

CalSavers Retirement Savings Board

Fiduciary and Governance Training

August 21, 2024

Today's Discussion

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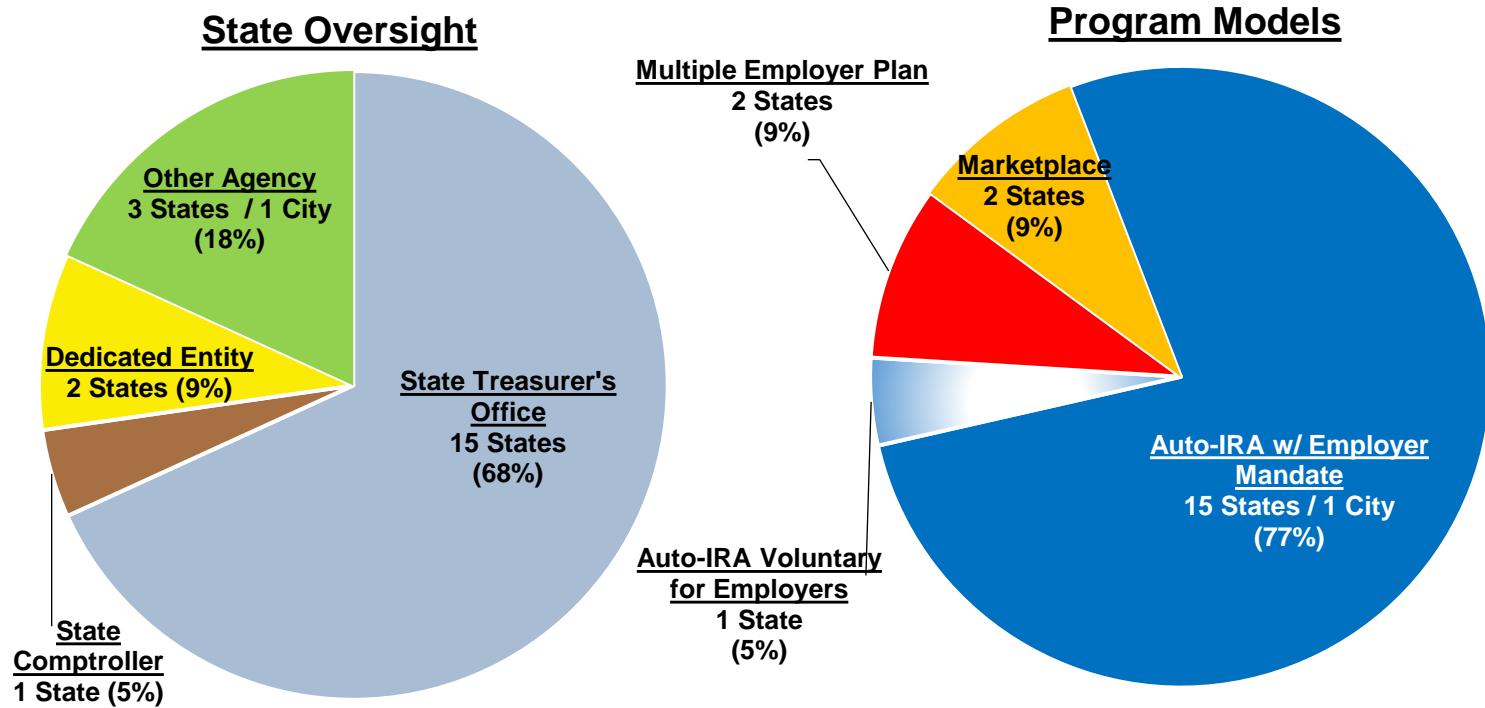
Section 1.

Oversight and Securities Law Fundamentals

Administrators of State-run Retirement Programs

- **State Legislature authorizes a municipal program to facilitate retirement savings:**
 - Determines the nature of the “program” (e.g., Auto-IRA, MEP, Marketplace or other)
 - Designates or creates the oversight entity
 - Sets the oversight duties and obligations
- **Legislation also sets the terms to implement each Program:**
 - Essentially creates a **municipal trust** by statute, rule or resolution
 - By language or by implication, the administrator **serves as a fiduciary to the participants**
 - **Administrator is** advised by several external experts, *which are fiduciaries*
 - State entity is an issuer of municipal securities
- **Governance and oversight vary by the organization responsible for maintaining each Program**

State Oversight and Program Models



Information as of August 5, 2024

State Treasurer's Offices include California, Colorado, Delaware, Illinois, Maine, Massachusetts, Missouri, Nevada, New Jersey, New Mexico, New York State, Oregon, Rhode Island, Vermont and Washington (Auto-IRA eventually). In every case BUT Vermont, Treasurer chairs or is a member of a Board; Vermont Treasurer is a Sole Trustee

State Comptroller includes Connecticut, which is a Sole Trustee

Other Agencies include Hawaii, Virginia, Washington State (Marketplace today) and City of Seattle

Dedicated Entity includes Maryland and Minnesota

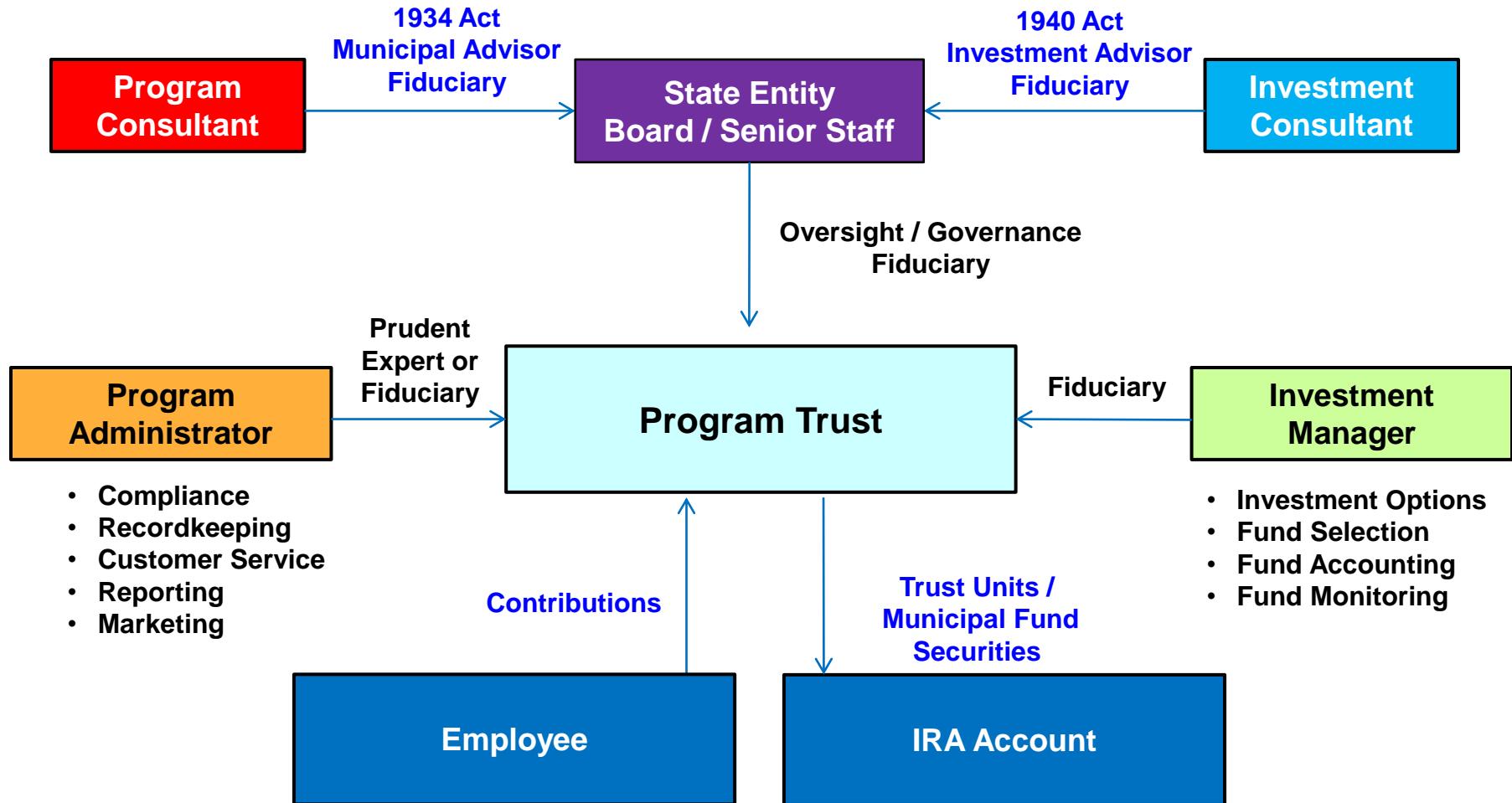
Oversight reflects 21 public entities, assuming the New York State Program includes New York City Program

Program Models reflect 22 Programs, including Marketplace and Voluntary Auto-IRA authorized in New Mexico (and assuming New York City is in New York State Program)

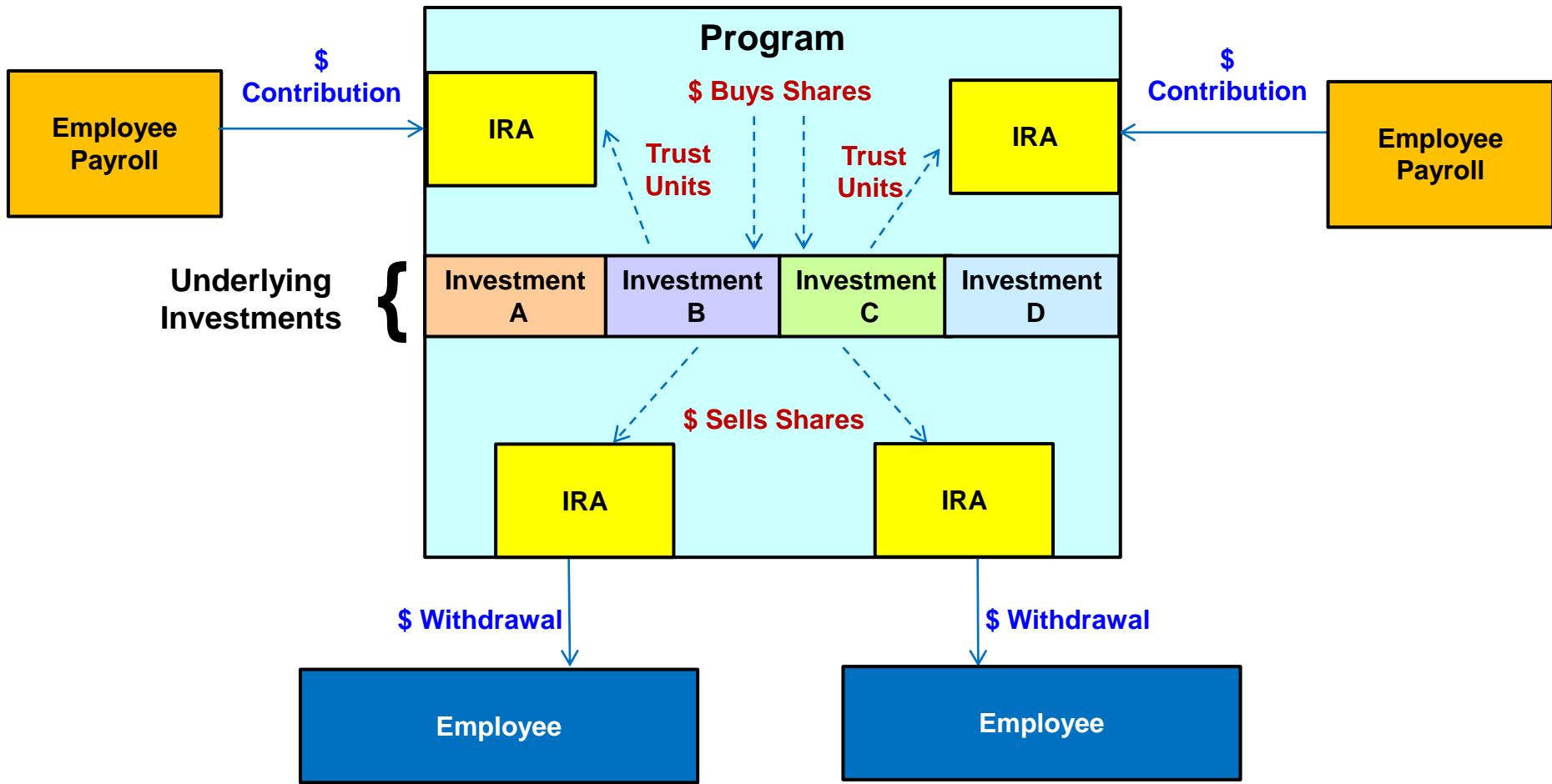
Securities in State-run Investment Programs

- **Municipal securities fall into two categories:**
 - Municipal bonds that raise money to build public projects
 - Municipal fund securities that facilitate savings for (i) qualified education expenses, (ii) qualified disability expenses, and (iii) retirement
- **Municipal fund securities invest in underlying mutual funds or other “pooled investments,” much like mutual funds but:**
 - They are exempt from registration under the Investment Company Act of 1940 (the “1940 Act”), which regulates mutual funds
 - Exemption is codified in Section 2(b) of the 1940 Act and Rule D-12 of the Municipal Securities Rulemaking Board (defining municipal fund securities)
- **Account contributions are deposited into a municipal trust that represents the Program:**
 - Trust invests in underlying investments approved by the State entity
 - Trust owns the underlying investments
- **Account owners select investment options that reflect the underlying investments:**
 - Investments are evidenced by “units” of the trust
 - Account owner does not directly own shares of the underlying investments
- **Fees are charged against each account to pay the administrative costs of the Program**

Typical Auto-IRA Program Structure



Typical Auto-IRA Flow-of-Funds



Statutory Foundation and Exemptions

- **The CalSavers Act establishes the Board as the creator of a municipal trust:**
 - CalSavers participants open IRA accounts
 - Contributions to the IRA accounts are invested in units of the trust, which are “securities”
- **Securities Act of 1933:**
 - Municipal securities are exempt from registration
 - *Anti-fraud provisions apply to issuers*
- **Securities Exchange Act of 1934:**
 - Municipal securities are exempt from most reporting requirements
 - Board members, officers and employees may participate in the sale of Trust interests without registering as broker-dealers
 - *Municipal securities are subject to anti-fraud provisions*
- **Trust Indenture Act of 1939:**
 - Provisions do not apply to municipal securities
- **Investment Company Act of 1940 and Investment Advisers Act of 1940:**
 - Provisions do not apply to instrumentalities of a State or agents “acting in the course of official duty”
- **Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010:**
 - Advisers to municipal entities are subject to varying degrees of oversight by FINRA, the MSRB and applicable Bank Regulators

Importance of the 1933 and 1934 Acts Together

- Municipal trusts do not register securities or sales of securities
- BUT anti-fraud provisions of both Acts **always apply**:
 - Section 17(a) – Fraudulent Interstate Transactions (1933 Act)
 - Section 10(b) – Manipulative and Deceptive Devices (1934 Act)
 - Rule 10b-5 – Employment of Manipulative and Deceptive Devices (1934 Act)
- Content is always subject to anti-fraud prohibitions of securities laws:
 - “It is unlawful to make *any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading*”
 - *Interpretation*: You cannot misstate a material fact and you can't fail to state a material fact IF that material fact would make the statement not misleading ... In other words, if that material fact would have caused the investor not to be misled...or maybe not to have invested
- Single most important concept in the federal securities laws relating to disclosure and applies to all municipal disclosure materials

State-run Retirement Program Oversight and Governance

- **Regardless of administration, board members are fiduciaries**
- **Other parties also may be fiduciaries**
- **Breaches of fiduciary duty have serious consequences**
- **Understanding the duties and implementing thorough decision-making processes mitigate the risk of a fiduciary breach**

Section 2.

Fiduciary Duties of Administrators

Who is a Fiduciary?

- **Board members** are the highest-level fiduciaries with the broadest responsibility
- **Others** may be fiduciaries, too, by virtue of the work they perform, by statute or by contract:
 - Executive Directors
 - Investment managers, investment consultants and municipal advisors
 - *Not* auditors or attorneys
 - *Not* participating employers in California
- Determined by **work performed**:
 - They have discretion over program administration or management of the assets
 - Not merely the performance of ministerial tasks

Sources of Fiduciary Duties

- The CalSavers Retirement Savings Trust Act (California Code Sections §§ 100000 — 100050) authorizing and establishing CalSavers are primary sources
- Fiduciary law is based on common law of trusts developed over time by case law
- Fiduciaries are held to extremely high standards of conduct
- Sources for and guidance on fiduciary duties:

State Law

CalSavers Code
Sections
§§ 100000 — 100050

CalSavers
Regulations

Common Law

Restatement of Trusts

Uniform Management
of Public Employees
Retirement Systems
Act

Federal Law

Internal Revenue Code

Securities Laws

ERISA, UPIA

Program Documents

Program Disclosure
Booklet

IRA Documents

Common Law Underpinnings

- **Duty of Care:**
 - Act in good faith, in the best interest of the entity
 - Standard: ordinarily prudent person acting under similar circumstances
 - Seek professional assistance where necessary
- **Duty of Loyalty:**
 - Put entity's interests ahead of personal interests
 - Act solely for the benefit of participants
- **Duty of Obedience:**
 - Follow governing documents and the entity's mission
 - Comply with the law

The Board's Fiduciary Duties

- The most important duties for CalSavers fiduciaries are those of loyalty, prudence and plan document adherence – CalSavers Code section 100002(d)
- **Duty of Loyalty:**
 - “Exclusive benefit rule”
 - Unwavering commitment to stay focused on the interests of the participants in the Program
- **Duty of Prudence:**
 - Requires expertise and more than a good faith attempt to try to do the right thing
 - *“The Board... shall discharge their duties as fiduciaries...by investing with the care, skill, prudence and diligence...that a prudent person would use...”*
 - Test of prudence is CONDUCT, not RESULTS
- **Duty of Obedience:**
 - Follow the California Code and CalSavers Regulations

Duty of Loyalty

- **Also known as the “Exclusive Benefit Rule”**
 - “The Board...shall discharge their duties as fiduciaries with respect to the trust solely in the interest of the program participants...” *CalSavers Code section §100002 (d)*
- **Interpretation of loyalty**
 - When creating policies or making other decisions for the Trust, the fiduciaries can “only wear one hat ”
 - Courts have held that a trustee may not wear a second hat as a representative of an entity that may have appointed him or her to the fiduciary position
 - Trustees are not to balance interests of outside parties
 - Trustees are not to act in their own self-interest

Duty of Loyalty, cont'd

- **Each Board member has a fiduciary duty that is owed to all participants in the Program**
- **There will be those who expect you to represent them and be their advocates when you serve on the Board, but**
 - No fiduciary duty is owed to whoever appointed you
 - No fiduciary duty is owed to the local business community
 - No fiduciary duty is owed to taxpayers of the state
 - No fiduciary duty is owed to employers who facilitate employee contributions to CalSavers
 - No fiduciary duty is owed to the Legislature or Executive Branch
- **Regardless of how one comes to serve on the Board, the fiduciary duty is the same for each member**

Duty of Prudence

- **Duty of prudence requires more than a good faith attempt to do the right thing:**
 - Understand facts and what is being voted on
 - Investigate options, review information on what others are doing
 - Seek expert advice
 - Delegation mitigates risk as long as delegation process was prudent
- **A good process is more important than a good outcome:**
 - Best defense to potential liability
 - Board members are judged by the “prudence” of their process
 - Written documentation is critical
- **Delegation still requires an ongoing duty to monitor**
- **Law requires prudence, not perfection!**

Duty of Obedience

- Board members have a duty to follow the written terms of the Program without deviating from any requirements
- For all fiduciaries, the duty is often stated as the **duty to follow “Program Documents”**
- For the Board, the enabling statute is the primary “Document” (i.e., CA Code Title 21, §§ 100000 — 100050: The CalSavers Retirement Savings Trust Act)
 - Other federal and State laws and regulations may also be applicable
- “Program Documents” also include other documents that the Board has formally adopted:
 - Program Disclosure Booklet and related IRA documents
 - Rules, Regulations, Policies and Procedures (e.g., the Investment Policy Statement), etc.
 - Open meetings and open records laws are usually incorporated by reference and thereby become part of the Program Documents

Additional Fiduciary Duties

- **Duty to Diversify:**
 - Flows from prudence
 - Investments should be diversified unless not prudent
- **Duty to Refrain from Prohibited Transactions:**
 - Avoid self-dealing and all conflicts of interest
- **Duty to Delegate:**
 - Prudence allows for delegation but not abdication
 - Boards cannot delegate appropriate monitoring

Federal Guidance on Fiduciaries

- **Employee Retirement Income Security Act of 1974 (“ERISA”)**
 - Establishes prudent expert standard
- **Investment Company Act of 1940 (“1940 Act”)**
 - Establishes importance of developing Investment Policy Statement
- **Uniform Management of Public Employees Retirement Systems Act (“UMPERSA”)**
 - Establishes rules and guidance for public sector management of public retirement funds
- **Uniform Prudent Investor Act (“UPIA”)**
 - Establishes standards of prudence for investment portfolios

ERISA and Public Funds

- **Generally, ERISA does not apply to governmental plans, i.e. public pension funds**
- **State laws and regulations govern public funds**
- **State fiduciary standards are usually modeled after ERISA**
 - Since ERISA reflects relevant trust law, its “spirit” is usually followed by the courts if there is an absence of stated or written standards
- **Bottom line – guidance provided by ERISA is a good foundation for trustees of public funds**

ERISA on Fiduciaries

- Status is based on the functions performed, not just a person's title, held to a "prudent expert standard":
 - *"With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims..."**
- Includes the trustee, investment advisers and individuals exercising discretion in administration
- Excludes custodians, attorneys, accountants and actuaries acting in their professional capacity

* ERISA 404(a)(1)(B) (*Emphasis added*)

1940 Act on Governance Duties

- Directors of investment companies and public companies generally share common responsibilities
- But for the municipal nature of the trust, CalSavers would be an investment company
- By analogy, the Board's duties are similar to those of investment company directors
- Examples of duties specific to investment company directors:
 - Approve time of Net Asset Value calculations and procedures for valuation of securities
 - Approve trading practices and procedures
 - Approve investment objectives and policies
 - Monitor credit quality and valuation of funds

Fiduciary Liability

- **Laws governing fiduciaries may impose liability for breach of duty:**
 - Sovereign immunity may apply
 - The CalSavers statute empowers the Board to “...[P]rocure insurance indemnifying each member from personal loss or liability resulting from a member’s action or inaction...” CalSavers Code section § 100010
- **Delegating responsibility may shift the liability BUT:**
 - Oversight is still required
 - Delegation must continue to be prudent
- **Consequences of breach of duty:**
 - Personal liability for losses and restoration of profits that have been made through use of Program assets
 - Other equitable or remedial relief as a court may deem appropriate
 - Liability usually not relieved in bankruptcy
- **Attorney-client privilege may run to the Program rather than to an individual fiduciary**

Co-Fiduciary Liability

- “You are your brother’s and sister’s keeper”
- Liability can result if a fiduciary enables, knowingly participates in, or knowingly undertakes to conceal a breach by another fiduciary
- A fiduciary has a duty to take reasonable steps to prevent or halt a co-fiduciary’s breach
- Where applicable, resignation from the Board is usually not sufficient

Mitigating Fiduciary Liability

- **Understand Your Duty:**
 - Initial orientation and continuing education demonstrate key steps toward fiduciary responsibility
 - Know what being a fiduciary means and be aware of where the duties exist
- **Have Set Processes and Follow Them:**
 - Detailed and disciplined decision-making process with clear documentation of actions and rationale
- **Engage Experts Where Needed:**
 - Investment consultants, legal counsel and others, as appropriate
 - Prudent delegation and diligent oversight – know what authority has been delegated and what has been retained
- **Diligently Monitor Key Functions:**
 - Clearly define roles and responsibilities, benchmarks and accountability
 - Commit to continual oversight

Section 3.

Guidance on Good Governance

Defining Governance

- **What is Governance?**
 - The structure, manner, and process by which a Board exercises authority or control
 - Begins with understanding of fiduciary duty
- **Essential Elements of good Governance:**
 - Accountability
 - Transparency
 - Adherence to laws, rules and policies
 - Inclusiveness – engaging in participatory processes
 - Clear distinction between roles of the Board and the staff
- **Governance typically does not include involvement in:**
 - Day-to-day operations
 - Tactical decisions
 - Staff management
 - Details of policy implementation

Exhibiting Good Governance

- **Procurement Processes**
- **Investment Policy Statements**
- **Performance Benchmarks (Administrative and Marketing)**
- **On-going Reviews and Reporting**

Processes for Governance

- **Procurement Processes:**
 - Delineate appropriate roles for Board members and staff in –
 - Development and approval of RFPs
 - Evaluation of responses
 - Final approval of contracts
 - Staff should ensure open and fair solicitations
 - Recommendations should reflect weighted criteria that bidders understand
 - If sole source procurement, basis for closed process should be clear
- **Investment Policy Statements and Monitoring Criteria:**
 - Establish roles, responsibilities and process
 - Also defines selection criteria and monitoring procedures
 - Ramifications for underperformance should be clear
- **Establishment of Performance Benchmarks:**
 - Administration and operations
 - Marketing costs and results
 - Investment policies and performance targets

On-going Reviews and Reporting

- **Monthly Reviews:**
 - Investment Manager reports investment results to key staff and independent Investment Consultant
- **Quarterly Reports:**
 - Investment Manager and independent Investment Consultant report on investment performance and capital markets generally
 - Program Manager reports on agreed upon benchmarks, including –
 - Operational performance (call center metrics, security, completion of enhancements/initiatives, etc.)
 - Marketing efforts (description of activities and analysis of how successful efforts were, etc.)
- **Annual and Other Periodic Reviews:**
 - Assess administrative budget vs actual performance
 - Review and approve next FY operating budget
 - Review past and next FY marketing plans (including matters such as account growth goals, as applicable)
 - Affirm or amend Investment Policy Statement and investment line-up
 - Review and accept audited financial statements
 - Assess Program Administrator operations (including, if applicable, SOC Reports)

Governance Best Practices

- Prepare for and attend all meetings
- Act in good faith and in the best interest of all participants
- Know and abide by applicable laws, regulations and Program policies
- Where appropriate, delegate to experts but maintain vigilant oversight
- Establish and document prudent processes; review regularly to ensure consistency and relevancy

Summary of Your Responsibilities

- **Essential Duties and Standards:**
 - Act solely in the interest of CalSavers participants
 - Understand the subject matter (seek expert advice if necessary)
 - Carry out duties prudently
 - Delegate but do not abdicate fiduciary duties
 - Follow CalSavers Program documents
- **Governance Oversight Actions:**
 - Establish and follow policies and procedures; update these as necessary
 - Prepare for and attend Board meetings
 - Review and analyze operating and investment reports regularly
 - Assess Program performance, including performance of administrative partners, marketing efforts and overall Program goals

Appendix 1

Statutory and Regulatory Sources

Employee Retirement Income Security Act of 1974 (“ERISA”)

- Federal law that establishes minimum standards for pension plans in private industry regarding participation, vesting, benefit accrual and funding
- ERISA plans must provide participants with information about plan features and funding, and furnish information regularly and free of charge
- Provides extensive rules on the federal income tax effects of transactions associated with employee benefit plans
- ERISA requires accountability of plan fiduciaries, and, in addition to insisting participants are informed, it also gives participants the right to sue for benefits and breaches of fiduciary duty
- [29 U.S. Code Chapter 18 - EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

Uniform Management of Public Employee Retirement Systems Act (“UMPERSA”)

- Provides rules that permit public employee retirement systems to invest in the most productive and secure manner by declaring that all retirement system assets are held in trust, except for certain insurance-based assets
- Assures that public employees are guaranteed the highest standard of conduct in the management and investment of retirement assets that the law can establish
- Empowers Trustees to establish an administrative budget and to employ the services necessary to administer the trust
 - May delegate functions that "a prudent trustee or administrator acting in like capacity and familiar with those matters could properly delegate under the circumstances."
- Follows the Uniform Prudent Investor Act
- [Management of Public Employee Retirement Systems Act - Uniform Law Commission \(uniformlaws.org\)](#)

Uniform Prudent Investor Act (“UPIA”)

- Reflects changes in investment practice since the late 1960s, specifically with regard to modern portfolio theory
- Establishes that standard of prudence applies to any investment in the context of the total portfolio, rather than to individual investments
- Allows trustees to delegate investment management functions, subject to appropriate safeguards (such delegation was expressly forbidden by the former trust law)
- Fosters a greater degree of diversification in investment portfolios and allows for derivatives, commodities and futures:
 - Despite these investments individually having a relatively higher degree of risk, they could potentially reduce overall portfolio risk and boost returns when considered in a total portfolio context.
- [Uniform Prudent Investor Act | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/wex/uniform-prudent-investor-act)

Securities Act of 1933 (the “1933 Act”)

- Exempts issuers of municipal securities from registration (Section 3(a)(2))
- “Truth in securities” has two basic objectives:
 - Requires that investors receive financial and other significant information about securities being offered
 - Prohibits deceit and misrepresentation in the sale of securities
- [15 U.S. Code Chapter 2A - SECURITIES AND TRUST INDENTURES | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/uscode/text/15/77a)

Securities Exchange Act of 1934 (the “1934 Act”)

- **Created the SEC and empowers it to register, regulate and oversee:**
 - Brokerage firms, clearing agencies and transfer agents
 - Self regulatory organizations (“SROs”) including Financial Industry Regulatory Authority (“FINRA”) and the Municipal Securities Rulemaking Board (“MSRB”)
- **Establishes periodic reporting requirements for registered entities or transactions**
 - Municipal securities generally are exempt from reporting requirements (Section 3(a)(29))
 - **BUT** some initial and ongoing disclosures apply (Rule 15c2-12)
- **Identifies and prohibits deceitful conduct**
- **Grants the SEC disciplinary powers over regulated entities and the persons associated with them**
 - SROs are essential to the entire process (municipal broker-dealers may not contravene any rules of the MSRB (Section 15B))
- [15 U.S. Code Chapter 2B - SECURITIES EXCHANGES | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

Trust Indenture Act of 1939

- Applies to debt securities – including bonds and interests in publicly offered trusts
- Requires a trustee to protect and enforce the rights of bondholders and rights must be included in a trust indenture
- Municipal trusts are exempt based upon 1933 Act exemption (Section 304(a)(4)(A))
- [15 U.S. Code Subchapter III - TRUST INDENTURES | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

Investment Advisers Act of 1940 (the “Advisers Act”)

- Firms that provide advice about securities investments must conform to regulations designed to protect investors:
 - Advisers with more than \$100 million in client assets must file Form ADV with SEC
 - If assets > \$25 million but < \$100 million, adviser registers with state
- Does not apply to states or subdivisions or to officers or employees “acting as such in the course of his official duty” (Section 202(b))
- [15 U.S. Code Subchapter II - INVESTMENT ADVISERS | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/uscode/text/15/2051)

Investment Company Act of 1940 (the “1940 Act”)

- Regulates companies that engage primarily in investing, reinvesting and trading in securities
- Focus of the Act is to provide the public with information about a fund and its objectives, and about the investment company structure and operations
- Explicitly not applicable to government entities or officers or employees “acting as such in the course of his official duty” (Section 2(b))
- [15 U.S. Code Subchapter I - INVESTMENT COMPANIES | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/uscode/text/15/801)

Investment Company Definition and Exemption

- If the Section 2(b) exemption for political subdivisions and instrumentalities of a State were not available, in the absence of SEC No-Action relief, it is highly likely that State-run Investment Programs would be deemed to fall within the Section 3(a)(1)(A) definition of Investment Company:

“When used in this title, “investment company” means any issuer which — (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities”

- Securities are defined as all securities other than government securities
- The Section 2(b) exemption is critical because the *Act could otherwise subject any State-run Investment Program to the disclosure and corporate governance provisions applicable to mutual funds*
- By contrast, the SEC is prohibited from regulating the content of disclosure of municipal issuers

Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)

- Amends Section 15B (1934 Act) to require registration of municipal advisors and imposes fiduciary duty on them
- “Municipal advisor” is any person that provides advice to or on behalf of a municipal entity regarding municipal securities, including advice with respect to the structure, timing, terms and similar matters concerning such issues
- Excludes registered Investment Advisers, attorneys offering “legal advice”, engineers and accountants
- Act also creates the Consumer Financial Protection Bureau
- [12 U.S. Code Chapter 53 – Wall Street Reform and Consumer Protection | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

Municipal Securities Rulemaking Board (“MSRB”)

- **Established by Congress in 1975:**
 - Mission is to protect investors, municipal entities and obligated persons, and to promote a fair and efficient municipal market
 - Operates Electronic Municipal Market Access (“EMMA”) to promote transparency and provide widespread access to information
- **MSRB rules are intended to:**
 - Prevent fraudulent or manipulative practices
 - Promote just and equitable principles of trade
- **Has no enforcement powers – its rules are enforced by:**
 - FINRA for securities firms
 - Office of the Comptroller of the Currency, the Federal Reserve, or the FDIC for banks
 - SEC for municipal advisors, securities firms and bank dealers
- **Bottom line: jurisdiction is over securities firms, municipal dealers and municipal advisors, NOT municipal issuers**
- **MSRB | MSRB**

Appendix 2

Checklist – Common and Best Practices

Checklist – Common and Best Practices

- Prepare for and attend all meetings
- Act in good faith and in the best interest of participants in all decision making
- Be familiar with and abide by all applicable laws, regulations and Program documents
- Delegate, where appropriate, to experts pursuant to a prudent process
- Establish and document prudent processes
- Periodically review policies and procedures to ensure consistency and relevancy
- Differentiate Board policies from management policies
- Take actions consistent with the mission and policies of the Program

Checklist – Common and Best Practices, cont'd

- **Perform continual oversight – applies to Board and staff**
- **Institute reporting tools and procedures that facilitate oversight**
 - Internal Sources examples –
 - Executive Director Reports
 - Internal Audit
 - Risk Management Dashboard
 - External Sources examples –
 - Program Administrator
 - Investment Manager(s)
 - Investment and Program Consultants
 - Independent Auditors
- **Clearly define and enumerate roles and responsibilities between the Board and staff**
- **Regular review of efficiency and effectiveness of the Program's goals**

Checklist – Common and Best Practices, cont'd

- **Assess performance and actions of staff and service providers**
- **Benchmark operations to similar programs and best practices**
- **Obtain independent expert advice**
- **Require transparency and accountability**
- **Communicate with all stakeholders in a timely, accurate and transparent manner**
- **Maintain confidentiality of participant information**
- **Offer orientation and continuing education on relevant topics**

AKF Legal Disclosure

Pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-42, on Duties of Non-Solicitor Municipal Advisors, Municipal Advisors are required to make certain written disclosures to clients and potential clients which include, among other things, Conflicts of Interest and Legal or Disciplinary events of AKF and its associated persons.

Conflicts of Interest

Compensation

AKF represents that in connection with the issuance of municipal fund securities, AKF receives compensation from its client issuers for services rendered on an hourly, retainer or fixed fee basis. Consistent with the requirements of MSRB Rule G-42, AKF hereby discloses that such forms of compensation may present a potential conflict of interest regarding AKF's ability to provide unbiased advice regarding a municipal fund security transaction. This potential conflict of interest will not impair AKF's ability to render unbiased and competent advice or to fulfill its fiduciary duty.

Other Municipal Advisor Relationships

AKF serves a wide variety of clients that may from time to time have interests that could have a direct or indirect impact on the interests of other AKF clients. AKF fulfills its regulatory duty and mitigates such conflicts by dealing honestly and with the utmost good faith with all clients. If AKF becomes aware of any potential or actual conflicts of interest after this disclosure, AKF will disclose the detailed information in writing to the client or obligated person in a timely manner.

Legal or Disciplinary Events

AKF does not have any legal events or disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. You may electronically access AKF's most recent Form MA and each most recent Form MA-I filed with the Securities and Exchange Commission at the following website: www.sec.gov/edgar/searchedgar/companysearch.html. If any material legal or regulatory action is brought against AKF, AKF will provide complete and detailed disclosure to its clients, thereby allowing each client to evaluate AKF, its management and personnel.