



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 30, 2024

To: Deferred Compensation Board

From: Shelly Schueller, Director
 Wisconsin Deferred Compensation Program

Dan Hayes, Attorney
 Office of Legal Services

Subject: Evaluation of Managed Account Service

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

At the March 2024 meeting, the Deferred Compensation Board (Board) expressed interest in learning more related to how the managed account service is offered to Wisconsin Deferred Compensation Program (WDC) participants. Specifically, there was some concern that this service is being “sold” to participants.

The Department of Employee Trust Funds (ETF) subsequently completed a review of contract language and field staff training related to the managed account service to verify that WDC participants are receiving advice tailored to their individual situations and are not being pressured to enroll in the managed account service.

Administrative Contract Language

The WDC administrative contract explicitly states that Empower Asset Group’s managed account advisors are fiduciaries. While the contract does not explicitly state the same for the local retirement plan advisors (RPAs), Empower’s Request for Proposal (RFP) response does state that the RPAs are fiduciaries, and the RFP response is incorporated into the contract. In addition, the contract includes more general language related to fiduciary services:

2.38. B. Participant Fiduciary Services

EMPOWER or its affiliates may offer investment advice and provide recommendations as a fiduciary under applicable law to PARTICIPANTS on certain PLAN transactions, such as point-in-time investment advice on designated investment alternatives, investment advisory services available under the PLAN, and recommendations on distribution and rollover options, which may include services and products offered by

Patti Epstein

Reviewed and approved by Patti Epstein, Chief Benefits Officer, Division of Benefits Administration
 Electronically Signed 08/20/2024

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EMPOWER and its affiliates. When EMPOWER acts as a fiduciary, it will do so in the best interest of the PARTICIPANTS. EMPOWER will provide such fiduciary services pursuant to applicable law.

Empower Field Staff Training

Empower's Wisconsin RPAs are extensively trained and have the experience and knowledge necessary to advise WDC participants. The RPAs do not "sell" WDC investment options or services. They are required to have Financial Industry Regulatory Authority (FINRA) Series 6/7 registration and Series 63, and/or 65/66 state securities registrations. The State Director for Empower, Emily Lockwood, is required to hold more registrations. She must have the Series 26 registration as their manager and the Wisconsin state life and variable insurance license in addition to having the 6, 63 and 65.

Empower shared their Best Interest Profile (BIP) training module (attached) with ETF. The BIP process results in a formal (written) personalized recommendations for individual participants that includes the following language:

We act as a fiduciary when determining your personalized recommendations. As a fiduciary, we must:

- Meet a professional standard of care when making investment recommendations (give prudent advice);
- Never put our financial interests ahead of yours when making recommendations (duty of loyalty);
- Avoid misleading statements about conflicts of interest, fees, and investments;
- Follow policies and procedures designed to ensure that we give advice that is in your best interest;
- Charge no more than what is reasonable for our services; and
- Provide information about conflicts of interest;

Empower's 30-day BIP training program for RPAs includes topics such as when to use the BIP tool (fiduciary services), an investment advice module, and compliance supervision. Empower also noted the following in their cover letter to the 2023 annual plan review:

Best Interest Profile

Regulation Best Interest established a standard of conduct for broker-dealers and their associates when making recommendations to a retail customer of any securities transaction or investment strategy involving securities. When RPAs provide recommendations or fiduciary investment advice, they must comply with a number of rules and regulations including the Securities and Exchange Commission (SEC) Regulation Best Interest, Department of Labor (DOL), rules and prohibited transactions, and FINRA's suitability requirements. Empower's Best Interest Profile (BIP) tool was developed with this in mind and rolled out in 2023. BIP puts duty of care

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front and center in participant meetings, establishes and maintains memorialization of the meetings and increases oversight and compliance.

In 2023, certain required disclosures before or at the time of the recommendation, about the recommendation and the relationship between the RPA and the participant were also updated and put in place.

The contract language and BIP training module indicate that Empower is contractually obligated to follow fiduciary standards of conduct and not to pressure participants to enroll in managed accounts.

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

Attachment A: [Empower FINAL 2023 RPA BIP Introduction Training](#)