

Pension Fund Professionals and Trustees Need Continuing Education to Properly Fulfill Their Fiduciary Responsibilities

by Bill Blythe and Tony Gelderman

Public retirement systems across the country are collectively responsible for investing many hundreds of billions of dollars in plan assets to secure pension and often health benefits for their plan participants. It should come as no surprise then that the level of professional responsibility plan executives and trustees must exercise to properly manage and invest these funds is extraordinary. Consider this simple legal fact: under a typical defined benefit plan the beneficiary of the pension and/or health benefits who has faithfully contributed to the pension fund has no title or control over the assets from which pension benefits will ultimately be derived. That is why modern pension plans are typically established as trusts under state statute.

These statutory trusts are governed by volunteer trustees who are charged with establishing the overall policy and direction for their systems while administrators, counsel and investment officers are responsible for managing and operating the day-to-day affairs of the system. All of these individuals, and in particular trustees, assume fiduciary responsibility to the beneficiaries of the trust. This fiduciary role entitles the beneficiaries to rely upon the trustee for the proper care of the assets of the trust. In fact, under the law no fiduciary relationship is more complete and nearly as absolute as the relationship between a public pension fund trustee and a pension fund beneficiary. Pension executives and senior staff also owe an extraordinary degree of care to the beneficiaries, though considered subordinate to the care owed by the trustee.

Whether a pension system has ten million or ten billion dollars in trust, the challenges and responsibilities of the fiduciaries to the trust are daunting. Under today's generally accepted pension law, trustees are expected to possess the knowledge and expertise necessary for the position they hold. Gone are the days when the experience a trustee brought to his or her position alone would suffice in the eyes of the law.

While trustees are required to possess an ever increasing degree of skill to cope with the ever more complicated financial markets, the majority of public pension fund trustees are elected by their peers from the same workforce class as that of their peers.

Moreover, pension fund officials often attain their positions of authority by rising through the ranks of municipal and state government. While these officials are normally highly skilled governmental administrators, these executives may not always have educational backgrounds that include business and finance. Thus, a significant need for continuing or supplemental educational programs exists in the public pension community.

The good news is trustees and pension officials are well aware of the need for focused, on-going education. In a recent survey of a broad cross-section of pension officials, those surveyed highlighted the need for the following areas of education in programs designed for the pension fund community:

- Fiduciary responsibilities and liabilities, both for the individual and the entity
- Training for the new trustees, including instruction on fundamental methodology of how investments work, investment policy, goals and objectives, portfolio monitoring and risk assessment
- The role of the Board and of the Administrator
- Ethics; conflicts of interest
- Positioning the plan to deal with the eventual end of the current era of high investment returns
- Funding levels, both under- and over-funding; appropriate asset allocation; portfolio insurance
- Manager selection and reviews/ evaluation process
- Emergency preparedness; fraud prevention; cost reduction; strategic planning
- Regulatory and legal compliance
- Changing benefit plan designs; defined benefit vs. defined contribution; hybrid DB/DC plans; vesting; portability issues; cash balance plans; mergers and acquisitions
- Understanding actuarial assumptions and reports
- Supplemental pension benefits; funding post-retirement health care
- Education of and communication with members

In addition, the passage of the Private Securities Litigation Reform Act of 1995 has

also made it important for pension officials to be educated in the area of prosecuting securities fraud class actions. Specifically, the Private Securities Litigation Reform Act embodies Congress' intention to facilitate the appointment of public pension funds and other institutional investors as lead plaintiffs in shareholder class action lawsuits. Thus, it is important for pension fund officials to be familiar with the obligations of a lead plaintiff in a class action and to understand why serving in such a capacity could be beneficial to their pensioners. Finally, the importance of education in the area of securities fraud litigation is even more crucial in today's markets given what appears to be the ever-increasing amount of accounting fraud taking place within public corporations.

While the survey results underscore the need for high quality educational opportunities for trustees and pension fund officers, the challenge today is finding educational programs that truly have a core educational focus. Unfortunately, some programs are primarily focused on providing marketing opportunities for vendors. While interaction between pension fund officials and vendors is a necessary and appropriate component to the operation of pension funds, some commercial seminars have devolved into a series of marginally relevant promotional presentations from money managers, consultants, actuaries and attorneys. Thus, care should be exercised in identifying seminars and symposiums that are recognized for providing relevant educational content along the lines of the survey results outlined above.

Even before spending time and resources attending outside conferences, symposiums or executive education programs, there is a great deal of basic and highly pertinent education material and instruction available directly from any well-organized public pension fund. For instance, all new trustees and pension fund staff should upon appointment or election read all relevant statutes, ordinances and internal policy/mission statements concerning the pension plan. This should include public records laws, state ethics laws and state investment laws. Next, the past three annual reports and/or audit reports should be read as well as the past two actuarial reports. Once this basic reading is completed, existing plan resources should be consistently leveraged for educational purposes. Plans should also consider consulting the various state pension associations such as TEXPERS in Texas and LAPERS in Louisiana. These organizations can direct you to educational programs and often conduct their own close-to-home seminars. As readers can see by the article, below, Pension Fund Professionals Create a National Organization and Education Certification Program, the National Society of Pension

Professionals was founded by the Scholarship, Research & Education Foundation to provide education instruction to pension fund professionals.

Finally, public pension boards should adopt specific guidelines that recognize the need for outside education. The guidelines should encourage the attendance at high quality programs and the board should provide specific budget authority for the costs associated with the programs. The best run pension systems know that the cost of educating staff and trustees is far outweighed by the benefits of having knowledgeable and skilled professionals guiding the pension plan.

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