

# ForeFront Portfolio<sup>SM</sup> for Not-For-Profit Organizations

Fiduciary Liability Insurance

CHUBB<sup>®</sup>



# If your officers and fiduciaries just spoke about a possible conflict of interest, stop talking.

The Employee Retirement Income Security Act of 1974 (ERISA) established strict standards of fiduciary conduct. As such, any fiduciary who breaches any of the responsibilities, obligations, or duties imposed by ERISA may be personally liable to compensate the plan for any resulting losses.

Furthermore, in today's evolving legal environment, employers and plan fiduciaries are increasingly being held accountable for their actions in administering the benefit plans they offer employees. Not to mention that recent settlements have made this complex area of litigation more attractive to the plaintiffs' bar.

That's why Chubb created ForeFront Portfolio<sup>SM</sup> for Not-For-Profit Organizations Fiduciary Liability Insurance specifically for private companies like yours.

## Why Your Company Needs Fiduciary Liability Insurance

- A breach of ERISA may be a personal liability.
- Participants and beneficiaries can sue a plan's fiduciaries to enforce or clarify their rights under ERISA and the plan.
- The Department of Labor (DOL) may bring a claim against plan fiduciaries to enforce the provisions of ERISA and fiduciary standards of conduct.

- Even if a judgment is obtained in your favor, defending yourself from any alleged breach of fiduciary obligations could result in loss of hundreds of thousands or even millions of dollars in defense costs.
- Delegation of fiduciary responsibility to an outside service provider requires prudent selection and monitoring of those providers by your organization's fiduciaries. Failure to do so may expose them to personal liability.
- Even if your organization wishes to indemnify its fiduciaries, it may not be able to do so, or it may be prohibited from doing so by law. Relying on indemnification from the organization as your sole protection as a fiduciary may be placing your personal assets at risk.

Coverage provided by the Employee Benefits Liability Rider/Endorsement to your General Liability policy does not provide coverage for an alleged breach of fiduciary duty under ERISA, leaving a potential gap in coverage.

## Policy Highlights

- Chubb has the duty to defend claims triggering the policy; we provide you with access to expert ERISA defense counsel.
- 100% defense costs coverage is built into the policy for covered claims.
- Voluntary settlement program coverage for programs administered by the IRS, DOL, or any similar program administered by a governmental authority located outside of the United States.
- Coverage for HIPAA civil penalties, where allowed.

## Key Features

- Enhanced reporting provision when policy is renewed with Chubb.
- Defense Costs coverage for claims alleging fraud unless a final and non-appealable judgement or adjudication, or a plea of guilty obtained.
- Continuing coverage for terminated plans so long as the policy is renewed with Chubb.
- Broad omnibus definition of Plan removing requirement to specifically list plans to be covered under the policy.
- Worldwide coverage written on a claims-made basis with retroactive coverage available for qualified accounts.

ForeFront Portfolio for Not-For-Profit Organizations Fiduciary Liability Insurance responds to allegations including:

- Wrongful denial or improper change in benefits.
- Error or omission in plan administration.
- Improper advice or counsel.
- Fiduciaries engaging in a prohibited transaction.
- Failure to administer the plan according to plan documents.
- Imprudent investment of plan assets or lack of investment diversity.
- Imprudent selection and failure to monitor third-party service providers, including allegations participants were charged excessive fees by retirement plan service providers.

With additional advantages:

- Our not-for-profit underwriters are positioned throughout the United States and are experienced in a broad spectrum of industries.
- Access to Fiduciary loss prevention services.
- A Chubb special report: Who May Sue You and Why: How To Reduce Your ERISA Risks, and the Role of Fiduciary Liability Insurance.

## **ForeFront Portfolio<sup>SM</sup> for Not-For-Profit Organizations Fiduciary Liability Enhancement Endorsement**

For qualifying customers, Chubb's Fiduciary Liability Enhancement Endorsement offers many features to address the evolving needs of not-for-profit organizations and their fiduciaries, including amendments to provide greater flexibility in managing the claim-reporting process.

### **Definition of Wrongful Acts**

Expanded to include acts, errors or omissions solely in an Insured's settlor capacity with respect to establishing, amending, terminating, or funding a trust or sponsored plan.

**Pre-Claim Investigation Reporting** - Insureds now have the option to report a fact-finding investigation commenced by the U.S. Department of Labor (DOL), Pension Benefit Guaranty Corporation

(PBGC) or similar governmental authority located outside of the U.S. prior to any allegation of a wrongful act in writing.

### **Benefit Claim Denial Reporting**

- Insureds may also report, at their option, an appeal of an adverse benefit determination prior to a wrongful act allegation.

**Interview Coverage** - We cover defense costs incurred by an Insured person when contacted by an enforcement unit during the policy period with respect to an interview by the enforcement unit. These enforcement unit interviews are not claims.

**Definition of Insured** - Amended to include past employees or executives retained as a fiduciary or plan consultant to the sponsored plan.

**Loss** - Broader definition expanded to include:

- Claimant attorney fees awarded by a court pursuant to Section 502(g) of ERISA.
- Reasonable fees and expenses of an independent fiduciary retained to review a proposed settlement of a covered claim.

**Defense Costs** - Defined as reasonable charges incurred in defending or investigating claims. Deductible is waived for the first \$50,000 in defense costs incurred for e-discovery specialist services on account of a claim.

### **Claim** - Expanded to include:

- Regulatory proceeding against an Insured person fiduciary by an enforcement unit including a Wells notice, target letter or search warrant.
- Written requests upon Insured persons for witness testimony commenced by the service of a subpoena or other similar documents in connection with a wrongful act.

## **Additional Enhancements**

**Pollution** - Exclusion is deleted. Clean-up costs are excepted from loss. Other insurance is modified to stipulate policy is excess of any environmental, pollution liability or general liability policy.

### **Defense and Settlement**

- The policy advances defense costs to Insured persons if the organization

refuses in writing to indemnify or fails to do so within 60 days of the Insured person's written request for indemnification.

- The policy allows full settlement within the retention without prior consent for reported claims.
- The policy allows Chubb, at its sole discretion, to consider payment under the policy for defense costs incurred

within 90 days prior to tender of the claim to Chubb.

- Chubb remains liable only for loss incurred with its prior written consent.

**Liberalization** - Liberalization with respect to state amendatory cancellation/termination and ERP timeframes.

## **Why ForeFront Portfolio<sup>SM</sup> for Not-For-Profit Organizations?**

A long-time leader in providing insurance to not-for-profit organizations, Chubb

created ForeFront Portfolio for Not-For-Profit Organizations Fiduciary Liability Insurance as one of a suite of five insurance solutions under ForeFront Portfolio for Not-For-Profit Organizations.

The coverage parts in ForeFront Portfolio for Not-For-Profit Organizations work as standalone policies or seamlessly together in order to minimize gaps and reduce overlaps in insurance coverage.

## Why Chubb?

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Since 1975, **Chubb has been devoted to helping to protect Not-For-Profit organizations like yours.** We were a pioneer in providing not-for-profit organizations with an integrated insurance solution to address their professional and management liability exposures.

**Our reputation for fair claims handling and superior service** offers you additional peace of mind.

**Our financial stability** and ability to pay claims rate among the best in the insurance industry.

## Contact Us

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For more information on Chubb's ForeFront for Not-for-Profit Organizations and Fiduciary Liability solutions, contact your local agent or broker, or visit [www.chubb.com/us/fiduciaryliability](http://www.chubb.com/us/fiduciaryliability).

**Chubb. Insured.<sup>SM</sup>**

[www.chubb.com/us/fiduciary](http://www.chubb.com/us/fiduciary)

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