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## **Correspondence Memorandum**

**Date:** September 27, 2021

**To:** Deferred Compensation Board

**From:** Shelly Schueller, Director  
 Wisconsin Deferred Compensation Program

Dan Hayes, Attorney  
 Office of Legal Services

**Subject:** Fiduciary Responsibilities Review

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

In 2018, at the Deferred Compensation Board's (Board's) request, the Wisconsin Deferred Compensation Program's (WDC) fiduciary responsibilities review was created. The attached document provides selected examples of these requirements. 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 2021, ETF reviewed and updated the attached document through the course of actions listed below.

2, 3 and 4: The newest Board member, appointed in July 2021, received fiduciary training as part of Board orientation in August 2021.

7b: The Board is expected to review total cost of the WDC (administration and investment expenses) as part of the November 2021 Board meeting.

7c: An electronic participant survey is currently in progress (from September to October 2021).

9 and 10: In March 2021, the Board made changes to correct an error made in the Wisconsin Plan and Trust Document when authorizing in-service distributions for participants who attained the age 59 and a half, pursuant to federal provisions.

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services Electronically Signed 10/07/21 
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12 and 13: The Investment Policy Statement will be discussed at the November 2021 Board meeting.

20 and 38: WDC participants will receive notice of the pending closure and removal of the American Beacon Bridgeway fund.

23: ETF procurement staff issued a Request for Proposals (RFP) for the WDC's administrative and record keeping services, with the Board expected to make a motion to award a contract in late 2021.

Fiduciary training is an important part of new Board members' orientation to the WDC; this training is also periodically conducted at Board meetings. As indicated in the examples list, the entire Board last received formal fiduciary training during the June 2017 meeting. ETF anticipates scheduling refresher fiduciary training for the Board in the future, as needed.

In March 2021, the Board received public records law basic training from ETF staff.

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 2021)

## Selected Examples of WDC Fiduciary Responsibilities October 2021

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/download?inline=>

	WDC	WDC	Comments/Ref.	Date	Next Action Date
	<b>Plan Fiduciaries</b>				
1		√	Yes per Wis. Stat. § 15.165 and WDC Plan and Trust § 9.03	newest members appointed in Dec. 2020 and July 2021	tbd
2		√	Training at Board mtg. ***** newest board members trained at Board Member orientation	6/8/2017 ***** newest board member trained 8/5/2021	
3		√	Training at Board mtg. ***** newest board members trained at Board Member orientation	6/8/2017 ***** newest board member trained 8/5/2021	
4		√	Training at Board mtg. ***** newest board members trained at Board Member orientation	6/8/2017 ***** newest board member trained 8/5/2021	
5		√	yes	3x/year at board meetings	
6		√	ETF maintains Board info. on publically-available website	permanent	
7					
		√	7a) a statistical analysis of participant activities (participant deferrals, asset mix, transaction history),	quarterly via printed reports	
		√	7b) a review of the total cost of the program (investment and administrative), and	investment expenses reviewed quarterly and admin. costs annually w/ ppt fee analysis	participant fee analysis expected to be on 11/2021 Board agenda

**Selected Examples of WDC Fiduciary Responsibilities  
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	<b>WDC</b>	<b>WDC</b>	<b>Comments/Ref.</b>	<b>Date</b>	<b>Next Action Date</b>
	7c) an examination of participant/employee satisfaction (surveys), etc., to ensure the plan continues to meet the needs of the workforce?	√	yes via online surveys	in progress during Sept./Oct 2021	
8	Are fees being paid by the plan for the investment options reasonable?	√	Yes	reviewed quarterly along with performance	
	<b>Plan and Trust Document</b>				
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 3/2021 with an effective date of 8/1/2021	
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 3/2021 with an effective date of 8/1/2021	
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	
	<b>Investment Selection, Monitoring and Oversight</b>				
12	Does your plan have an investment policy statement?	√	Yes - see Investment Policy Statement in Governance Manual		Next review is anticipated to be on 11/2021 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 - The Board reviews annually. Note: Was also reviewed by the advisory-only Investment Committee, which was disbanded in early 2021.	Annually or more often as needed.	Next review is anticipated to be on 11/2021 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 Board 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	quarterly

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	<b>WDC</b>	<b>WDC</b>	<b>Comments/Ref.</b>	<b>Date</b>	<b>Next Action Date</b>
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	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	quarterly
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 Wis. Admin. Code Ch. ETF 70.08 and IPS.		Will be eliminating American Beacon Bridgeway fund in early 2022
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 Wis. 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: RFP in progress * Auditors: with RFPs every 2-3 years * Investment Option expense ratios: at every meeting	Board expected to make decision regarding WDC record keeper in late 2021.

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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		
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		
<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.		

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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		
36	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 line-up and/or any blackout periods that may occur that limit their ability to execute transactions in their account?	√	yes		Yes - pending change in early 2022 to large cap value option. Will follow Wis. Admin. Code for removal of American Beacon Bridgeway fund.

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 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