

# Encore Fiduciary Transparency & Choice Model

## FIDUCIARY LIABILITY INSURANCE FOR GOVERNMENTAL BENEFIT PLANS

Many governmental employee benefit plans today remain uninsured because plan administrators often believe that fiduciary liability insurance is not needed. Yet other plans unsuspectingly purchase insurance that does not provide full coverage. Encore (Formerly Euclid) Fiduciary, a leader in fiduciary liability insurance for governmental plans, has a better approach. We offer transparency and choices in fiduciary liability coverage.

## Trustees of Governmental Benefit Plans Need Fiduciary Liability Insurance

Most states provide some level of immunity for governmental activities. But governmental immunity and indemnification for governmental employees serving benefit plans is far from foolproof. Indeed, fiduciary liability insurance is the only reliable protection against individual liability.

**Sovereign immunity is limited.** Sovereign immunity is the legal principal that the sovereign or government is immune from lawsuits or other legal actions except when it consents to them. Most states provide sovereign immunity for actions by governmental agents, including fiduciaries for public benefit plans. But there are limits to sovereign immunity protection. Many states, for example, protect fiduciaries for acts made only in good faith: sovereign immunity will not typically apply for acts considered willful, wanton, reckless, malicious, grossly negligent or in bad faith.

**Encore Fiduciary provides options and transparency based on the level of indemnification available to fiduciaries.**

**The scope of indemnification by governmental entities is limited and often discretionary.** Many states have indemnification provisions that are designed to protect retirement board employees when they are accused of wrongdoing. But like the sovereign immunity statutes discussed above, these indemnification provisions typically have significant limitations, as the indemnification is often discretionary and not guaranteed, or often not available until the end of a case after expenses have been personally incurred proving one's innocence.

**Governmental trustees have personal fiduciary liability exposure.** Though not subject to ERISA, governmental employee benefit plans are typically held to an ERISA-like standard of care. Governmental fiduciaries have their personal assets at risk.

The best and only reliable way to protect against personal liability is through the purchase of fiduciary liability insurance. Nearly half of the states expressly authorize the board of trustees or its equivalent to purchase fiduciary liability insurance for plan trustees, officers, agents and employees. But even in states in which fiduciary liability insurance is not specifically mentioned in state statutes, nothing prohibits a plan from purchasing insurance to protect its trustees. Indeed, given the significant risks, no fiduciary should agree to serve an employee benefit plan unless they are protected with fiduciary liability insurance.

## Do You Have the Coverage You Want?

With governmental benefit plans in the news weekly, proactive benefit plans have been purchasing fiduciary liability insurance to protect their fiduciaries and plans. Nevertheless, many of these plans do not understand that they are purchasing limited insurance coverage.

The typical fiduciary liability insurance policy for governmental plans limits coverage to situations in which governmental immunity does not apply. Carriers have different labels for this coverage restriction — like “Governmental Defended Claims” — but the effect is the same. The coverage will only apply if governmental immunity or indemnification is not permitted or applicable. This may be the right coverage for some plans, but they deserve the opportunity — with full disclosure — to understand what they are choosing.

## The Encore Approach: Transparency and Choices

Encore Fiduciary has a better approach for governmental fiduciary insurance. We provide options and transparency based on the level of indemnification available to fiduciaries. Our three-tier coverage and rating model provides options:

- 《 **Option 1**    **FULL COVERAGE APPROACH** — this approach provides full coverage irrespective of whether governmental indemnification or sovereign immunity applies. We can also offer full settlor coverage, as well as a defense limit for non-fiduciary claims, for qualified plans.
- 《 **Option 2**    **NON-INDEMNIFIABLE APPROACH** — a more limited and less expensive approach is also offered that matches typical coverage offered by most carriers. This policy responds only if the loss is nonindemnifiable, thus a less expensive option for the plan.
- 《 **Option 3**    We also offer “**A**” **SIDE**” **COVERAGE** which covers only individual trustees when sued for breach of fiduciary duty. Typically available only in D&O insurance policies, Encore has introduced this valuable concept to the fiduciary liability insurance market.

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## Make the Prudent Choice

Encore Fiduciary specializes in fiduciary and other management liability insurance for multi-employer, governmental and other non-profit employee benefit plans, with over 15,000 policies issued in this niche. Known for our expertise and thought leadership in protecting Insureds from complex liability, we also offer Directors & Officers Liability, Employment Practices Liability, Cyber Liability and Crime Insurance Coverages to employee benefit plans and plan officials.

Our carrier partner is Hudson Insurance Group, a leading underwriter of specialty lines programs. Hudson is the US Insurance Division of Odyssey Re Holdings Corp. Hudson is an A.M. Best “A+” (Superior) financial size category XV (\$2.0 billion or greater) rated insurance carrier that has an impressive track-record in the employee benefit plan niche.

For Encore Fiduciary’s white paper on governmental fiduciary liability insurance, contact us or view our website at [www.encorefiduciary.com](http://www.encorefiduciary.com). Submissions can be sent to [mail@encorefiduciary.com](mailto:mail@encorefiduciary.com)

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### Euclid Fiduciary is Now Encore Fiduciary

To learn more about the story behind the rebranding, changes and FAQs.

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