

Fiduciary Duties: Practical Recommendations for the Boards

Item 3B – Joint Meeting of the ETF, TR, and WR Boards

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Informational item only

No Board action is required.

Overview

- Board Member Responsibilities
- Key Fiduciary Duties and Examples
- Practical Steps for Exercising Fiduciary Duties

Board Member Responsibilities

Board Members as Fiduciaries

- Board members are named fiduciaries in Chapter 40 of the Wisconsin Statutes.
- A fiduciary is someone who exercises discretionary authority or control over the management or disposition of plan assets or has discretionary authority or responsibility for plan administration.
- Fiduciaries are held to the highest duty of care and loyalty.

Board Responsibilities

ETF Board

- Sets ETF policy.
- Appoints the ETF secretary.
- Approves tables used for computing benefits, contribution rates and actuarial assumptions.
- Authorizes all annuities except for disability.
- Approves or rejects ETF administrative rules.
- Oversees the benefit programs, except group insurance and deferred compensation.

WR Board

- Advises the ETF Board on retirement matters.
- Approves or rejects administrative rules.
- Authorizes or terminates disability benefits for non-teachers.
- Hears appeals of disability rulings.
- Appoints 4 members to the ETF Board and 1 member to the State of Wisconsin Investment Board.

TR Board

- Advises ETF Board on retirement and other benefit matters involving public school, vocational, state and university teachers.
- Approves or rejects administrative rules.
- Authorizes or terminates teacher disability benefits and hears disability benefit appeals.

Key Fiduciary Duties and Examples

Key Fiduciary Duties

1. Duty of Prudence;
2. Duty of Loyalty;
3. Duty of Impartiality; and
4. Duty to Follow Plan Documents and Applicable Law.

Duty of Prudence



- Requires acting with the care, skill, and diligence that a reasonable person would use in the same circumstances:
 - Making reasonable inquiries;
 - Weighing all relevant information reasonably available; and
 - Not closing one's eyes to red-flags.
- May rely on the advice and reports of experts.

Duty of Prudence— Example



Example: A board member saw a news article on a lawsuit brought against a private retirement plan for breach of fiduciary duty. The lawsuit was based on the private plan not having processes in place to ensure that individuals were properly enrolled in the plan. Based on the article, he wondered what ETF's WRS enrollment processes were like.

Answer: The board member would be properly exercising the fiduciary duty of prudence by asking ETF about our WRS enrollment processes. We welcome the opportunity to provide information to the board on how ETF's benefit programs are administered.

Duty of Loyalty



- The “exclusive benefit” rule—requires acting solely in the best interest of plan participants and beneficiaries. Wis. Stat. § 40.01 (2)
- Prohibits Board members from participating in negotiations or decisions when they have a financial interest. Wis. Stat. § 40.01 (3)

Duty of Loyalty— Example



Example: The WRS consulting actuary recommends a modest decrease in the WRS assumed rate based on a change in mortality assumptions. A board member who also works for a city knows the city’s budget is strained and worries about corresponding increases to WRS contributions if the assumed rate is lowered.

Answer: Board members bring their valuable experience to the board. As part of the board’s discussion, it would be helpful for the board member to share her concerns and ask the actuaries about potential increases to contribution rates. Having this type of dialogue enriches the board’s discussion and creates a record that the board’s ultimate decision was thoughtful. When it comes to voting, however, board members must make decisions solely based on the best interest of plan participants.

Duty of Impartiality



- Balance potentially conflicting interests among different groups of participants.
- Board members may convey the views of a sub-group of participants but may not favor that group in making decisions.

Duty of Impartiality— Example



Example: A TR Board member has concerns about a proposed administrative rule change and how it might affect public school teachers. The board member hesitates to ask at the TR Board meeting during the presentation by ETF's Office of Legal Services because he knows that fiduciaries have to act solely in the best interest of *all* plan participants.

Answer: It would be appropriate for the TR Board member to express his concern about the proposed change during the board's discussion to ensure that TR Board members weigh all relevant information when making a decision about whether to authorize proposed administrative rules. The key is balancing the interests, best as possible, of all plan participants.

Duty to Follow the Plan Document and Applicable Law

- Chapter 40 of the Wisconsin Statutes and Applicable Wisconsin Administrative Code.
- Federal laws such as the Internal Revenue Code.
- Policies adopted by the Board such as the WRS reserve policy.

Duty to Follow the Plan Document and Applicable Law— Example

- **Example:** A member filed an administrative appeal with the WR Board based on the denial of a 40.63 disability benefit. While it was clear from the medical reports that she met the definition of disability in Chapter 40, she did not meet the WRS service requirements to qualify for a 40.63 disability benefit. In her appeal, the member presented very sympathetic facts asking the Board to grant her the benefit anyway.
- **Answer:** During board deliberations, board members discuss the facts, plan document, and applicable law. In this case, the plan document and applicable law require denial of the appeal. Even under very sympathetic circumstances, the board does not have the authority to grant a benefit when the member does not meet the statutory eligibility requirements.

Practical Steps for Exercising Fiduciary Duties

Practical Steps for Exercising Fiduciary Duty

1. Understand the board's responsibilities, the programs the board oversees and ETF's policies and procedures by reviewing board materials.
2. Ask questions of ETF staff to ensure board decisions are being properly and effectively implemented.
3. Make suggestions or pose thoughts and ideas about how to improve benefit programs, or ETF's policies or procedures.
4. Receive regular updates from ETF on benefit programs and ETF practices.
5. Ensure the path to making decisions and the reasons for decisions are documented in board meeting minutes and board meeting materials.

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Questions?

Thank you



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