



Fidelity Bond and Fiduciary Insurance Information

Purchasing a Fidelity Bond

Generally, every fiduciary and anyone who handles funds or other property of the plan **must be bonded** unless one of the exceptions under ERISA §412 applies. The bond must cover at least 10% of the amount handled by the bonded individual. The bond may not be for less than \$1,000 and need not exceed \$500,000. Effective for year beginning on or after January 1, 2007, however, the maximum bond amount is \$1,000,000 for plans holding employer securities.¹

To qualify for the small retirement plan audit waiver, any person who handles non-qualifying plan assets must be bonded in an amount at least equal to 100% of the value of the non-qualifying assets if they constitute more than 5% of total plan assets.

The bonding requirements do not apply to plans that are completely unfunded (i.e., benefits are paid from the employer's general assets) or plans that are fully insured.²

Note: A fidelity bond is different from fiduciary liability insurance because the fidelity bond protects the plan against losses. Fiduciary liability insurance protects the fiduciary.

Note: The bonding requirements under ERISA section 412 do not apply to employee benefit plans that are completely unfunded, or that are not subject to Title I of ERISA or the fiduciary is organized and doing business under state or federal law, is subject to state or federal supervision or examination, and meets certain capitalization requirements.

Purchasing Fiduciary Liability Insurance

An insurance policy covering the plan sponsor's directors and officers should be reviewed to determine whether ERISA claims are covered. If it does not cover fiduciary liability, a so-called "ERISA rider" might be considered. When reviewing such documents, it is important to determine whether ERISA breaches of fiduciary duty are covered and, if so, to what extent. Usually, companies can negotiate with insurers for fairly broad coverage at reasonable rates.

Note: Fiduciary liability insurance is not the same as a fidelity bond. A fidelity bond required under ERISA specifically *protects the plan* against losses due to fraud or dishonesty on the part of individuals (e.g., plan fiduciaries) who handle plan funds or other property.³ Fiduciary liability insurance generally *protects fiduciaries and their personal assets* from lawsuits alleging breaches of fiduciary responsibility (e.g., imprudent investment decisions). Fiduciary liability insurance may qualify as a fidelity bond, but only if it *protects the plan* against a fiduciary's breach.

Note: Fiduciary liability insurance paid for by a plan must give the insurer recourse against the fiduciary in the case of a fiduciary breach.⁴

Purchasing a Policy

Fiduciaries can purchase policies through local or national insurance organizations. Two popular national insurers are:

- Chubb: www.chubb.com
- Colonial Surety: www.colonialsurety.com

For more information, please contact Jill Shea at: (949) 336-2432 or email: jill.shea@shea-retirement.com.

¹ ERISA §412, as amended by §622 of the Pension Protection Act of 2006, effective for plan years after 2007.

² ERISA §412.

³ Field Assistance Bulletin No. 2008-04.

⁴ Field Assistance Bulletin No. 2008-04.