Bonds: Is your plan covered?

The Employee Retirement Income Security Act (ERISA) requires coverage to protect the plan from losses due to fraud and dishonesty.

SUMMER 2023

There are three main types of bond coverage for retirement plans: fidelity bonds, fiduciary liability insurance, and cyber liability insurance. Not all three coverages are required, but understanding what is available and what they cover will help you determine the best protection for your plan.

ERISA Fidelity Bond

An ERISA fidelity bond protects the plan against losses caused by acts of fraud or dishonesty—such as theft, embezzlement, and forgery—by those who handle plan funds or other property. These funds or property are used by the plan to pay benefits to participants. This includes plan investments such as land, buildings, and mortgages. It also includes contributions received by the plan and cash or checks held to make distributions to participants. A person is considered to "handle" plan funds if their duties could cause a loss due to fraud or dishonesty, either by acting alone or in collaboration with others. Per the U.S. Department of Labor (DOL), handling refers to the following:

- Physical contact with cash, checks or similar property;
- Power to transfer funds from the plan to oneself or to a third party;
- Power to negotiate plan property (mortgages, title to land and buildings or securities);
- Disbursement authority or authority to direct disbursement;
- Authority to sign checks or other negotiable instruments; or
- Supervisory or decision-making responsibility over activities that require bonding.

Bond coverage is required for most ERISA employee benefit plans and the amount of coverage is reported on your plan's Form 5500. The minimum coverage is 10% of prior year plan assets but not less than $1,000. The maximum bond amount is $500,000, or $1,000,000 for plans that hold employer securities. Bonding requirements do not apply to plans that are not subject to Title 1 of ERISA, such as church or governmental plans. Some regulated financial institutions (certain banks and insurance companies, for example) are exempt if they meet certain criteria.

The fidelity bond can be part of your company's umbrella policy or can stand alone. In either case, the plan must be named and there can't be a deductible. If your fidelity bond is less than $500,000, including an inflation guard will automatically increase the value of the fidelity bond to cover the growing plan assets so you will always have adequate coverage. It should be noted that the fidelity bond is different than the employee dishonesty bond that may be in effect for your company. While both provide coverage in the case of fraud, the fidelity bond provides protection for the plan, whereas the employee dishonesty bond protects the employer.

Fiduciary Liability Insurance:

Fiduciary liability insurance covers fiduciaries against losses due to a breach of fiduciary responsibility. A fiduciary is defined by the DOL as any of the following:

- Persons or entities who exercise discretionary control or authority over plan management or plan assets.
- Anyone with discretionary authority or responsibility for the administration of a plan.
- Anyone who provides investment advice to a plan for compensation or has any authority or responsibility.

Examples of fiduciaries include plan trustees, plan administrators, and members of the plan's investment committee. A fiduciary is in a position of trust with respect to the participants and beneficiaries in the plan and is responsible to act solely in their interest, provide benefits, defray reasonable expenses, follow the plan document, and diversify plan investments. The fiduciary must act with care, skill, prudence, and diligence. This bond is not required but can provide protection to the fiduciaries.

Cyber Liability Insurance:

Cyber liability insurance for the plan provides protection from covered losses and expenses in the event of a cyber breach. Your service provider's insurance may not cover your plan for all losses, so the plan may want to consider its own policy. In May 2023 at the Plan Sponsor Council of America National Conference, DOL Assistant Secretary Lisa Gomez mentioned the importance of cybersecurity. She stressed that many employers may have cyber liability insurance for the company and assume that it covers the plan, but the fine print in the policy clarifies that it does not cover the company in its capacity as a plan sponsor.

In 2021, the DOL issued cybersecurity guidance for plan sponsors, plan fiduciaries, record-keepers, and plan participants. The guidance, which is still very relevant, included the following:

- **Tips for hiring a service provider:** Includes questions to ask when choosing a service provider to ensure they follow strong cybersecurity practices.
- **Cybersecurity Program best practices:** Suggestions of practices and procedures that plan fiduciaries and record-keepers should have in place for risk assessments, secure data storage, cybersecurity training, and incident response.
- **Online Security Tips:** Ways that plan participants can reduce the risk of fraud.

You can access the full news release here: https://www.dol.gov/newsroom/releases/ebsa/ebsa20210414

Things can happen outside of the control of the plan sponsor. Check with your service providers to determine the type of coverage your plan needs to be protected.

It doesn't hurt to double check! We're here for you!

As situations arise during the plan year, it's always better to double check the plan provisions rather than address a plan failure after the fact. In some situations, it's easier to ask for forgiveness rather than permission, but that isn't true in retirement plans. Correcting mistakes can be very costly. Do not hesitate to reach out to us for clarification on what the plan allows. For example:

When a participant (staff or owner) requests a distribution, there is a process to follow to ensure the distribution is permitted by the plan. Questions to be considered:

- **Eligibility:**
  - If a request is made for an in-service or hardship distribution, does the participant satisfy the requirements?
  - For terminated participants, does the plan permit distributions immediately or is there a waiting period defined in the plan document?
- **Available funds:**
  - Is the type of distribution limited to employee contributions or are employer funds available?
  - Is the participant's vested percentage sufficient if taking employer funds?
  - Has the vesting been updated for current plan year hours, if applicable?

- **Documentation:**
  - Has the necessary online or paper request been completed?
  - Has spousal consent been obtained, if required?
- **Type of distribution:**
  - Is the distribution only permitted in cash or are in-kind distributions permitted? In-kind refers to the transfer of assets to an IRA or another plan rather than liquidating shares and distributing the cash.
  - In the case of an in-kind transfer from a self-directed brokerage account, is the transfer to an IRA or another retirement plan (qualifying it as a rollover distribution) or to another account within the same plan (not a distribution)?

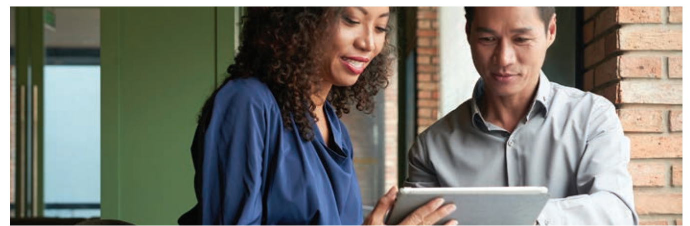
Contributions to the plan must be made per the provisions of the plan. If an employer contribution is usually funded after the end of the year but you find you have funds available during the year, a deposit may have to wait.

- If the funds are pooled in one account, it's important to be sure the total employer contribution funded does not exceed the deductible amount for that tax year. This won't be known until after the end of the year when total compensation figures are available.
- If the funds are in separate participant-directed accounts, the determination of how much to deposit to each participant is based on payroll as well. Funding some participants early, especially the owners, can also be a discrimination issue.

Are there changes to the company being considered? These events should be discussed prior to the effective date of the change because the plan can be greatly impacted.

- Changes include buying another company, selling the company, or merging into another one.
  - Depending on the details, it may require plan termination and affect whether the participant account balances can be distributed or if they must be transferred to the other party's plan.
  - The plan document may need to be amended for eligibility, vesting and other provisions.
- Change in current ownership.
  - Some plan contribution formulas are suitable for the current demographics of the plan, meaning testing requirements pass. Changes to ownership may negatively affect test results so plan design changes may need to be considered.
  - Since ownership can be attributed to family members, hiring a relative can dramatically affect certain types of contributions and testing.

Any time funds are going into the plan or leaving it, there are terms of the plan that must be followed. If you find the provisions no longer suit you and your employees, an amendment can be considered to make the necessary changes. It is very important to operate the plan in accordance with the plan document, so please ask for clarification as needed!



Are Changes Needed to the Plan?

As time goes by, the needs of a company and the needs of the participants evolve, and a plan may need to be amended to keep up with those changes. This is a good time of year to review plan provisions and determine if any changes are needed before the next plan year. Below are some possible considerations:

Automatic enrollment can boost plan participation. Participants who don't make an election will have 401(k) deferrals withheld automatically. There are several types of automatic enrollment designs that offer variations that may work best for the plan.

Does the plan fail the Actual Deferral Percentage/Actual Contribution Percentage (ADP/ACP) testing and require refunds to the Highly Compensated Employees? If so, it may be beneficial to add a safe harbor contribution, which could be either a match or a non-elective contribution. If the plan already has a safe harbor contribution, it's possible that a different type of safe harbor will provide a better result.

We are a full service third party administration (TPA) firm based in Vancouver, Washington, built from the ground up to provide unparalleled service, expertise and guidance in the administration of our customers' retirement plans. Unlike traditional Third Party Administrators or fully-bundled providers, we take additional measures to insulate and protect our clients from the complex rules and regulations that overwhelm so many companies.

For over 25 years we have worked hard to earn the trust and confidence of our clients, as well as the many CPAs, Attorneys, and Investment Professionals we work with.With our unique skill set, we are able to provide additional 3(16) fiduciary support, notice fulfillment, payroll integration using our comprehensive "270 PI" solution, and several other accounting functions. Just ask and you'll be surprised what we can do!

The expertise you need. The attention you deserve.

Joseph M. Burt, President
Joe@TPAteam.com

Rosalynn Ritschard, VP of Operations
Rosalynn@TPAteam.com

Pension Plan Specialists, PC
805 Broadway, Suite 600
Vancouver, WA 98660
www.pensionplanspecialists.com

Should employees be eligible for the plan earlier, or should they be ineligible for a longer period of time? It may be time to review the plan's eligibility requirements.

Are the right participants receiving the contribution? For a non-safe harbor contribution, consider how terminated participants, participants who work low hours, and different classes of employees earn a contribution.

Is the best profit-sharing contribution formula being used? There are several ways to allocate a profit-sharing contribution, including pro rata (everyone receives the same percentage), integrated (employees with earnings above a certain dollar amount receive more), cross tested/new comparability (projects benefit to retirement and each person can receive a different contribution) and flat dollar amount (everyone receives the same amount). The best fit may change over time as the employee base changes.

Certain owners looking to boost the employer contribution beyond the limits of an existing 401(k) plan may be interested in adding a cash balance plan.

These are some ideas to be considered by plan sponsors throughout the life of a plan. Reach out if you would like to discuss any of these options.

Deadlines for Calendar-Year Plans

September 15th

Required contribution to Money Purchase Pension Plans, Target Benefit Pension Plans, and Defined Benefit Plans.

Contribution deadline for deducting 2022 employer contributions for those sponsors who filed a tax extension for Partnership or S-Corporation returns for the March 15, 2023 deadline.

September 30th

Deadline for certification of the Annual Funding Target Attainment Percentage (AFTAP) for Defined Benefit plans for the 2023 plan year.

October 16th

Extended due date for the filing of Form 5500 and Form 8955 for plan years ending December 31, 2022.

Due date for 2023 PBGC Comprehensive Premium Filing for Defined Benefit plans.

Contribution deadline for deducting 2022 employer contributions for those sponsors who filed a tax extension for C-Corporation or Sole-Proprietor returns for the April 18, 2023 deadline.

Due date for non-participant-directed individual account plans to include Lifetime Income Illustrations on the annual participant statement for the plan year ending December 31, 2022.