

Creative Benefit Strategies, Inc.

Retirement Plan Consultants, Actuaries and Administrators

ERISA/Fidelity Bond – Frequently Asked Questions (FAQs)

Following are FAQs concerning ERISA/Fidelity bonds. Please read this information carefully.

Q. Who must be bonded?

A. Plan fiduciaries and any other persons who handle or have the authority to handle plan assets must be bonded. A plan fiduciary is considered to be handling funds when the fiduciary's responsibilities risk the loss of funds through fraud or other dishonest means, except in those instances where the risk of loss is negligible. Plan are required by law to be covered by an ERISA or Fidelity bond.

Q. Can fiduciaries who handle plan assets obtain personal liability coverage for their actions within the Plan?

A. Yes, however please note that fiduciary insurance or a fiduciary bond is NOT the same as an ERISA or Fidelity bond. ERISA bonds are for the protection of the plan participants against the misuse of Plan assets by plan fiduciaries. Fiduciary bonds cover fiduciaries when sued by plan participants and are not required by law. Fiduciaries as well as co-fiduciaries, who breach their duties may be personally liable to make a plan whole for losses caused by their breach, including lost opportunity and litigation costs. As a result of a breach of fiduciary responsibility, fiduciaries can be removed and barred from acting in future fiduciary capacity with respect to any plan.

Q. Can civil penalties be leveled on fiduciaries in breach of their responsibilities?

A. Both the IRS and the Department of Labor (DOL) can levy civil penalties on fiduciaries. The IRS can assess a 5 percent prohibited transaction excise tax on a fiduciary who participates in a prohibited transaction. The IRS has the authority to increase the excise tax to 100 percent of the amount of the transaction that has not been corrected, if after notice from the IRS that a levy will occur, the prohibited transaction has not been corrected. Additionally, the DOL can levy a civil penalty of 20% of the amount recovered with respect to a plan.

Q. May a plan shield a fiduciary in advance of liability?

A. No. There are no provisions that permit a plan to prospectively agree to exempt a particular fiduciary from liability or through indemnification by the sponsoring employee.

Q. How may fiduciaries insure that they will make prudent fiduciary decisions and adequately document their investment handling?

A. Fiduciaries must exercise procedural due diligence, which is a process for making high-quality, prudent fiduciary decisions and documenting the decisions made in that process. Use of procedural due diligence enables the fiduciary to obtain a better defense in the event that the prudent decision results in desultory outcomes.

Q. What are the main aspects of procedural due diligence as the process relates to selecting a plan investment?

A. To obtain the greatest protection in analyzing and selecting investment alternatives for the plan, a fiduciary should:

- Read all pertinent investment documents and disclosure materials. Ascertain the costs, the risk level, and expected return.
- Ascertain the reasonableness of any fees associated with the investment.
- Be able to show that the investment is reasonably designed to further plan purposes and is consistent with the plan’s funding policy.
- Review investment alternatives and obtain competitive bids when that is feasible.
- Research the investment’s historical performance, as well as that of its sponsor, and check any available rating service information that covers the particular investment.
- Hire an expert to help in the decision-making process.
- Obtain regular information about the selected investment’s performance and research material discrepancies.
- Document all activity engaged in the investment decision-making process and maintain a detailed file of all pertinent documents, including reports, meeting notes, and legal documents.

Q. Are non-publicly traded assets a reasonable investment?

A. Only if the fiduciary’s due diligence can be documented as outlined above. Another consideration involved with non-publicly traded assets is liquidity.

Q. What is the required ERISA/Fidelity bond amount?

A. The minimum bond is \$1,000.00. The maximum bond is \$500,000.00. A bond must cover at least 10 percent of plan assets. In addition, other rules may apply depending on the number of plan participants and type of assets held by the Plan.

Q. How do I obtain an ERISA/Fidelity bond?

A. We have partnered with Colonial Surety to assist our clients with obtaining the required coverage. Colonial Surety offers a five-year bond with an automatic extended coverage endorsement (i.e., the bond automatically increases to maintain compliance with current legal requirements). Please visit our website www.creben.com and click on “Related Links” to obtain a quote and apply for a bond.

You can also contact your regular insurance agent to obtain a bond. Please be sure to request a “Fidelity” or “ERISA” bond. Please forward a copy of the bond to us so that we may review and properly complete the annual Form 5500 / 5500-SF.

Please contact your CBS administrator if you have additional questions.

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