

*The Employee Retirement Income Security Act passed by Congress in 1974, generally requires that, with respect to an employee benefit plan, **every person who handles plan assets or funds be bonded**. The bonding requirement is to protect against the risk that plan assets could be lost in the event of fraud or dishonesty. (Plans that file Form 5500-EZ are not subject to this requirement.)*

Since the bonding requirement applies to all persons who “handle” plan assets, the key question is: what does “handling” mean for this purpose? The answer is that a person is considered to “handle” plan assets if he or she has:

1. Physical contact or possession of plan assets;
2. Power to withdraw or otherwise gain access to plan assets;
3. Power to transfer plan assets;
4. Power to negotiate for the value any plan assets;
5. Authority to disburse plan assets (i.e., pay benefits to eligible participants);
6. Authority to sign or endorse checks or negotiable instruments with respect to plan funds; or,
7. Supervisory authority over any other person who has authority or power to do any of the above.

For all plans a fidelity bond must be obtained at the start of each plan year from an acceptable surety company for at least 10 percent of the value of those plan assets handled the previous plan year. The minimum bond required is \$1,000, the maximum required bond is \$500,000, and there can be no deductible. The bond must be purchased and in effect before plan assets are handled. Be sure that the plan is named as the loss payee so that it receives any proceeds. The bond must be for a discovery period of at least one (1) year. A blanket bond is acceptable. The bond must be a fidelity bond, not a fiduciary bond or fiduciary insurance.

Note that fiduciary insurance may not be adequate since it may not cover all persons who “handle” funds, or may not cover certain events which must be covered, such as fraud.

For a plan with fewer than 100 participants that wishes to avoid an independent CPA Form 5500 audit by using the bonding exception, the amount of the bond must be at least the amount of non-qualifying assets at the end of the prior plan year, even if that amount is greater than \$500,000 or 10% of the assets handled. The bond must be in effect as of the first day of the plan year. It cannot be retroactive. (Plans that file *Form 5500-EZ* (i.e. plans that cover only company owners and their spouses) are not subject to this requirement.)

Additionally, do not procure your bonds from any surety or other company or agency or brokerage firm in which the person to be bonded has any interest, whether direct or indirect, without first consulting us, as to do so might be illegal.

Please inform your insurance agent about your bonding requirements so that he may maintain an annual check-up on these requirements. Often an existing business policy can be endorsed to cover these bonding requirements at little or no extra cost.

If you have any questions about the bonding requirements or any other provisions of the plan or trust, please do not hesitate to contact us at your convenience.