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Correspondence Memorandum

Date: October 23, 2020
To: Deferred Compensation Board
From: Shelly Schueller, Director
 Wisconsin Deferred Compensation Program
Subject: Fiduciary Responsibilities Review

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

The attached document provides selected examples of the Board's Wisconsin Deferred Compensation Program (WDC) fiduciary responsibilities and was originally created in 2018 at the Board's request. 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 information contained in the Board's Governance Manual. It also includes items suggested as best practices by the National Association of Government Defined Contribution Administrators.

The Board determined that an annual evaluation of this document was desirable. For 2020, ETF has reviewed and updated the attached document as follows:


2, 3 and 4: The newest Board member, appointed in late fall 2019, received fiduciary training as part of Board orientation in December 2019;

7b: The Board is expected to review total cost of the WDC (administration and investment expenses) as part of the November 2020 Board meeting;

9 and 10: In June 2020, the Board made changes to the Plan and Trust pursuant to federal SECURE Act, and more are anticipated for the CARES Act provisions and after additional federal guidance on SECURE Act provisions is released;

12 and 13: The Investment Policy Statement was reviewed by the Investment Committee in August 2020 and will be discussed at the November 2020 Board meeting;

20: The Federated US Gov't Securities 2-5 Year fund was fully closed May 1, 2020;

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services
 Electronically Signed 11/5/20

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23: ETF procurement staff completed an RFP this year for the FDIC Insured investment option and successfully “piggybacked” on a contract with a consulting firm for review of a specific investment option. We also anticipate that the Board will approve a request to release an RFP for administration and record keeping services at the November 2020 Board meeting.

38: WDC participants received notice of the closure of the Federated US Gov’t Securities 2-5 Year fund, effective May 1, 2020.

Fiduciary training is an important part of all new Board member’s orientation to the WDC, and this training is also scheduled periodically at Board meetings. As indicated in the examples list, the entire Board last received formal fiduciary training at the June 2017 Board meeting. ETF anticipates scheduling refresher fiduciary training for the Board in the future as needed.

In March 2020, the Board received public records law training from ETF staff and ethics training from the State of Wisconsin Ethics Commission.

Fiduciary responsibilities resources in the Board’s Governance Manual include:

- [Ethics and Fiduciary Duty: Who is a Fiduciary?](#)
- [Attorney General Opinion \(OAG-2-06\) on Board Member Liability](#)
- [Great-West Financial – State of Wisconsin Fiduciary Responsibility](#) (2014)

The Governance Manual is regularly updated and is accessible at <https://etf.wi.gov/boards/deferredcompensation/gm-contentspdf/direct>

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

Attachment: Selected Examples of WDC Fiduciary Responsibilities (Fall 2020)

Selected Examples of WDC Fiduciary Responsibilities Fall 2020

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 <https://etf.wi.gov/boards/deferredcompensation/gm-contentspdf/direct>

	WDC	Comments/Ref.	Date	Next Action Date
	Plan Fiduciaries			
1	✓	Yes per Wis. Stat. § 15.165 and WDC Plan and Trust § 9.03	newest member appointed in fall 2019	tbd
2	✓	Training at Board mtg. ***** newest member trained at board orientation	6/8/2017 ***** new board member 12/2/19	
3	✓	Training at Board mtg. ***** newest member trained at board orientation	6/8/2017 ***** new board member 12/2/19	
4	✓	Training at Board mtg. ***** newest member trained at board orientation	6/8/2017 ***** new board member 12/2/19	
5	✓	yes	3x/year at board meetings	
6	✓	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)	yes	investment expenses reviewed quarterly and admin. costs annually w/ ppt fee analysis participant fee analysis is expected to be on 11/2020 Board agenda
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 fall 2019










**Selected Examples of WDC Fiduciary Responsibilities
Fall 2020**

	WDC	WDC	Comments/Ref.	Date	Next Action Date
8	Are fees being paid by the plan for the investment options reasonable?		Yes	reviewed quarterly along with performance	
	Plan and Trust Document				
9	Do you have a formal plan document that is in compliance with federal and state laws and reflects current plan operations?		WDC Plan and Trust doc.	last updated 6/11/2020 with effective date of 8/1/2020	
10	Have you reviewed the plan document to reflect any changes in federal and state laws or regulations or plan operations that may have occurred?		ETF brings proposed revisions to Board	last updated 6/11/2020 with effective date of 8/1/2020	Additional revisions anticipated related to federal SECURE Act and CARES Act changes.
11	Has the plan adopted a trust, custodial account or annuity for the purpose of maintaining plan assets for the sole benefit of participants and their beneficiaries, as required by the Internal Revenue Code?		Trust added - see Wis. Stat. § 40.80(2)g	approx. 1996	
	Investment Selection, Monitoring and Oversight				
12	Does your plan have an investment policy statement?		Yes - see Investment Policy Statement in Governance Manual		August 2020 DCIC review for Nov. 2020 Board agenda
13	Is the investment policy statement (IPS) reviewed regularly to ensure it reflects current policies and procedures for selecting and monitoring the plan's investments?		Yes - DCIC reviews periodically per charter. Expect to do annually.	Annually or more often as needed.	August 2020 DCIC review for Nov. 2020 Board agenda
14	Does your plan allow participants to achieve efficient diversification by offering investment options in a broad range of diverse asset classes, such as equities, bonds, cash and real estate?		yes	ongoing	
15	Has there been a comprehensive review of the plan's investments to ensure they continue to meet the stated objectives in the investment policy statement as appropriate long-term investment vehicles for plan participants?		yes	Reviewed at either Board or Inv. Comm. Mtgs. At least 3/x year, often quarterly	
16	Is the performance of the plan's investment options and their volatility systematically and periodically measured net of fees and compared to appropriate benchmarks?		yes	quarterly	
17	Are the fees and expenses charged by the investment companies evaluated and monitored to ensure they are appropriate as compared to peer funds within the asset class?		yes	quarterly	
18	Are in-house experts or external (third party) resources used to assist in the review of the plan's investment options?		Bill Thornton, Investment Director, Great-West Investments	quarterly	






Selected Examples of WDC Fiduciary Responsibilities Fall 2020

	WDC	WDC	Comments/Ref.	Date	Next Action Date
19	If external resources are used, are they free from potential conflicts of interest (i.e., fund providers or brokers are not reviewing their own funds)?	✓	yes. Bill Thornton, Investment Director, Great-West Investments	as needed	
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.		Federated fund closeout completed 5/1/2020
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.		
Operations and Monitoring Service Providers					
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	ETF's BCAP staff completed an RFP in 2019 for the FDIC investment option and secured a piggyback contract for specific consulting services. ETF anticipates an RFP for record keeping services in the near future.
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	✓	yes		

**Selected Examples of WDC Fiduciary Responsibilities
Fall 2020**

	WDC	WDC	Comments/Ref.	Date	Next Action Date
27	Have requests for withdrawals under the emergency financial hardship provision been decided appropriately and consistently?		yes		
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	Effective 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		
Participant Education, Advice and Disclosures					
30	Do all employees annually receive, or have reasonably available, information about the benefits of participating in the plan and how they can enroll?		ETF and WDC website are available 24/7. 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		

**Selected Examples of WDC Fiduciary Responsibilities
Fall 2020**

	WDC	WDC	Comments/Ref.	Date	Next Action Date
	Do participants receive quarterly statements that identify:				
36a	* 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 lineup and/or any blackout periods that may occur that limit their ability to execute transactions in their		yes		Yes for removal of Federated option (effective 5/1/20)

Example for #37: 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 the vast majority of plans.

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).

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