

GETTING IT RIGHT

Know Your Fiduciary Responsibilities



PROTECT YOUR EMPLOYEE BENEFIT PLAN WITH AN ERISA FIDELITY BOND

The Employee Retirement Income Security Act (ERISA) sets rules and standards of conduct for private sector employee benefit plans and those that invest and manage their assets. The provisions of ERISA, which are administered by the U.S. Department of Labor, were enacted to address public concern that funds of private pension and other employee benefit plans were being mismanaged and abused. One of ERISA's requirements is that people who handle plan funds and other property must be covered by a fidelity bond to protect the plan from losses due to fraud or dishonesty.

This publication highlights key elements that employers and other plan sponsors should know about ERISA's fidelity bonding requirements. These questions and answers provide general information to help you understand the law and the fidelity bonding requirements. It is not a legal interpretation and does not address all of the issues related to ERISA's fidelity bonding requirement.

WHAT IS AN ERISA FIDELITY BOND?

An ERISA fidelity bond is a type of insurance that protects the plan against losses caused by acts of **fraud or dishonesty**. Fraud or dishonesty includes, but is not limited to, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, and other acts. Deductibles or other similar features are prohibited for coverage of losses within the maximum amount for which the person causing the loss is required to be bonded. In addition, it is important to make sure that the plan is named (or otherwise specifically identified) as an insured party on the bond so that the plan can recover losses covered by the bond.

IS AN ERISA FIDELITY BOND THE SAME THING AS FIDUCIARY LIABILITY INSURANCE?

No. The fidelity bond required under ERISA specifically insures a plan against losses due to **fraud or dishonesty** (e.g., theft) by persons who handle plan funds or property. Fiduciary liability insurance, on the other hand, insures fiduciaries, and in some cases the plan, against losses caused by breaches of fiduciary responsibilities. Although many plan fiduciaries may be covered by fiduciary liability insurance, it is not required and does not satisfy the fidelity bonding required by ERISA.

CAN I GET AN ERISA BOND FROM ANY BONDING OR INSURANCE COMPANY?

No. Bonds must be obtained from a surety or reinsurer that is named on the Department of the Treasury's Listing of Approved Sureties, Department Circular 570 (available at fms.treas.gov/c570/c570.html). Under certain conditions, bonds may also be obtained from Underwriters at Lloyds of London. Neither the plan nor any interested party may have any control or significant financial interest, either directly or indirectly, in the surety or reinsurer, or in an agent or broker, through which the bond is obtained.

WHO MUST BE BONDED?

Every person who “**handles funds or other property**” of an employee benefit plan is required to be bonded unless covered under an exemption under ERISA. ERISA makes it an unlawful act for any person to “receive, handle, disburse, or otherwise exercise custody or control of plan funds or property” without being properly bonded.

Fidelity bonding is usually necessary for the plan administrator and those officers and employees of the plan or plan sponsor (employer, joint board, or employee organization) who handle plan funds by virtue of their duties relating to the receipt, safekeeping and disbursement of funds. The bonding requirement is not limited to just plan trustees, employees of the plan and employees of the plan sponsor. Bonding coverage may also be required for other persons, such as service providers to the plan, whose duties involve access to plan funds or decision-making authority that can give rise to a risk of loss through fraud or dishonesty. Where a plan administrator, service provider, or other person who must be bonded is an entity, such as a corporation or association, ERISA’s bonding requirements apply to the natural persons or person who “handles” the funds.

The term “funds or other property” generally refers to all funds or property that the plan uses or may use to pay benefits to plan participants or beneficiaries. Plan “funds or other property” includes all plan investments including land and buildings, mortgages, and securities in closely-held corporations. It also includes contributions from any source, such as employers, employees, and employee organizations that are received by the plan, and cash, checks and other property held for the purpose of making distributions to plan participants or beneficiaries.

A person is deemed to be “handling” funds or other property of a plan whenever his or her duties or activities could cause a loss of plan funds or property due to fraud or dishonesty, whether acting alone or in collusion with others. The general criteria for determining “handling” include:

- Physical contact with cash, checks or similar property;
- Power to transfer funds from the plan to oneself or to a third party;
- Power to negotiate plan property (e.g., mortgages, title to land and buildings or securities);
- Disbursement authority or authority to direct disbursement;
- Authority to sign checks or other negotiable instruments; or
- Supervisory or decision-making responsibility over activities that require bonding.

WHO ARE THE PARTIES TO AN ERISA FIDELITY BOND?

In a typical bond, the plan is the named insured and a surety company (insurer) is the party that provides the bond. The persons covered by the bond are the persons who handle funds or other property of the plan. As the insured party, the plan can make a claim on the bond if a plan official causes a covered loss to the plan due to fraud or dishonesty.

DO ERISA'S BONDING REQUIREMENTS APPLY TO ALL EMPLOYEE BENEFIT PLANS?

No. Although the bonding requirements generally apply to most ERISA retirement plans and many funded welfare benefit plans, the ERISA bonding requirements do not apply to employee benefit plans that are completely unfunded (i.e., the benefits are paid directly out of an employer's or union's general assets), or to plans that are not subject to Title I of ERISA (for example, church plans, governmental plans.)

ARE THERE ANY OTHER EXEMPTIONS FROM ERISA'S BONDING REQUIREMENTS?

Yes. The law and the Department's regulations provide exemptions for some regulated financial institutions, including certain banks, insurance companies, and registered brokers and dealers. If the financial institution meets the conditions in the exemption, the institution and its employees do not need to be covered by an ERISA fidelity bond even if their activities include handling your plan's funds or property.

MUST ALL FIDUCIARIES BE BONDED?

No. Most fiduciaries have roles and responsibilities that involve handling plan funds or other property, and generally will need to be covered by a fidelity bond, unless they satisfy one of the exemptions in ERISA or the Department's regulations. However, an ERISA fidelity bond would not be required for a fiduciary who does not handle funds or other property of an employee benefit plan.

MUST SERVICE PROVIDERS TO THE PLAN BE BONDED?

It depends. A service provider, such as a third-party administrator or investment advisor, must be bonded if the service provider or its employees handle funds or other property of your employee benefit plan.

HOW MUCH COVERAGE MUST THE BOND PROVIDE?

Generally, each person must be bonded in an amount equal to at least 10% of the amount of funds he or she handled in the preceding year. The bond amount cannot, however, be less than \$1,000, and the Department cannot require a plan official to be bonded for more than \$500,000, or \$1,000,000 for plans that hold employer securities. These amounts apply for each plan named on a bond.

For example, assume your company's plan has funds totaling \$1,000,000. The plan trustee, named fiduciary and administrator are three different company employees that each have access to the full \$1 million, and each has the power to transfer plan funds, approve distributions, and sign checks. Under ERISA, each person must be bonded for at least 10% of the \$1 million or \$100,000.

(Note: Bonds covering more than one plan may be required to be over \$500,000 to meet the ERISA requirement because persons covered by a bond may handle funds or other property for more than one plan.)

IF THE PLAN PURCHASES A BOND TO MEET ERISA'S REQUIREMENTS, MAY THE PLAN PAY FOR THE BOND OUT OF PLAN ASSETS?

Yes. The plan can pay for the bond using the plan's assets. The purpose of ERISA's bonding requirements is to protect the plan. Such bonds do not protect the person handling plan funds or other property or relieve them from their obligations to the plan, so the plan's purchase of the bond is allowed.

CAN A PLAN PURCHASE A BOND FOR A LARGER AMOUNT?

Yes. The plan can purchase a bond for a higher amount in appropriate cases. Whether a plan should spend plan assets to purchase a bond in an amount greater than that required by ERISA is a fiduciary decision.

WHO IS RESPONSIBLE FOR MAKING SURE THAT THE PLAN HAS PROPER BONDED COVERAGE?

The responsibility for ensuring that the plan has proper bonding coverage may fall upon a number of individuals simultaneously. All persons who handle plan funds or other property are responsible for complying with the bonding requirements themselves. In addition, any other person who has authority to authorize another person to perform handling functions is also responsible for ensuring that those persons are properly bonded. For example, if a fiduciary hires a trustee for a plan, the fiduciary must ensure that the trustee is properly bonded or covered by an exemption.

IF A SERVICE PROVIDER IS REQUIRED TO BE BONDED, MUST THE PLAN PURCHASE THE BOND?

No. A service provider can purchase its own separate bond insuring the plan. The plan may agree with the service provider that the service provider will pay for the bond. Plan fiduciaries can also decide to add a service provider to the plan's existing fidelity bond.

This publication provides an overview of the fidelity bonding requirements. You will need more information to determine what fidelity bonding arrangement is right for your plan. You may want to consult with your ERISA advisor or a fidelity bonding provider. In addition, for a more detailed discussion of ERISA's fidelity bonding requirements, visit the Employee Benefits Security Administration's Website at dol.gov/ebsa/regs/fab2008-4.html to view the Department's Field Assistance Bulletin 2008-04.

For more information, or if you have questions, you may contact an EBSA Benefits Advisor electronically at askebsa.dol.gov or by calling 1-866-444-3272.