

ERISA Bond Requirements for Investment Advisers

The Employee Retirement Income Security Act of 1974 (“ERISA”) requires every fiduciary of an ERISA plan and every non-fiduciary who “handles” plan assets to be bonded. This requirement protects ERISA plans against losses sustained by reason of fraudulent or dishonest acts by persons who come in direct contact with or exercise discretion over plan assets.

A person is subject to the bonding requirements if s/he has the right or power to exercise discretionary authority in the administration of an ERISA plan. Thus, an investment adviser who provides discretionary investment management services to a plan (i.e., is a fiduciary) will be subject to the bonding requirements. An ERISA bond is required regardless of whether a fiduciary has custody of or otherwise actually handles plan assets because the bonding rules apply to all plan fiduciaries (other than certain trust and insurance companies, banks and registered broker-dealers.)

While some plan sponsors obtain bonding coverage for the plan’s investment managers, most investment managers obtain their own bonds. The bond must specifically name the ERISA plan as the insured and must be placed with a surety or reinsurer that is named on the US Department of Treasury’s Listing of Approved Sureties.

Generally, the amount of an ERISA bond must be at least 10% of the plan assets handled by the bonded party, with a minimum bond of \$1,000 and a maximum bond of \$500,000. However, if the ERISA plan holds employer securities, the maximum bond amount is increased to \$1,000,000. This applies regardless of whether the fiduciary actually holds the employer securities and whether the securities are publicly or privately held. The bond amount is determined at the beginning of each plan year.

ERISA requires bonds to provide coverage from the first dollar of loss. Bonds that have a deductible or other features that place a portion of the risk of loss on the ERISA plan do not satisfy ERISA (although the bond can include a deductible for a portion of the coverage that exceeds the maximum bond amount). The ERISA plan must have a one-year period after termination of the bond to discover losses that occurred during the term of the bond.

Fiduciaries of defined benefit pension plans, money purchase pension plans, profit sharing plans, Section 401(k) plan, stock bonus plans, ESOPs, and Keogh or H.R. 10 plans that have employee participants (and not solely owners and spouses) must be bonded. Fiduciaries of individual retirement accounts (IRAs), including Roth IRAs, are not required to be bonded, unless the IRA is a simplified employee pension (SEP) IRA or a SIMPLE IRA plan. Further, fiduciaries of “top hat” or executive deferred compensation plans are not required to be bonded.

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Although ERISA does not impose a specific monetary penalty on failing to maintain an ERISA bond, a fiduciary can be held personally liable under ERISA for any loss to the plan that should have been covered by a bond.

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