



CBOP/CBO Training—October 2020



**Wespath**

BENEFITS | INVESTMENTS

# CBOP Duties and *Book of Discipline* Obligations

# Agenda

---

- Duties: Origins, and to Whom Are They Owed?
- General Corporate Fiduciary Duties
- Benefit Plan Settlor v. Fiduciary Functions
- Benefit Plan Fiduciary Duties
- Conference Boards of Pensions (CBOP)  
*Book of Discipline* Obligations



# Duties—Flow From

---

*The Book of Discipline*

Federal law (e.g., Internal Revenue Code)

State law (nonprofit corporate and trust law)

Corporate articles, bylaws, trust or plan document

Committee charters and policies



# Duties—Flow To

---

**The United Methodist Church**

**Annual conferences**

**Participants and beneficiaries**

**Others ... (e.g., local churches)**



# Officers and Directors—General Corporate Fiduciary Duties

---

Loyalty

Obedience

Care





# Duty of Obedience

---



Must not act beyond the scope of the corporation's or organization's powers and authority



Must work to fulfill the corporation's tax-exempt purpose and maintain its tax-exempt status

# Duty of Loyalty

---

- Act solely in corporation's best interests
- Avoid conflicts of interest
  - Financial or personal
  - Present or potential
  - Direct or indirect
  - Disclosure
- Maintain confidentiality



# Duty of Care

---

Reasonably informed

Reasonably prudent

Reasonable judgment



Duty of Care



# Breach of Duties

---

- **Potential Liability**
  - Annual conference
  - Third parties (participants)
  - Government (civil and criminal penalties)
- **Limited Immunity**
  - State Limited Liability Statutes (e.g., Illinois)
  - Federal Volunteer Protection Act of 1997 (42 USC 14501)
  - Business Judgment Rule





## Benefit Plan Responsibilities

# Settlor Functions

---

- **Not subject to fiduciary obligations**
  - Can act in the best interests of the settlor—e.g., plan sponsor (business judgment rule)
- **Settlor functions include:**
  - Adoption, amendment, or termination of a plan or trust
  - Plan design (e.g., eligibility rules, benefit levels, matching contribution, deductibles)
- **Implementation of a settlor decision may turn into a fiduciary function**

# Who Is the Settlor?

---

## General Conference Plans

- General Conference for most plan design, plan amendment or termination
- Plan sponsor (i.e., CBOP) for design choice provisions
  - Example: Part-time clergy coverage in CRSP

### **NOT Wespath**

Wespath performs plan design study and analysis to inform General Conference in amending the plans

# Who Is the Settlor?

---

## Non-General Conference Plans

- **HealthFlex**
  - Wespath for some underlying plan design
  - Plan sponsor/CBOP for plan choices, eligibility choices, etc.
- **Self-insured conference plans**
  - CBOP
- **Fully-insured conference plan**
  - CBOP



# Fiduciary Functions

---

**Must act in the best interest of participants and beneficiaries**

## **Fiduciary functions include:**

- Exercising discretionary authority or responsibility for plan administration
- Selecting and monitoring investment options and service providers
- Interpreting plan provisions/hearing plan appeals
- Communicating material plan terms
- Paying plan fees and expenses with plan assets



# Plan Fiduciary Duties—ERISA

## Employee Retirement Income Security Act of 1974 (ERISA)

- Duty of loyalty (exclusive benefit rule)
- Duty of prudence
- Duty to diversify
- Duty to follow documents

**Church plans are exempt from ERISA**



# Fiduciary Duties—State Law

---

- **Church plans are generally trusts subject to fiduciary duties under state law**
  - State Common Law of Trusts
  - Uniform Trust Code/Uniform Prudent Investor Act (UPIA)—31 states
- **Charities organized as non-profit corporations are also subject to fiduciary duties**
  - Uniform Prudent Management of Institutional Funds Act (UPMIFA)—49 states

# Who Is the Fiduciary?

---

## General Conference Plans

<b>Wespath</b>	Investments, administration, service provider selection, appeals
<b>CBOP</b>	Enrollment, remitting contributions, awareness and notice to participants and beneficiaries
<b>Shared</b>	Implementation of settlor changes

# Who Is the Fiduciary?

---

## Non-General Conference Plans

<b>CBOP</b>	Enrollment, investment (unless delegated), administration (unless delegated), appeals (unless delegated), notices and awareness, recordkeeping, etc.
<b>Third-party administrator or Insurer</b>	If properly delegated by contract

# Core Benefit Plan Fiduciary Duties

---

**Duty of Prudence**

**Duty of Loyalty**

**Duty of Impartiality**



# Duty of Loyalty

---

Must administer plan solely in the interest of the participants and beneficiaries

- Prohibited from transactions engaging in self-dealing
- Prohibited from transactions that involve or create a conflict of interest
- Duty to deal fairly with participants



# Duty of Prudence

---

Must administer the plan as a prudent person would, in light of the purposes, terms and other circumstances of the plan

- Prudent expert standard—fiduciary does not need to be an expert, but may need to consult one

# Duty of Prudence

---

## Good faith is not enough.

“A pure heart and an empty head are not enough.”

*Donovan v. Cunningham*, 716 F.2d 1455, 1467 (5<sup>th</sup> Circuit 1983)

- Does not require guarantee of outcome, but does require use of prudent process
  - “When evaluating whether an act was prudent, a trustee is judged based on the circumstances at the time of the decision and not with the benefit of hindsight.” *Restatement (Third) Trusts Section 77 cmt. b(1)*
- Important to document fiduciary considerations and decisions

# Duty of Impartiality

---

Must administer plan in a manner that is impartial with respect to the various participants and beneficiaries

# Other Fiduciary Duties

---



Must select prudent investments and diversify



Must inform participants and beneficiaries



Must follow terms of plan



Must act personally or exercise fiduciary discretion when delegating



Must maintain records



Must segregate assets

# Helpful Practices on Plan Fiduciary Duties

---

- Establish a fiduciary or investment committee that meets regularly and provide training
- Review service providers periodically
- Review fees and investment performance regularly and compare to benchmarks
- Establish and adhere to an investment policy
- Communicate terms of plan to participants
- Audit plan/trust operations for compliance
- Document processes and decisions

# CBOPs—*Book of Discipline* Obligations

---

## Retirement/Welfare/Health Plan Duties

- Determine eligibility and enroll participants
- Remit timely contributions or premiums
- Maintain service record
- Give appropriate notices to participants
- Execute adoption agreements (including plan design elections, if any)
- Follow state law mandates, if applicable (especially for health plans)
- Follow plan provisions



# CBOPs—*Book of Discipline* Obligations

---

## Other Duties

- Follow an investment policy
- Develop funding plans
- Consider a record retention policy
- Prepare financial statements
- Be consistent in administration

# CBOPs—*Book of Discipline* Obligations

---

- **Paragraph 639 Conference Board of Pensions**
- An “auxiliary to the GBOPHB” (Wespath)
- “shall have charge of the interests and work of providing for and contributing to the support, relief, assistance, and pensioning of clergy and their families, other church workers, and lay employees of the institutions, organizations, and agencies within that annual conference”
- Petition to remove language on proportional payment (NAACT, AUMCPBO, Wespath)

# CBOPs—*Book of Discipline* Obligations

---

- ¶639.5 Reports and Responsibilities to Wespath
- Reference to ¶1506—and requirements to submit service data to Wespath after AC is over
- ¶639.6 Retiree health care access
- ¶639.7 AC Group Health Care Plans. “shall sponsor or participate” in a group health care plan
  - Exception for health insurance exchanges

# CBOPs—*Book of Discipline* Obligations

---

- **Paragraph 1506 Powers, Duties, and Responsibilities of ACs** (petition would move to ¶1639)
- ACs shall have the following powers, duties, responsibilities w/r/t clergy benefit plans administered by Wespath:
  - Executing adoption agreements; enrolling clergy; making contributions; determining appointment status for clergy for a given period; reporting compensation; determining a clergyperson's conference relationship status; determining LOA status; reporting on any waivers of plan participation; determining retirement statuses, including years of service
  - Determine Pre-82 service (special rules and way to vote to approve credit)
- CBOP can recommend to AC that it “revise, correct, or adjust a clergyperson's record of pension credit”
- Each AC shall “develop, adopt, and implement a formal comprehensive funding plan or plans for funding all of its benefit obligations.” Submitted annually to Wespath for review and approval

# CBOPs—*Book of Discipline* Obligations

---

- **Paragraph 1507 Financing Pension and Benefit Programs**  
(petition would move to ¶1639)
- ACs are responsible for annually providing funding for the pension and benefit funds, plans and programs of the conference
- CBOP shall compute the amount to be apportioned annually to meet the requirements of the pension and benefit programs of the conference
- CBOP shall disburse (or direct disbursement) the conference's distributable pension funds
- CBOP may accumulate a fund from the income for pension purposes in order to stabilize the pension program of the conference.

# CBOPs—*Book of Discipline* Obligations

---

- **Paragraph 1508 Policies Related to Conflict of Interest and Investment Management**
- A petition would move this to the end of ¶1639
- Applies to financial administration of AC pension and pension-related funds
- Rules seek to avoid conflicts of interest involving members of CBOP
- Makes interested parties ineligible to vote
- Prohibits members from benefiting from conference transactions
- Prohibits loans to church entities from such pension-related funds
- Diversification requirement; encourages to invest to support the goals in the Social Principles
- Board, through CF&A, shall provide a fidelity bond for all persons handling such funds

# CBOPs—*Book of Discipline* Obligations

---

## Other BOD duties of CBOP:

- ¶346.1 Enroll clergy from other annual conferences and other Methodist denominations in CRSP and CPP, when appointed to your annual conference
- ¶¶356 and 652 (medical leaves) Recommend medical leaves (along with BOM) to AC, which votes. AC may establish a medical leave committee, with representation from CBOP and BOM
- ¶357.2 Retirement. Determine (with the BOM) a time of the year as the effective date of clergy retirements (30 years/age 62 or 40 years/age 65)
- ¶357.4 Preretirement counseling

# CBOPs—*Book of Discipline* Obligations

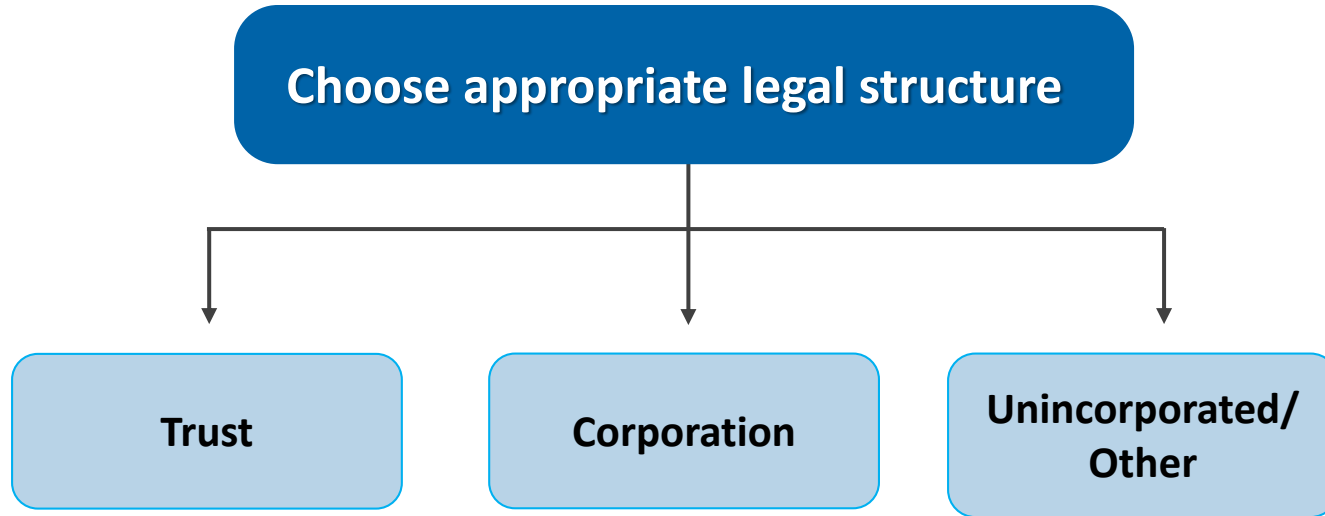
---

- ¶605.6 Business of the conference: At Wespath request, agenda of the AC shall provide time for an address / report from Wespath in consultation with the CBOP for discussing benefit plans and related issues
- ¶606 Records and archives. CBOP (among others) must keep records in conformity with guidelines provided by GCFA, in consultation with GBHEM and Wespath
- ¶614 Budgets. CF&A to consult with CBOP on amounts necessary to meet the needs for the AC's pension and benefit programs
- ¶635 Conf Board of Ordained Ministry. CBOP to receive a report from the conference BOM re changes in conference relationship of a clergyperson
- ¶1504.7 Provide census data to Wespath as requested, on participants and their families, such as birth dates, marriage dates, divorce dates, dates of death



# Which CBOP Entity Form Is Best?

---





**Wespath**

BENEFITS | INVESTMENTS