ERISA Bonding Requirements

Q. What is ERISA?

A. ERISA stands for Employee Retirement Income Security Act of 1974. This is a legislative enactment of specific rules regarding retirement plans that became a part of the Internal Revenue Code that governs the operation of retirement plans.

Q. What is a Fiduciary?

A. ERISA defines a plan fiduciary as any person who: has discretionary power or control of plan funds, renders investment advice, or has discretionary authority over the actual operation or administration of a plan.

Q. What is a Bonding Requirement?

A. All fiduciaries and other persons who handle plan funds must be bonded. The reason for the bonding is to protect the plan against loss of plan funds through fraud or dishonesty. This is different than liability insurance, which covers personal liability for the act or omission of a fiduciary.

The bond must cover 10% of the total amount handled during the preceding year. If no plan funds were handled in the preceding year, the bond should cover 10% of the estimated amount to be handled for the current year. The minimum required bond is $1,000 and the maximum required bond is $500,000 or $1,000,000 for plans that hold employer securities.

You may use the Annual Report (IRS Form 5500 Schedule H or I) from the prior year to determine the amount handled.

Effective April 18, 2001, small plans (under 100 participants) must meet special bonding requirements in order to avoid an independent audit. At least 95% of plan assets must be "qualifying plan assets" and the amount of the bond cannot be less than the value of the non-qualifying assets. Qualifying assets include: assets held at a bank, financial institution, insurance company, or broker-dealer. Mutual funds, collective investment funds (CIF's), employer securities, and loans are all qualifying assets. A limited partnership is an example of a non-qualifying asset.

Q. How do I know if a bond is in place?

A. You can contact your insurance agent or legal advisor to find out if you have a bond in place that covers your retirement plan.

You may obtain a bond through a surety company approved by the Treasury Department. Each July, the Federal Register publishes a list of approved companies.

Q. Are there Penalties for not having a bond?

A. There is no prescribed penalty for not purchasing a bond. However, there is a general penalty the DOL can impose on a plan that does not comply with ERISA. This penalty is $5,000 and/or to one year in jail.

Q. If a participant has made a hardship withdrawal and subsequently had their elective deferral suspended for six months, will the deferral rate automatically be changed to zero? Will the deferral rate automatically be restored following the suspension period if the plan calls for the participant's previous election to resume after the suspension period?

A. No (to both questions). The plan sponsor, in its role as plan administrator, would be responsible for correctly enforcing the deferral rate suspension period, working directly with the payroll provider as needed.

Important note: Recent rule changes eliminate the requirement that participants be prohibited from making elective contributions to the plan for six months after taking a hardship withdrawal. The rule change is mandatorily effective on January 1, 2020, but can be applied as early as January 1, 2019.

Q. Will the payroll integration solution be able to incorporate when a participant is allowed to make a separate elective deferral election for irregular pay (ex: bonus payment)?

A. No. Since this is a one-off payroll circumstance, the system does not have the ability to automatically facilitate such a scenario. If the plan allows for a separate election to be made for irregular pay, the plan sponsor would address the separate election processing directly with the payroll provider.

Q. If loan repayments are suspended for a participant due to leave of absence or military leave, will the plan sponsor need to work with the payroll provider to ensure payroll is processed correctly?

A. Yes. The plan sponsor, in its role as plan administrator, would be responsible for making the appropriate changes to payroll to suspend loan repayments accordingly, working directly with the payroll provider as needed. We would work with the plan sponsor to explain options available to the participant upon return from a leave of absence.

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Important Reminder: A very important aspect of the payroll integration service—particularly, 360-degree payroll integration—is the line of communication between the plan sponsor and recordkeeper regarding any changes to administrative procedures. It is imperative for the plan sponsor to provide advance notice to the recordkeeper when amending plan entry date provisions and/or making changes to procedures for when participants are allowed to make deferral modifications. Please keep this in mind when considering making a change to your plan's administrative procedures.