

# Fiduciary Liability Insurance for Public Sector Plans

CHUBB®



Trustees of governmental health, welfare, and pension 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 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.

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

## **Why trustees of government benefit plans need fiduciary liability insurance?**

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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

## **Are trustees a target for claims alleging a fiduciary duty breach or failure to properly administer a public sector benefit plan?**

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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 fiduciary liability insurance cover for public sector plans?**

At Chubb, we customize fiduciary liability coverage to fit the unique needs of our insured plans with an emphasis in key areas (some of which are available upon request and risk acceptance and must be obtained specifically by endorsement):

- Broad definition of insured includes the plan as well as its trustees and employees as well as others which can be added by endorsement such as governance boards or committees
- Broad definition of wrongful act with respect to an insured plan includes breach of duties imposed by common or statutory law, and negligence in the administration of such plan

- Penalties coverage associated with various laws:
  - Health Insurance Portability and Accountability Act of 1996
  - Patient Protection and Affordable Care Act of 2010
  - Section 203 of the Bipartisan Budget Act of 2013
  - Section 4975 of the Internal Revenue Code of 1986
  - Others where insurable by law
- Loss can be broadened to include:
  - Compensatory damages
  - Punitive, exemplary and multiplied damages where insurable by law
  - Pre-judgment and post-judgment interest
  - Benefit Overpayment Insuring Clause
  - Other Taxes, Fines, or Penalties
  - Trustee Non-Fiduciary Defense Costs
  - Umbrella for Civil Penalties
- Duty to Defend can be amended to include option for Insured to select defense counsel
- No Hammer Clause
- Non-cancellable policy
- Non-rescindable policy

### **Why Chubb?**

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**

To learn more about fiduciary liability protection 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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