

## BONDING REQUIREMENTS FOR QUALIFIED RETIREMENT PLANS

Department of Labor (DOL) Regulations require all “Fiduciaries” of Qualified Retirement Plans to be bonded. We recommend plan sponsors review the adequacy of the plan’s fidelity bond annually. Here is a summary of the fidelity bond rules.

### **WHO IS SUBJECT TO BONDING.**

1. Section 412(a) of the Employee Retirement Income Security Act of 1974 (ERISA) states that every fiduciary of an employee benefit plan must be bonded, subject to the exceptions provided for in Section 2510.3-3 of Department of Labor Regulations.
2. A “fiduciary” is defined as any person who has the power of control, management or disposition over the funds or other property of any employee benefit fund, actually provides investment advice for a fee, or has discretion with regard to plan administration. Any person who has physical contact with cash, checks or other Plan property; power to transfer or negotiate Plan property for a price; power to disburse funds, sign checks or produce negotiable instruments from the Plan assets; or who has decision making authority over any individual described above is a Plan fiduciary subject to the bonding requirements. Plan fiduciaries include the Plan Administrator and Plan Trustee(s).
3. Department of Labor Regulations provide an exception to the bonding requirements for the following plans:
  - a. Plans sponsored by a corporation or a sole proprietorship under which only the sole (100%) owner or sole owner and his/her spouse are participants; or
  - b. Plans sponsored by a partnership under which only the partners or partners and their spouses are participants.

### **AMOUNT OF BOND REQUIRED.**

1. The amount of the bond must not be less than 10% of the Plan’s assets and, in no case, shall the bond be less than \$1,000 or more than \$500,000. (See exception below for “small plans”.)
2. The amount of the bond will be determined as of the beginning of each plan year.
3. If an employer sponsors more than one plan, the amount of the bond should be based on the combined assets of all plans.
4. To allow for on-going growth in the Plan’s trust (investment gains, contributions, etc.), an employer may wish to purchase the required bond for an amount significantly greater than 10% of current assets, thus possibly eliminating the need to increase the amount of the bond each year.

### **SPECIAL BONDING RULES FOR “SMALL PLANS”.**

1. “Small plans” are those plans with fewer than 100 participants (at the beginning of the plan year) who file annual reports on Form 5500 without audited financial statements.
2. “Small plans” are subject to an annual independent audit unless such plans meet certain requirements regarding the type of investments held in the Plan’s trust. The cost of this type of independent audit may be relatively expensive.
3. An employer may claim a waiver of the small plan audit requirement for any plan year in which either (a) at least 95% of the assets of the plan constitute “qualifying plan assets” or (b) the bonding requirement for the plan is increased to 100% of the total “non-qualifying assets”.

4. "Qualifying Plan Assets", generally determined on the first day of the plan year, include the following:
  - a. Qualifying employer securities, such as employer stock, marketable obligations, or an interest in a publicly traded partnership, each issued by an employer of employees covered by the plan or by an affiliate of such employer;
  - b. Participant loans that meet the prohibited transaction requirements under ERISA Sec. 408(b)(1);
  - c. Assets held by a "regulated financial institution" (e.g., bank or similar financial institution, insurance company, registered broker-dealer);
  - d. Shares issued by an investment company registered under the Investment Company Act of 1940 (e.g., mutual fund shares);
  - e. Investment and annuity contracts issued by an insurance company qualified to do business under the laws of a state; and
  - f. In the case of an individual account plan, any assets in the individual account of a participant or beneficiary over which the participant or beneficiary has the opportunity to exercise control and with respect to which the participant or beneficiary is furnished, at least annually, a statement from a regulated financial institution describing the plan assets held or issued by the institution and the amount of such assets.
5. "Non-Qualifying Plan Assets" include, but are not limited to, the following:
  - a. Limited partnerships, coins, diamonds and works of art;
  - b. Real estate interest held by parties that are not regulated financial institutions;
  - c. Stock certificates held by the sponsor/trustee rather than in street name by the brokerage firm or other regulated financial institutions.