



STATE OF WISCONSIN
Department of Employee Trust Funds
 A. John Voelker
 SECRETARY

Wisconsin Department
 of Employee Trust Funds
 PO Box 7931
 Madison WI 53707-7931
 1-877-533-5020 (toll free)
 Fax 608-267-4549
etf.wi.gov

Correspondence Memorandum

Date: July 26, 2022

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 request, staff initiated an annual review of the Board's fiduciary responsibilities for the Wisconsin Deferred Compensation Program (WDC). The attached document has been updated for 2022 and 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.

For 2022, ETF reviewed and updated the attached document through the course of actions listed below:

- 7b: The Board is expected to review total cost of the WDC (administration and investment expenses) as part of the December 2022 Board meeting.
- 7c: An electronic participant survey was completed during the summer of 2022.
- 13: The need for any Investment Policy Statement revisions will be discussed at the September 2022 Board meeting.
- 20: WDC participants received notice of the removal of the American Beacon Bridgeway Large Cap Value fund, which was replaced with the JP Morgan US Value fund in early March 2022.
- 23: A new contract was signed for the WDC's administrative and record keeping services for the term December 1, 2022, through November 30, 2027.
- 28: With the change in share class for the Dodge and Cox Income option during the last quarter of 2022, no WDC investment options will offer reimbursements.
- 29: ETF confirmed the administrative services contract terms match the Plan and Trust document during contract negotiations.

Reviewed and approved by Matt Stohr, Administrator, Division of Retirement Services
 Electronically Signed 08/08/2022

Matt Stohr

Board	Mtg Date	Item #
DC	09.01.22	7

Fiduciary Responsibilities Review

July 26, 2022

Page 2

- 38: WDC participants received notice during the first quarter of 2022 regarding the removal of the American Beacon Bridgeway Large Cap Value fund. This fund was replaced with the JP Morgan US Value fund in early March 2022. Participants will also receive notice during 4Q22 of the change to the share class for the Dodge and Cox Income fund and the addition of the “tens” series of Vanguard Target Date Retirement options.

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 attached list, the entire Board last received formal fiduciary training during the June 2017 meeting.

In March 2022, the Board independently completed public records law basic training.

Fiduciary responsibility 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 A: Selected Examples of WDC Fiduciary Responsibilities (Fall 2022)

Selected Examples of WDC Fiduciary Responsibilities
draft for September 2022

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
	Plan Fiduciaries				
1		√	Yes per Wis. Stat. § 15.165 and WDC Plan and Trust § 9.03	newest member appointed in July 2021	to be determined
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	quarterly as of 2022	
6		√	ETF maintains Board info. on publically-available website	permanent	
7					
			Do fiduciaries review the plan as a whole, such as through:		
		√	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 - quarterly * admin. costs annually w/ ppt fee analysis	participant fee analysis expected item on 12/2022 Board agenda
		√	7c) an examination of participant/employee satisfaction (surveys), etc., to ensure the plan continues to meet the needs of the workforce?	Survey open June 20 - July 13, 2022.	
8		√	Yes	reviewed quarterly along with performance	
	Plan and Trust Document				
9		√	WDC Plan and Trust doc.	last updated 3/2021 with an effective date of 8/1/2021	
10		√	ETF brings proposed revisions to Board	last updated 3/2021 with an effective date of 8/1/2021	

Selected Examples of WDC Fiduciary Responsibilities
draft for September 2022

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	Federal trust requirements started in approx. 1996. WI passed State legislation (2005 WI Act 150) to create WDC as trust, effective April 2006.
12	Does your plan have an investment policy statement?	√	Yes - see Investment Policy Statement in Governance Manual	Next review part of 9/2022 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.	Annually or more often as needed. Next review part of 9/2022 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 quarterly Board mtgs
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. Dodge and Cox Income fund share class change in 4Q22 will eliminate last option with reimbursements.	Evaluated 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
19		√	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.	1Q22: American Beacon Bridgeway Large Cap Value removed and replaced with JP Morgan US Value R6
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, Gov. Manual, memos to Board from ETF and others, etc.	

**Selected Examples of WDC Fiduciary Responsibilities
draft for September 2022**

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. New 5 year contract with WDC record keeper signed in May 2022 has lower admin. fees. Effective Dec. 1, 2022 through Nov. 30, 2027.	* Record keeper RFP as needed * 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?			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. With Dodge and Cox Income share class change, no remaining reimbursements from WDC options.	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. Confirmed as part of TPA contract negotiations in 2022.	May 2022: Administrative Services Contract completed/signed.
30	Do all employees annually receive, or have reasonably available, information about the benefits of participating in the plan and how they can enroll?	√	Outreach includes mailings/email and field staff visits or virtual meetings, 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 available virtually and as employers permit, make annual visits to work sites, plus webinars, website info., call center etc.	

**Selected Examples of WDC Fiduciary Responsibilities
draft for September 2022**

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 and CFP services 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	
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 - ppts received notice of change in large cap value fund in 1Q22 (Amer. Beacon Bridgeway to JP Morgan).	1Q22 and 4Q22

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).

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