

Selected Examples of Deferred Compensation Board Fiduciary Responsibilities September 2024

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/governance-manual/gm-table-contents/download?inline=>

	WDC	Comments/Ref.	Date(s) (if applicable)	Next Action Date (if applicable)
	WDC			
	Plan Fiduciaries			
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.		
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. ***** Since last training at Board meeting (2017), new board members receive individual training at Board Member Orientation.		
3	Have training opportunities been provided to current or new board members and/or staff to ensure they are aware of their fiduciary responsibilities?	√ "Current Developments in Fiduciary Litigation" presented at December 2022 Board meeting by ETF General Counsel, Diana Felsmann. ***** General Fiduciary Training at Board mtg. ***** Since last training at Board meeting (2017), new board members receive individual training at Board Member Orientation.		
4	Are fiduciaries aware of their potential liability for not meeting their fiduciary duties?	√ Training at Board mtg. ***** Since last training at Board meeting (2017), new board members receive individual training at Board Member Orientation.		
5	Are fiduciary meetings held on a periodic basis to review the plan and make decisions as appropriate?	√ Yes	Quarterly	
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 publicly-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),	√ Yes	Quarterly via printed reports	

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	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.	* Investment expenses - quarterly * 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 surveys	Annually or more often as needed.	
8	Are fees being paid by the plan for the investment options reasonable?	√	Yes	Investment option expense ratios are reviewed quarterly along with performance. Overall investment lineup reviewed annually.	
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. ***** Monitoring release of guidance for certain provisions of SECURE 2.0 and applicability to plan.		Anticipate discussion on updates at 9/2025 Board meeting, which could be effective 1/1/2026.
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. ***** Monitoring release of guidance for certain provisions of SECURE 2.0 and applicability to plan.		Anticipate discussion on updates at 9/2025 Board meeting, which could be effective 1/1/2026.
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.	
Investment Selection, Monitoring and Oversight					
12	Does your plan have an investment policy statement?	√	Yes - see Investment Policy Statement in Governance Manual.		Next review part of 9/2025 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 9/2025 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	

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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	Evaluated quarterly and reviewed at quarterly Board mtgs.	
18	Are in-house experts or external (third party) resources used to assist in the review of the plan's investment options?	√	Yes. Expert: Bill Thornton, Investment Director, Empower Investments	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. Expert: Bill Thornton, Investment Director, Empower 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 Investment Policy Statement.		
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.		
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. 5 year contract with WDC record keeper for the term 12-1-2022 through 11-20-2027 has lower admin. fees than previous contract.	* 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?	√	Yes	At time of engagement and thereafter as needed. Example: ETF consults Empower Investments when an investment fund manager change is announced.	
25	Have all performance standards been adhered to, or deficiencies addressed appropriately?	√	Yes. Additionally, ETF is examining the feasibility of changes recommended by audit, including potential contract amendments related to verification and the TPA providing documentation for certain performance standards.	Perf. standards reviewed quarterly. Most recent contract compliance audit completed spring 2024 (presented to the Board in June 2024) revealed TPA is generally in compliance with performance standards.	
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. No WDC investment options offered reimbursements as of 2022.	Effective 2016, reimbursements returned to participants in option offering reimbursement.	

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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	Audit report states TPA "was compliant with most of the administrative services contract requirements" in the audit.	Confirmed via CY2023 audit, presented to the Board in June 2024. This audit will occur regularly.
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?	√	Outreach includes mailings/email and field staff in-person 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?	√	Yes, 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?	√	Yes. WDC field staff available virtually and as employers permit, will make annual in-person visits 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 and CFP services also offered. ***** In the summer of 2024, ETF reviewed the managed accounts service, including contract language and field staff training procedures.		
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?	√	Yes, 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?	√	Yes. 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.		

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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. No changes in 2024.	

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 https://docs.legis.wisconsin.gov/misc/oag/recent/oag2_06).