

# Introduction to Benefit Funds

NYSUT Benefits Conference  
May 2, 2008

Presented by:  
Mark L. Stulmaker  
Lipsitz Green Scime Cambria LLP  
[mstumaker@lglaw.com](mailto:mstumaker@lglaw.com)  
(716) 849-1333



# Benefit Fund

- A “Benefit Fund” is a trust established to hold, invest, and administer assets to be used to provide employee benefits for trust beneficiaries.
- “Pension funds” provide retirement benefits, while “welfare funds” provide health, life, or disability benefits.



# Trusts

- Created when one person expresses his or her intent to hold property for the benefit of another
- Legal title
- Beneficial title
- Trust Agreement
- Trustees can all be Union designees



# Fiduciary Duties

- Must act for the exclusive benefit of participants and beneficiaries,
- as would a prudent person under like circumstance,
- so as to diversify plan assets, and
- in accordance with plan documents and instruments.



# Tax Exemption

- Exemption under 501(a) of the Internal Revenue Code allows the benefit fund to accumulate income on tax-free basis
- 501(c)(9) voluntary employees' beneficiary association (VEBA)



# Requirements of a VEBA

- The organization must be comprised of employees who are voluntary members of the association;
- the purpose of the association must be the payment of life, sick, accident, or other benefits;
- acceptable benefits must be paid to members of the association or to their dependents or designated beneficiaries; and
- no part of the net earnings of the association may inure (other than through the payment of benefits) to the benefit of any private shareholder or individual.



# Permissible “other benefits”

- vacation benefits, paid vacation facilities, vacation expense reimbursement, and subsidized recreational activities, such as athletic leagues;
- dependent or child care;
- job readjustment allowances;
- income maintenance payments for economic dislocation;
- temporary living expense loans and grants at time of disaster (i.e., fire or flood);
- supplemental unemployment compensation benefits;
- severance benefits; and
- education or training benefits or courses (such as apprentice training programs)



# Impermissible benefits

- accident or homeowner's insurance benefits for property damage;
- malpractice insurance;
- loans to members except in times of personal distress;
- savings facilities for members; and
- commuting expenses, such as bridge tolls or train fares.



# Reporting and Compliance

- Employer ID number
- IRS Form 990 if average gross receipts exceed \$25,000
- Employee Retirement Income Security Act of 1974 (ERISA)
- Governmental plan exemption



## Reporting and Compliance continued

- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
- Family and Medical Leave Act of 1993 (FMLA)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)



# Plan Documents and Operation

- Insured vs. self-funded benefits
- Plan of benefits
- Summary plan description (SPD)
- Insurance contract with wrap-around SPD



# Summary Plan Description

- The name and business address of the plan and the board of trustees;
- The employer identification number assigned to the plan;
- The type of administration of the plan (for example, contract administration or insurer administration);
- The sources of funding or contributions;
- The procedures to be followed in presenting claims for benefits under the plan and the appeal process;



# Summary Plan Description (continued)

- Requirements for eligibility to participate, including any age or service requirements;
- Summary of benefits, including a description of any cost-sharing provisions, deductibles, co-insurance, and co-payment amounts for which the participant or beneficiaries are responsible, provisions governing the use of network providers, the composition of the provider network and whether coverage is provided for out-of-network services;
- A description of COBRA continuation rights, FMLA provisions, and a procedure to handle qualified medical child support orders; and
- A description of the permissible uses of Protected Health Information by the Trustees.



# Written Policies

- travel and expense reimbursement;
- investment policy;
- privacy policy; and
- there should be a form subrogation agreement for participants who may have third-party claims for medical expenses.



# Service Providers

- Legal services agreement;
- Accounting services agreement;
- Investment management agreement with investment advisors;
- Custodial agreement with bank;
- If the fund is to share office space and employees with the union, it should have a written agreement detailing such arrangement and the amount of the payments to the union;
- Business associate agreements; and
- Group insurance contract.



# Trustee Insurance

- Fiduciary liability insurance
- Fidelity Bond



# Advantages of a Benefit Fund

- Union representatives design the health program within the budgetary limits negotiated with the School District. Any savings will inure to the benefit of covered employees.
- The Union maintains a close relationship with its members regarding a valuable employee benefit.
- The covered bargaining unit can work toward gathering its own experience and utilization data.
- Self-funded plans will benefit from their own favorable experience and may benefit from reduced administrative and reserve expenses.
- If the School District adopts a cafeteria plan under §125 of the Internal Revenue Code, participant forfeitures can go to the benefit fund, rather than revert to the employer.

