

A retirement plan is required, in accordance with Section 412(b) of ERISA (Employee Retirement Income Security Act), to be covered by a fidelity bond which covers all fiduciaries and any other individuals who handle Plan assets. This bond is a form of insurance that protects participants and beneficiaries from dishonest acts of fiduciaries. Following are a few important insights you can use to ensure proper coverage.

### EXEMPTIONS

Some retirement plans are excluded from the fidelity bond requirement. This generally includes unfunded plans and plans sponsored by employers with only owners and/or spouse(s) as sole plan participants. A plan is considered unfunded for bonding purposes only if all benefits are paid directly out of any employer's or union's general assets. [\[29 C.F.R. Section 2580.412-2\]](#) For "owners only" plans employers should take caution when there are adult children who are not business owners. If there are no common law employees the Department of Labor regulations excludes the plan from the bonding requirement. However, if the plan allows employee contributions and the adult children are not partners with their parents they *are* considered common law employees. [\[DOL Reg § 2510.3-3\(d\)\(1\)\(ii\)\]](#)

### HANDLING PLAN FUNDS

The term "handle" does not specifically mean having physical contact with the funds or property of the plan. A person would qualify as handling funds when there is a risk that such funds or property could be lost due to fraud or dishonesty acting alone or in collusion with others. [For example](#), physical contact with cash, checks or other property, power to transfer funds from the plan to oneself or a third party, disbursement authority, authority to sign checks or decision making responsibility over activities that require the bonding. It's very important to understand who is considered handling plan assets especially when there are committees involved.

If the committees make decisions to pay benefits or make final investment decisions each committee member should be bonded. This would not include committee members who only make recommendations.

### BOND AMOUNT

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 minimum is \$1,000 and the maximum is \$500,000 or \$1,000,000 for plans holding employer securities. Employers sponsoring two plans such as a 401(k) profit sharing and a cash balance pension plan take note that these amounts apply for each plan named on the bond where the person is considered handling plan funds.

### TIMING

The fidelity bond should be purchased and in effect before any plan assets are handled. Plan sponsors must evaluate their bond coverage at the beginning of each subsequent plan year to ensure that the minimum bonding requirements are met and increase the amount when necessary. The amount and the insurance carrier must be reported annually on the IRS Form 5500.

### SUMMARY

Fidelity bond coverage is an ERISA compliance requirement and therefore not optional. Insufficient coverage could trigger a Department of Labor audit. The DOL could assess a penalty on a plan that does not comply with ERISA. This penalty is \$5,000 and/or up to one year in jail. Obtaining and maintaining proper fidelity bond coverage not only provides security if there is a fraudulent event but removes the risk of some pretty heavy penalties for non-compliance. Reach out to your EBS Retirement Plan Professional if you need assistance with this requirement.

