Stones River Consulting INC

Advisor Connect | Four Things to Know About ERISA Fidelity Bonds and Fiduciary Liability Insurance

MAKING IT ACTIONABLE

The Employee Retirement Income Security Act known as "ERISA" regulates 401(k) and most other types of employee benefits plans. Under ERISA, anyone who handles plan funds must be covered by a fidelity bond. The bond protects the ***plan*** from losses that may result from fraudulent or dishonest acts.

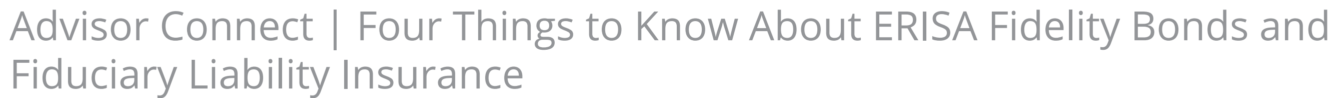
ACTION TO TAKE NOW

It is key that you familiarize yourself with these four important facts about fidelity bonds.

1. **An ERISA fidelity bond is not the same thing as fiduciary liability insurance.**
The fidelity bond insures the retirement plan against losses due to fraud or theft by people who handle the plan's funds or property. Fiduciary insurance, on the other hand, protects the fiduciaries themselves against losses due to breaches of fiduciary responsibility. It's important to note that while many plan fiduciaries may have fiduciary liability coverage, ERISA doesn't require it and it doesn't satisfy the fidelity bonding requirement.

2. **Not every fiduciary of the plan needs to be bonded.**
The intent of the fidelity bond is to protect the plan from losses due to bad behavior by people whose roles and responsibilities involve handling funds or other property of the plan. A bond is not required for a plan fiduciary who has no access to these processes or authority to direct funds.

3. **Fidelity bonds have coverage requirements.**
The amount of the required fidelity bond is equal to 10% of the amount of plan funds the fiduciary handles. Since 2008, the maximum required bond has been $1,000,000. Buying more coverage is permitted, but that decision is a fiduciary act, too.



Something else to note here: Some retirement plans hold what are called non-qualifying assets. These are investments that include limited partnerships, artwork, collectibles, mortgages, real estate or the securities of "closely-held" companies. If a plan has more than 5% in these non-qualifying assets, the company needs either a bond amount equal to 100% of these assets or it needs to arrange for an annual full-scope CPA audit.

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The plan can use plan assets to pay for fidelity bonds.
The named beneficiary of these bonds is the plan, not the fiduciary. The bonds don't protect the people handling plan funds or property and doesn't diminish their obligation to the plan. Because of this, the plan is permitted to purchase fidelity bonds from plan assets.

While this topic doesn't get a lot of headlines, it's an important one to help clients navigate. Talk to us about the details of sourcing and maintaining ERISA fidelity bonds.