

# Part 3: Governance

# Learning Objectives

- Be familiar with the composition of their board and how trustees are appointed
- Understand their responsibilities as board members
- Understand the roles of the board's committees, system administrator and staff
- Understand the roles and responsibilities of investment consultants and managers, the board's actuary, legal counsel, and auditors
- Comprehend the board's oversight role relating to contracted professionals
- Be familiar with the laws and rules governing public pension plans in State and any governing documents including bylaws
- Have a basic understanding of the plan's policies and procedures
- Utilize best practices associated with good pension plan governance
- Understand the various fiduciary duties
- Be familiar with state and federal ethics laws that apply to public officials
- Understand the consequences of violating ethics laws
- Know what should be included in an ethics policy
- Be familiar with basic standards of conduct
- Understand the potential conflicts of interest faced by fiduciaries
- Know about prohibited transactions and interests
- Be aware of required disclosures
- Understand issues relating to confidentiality
- Be familiar with laws governing nepotism, gifts, and benefits
- Be familiar with the laws that apply to fiduciaries in State
- Understand the duty to follow the plan documents
- Be familiar with some examples of litigation involving fiduciary liability
- Be aware of ethical responsibilities that are expected of fiduciaries

# Fiduciary Roles in a Retirement System

- Designated
  - By virtue of voter elected or governmental appointed position
  - By plan or trust documents
- Elected
  - By plan members
- Functional
  - Plan Sponsor/Plan Administration Senior Management
  - Service Providers providing advice for a fee
- Contractual
  - Investment managers
  - Investment consultants/advisors
  - Other service providers who contractually agree to act as a fiduciary

# Non-Fiduciary Roles in a Retirement System

- Service providers:
  - Brokers/sales reps who act at arms-length in a transactional capacity
  - Custodians
  - Attorneys
  - Accountants
  - Actuaries
  - Recordkeeper
- Plan administration staff:
  - Executive director
  - Providing benefit calculations
  - Applying salary and contributions to recordkeepers
  - Preparing and distributing communication materials

# Stewards - Three Functional Areas of Responsibility

1

## Investments

- Select and monitor funds
- Investment committee
- Fees
- IPS
- Service provider review

2

## Administration

- Plan management
- Communication
- Fiduciary files
- Fee disclosure
- Documentation








3

## Financial

- Tax returns – Form 5500
- Audits
- Form 1099 - participants  
Form 945 filings
- Plan entry & eligibility
- Timely deposits

# The Ability to Delegate Responsibility is Limited

A fiduciary is always responsible for the following:

-  Confirm investment goals and objectives
-  Approve appropriate asset allocation strategy
-  Establish or approve an explicit, written IPS
-  Prudently select service providers
-  Incur only reasonable expenses
-  Monitor the activities of the overall investment program, including service providers
-  Avoid conflicts of interest and prohibited transactions

# Define Service Requirements

- What services are needed? (legal, accounting, trustee/custodial, actuarial, recordkeeping, investment management, education, advice, etc.)
- What services do the providers offer/recommend?
- Are there opportunities to bundle multiple services to a single provider to save cost?
- What criteria will be used to evaluate service providers against each other? (cost, performance, size, experience, credentials, convenience, testimonials/recommendations, etc.)

# Board Responsibilities

Board trustees are fiduciaries and are responsible for acting solely in the interest of plan participants.

Board responsibilities include:

- appointment and oversight of top executive positions
- delegation and oversight of service providers
- approval of a budget
- oversight of payment of benefits
- hearing appeals regarding disputes within the board's purview
- ensuring that systems are in place to report and monitor retirement system activities and processes



# Composition of Retirement System Boards

- Median public retirement system board size: 9
- Members are sometimes appointed, elected, or serve ex-officio
- Knowledge and experience requirements, if any, vary

Source: National Association of State Retirement Administrators <https://www.nasra.org/governance>

# Governance Manual

Whether it is in electronic or paper form, a fund should adopt a governance manual that serves as a central repository for the fund's primary governance documents. A well-designed governance manual facilitates effective management and provides a tool to educate trustees and stakeholders on fund operations. Key components include:

- Summaries of statutes, regulations, the plan document and board practices
- The systems' mission statement and, if applicable, its vision and guiding principles
- The organization chart, lines of authority, job descriptions and summaries of contracts
- Board policies, key procedures and, if applicable, charters for committees of the board
- References to rulings and agreements that determine benefits and contribution levels

Source: [https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)

# Board Practices

A pension fund should establish, document and adhere to a set of practices that have a proven impact on performance and risk oversight. Some of these practices are mandatory (e.g. actuarial valuations), while others may be optional. Recommended practices include:

- Development of a strategic plan or equivalent that guides the fund towards its goals
- Adoption of a fiduciary education program to continuously improve fiduciaries' skill sets
- A program of assessments and audits to evaluate internal controls, performance and risk
- Actuarial valuations to inform the board of the fund's future financial needs
- Asset allocation studies to identify asset mixes for meeting future financial needs
- A corporate governance approach under which the fund votes its proxies

Source: [https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)

# Board Policies

A fund should adopt and adhere to a set of policies designed to guide system operations toward the achievement of stated goals within established risk tolerances. While their form may vary, a board's key policies and procedures should include:

- Standards of conduct, ethics and conflicts of interest rules to codify the duties of fiduciaries
- An investment policy that includes goals, monitoring procedures and board risk tolerances
- Procurement guidelines that document procedures for selecting and monitoring contractors
- A privacy policy that sets forth procedures for protecting members' confidential data
- A risk policy (or equivalent) that defines fund risks along with measures and processes

Source: [https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)

# Risk Oversight

A fund should adopt a risk management framework and document it in a risk policy or within other policy documents (e.g. investment policy, privacy policy). The board should delegate accountability for management of market, credit, operational, asset / liability, liquidity and other risks through job descriptions, contracts and charters. Key components include:

- A governance approach that defines risk categories, accountabilities and reporting
- Risk assessments (e.g. audits) to test controls and potential outcomes of risk events
- Key measures to assess market, operational, credit and asset / liability risk exposures
- Access to information technology to collect and distribute risk data across the fund

[https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)

# Strategic Planning

A fund should adopt a strategic planning approach either in the form of a multi-year plan or within other documents. Strategic planning is a hallmark of successful organizations. It provides the board with a mechanism to map out long-term goals along with the implementation steps necessary to achieve them. Key components include:

- Goals and performance measures for key functions such as benefits administration
- Long-term investment goals, investment risk tolerances and diversification objectives
- Multi-year budgetary needs for fund operating units and for the system
- Service quality goals, measures and tactical plans for achieving them
- Plans for strengthening the fund's compliance program and internal controls

[https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)

# Reporting: Key Performance and Risk Measures

Reports to the board should include a set of key performance and risk measures to help the board assess the fund's progress toward goals across actuarial, administrative, audit, compliance and investment functions. Given their expansive duties, boards rely on efficient reporting to provide effective oversight. Key measures include:

- The funded ratio as measured by the ratio of fund assets to fund liabilities
- Net annualized investment returns relative to the return assumption and benchmarks
- Timeliness and accuracy of distributions paid to members and beneficiaries
- Member satisfaction with fund services as measured by surveys and correspondence
- Future benefits owed to members as measured by the actuarial accrued liability
- Net assets available for benefits and changes thereto as reported in the annual audit

[https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)

# Stakeholder Communications

A fund should communicate regularly with members and other stakeholders through multiple media including web site notifications, publications and letters as well as required reports. Communications provide transparency into fund operations and may increase member satisfaction, while strengthening the fund's reputation. Key components may include:

- A mission statement that describes the fund's purpose to members and the public
- Surveys that measure participant satisfaction, while providing a basis for improvements
- Updates, letters, annual reports on fund operations and forms for member beneficiaries
- Reports on fund performance, board initiatives and external events that impact members
- Governance principles that summarize the fund's structure and statutory framework

[https://www.ncpers.org/Files/2012\\_ncpers\\_best\\_governance\\_practices.pdf](https://www.ncpers.org/Files/2012_ncpers_best_governance_practices.pdf)



# Important Sources of Fiduciary Principles

- ERISA – Employee Retirement Income Security Act
  - Not directly applicable to governmental plans
  - May be referenced when state and local statutes are silent
- UPIA - Uniform Prudent Investor Act
- UMPERSA - Uniform Management of Public Employees Retirement Systems Act (State, county, and municipal retirement systems)

# State Government Code

## Applicable Sections

- 801 State Pension Review Board
- 802 Administrative Requirements
- 803 Proportionate Retirement Program
- 804 Domestic Relations Orders and Spousal Consent
- 805 Credit Transfer Between Employees Retirement System of State and Teacher Retirement System of State
- 808 Prohibition on Investment in Companies That Boycott Israel
- 810 Miscellaneous Provisions

## Also:

- Some sections of State Administrative Code
- State Open Meetings Act
- State Public Information Act

# DOL Fiduciary Obligations

- Act solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them
- Carry out their duties prudently
- Follow the plan documents (unless inconsistent with ERISA)
- Diversify plan investments
- Pay only reasonable plan expenses

NOTE: Department of Labor (DOL) Regulations are a good source of fiduciary guidance, including for fiduciaries not under DOL control.

# DOL Assessment of Plan Fiduciaries

- Fiduciary liability exists when responsibilities are left unfulfilled.
- Department of Labor studies show:
  - Plan fiduciaries receive little or no training.
  - They believe they can transfer their responsibility to a third party.
  - They fail to understand personal liability implications.
  - Breach of fiduciary responsibility – leading cause of arbitration, civil and regulatory lawsuits.

“...large, publicly managed pension funds create all manner of opportunities for political mischief.”

*Headline on WSJ Editorial 10/3/07 Use editorial to promote replacement of DB Plans with DC Plans.*

National Institute on Retirement Security (August 2008) report finds that a defined benefit (DB) pension plan can deliver the same level of retirement income to a group of employees at 46% lower cost than an individual defined contribution (DC) account. Built-in features of DB plans enable the systems to be the most fiscally efficient way to provide retirement income.

# Best Practice Recommendation – Campaign Contributions

Former Sole Trustee of the NY Pension Fund under attack on several grounds:

- State attorney general reportedly investigating “pay to play” campaign contributions made to former Trustee.
- SEC reportedly investigating “finder’s fees” payments to third party registered brokers closely aligned with former Trustee

Money management firms and contributions to public funds

- Quadrangle Group's New Mexico State Inv. Council contributions
- Carlyle Group's New York contributions
- Blackstone Group’s Pennsylvania’s contributions

# Best Practice Recommendation – Campaign Contributions

Former Sole Trustee of the NY Pension Fund under attack on several grounds:

- State attorney general reportedly investigating “pay to play” campaign contributions made to former Trustee.
- SEC reportedly investigating “finder’s fees” payments to third party registered brokers closely aligned with former Trustee

Money management firms and contributions to public funds

- Quadrangle Group's New Mexico State Inv. Council contributions
- Carlyle Group's New York contributions
- Blackstone Group’s Pennsylvania’s contributions

# Best Practice Recommendation –Example and Enforcement Remedies (CALSTRS)

- Regulation requires current & potential money managers communicate with CIO
- Restricts board members outside communication with money managers
- Board members required to attend annual training sessions that detail their responsibilities to fund participants and beneficiaries
- Board agreed to seek state legislation requiring placement agents to register as lobbyists
- Ordered investment firms to disclose their use of placement agents, amount they are paid and services they perform.
  - Applies to vendors that provide money management or fund management services, investment advice or consulting and investment support services (including market research, fund accounting, custodial services and fiduciary advice).
- Policies covers campaign contributions to or on behalf of officers and employees, existing Board members, the Governor, Controller, Treasurer and Superintendent of Public Instruction (latter 3 sit on Board) and candidates for Board members and the four political offices.
- Enforcement remedies.
  - Vendor seeking a relationship found to be in violation is disqualified from engaging in investment relationship with CalSTRS for two years.
  - Vendor who has an existing relationship found to be in violation is disqualified from doing future or additional business for two years. For private equity funds will apply to next fund.
  - Exemption for inadvertent violations.



# Additional Resources

- National Association of State Retirement Administrators (<https://www.nasra.org/>)
- The PEW Charitable Trusts:
  - State retirement research (<http://www.pewtrusts.org/en/projects/public-sector-retirement-systems>)
  - Fiduciary duties in state systems  
([http://www.pewtrusts.org/~media/assets/2017/11/basic\\_legal\\_protections\\_vary\\_brief\\_draft.pdf](http://www.pewtrusts.org/~media/assets/2017/11/basic_legal_protections_vary_brief_draft.pdf))
- National Association of Government Defined Contribution Administrators  
(<https://www.nagdca.org/>)
- National Institute on Retirement Security (<https://www.nirsonline.org/>)
- CFA Institute (<https://www.cfainstitute.org>)

# Define By-laws or Operating Procedures

- Investment committees need to have by-laws and governance
- By-laws provide for:
  - more effective and cohesive governance
  - clear operating and procedural guidelines

# Roles and Responsibilities

- Trustees, Investment Staff, Investment Managers, Custodian Bank, Consultants, Auditors, other Vendors

# Plan Documents

- Summary plan document (SPD)
- Summary of material modifications (SMM)
- Investment committee policies
- Investment policy statement (IPS)
- Plan trust document
- EGTRRA updates

Note: EGTRRA - Economic Growth and Tax Relief Reconciliation Act of 2001

# Role of Governing Documents

- Define roles and responsibilities
- Establish service requirements
- Set criteria for investment selection and monitoring
- Demonstrate procedural prudence

# Role and Responsibilities of Financial Intermediaries

- Traditional Broker:

- Agent
- Salesperson
- Intermediary
- Buyer be aware
- Fair dealing
- Rules-based

- Consultant:

- Fiduciary
- Professional
- Same side of table
- Trust assumed (verify)
- Best interest
- Principles-based

# Applicable Ethics Laws

Many of the ethical standards and conflict-of-interest and disclosure requirements that may apply to public retirement systems can be found in various Texas statutes:

- Article 16, Section 67 of the Texas Constitution – fiduciary duties applicable to state and local retirement systems’ board of trustees.
- Chapter 802, Section 802.203 of the Texas Government Code – fiduciary responsibilities of the governing body of a public retirement system
- Chapter 572 of the Texas Government Code – standards of conduct, and conflict-of-interest and disclosure requirements for state officers and employees.
- Chapters 171 and 176 of the Texas Local Government Code – conflict-of-interest and disclosure requirements applicable to officers of municipalities, counties, and certain other local governments.
- Statewide and local governing statutes can be found in the Texas Government Code, Vernon’s Texas Civil Statutes, or Local Ordinances adopted by a city. A retirement system should refer to its governing statute to ensure all ethics-related requirements are included in their policy.
- The Texas Trust Code contained under the Texas Property – administer the trust in good faith and shall perform all of the duties imposed on trustees by the common law.
- The Uniform Prudent Investor Act, Chapter 117 of the Texas Trust Code – duties of trustees including the standard of care, loyalty, impartiality, and the prudent investor rule in managing trust assets.
- Federal laws, such as the Internal Revenue Service’s fiduciary-related requirements and the Securities and Exchange Commission’s Pay to Play Regulations.

# Ethics Policies

Adoption of ethics and conflict-of-interest policies may help public retirement systems to outline standards of conduct expected of their board of trustees, as plan fiduciaries, to act responsibly, honestly and in the best interest of the fund, and to avoid creating even the appearance of impropriety.



# Model Policy

- Overview
- Code of Ethics
- Standards of Conduct
- Fiduciary Duties
- Conflicts-of-Interest
- Prohibited Transactions and Interests
- Disclosure
- Confidential Information
- Nepotism
- Gifts
- Enforcement
- Training

See: [https://www.prb.texas.gov/txpen/wp-content/uploads/2019/11/prb\\_model\\_ethics\\_policy\\_2015.pdf](https://www.prb.texas.gov/txpen/wp-content/uploads/2019/11/prb_model_ethics_policy_2015.pdf)

# Sample Code of Ethics

Trustees shall abide by the Texas Constitution, Texas statutes, and federal laws applicable to the System and will also abide by the code set forth below:

- A. Act solely in the best interest of the fund and the System members, retirees, and beneficiaries.
- B. Act with integrity, competence, dignity, and in an ethical manner when dealing with participants, beneficiaries, the public, employees, vendors, and fellow members.
- C. Use reasonable care and prudence.
- D. Exercise independent professional judgment.
- E. Remain independent from conflicts-of-interest.
- F. Deal fairly, objectively, and impartially in all matters relating to the System.
- G. Maintain confidentiality of the System, participant, and beneficiary information.
- H. Not have a direct or indirect interest, including financial or other interests, or engage in a personal business activity that could conflict with the proper discharge of the trustee's duties or management of the System investments.

# Sample Standards of Conduct

A trustee must abide by the following statutory standards of conduct and shall not:

1. Accept or solicit any gift, favor, or service that might reasonably tend to influence the trustee in the discharge of official duties or that the trustee knows or should know is being offered with the intent to influence the trustee's official conduct;
2. Accept other employment or engage in a business or professional activity that the trustee might reasonably expect would require or induce the trustee to disclose confidential information acquired by reason of his or her position with the [retirement system];
3. Accept other employment or compensation that could reasonably be expected to impair the trustee's independence of judgment in the performance of his or her official duties for the [retirement system]; or
4. Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the trustee's authority or performed the trustee's duties at the [retirement system] in favor of another.

# Sample Standards of Conduct

A trustee must abide by the following additional standards of conduct.

1. Trustees must be honest in the exercise of their duties and must not take actions which will discredit the [retirement system].
2. Trustees should avoid personal, employment, or business relationships that create conflicts of interest. Should trustees become aware of any conflict of interest, they have an affirmative duty to disclose and to cure the conflict in a manner provided for in this policy.
3. Trustees may not use their relationship with [retirement system] to seek or obtain personal gain. This should not be interpreted to forbid properly authorized expense reimbursements from the [retirement system] to a Trustee for valid expenses incurred in the performance of duties or the use of the [retirement system] as a reference or the communication to others of the fact that a relationship with the public retirement system exists, provided that no misrepresentation is involved.
4. Solicit, accept, or agree to accept any benefit from a person the trustee knows is interested in or is likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the trustee's discretion.

# Fiduciary Duties

A trustee must abide by the following statutory fiduciary responsibility.

1. In the administration of the [retirement system] and in making and supervising investments of assets of the system, a trustee shall discharge his or her duties solely in the interest of the participants and beneficiaries:
  1. For the exclusive purposes of:
    1. providing benefits to participants and their beneficiaries; and
    2. defraying reasonable expenses of administering the system;
  2. with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
  3. by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
  4. in accordance with the documents and instruments governing the system.

# Fiduciary Duties

2. In choosing and contracting for professional investment management services and in continuing the use of an investment manager, a trustee must act prudently and in the interest of the participants and beneficiaries of the [retirement system].
3. The board of trustees when appointing an investment manager for the system shall obtain an acknowledgement in writing stating that the manager has fiduciary responsibility to the fund.
4. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries and, if the trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.
5. In making investments, a trustee shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.
6. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

# Fiduciary Duties

A trustee must abide by the following additional fiduciary duties.

1. In making or participating in decisions, trustees shall give appropriate consideration to those facts and circumstances reasonably available to the trustee, which are relevant to the particular decision, and shall refrain from using facts or circumstances which are not relevant to the decision.
2. Trustees shall ensure that [retirement system] business transactions are based on professional integrity and competence, financial merit and benefit to [retirement system] and on a competitive basis.
3. Review on a regular basis the efficiency and effectiveness of the [retirement system's] success in meeting its goals, including assessing the performance and actions of system service providers, such as investment managers, consultants, and actuaries.
4. Trustees shall use reasonable care to prevent other trustees from committing a breach and shall not participate in concealing such a breach, or knowingly or negligently permit such a breach to occur.

# Conflicts-of-Interest

Statutory conflict-of-interest provisions governing state officials.

1. A trustee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the trustee's duties.
2. Make personal investments that could reasonably be expected to create a substantial conflict between the trustee's private interest and the interest of [retirement system].
3. A trustee may not solicit or accept from the [retirement system], or any third party a commission, fee, bonus, retainer, or rebate that is compensation for the trustee's personal solicitation for the award of a contract for investment services or sale of goods to the [retirement system].



# Conflicts-of-Interest

Statutory conflict-of-interest provisions governing local officials.

1. If a trustee has a substantial interest in a business entity or in real property, the trustee shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if: a. In the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or b. In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.
2. The board of trustees of the [retirement system] shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a trustee has a substantial interest. The affected trustee may not participate in that separate vote. The trustee may vote on a final budget if the trustee has complied with Texas Local Government Code, Chapter 171; and the matter in which the trustee is concerned has been resolved.

# Conflicts-of-Interest

Trustees must abide by the following additional conflict-of-interest guidelines.

1. Trustees should make reasonable efforts to avoid conflicts of interest and appearances of conflicts of interest.
2. Trustees may not under any circumstances accept offers, by reason of their service, relationship or employment with the [retirement system], to trade in any security or other investment on terms more favorable than those available to the general investing public or, in the case of private market investments, a similarly situated investor.
3. A conflict of interest exists for a trustee whenever the trustee has a personal or private commercial or business relationship that could reasonably be expected to diminish the trustee's independence of judgment in the performance of the trustee's responsibilities to the [retirement system].

# Conflicts-of-Interest

## Curing Conflicts-of-Interest

1. All trustees who become aware of a personal conflict of interest have an obligation not only to disclose that conflict, but to cure it. A person normally cures a conflict of interest by promptly eliminating it.
2. A trustee can cure a conflict by prudently withdrawing from action on a particular matter in which a conflict exists provided that:
  1. the person may be and is effectively separated from influencing the action taken;
  2. the action may properly be taken by others; and
  3. the nature of the conflict is not such that the person must regularly and consistently withdraw from decisions that are normally his or her responsibility with respect to the [retirement system].
3. Trustees must disclose any conflicts-of-interest regarding matters which are before the board, absent themselves from any relevant deliberations, and not vote on the matter. Such trustees may be required to disclose additional relevant information with respect to the matter in question.

# Prohibited Transactions and Interests

Trustees must abide by the following prohibited-transaction guidelines.

1. Certain transactions by trustees are prohibited, including:
  1. The purchase, sale, exchange or leasing of property with the [retirement system] if that trustee holds an interest in the property;
  2. The purchase, sale, or exchange of any direct investment with the system if that trustee holds an interest in the investment; and
  3. The lending of money or furnishing of other credit by the [retirement system] if the trustee has a direct or indirect interest in the loan or credit unless such loan or credit is generally available to members of the system, generates a reasonable return, provides adequate security, and is made in accordance with specific provisions of the plan.

# Prohibited Transactions and Interests

2. Trustees shall not under any circumstance accept offers by reason of their position with the [retirement system] to trade in any security or other investment on terms more favorable than those available to the general investing public.
3. Trustees shall not use their position with the [retirement system] to solicit business for their own account or the account of an immediate relative or business associate.
4. Trustees shall not borrow from investment managers, outside service providers, professional consultants or consultants, banks or other financial institutions with which the [retirement system] has a business relationship , unless such entities are normally engaged in such lending in the usual course of their business.
5. No trustee shall serve as a placement agent in connection with any [retirement system] investment. A former trustee may be prohibited from serving as a placement agent in connection with any system investment for a certain period of time. A placement agent is any person or entity hired, engaged, or retained by or acting on behalf of an external investment manager or investment fund or on behalf of another placement agent as a finder, solicitor, consultant, broker or other intermediary to raise investments from or to obtain access to the system, directly or indirectly.
6. Trustees shall not cause the system to engage in any prohibited transactions outlined above with any immediate relative or business associate of the trustee, any other trustee, employee, custodian, vendor or consultant to the system, or any person providing services to the system.

# Prohibited Transactions and Interests

Trustees may buy or sell a publicly traded security of an issuer which is held by the [retirement system], but may not engage in a personal securities transaction when the trustees have actual knowledge that the [retirement system] is trading such securities.

Statutory requirements for former state officials:

1. Trustees may not for two years after ceasing to be in their respective positions at the [retirement system] make any communication to or appearance before, an officer or employee of [retirement system], with the intent to influence [retirement system] action to benefit the person seeking such action. This restriction does not apply to the act of providing information as long as such communication is done without the intent to influence any actions by the [retirement system].
2. A former trustee may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former trustee participated during the period of his/her service or employment, either through personal involvement or because the matter was within the trustee's official responsibility.

# Disclosure

Statutory disclosure requirement governing state officials. A trustee who has a personal or private interest in a measure, proposal, or matter pending before the [retirement system] shall publicly disclose the fact to the system. The trustee may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

Statutory disclosure requirements governing local officials.

1. Trustees shall file a conflicts disclosure statement with respect to a vendor who enters into a contract with the [retirement system] or the system is considering entering into a contract with the vendor; and
  1. the vendor has an employment or other business relationship with the trustee or a family member of the trustee that results in the trustee or family member receiving certain taxable income exceeding \$2,500.
  2. the vendor has given one or more gifts with an aggregate value of greater than \$100 to the trustee or a family member; or
  3. the vendor has a family relationship with the trustee
2. A trustee is not required to file a conflicts disclosure statement in relation to a gift accepted by the trustee or a family member of the trustee if the gift is a political contribution as defined by Title 15, Election Code; or food, accepted as a guest.
3. A trustee is not required to file a conflicts disclosure statement under Subsection (B1) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.01, Government Code.<sup>30</sup>

# Confidential Information

Trustees must not disclose confidential information, except when duly authorized personnel determine such disclosure is required by law.

Trustees may be provided or have access to confidential information, including material, nonpublic information. It is the duty of trustees to maintain the confidentiality of information and not misuse confidential information, including material, nonpublic information, belonging to or relating to the [retirement system]. Trustees who come into possession of material, nonpublic information must not communicate it intentionally or inadvertently to any third party, including but not limited to relatives and friends, unless the person has the need to know for legitimate reasons and such communication is consistent with their responsibilities to the system.



# Nepotism

## Statutory Nepotism provisions:

A trustee must not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The individual is related to the trustee within the third degree by consanguinity or within the second degree by affinity; or
2. The trustee holds the appointment or confirmation authority as a member of the [retirement system] board and the individual is related to another member of that board within the third degree by consanguinity or within the second degree by affinity.
3. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

# Gifts

1. Barring any statutory exception, a trustee is prohibited from soliciting or accepting a gift from any donor because of or through use of the trustee's position with the [retirement system]. Such gifts cannot be accepted by trustees themselves or for their families or business partners.
2. Under no circumstances may trustees accept a gift if the source of the gift is not identified or if the trustee knows or has reason to know that the gift is being offered through an intermediary.
3. If a prohibited gift is received by a trustee, he or she should return the gift to its source. If that is not possible or feasible, the gift should be donated to charity.
4. Statutory exceptions regarding acceptance of gifts are allowed under this policy as long as the trustee is not influenced by the gift.