

Fiduciary Liability Glossary of Terms

The statements below are not legal definitions. In all instances, the definitions contained within the policy will control coverage.

502(c) Coverage

Section 502(c) of ERISA provides for the assessment of penalties for various administrative failures.

502(I) Coverage

Section 502(I) of ERISA provides that the Secretary of Labor shall assess a civil penalty against a fiduciary equal to 20% of any damage award resulting from a breach of fiduciary duty.

Administrative Errors & Omissions

Basic coverage for negligent administrative acts, which is defined to mean giving advice to participants and beneficiaries with respect to a Trust or Plan, interpreting a Trust or Plan, and handling the records, effecting enrollment, and termination or cancellation of participants under a Trust or Plan.

COBRA Coverage

Amends policy to add and clarify the scope of COBRA coverage provided.

Conduct Exclusions - Final Adjudication

Excludes claims based upon deliberately fraudulent acts or omissions or willful violations of any statute or regulations, or the gaining of any personal profit to which the insured was not entitled to, but will not apply unless a final adjudication establishes such acts.

Duty of Defend

Duty to defend, which is usually associated with the carrier's right to appoint defense counsel or, more typically, for the Insured to select defense counsel from a pre-approved list of "panel counsel" means that as long as any one pleading or allegation is a covered matter, the carrier must defend all the pleadings or allegations. This does not mean, however, that the carrier will be obligated to pay the settlement or judgment of an uncovered matter. "Duty to defend" applies only to the defense costs.

First Party Benefit Overpayments Coverage

Coverage is provided for benefit overpayments based on miscalculations, subject to a sublimit, that cannot be paid out of trust assets or recovered from beneficiaries after a "reasonable effort" has been made to recover them, even if a formal Claim has not been made against an Insured. If a formal Claim against an Insured has been made regarding the alleged overpayment(s), full policy limits may be available, subject to the specific fact pattern of the claim and the other terms and conditions of the policy.

Hammer/Settlement Clause Deleted

Removes clause from policy so that if the Insured rejects a proposed settlement, the carrier cannot cap or limit its exposure to the amount of the initial proposed settlement.

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HIPAA Coverage

Amends policy to include coverage for allegations of a violation of HIPAA. Coverage is also extended to include the fines and penalties that can be imposed by HIPAA.

IRC 4975 & 4976 Tax Coverage

Section 4975 of the IRS Tax Code provides for the assessment of tax penalties, equal to 15 percent of the amount involved, or if the prohibited transaction is not corrected within the taxable period, 100 percent of the amount involved, on prohibited transactions between the plans and disqualified persons. Section 4976 of the IRS Tax Code Provides for the Assessment of tax penalties for a disqualified benefit, as that term is defined, provided by an employer-maintained welfare benefit fund-the penalty can be equal to 100 percent of such disqualified benefit.

Misc. Regulatory Penalty Coverage

Coverage for various regulatory fines and penalties are provided that would not already be covered by the policy and not uninsurable by law. This includes regulatory agencies including the DOL, IRS, or similar regulatory bodies.

Non-cancellable except for non-payment

Carrier cannot cancel the policy for any reason other than non-payment of premium.

Non-Fiduciary Defense Coverage

This endorsement will provide defense costs coverage for Trustee functions beyond fiduciary duties. We believe this is a valuable coverage for Funds that may need to consider benefit changes, other amendments, or regulatory issues that are the responsibility of the Trustees but may not clearly fall within a breach of fiduciary duty. This coverage provides defense only and is subject to a sublimit.

Pending and Prior Litigation Exclusion

The pending and prior litigation exclusion restricts coverage for claims that are a result of any current or past lawsuits. Full coverage is provided for claims not previously litigated or reported.

Plan Sponsor or Settlor Coverage

Clarifies the scope of coverage provided for allegations involving settlor type actions, such as creating or terminating an ERISA benefit plan, or changes in the scope of coverages or costs to the participant of and ERISA benefit plan.

Pollution Exclusion

The pollution exclusion excludes claims arising from pollution or contamination of any kind.

PPACA Coverage

Coverage is provided for civil fines and penalties imposed pursuant to the Patient Protection and Affordable Care Act (PPACA)

Pre-Claim Investigation Defense

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Coverage for “pre-claim” defense costs at the commencement of a DOL investigation. Typically, coverage during a DOL investigation is not provided until after a clear focus of the investigation is identified or breaches of fiduciary duty allegations are actually alleged.

Section 2036 Bipartisan Budget Act 13

Section 203 of the Bipartisan Budget Act of 2013 limits access to the Social Security Administration’s (SSA) Death Master File (DMF). Funds need to become certified under the law and agree to maintain information obtained under certain safeguards. The Department of Commerce will review eligibility of applicants, examine the safeguards and conduct audits of certified entities to ensure compliance. Penalties can be assigned if there are finding during the audit.

Severability Coverage

The Severability clause allows coverage to apply separately to each insured under the policy.

Spousal Coverage

Amends the policy to include coverage for an insured’s spouse should they be named as a defendant in an otherwise covered claim.

Voluntary Settlement Program

Additional coverage for fees, sanctions, and penalties assessed by the IRS or DOL pursuant to a voluntary settlement or compliance program, such as the IRS EPCRS or DOL Delinquent Filer Program. These losses typically cannot be paid from plan assets.