). Please refer to the Department of Labor’s website www.dol.gov/ebsa to obtain more information on the Small Pension Plan Audit Waiver Regulation and definitions of non-qualifying plan assets.

If any person to be bonded has an interest, direct or indirect, in a surety company, agency or brokerage firm from which you intend to obtain your bond, we recommend consulting an ERISA attorney to ensure that you will not be engaging in a prohibited transaction.

We cannot stress enough, the importance of obtaining the proper bonding for your plan. We encourage you and your insurance agent to carefully review your fidelity bond to ensure that it complies with the requirements of ERISA Section 412.

Circular 230 Disclaimer: To ensure compliance with Treasury regulations governing written tax advice, please be advised that any advice included in this communication, including any attachment, is not intended, and cannot be used, for the purpose of (1) avoiding any federal tax penalty, or (2) promoting, marketing, or recommending any transaction or matter to another person.