

MACRS

Fall 2024

Compliance Overview



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What Makes a Person a Fiduciary?

- Actual exercise of discretion and control over plan assets.
 - Investments
 - Purchasing decisions for goods and services
- Failure to be involved or to take discretionary actions does not change status as fiduciary.
 - Cannot delegate away fiduciary status
 - Even if delegate activities, still a fiduciary

What are the Special Duties of Fiduciaries?

- Impartiality - fairness to all members and beneficiaries.
- Avoid Conflicts.
- Comply with retirement laws and regulations and other applicable laws.
- Expend system assets reasonably and properly.
- Collect contributions timely and correctly.
- Hire and monitor competent staff and necessary experts/specialists.

To Whom Do Fiduciaries Owe a Duty?

- Duty owed *solely* to the members and beneficiaries of the system.
 - This means current and future beneficiaries.
 - Not the people who elected them or appointed them.
 - Not the “taxpayers”.
 - Social and political agendas must mesh with the duty to act for the sole interest of the members and beneficiaries.

What Standard Must a Fiduciary Meet?

- **Loyalty:** Must exercise the highest and undivided loyalty to the trust.
- **Prudence:** Must exercise the skill, care, and diligence under the current circumstances that a person acting in a like capacity and familiarity with such matters would use in the conduct of an enterprise of like character and with like aims – “the prudent expert”.

What Does a Fiduciary Have to Do To Meet This Standard?

- Be vigilant and have strong awareness.
- Become and remain knowledgeable.
- Take advantage of education and training opportunities.
- Establish and follow processes and procedures for decision making.

What are Co-Fiduciaries and What Responsibility Does One Have for the Acts of Another?

- Co-fiduciaries are other plan fiduciaries such as board members, staff, and advisors.
- A co-fiduciary who knows of another fiduciary's breach of duty and fails to try to prevent this breach can be held liable for losses.
 - Exception: You have to know of the breach.
 - Exception to the Exception: Should you have reasonably known of the breach?
- Failure to monitor co-fiduciaries may be a breach of fiduciary duty.
- Duty to be informed, involved and to try to prevent a breach.

Board Member Education

- G.L. c. 32, Section 20(7)
 - 18 credits over the course of 3-year term
 - At least 3 credits in each year
 - Education Memo issued quarterly
 - Language in PROSPER will read:

Minimum Credits Met.

OR

Credits Needed. Please refer to the courses offered under Education Registrations.

Board Members Filings

- Term Pledge
- Pledge
 - [Conduct of Public Officials and Employees](#)
 - [Fiduciary Standards for Retirement Systems](#)

Board Members Filings (*Cont'd*)

- Annual Eligibility Certification
 - [Old Form](#)

Board Members Filings (Cont'd)

- Statement of Financial Interest
 - [Retirement Board Member SFI](#)
 - [268B Filer](#)
 - [SFI Online Submission](#)

Section 23B

- Under Chapter 32, Section 23(3) board members, as fiduciaries, must meet the standard of a prudent expert in taking all actions related to procurement and contracting.
- Established an open and competitive procurement process to be followed by boards when soliciting investment, actuarial, legal, or accounting services
- A competitive process which meets that fiduciary duty must be followed in all instances.

Content of Notice of RFP Posting

- Type of service must be on the notice
- Evidence of minimum two week posting in a publication of interest of those who may respond
- Notice in a publication established by the Massachusetts Secretary of State for the advertisement of such procurements
 - Goods and Services Bulletin
- PERAC posts these notices on our website

Request for Proposal (“RFP”) Requirements

- Notice must contain the terms and deadline for RFP bid period
- Evaluation criteria for the basis of the contract award
- All contractual terms and conditions
- Request separate, sealed price and non-price proposals

Opening of Bids

- Not required to be a public meeting but the signature of a witness or witnesses are needed. At least one witness is required to be at the opening of sealed bids.
- A register of all proposals received must be documented.
- The place, time and date proposals are opened must be documented.
- Written notice of any submitted modifications or revisions to filed bids.
- A written affidavit should be used to document the requirements for the opening of bids.

Retirement Board Initial Evaluation

- Each proposal to be rated in written format based solely on the criteria established in RFP.
- Ratings should be based on some rating criteria using the standards:
 - 1) Highly Advantageous
 - 2) Advantageous
 - 3) Not Advantageous
 - 4) Or Not Acceptable

If evaluation is done by consultant, each submission of review with each Retirement Board member should take place and be documented.
- No sub-committees.
- Evaluation must be completed prior to interviewing process
- The Board will determine the most advantageous proposal taking into consideration price and the evaluation criteria set forth in the RFP

Interviews

- Following the initial evaluation, the Retirement Board must determine which applicants should be interviewed by the entire Retirement Board (no sub-committees).
- Number of applicants to be interviewed dependent on two factors:
 - Rankings
 - Number of Applicants
- Time to negotiate price, discuss track record, specific concerns.

Written Determination Of Most Advantageous Proposal

- Based on price and evaluation criteria set forth in the RFP.
- Award is to be made in writing within the time specified in the RFP.
- Award may be conditioned on negotiated items.
- If negotiations result in a decision not to award contract to “Most Advantageous”, the Retirement Board may negotiate with the “next Most Advantageous” vendor and should document the need for such further negotiations.
- Investment service RFP to also include certain mandatory terms and conditions.

Mandatory Terms and Conditions

- Statement that vendor is a fiduciary of such fund.
- Statement that vendor is not to be indemnified by the retirement system.
- Vendor to submit disclosure forms to PERAC and Retirement Board detailing compensation for services.
- Disclosure by vendor to PERAC of any conflict of interest.

Vendor and Retirement Board Member Certification Forms

- Any person submitting a RFP for a service contract must certify in writing, under the penalties of perjury, that the proposals were submitted in “good faith” and without collusion or fraud.
- Same requirement for each Retirement Board member to certify that proposals are submitted in “good faith” and without collusion or fraud.

PERAC's Acknowledgment

- Upon determination of the Most Advantageous Proposal, the retirement board must submit all RFP required documents to PERAC for review.
- PERAC acknowledges the receipt of the RFP documents and then has 10 days to review and either issue an acknowledgement or put the procurement “under review”
- In providing the acknowledgement, PERAC does not pass judgement on the quality of the vendor. Our focus is on the procurement process and its compliance with Section 23B.

Awarded Service Contracts

- No contract is valid without PERAC acknowledgement.
- Each awarded contract must be executed in writing.
- No payment for service rendered prior to execution of the contract.
- No contract shall exceed a term of seven years, including any renewal, extension or option.
- Exceptions to the seven-year term are any limited investment partnership or trust.

Cybersecurity

- Cybersecurity Framework
 - Identify
 - Protect
 - Detect
 - Respond
 - Recover/Post-Incident Activities

Questions?

- My email: John.P.Galvin@mass.gov
- Feel free to reach out with compliance questions, procurement, education, or general questions — happy to help!

