

## Multiemployer Plan Fiduciary Liability Policy for Public Sector Plans



For almost 50 years, Chubb has protected governmental plan trustees and employees from personal liability exposures they face as fiduciaries of public sector plans. Trustees of governmental health, welfare, defined contribution, pension, and other benefit plans hold a significant and often complex role in managing these plans for the purpose of providing benefits to participants, dependents, and beneficiaries. While governmental plans are not subject to the federal law, the Employee Retirement Income Security Act of 1974 (ERISA), trustees must take time to understand the applicable state laws governing their conduct as their personal assets may be at risk.

### **Why Are Trustees Targets for Claims Alleging Fiduciary Breach or Administration Failure?**

There are key factors that every trustee must keep in mind when they serve on a benefit plan board or committee:

- Government benefit plans must adhere to fiduciary rules
- Plan trustees can be personally liable for breaching their fiduciary duty
- Indemnification may not be available to protect plan trustees if they are sued for breaching their fiduciary duties or for their mistakes in administering the plan. Indemnification provided in some states may be considerably limited in scope or may even include an express denial of indemnification
- Plan trustees may not be fully protected by sovereign immunity
- Outsourcing management of benefit plans does not eliminate or reduce the potential liability of plan trustees
- Responsibility for managing and administering the plan remains with the fiduciary

### **Are Trustees Targets for Claims Alleging Fiduciary Breach or Failure?**

Trustees must execute their obligations with both prudence and loyalty. In other words, they must act with the care, skill, and diligence that a prudent person would exercise in a similar situation. Additionally, they must carry out their duty with respect to a benefit plan solely in the interest of its participants.

Lawsuits are brought against trustees subjecting them to expensive and time-consuming legal proceedings with a wide spectrum of allegations:

- Denial or change of benefits
- Administrative error
- Incorrect benefit calculation
- Improper advice or counsel
- Misleading disclosures
- Conflicts of interest and self-dealing
- Imprudent investment of plan assets resulting in funding deficiencies
- Violation of plan documents
- Benefit payment to ineligible individuals

## What does the Chubb Multiemployer Plan Fiduciary Liability Policy cover?

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In such a rapidly evolving legal landscape, the responsibilities that trustees carry can be daunting.

As a leading provider of fiduciary liability insurance to the public sector, the **Multiemployer Plan Fiduciary Liability Policy** can be customized to fit the unique needs of our customers. Key policy elements include:

- Streamlined coverage with Insuring Clauses for Fiduciary Liability, Voluntary Compliance, and Interview Coverage
- Expanded definition of Wrongful acts, to provide defense costs coverage, for acts, errors, or omissions of an insured while acting in a settlor capacity with respect to establishing, amending, terminating, funding, merging, or consolidating plans, in addition to breach of duty imposed by ERISA upon fiduciaries and errors in plan administration
- Expanded definition of Claim includes:
  - Pre-Claim Investigations (Insured's option to report)
  - Benefit Claim Denials (Insured's option to report)
  - Regulatory proceedings against an Insured Persons by an Enforcement Unit (SEC, DOJ, HHS)
  - Subpoena requests upon Insured Persons
- Expanded definition of Loss includes coverage for
  - Civil penalties where insurable by law:
    - Health Insurance Portability and Accountability Act
    - Health Information Technology for Economic and Clinical Health Act
    - Patient Protection and Affordable Care Act
    - Employee Retirement Income Security Act Section 502(c)
    - Section 4975 of the Internal Revenue Code
    - Section 203 of the Bipartisan Budget Act
  - Compensatory damages
  - Punitive, exemplary, and multiplied damages where insurable by law
  - Claimant attorney fees awarded by a court pursuant to Section 502(g) of ERISA
  - Pre-judgment and post-judgment interest
  - Reasonable fees and expenses of an independent fiduciary retained to review a proposed settlement of a covered claim

- Duty to Defend includes built-in flexibility for Insured to select defense counsel on a majority of claims
- No Hammer Clause
- Non-cancellable
- Non-rescindable
- Enhanced Claim Reporting

## Why Chubb?

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As the world's largest publicly traded property and casualty insurer, Chubb carefully crafts coverage to protect trustees and employees of public sector plans from personal liability exposures they face in fulfilling their duties. We have earned our leadership position as a provider of fiduciary liability insurance by our unflinching commitment in providing:

- Broad fiduciary liability protection
- Superior service
- Outstanding underwriting expertise
- Unmatched claims handling
- Continued financial stability as one of A.M. Best Company's elite highest ranking insurers

## Contact us

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To learn more about the Chubb **Multiemployer Plan Fiduciary Liability Policy** for public sector plans, contact your local underwriter or visit [www.chubb.com/us/fiduciaryliability](http://www.chubb.com/us/fiduciaryliability).

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