<u>FIDELITY BOND REQUIREMENTS OF ERISA AND THE DEPARTMENT OF LABOR</u>

It is a requirement of the Employment Retirement Income Security Act of 1974 (ERISA) that qualified retirement plans subject to ERISA have a fidelity bond to cover at least 10% of the total value of plan assets (calculated at the beginning of the plan year), with a minimum bond requirement of $1,000 and a maximum bond requirement of $500,000 ($1 million for a plan that holds employer stock). This "ERISA bond" should be obtained through your casualty insurance broker, and this requirement is not waived *for any reason*.

Note: A "one-participant plan", which is a plan that covers <u>only</u> the sole owner of the sponsoring business, the sole owner and his or her spouse, or partners in the sponsoring partnership and their spouses, is not subject to ERISA, and therefore has no bonding requirement. Remember that a "one-participant plan" immediately becomes subject to ERISA if <u>anyone</u> else meets the plan's eligibility requirements, and the plan would therefore immediately be subject to the DOL audit requirement discussed below unless one of the exceptions applies, and the plan would also be subject to the ERISA bond requirement discussed above.

In addition to the ERISA bond requirement, the Department of Labor (DOL) has issued regulations to require retirement plans subject to ERISA (again, this does not include one-participant plans) to have an annual independent audit by a Certified Public Accountant. Previously, this audit requirement applied only to large plans (plans with 100 or more participants.) However, the DOL regulation waives the audit requirement for a small plan (plan with less than 100 participants) **if** it meets at least one of the following exceptions:

1. No more than 5% of the total value of plan assets are derived from "non-qualifying assets". A "non-qualifying asset" is any asset (other than securities of the Employer sponsoring the plan or participant loans) that is **not** held by a regulated financial institution such as a brokerage house, bank trust department, insurance company, or mutual fund company.

2. Your plan has a fidelity bond for at least 100% of the value of "non-qualifying" assets held by the plan.

If your plan is not a one-participant plan, does not already meet one of the exceptions to the DOL audit requirement, and/or if you do not already have a bond to meet the ERISA bonding requirement, you should contact your insurance broker to obtain appropriate fidelity bond coverage <u>immediately</u>.

Annual CPA plan audits can be very costly. To meet the DOL bonding exception, the value of your bond may be no less than 100% of the value of the "non-qualifying assets" held by your plan, *and the ERISA $500,000 maximum bond limit does not apply*. However, the bond that you already have in place to cover the 10% ERISA bond requirement *does* count toward the 100% of non-qualifying assets DOL bond requirement. You may wish to purchase a larger bond than is immediately necessary, so that increases in the bond to cover increases in the value of plan assets may be less frequent. Alternatively, you may wish to purchase a policy rider that will automatically increase the bond coverage amount as the value of plan assets increase.

<u>What to do right now:</u> Determine the percentage of total assets held by the plan which are "non-qualifying assets". If the percentage is more than 5%, increase bonding to cover 100% of the value of the "non-qualifying assets". If your Plan Trustee has any doubt as to the actual value of any plan asset, or if there is any question as to the amount of bonding required, we recommend that you purchase as much coverage as could <u>possibly</u> be needed, in order to be absolutely certain that you are not purchasing too little.

<u>What to do in the future:</u> At the end of every plan year, and at any time that your plan obtains an asset that is deemed to be "non-qualifying", review the value of your plan assets and the associated bonding requirement, and increase your bond coverage as required.

<u>We cannot emphasize enough the importance of reviewing your bonding coverage NOW, and regularly in the future.</u> If you would like assistance in determining how bonding requirements affect your plan, please e-mail us at **bonding@jandaretirement.com.**