Advisory Council on Employee Welfare and Pension Benefit Plans

Report to the Honorable R. Alexander Acosta, United States Secretary of Labor

Evaluating the Department's Regulations and Guidance on ERISA Bonding Requirements and Exploring Reform Considerations

November 2018

NOTICE

This report was produced by the Advisory Council on Employee Welfare and Pension Benefit Plans, usually referred to as the ERISA Advisory Council (the "Council"). The Council was established under section 512 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") to advise the Secretary of Labor on matters related to welfare and pension benefit plans. This report examines the regulations and guidance implementing bonding requirements under section 412 of ERISA.

The contents of this report do not represent the position of the Department of Labor (the "Department").

LIST OF COUNCIL MEMBERS

Cynthia J. Levering, Council Chair

Srinivas D. Reddy, Council Vice Chair

Robert A. Lavenberg, Issue Chair

Douglas L. Greenfield, Issue Vice Chair

Beth A. Almeida, Drafting Team Member

Linda M. Kerschner, Drafting Team Member

Colleen E. Medill, Drafting Team Member

David M. Blanchett

Jason K. Bortz

Patricia M. Haverland

Tazewell V. Hurst III

David J. Kritz

Bridget O'Connor

Stacy R. Scapino

ABSTRACT

The 2018 ERISA Advisory Council examined the effectiveness of the Department's regulations and sub-regulatory guidance under section 412 of ERISA, which requires (with certain exceptions) that an employee benefit plan purchase a fidelity bond to protect against losses to plan funds or other property caused by acts of fraud or dishonesty. In particular, the Council focused its inquiry on whether changes to the regulations and sub-regulatory guidance implementing section 412 of ERISA could improve compliance and thereby enhance the safeguarding of plan funds or other property from acts of fraud or dishonesty.

Based upon testimony received during public hearings, supplemented by submissions of written material from the Department and interested stakeholders, the Council developed recommendations for updating regulatory and sub-regulatory guidance for plan officials, plan sponsors and plan service providers to improve compliance with the requirements of section 412. Specifically, the Council recommends the Department issue a new Interpretive Bulletin and a summary of the requirements under section 412 of ERISA for securing a fidelity bond.

ACKNOWLEDGEMENTS

The Council recognizes the following individuals and organizations who contributed to the Council's deliberations and final report. Notwithstanding their contributions, any errors in the report rest with the Council alone.

Robert J. Duke	The Surety & Fidelity Association of America
Kevin M. Guillet	Marsh USA Inc.
Matthew Jackson	Segal Select Insurance Services, Inc.
Marc S. Mayerson	The Mayerson Firm
Diane R. McNally	Segal Select Insurance Services, Inc.
Norman Stein	Drexel University School of Law
Christine Donahue	Employee Benefits Security Administration
Larry Good	Employee Benefits Security Administration
Thomas Norris	Employee Benefits Security Administration

TABLE OF CONTENTS

I. RECOMMENDATIONS

Based on the testimony and research received and for the reasons stated, the Council recommends that the Department publish the following new guidance directed to plan officials, plan sponsors, and plan service providers:

1. A new Interpretive Bulletin, incorporating much of the content of its 2008 Field Assistance Bulletin 2008-04.

2. A summary of the requirements for securing a fidelity bond that complies with the Department's guidance. The Council has drafted a sample summary, which is included in the Appendix to this report.

II. DISCUSSION

A. Background

In crafting the participant protection provisions in Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), Congress borrowed from existing laws where available. The requirement that funded employee benefit plans, with some exceptions, be required to secure a fidelity bond was effectively an extension of the then current requirements under the Welfare and Pension Plan Disclosure Act of 1962 ("WPPDA"). The concept of statutorily required fidelity bonds to protect members of beneficiary organizations was first adopted in the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), which required labor unions to be bonded. The terms and terminology used over the three acts are remarkably similar. When the bonding requirements were codified in section 412 of ERISA, the pre-existing regulations promulgated by the Department under the WPPDA were transformed in 1975 into temporary regulations under ERISA. Those regulations have been largely untouched since 1975, and never were finalized.

Because 43 years have passed since the temporary regulations under section 412 of ERISA were published and because the original LMRDA language used in those temporary regulations seemed inconsistent with the terminology used in ERISA, the Department asked the Council to consider whether the Department's guidance should be updated and whether any of the rules provided in the temporary regulations should be reformed based on contemporary experience.

There was some evidence to suggest that an update of the regulations would be useful. Specifically, the Department's Office of Enforcement in its investigations had discovered fidelity bonds that were not satisfying the requirements set out in the temporary regulations, and an informal survey of Annual Return/Report of Employee Benefit Plan Form 5500 ("Form 5500") data performed by the Department showed that a significant number of small employee benefit plans (roughly one third) did not have a required fidelity bond in place. These examples of noncompliance occurred in years after the Department had published its modernized version of the fidelity bond requirements in its 2008 Field Assistance Bulletin 2008-04 ("FAB 2008-04").

Further, the 2014 Council, in its report on Outsourcing Employee Benefit Plan Services, found sufficient confusion about distinctions between mandated and voluntary insurance coverage to recommend to the Department that it consider updating ERISA's bonding requirement guidance to reduce confusion over coverage issues.

B. The Council's Approach

After discussion with the Department to learn with more specificity the examples of noncompliance with the fidelity bond requirements that were surfacing, the Council broke down its evaluation into five somewhat overlapping inquiries:

a. To what extent are the fidelity bonds currently being secured by plan officials insuring against losses resulting from any act of fraud or dishonesty as is currently required under section 412 of ERISA?
b. To what extent are the fidelity bonds currently being secured by plan officials covering all plan officials who handle plan funds or other property as required under section 412 of ERISA?
c. To what extent are the fidelity bonds currently being secured by plan officials providing sufficient recovery amounts to offset the full losses caused by acts of fraud or dishonesty?
d. Should the plan funds or other property mandated to be insured under section 412 of ERISA against losses attributable to acts of fraud or dishonesty be expanded to include participant contributions prior to their deposit in the plan?
e. Should the Department's current guidance and reporting requirements be modified to clarify (and to better educate plan officials as to) the value of, and the distinctions among, fidelity bonds, insurance policies covering crime (including cybercrime), insurance policies covering liability, and insurance policies indemnifying fiduciaries?

The Council posed these questions to educators, insurance underwriters, insurance brokers, and insurance coverage attorneys to develop a general understanding as to the effectiveness of the current fidelity bond coverage, the efficiency of the current fidelity bond market, the utility of additional or revised regulations, sub-regulatory guidance, or reporting obligations, and the impact that any proposal to expand the scope of the current fidelity bond coverage would have on administrative costs and the security of plan funds and other property.

C. Summary of Witness Testimony and Council Discussion

1. *History of Section 412 of ERISA and Employee Benefit Plan Trends*. The fidelity bond requirement of section 412 of ERISA dates back to 1962, when Congress amended WPPDA by adding a fidelity bond requirement for welfare and pension plans. When Congress enacted ERISA in 1974, the original language of section 13 of the WPPDA, which contained the fidelity bond requirement, was carried forward and incorporated as section 412 of ERISA. In 1975, the Department enacted temporary regulations under section 412 of ERISA that adopted almost verbatim the original 1962 regulations that were promulgated under section 13 of the WPPDA. These temporary regulations were updated in 1985 with only minor changes. Since the 1985 changes were adopted, Congress amended the language of section 412 of ERISA to add the

current exemption for broker-dealers and to increase the maximum limit of the fidelity bond for pension plans holding company stock as a plan asset.

Professor Norman Stein pointed to two trends that have had an impact on the value of the fidelity bond requirement incorporated as part of ERISA in 1974: (1) the design and assets of pension plans have changed from predominantly defined benefit plans or defined contribution plans with pooled investments to 401(k) plans with participant and self-directed investments; and (2) plans and plan sponsors are increasingly reliant on third-party service providers for compliance with ERISA's technical requirements, including the bonding requirement of section 412 of ERISA.

Prof. Stein posited that the dispersion of investment authority to plan participants and the outsourcing of tracking of plan assets to third-party recordkeepers and custodians made it less likely that plans would be exposed to theft, fraud and dishonest acts by plan officials.

Prof. Stein's view was backed by a number of witnesses who testified that the protection against the risk of loss due to theft, dishonesty, or fraud offered by a fidelity bond, if ever a substantial problem, has become less important as compared to other forms of insurance. There was a consensus among the witnesses that today, losses to employee benefit plans due to theft, fraud, or dishonesty on the part of persons who handle plan funds or other property are far less significant than losses due to social engineering fraud and cybercrime. Fidelity bonds generally would not protect the plan against losses due to these latter risks because those losses do not result from theft, fraud or dishonesty by plan officials, but rather the fraudulent and criminal activity of outside parties. As those witnesses told the Council, because fidelity bonds are often sold in a package with policies that cover these types of risks, the fidelity bond coverage is often confused with the other policies in the package.

2. *Recent Department Compliance Projects*. The Employee Benefits Security Administration ("EBSA") shared with the Council the results of two recent compliance projects on bond reporting on the Form 5500. The purpose of these projects was to assess the quality of bonding reporting on the Form 5500 and to determine whether the fidelity bonds held by employee benefit plans complied with the various bonding requirements of section 412 of ERISA. The projects were conducted by the Philadelphia Regional Office in 2014 and by the national office of the EBSA in 2015.

In 2014, the Philadelphia Regional Office completed a study of plans that did not report bonds on their 2012 plan year Form 5500 filing. The study found that 61% of closed investigations were found to have at least one violation of the bonding requirements of section 412 of ERISA.

Although not nationally representative, the results of the study by the Philadelphia Regional Office prompted EBSA to conduct the National Bonding Project in 2015 (the "National Project"). The initial plan population for the National Project was derived from plans that filed a Form 5500 for the 2013 plan year. EBSA generated a sample of 1,200 plans, stratified by EBSA regional office, that did not report a bond on their form year 2013 Form 5500. EBSA then sent out compliance letters to these plans, asking them to: (1) verify their Form 5500 reporting related to bonds; (2) send a copy of their bond to EBSA for review; or (3) acquire a bond, if the plan did not have one. EBSA's Office of Enforcement then assessed whether the bonds that plans already held and those that were acquired as a result of the compliance letter complied with ERISA's bonding requirements.

According to EBSA, the preliminary results from the National Project showed that 43% of plans purchased bonds following receipt of EBSA's compliance letter. In addition, of the plans that claimed to be exempt from the bonding requirements of section 412 of ERISA, a little less than half actually were exempt.

EBSA also conducted a snapshot review of Form 5500 data for the 2015 plan year (the "2015 Review"). EBSA reported to the Council that, based on the results of the 2015 Review, small pension plans are much more likely to indicate that they do not have a bond. According to EBSA, nearly all large pension plans that filed Form 5500s for the 2015 plan year indicated on Form 5500 that they were covered by a fidelity bond with a median coverage of $500,000. Conversely, two-thirds of small pension plan filings indicated that they were covered by a fidelity bond, with a median coverage of $200,000. For welfare benefit plans that filed Form 5500s for the 2015 plan year, the results were similar. Again, almost all large welfare plans reported that they were covered by a fidelity bond, with a median coverage amount of $500,000. Only two-thirds of small welfare benefit plans indicated that they were covered, but those also had a median coverage amount of $500,000.

The 2015 Review also collected data on reported plan losses that were caused by fraud or dishonesty. Form 5500 requires plans, when relevant, to state whether the plan had a loss that was caused by fraud or dishonesty (Form 5500-SF Line Item 10d, Form 5500 Schedule H and I Line Item 4f). Of the 140 plans reporting for plan year 2015 that they had a loss caused by fraud or dishonesty, 58 plans reported a loss that was higher than the fidelity bond amount reported on the Form 5500.

EBSA reported to the Council that the preliminary results of these compliance projects indicate that language found in fidelity bonds is often inconsistent with section 412 of ERISA. EBSA determined that fidelity bond policies frequently: (1) cover losses only if an employee intends to cause a loss to the insured; (2) fail to list the plan as the named insured; and (3) cover losses only if the employee obtains a financial benefit for himself/herself or for another person or entity.

Overall, EBSA concluded that the preliminary results from both the Philadelphia Regional Office project and the National project suggest that persons responsible for plan compliance with section 412 of ERISA may not fully understand the bonding requirements under ERISA.

3. *Responses to the Council's Inquiry.* The witnesses provided the following testimony in response to the five inquiries raised by the Council:

a. *Covered Losses*. The witnesses testified consistently that the risk of losses to plan participants across both the small and large plan market is escalating rapidly from the emergence of social engineering and cybercrime, but not due to acts of fraud or dishonesty that are covered by fidelity bonds. The witnesses also testified consistently that other insurance products are available to cover losses caused by social engineering, cybercrime, and breaches of fiduciary duty by plan fiduciaries that do not rise to the level of "fraud or dishonesty." The witnesses explained that, in general, the risk of an act of fraud or dishonesty that is covered by a fidelity bond is lower in the large plan market than in the small plan market due to the greater availability of internal specialized staff, advisors, attorneys and other professionals supporting the plan fiduciaries who administer the plan and manage or monitor the plan's investments.

They further noted that in the large plan market, plans often secure a fidelity bond that exceeds the minimum required dollar amount under section 412 of ERISA.

The witnesses emphasized that a fidelity bond under section 412 of ERISA is not intended to cover losses caused by negligent acts or as a substitute for adequate internal controls of the employer. Robert J. Duke, General Counsel for The Surety & Fidelity Association of America, explained that "Fidelity Bonds are written with appropriate pricing and parameters of the risk established clearly and specifically in the policy." Mr. Duke explained that prior to the objections raised by the Department in 2013, fidelity bonds typically defined the term "fraud or dishonesty," as applying only to an act by an employee with the "manifest intent" to cause the insured (the plan) a loss.

The witnesses could offer few examples of fidelity losses that were not covered by the bond but believed that nearly all such examples would likely be found almost exclusively in the small plan market because of the more limited staff resources, fewer or less robust internal controls, fewer qualified service providers to assist small plan sponsors with compliance, and overall relatively higher costs for plan administration. The witnesses surmised that most uninsured fidelity losses in the small plan market resulted from those small plans not securing a fidelity bond at all, rather than securing a bond that does not meet all the requirements of section 412 of ERISA. Further, the witnesses speculated that the failure to secure a fidelity bond was in many cases the result of the plan officials and the providers that serve them not understanding the differences between fidelity bonds and insurance policies designed to protect the plan against losses such as social engineering and cybercrime, or fiduciary liability insurance.

b. *Persons Bonded*. Although the witnesses testified that there were consistent questions regarding the coverage of third parties who were plan officials, there was no evidence raised of internal plan officials not being covered by fidelity bonds purchased on behalf of the plan. Kevin M. Guillet, Senior Vice-President of Marsh USA Inc., explained that fidelity bonds generally do not cover outside third party plan officials, such as investment managers, for acts of fraud or dishonesty committed by them or their employees, even though these third parties do handle funds or property of ERISA plans and, therefore, are subject to the bonding requirement of section 412 of ERISA. Several witnesses noted that typically such third parties maintain their own fidelity bond, and it is the obligation of the plan's named fiduciary to ensure that such fidelity bonds are secured in circumstances where the third party is not a covered person of the bond secured by the plan. Those witnesses noted, however, that while the market for providing third party bonding coverage does exist, plan officials might not be knowledgeable about it.

c. *Adequacy of Bond Amount*. The witnesses were unable to provide data in response to the question of whether fidelity bond amounts were sufficient to offset the losses to plans that were caused by acts of fraud or dishonesty. Additionally, there was no testimony or research obtained that gave any indication of harm to participants caused by either the lack of a bond or an inadequate bond amount. Prof. Stein testified that there was a lack of academic literature on nearly all the basic questions regarding the fidelity bond market, including the adequacy of the minimum required insurance coverage amounts. Other witnesses explained that the lack of data on this question is in part a function of other available insurance products, such as a commercial or cybercrime policy, which may include fidelity bond coverage. For example, if a plan is added as a named joint insured to an existing employer bond or a crime policy, claims made under the policy for fidelity losses would not be distinguished in reporting from claims made for crimes.

As a result, if any available proprietary claims data maintained by insurance carriers were made available, it is not clear whether it would provide useful information.

d. *Expanded Coverage of Participant Contributions.* There was a diversity in opinion among witnesses as to whether the scope of coverage of a fidelity bond should be expanded to include participant contributions prior to their deposit into the plan's trust. Marc S. Mayerson, a lawyer specializing in insurance coverage on behalf of policyholders and an instructor of insurance law at Georgetown University Law Center and George Washington University Law School, summarized the rationale for not expanding coverage by stating that it does not seem reasonable to require insurers to pay for receivables where the dishonesty of the contributor is at issue because the underwriters do not have cost-effective ways of policing or pricing such a risk. Mr. Mayerson further explained that for this reason, mandating that fidelity bonds cover the dishonesty of contributors would be unwieldy and perhaps would undermine the fiduciary responsibility to supervise and pursue collections. Mr. Duke observed that there are other kinds of insurance policies that may more appropriately cover the risk of loss of participant contributions prior to deposit into the plan's trust, such as a fiduciary liability policy where the insured is the employer responsible for deducting and depositing the contributions.

Mr. Guillet, however, endorsed the idea of expanding the fidelity bond mandate to cover undeposited participant contributions, because those contributions are treated as plan assets by the Department and should be afforded the same coverage as all other plan assets. Mr. Guillet stated that the additional risk posed by covering undeposited participant contributions was not so significant as to cause disruption in the market for ERISA fidelity bond coverage. Mr. Guillet acknowledged the challenge that such coverage would pose as expressed by the other witnesses but felt that there would be ways to underwrite risks despite these challenges.

e. *Need for Additional Education.* The witnesses generally agreed that, notwithstanding current regulatory and sub-regulatory guidance by EBSA, the bonding requirements of section 412 of ERISA are not well understood by small plan sponsors or individual insurance brokers who serve as generalists and not specialists in ERISA fidelity bonds. They concurred that additional education would be helpful in the small plan market, both for plan sponsors and the third-party service providers who assist small employers in the administration of their employee benefit plans.

The need for additional education is due in large part to the emergence of new insurance products aimed at the risk of losses from social engineering and cybercrime. Diane McNally of Segal Select Insurance Services, Inc. stated that FAB 2008-04 provides a useful standard but it is not widely viewed by small plan officials or their service providers, who often confuse the various policies and coverage. Mr. Guillet further explained how confusion among plan sponsors leads to claims reporting errors and mistakes in reporting the plan's fidelity bond coverage on the Form 5500.

D. The Council's Observations

The Council's evaluation is significantly limited by its inability to obtain relevant underwriting data for the fidelity bond industry. The lack of underwriting data appears to be the product of the following factors: (a) the ERISA fidelity bond market is a relatively small part of the overall crime and fidelity policy market and the underwriting data is not readily segregable from the overall crime and fidelity underwriting data; (b) the insurance industry is regulated on a state-by-state basis, making it more difficult to develop national underwriting data; and (c) the fidelity bond market does not appear to be particularly sensitive to underwriting concerns. The consequence of the lack of availability of underwriting data is that it is difficult to develop confidence in specific findings because nearly all of them are based on anecdotal evidence or general observations. Specifically, the Council's evaluation is often based on its "finding no evidence of a problem." Obviously, this does not mean that there is no problem; only that the Council did not have access to the type of data that would be necessary to reach more than a general observation.

With that caveat in mind, the Council generally observed the following:

- Fidelity bonds appear to be widely available, easily obtainable, and relatively inexpensive. This observation leads the Council to assume that the fidelity bond market is efficiently providing coverage to the plan officials required to obtain it.

- Although the mismatch of the language of the temporary regulations and ERISA appears to be a factor in plan officials' apparent confusion about the role of fidelity bonds in the general suite of crime, indemnity and fidelity insurance products that are available, the Council found no specific evidence that the use of the language itself in the fidelity bonds obtained resulted in fraud or dishonesty losses being left uncovered.

- The testimony and research obtained revealed no significant fidelity losses that were uncovered because they exceeded the required fidelity bond limit.

- There appears to be no consensus as to whether an efficient insurance market could be developed to cover losses to an employee benefit plan due to the failure of employers to pay participant contributions over to the plan on a timely basis if the fidelity bond requirements were expanded to cover such losses. The lack of internal controls that could be imposed on this risk would make insuring the performance of employers challenging to insure. As a consequence, the insurance might not be cost effective for the employee benefit plans. If the Department continues to be interested in this inquiry, it would need to approach the surety industry about the development of a model bond that could be tested.

- Informal survey data and anecdotal evidence indicates that there are losses being borne by small employee benefit plans that would have been covered had a fidelity bond been purchased as required. We could not ascertain with the available data, the extent to which, if any, these plan losses resulted in losses to participants. What does seem clear though is that a lack of awareness of the fidelity bond requirements and confusion over which insurance coverage is required and which insurance coverage is voluntary appear to be significant factors in the lack of coverage in the small employee benefit plan market.

III. BASIS FOR RECOMMENDATIONS

Although the Council's observations do not include evidence of uninsured fidelity losses resulting from insurance market failures or out-of-date statutory or regulatory requirements, the Council did observe evidence of greater noncompliance – that is, the failure of plans to be covered by fidelity bonds – than should have been observed given the price and availability of fidelity bonds on the market. The Council observed that the instances of noncompliance are concentrated in the small plan market and it attributes this phenomenon to a general underdeveloped awareness and misunderstanding of the fidelity bond rules by sponsors of small plans and the commercial service providers who serve the small plan market. For this reason, the Council recommends that the Department relaunch the updated rules that it published in FAB 2008-04, this time focusing directly on plan sponsors and other plan officials and plan service providers as the targeted audience. The Council suggests that the best vehicle for this new publication would be an Interpretive Bulletin because it would be published in the Code of Federal Regulations and not require a full Administrative Procedure Act process that a revision of the current Temporary Regulations would entail.

The Council also recommends that the Department add a "Fidelity Bond Summary" to its sub-regulatory guidance. Such a summary would serve to demystify fidelity bonds for purchasers, by explaining the basic requirements, and by helping them to distinguish among the various insurance products that are typically sold in conjunction with fidelity bonds, but that are not subject to statutory mandates under ERISA or the Department's rules and regulations.

The Council is not recommending that section 412 of ERISA or the Temporary Regulations be updated to increase the mandated amount of the fidelity bond because instances of losses due to fraud or dishonesty that exceed the existing required coverage amounts simply are not being reported in any material numbers. This could be for any number of reasons, but it might be because it is relatively common for large plans to purchase greater coverage than the required minimum amounts, and/or because the instances of fraud or dishonesty losses are generally relatively few in number in any event.

The Council is also not recommending that section 412 of ERISA be amended or interpreted at this time to include the coverage of losses due to the fraudulent or dishonest failure of employers to deposit participant contributions to employee benefit plans on a timely basis. The Council's reluctance to make a recommendation is based on its uncertainty as to whether such losses could be insured efficiently by the surety industry and as to whether the surety benefit provided to participants and beneficiaries would justify the cost of the expanded coverage requirement. The Council concludes that if the Department wishes to explore this question further it would need financial testing performed by insurance experts to evaluate the costs and benefits of the expanded mandate.

IV. APPENDIX – SAMPLE FIDELITY BOND SUMMARY

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for pension and health and welfare plans in private industry. One of ERISA's requirements is that people who handle employee benefit plan funds and other property must be bonded to protect the plan from losses due to fraud or dishonesty. This requirement is usually met by obtaining a "fidelity bond" or "ERISA bond." This summary is designed to help employers, plan sponsors and their advisors understand and comply with this requirement by identifying the important elements a bond must include in order to comply with section 412 of ERISA.

This summary provides general information to help you understand the law and the fidelity bonding requirements. It is not a legal interpretation and does not address all of the issues related to ERISA's fidelity bonding requirement.

Do I need a bond?	Unless your plan is completely unfunded (that is, it pays benefits only from the general assets of a union or employer), a bond is required for any employee benefit plan covered by ERISA.
Who must be bonded?	Every person who "handles funds or other property" of an employee benefit plan is required to be bonded. This will usually include the plan administrator and those officers and employees of the plan or plan sponsor who handle plan funds by virtue of their duties relating to the receipt, safekeeping and disbursement of funds. Other persons may also need to be bonded, such as service providers whose duties and functions involve access to plan funds or decision-making authority that can give rise to a risk of loss through fraud or dishonesty.
What losses are covered?	The bond must protect the plan against losses caused by acts of fraud or dishonesty. Fraud or dishonesty includes, but is not limited to, larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, and other acts, notwithstanding the intent of the person handling the funds or other property of the plan.
Where can I purchase one?	Bonds must be obtained from a surety or reinsurer that is named on the Department of the Treasury's Listing of Approved Sureties, Department Circular 570. Under certain conditions, bonds may also be obtained from Underwriters at Lloyds of London.
Amount of bond	Generally, each person must be bonded in an amount equal to at least 10% of the amount of funds he or she handled in the preceding year, up to $500,000, or $1,000,000 for plans that hold employer securities. Plans may purchase coverage for more than the required amounts. These amounts apply for *each plan* named on a bond. When a bond insures more than one plan, the bond's limit of liability must be sufficient in amount to insure each plan as though it were bonded separately. Further, the bonding arrangement must ensure that payment of a loss sustained by one plan will not reduce the amount of coverage available to other plans insured under the bond.

Named insured	The employee benefit plan should be named as the insured party (or otherwise specifically identified) on the bond so that the plan can recover any losses covered by the bond.
Form of bond	A plan may be insured on its own bond or it can be added as a named joint insured to an existing employer bond or insurance policy (such as a "commercial crime policy"), so long as the existing bond is adequate to meet the requirements of section 412 of ERISA and the regulations. An "ERISA rider," modification, or separate agreement between the parties may be needed to ensure that exclusions or deductibles that apply to other aspects of the policy do not apply to the ERISA fidelity bond coverage.
Discovery period	The bond must either provide for a one-year period after the termination of a bond to discover losses that occurred during the term of the bond, or give the plan the right to purchase a one-year discovery period following termination or cancellation of the bond. Some policies terminate the discovery period upon the insured obtaining a replacement policy that offers the same coverage.
Deductibles	Deductibles or other features that transfer risk to the plan are not permitted. (However, if a plan chooses to purchase coverage in excess of the requirements, a deductible may apply to those amounts.) In situations where the employee benefit plan is added as a joint insured to an existing bond or policy (e.g., a commercial crime policy), it is important to examine the bond carefully to be sure that no deductible applies to the ERISA fidelity bond portion of the coverage.
Exclusions	Any exclusions should be carefully examined to ensure they do not conflict with the requirements of section 412 of ERISA. For example, exclusions for situations where an employer or plan sponsor "knew or should have known" that a theft was likely are unacceptable in an ERISA fidelity bond because the insured party is the plan, not the employer or plan sponsor. In situations where the employee benefit plan is added as a joint insured to an existing bond or policy (e.g. a commercial crime policy), it is especially important to ensure that exclusions that apply to other aspects of the policy do not apply to the fidelity bond if they are inconsistent with the requirements of section 412 of ERISA.