WHITE PAPER · SURETY ONE, INC. · 2026 EDITION

A PRACTICAL COVERAGE & RISK GUIDE

Fiduciary Liability Insurance

Protecting the people who govern employee benefit plans — against the breach-of-duty claims that no other policy answers.

A working reference for plan sponsors, trustees, investment and benefits committees, human-resources and finance officers, and the counsel and advisors who serve them. Covering the ERISA fiduciary standard, the architecture of the modern policy, the current litigation landscape, and the discipline of procedural prudence.

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I · FOREWORD

From the underwriter's desk

EVERY FUNDED RETIREMENT, HEALTH or welfare plan is, at bottom, a pool of other people's money administered by a handful of people who are trusted to act in the participants' interest. The Employee Retirement Income Security Act treats that trust with great seriousness. It imposes on those people — the plan's fiduciaries — duties of prudence and loyalty enforced by a standard the courts have called the highest known to the law, and it makes them *personally* liable to restore any loss their breach of those duties causes the plan.

That personal exposure is the risk this guide is about. It is widely misunderstood, and the misunderstanding is expensive. In three decades of underwriting fidelity and financial-institution risk I have watched two errors repeat themselves. The first is the belief that a company's general liability, directors-and-officers, or umbrella program will respond to a fiduciary-breach claim; with rare exception, it will not, and most D&O policies exclude ERISA liability outright. The second is the conflation of fiduciary liability insurance with the ERISA fidelity bond — two instruments that sound alike, are routinely confused, and protect entirely different parties against entirely different risks. A plan can carry a perfect fidelity bond and leave every one of its fiduciaries personally unprotected.

The exposure has only grown. In 2025 the plaintiffs' bar filed on the order of one hundred and fifty-five new fiduciary-breach class actions, extended its excessive-fee playbook from retirement plans to health and welfare plans, and opened fresh fronts over the use of plan forfeitures and the selection of annuity providers in pension risk transfers. The Supreme Court, in *Cunningham v. Cornell University*, made certain prohibited-transaction claims markedly easier to plead. For the fiduciaries of an ordinary mid-sized 401(k) plan, the question is no longer whether claims of this kind are conceivable, but whether the people exposed to them are insured.

This guide explains where fiduciary liability comes from, what the insurance does and does not cover, how the modern policy is built, how to size it, and how disciplined plan governance both reduces the risk and improves the terms an underwriter can offer. It is written for the practitioner rather than the litigator, and it is a starting point for sound risk management — not a substitute for the advice of counsel.

With regards,

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Fiduciary liability at a glance

§ 409

ERISA makes fiduciaries **personally liable** to make the plan whole for losses caused by a breach of duty.

Not § 412

The coverage is **voluntary** — permitted by ERISA § 410, but not the mandated fidelity bond.

~155

New fiduciary-breach class actions filed in **2025**, a near-record year.

$750–2,500

Typical annual premium for a **$1M** policy for many small to mid-sized employers.

Why the coverage exists

ERISA's fiduciary duties run to individuals, and ERISA § 409 makes those individuals personally answerable for the plan's losses. A participant, a class of participants, the Department of Labor, or a co-fiduciary may bring the claim. When they do, the cost of defense and any settlement or judgment falls in a place no conventional policy reaches: commercial general liability does not respond to economic loss of this kind, a personal umbrella excludes business pursuits, and the great majority of directors-and-officers policies carry an express ERISA exclusion. Fiduciary liability insurance is the instrument written for precisely this gap.

What it is — and what it is not

Fiduciary liability insurance is third-party liability coverage that protects the fiduciaries — and the plan sponsor and the plan as insureds — against claims alleging a breach of fiduciary duty or an error in the administration of an employee benefit plan. It is emphatically *not* the ERISA fidelity bond, which is first-party coverage that protects the plan against theft or dishonesty by those who handle its funds and is required by ERISA § 412. Carrying one satisfies no part of the need for the other; most plans should hold both.

How the modern policy responds

Coverage is written on a claims-made-and-reported basis. Defense costs are typically paid within — and therefore erode — the limit of liability, and are applied against the retention the insured bears first. The applicant elects either duty-to-defend coverage, in which the insurer controls the defense, or reimbursement coverage, in which the insured defends and is indemnified. Well-built policies extend beyond classic breach claims to administrative errors, the defense of regulatory investigations, and the cost of voluntary correction-program filings, and they affirmatively cover certain civil penalties that ERISA and related statutes permit to be insured.

THE THRESHOLD QUESTION FOR EVERY PLAN

Does any person at the organization exercise discretion over the plan, its administration, or its assets? If so — and for any sponsor of a funded plan the answer is yes — that person is a fiduciary, is personally exposed under ERISA § 409, and is the person fiduciary liability insurance is designed to protect. The duty, and the exposure, attach to the function and not the title.

IV · THE FOUNDATION

ERISA, fiduciary duty and personal liability

Where the exposure comes from, and why no other policy answers it.

The Employee Retirement Income Security Act of 1974 governs most private-sector retirement, health and welfare plans in the United States. Congress enacted it after a generation of pension failures and self-dealing left workers with broken promises, and its central protective device is the fiduciary standard: those who control a plan must act for the participants, and must answer personally when they do not.

Who is a fiduciary

ERISA defines fiduciary status by function, not by appointment. A person is a fiduciary to the extent that they exercise any discretionary authority or control over the management of the plan, exercise any authority or control over the management or disposition of its assets, render investment advice for a fee, or have discretionary responsibility in the administration of the plan. The consequence is that fiduciary status frequently attaches to people who have never been named to any committee — the executive who selects the recordkeeper, the human-resources manager who decides appeals, the officer who signs off on the investment menu. A person can be a functional fiduciary without realizing it, and can be sued as one.

The four duties

Section 404(a)(1) requires a fiduciary to discharge their duties solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses. Four obligations follow: the duty of **loyalty**, to act for the participants and not for the employer or oneself; the duty of **prudence**, to act with the care, skill and diligence of a prudent person familiar with such matters — an expert's standard, not a layperson's; the duty to **diversify** plan investments to minimize the risk of large losses; and the duty to follow the **plan documents** insofar as they are consistent with ERISA. The prudence duty is procedural: courts examine the rigor of the process a fiduciary followed, not merely the outcome that resulted.

Prohibited transactions

Beyond the general duties, ERISA § 406 flatly prohibits certain transactions between a plan and a "party in interest" — sales, loans, the furnishing of goods or services — unless a statutory or administrative exemption applies. These are categorical rules; a transaction can be entirely fair and still be prohibited. The prohibited-transaction regime is the engine behind much recent litigation,

particularly claims that routine arrangements with recordkeepers and service providers were prohibited dealings for which no exemption was satisfied.

Personal liability and enforcement

Section 409 is the provision that gives the exposure its teeth: a fiduciary who breaches any duty is personally liable to make good to the plan any losses resulting from the breach and to restore any profits made through use of plan assets, and is subject to such other equitable or remedial relief as a court deems appropriate, including removal. Section 502(a) supplies the cause of action — to participants, beneficiaries, other fiduciaries and the Secretary of Labor alike. Critically, § 410(a) voids any provision that purports to relieve a fiduciary of these responsibilities; a fiduciary cannot simply contract the duty away.

Where the insurance fits

Section 410(b) is the door through which the insurance enters. Although a fiduciary may not be exculpated, ERISA expressly permits the purchase of insurance to cover fiduciary liability — by the plan, by the fiduciary, or by the employer. There is an important condition. If the *plan* pays the premium, the policy must permit the insurer recourse against the breaching fiduciary, so that plan assets are not used to absorb a fiduciary's own wrong; that recourse can be waived only if the fiduciary or the employer pays the additional premium for a waiver-of-recourse endorsement. In practice the employer purchases the coverage, and the question of recourse is handled at placement.

THE GAP NO OTHER POLICY FILLS

A breach-of-fiduciary-duty claim seeks the plan's economic loss from individuals. General liability answers bodily injury and property damage, not this. Personal umbrellas exclude business pursuits. Crime and fidelity bonds answer theft, not imprudence. And most directors-and-officers policies contain an express ERISA exclusion. **Fiduciary liability insurance is the only coverage built to respond.**

V · THE INSTRUMENT

What the insurance is — and is not

Four instruments are routinely confused. They are not interchangeable.

Fiduciary liability insurance occupies a specific position in a benefit-plan risk program. Understanding it means distinguishing it cleanly from the three coverages most often mistaken for it: the ERISA fidelity bond, directors-and-officers liability, and employment practices liability.

Fiduciary liability insurance vs. the ERISA fidelity bond

This is the distinction that matters most, and the one most often gotten wrong. The two instruments protect different parties against different risks under different rules, and most plans need both.

	Fiduciary Liability Insurance	ERISA Fidelity Bond
Who is protected	The fiduciaries, the sponsor and the plan, against personal/entity liability.	The plan itself, and ultimately its participants.
Risk covered	Breach of fiduciary duty, imprudent decisions, administrative error, mismanagement.	Loss of plan assets through fraud or dishonesty by those who handle them.
Nature	Third-party liability insurance.	First-party fidelity coverage purchased for the benefit of the plan.
Required?	Voluntary — permitted by ERISA § 410.	Mandatory — required by ERISA § 412.
Typical amount	Sized to risk; commonly $1M and up per policy period.	10% of funds handled; capped at $500,000 ($1,000,000 with employer securities).
Satisfies the other?	No — does not meet the § 412 bonding mandate.	No — does not cover breach-of-duty claims.

A plan can carry millions in fiduciary liability cover and still violate ERISA for want of a fidelity bond; the reverse is equally true.

Fiduciary liability vs. directors & officers (D&O)

D&O liability insurance protects directors and officers against claims arising from their management of the *company*. Because administering a benefit plan is a distinct activity governed by a distinct statute, D&O policies almost universally carry an ERISA or fiduciary exclusion. The exclusion exists precisely because fiduciary liability is meant to be placed separately. Relying on a D&O policy to answer a benefit-plan claim is, in the typical case, relying on a coverage that has been written out.

Fiduciary liability vs. employment practices (EPLI)

Employment practices liability answers claims of discrimination, harassment, wrongful termination and the like. Some benefit-related allegations sit at the border — a claim that an employee was terminated to prevent a pension from vesting (an ERISA § 510 claim) is one example — and policies handle that overlap by coordinating definitions. As a general matter, however, conduct toward employees is EPLI's province, and conduct toward the plan is fiduciary liability's.

Fiduciary liability vs. crime / commercial fidelity

A commercial crime policy and the ERISA fidelity bond both answer dishonest taking. Fiduciary liability answers negligence and breach of duty — failures of care, not acts of theft. The conduct that triggers one is, by design, excluded from the other: a policy built to cover imprudence does not cover the fiduciary who steals, and the bond built to cover the thief does not cover the fiduciary who merely chose badly.

> **A NOTE ON THE ERISA FIDELITY BOND**
>
> Because the bond and the insurance are so often confused, Surety One maintains a separate practitioner's guide devoted entirely to the ERISA fidelity bond — who must be bonded, in what amount, and how the requirement applies across plan classes. It is the companion to this volume.

VI · THE ANATOMY OF THE POLICY

How the modern policy is built

Trigger, defense, retention, and the structural terms that govern how it responds.

Fiduciary liability is a management-liability form, and it behaves like one. A handful of structural features determine when it responds and how far the money goes; an applicant who understands them buys a far more useful policy.

The insuring agreement and who is insured

The core agreement promises to pay, on behalf of the insureds, loss arising from a claim for a wrongful act in connection with an employee benefit plan. The set of insureds is broad and deliberately so: the sponsoring organization; the plans themselves; and the natural persons who are or were trustees, officers, directors, employees or committee members acting in a fiduciary or administrative capacity for the plans. The breadth matters because a single alleged breach typically names the company, the committee and the individuals together.

The claims-made-and-reported trigger

Coverage responds to claims first made against an insured during the policy period (or any applicable extended reporting period) and reported to the insurer as the policy requires. Two consequences follow. First, continuity of coverage matters enormously: a gap between policies can leave a later claim arising from earlier conduct uninsured. Second, the policy's **prior-and-pending** date and any **retroactive** date define how far back covered conduct may reach; preserving a continuous retroactive date through successive renewals is one of the most valuable things a buyer can do.

Defense within the limit, and the retention

On the typical fiduciary form — including the form Surety One places — defense expenses are part of, and reduce, the limit of liability rather than being payable in addition to it. They are also applied against the retention, the insured's first-dollar share of every claim. The practical lesson is that a limit must be sized to absorb defense *and* indemnity together: a vigorously defended claim can consume a meaningful share of the limit before any settlement is reached.

Duty to defend or reimbursement

The applicant elects the defense structure. Under **duty-to-defend** coverage the insurer selects counsel and conducts the defense; under **reimbursement** (or indemnity) coverage the insured retains its own counsel, subject to the insurer's consent, and is reimbursed for covered defense

cost. Larger and more sophisticated insureds frequently prefer reimbursement to control counsel selection; smaller plans often value the turnkey nature of a duty-to-defend policy.

Consent, allocation and the settlement clause

Because the insurer's money is at stake, the policy conditions settlement on the insurer's consent and conditions the insured's defense on cooperation. A **consent-to-settle** provision — sometimes paired with a "hammer clause" that caps the insurer's exposure if a reasonable settlement the insurer recommends is refused — governs how settlement authority is shared. Where a claim mixes covered and uncovered matters, or insured and uninsured parties, an **allocation** provision determines how loss and defense cost are apportioned.

The extended reporting period

Because coverage is claims-made, the end of a relationship with an insurer (or the wind-down of a plan) creates a reporting cliff. An **extended reporting period** — a "tail" — preserves the ability to report, during a defined window after expiration, claims arising from conduct before expiration. For a plan that is being terminated, merged or sold, a run-off tail is often essential, because fiduciary exposure does not end when the plan does.

Subsidiaries, acquisitions and changes in control

The policy defines which related entities and plans are covered, how newly created or acquired plans are brought in during the policy period, and what a change in control of the sponsor does to coverage — typically converting the policy to run-off for pre-transaction conduct. These provisions deserve attention during any corporate transaction, when benefit-plan liabilities are frequently the last thing on the deal team's mind.

THREE NUMBERS THAT DEFINE THE POLICY

The **limit** (reduced by defense), the **retention** (the insured's first-dollar share, to which defense also applies), and the **retroactive / prior-and-pending date** (how far back covered conduct may reach). Get these three right and most of the policy's behavior is settled.

VII · THE SCOPE OF COVERAGE

Wrongful acts, penalties and correction

What a well-built policy reaches beyond the classic breach claim.

The defined "wrongful act" is the heart of the grant. At minimum it captures any actual or alleged breach of the responsibilities, obligations or duties imposed on fiduciaries by ERISA, together with negligence in the administration of a plan. The better forms go considerably further.

The covered wrongful acts

- Breach of the ERISA duties of prudence and loyalty in managing the plan or its assets.
- Imprudent selection or retention of investment options, and failure to diversify.
- Permitting or failing to control unreasonable plan fees and expenses.
- Negligent failure to monitor service providers, investment managers or co-fiduciaries.
- Errors in plan administration — enrollment, eligibility, contributions, distributions, benefit calculation, and participant communications.
- Negligent counsel or interpretation that causes a participant to lose a benefit.
- Conflicts of interest and inadvertent prohibited transactions.

Administrative errors and "errors & omissions" overlap

Much of the day-to-day value of the coverage lies not in dramatic investment disputes but in mundane administrative mistakes — a missed enrollment, a botched COBRA notice, a miscalculated distribution. Good fiduciary forms cover these administration errors expressly, and an organization that performs substantial in-house administration should confirm the breadth of that grant rather than assume it.

Settlor functions

Decisions to establish, amend, or terminate a plan are "settlor" functions — business decisions of the employer, not fiduciary acts — and are not, strictly speaking, breaches of fiduciary duty. But plaintiffs routinely recast settlor decisions as fiduciary ones, and the cost of defending that characterization is real. Some forms add **settlor coverage** to answer the defense of such allegations; it is a meaningful enhancement for active plan sponsors.

Voluntary correction programs

Regulators reward self-correction, and the agencies maintain formal programs for it: the Department of Labor's **Voluntary Fiduciary Correction Program (VFCP)** and **Delinquent**

Filer Voluntary Compliance Program (DFVCP), and the IRS's **Employee Plans Compliance Resolution System (EPCRS)**. Enhanced fiduciary policies provide a sublimit for the fees and costs of making such voluntary filings — coverage that encourages exactly the early correction regulators want, and that can forestall a far larger claim.

Civil penalties, where insurable

ERISA and related statutes impose a number of civil penalties, and well-drafted policies affirmatively cover those that the law permits to be insured, commonly including:

Provision	What it penalizes
ERISA § 502(c)	Failures of reporting and disclosure to participants and regulators.
ERISA § 502(i)	Prohibited transactions involving non-qualified plans (civil penalty).
ERISA § 502(l)	The 20% penalty the DOL assesses on amounts recovered for fiduciary breach.
HIPAA / HITECH	Certain penalties relating to protected health information in health plans.
PPACA	Certain penalties under the Affordable Care Act's group-health provisions.

Insurability of penalties varies by statute and jurisdiction; the policy language and applicable law govern. The § 502(l) penalty is frequently provided on a sublimit.

Defense of regulatory investigations

A Department of Labor or IRS inquiry can impose substantial defense cost long before any formal claim is made. Better forms extend to the defense of such investigations of an insured in their fiduciary capacity, which is often where the expense — and the opportunity to resolve a matter quietly — first arises.

VIII · EXCLUSIONS

Exclusions and their carve-backs

The coverage is built for negligence, not for theft or intentional wrong.

Fiduciary liability insurance is not a guarantee against all loss; it is a promise to answer for negligence and breach of duty. The exclusions mark that boundary, and several of them contain carve-backs that preserve coverage in the very situations buyers most worry about.

Exclusion	What it does — and the usual carve-back
Fraud & dishonesty	Excludes deliberately fraudulent or criminal acts and the gaining of illegal personal profit — but typically only once established by final adjudication, so defense is preserved until then, and the conduct of one insured is not imputed to innocent insureds (severability).
Personal profit / advantage	Excludes the portion of loss representing profit or remuneration to which the insured was not legally entitled.
Prior & pending	Excludes matters litigation or proceedings of which pre-date the policy's prior-and-pending date.
Prior knowledge / notice	Excludes claims arising from facts an insured knew, before inception, could give rise to a claim — the reason the application asks the awareness questions it does.
Bodily injury / property damage	Excludes physical injury and property damage, which belong to other lines — though emotional-distress carve-backs for covered ERISA claims are common.
Insured vs. insured	Limits suits between insureds, with important carve-backs — notably for participant claims and for the very § 502(a)(2) actions ERISA contemplates fiduciaries bringing against one another for the plan's benefit.
Benefits due	Excludes benefits payable from the plan that should simply be paid — but carves back the portion of a loss that becomes the fiduciaries' *personal* liability, and the cost of correcting the failure. This carve-back is the crux of the coverage and deserves close reading.

Exclusion	What it does — and the usual carve-back
Failure to fund / collect	Excludes the failure to fund a plan from the employer's own assets, distinguishing a funding obligation from a fiduciary breach.

Exclusion wording and carve-backs vary materially between forms; the policy as issued controls. The benefits-due exclusion and its personal-liability carve-back are the single most important language to review.

WHY THE CARVE-BACKS MATTER

A poorly drafted benefits-due exclusion can swallow much of the grant; a well-drafted one preserves coverage for the fiduciaries' personal exposure and the cost of correction while excluding only the benefits that ought to be paid in the ordinary course. Two policies with identical limits can differ enormously here.

IX · THE LITIGATION LANDSCAPE

What is driving claims now

A near-record 2025, an expanding set of theories, and a lower bar to plead.

Fiduciary exposure is not theoretical. The plaintiffs' bar that built the excessive-fee class action into an industry has, in the last several years, broadened its theories, extended them from retirement plans to health and welfare plans, and benefited from a Supreme Court decision that makes certain claims easier to bring. Roughly one hundred and fifty-five new fiduciary-breach class actions were filed in 2025, with large defined-contribution plans — particularly those holding between roughly a quarter-billion and three-quarters of a billion dollars — the most frequent targets.

Excessive fees and imprudent investments

The foundational theory remains that fiduciaries failed to use the plan's size to obtain reasonable recordkeeping and investment fees, or retained expensive or underperforming options when cheaper or better ones were available. The Supreme Court's decisions in *Tibble v. Edison International* (recognizing a continuing duty to monitor investments) and *Hughes v. Northwestern University* (holding that offering some prudent options does not cure imprudent ones) frame the modern pleadings. Because the underlying fee data is disclosed publicly on the Form 5500, a plan need do nothing dramatic to draw a complaint; visibility and size are enough.

The failure-to-monitor theory

ERISA permits fiduciaries to delegate, but not to abdicate. A recurring claim is that fiduciaries failed to oversee the service providers, investment managers and co-fiduciaries to whom they delegated — a theory that reaches committees and individual fiduciaries who never made the underlying decision but were charged with watching those who did.

Plan forfeitures — the newest retirement-plan front

Beginning in 2023 and accelerating through 2025, plaintiffs filed on the order of eighty suits alleging that using forfeited employer contributions to offset future employer contributions — rather than to defray plan expenses charged to participants — is a breach of loyalty and prudence and a prohibited transaction. The cases have met a mixed but largely defense-favorable reception: most have been dismissed on the ground that the use of forfeitures is a settlor-level plan-design decision rather than a fiduciary act, and the Department of Labor has filed amicus briefs describing the theory as meritless. A minority have survived a motion to dismiss, and the front remains active.

Pension risk transfer and annuity selection

As sponsors of defined benefit plans transfer obligations to insurers by purchasing group annuities, a new theory has emerged: that selecting a particular annuity provider — litigation has centered on transfers to one private-equity-affiliated insurer — breached the duty to choose the "safest available" annuity under the Department of Labor's Interpretive Bulletin 95-1. Early rulings have split; in March 2025 one federal court allowed such a claim against a large aerospace sponsor to proceed while another dismissed a parallel claim against a different sponsor on the same day. The theory bears watching by any sponsor contemplating a risk transfer.

The expansion to health and welfare plans

The most consequential development is the migration of the retirement-plan fee theory into group health plans. Suits against large employers have alleged that fiduciaries failed to control pharmacy-benefit and prescription-drug costs, mismanaged plan design, or — in wellness-program cases — imposed tobacco surcharges without the reasonable-alternative standard that HIPAA's nondiscrimination rules require. A related line alleges failure to monitor a carrier's provider network. These cases apply to health plans the same fiduciary lens long trained on 401(k)s, and they have multiplied quickly. Health-and-welfare fiduciaries, historically less attentive to ERISA fee exposure than their retirement-plan counterparts, are now squarely within the field of fire.

A lower bar to plead prohibited transactions

In *Cunningham v. Cornell University* (2025) the Supreme Court held that, to state a prohibited-transaction claim under ERISA § 406(a), a plaintiff need only plausibly allege the elements of that section; the statutory exemptions under § 408 are affirmative defenses the fiduciary must raise and prove. The practical effect is that a class of prohibited-transaction claims — including those arising from ordinary service-provider arrangements — will more readily survive a motion to dismiss and reach the expensive stages of litigation. For insureds, that increases both the frequency of costly defense and the value of coverage that pays it.

THE THROUGH-LINE FOR UNDERWRITERS AND BUYERS

Across every theory — fees, monitoring, forfeitures, annuity selection, health-plan costs — the dispositive question the courts return to is the same one ERISA asks: **was the fiduciary's process prudent and documented?** The litigation landscape rewards governance, and so does the underwriting.

X · SIZING THE COVERAGE

Limits and retentions

How much, against what, and why defense erosion changes the math.

There is no statutory formula for a fiduciary liability limit as there is for the fidelity bond. The limit is a risk judgment, and a few principles discipline it.

Start from the exposure, not the premium

The relevant exposure is not the plan's asset value as such but the magnitude of a plausible breach claim: the share of assets affected by a challenged decision, multiplied across a participant class, plus the cost of defending a class action to a defensible resolution. A plan with several hundred million dollars of assets and thousands of participants can generate a claim — and a defense bill — far larger than a sponsor's intuition suggests.

Remember that defense erodes the limit

Because defense costs are paid within the limit on the typical form, the limit must be large enough to fund a sustained defense *and* a settlement. A limit that looks adequate against an expected settlement may be inadequate once a year or two of class-action defense has been charged against it. This single feature argues for higher limits than a naïve "expected loss" analysis would suggest.

Set the retention to the balance sheet

The retention is the insured's first-dollar share, and defense applies to it. A retention should be set at a level the organization can comfortably absorb on more than one claim at once, not merely once. Larger sponsors take larger retentions in exchange for premium; smaller plans are better served by retentions they can actually fund.

Watch the sublimits

Penalty coverage (notably the § 502(l) penalty), voluntary-correction-program costs, and settlor defense are frequently provided on sublimits beneath the policy aggregate. A buyer should know which enhancements are full-limit and which are capped, because a sublimit that is too small can leave a real exposure only partly answered.

> **A PRACTICAL BENCHMARK**
>
> Many small and mid-sized sponsors begin at a $1,000,000 limit and adjust upward with plan size, participant count and prior-claim sensitivity. The right number is the one that funds a full

> defense and a credible settlement without exhausting — not the one that merely matches an average outcome. Surety One will benchmark a limit against the specific plan profile on request.

XI · UNDERWRITING & PRICING

What drives the premium

The coverage is affordable relative to the exposure; it is priced on the plan, not a flat rate.

Fiduciary liability premium is built from the plan and its governance, not from a tariff. For many small and mid-sized employers a $1,000,000 stand-alone policy commonly runs between roughly $750 and $2,500 per year; larger plans, complex structures, employer-securities holdings and adverse claims history move the number materially upward.

The principal rating factors

Plan assets and asset mix. Total assets under management and the presence of illiquid, alternative or employer-security holdings.

Participants and plan count. The number of participants and the number and types of plans to be covered.

Plan types. Defined benefit, defined contribution, ESOP and funded welfare plans each carry distinct exposure profiles.

Governance quality. Committee structure, an investment policy statement, periodic fee benchmarking, documentation and fiduciary training.

Claims and investigation history. Prior claims, DOL or IRS inquiries, and known circumstances.

Limit, retention and defense structure. The requested limit and retention and the duty-to-defend or reimbursement election.

Industry and profile. Sector, public-company status, and the litigation visibility that accompanies plan size.

Employer securities. Company stock in the plan adds stock-drop exposure and is weighed accordingly.

How governance enters the price

Underwriting fiduciary liability is, in large part, underwriting process. An applicant that can demonstrate a functioning benefits or investment committee, a current investment policy statement, regular and documented fee and performance reviews, and a record of acting on advice presents a fundamentally better risk than one that cannot — and is quoted accordingly. The same procedural prudence that defends a claim in court earns better terms at the underwriting desk.

XII · RISK MANAGEMENT

The discipline of procedural prudence

ERISA judges the process. Build and document the process, and most claims weaken.

Because the prudence standard is procedural, a fiduciary who follows a rigorous, well-documented process is defensible even when an investment underperforms, and a fiduciary who cannot show their work is exposed even when the outcome was fine. The following practices reduce both the likelihood of a claim and the cost of defending one — and they improve the terms of coverage.

Govern deliberately

- Charter a benefits or investment committee with written terms of reference, defined membership and a regular meeting cadence; keep minutes that record what was considered and why.
- Adopt and maintain a current **investment policy statement**, and actually follow it.
- Benchmark recordkeeping and investment fees on a documented schedule, and put significant services out to competitive bid periodically.
- Monitor investment options against the policy statement, and document the decision to retain, replace or watch each one.

Delegate carefully

- Where appropriate, appoint professional fiduciaries — a § 3(38) investment manager that assumes discretion, or a § 3(21) adviser that shares it — and document the basis for the appointment.
- Remember that delegation transfers a task but not the duty to monitor; supervise the people to whom you delegate.

Document, train and correct

- Train fiduciaries on their duties; a committee that understands its role behaves like one.
- When an error surfaces, use the voluntary correction programs (VFCP, EPCRS) promptly; early correction is both a regulatory virtue and a litigation defense.
- Retain the documentation. In fiduciary litigation, the contemporaneous record is frequently the difference between an early dismissal and a costly discovery fight.

INSURANCE AND GOVERNANCE ARE COMPLEMENTS, NOT SUBSTITUTES

A policy pays for the defense and the loss; governance prevents the claim and wins the case. The strongest benefit-plan risk programs treat the two as one discipline — and the underwriter rewards the combination.

XIII · THE COVERAGE ARCHITECTURE

How the coverages fit together

No single policy answers every benefit-plan risk. Build the set deliberately.

A benefit-plan risk program is a set of instruments, each answering a distinct exposure. Understanding the boundaries prevents both gaps and wasteful overlap.

Instrument	Answers	Required?
ERISA fidelity bond	Theft or dishonesty by those who handle plan funds; protects the plan.	Yes — § 412.
Fiduciary liability insurance	Breach of fiduciary duty and administrative error; protects fiduciaries, sponsor and plan.	No, but essential.
Directors & officers	Management of the company; typically excludes ERISA fiduciary liability.	No.
Employment practices	Discrimination, harassment, wrongful termination and related employment torts.	No.
Cyber / privacy	Data breach and privacy exposure, increasingly relevant to plan and participant data.	No.

The fidelity bond and fiduciary liability insurance are the two indispensable instruments for any funded plan; the others address adjacent but distinct risks.

The interaction with indemnification

Many sponsors indemnify their fiduciaries by bylaw or resolution, and that indemnity is valuable — but it is not a substitute for insurance. Indemnification depends on the indemnitor's solvency and willingness, is constrained where the loss runs to the plan itself, and is unavailable in the cases where it is most needed, such as the insolvency of the sponsor. Fiduciary liability insurance sits where indemnification fails, and the two are designed to work in tandem: the policy's retention is often aligned with the indemnification the sponsor is prepared to provide.

XIV · UNDERWRITING SUBMISSIONS

What Surety One needs to quote

Review and quoting are free of charge and carry no obligation.

Most fiduciary liability submissions can be quoted promptly. Requirements scale with the size and complexity of the plans and the limit requested.

Standard submission	Enhanced submission (larger / complex plans)
• Completed fiduciary liability application • Identity of the sponsor and each plan to be covered • Plan types and total participants • Total plan assets and general asset mix • Requested limit, retention and effective date • Whether any plan holds employer securities • Defense preference (duty to defend / reimbursement) • Knowledge of any facts that could give rise to a claim	• Everything in the standard submission • Most recent Form 5500 for each plan • Plan financial statements / audited financials where applicable • Investment policy statement and committee charter • Schedule of plan investment options and fees • Service-provider arrangements (recordkeeper, adviser, TPA) • Detail of any prior claims, investigations or known circumstances • For employer-securities or DB plans, additional financial detail on request

The process

1. **Identify the plans and the limit.** List every plan to be covered and the limit and retention sought; note any plan holding employer securities or contemplating a transaction.
2. **Submit the application.** Complete the Surety One fiduciary liability application — online or on paper — and include the enhanced materials for larger or complex risks.
3. **Underwriting review and quote.** Our underwriters review the submission and return a no-obligation quotation, typically promptly for standard risks.
4. **Bind and issue.** On acceptance we bind coverage and issue the policy, naming the insureds and plans and confirming the retroactive and prior-and-pending dates.
5. **Maintain continuity.** Because the coverage is claims-made, we work to preserve a continuous retroactive date at each renewal and to arrange run-off where a plan is wound down, merged or sold.

XV · GLOSSARY

Terms used in this guide

Allocation. The policy mechanism for apportioning loss and defense cost between covered and uncovered matters, or insured and uninsured parties.

Claims-made and reported. A coverage trigger responding to claims first made during the policy period and reported as the policy requires, as distinct from occurrence coverage.

Consent to settle. A condition requiring the insurer's agreement before a claim is settled; often paired with a "hammer clause."

Defense within limits. A structure in which defense expenses reduce the available limit of liability rather than being paid in addition to it.

DFVCP. The DOL Delinquent Filer Voluntary Compliance Program, for correcting late Form 5500 filings.

EPCRS. The IRS Employee Plans Compliance Resolution System, for correcting qualification failures.

ERISA. The Employee Retirement Income Security Act of 1974, governing most private-sector benefit plans.

Extended reporting period. A "tail" allowing claims arising from pre-expiration conduct to be reported for a defined window after the policy ends.

Fiduciary. A person who exercises discretionary authority or control over a plan, its administration or its assets, or renders investment advice for a fee; held to ERISA's prudent-expert standard.

Fiduciary liability insurance. Third-party coverage protecting fiduciaries, the sponsor and the plan against claims of breach of fiduciary duty or administrative error. Permitted by ERISA § 410.

ERISA fidelity bond. First-party coverage required by ERISA § 412 protecting the plan against theft or dishonesty by those who handle its funds; not a substitute for fiduciary liability insurance.

Forfeiture. Unvested employer contributions returned to the plan when a participant leaves before vesting; the subject of recent reallocation litigation.

Hammer clause. A provision capping the insurer's exposure where the insured refuses a settlement the insurer recommends and could obtain.

Interpretive Bulletin 95-1. DOL guidance requiring fiduciaries to select the "safest available" annuity in a pension risk transfer.

Investment policy statement (IPS). The written framework governing a plan's investment selection and monitoring.

Loyalty & prudence. ERISA § 404's core duties: to act solely for participants, and with an expert's care, skill and diligence.

Prohibited transaction. A dealing between a plan and a party in interest barred by ERISA § 406 unless a § 408 exemption applies.

Prior-and-pending date. The date before which existing litigation or proceedings are excluded from coverage.

Procedural prudence. The principle that ERISA evaluates the rigor of a fiduciary's decision-making process rather than the outcome.

Retention. The insured's first-dollar share of each claim, to which defense expense is also applied.

Retroactive date. The date back to which covered wrongful acts may reach under a claims-made policy.

Section 3(21) / 3(38). The adviser that shares fiduciary responsibility (3(21)) and the investment manager that assumes discretionary responsibility (3(38)).

Section 409. The ERISA provision making a breaching fiduciary personally liable to make the plan whole.

Section 502(l). The 20% civil penalty the DOL assesses on amounts recovered for a fiduciary breach.

Settlor function. A business decision of the employer — to establish, amend or terminate a plan — as distinct from a fiduciary act.

VFCP. The DOL Voluntary Fiduciary Correction Program, for self-correcting certain fiduciary breaches.

Waiver of recourse. The endorsement, paid for by the fiduciary or employer, removing the insurer's right of recourse where the plan pays the premium.

Wrongful act. The defined trigger of the policy — the breach of duty or administrative error to which coverage responds.

XVI · ABOUT SURETY ONE, INC.

Who we are

Surety One, Inc. is a surety bond underwriter, international insurance brokerage and surety-focused managing general agency licensed in all fifty United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Canada and the Dominican Republic. We hold broad binding and issuing authority through multiple admitted and non-admitted carriers, and our underwriting staff is available seven days a week.

We specialize in fidelity, management-liability and financial-guarantee lines — including fiduciary liability insurance for employee benefit plans of every class, and the ERISA fidelity bonds that accompany them, from standard qualified plans to ESOPs, Taft-Hartley and multiemployer trusts, pooled employer plans, and small plans holding non-qualifying assets. We are accredited A+ by the Better Business Bureau.

Surety One was founded by C. Constantin Poindexter, a thirty-year veteran of the surety industry, a Chartered Property Casualty Underwriter and the author of *The Contractor's Guide to Surety Bonds*. Under his leadership Surety One has grown into an international managing general agency whose underwriting standards reflect his commitment to the discipline.

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