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LEGAL ALERT

December 1, 2008

DOL Issues Field Guidance on ERISA Bonding Requirement

On November 25, 2008, the Department of Labor issued Field Assistance Bulletin 2008-04, providing guidance to its field offices as to the fidelity bonding requirement of ERISA § 412. The guidance, in the form of 42 Q-and-A's, reflects DOL's existing regulations, its responses to field and other inquiries, and its position on changes enacted in the Pension Protection Act of 2006. Among other things, the FAB takes the position that:

- Service providers who "handle" the funds or other property of an ERISA plan must be bonded, unless they qualify for the financial institution or other exception to the bonding requirement. Service providers (including fiduciaries and investment advisers) who do not "handle" plan funds need not be bonded. The bond may be purchased by either the plan or the service provider. A plan may use plan assets to purchase a bond. Q&A-7 through -11.
- One bond can name more than one plan as an insured, through an "omnibus clause" or otherwise. Q&A-23, -32. The bond's limit of liability must be sufficient to insure each plan as though that plan were bonded separately, however, and a claim by one plan under such a bond may not reduce the amount of coverage available to other plans insured by the same bond. Q&A-24.
- The increased $1 million bond amount for plans that hold employer securities, enacted in the PPA, does not apply if the plan's only investment in employer securities is through a broadly-diversified pooled or common investment vehicle that is independent of the employer and its affiliates. Q&A-38.
- Plans that are not covered by ERISA Title I, or that are entirely unfunded, are not subject to the bonding requirement. There is no specific exemption for SEP and SIMPLE IRA's or for fully insured plans, although in practice the persons who handle funds for those plans often qualify for the financial institution exception. Q&A-12 through -16.

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