Qualifying Plan Assets

How do I calculate the percentage of "qualifying plan assets" for my plan?

All plan assets that must be reported on the Form 5500 Schedule I line 1a, column (b) for the end of the prior plan year must be included in the calculation of "qualifying" and "non-qualifying" plan assets. The calculation must be made as soon as the information regarding the plan's assets at the close of the preceding plan year practically can be ascertained. This generally will be much sooner than the due date for filing the Form 5500 for that preceding plan year.

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How is the percentage of "qualifying plan assets" determined for initial plan years?

In the initial plan year, the plan administrator may rely on estimates. The administrator should follow a similar method to the one described in 29 CFR 2580.412-15 for estimating the amount required for the ERISA section 412 fidelity bond for an initial plan year. For example, if a plan will be investing exclusively in assets that meet the definition of "qualifying plan assets," for example, insurance contracts and mutual fund shares, bonding in addition to that required under section 412 would not be necessary to meet the first condition for claiming the audit waiver.

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When a new plan is initially funded through the transfer of assets from a predecessor plan, how is the percentage of "qualifying plan assets" determined for the initial plan year?

You should make the determination by treating the new plan as not having a preceding reporting year and use the assets actually transferred from the predecessor plan to determine whether the new plan meets the 95% percentage condition for "qualifying plan assets."

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Does the type of account the plan has with a "regulated financial institution" matter in determining whether assets are "qualifying plan assets?"

Generally, the account must be a trust or custodial account. For example, plan assets held in bank custodial, common or collective trust or separate trust accounts are qualifying plan assets. In addition, securities held by a broker-dealer for the plan in an omnibus account are qualifying plan assets. Checking and savings accounts that create a debtor-creditor relationship between the plan and the bank are also "qualifying plan assets" for purposes of the audit waiver conditions.

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If I put plan assets in a bank safe deposit box, can I treat those assets as "qualifying plan assets"?

No. Plan assets put in a safe deposit box with a bank are not qualifying plan assets.

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Can assets in individual participant accounts be treated as qualifying plan assets if the individual account statements from the regulated financial institutions are mailed by affiliates of the regulated financial institutions, other unaffiliated service providers, or the plan administrator?

Yes. The account statements must be statements of the regulated financial institution, but the institution's regular distribution systems may be used to transmit the statements to participants and beneficiaries. For example, a statement prepared by the regulated financial institution, on the institution's letterhead including contact information that a participant could use to confirm the accuracy of the information in the statement with the regulated financial institution could be given to the plan administrator for distribution to the plan participants and beneficiaries. However, a statement prepared by the plan administrator, even if based on data from the regulated financial institution, would not meet the audit waiver condition.

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Fidelity Bonding For Non-Qualifying Assets

What type of fidelity bond is needed to meet the audit waiver conditions if more than five percent of its assets are non-qualifying assets?

Persons that handle non-qualifying assets must be covered by a fidelity bond or bonds that meet the requirements of section 412 of ERISA, except that the bond amount must be at least equal to 100% of the value the non-qualifying plan assets the person handles. Persons handling non-qualifying plan assets can rely on normal rules and exemptions under section 412 in complying with the audit waiver's enhanced bonding requirement. For example, if the only non-qualifying assets that a person handles are not required to covered under a standard ERISA section 412 bond (e.g., employer and employee contribution receivables described in 29 CFR 2580.412-5) that person would not need to be covered under an enhanced bond for a plan to be eligible for the audit waiver.

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If the plan has more than 5% of its assets in non-qualifying plan assets, does the enhanced bond have to cover all the non-qualifying assets or only those in excess of the 5% threshold?

All the non-qualifying assets, not just a selection that represent the excess over 5%, are subject to the enhanced bond requirement.

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Can the plan satisfy the audit waiver bonding requirement by having persons who handle the non-qualifying plan assets get their own bond?

Yes. The person handling the non-qualifying plan assets can obtain his or her own bond. Also, a company providing services to the plan can obtain a bond covering itself and its employees that handle non-qualifying plan assets. The bond has to meet the requirements under section 412, such as the requirements that the plan be named as an insured, that the bond not include a deductible or similar feature, and that the bonding company be on the U.S. Department of the http://www.dol.gov/ebsa/faqs/faq_auditwaiver.html#section4

Treasury's Circular 570 list of approved surety companies.
[http://www.fms.treas.gov/c570/c570.html]

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Can the plan's section 412 fidelity bond be used to satisfy the bonding requirements for an audit waiver?

Section 412 of ERISA provides that persons that handle plan funds or other property generally must be covered by a fidelity bond in an amount no less than 10 percent of the amount of funds the person handles, and that in no case shall such bond be less than $1,000 nor is it required to be more than $500,000. In some cases, 100% of the value of non-qualifying plan assets may be less than 10% of the value of all of the plan funds a person handles. Under those circumstances, the section 412 bond covering the person will satisfy the audit waiver condition because the amount of the bond will be at least equal to 100% of the non-qualifying plan assets handled by that individual.

For example, a person may handle a total of $1 million in plan funds, but only $50,000 are non-qualifying plan assets. In that case, the ERISA section 412 bond covering the person should be equal to or greater than $100,000, which would be more than the value of the non-qualifying assets the person handles. For that person, the ERISA section 412 bond would also satisfy the audit waiver enhanced bonding requirement.

Even where the amount of an existing section 412 bond is insufficient to meet the audit waiver requirement, plan administrators may want to consider increasing the coverage under the section 412 bond rather than getting a new fidelity bond.