

**SUMMARY PLAN DESCRIPTION
OF THE
UPSTATE NEW YORK ENGINEERS S.U.B. FUND**

REVISED: APRIL 1, 2022



UPSTATE NEW YORK ENGINEERS S.U.B. FUND

**101 Intrepid Lane – Box 100
Syracuse, New York 13205
Telephone: (315) 492-1796
Fax: (315) 492-6618**

Dear Participant:

This booklet, known as a “Summary Plan Description” describes the requirements you must satisfy in order to become eligible for benefits from this Fund. It also summarizes the Fund benefits and the conditions governing the payment of those benefits. The procedure you must follow in filing a claim for benefits is also explained in this booklet, as well as the procedure for making an appeal if your claim is denied.

If you have any questions concerning the Plan, or this Summary Plan Description, or if you would like to receive more information about Plan eligibility, coverage and/or benefits then you should contact the Fund Office at the address or telephone number set forth at the top of this page.

Sincerely,

**THE BOARD OF TRUSTEES OF THE
UPSTATE NEW YORK ENGINEERS
S.U.B. FUND**

UPSTATE NEW YORK ENGINEERS S.U.B. FUND

101 Intrepid Lane – Box 100
Syracuse, New York 13205
Telephone: (315) 492-1796
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UNION TRUSTEE

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IUOE Local 17
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SEI Investments
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Oaks, PA 19456

PLAN IDENTIFICATION NUMBER

16-0905061

EMPLOYER TRUSTEE

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PLAN NUMBER

502

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ARTICLE I

INTRODUCTION

This booklet contains the provisions of the Supplemental Unemployment Benefit Plan, also referred to as the “S.U.B. Plan” or the “Plan,” as of April 1, 2022. The S.U.B. Plan is a welfare plan that provides for lost income in the event of certain events described in this booklet.

This document is both the Plan Document, and the Summary Plan Description, of the Upstate New York Engineers SUB Fund (“Fund”) for purposes of the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The terms contained herein constitute the terms of the Plan.

The purpose of the Plan is to provide supplemental benefits in the event you are:

- a. Unemployed
- b. Unable to work due to an accident or sickness
- c. On jury duty
- d. A member of the Armed Forces Reserves and called for two weeks annual training; and/or
- e. Retired
- f. On family medical leave.

You must satisfy the eligibility requirements to receive the benefits as described in this booklet. Regardless of your eligibility, in order to receive a benefit from the Fund, you must provide the Fund Office with a completed application along with any required documentation. Failure to do so prevents the Fund from providing benefits to you. **Benefits under this Plan will be paid only if the Trustees decide in their sole and absolute discretion that you are entitled to them.**

A “Contributing Employer” or “Employer” as used in this Plan means an employer who makes contributions to the Plan, pursuant to its collective bargaining agreements with a participating Local Union, or pursuant to its Participation Agreement with the Plan’s Trustees. You may obtain a complete list of the Contributing Employers upon written request to the Trustees, or you may examine the list at the Fund Office. You may also obtain information as to whether a particular employer is a Contributing Employer and, if the employer is, the employer’s address.

The term “Local Union” as used in this Plan refers to Local Union No. 17 of the International Union of Operating Engineers. The Contributing Employers and the Local Union negotiate collective bargaining agreements, under which the Plan is maintained. The source of contributions to the Plan is the Contributing Employer, and there is no insurance company or other institution, organization, or entity which maintains a fund on behalf of the Plan or through which the Plan is funded or benefits are provided.

ARTICLE II

ELIGIBILITY REQUIREMENTS

UNEMPLOYED

1. You will be eligible for Supplemental Unemployment Benefits if all of the following requirements have been met:
 - a. You have registered and reported to a State Unemployment Office; and
 - b. You have registered at and reported on your Local Union unemployment roll and you have not failed or refused to accept work as an Operating Engineer when it is offered through the Local Union or an Employer; and
 - c. You have received State Unemployment Insurance benefits for the week or you have received a certification that you are a member entitled to receive a benefit for the week; and
 - d. You have worked for a Contributing Employer who was obligated to contribute to the Plan; and
 - e. You met the Hours of Work requirement, which is described in Article III of this booklet.

DISABLED

2. You will be eligible for Supplemental Workers' Compensation Benefits or Supplemental Disability Benefits if you are unemployed due to an injury or sickness and the following requirements have been met:
 - a. You are unable to work because of occupational or non-occupational injury or sickness, and you have been certified to be disabled by a licensed physician; and
 - b. You have worked for a Contributing Employer who was obligated to contribute to the Plan; and
 - c. You have met the Hours of Work requirement, which is described in Article III of this booklet.

JURY DUTY

3. You will be eligible for Supplemental Unemployment Benefits if the following requirements have been met:
 - a. You have been called to jury duty and you submit your jury duty pay vouchers for the period that you are claiming; and

- b. You are working for a Contributing Employer who is obligated to contribute to the Plan at the time you are called for jury duty; and
- c. You have met the Hours of Work requirement, which is described in Article III of this booklet.

ARMED FORCES

- 4. You will be eligible for Supplemental Unemployment Benefits if the following requirements have been met:
 - a. You've been called for two weeks of annual training for any branch of the United States Armed Forces, and you submit copies of orders and/or vouchers for the period you are claiming benefits, provided your Employer does not pay the difference; and
 - b. You are working for a Contributing Employer who is obligated to contribute to the Plan at the time you are called for such training; and
 - c. You have met the Hours of Work requirement, which is described in Article III of this booklet.

RETIREMENT

- 5. You will be eligible for Supplemental Unemployment Benefits upon retirement if the following requirements have been met:
 - a. You've been awarded a pension from the Upstate New York Engineers Pension Fund; and
 - b. You have worked for a Contributing Employer who was obligated to contribute to the Plan; and
 - c. You have met the Hours of Work requirement, which is described in Article III of this booklet.

FAMILY & MEDICAL LEAVE

- 6. You will be eligible for Supplemental Unemployment Benefits if the following requirements have been met:
 - a. You are on an approved leave of absence under the Family Medical Leave Act of 1993 or the New York State Paid Family Leave Act; and
 - b. You are working for a Contributing Employer at the time your leave began; and
 - c. You have met the Hours of Work requirement, which is described in Article III of this booklet.

SPECIAL CONDITIONS

You may still be able to collect S.U.B Plan benefits if you (i) worked for a Contributing Employer; and (ii) met the Hours of Work requirements but you are not eligible for State Unemployment Benefits for any of the following reasons:

- a. exhaustion of State Unemployment Benefits; or
- b. ineligibility for State Unemployment Benefits due to not attaining the required number of weeks to qualify; or
- c. ineligibility for State Unemployment Benefits due to self employment or business ownership.

If you meet any of these criteria you should complete the S.U.B. certification card and mail it to the Local Union office. The Local Union will verify your employment status and forward the certification to the Fund Office for a determination of eligibility.

ARTICLE III

HOURS OF WORK REQUIREMENT AND BENEFIT AMOUNT

In order to be eligible for the benefits described in Article II, you must satisfy an “Hours of Work” requirement. Specifically, you must have attained a minimum of 400 hours of credit for work in Covered Employment during the calendar year prior to the calendar year in which your application for benefits is received by the Fund Office. Covered Employment for which you earn hours of credit is work for which your Employer is required to contribute to the Plan on your behalf pursuant to a collective bargaining agreement with the Local Union or a Participation Agreement with the Plan.

The weekly benefits paid by the Fund are based on the number of hours for which contributions were received by the Fund on your behalf during the twelve (12) months prior to the month in which your S.U.B. claim is received by the Fund. The S.U.B. Fund’s weekly benefits (except for Jury Duty) will be paid as follows:

<u>HOURS</u>	<u>AMOUNT</u>
1,000 hours and over (maximum credit)	\$ 195.00
900-999 hours	\$ 176.00
800-899 hours	\$ 164.00
700-799 hours	\$ 154.00
600-699 hours	\$ 142.00

500-599 hours	\$ 131.00
400-499 hours	\$ 121.00
less than 400 hours – Not Eligible	

S.U.B. benefits will be paid for jury duty on a daily basis of 1/5 the weekly benefit level. The Trustees may periodically either increase or decrease the eligibility requirements and/or the benefit level due to economic conditions or the level of assets available for benefits. For more information concerning disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, or reduction of benefits, please see Article VII.

If you are receiving S.U.B. benefits while on New York State Paid Family Leave, in no event will your benefits, when combined with your paid leave, exceed your total wages.

ARTICLE IV

APPLICATION FOR BENEFITS

UNEMPLOYMENT

When applying for Supplemental Unemployment Benefits you must properly complete and submit the S.U.B. Certification Card and a copy of your State Unemployment Official Record of Benefit Payment History to the Fund Office. S.U.B Certification Cards and return envelopes are available at the Fund Office or at your Local Union Office. Any claim for Supplemental Unemployment Benefits must be received by the Fund Office within 1 year of the date on which you first became unemployed. Any claims received after this 1-year period will be denied as untimely.

DISABILITY

When applying for Supplemental Disability Benefits or Supplemental Workers' Compensation Benefits, you must properly complete the front of the Supplemental Disability application. Your attending physician must properly complete the back of the Disability application. The Disability application must be received at the Fund Office for processing. Supplemental Disability forms and return envelopes are available at the Fund Office or your Local Union Office. Any claim for Supplemental Disability Benefits or Supplemental Workers' Compensation Benefits must be received by the Fund Office within 1 year of the date on which you were determined to be disabled. Any claims received after this 1-year period will be denied as untimely.

JURY DUTY

Any claims for benefits that result from absence of employment as a result of jury duty must be received by the Fund Office within 1 year of the first day on which you were absent from employment for jury service. Any claims received after this 1-year period will be denied as untimely.

ARMED FORCES

Any claims for benefits that result from absence of employment because of Armed Forces training must be received by the Fund Office within 1 year of the first day on which you were absent from

employment for such training. Any claims received after this 1-year period will be denied as untimely.

RETIREMENT

Any claims for benefits that result from retirement from the Upstate New York Engineers Pension Fund must be received by the Fund Office within 1 year from your retirement date. Any claims received after this 1-year period will be denied as untimely.

FAMILY MEDICAL LEAVE

If you are seeking benefits because you are on federal family medical leave, you must present a copy of a letter from your employer granting the requested leave. If you are receiving paid leave under the New York State Paid Family Leave Act, you must provide a letter from the insurer regarding the amount of your paid leave. All claims must be submitted within 1 year of the date on which your leave began. Any claims received after this one-year period will be denied as untimely.

The S.U.B. Fund will not credit hours based on benefits provided by the Upstate New York Engineers Pension Fund and/or the Upstate New York Engineers Health Fund.

The Plan's Board of Trustees will be the sole judge of the kind of proof that is acceptable to determine your eligibility to receive benefits, and the decision of the Trustees on all matters of proof will be final and binding on all persons.

ARTICLE V

ADDITIONAL PROVISIONS OF THE PLAN

1. RECOVERY OF OVERPAYMENTS AND MISTAKEN PAYMENTS

If the Fund pays benefits in error, such as when the Fund pays you more benefits than you are entitled to receive under the Plan, you are required to repay the Fund in full.

The Fund shall have a constructive trust, lien and/or an equitable lien by agreement in favor of the Fund on any overpaid benefits received by you or your representative (including an attorney) that is due to the Fund under this Section, and any such amount is deemed to be held in trust by you for the benefit of the Fund until paid to the Fund. By accepting benefits from the Fund, you consent and agree that a constructive trust, lien, and/or equitable lien by agreement in favor of the Fund exists with regard to any overpayment, and in accordance with that constructive trust, lien, and/or equitable lien by agreement, you agree to cooperate with the Fund in reimbursing it for all of its costs and expenses related to the collection of those benefits.

Any refusal by you to reimburse the Fund for an overpaid amount will be considered a breach of your agreement with the Fund that the Fund will provide the benefits available under the Plan and you will comply with the rules of the Fund. Further, by accepting benefits from the Fund, you and your estate affirmatively waive any defenses you may have in any action by the Fund to recover overpaid amounts or amounts due under any other rule of the Plan, including but not limited to a

statute of limitations defense or a preemption defense, to the extent permissible under applicable law.

The Fund may recover overpaid benefits by any and all methods, which include, but are not necessarily limited to, offsetting all future benefits otherwise payable by the Fund to you until the entire overpayment plus interest has been recovered.

If you fail to reimburse the Fund and the Fund is required to pursue legal action against you or your estate to obtain repayment of the overpaid benefits, you shall pay all costs and expenses, including attorneys' fees and costs, incurred by the Fund in connection with the collection of any amounts owed to the Fund or the enforcement of any of the Fund's rights to reimbursement. You are also required to pay interest at the rate determined by the Trustees from time to time from the date you become obligated to repay the Fund through the date that the Fund is paid the full amount owed. The Fund has the right to file suit against you or your estate in any state or federal court that has jurisdiction over the Fund's claim.

The Board of Trustees shall have full authority to determine eligibility requirements for benefits, and to adopt rules and regulations that are binding on you and your dependents.

Every participant and Employer shall, upon reasonable request, furnish the Board of Trustees such information or proof as may be reasonable, necessary or helpful in determining entitlement to benefit payments.

No monies, property or equity, of the Fund, or policies or benefits or monies payable therefrom, shall be subject in any manner by a participant to anticipation, alienation, pledge, encumbrance, garnishment, mortgage lien, or charge except to the extent required by law, and any attempt to cause the same to subject thereto, shall be null and void.

2. DURATION OF BENEFITS

Supplemental Unemployment Benefits will be paid to participants for each week (Monday to Sunday) that they continue to meet all the eligibility requirements of the Plan, up to a maximum of 27 weeks per claim year, including the waiting week period, except that Supplemental Workers' Compensation and Supplemental Disability Benefits will be paid to participants for each week (Monday to Sunday) that they continue to meet all the eligibility requirements of the Plan up to a maximum of 52 weeks per year and except that for family medical leave, payments will continue only for as long as you are on such leave.

The Trustees may periodically extend, in their sole discretion and on a uniform basis, the period for which benefits will be paid due to excessive unemployment or poor economic conditions in the construction industry.

ARTICLE VI

APPEAL PROCEDURE

If, for any reason, you are not satisfied with the determination in response to your claim for benefits by the S.U.B Fund, you may appeal that decision to the Fund's Board of Trustees, by writing to the Fund Office and requesting same. The Fund Office will then notify you about the Trustees' response to your appeal under the following procedure.

Your correspondence, or your representative's correspondence, should include the following statement: "I AM WRITING IN ORDER TO APPEAL THE DECISION TO DENY ME BENEFITS. THE ADVERSE BENEFIT DETERMINATION WAS DATED _____" If this statement is not included, then the Trustees may not understand that you are making an appeal, as opposed to a general inquiry. If you have chosen someone to represent you in making your appeal, then your letter (or your representative's letter) must state that you have authorized him or her to represent you with respect to your appeal, and you must sign such statement.

You shall have the opportunity to submit written comments, documents, records, and other information related to the claim for benefits. You shall also be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits. The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

Determinations on Appeal

Time Frames

The Board of Trustees at their next regularly scheduled meeting after your appeal is received will make a determination on the appeal. However, if the appeal is received less than 30 days before the meeting, the decision may be made at the second meeting following receipt of the appeal. If special circumstances require an extension of time for processing, then a decision may be made at the third meeting following the date the appeal was received. Before an extension of time commences, you will receive written notice of the extension, describing the special circumstances requiring the extension and the date by which the determination will be made. The Board of Trustees will notify you, or your authorized representative, of the benefit determination no later than 5 days after the determination is made.

Content of Adverse Determination on Review

The Plan's written notice of the Board's decision will include the following:

1. The specific reason for the adverse benefit determination;
2. Reference to specific plan provisions on which the determination is based;

3. A statement that you are entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to your claim for benefits;
4. A statement of your right to bring a civil action under Section 502(a) of the Employee Income Security Act within 180 days of the date of the letter notifying you that your appeal was denied;
5. If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse benefit determination, the notice will provide either the specific rule, guideline, protocol, or other similar criterion, or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse benefit determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge upon request; and
6. If the adverse benefit determination is based on medical evidence, the written notice shall contain an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to your medical circumstances, or a statement that such explanation will be provided upon request.

The Trustees' Decision is Final and Binding

The Board of Trustees has exclusive authority and discretion to determine all questions of eligibility and entitlement for benefits under the Plan. The Board of Trustees' decision with respect to its review of your appeal will be final and binding. Any legal action against this Plan must be started within 180 days from the date the adverse benefit determination denying your appeal is deposited in the mail to your last known address.

ARTICLE VII

PLAN CHANGES

The Trustees, in their sole discretion, may terminate, amend or modify all or part of the Plan at any time to the extent allowable by law. However, in no event shall any amendment allow any portion of the Trust Fund to revert to or be recovered by a Contributing Employer or Local Union.

The Trustees have exclusive authority and discretion to determine eligibility requirements for benefits and to adopt rules and regulations establishing the same, which shall be binding on all participants. The Trustees may also discontinue or terminate the Plan in their sole discretion.

No Contributing Employer has any liability (directly or indirectly) to provide the benefits offered by the Plan, other than its obligation to make contributions stipulated in its collective bargaining agreement or participation agreement. Likewise, to the maximum extent permitted by law, there shall be no liability on the Trustees (directly or indirectly), nor upon the Local Union, to provide the benefits offered by the Plan. Thus, no benefits will be paid by the Plan to any other individual or entity to the extent the Plan does not possess sufficient assets to provide such benefits.

In the event of termination, the Trustees shall decide in their discretion how to distribute available benefits in accordance with applicable law. This Plan is not covered by any governmental programs, like the Pension Benefit Guarantee Corporation, that provides assistance in the event of termination.

ARTICLE VIII

IMPORTANT INFORMATION

PLAN ADMINISTRATOR

The Plan is administered by a joint Board of Trustees, of which the Local Union and the Contributing Employers are equally represented. The Board as a whole is the Plan Administrator. As such, the Trustees are responsible for collecting and administering Employer contributions to the Plan. The Trustees are also required to develop and administer the provisions of the Plan itself. The Trustees hire certain professional advisors to assist them with these responsibilities. If you have any questions about the Plan, you may contact the Trustees by writing to: Board of Trustees, Upstate New York Engineers Supplemental Unemployment Benefit Fund, 101 Intrepid Lane, Box 100, Syracuse, New York 13205-0100. The telephone number is (315) 492-1796.

ERISA RIGHTS

As a participant of the Upstate New York Engineers Supplemental Unemployment Benefit Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 as amended (“ERISA”). ERISA provides that all Plan participants shall be entitled to:

RECEIVE INFORMATION ABOUT YOUR PLAN AND BENEFITS

Examine, without charge, at the Fund Office and at other specified locations such as work sites and Union halls, all documents governing the Plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies.

Receive a copy of the Plan’s annual financial report. The Plan administrator is required by law to furnish each participant with a copy of this summary annual report.

PRUDENT ACTION BY PLAN FIDUCIARIES

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operations of the Plan. The people who operate your Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, your Union or any other person may fire you or otherwise discriminate against you in any way to prevent you from obtaining a benefit or exercising your rights under ERISA.

ENFORCE YOUR RIGHTS

If your claim for benefits is denied or ignored, in whole or in part, you have a right to know why this was done, obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, these steps are the steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report from the Plan Administrator and do not receive them within 30 days, you may file suit in Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110.00 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator. If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in Federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in Federal court. The court will decide who should pay the court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim to be frivolous.

ASSISTANCE WITH YOUR QUESTIONS

If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquires, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Security Administration.

THE TRUSTEES

The names and business addresses of the Trustees are as follows:

UNION TRUSTEE

Gary Swain
IUOE Local 17
5959 Versailles Road
Lakeview, New York 14085

EMPLOYER TRUSTEE

Nickolaus Osinski
Union Concrete & Const. Corp.
435 Meyer Rd.
West Seneca, New York 14224

SERVICE OF LEGAL PROCESS

The Trustees have designated Deborah Spaulding as the agent of service for legal process. The address at which process may be served is as follows: Deborah Spaulding, Upstate New York Engineers Supplemental Unemployment Benefit Fund, 101 Intrepid Lane, Box 100, Syracuse, New York 13205. The telephone number is (315) 492-1796. Service of legal process upon Deborah Spaulding will be deemed to be service upon the Trustees, or upon an individual trustee.

PLAN DECISIONS

The Trustees are responsible for interpreting this booklet and for making determinations under the Plan. In order to carry out this responsibility, the Trustees have exclusive authority and discretion to determine whether an individual is eligible for benefits under the Plan, determine the amount of benefits, if any, an individual is entitled to from the Plan, to determine or find facts that are relevant to any claim for benefits from the Plan, to interpret the provisions of any collective bargaining agreement or written participation agreement involving or impacting this Plan, to interpret the provisions of the Trust Agreement governing the operation of this Plan, to interpret all of the provisions of any other document or instrument involving or impacting this Plan, and to interpret all of the terms used in this Booklet and in all of the other previously mentioned agreements, documents and instruments. **Benefits under this Plan will be paid only if the Trustees decide in their discretion that you are entitled to them.**

All such determination and interpretation by the Trustees, or their designee will be final and binding upon any individual claiming benefits under this Plan and upon all employees, Employers, the Union, and any party who has executed any agreement with the Trustees or the Union, will be given deference in all courts of law, to the greatest extent allowed by applicable law, and, will not be overturned or set aside by any court of law unless the court finds that the Trustees, or their designee, abused their discretion in making such determination or rendering such interpretation.

Plan Identification Number: 16-0905061

Plan Number: 502

Plan Year: April 1 through the following March 31.

Note: The Plan, the Fund Office and the Board of Trustees are the only authorized sources of Plan information for you. The Trustees have not empowered anyone else to speak for them with regards to the Plan. No Employer, Union representative, supervisor or shop steward is in a position to discuss your rights under the Plan with authority.

The Plan does not provide medical benefits, and there are no cost-sharing provisions to describe in the booklet such as; premiums; deductibles; co-insurance; co-pays; caps or benefit limitations; coverage for preventative services; prescriptions; medical tests; devices; or procedures; network provider arrangements; out-of-network coverage; conditions or limits on the selection of primary care providers or obtaining emergency medical care; and provisions for preauthorization or utilization review. Furthermore, the Plan does not provide continuation coverage, typically referred to as COBRA coverage, and it is not subject to qualified medical child support orders (“QMCSO”). For more information about paying benefits to someone beside the employee that earned the benefit, please contact the Fund Office.

