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Retirement Solutions

Fiduciary Bond Requirements

Sometimes known as a "dishonesty bond," a fidelity bond protects certain employee benefit plans against losses caused by fraud or dishonesty of a fiduciary or anyone else who handles plan assets. The following is a summary of the fidelity bond requirements for employee benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Who must be bonded?

According to the Department of Labor (DOL), plan fiduciaries, plan trustees and any person who handles funds or other property of a plan, such as (among others) someone who has:

- Physical contact with cash, checks or other plan property;
- Power to transfer plan property or negotiate plan property for a price;
- Power to disburse funds, sign checks or produce negotiable instruments from the plan assets; or
- Decision-making authority over any individual described above.

What are the requirements?

The fidelity bond must be no less than 10% of the amount of funds handled, with a minimum of $1,000 and a maximum of $500,000. There are exceptions, however, including:

MAXIMUM AMOUNT: There is an exception to the $500,000 maximum for retirement plans that hold employer stock or employer securities. For those plans the maximum is $1,000,000 which applies to each plan that holds employer stock or other employer securities.

SPECIAL BONDING RULES FOR SMALL PLANS WITH NONQUALIFYING ASSETS: A pension plan with fewer than 100 participants at the beginning of a plan year in which more than 5% of its assets are invested in nonqualifying assets such as limited partnerships, art work, mortgages, real estate or securities of closely held companies that are held outside of a regulated financial institution, can be exempted from the annual full-scope audit if each person who handles nonqualifying assets is bonded in an amount equal to 100% of the value of such assets.

What are the consequences?

Fidelity bond compliance is tracked on IRS Form 5500, Schedule H. Schedule H asks whether a plan is covered by a bond; whether the plan had a loss caused by fraud, whether or not reimbursed by the plan's fidelity bond that was caused by the loss; and the amount of the loss. Failure to have proper bonding can cause serious consequences, including legal action and penalties imposed by the DOL.

Liability insurance

Plan fiduciaries should also consider purchasing fiduciary liability insurance. This coverage provides protection for losses that the insured is legally obligated to pay because of a claim that the fiduciary, although acting in good faith, violated the complex fiduciary rules under ERISA.

Plan fiduciaries should consult their legal advisors concerning ERISA's fidelity bond requirements as well as the benefits of fiduciary liability insurance.

Please note that no bond is required for any entity that is registered as a broker/dealer under Section 15(b) of the Securities and Exchange Act of 1934 and is subject to the fidelity bond requirements of a "self-regulatory organization."