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## Correspondence Memorandum

**Date:** September 10, 2018  
**To:** Deferred Compensation Board  
**From:** Shelly Schueller, Director  
Wisconsin Deferred Compensation Program  
**Subject:** Fiduciary Responsibilities

**This memo is for informational purposes only. No Board action is required.**

At the Board's request, the Department of Employee Trust Funds reviewed the Board's fiduciary responsibilities regarding the Wisconsin Deferred Compensation Program (WDC).

The attached document provides selected examples of WDC fiduciary responsibilities. The list of examples was developed based on a review of applicable sections of the federal Internal Revenue Code, Wisconsin State Statutes, Wisconsin Administrative Code, the WDC Plan and Trust document, the Board's Investment Policy Statement and other information contained in the Board's Governance Manual. It also includes examples suggested as best practices by the National Association of Government Defined Contribution Administrators.

You may wish to review the following resources regarding fiduciary responsibilities, which are included in the Board's Governance Manual:

- [Who is a Fiduciary?](#)
- [Attorney General Opinion \(OAG-2-06\) on Board Member Liability](#)
- [Great-West Financial – State of Wisconsin Fiduciary Responsibility](#)

The Governance Manual is regularly updated and is accessible at [http://etf.wi.gov/boards/gov\\_manual\\_WDC/gm-contents.pdf](http://etf.wi.gov/boards/gov_manual_WDC/gm-contents.pdf)

Staff will be at the Board meeting to answer any questions.

Attachment: Selected Examples of WDC Fiduciary Responsibilities

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services

Electronically Signed 9/11/18

Board	Mtg Date	Item #
DC	11.15.18	14

## Selected Examples of WDC Fiduciary Responsibilities November 2018

This document provides examples of fiduciary responsibilities of the Deferred Compensation Board. It is not meant to be an exhaustive list. The examples below were developed based on a review of known sources, including applicable sections of the federal Internal Revenue Code, Wisconsin State Statutes, Wisconsin Administrative Code, the WDC Plan and Trust document, the Board's Investment Policy Statement and other information contained in the Board's Governance Manual, and includes items suggested as best practices by the National Association of Government Defined Contribution Administrators (NAGDCA). The Governance Manual is regularly updated and maintained on behalf of the Board by the Department of Employee Trust Funds and is accessible at [http://etf.wi.gov/boards/gov\\_manual\\_WDC/gm-contents.pdf](http://etf.wi.gov/boards/gov_manual_WDC/gm-contents.pdf)

	WDC	Comments/Ref.	Date	
	<b>Plan Fiduciaries</b>			
1	Have current plan fiduciaries been appointed or selected according to the plan documents and any governing statutes (state laws)?	★	Yes per Wis. Stat. § 15.165 and WDC Plan and Trust § 9.03	newest member appointed in 2017
2	Have you identified all potential plan fiduciaries and notified them of their fiduciary status? Includes Board, ETF Secretary, Dep. Secretary, Assist. Dept. Secretary, Division Admin. & others depending on functions and amount of discretion exercised.	★	Training at Board mtg.	06/08/17
3	Have training opportunities been provided to current or new board members and/or staff to ensure they are aware of their fiduciary responsibilities?	★	Training at Board mtg.	06/08/17
4	Are fiduciaries aware of their potential liability for not meeting their fiduciary duties?	★	Training at Board mtg.	06/08/17
5	Are fiduciary meetings held on a periodic basis to review the plan and make decisions as appropriate?	★	yes	3x/year at board meetings
6	Are meeting minutes and documentation of actions kept in a specific due-diligence file for a specified time period?	★	ETF maintains Board info. on publically-available website	permanent
	Do fiduciaries review the plan as a whole, such as through:			
7a	* a statistical analysis of participant activities (participant deferrals, asset mix, transaction history),	★	yes	quarterly via printed reports
7b	* a review of the total cost of the program (investment and administrative), and	★	yes	investment expenses reviewed quarterly and admin. costs annually w/ ppt fee analysis
7c	* an examination of participant/employee satisfaction (surveys), etc., to ensure the plan continues to meet the needs of the workforce?	★	yes via online biannual participant surveys	last completed summer 2016; in progress during Sept./Oct 2018
8	Are fees being paid by the plan for the investment options reasonable?	★	Yes	reviewed quarterly along with performance

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	WDC	Comments/Ref.	Date
<b>Plan and Trust Document</b>			
9	★	WDC Plan and Trust doc.	last updated 12/1/2017
10	★	ETF brings proposed revisions to Board	last updated 12/1/2017
11	★	Trust added - see Wis. Stat. § 40.80(2)g	approx. 1996
<b>Investment Selection, Monitoring and Oversight</b>			
12	★	Yes - see Investment Policy Statement in Governance Manual	last revised 6/8/17
13	★	Yes - DCIC reviews periodically per charter. Expect to do annually.	Annually or more often as needed.
14	★	yes	ongoing
15	★	yes	Reviewed at either Board or Inv. Comm. Mtgs. At least 3/x year, often quarterly
16	★	yes	quarterly
17	★	yes	quarterly
18	★	Bill Thornton, Investment Director, Great-West Investments	quarterly
19	★	yes. Bill Thornton, Investment Director, Great-West Investments	as needed

**Selected Examples of WDC Fiduciary Responsibilities  
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	<b>WDC</b>	<b>WDC</b>	<b>Comments/Ref.</b>	<b>Date</b>
20	Has appropriate action been taken to remove, close or replace investment options, if warranted by the review of the plan's investment options?	★	yes - follow processes in Admin. Code Ch. ETF 70.08 and IPS.	
21	Do you maintain documentation of your review process, rationale for fiduciary actions, and any other relevant notes or analysis in a due diligence file?	★	yes - In ETF Admin. Code, WDC Plan and Trust document, Board mtg minutes, Governance Manual, memos to Board from ETF and others, etc.	
<b>Operations and Monitoring Service Providers</b>				
22	Have employee deferrals been collected and invested in a timely manner?	★	Employers offering WDC agree to send deferrals timely to recordkeeper. By contract, recordkeeper responsible for investments being completed timely.	
23	Have fiduciaries evaluated the performance and reasonableness of fees for services from the plan's outsourced service providers?	★	yes	* Record keeper: 2015 * Auditors: with RFPs every 2-3 years * Investment Option expense ratios: at every meeting
24	Have fiduciaries required outsourced investment managers and advisers as well as other service providers to provide a disclosure of qualifications, conflict of interest and all sources of compensation?	★	yes	At time of engagement and thereafter as needed. Example: ETF consults Great-West Financial when an investment fund manager change is announced.
25	Have all performance standards been adhered to, or deficiencies addressed appropriately?	★	yes	reviewed quarterly
26	Have all participant complaints or concerns over the past 12 months been documented and resolved?	★	yes	
27	Have requests for withdrawals under the emergency financial hardship provision been decided appropriately and consistently?	★	yes	

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	<b>WDC</b>	<b>WDC</b>	<b>Comments/Ref.</b>	<b>Date</b>
28	Have unallocated amounts in a plan account, if applicable, been used to pay allowable plan expenses or been allocated to participant accounts?	★	yes - reimbursements to ppts in option offering reimbursement	changed in 2016
29	Do policies and procedures for operating the plan and all processes outsourced to service providers match the terms of the plan and trust?	★	yes	
<b>Participant Education, Advice and Disclosures</b>				
30	Do all employees annually receive, or have reasonably available, information about the benefits of participating in the plan and how they can enroll?	★	WDC outreach includes mailings/email and field staff visits plus info. online etc.	
31	Are participants provided access to the WDC Plan and Trust Document, prospectuses for all investment options, the investment policy statement and other governing documents?	★	Via ETF and WDC websites	
32	Do all participants receive, or have access to, education to help them with their investment decisions - such as employee workshops, on-line tools and print material that explain investment basics including risk & return and the importance of asset allocation/diversification?	★	WDC field staff make annual visits (minimum required) to work sites, plus webinars, website info., call center etc.	
33	Are participants provided personal counseling or advice or a simplified approach to investing, such as through target date funds or managed accounts?	★	Yes - target date funds and managed accounts available. Individual retirement readiness reviews also offered.	
34	Do all participants receive sufficient relevant information about each of the plan's investment options that includes the investment risk of each option, and any trading policies and restrictions?	★	Via WDC website and call center	
35	Do participants receive full disclosure about the fees and expenses that are charged to their account, including any costs that are not itemized on their statements, such as investment management fees that are deducted from investment returns?	★	Included on each quarterly statement	

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36a	Do participants receive quarterly statements that identify: * all transaction activity within their accounts (deferrals, investment experience, fees, withdrawals, exchanges, etc.),	★ yes	
36b	* the allocation of their account balance and future deferrals by asset class, and	★ yes	
36c	* other relevant information such as designated beneficiaries?	★ yes	
37	Do you use ERISA § 404(c) as a best practice to inform participants and limit your potential fiduciary liability? (Note: see below for §404(c) example.)	★ yes where appropriate: investment lineup, default fund, plan features, etc.	
38	Do participants receive advance notice (at least 60 days) of any changes to the plan's investment line-up and/or any blackout periods that may occur that limit their ability to execute transactions in their account?	★ yes	

Example for #38: Under 404(c), participants must be able to select from at least three investment alternatives, each of which is diversified and has materially different risk and return characteristics. Most plans maintain more than three investment choices, and, though there may be overlap among asset classes within an investment array, at least three investments with materially different risk and return characteristics can be identified in that vast majority of plans as well.

Note: The question of fiduciary liability or other insurance coverage was also reviewed. The WI Attorney General's 2006 WL 4737913 (Wis.A.G.) opinion says limitation on liability is provided by Wis. Stat. § 893.82(6) (see [http://docs.legis.wisconsin.gov/misc/oag/recent/oag2\\_06](http://docs.legis.wisconsin.gov/misc/oag/recent/oag2_06)).

WDC Plan and Trust § 11.06 = immune from civil liability, § 14.03 = ppt can't seek recovery for non performance of duties, negligence or other misconduct, and § 14.05 = held harmless from court cost and attorney's fees