

Public Entity Plan and Trustee Protector

Recent high-profile cases spotlight the formidable fiduciary liability exposure faced by individuals who manage, oversee or administer public entity employee benefit plans. While these plans are not subject to the Employee Retirement Income Security Act (ERISA), they are regulated at the state and even local level and are subject to scrutiny from many parties. When allegations such as mismanagement and underfunding of plans emerge, public entity plan trustees can find themselves the target of lawsuits — even when the actions that led to the allegations were beyond their control. All too often, sovereign immunity is not a shield.

Chartis has responded to this exposure with the Public Entity Plan and Trustee Protector, a new policy built from the ground up that expressly addresses the risks public entity plan trustees face now.

Public entity plan trustees are at risk of fiduciary claims from a wide range of parties — from plan participants, beneficiaries, and local watchdog agencies, to states' attorneys general and average citizens — alleging improper use of plan assets.

Coverage Highlights

Knowing that public entity trustees have so much at stake, Chartis created a dedicated policy form that is specifically tailored to address the coverages public entities need — avoiding the potential gaps in coverage caused by modifying corporate fiduciary forms to address a public entity's exposure.

The policy provides:

- Expansive coverage for trustees, the plan and the retirement system for claims alleging breach of *Employee Benefit Law* — broadly defined to include applicable statutory laws or regulations of the United States, Canada or any state or province therein
- A broad definition of “insured” that includes past, present and future plan and retirement system employees, plan committee members, members of the board of plan trustees, and elected or appointed public officials
- Indemnity coverage for government-defended claims¹
- Defense coverage that includes third party service costs paid in both insurer or government-defended claims (i.e., expenses incurred in connection with a claim or appeal of a claim for services provided by accountants, actuaries, investigators, expert witnesses, document reproduction services, court reporters and process servers)
- Investment Loss Coverage wording (an exception to the benefits exclusion to ensure coverage for monetary awards in claims arising from loss of investment value)
- Built-in coverage for HIPAA penalties
- Broad definition of “claim” that includes written demands for monetary, non-monetary or injunctive relief
- Final adjudication wording for “conduct” exclusions
- Severability of the application provision provides full severability for Natural Person Insureds — the knowledge of a Natural Person Insured shall not be imputed to any other Natural Person Insured with respect to the statements, warranties and representations contained in the Application
- Severability of the exclusions — the wrongful act of any Insured shall not be imputed to any Plan or Natural Person Insured with respect to applicability of the exclusions²

¹ Claims where representation is provided by government body

² Non-imputation shall not apply to exclusions for prior notice and pending or prior litigation

Unlike other policies, **no** exclusions in the following keys areas:

- No exclusion for debt instruments or other securities issued by any government entity or instrumentality
- No prior acts exclusion
- No hidden warranty statements
- No reversion of assets exclusion
- No failure to maintain insurance exclusion

To learn more about Public Entity Plan and Trustee Protector, please visit www.chartisinsurance.com, email executiveliability@chartisinsurance.com, or contact your insurance broker.

Chartis
175 Water Street
New York, NY 10038



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