

Qualified Retirement Plans
Practice Alert
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What is an ERISA Fidelity Bond

ERISA section 412 requires that every fiduciary in a qualified retirement plan who “handles” funds must be bonded. The purpose of this bond is to protect the plan from risk of loss due to fraud or dishonesty. An individual is said to “handle” funds or property if:

1. the person has physical contact with cash, checks or similar property;
2. the person has power to transfer funds or other property from the plan to a third party;
3. the person has authority to disburse funds or property;
4. the person has the authority to sign checks; or
5. the person has supervisory or decision making authority that require bonding.

ERISA defines “funds or other property” as:

1. contributions from any source;
2. cash;
3. checks;
4. negotiable instruments;
5. marketable securities; and
6. any and all property that can be converted to cash.

A plan fiduciary must be bonded for at least 10% of the funds handled. The minimum bond is \$1,000 and the maximum bond required is \$1,000,000. An ERISA fidelity bond differs from fiduciary liability insurance. The former insures against loss due to fraud or dishonesty while the latter usually insures against losses due to breaches of fiduciary responsibility, e.g. entering into a prohibited transaction. Fiduciary liability insurance is not required by ERISA but a fiduciary bond is required. Certain plans are not subject to ERISA bonding requirements including unfunded plans and plans that are not subject to Title I of ERISA, e.g. owner only plans.

The form 5500, in question #, asks if the plan has a fiduciary bond, the amount of the bond and the insurance company that issued the bond. If this question is answered in the negative, left blank, or is incomplete an audit may be triggered.

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