County of Fresno

457 DC Plan

DCMC Meeting – May 2012

HEINTZBERGER | PAYNE
Client-Driven Investment Services

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Section 1-Executive Summary

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Executive Summary

HEINTZBERGER | PAYNE
Client-Driven Investment Services

Legislative Updates

1. **Legislative Updates**:
   - 2012 COLA Limits
     - New COLA limit of $17,000
     - First increase in 3 years ($500 increase)

   - Fee disclosures
     - 408(b)(2) notices are due July 2012
     - 404(a)(5) notices are due August 2012

   - Existing regulation (2a-7) for Money Markets
     - **Quality**: Limit tier 2 securities to 3% of assets
     - **Diversification**: Limit exposures to single issuer to no more than 5% of total fund assets
     - **Disclosures**: Report portfolio holdings monthly
     - **Liquidity**: Minimum of 10% daily liquid assets for taxable money markets and 30% weekly liquid assets for all money markets
     - **Maturity**: Maximum of 397 days maturity for individual securities, with max of 120 days weighted average life and 60 day weighted average maturity

   - Proposed SEC Rules for Money Market Funds
     - **Fluctuating NAV**
     - **Holdback Provisions**: 3-5%/ 30 days
     - **Capital Buffers**: tied to holdback provisions. Could be borne by sponsor, shareholder, or both.

Action Items

2. **2012 Initiative Timeline**
   - Discuss attached Timeline
3. **RidgeWorth**:
   - On May 9, Reuters announced that RidgeWorth's management team is holding discussions with its parent company, SunTrust Banks, Inc., along with several private equity groups to agree on terms to a management-led purchase. Representatives from RidgeWorth were not able to confirm or deny the occurrence of these discussions, but have mentioned that for several years RidgeWorth's management has maintained the goal of purchasing the company from its parent. New Jersey-based Seix Advisors continues to manage the Total Return Bond fund for Ridgeworth, and we do not anticipate that a management buy-out of the fund's distributor, RidgeWorth, will negatively impact the fund's performance or de-incentivize the fund's managers from continuing to effectively manage the bond fund.

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Section 2-Timeline

Timeline #9

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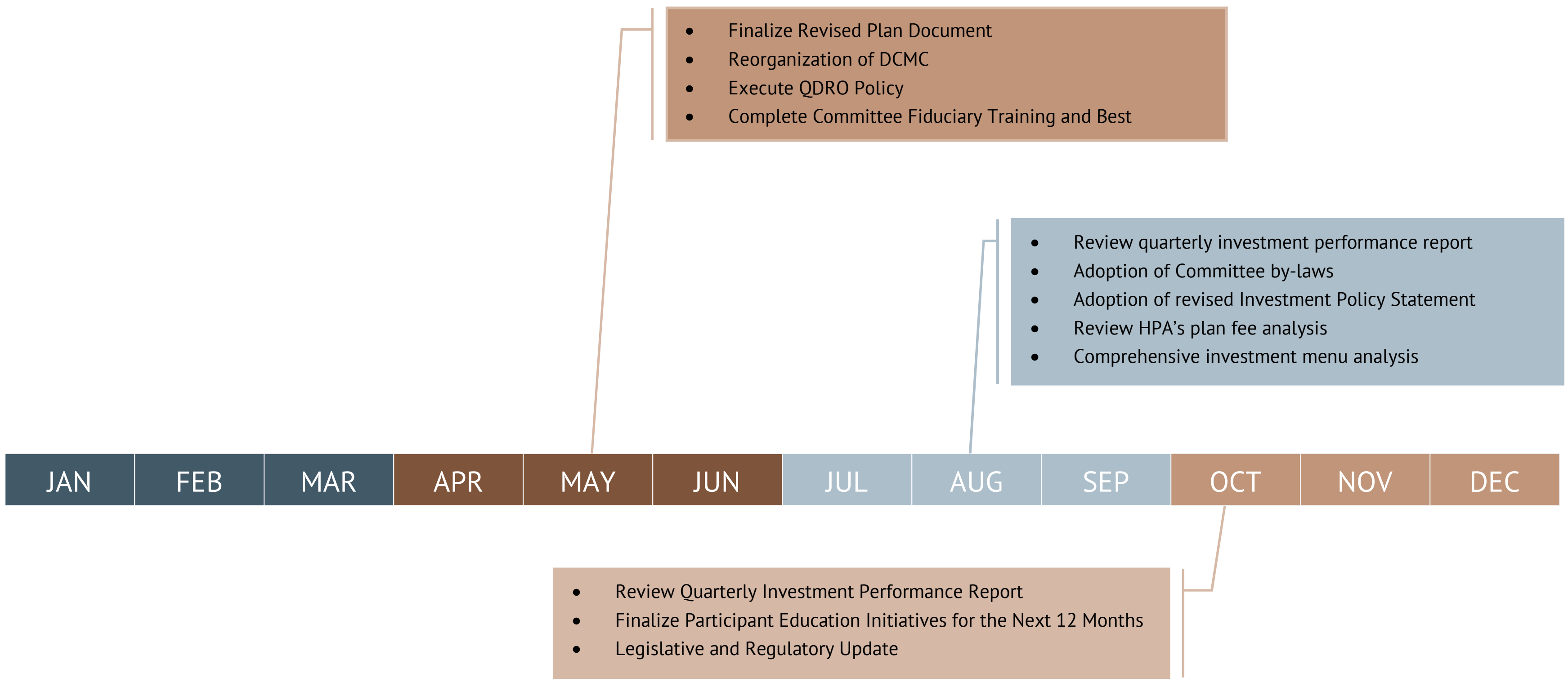
County of Fresno 457 Deferred Compensation

Action Item Timeline

2012 Plan Year



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Section 3-Market Overview

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Quarterly Market Commentary and Outlook, March 31, 2012

"Kites rise highest against the wind – not with it."
Winston Churchill

A Record First Quarter

Investors were rewarded with the best first quarter performance on the S&P 500 in 14 years as the index soared 12.59%. Small stocks rose too, as the S&P 600 was up 11.99%, and foreign stocks in developed countries underperformed their US counterparts with a return of 10.98% for the quarter. Many investors welcomed the rally that accompanied improving news in Europe, positive surprises to economic data in the US, and an overall sense of old-fashioned well-being. Over the past six months ended March 31, the S&P 500 has recovered from its September month-end lows and rebounded 25.9%.

Relative to the past several quarters, one might even consider the mood a bit euphoric. According to a recent survey by James Investment Research, 83% of professional investors now describe themselves as bullish. This may not be saying much. For several years, the Wall Street Journal ran a column where professional investors compared their skill against the dart-throwing abilities of blindfolded monkeys. Despite the monkeys losing the years-long contest, they still managed to beat the professionals about 39% of the time at picking individual stocks. Although far from a scientific study, we do know it can sometimes (although not always) make sense to invest against general consensus, and among professionals at least, the consensus is beginning to seem bullish. But if current trends continue, the Federal Reserve is perhaps best viewed as an 800-pound gorilla that, with tornado-like strength, can temporarily suspend the market's correlation with underlying economic fundamentals and, if recent trends continue, potentially create an artificial (but very strong) rally as it has done in the past.

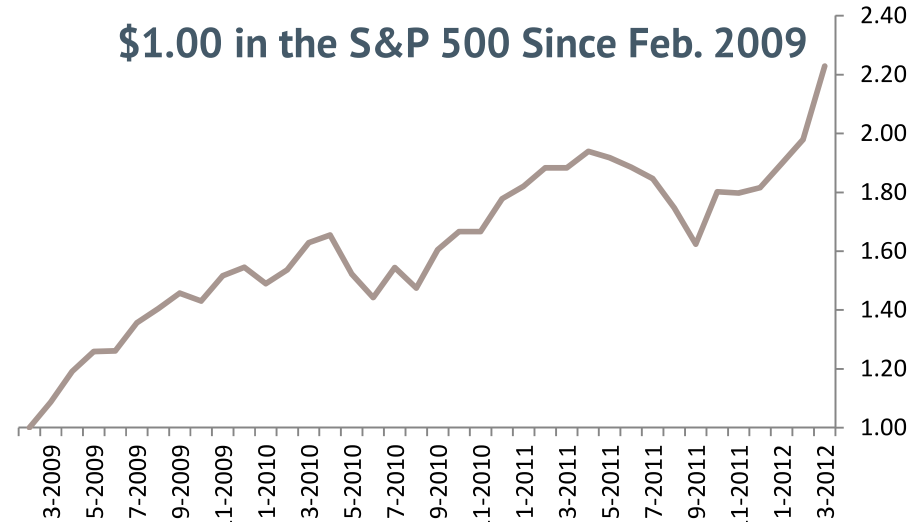
Support Measures and Market Rallies

After the financial crisis of 2008, the S&P 500 reached its month-end low in February 2009. It was the height of despair, and even though there is nobody who rings a bell at the market's bottom, it would have been the best time to buy stocks since the 2008 crisis. Buying at this time was no doubt difficult for those who did, but those individuals were rewarded handsomely, as the cumulative return has been 122% over the past 37 months. Nonetheless, there were several headwinds that existed at that time, many of which continue to exist today.

Faced with stubborn unemployment, stagnant housing market, slow economic growth, etc., the Federal Reserve has taken several steps aimed to prop up bond values, and other assets by extension, over the past several years. The most recent support measure, Operation Twist, has nearly run its course and is expected to conclude in June. Already, speculators are whispering about a possible third round of Quantitative Easing. In fact, Credit Suisse recently estimated the odds of a third round at 37%. It remains anyone's guess as to whether the Fed will step in with more stimulus and how extensively, but given enough bad news it just might happen.

Some investors are beginning to wonder if central banks will run out of acronyms before they run out of stimulus measures. Not to be outdone by QE1, QE2, TARP, TALF, PPIP, and several others by various governmental entities in the United States, the European Central Bank has followed suit with its own unique arrangements, most recently, the LTRO, or Long-Term Refinancing Operation. As part of the LTRO, the European Central Bank stands ready to make 1% interest loans to over 500 European Banks on 3 year terms in exchange for collateral. In this case, the collateral may be bonds backed by economically-troubled countries like Greece or Spain. Over the past quarter, the arrangement was sufficient to—perhaps temporarily—quell investors' fears, but many view the step as another round of patchwork fixes in a bubblegum-and-BandAid menagerie for an economic union with a fundamental challenge: it applies uniform monetary policy, but individual nations determine individual fiscal policies. In effect, the ECB may have temporarily bolstered the prices of troubled bonds by creating an additional reason for institutions to buy the bonds.

Regardless of short-term support, many would point out the underlying economies of Greece, Spain, Italy, and similar countries simply cannot afford to repay their debt given current levels of economic productivity unless spending is reduced and taxes are increased.



Despite economic headwinds, the S&P 500 has rallied 122% since February 2009

Consider cuts to government spending and increases in taxes in the midst of say, 23% unemployment (which is the case with Spain). Cuts that would be sufficient in size to bring the debt-to-GDP relationship to sustainable levels would need to be so large that they would almost certainly be counterproductive, because they would erode at an already-fragile or non-existent economic recovery.

The situation abroad is especially concerning because countries in this predicament have traditionally devalued their currencies to increase exports and improve the functioning of their economies. Because the European Union has a uniform monetary policy, troubled nations do not currently have the option to devalue their currency (thereby making their exports more attractive) and must consequently either exit the Euro, default outright, lobby for continued bailouts, successfully grow, or try a different solution. In the interim, experts are exploring a wide range of additional measures, but we do not expect the issues in Europe to self-resolve overnight. These types of dynamics have many experts questioning whether the European Union will have the same membership at some point in the future, or if a scaled-down Eurozone is likely. There is little question that changes to the composition of nations in the EU would at lease cause a short-term shock for global markets.

Because of the level of systemic risk that has existed since 2009, Central Banks have thus far been resolved to provide markets with a backstop. When this resolution fades, becomes ineffective, or—ideally—works as intended remains anyone's prediction. In the meantime, US investors are focused on Ben Bernanke's wind turbine to fan the flames of economic growth, even as stubbornly high unemployment remains the status quo and investors wait for a stagnant housing market to work through inventories. Increasing gas prices may portend increases in inflation on the horizon, but the Chairman has indicated an appetite for a modest level of inflation if it coincides with the desired effect of economic growth.

Long-Term, Short-Term and Discipline

Despite the impressive rally that has occurred since 2009, an investor would have faced two major drawdowns in the S&P 500, both of which began in the month of May over the past couple of years:

- First, a -16.3% loss began in May 2011, bottomed in September and recovered in February.
- And second, a -12.8% loss began in May 2010, bottomed the next month (June) and recovered the following October.

If a market correction of the magnitudes listed above or greater would make you reconsider your investment strategy, and possibly even sell equity exposure, then your investment strategy may be too risky for your situation. On the other hand, if you are able to endure a correction of this size and have at least a 7-10 year time period to invest, we would encourage investors to consider the possibility of adding to market exposure on pullbacks. Historically, over long periods of time, investors have been paid for taking on the short-term volatility associated with stocks—but only for long-term investors who were disciplined and stayed in the market!

We continue to favor a combination of investment themes that could be described as conservative. At the moment, we remain overweight to short duration fixed income, recommend a focus on US large cap dividend paying stocks, prefer indirect exposure to emerging markets via investment managers who allocate to globally-diverse multinational corporations, and maintain a neutral weighting to developed foreign companies. These are themes that we have focused on for some time. If markets retreat from current levels however, we anticipate moving toward a moderate increase to US equities, with a continued focus on managers who allocate to US large cap stocks with attractive dividend yields and stable earnings histories.

In Conclusion

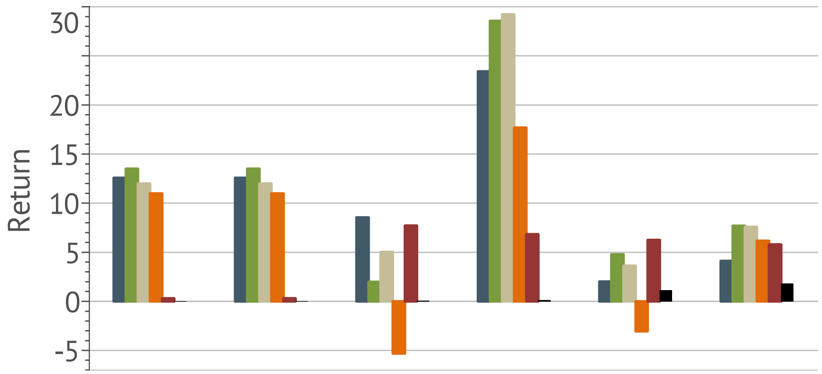
Despite persistent headwinds, equity markets have provided generous returns off of the February 2009 lows; but equity investors have endured a high level of volatility in exchange for those returns. Despite several challenges in the US (stagnant housing, high unemployment and slow economic growth, among others), the rally has been strong, and the past quarter was no exception. Even with turbulence slated to periodically arise in the European Union, we believe that equity markets over the long-term will provide stronger performance for disciplined investors who are able to take advantage of short-term pullbacks and maintain a long-term perspective during volatile markets.

For the past two years, May has been the beginning of two market corrections and we would not be surprised if the markets experienced one or two "air pockets" between now and the year's end. If you do not have the ability stay invested in stocks in the event of a -20% (or worse) correction, or if you believe a pullback would cause you to sell out of equity exposure, we encourage you to reach out to us. By working together, we can determine how best to revise your investment strategy for your financial goals, and your current level of risk tolerance. In the interim, we plan to take advantage of market retreats to increase exposure to equities in accounts with long investment periods.

Thank you for your business,
Heintzberger | Payne Advisors
March 31, 2012

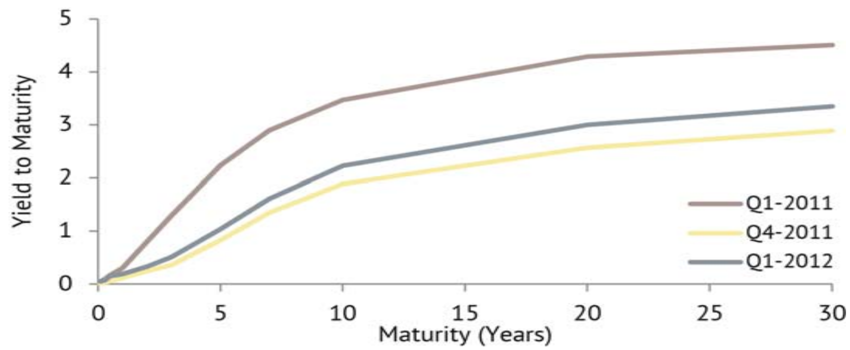
As of 3/31/2012

Trailing Returns



Index	QTR	YTD	1 year	3 years	5 years	10 years
S&P 500	12.59	12.59	8.54	23.42	2.01	4.12
S&P MidCap 400	13.50	13.50	1.98	28.55	4.78	7.70
S&P SmallCap 600	11.99	11.99	5.03	29.22	3.62	7.58
MSCI EAFE Index	10.98	10.98	-5.31	17.68	-3.04	6.16
Barclays U.S. Aggregate	0.30	0.30	7.71	6.83	6.25	5.80
Citigroup 3-month T-bill	0.01	0.01	0.05	0.11	1.12	1.81

Treasury Yield Curve



Date	3 month	1 year	5 year	10 year	30 year
Q1 2011	0.09	0.30	2.24	3.47	4.51
Q4 2011	0.02	0.12	0.83	1.89	2.89
Q1 2012	0.07	0.19	1.04	2.23	3.35

Data: US Department of the Treasury

Market Overview

Trailing Quarter

The US stock market, as represented by the S&P indices, posted positive double digit returns over the trailing quarter. The S&P Mid Cap 400 outperformed both its larger- and smaller-cap counterparts with a 13.50% reurn. The S&P 500 posted a 12.59% return while the S&P SmallCap 600 returned 11.99%. Foreign securities, represented by the MSCI EAFE index also posted significant gains, at 10.98%. Fixed Income, represented with the Barclays US Aggregate Index posted a 0.30% return for the quater.

Trailing Year

Over the trailing year, all asset classes except for foreign equity posted a positive return. US large cap securities took the lead with a positive 8.54% return. The Barclays US Aggregate also posted an impressive return over the trailing year, returning 7.71% and outpacing US small cap, US mid cap and foreign securities during the period. The MSCI EAFE Index posted a -5.31% return over that same time period.

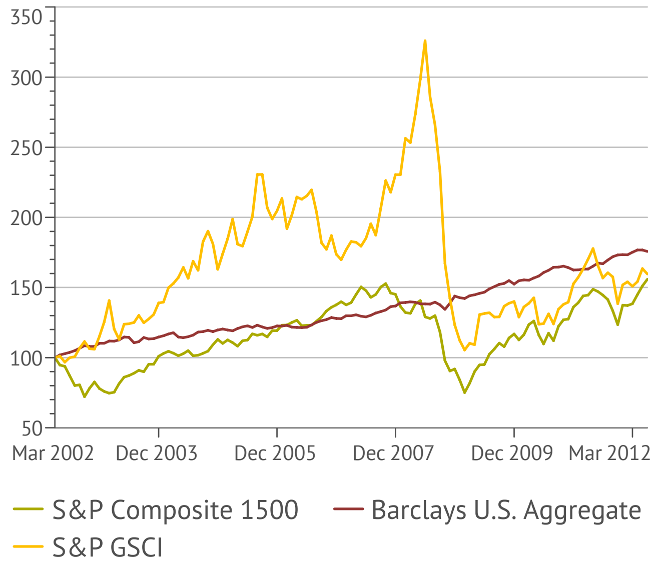
Fixed Income Insights

Treasury yields have decreased significantly over the trailing year amid continued support measures from the Federal Reserve. Over the past quarter, yields on Treasuries have increased due to an improvement in economic outlook among investors. High yield bonds returned 5.05% for the quarter, as measured by the BofML High Yield Cash Pay. Long-dated Treasuries, as measured by the BarCap US Government Long TR index, which ran nicely during 2011, lost -5.57% for the first quarter of 2012. Intermediate Corporate bonds returned 3.87%.

Capital Market Review

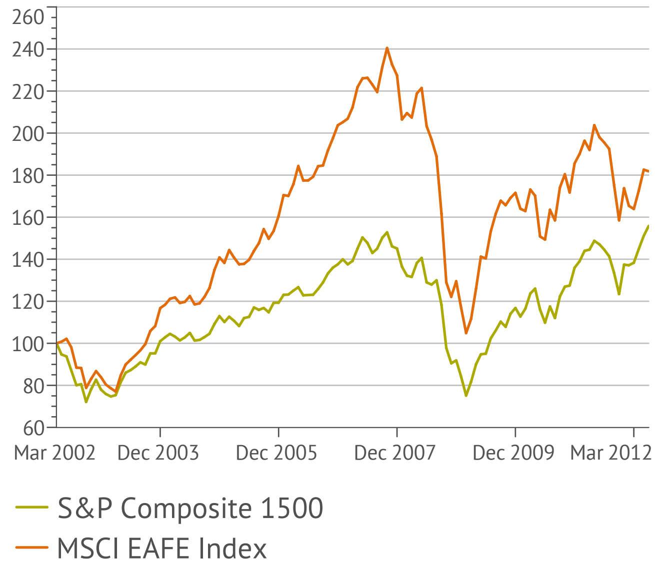
10 year trailing data ending 3/31/2012

Stocks vs. Bonds vs. Commodities

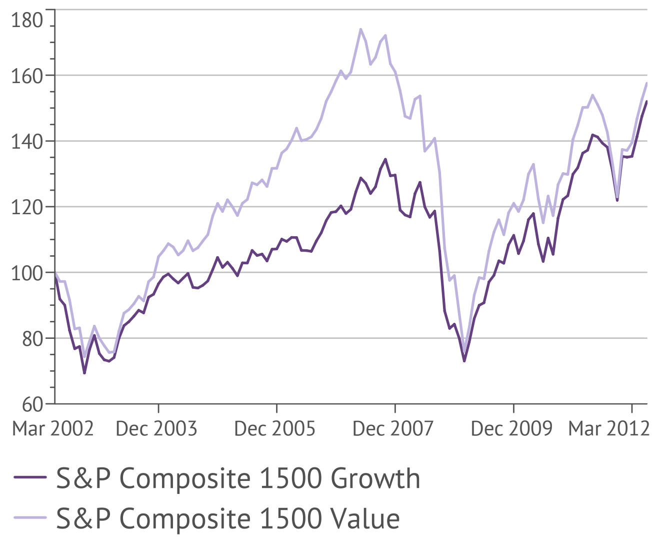


Large Cap vs. Small Cap

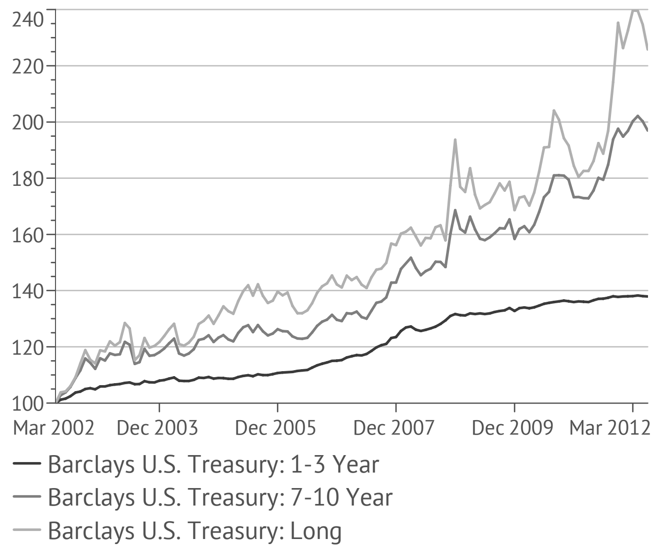
Domestic vs. International



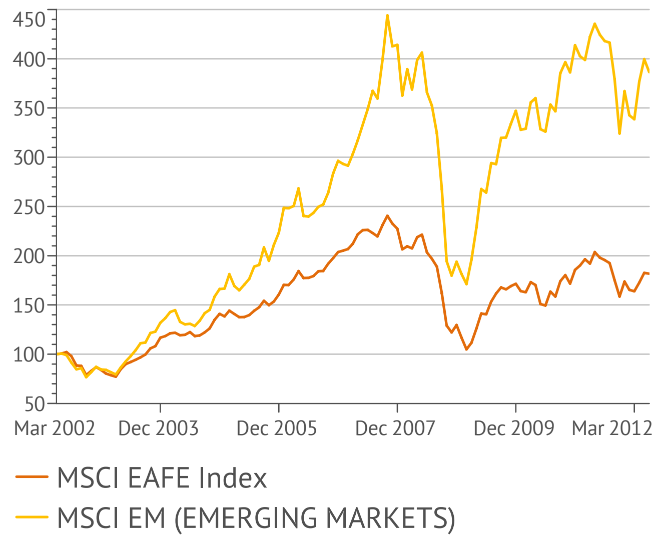
Growth vs. Value



Fixed Income: Long vs. Short Duration



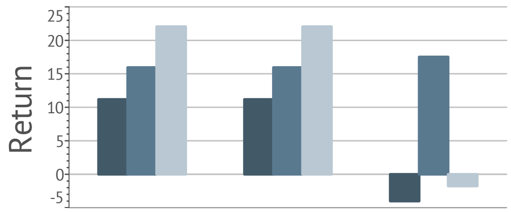
Developed vs. Emerging



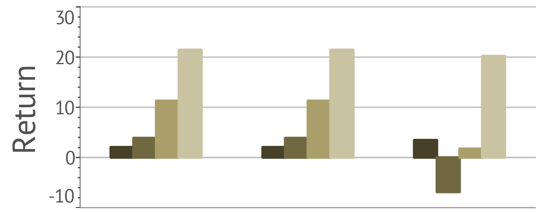
Sector Performance Summary

As of 3/31/2012

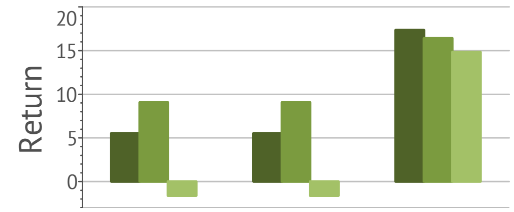
S&P 500 Sectors



Large - Cyclical	QTR	YTD	1 year
Materials	11.19	11.19	-4.01
Consumer Discr.	15.96	15.96	17.53
Finacials	22.05	22.05	-1.76

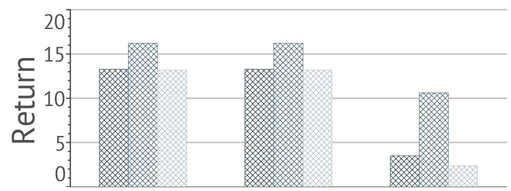


Large - Sensitive	QTR	YTD	1 year
Telecom	2.08	2.08	3.46
Energy	3.88	3.88	-6.86
Industrials	11.31	11.31	1.75
Technology	21.46	21.46	20.21

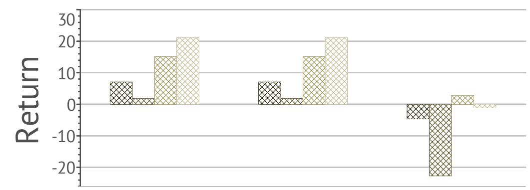


Large - Defensive	QTR	YTD	1 year
Consumer Staples	5.54	5.54	17.34
Health Care	9.06	9.06	16.41
Utilities	-1.62	-1.62	14.82

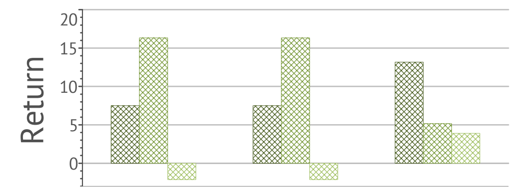
S&P 400 Sectors



Mid - Cyclical	QTR	YTD	1 year
Materials	13.28	13.28	3.50
Consumer Discr.	16.20	16.20	10.61
Finacials	13.18	13.18	2.36

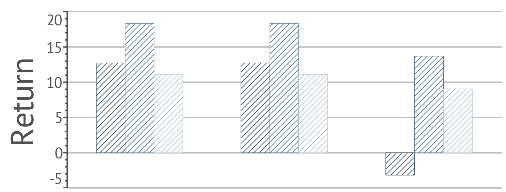


Mid - Sensitive	QTR	YTD	1 year
Telecom	7.08	7.08	-4.64
Energy	1.86	1.86	-22.75
Industrials	15.12	15.12	2.77
Technology	21.13	21.13	-1.13

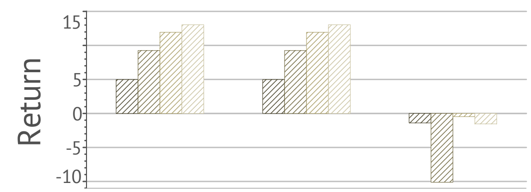


Mid - Defensive	QTR	YTD	1 year
Consumer Staples	7.50	7.50	13.18
Health Care	16.32	16.32	5.16
Utilities	-2.13	-2.13	3.89

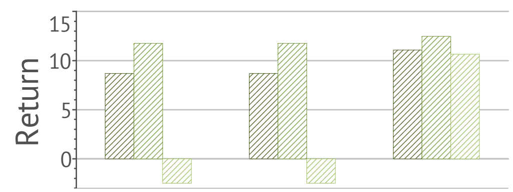
S&P 600 Sectors



Small - Cyclical	QTR	YTD	1 year
Materials	12.73	12.73	-3.18
Consumer Discr.	18.30	18.30	13.71
Finacials	11.07	11.07	9.04



Small - Sensitive	QTR	YTD	1 year
Telecom	4.97	4.97	-1.38
Energy	9.24	9.24	-10.14
Industrials	11.95	11.95	-0.47



Small - Defensive	QTR	YTD	1 year
Consumer Staples	8.67	8.67	11.08
Health Care	11.75	11.75	12.48
Utilities	-2.49	-2.49	10.65

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Section 4- Plan Fee Review

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County of Fresno 457 DC Plan

Fund Compliance to Investment Policy Performance Requirements. Performance calculated as of 3/31/2012

Asset Class / Style	Fund	Action	Percentile Rank Investment Returns (1 = Best) 1 Qtr	1 Yr	2 Yrs	3 Yrs	4 Yrs	5 Yrs	10 Yrs	Excess Returns (Fund's Returns Minus Benchmark's Returns) 1 Qtr	1 Yr	2 Yrs	3 Yrs	4 Yrs	5 Yrs	10 Yrs
US Large Cap																
Blend	Invesco Charter I (chtvx)	W	81	60	80	81	15	9	9	-1.91	-3.93	-4.63	-4.01	0.86	1.81	1.47
Growth	Alger Spectra I (aspix)		38	38	33	7	6	3	1	4.19	-3.65	-0.99	5.24	3.08	3.55	4.12
Growth	DWS Capital Growth Inst (sdgtx)	W	41	62	62	77	60	40		4.11	-5.77	-3.59	-3.35	-2.53	-0.79	
Index	Blackrock Equity Index Coll... (br500)		46	18	19	20	28	28	34	0.00	0.05	0.07	0.11	0.12	0.10	0.09
Utilities	Franklin Utilities Adv (fruax)	C	67	2	14	41	3	17	25	-12.17	7.09	2.78	-5.54	1.16	1.36	4.21
Value	Columbia Dividend Income Z (gsftx)		85	4	11	54	8	6	11	-4.71	4.82	2.01	-2.50	3.84	4.08	1.03
US Mid Cap																
Blend	Invesco Mid Cap Core Equity I (gtavx)	W	64	73	87	92	66	30	44	-1.92	-3.51	-7.50	-9.78	-3.50	-1.20	-1.28
Growth	FBR Focus I (fbrix)		98	3	29	51	11			-4.89	9.22	1.47	-2.44	1.27		
Value	Perkins Mid Cap Value I (jmvax)	W	80	37	78	92	45	10		-2.88	0.03	-3.40	-6.80	-1.27	1.27	
US Small Cap																
Growth	Neuberger Berman Genesi... (nbgnx)	W	98	35	52	83	77	15	1	-6.49	1.64	-1.21	-4.29	-3.06	1.82	3.46
Growth	Nicholas Limited Edition I (nclex)		76	14	22	50	11	2	7	-1.21	4.11	2.15	-1.19	2.70	3.62	1.99
Value	Perkins Small Cap Value I (jscox)		83	69	88	79	8	12		-3.41	-0.21	-1.65	-1.44	3.98	4.27	
Value	Royce Special Equity Invmt (rysex)		55	2	41	87	2	1	9	-0.68	6.12	1.87	-2.32	4.69	6.82	2.36
Foreign																
Blend	Ivy International Core Equity I (iceix)		70	67	22	15	6			-0.02	-1.70	2.06	2.34	3.86		
Blend	MainStay International Equity I (msiix)		5	44	90	96	14	31		3.85	-0.30	-3.19	-5.98	2.69	1.51	
World Equity	MFS Global Equity R4 (mwelx)		26	5	13	25	14	13		2.97	5.06	2.00	1.63	2.56	2.89	
Bonds																
Intermediate	RidgeWorth Total Return B... (samfx)		87	2	22	75	16	12	21	-0.07	3.53	2.03	1.77	2.57	1.64	0.81
Intermediate	Sentinel Government Securi... (sibwx)		16	76	39	23	14			0.96	0.35	0.87	2.00	1.85		
Stable Value	Fresno County Stable Value (fcsv)		1	1	1					0.70	3.00	3.06				
Specialty Options																
Balanced	Oakmark Equity & Income I (oakbx)	W	57	52	79	78	35	6	2	0.23	-4.15	-3.14	-1.59	-0.51	1.40	2.53
Balanced	Pax World Balanced Instl (paxix)		21	75	47	76	82	65		1.58	-2.09	-0.86	-1.93	-2.78	-1.72	
Real Estate	Fidelity Real Estate Income (frifx)		98	83	87	98	2	3		-4.06	-5.58	-6.69	-18.39	7.32	6.73	
Target Date Funds																
Target Date	Maxim Lifetime 2015 I T (mxltx)		80	11	33					-1.32	0.87	-0.53				
Target Date	Maxim Lifetime 2025 I T (mxalx)		96	12	49					-1.94	0.96	-1.05				
Target Date	Maxim Lifetime 2035 I T (mxglx)		92	18	43					-0.89	0.72	-0.97				
Target Date	Maxim Lifetime 2045 I T (mxmlx)		78	29	41					-0.75	0.54	-1.16				
Target Date	Maxim Lifetime 2055 I T (mxslx)		99	29	43					-0.74	0.49	-1.14				

Key to Actions: W indicates under Watch; R indicates fund will be Replaced; C indicates a Comment; and D means fund will be Deleted. For methodology, see Explanatory Notes.

All Funds remain in compliance with Investment Policy and no action need be taken other than as indicated in the Fund Compliance Commentary section of this report.

This report, along with more detailed performance data on Plan Investment Options, was reviewed by the Plan's Trustee and/or Investment Committee.

Heintzberger | Payne Advisors Date

Trustee / Committee Member Date

DWS Capital Growth Inst (SDGTX)

5/7/2012	Under Watch	The fund is underperforming both the S&P 500 Growth Index and its internal benchmark, the Russell 1000 Growth Index. The fund ranks in the 40th percentile of its peer group in the trailing 5-year period, but is below the median in the trailing 1- and 3-year time frame. Though the fund outperformed in the trailing quarter, it would have to produce significant sustained outperformance to return to compliance. The fund remains on watch.

Franklin Utilities Adv (FRUAX)

5/7/2012	Comment	The Franklin Utilities Fund is a sector-specific strategy, which invests in the securities of public utilities companies, with a focus in the US electric sector. Because of this sector-specific focus, the fund will show tracking error versus its broad-market benchmark, the S&P 500 index.

Invesco Charter I (CHTVX)

5/7/2012	Under Watch	The fund is underperforming in all trailing time periods 3-years and shorter and ranks in the bottom 80th percentile for most of those periods. The primary detractor has been the fund's double-digit allocation to cash. The fund's longer-term performance is much more favorable and it ranks in the top 10% of its peer group for the trailing 5- and 10-year periods. The fund is on watch.

Invesco Mid Cap Core Equity I (GTAVX)

5/8/2012	Under Watch	The fund is underperforming its benchmark in all trailing time periods and ranks in the 92nd percentile of its peer group for the trailing 3-year period. The primary detractor over the trailing 3-year period has been the fund's double-digit allocation to cash. The fund remains on watch.

Neuberger Berman Genesis Inv (NBGNX)

5/7/2012	Under Watch	The Neuberger Berman Genesis Fund is lagging by over 5% and ranks in the 85th percentile for the trailing 3-year period. The fund's strategy seeks to invest in high quality companies with below average volatility. Historically, this has caused their strategy to underperform in up markets, while protecting to the downside in down markets. The fund's performance more closely tracks that of its internal benchmark, the Russell 2000. The fund remains on watch.

Oakmark Equity & Income I (OAKBX)

4/26/2012	Under Watch	Despite positive relative gains in the past two quarters, the Oakmark Equity and Income Fund remains on watch due to its underperformance in the trailing 3-year time period and due to the recent retirement of co-manager Ed Stuzinski.
11/22/2011	Under Watch	The Oakmark Equity & Income Fund struggled over the third quarter of 2011 as the fund was overweight in equities (at nearly 70% of net assets going into the quarter) while the bond allocation was in very short duration positions. Because equity markets retreated while longer-term bonds rallied, the fund underperformed compared to its 60/40 blended equity/fixed income benchmark. We will continue to monitor the fund's performance in the coming months and although nothing has fundamentally changed in the fund's strategy, we are putting the fund on watch until performance improves.

Perkins Mid Cap Value I (JMVAX)

4/30/2012	Under Watch	Perkins Mid Cap Value continues to lag its benchmark. The fund's sizable cash allocation has detracted from returns during the significant market rally over the past two quarters. Despite this underperformance, the fund continues to exhibit extremely low volatility as well as downside protection during market pullbacks. We believe the fund will continue to add value over the long term, but will monitor ongoing performance in the interim.

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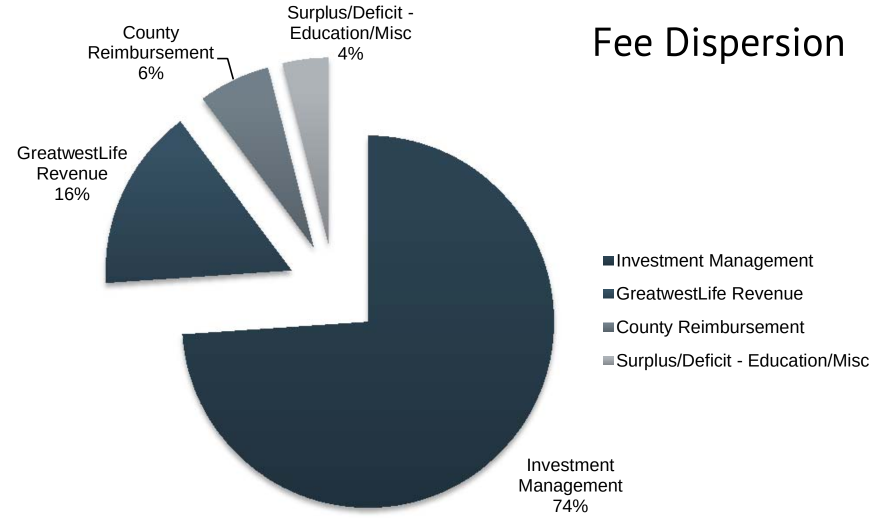
Projection of Vendor Fees

Data as of March 31, 2012

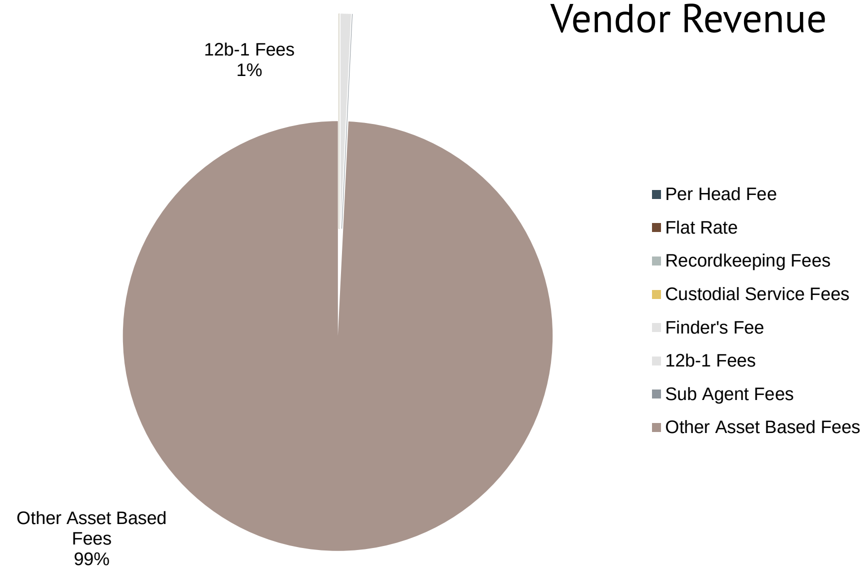
Total Revenue Generated	**0.177%**	**$292,518.03**
Required Plan Fees	0.15%	$247,985.35
Surplus/Deficit - Education/Misc Plan Expenses	0.027%	$44,532.68
Revenue Retained by GWL	**0.108%**	**$177,985.35**
County Reimbursement Fees	0.042%	$70,000.00
Required Plan Fees	0.15%	$247,985.35
County Reimbursement Fees :		
Plan Administration		$50,000.00
Number of Participants	3935	
Per Head Fee	$0	$0.00
Flat Rate		$0.00
Recordkeeping Fees		$0.00
Custodial Services Fees		$0.00
Other Fees		$20,000.00
County Reimbursement Fees		**$70,000.00**
Total Fee Dispersion:		
Per Head Fee		$0.00
Flat Rate		$0.00
Recordkeeping Fees		$0.00
Custodial Service Fees		$0.00
Finder's Fee		$0.00
12b-1 Fees		$2,279.71
Sub Agent Fees		$0.00
Other Revenue Share		$290,238.32
Investment Management		$829,280.83
Annualized Investment Fees		**$1,121,798.86**
Annualized % Investment Fees		**0.68%**
Annualized Vendor Fees per Participant		**$74.34**

*a breakdown of additional fees is given below and further audit of Vendor Revenue is given on next few pages.

Fee Dispersion



Vendor Revenue



Current Annualized Fee Audit
Asset Based Fees

Data as of March 31, 2012

Fund Name	Ticker	Assets	Expense Ratio	Components of Expense Ratio	Vendor Compensation				Total Revenue Share	Total Participant Expense	Total Fund Revenue Share
				Investment Management	Finder's Fee	12b-1 Fees	Sub Agent Fees	Other Revenue Share			
INVESCO Charter Institutional	CHTVX	$ 27,226,704.20	0.75%	0.40%	0.00%	0.00%	0.00%	0.35%	0.35%	0.75%	$ 95,293.46
Alger Spectra I	ASPIX	$ 911,883.64	1.32%	0.82%	0.00%	0.25%	0.00%	0.25%	0.50%	1.32%	$ 4,559.42
DWS Capital Growth Inst	SDGTX	$ 29,889,868.52	0.70%	0.60%	0.00%	0.00%	0.00%	0.10%	0.10%	0.70%	$ 29,889.87
Columbia Dividend Income Z	GSFTX	$ 8,326,972.78	0.75%	0.50%	0.00%	0.00%	0.00%	0.25%	0.25%	0.75%	$ 20,817.43
INVESCO Mid Cap Core Equity Fund - I	GTAVX	$ 876,374.02	0.79%	0.44%	0.00%	0.00%	0.00%	0.35%	0.35%	0.79%	$ 3,067.31
Perkins Mid Cap Value I	JMVAX	$ 4,667,607.21	0.85%	0.85%	0.00%	0.00%	0.00%	0.00%	0.00%	0.85%	$ -
Neuberger Berman Genesis Inv	NBGNX	$ 532,648.01	1.06%	1.06%	0.00%	0.00%	0.00%	0.00%	0.00%	1.06%	$ -
FBR Focus I	FBRIX	$ 2,182,703.06	1.15%	1.15%	0.00%	0.00%	0.00%	0.00%	0.00%	1.15%	$ -
Nicholas Limited Edition I	NCLEX	$ 4,932,916.92	0.91%	0.91%	0.00%	0.00%	0.00%	0.00%	0.00%	0.91%	$ -
Royce Special Equity Inv	RYSEX	$ 1,255,136.54	1.16%	0.96%	0.00%	0.00%	0.00%	0.20%	0.20%	1.16%	$ 2,510.27
Perkins Small Cap Value I	JSCOX	$ 88,314.76	0.94%	0.94%	0.00%	0.00%	0.00%	0.00%	0.00%	0.94%	$ -
MainStay International Equity I	MSIIX	$ 3,134,247.35	1.21%	1.01%	0.00%	0.00%	0.00%	0.20%	0.20%	1.21%	$ 6,268.49
Ivy International Core Equity I	ICEIX	$ 404,049.45	1.08%	1.08%	0.00%	0.00%	0.00%	0.00%	0.00%	1.08%	$ -
MFS Global Equity R4	MWELX	$ 5,886,172.91	1.12%	0.97%	0.00%	0.00%	0.00%	0.15%	0.15%	1.12%	$ 8,829.26
Franklin Utilities Adv	FRUAX	$ 1,947,890.25	0.61%	0.46%	0.00%	0.00%	0.00%	0.15%	0.15%	0.61%	$ 2,921.84
Fidelity Real Estate Income	FRIFX	$ 710,316.25	0.92%	0.67%	0.00%	0.00%	0.00%	0.25%	0.25%	0.92%	$ 1,775.79
RidgeWorth Total Return Bond I	SAMFX	$ 2,292,808.56	0.35%	0.20%	0.00%	0.00%	0.00%	0.15%	0.15%	0.35%	$ 3,439.21
Sentinel Government Securities I	SIBWX	$ 1,187,834.65	0.60%	0.50%	0.00%	0.00%	0.00%	0.10%	0.10%	0.60%	$ 1,187.83
Oakmark Equity & Income I	OAKBX	$ 1,471,203.59	0.77%	0.52%	0.00%	0.00%	0.00%	0.25%	0.25%	0.77%	$ 3,678.01
Pax World Balanced Instl	PAXIX	$ 607,840.61	0.71%	0.71%	0.00%	0.00%	0.00%	0.00%	0.00%	0.71%	$ -
BlackRock Equity Index - Collective F	BLKRK	$ 3,449,518.57	0.20%	0.02%	0.00%	0.00%	0.00%	0.18%	0.18%	0.20%	$ 6,209.13
Maxim Lifetime 2015 Portfolio I T	MXLTX	$ 1,001,701.65	0.86%	0.51%	0.00%	0.00%	0.00%	0.35%	0.35%	0.86%	$ 3,505.96
Maxim Lifetime 2025 Portfolio I T	MXALX	$ 1,140,885.74	0.92%	0.57%	0.00%	0.00%	0.00%	0.35%	0.35%	0.92%	$ 3,993.10
Maxim Lifetime 2035 Portfolio I T	MXGLX	$ 675,826.86	0.98%	0.63%	0.00%	0.00%	0.00%	0.35%	0.35%	0.98%	$ 2,365.39
Maxim Lifetime 2045 Portfolio I T	MXMLX	$ 425,513.90	1.00%	0.65%	0.00%	0.00%	0.00%	0.35%	0.35%	1.00%	$ 1,489.30
Maxim Lifetime 2055 Portfolio I T	MXSLX	$ 286,001.56	1.01%	0.66%	0.00%	0.00%	0.00%	0.35%	0.35%	1.01%	$ 1,001.01
County of Fresno Stable Value Fund	STABL	$ 59,810,624.90	0.50%	0.35%	0.00%	0.00%	0.00%	0.15%	0.15%	0.50%	$ 89,715.94
Total		$ 165,323,566.46	$ 1,121,798.86	$ 829,280.83	$ -	$ 2,279.71	$ -	$ 290,238.32	0.18%	0.68%	$ 292,518.03

Hypothetical Revenue Sharing Impact Due to Market Event

Current Revenue Sharing

Asset Class	Ticker	Fund Name	Expense	Revenue	Assets
US Large Cap					
Index	vinix	Vanguard Institutional Index	0.04%	0.00%	$7,959,102
Value	ehstx	Eaton Vance Large-Cap Value A	0.98%	0.50%	5,443,578
Growth	rgaex	American Funds Growth Fund R4	0.68%	0.35%	3,105,612
US Mid Cap					
Index	vmisx	Vanguard Mid Cap Index Fund Signal	0.12%	0.00%	4,911,144
Value	jmcvx	Perkins Mid Cap Value Fund T	1.02%	0.25%	3,937,795
US Small Cap					
Index	vsisx	Vanguard Small Cap Index Signal	0.17%	0.00%	3,445,719
Value	kscvx	Keeley Small Cap Value Fund	1.36%	0.40%	2,483,243
Foreign Stocks					
Blend	rerex	American Funds EuroPacific Growth R4	0.85%	0.35%	4,802,718
Growth	artix	Artisan International Inv	1.23%	0.35%	1,453,052
Value	dodfx	Dodge & Cox International Stock Fund	0.65%	0.10%	3,924,124
Fixed Income					
Stable Value		Stable Value Fund	0.25%	0.00%	23,132,064
Intermediate	ptrax	PIMCO Total Return Admin	0.71%	0.25%	12,868,118
Global	tgbax	Templeton Global Bond Adv	0.67%	0.15%	198,751
		Weighted Average Revenue		**0.21%**	

After Market Event Revenue Sharing

Asset Class	Ticker	Fund Name	Expense	Revenue	Assets
US Large Cap					
Index	vinix	Vanguard Institutional Index	0.04%	0.00%	$11,959,102
Value	ehstx	Eaton Vance Large-Cap Value A	0.98%	0.50%	$1,443,578
Growth	rgaex	American Funds Growth Fund R4	0.68%	0.35%	$3,105,612
US Mid Cap					
Index	vmisx	Vanguard Mid Cap Index Fund Signal	0.12%	0.00%	$4,911,144
Value	jmcvx	Perkins Mid Cap Value Fund T	1.02%	0.25%	$3,937,795
US Small Cap					
Index	vsisx	Vanguard Small Cap Index Signal	0.17%	0.00%	$3,445,719
Value	kscvx	Keeley Small Cap Value Fund	1.36%	0.40%	$2,483,243
Foreign Stocks					
Blend	rerex	American Funds EuroPacific Growth R4	0.85%	0.35%	$4,802,718
Growth	artix	Artisan International Inv	1.23%	0.35%	$1,453,052
Value	dodfx	Dodge & Cox International Stock Fund	0.65%	0.10%	$3,924,124
Fixed Income					
Stable Value	sv	Stable Value Fund	0.25%	0.00%	$33,132,064
Intermediate	ptrax	PIMCO Total Return Admin	0.71%	0.25%	$2,868,118
Global	tgbax	Templeton Global Bond Adv	0.67%	0.15%	$198,751
		Weighted Average Revenue		**0.16%**	

The example reviews how fund flows may impact total revenue sharing generated by the plan due to market events.

1. Market events can cause participants to move their money into historically better performing funds or sell and move into the cash option.

2. Two fund shifts are highlighted in the Tables above. A $4,000,000 move from Eaton Vance into the index fund and a $10,000,000 move from PIMCO Total Return into the cash option.

3. Money moving into investment options paying 0.00% revenue share will decrease total revenue generated by the plan.

4. Moving to the lowest expense ratio share classes paying little to no revenue share and adding on an asset charge to pay for plan costs will stabilize revenue flows and equally distribute the cost of the plan amongst all particiapnts.

Hypothetical Mapping Impact - Sample Plan with 0.22% Revenue Requirement

Current Lineup							*Recommended Fund Changes with Lowest Share Class*						
Asset Class	**Ticker**	**Fund Name**	**Expense**	**Revenue**	**Assets**	**ACTION:**	**Asset Class**	**Ticker**	**Fund Name**	**Expense**	**Revenue**	**Add-on**	**Total Rev**
US Large Cap							**US Large Cap**						
Index	vinix	Vanguard Institutional Index	0.04%	0.00%	$7,959,102	*Keep*	*Index*	vinix	Vanguard Institutional Index Instl	0.04%	0.00%	0.20%	0.20%
Value	ehstx	Eaton Vance Large-Cap Value A	0.98%	0.50%	5,443,578	*Map*	*Value*	cdozx	Columbia Dividend Opportunity Z	0.91%	0.40%	0.00%	0.40%
Growth	rgaex	American Funds Growth Fund R4	0.68%	0.35%	3,105,612	*Map*	*Index*	sgrnx	Wells Fargo Advantage Growth I	0.80%	0.15%	0.05%	0.20%
						Add	*Value*	yackx	Yacktman	0.93%	0.25%	0.00%	0.25%
US Mid Cap							**US Mid Cap**						
Index	vmisx	Vanguard Mid Cap Index Fund Signal	0.12%	0.00%	4,911,144	*Share*	*Index*	vmcix	Vanguard Mid Cap Index Ins	0.08%	0.00%	0.20%	0.20%
Value	jmcvx	Perkins Mid Cap Value Fund T	1.02%	0.25%	3,937,795	*Share*	*Value*	jmvax	Perkins Mid Cap Value I	0.83%	0.00%	0.20%	0.20%
US Small Cap							**US Small Cap**						
Index	vsisx	Vanguard Small Cap Index Signal	0.17%	0.00%	3,445,719	*Keep*	*Index*	vsisx	Vanguard Small Cap Index Signal	0.17%	0.00%	0.20%	0.20%
Value	kscvx	Keeley Small Cap Value Fund	1.36%	0.40%	2,483,243	*Share*	*Value*	kscix	Keeley Small Cap Value I	1.11%	0.15%	0.05%	0.20%
Foreign Stocks							**Foreign Stocks**						
Blend	rerex	American Funds EuroPacific Growth R4	0.85%	0.35%	4,802,718	*Share*	*Blend*	rergx	American Funds EuroPacific Gr R6	0.50%	0.00%	0.20%	0.20%
Growth	artix	Artisan International Inv	1.23%	0.35%	1,453,052	*Keep*	*Growth*	artix	Artisan International Inv	1.23%	0.35%	0.00%	0.35%
Value	dodfx	Dodge & Cox International Stock Fund	0.65%	0.10%	3,924,124	*Keep*	*Value*	dodfx	Dodge & Cox International Stock	0.65%	0.10%	0.10%	0.20%
Fixed Income							**Fixed Income**						
Stable Value		Stable Value Fund	-	-	23,132,064	*Keep*	*Stable Value*		Bi-Mart Stable Value Fund	-	-	-	-
Intermediate	ptrax	PIMCO Total Return Admin	0.71%	0.25%	12,868,118	*Share*	*Intermediate*	pttrx	PIMCO Total Return Instl	0.46%	0.00%	0.20%	0.20%
Global	tgbax	Templeton Global Bond Adv	0.67%	0.15%	198,751	*Keep*	*Global*	tgbax	Templeton Global Bond Adv	0.67%	0.15%	0.05%	0.20%
		Weighted Average Revenue		**0.213%**					**Weighted Average Revenue**		**0.072%**	**0.152%**	**0.22%**

***FUND Changes Highlighted in Yellow

Notes Revenue Sharing:

- By relying on Revenue Sharing to pay plan expenses, asset flows into lower revenue generating funds may cause a revenue deficit.

- Mapping into the cheapest share class will lower revenue and may require an additional fee added onto the fund expense to pay for plan costs.

- Mapping into the cheapest share classes with adding on an additional fee will stabilize cash flows of revenue needed to support the plan and evenly distribute plan cost across all participants.

County of Fresno 457 Retirement Plan

Current Lineup							*Recommended Fund Changes with Lowest Share Class*						
Asset Class	**Ticker**	**Fund Name**	**Expense**	**Revenue**	**Assets**	**ACTION:**	**Asset Class**	**Ticker**	**Fund Name**	**Expense**	**Revenue**	**Add-on**	**Total Rev**
US Large Cap							**US Large Cap**						
Index		BlackRock Equity Index - Collective F	0.20%	0.18%	$3,449,519	*Keep*	*Index*		BlackRock Equity Index - Collective F	0.20%	0.18%	0.00%	0.18%
Blend	chtvx	INVESCO Charter Institutional	0.75%	0.35%	$27,226,704	*Keep*	*Blend*	chtvx	INVESCO Charter Institutional	0.75%	0.35%	0.00%	0.35%
Growth	aspix	Alger Spectra I	1.32%	0.50%	$911,884	*Share Class*	*Growth*	aspzx	Alger Spectra Z	1.10%	0.08%	0.00%	0.08%
Growth	sdgtx	DWS Capital Growth Inst	0.70%	0.10%	$29,889,869	*Keep*	*Growth*	sdgtx	DWS Capital Growth Inst	0.70%	0.10%	0.00%	0.10%
Value	gsftx	Columbia Dividend Income Z	0.75%	0.25%	$8,326,973	*Share Class*	*Value*	cdvix	Columbia Dividend Income I	0.64%	0.10%	0.00%	0.10%
US Mid Cap							**US Mid Cap**						
Blend	gtavx	INVESCO Mid Cap Core Equity Fund - I	0.79%	0.35%	$876,374	*Keep*	*Blend*	gtavx	INVESCO Mid Cap Core Equity Fund - I	0.79%	0.35%	0.00%	0.35%
Growth	fbrix	FBR Focus I	1.15%	0.00%	$2,182,703	*Keep*	*Growth*	fbrix	FBR Focus I	1.15%	0.00%	0.00%	0.00%
Value	jmvax	Perkins Mid Cap Value Fund I	0.85%	0.00%	$4,667,607	*Keep*	*Value*	jmvax	Perkins Mid Cap Value Fund I	0.85%	0.00%	0.00%	0.00%
US Small Cap							**US Small Cap**						
Growth	nbgnx	Neuberger Berman Genesis Inv	1.06%	0.00%	$532,648	*Share Class*	*Growth*	nbgix	Neuberger Berman Genesis Instl	0.85%	0.08%	0.00%	0.08%
Growth	nclex	Nicholas Limited Edition I	0.91%	0.00%	$4,932,917	*Keep*	*Growth*	nclex	Nicholas Limited Edition I	0.91%	0.00%	0.00%	0.00%
Value	jscox	Perkins Small Cap Value I	0.94%	0.00%	$88,315	*Keep*	*Value*	jscox	Perkins Small Cap Value I	0.94%	0.00%	0.00%	0.00%
Value	rysex	Royce Special Equity Inv	1.16%	0.20%	$1,255,137	*Share Class*	*Value*	rseix	Royce Special Equity Instl	1.03%	0.03%	0.00%	0.03%
Foreign Stocks							**Foreign Stocks**						
Blend	iceix	Ivy International Core Equity I	1.08%	0.00%	$404,049	*Keep*	*Blend*	iceix	Ivy International Core Equity I	1.08%	0.00%	0.00%	0.00%
Blend	msiix	MainStay International Equity I	1.21%	0.20%	$3,134,247	*Keep*	*Blend*	msiix	MainStay International Equity I	1.21%	0.20%	0.00%	0.20%
World	mwelx	MFS Global Equity R4	1.12%	0.15%	$5,886,173	*Keep*	*World*	mwelx	MFS Global Equity R4	1.12%	0.15%	0.00%	0.15%
Fixed Income							**Fixed Income**						
Stable Value		County of Fresno Stable Value Fund	0.50%	0.15%	$59,810,625	*Keep*	*Stable Value*		County of Fresno Stable Value Fund	0.50%	0.15%	0.00%	0.15%
Intermediate	samfx	RidgeWorth Total Return Bond I	0.35%	0.15%	$2,292,809	*Keep*	*Intermediate*	samfx	RidgeWorth Total Return Bond I	0.35%	0.15%	0.00%	0.15%
Government	sibwx	Sentinel Government Securities I	0.60%	0.10%	$1,187,835	*Keep*	*Government*	sibwx	Sentinel Government Securities I	0.60%	0.10%	0.00%	0.10%
Specialty Options							**Fixed Income**						
Moderate	oakbx	Oakmark Equity & Income Fund	0.77%	0.25%	$1,471,204	*Keep*	*Moderate*	oakbx	Oakmark Equity & Income Fund	0.77%	0.25%	0.00%	0.25%
Balanced	paxix	Pax World Balanced Instl	0.71%	0.00%	$607,841	*Keep*	*Balanced*	paxix	Pax World Balanced Instl	0.71%	0.00%	0.00%	0.00%
Utilities	fruax	Franklin Utilities Adv	0.61%	0.15%	$1,947,890	*Keep*	*Utilities*	fruax	Franklin Utilities Adv	0.61%	0.15%	0.00%	0.15%
Real Estate	frifx	Fidelity Real Estate Income	0.92%	0.25%	$710,316	*Keep*	*Real Estate*	frifx	Fidelity Real Estate Income	0.92%	0.25%	0.00%	0.25%
Specialty Options							**Fixed Income**						
TargetDate	mxltx	Maxim Lifetime 2015 Portfolio I T	0.86%	0.35%	$1,001,702	*Keep*	*TargetDate*	mxltx	Maxim Lifetime 2015 Portfolio I T	0.86%	0.35%	0.00%	0.35%
TargetDate	mxalx	Maxim Lifetime 2025 Portfolio I T	0.92%	0.35%	$1,140,886	*Keep*	*TargetDate*	mxalx	Maxim Lifetime 2025 Portfolio I T	0.92%	0.35%	0.00%	0.35%
TargetDate	mxglx	Maxim Lifetime 2035 Portfolio I T	0.98%	0.35%	$675,827	*Keep*	*TargetDate*	mxglx	Maxim Lifetime 2035 Portfolio I T	0.98%	0.35%	0.00%	0.35%
TargetDate	mxmlx	Maxim Lifetime 2045 Portfolio I T	1.00%	0.35%	$425,514	*Keep*	*TargetDate*	mxmlx	Maxim Lifetime 2045 Portfolio I T	1.00%	0.35%	0.00%	0.35%
TargetDate	mxslx	Maxim Lifetime 2055 Portfolio I T	1.01%	0.35%	$286,002	*Keep*	*TargetDate*	mxslx	Maxim Lifetime 2055 Portfolio I T	1.01%	0.35%	0.00%	0.35%
		Weighted Average Totals	**0.68%**	**0.18%**	**$165,323,566**				**Weighted Average Totals**	**0.67%**	**0.17%**	**0.00%**	**0.17%**

***Share Class Changes Highlighted in Yellow

County of Fresno 457 Retirement Plan Suggested Menu

Recommended Lineup

Assets	Asset Class	Ticker	Fund Name	Expense	Revenue
	US Large Cap				
$30,676,223	*Index*		BLACKROCK EQUITY INDEX - COLLECTIVE F	0.06%	0.04%
$30,801,713	*Growth*	lgilx	LAUDUS GROWTH INVESTORS US LARGE CAP GR	0.78%	0.10%
$8,326,973	*Value*	cdozx	COLUMBIA DIVIDEND OPPORTUNITY Z	0.86%	0.40%
	US Mid Cap				
$3,059,077	*Index*	nmpax	COLUMBIA MID CAP INDEX Z	0.20%	0.10%
$4,667,607	*Value*	jmvax	PERKINS MID CAP VALUE FUND I	0.85%	0.00%
	US Small Cap				
$5,465,565	*Index*	nmscx	COLUMBIA SMALL CAP INDEX Z	0.20%	0.10%
$1,343,452	*Value*	kscix	KEELEY SMALL CAP VALUE I	1.10%	0.00%
	Foreign Stocks				
$6,290,222	*Blend*	rergx	AMERICAN FUNDS EUROPACIFIC GR R6	0.50%	0.00%
$3,134,247	*Value*	sgoix	FIRST EAGLE OVERSEAS I	0.89%	0.06%
$0	*Asia*	micsx	MATTHEWS ASIAN GROWTH & INCOME INSTL	0.99%	0.10%
$0	*Emerging*	odvyx	OPPENHEIMER DEVELOPING MARKETS Y	1.00%	0.25%
	Fixed Income				
$59,810,625	*Stable Value*		COUNTY OF FRESNO STABLE VALUE FUND	0.50%	0.15%
$2,292,809	*Intermediate*	fpnix	FPA NEW INCOME	0.60%	0.04%
$2,292,810	*Multi-Sector*	ostix	OSTERWEIS STRATEGIC INCOME	0.98%	0.04%
$1,187,835	*Global*	tgbax	TEMPLETON GLOBAL BOND ADV	0.64%	0.15%
	Fixed Income				
$2,079,045	*Moderate*	oakbx	OAKMARK EQUITY & INCOME I	0.77%	0.35%
$1,947,890	*Nat Resourse*	prnex	T. ROWE PRICE NEW ERA	0.67%	0.15%
$710,316	*Real Estate*	frifx	FIDELITY REAL ESTATE INCOME	0.92%	0.25%
	Fixed Income				
$1,001,702	*TargetDate*	mxltx	MAXIM LIFETIME 2015 PORTFOLIO I T	0.86%	0.35%
$1,140,886	*TargetDate*	mxalx	MAXIM LIFETIME 2025 PORTFOLIO I T	0.92%	0.35%
$675,827	*TargetDate*	mxglx	MAXIM LIFETIME 2035 PORTFOLIO I T	0.98%	0.35%
$425,514	*TargetDate*	mxmlx	MAXIM LIFETIME 2045 PORTFOLIO I T	1.00%	0.35%
$286,002	*TargetDate*	mxslx	MAXIM LIFETIME 2055 PORTFOLIO I T	1.01%	0.35%
$167,616,337			**Weighted Average Totals**	**0.52%**	**0.12%**

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Section 5-Fiduciary Best Practices

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Retirement Plan Fiduciary Best Practices

HEINTZBERGER | PAYNE
Client-Driven Investment Services

12511 SW 68th Avenue
Portland, OR 97223
(503) 597-1600

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What Did I Sign Up For?

Who is a Fiduciary?

- A person who has control of Plan assets or Plan management
- Renders investment advice for a fee
- Administers a Plan with discretionary authority

You Are a Fiduciary If:

- You appoint other fiduciaries
- You delegate or allocate responsibilities among other fiduciaries
- You are involved in the selection and monitoring of plan investments
- You provide investment advice to the plan for a fee.
- You are involved in acquiring or disposing of plan assets.
- You interpret plan provisions.

Factors That Determine Your Status

- This is a functional definition: If you perform fiduciary functions then you are a fiduciary
- Formal acknowledgment or appointment is not necessary to be recognized as a fiduciary
- Exercise of control and not a title is the determining factor

What Bucket Are You In:

Yes
Investment Manager
Employer
Trustee
Custodian
Plan Administrator

Maybe
Corporate officers
Employees
Investment Service Providers

No
Attorney
Auditor/Accountant
Record Keeper
TPA

What's At Stake?

Caution: Technical definition ahead! 

- ERISA provides that any person who is a fiduciary and breaches any of the responsibilities, obligations or duties imposed upon fiduciaries shall be ***personally*** liable
- A fiduciary may also be personally responsible for paying any civil penalties or excise taxes imposed on an employer by Court of Law

Who Bears the Bulk of the Responsibility?

...the Employer

What are My Responsibilities

Welcome to the Fiduciary Club

Roles and Responsibilities

- Act solely in the interest of plan participants
- Hold and deal with plan assets for the exclusive purpose of providing plan benefits and defraying reasonable expenses of administering the plan
- Act with care, prudence, skill and diligence that a prudent person acting in like capacity under similar circumstances would act

What Not to Do

- Self-dealing
- Transaction with party-in-interest; including sale, exchange, lease, or loan of plan securities or other properties
- Any use of plan assets that is not in the best interest of plan participants
- Under ERISA prohibited from entering into an agreement unless it is "reasonable".

Late Payroll Deposits	Lending money or extending credit to party-in-interest	Transfer to or use plan assets by party-in-interest

Check List

- ✓ Identify all Plan fiduciaries
- ✓ Identify all service provider
- ✓ Develop procedures that clearly describe roles and responsibilities
- ✓ Develop plan decision and investment monitoring documentation process

Plan Sponsors have a fiduciary responsibility to carefully evaluate the reasonableness of the fees and the potential conflicts of interests that may exist

A Fiduciary's Marching Orders

- Act in the best interest of plan participants
- Act in accordance with plan documents
- Attend investment committee meetings
- Review meeting minutes
- Diversify Plan investments
- Follow the guidelines of your policy statement
- Review, monitor, and control plan expenses

Committee Best Practices

Common Misconceptions

- We allow employees to make all their own investment decisions, so we are eliminated from liability.
- Our Fidelity Bond protects the fiduciaries from any exposure
- Our Directors & Officers Liability policy protects the fiduciaries from any exposure

Process, Process, Process

- Procedural prudence:
  - Following good processes
  - Demonstrating you acted with care, skill, prudence and diligence…
  - That a prudent person acting in similar capacity and familiar with such matters would use.

Four Guiding Principals

- Prudent Person Rule
- Exclusive Benefits Rule
- Plan Document Adherence
- Diversification of Investment Options

Build your policies and procedures to encompass these four critical principals

Best Practices

- ❑ Document your actions and processes
  - ❖ Policy statements
  - ❖ Charter
  - ❖ Education
  - ❖ Meeting minutes
- ❑ Hire competent, independent experts
- ❑ Provide your experts with accurate and up-top-date information
- ❑ Review service provider reports

Best Practices (cont.)

- Create written documentation of responsibility delegation
- Ensure your processes have reoccurring accountability reviews
- Hold regular, documented investment and plan committee meetings
- Monitor plan fees and cost regular, particularly as assets grow

Best Practices (cont.)

- Annually review participant disclosures: Content accuracy and timeliness of delivery
- Monitor service providers
- Discuss fiduciary liability insurance
- Involve your legal staff or ERISA counsel

Summary

- Act in the best interest of participants
- Seek guidance from experts
- Develop processes and procedures
- Document your actions

Fiduciary Duties and Obligations in Administering 457(b) Plans under California Law

A WHITE PAPER

By

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Fiduciary Duties and Obligations in Administering 457(b) Plans under California Law

1. *Introduction*

The purpose of this White Paper is to educate sponsors of plans formed under section 457(b) of the Internal Revenue Code of 1986, as amended ("457(b) plans") about their fiduciary duties and responsibilities under California law. The discussion will focus on duties imposed on the fiduciaries of California governmental 457(b) plans by the California State Constitution and the Government Code. Those duties are substantially identical to the fiduciary duties imposed on private sector fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA). As a result, where the California legal provisions are not developed, we will look to the well-developed regulatory and judicial authorities under ERISA to interpret the fiduciary requirements.[1]

This White Paper is organized as follows:

- We first discuss the requirements under the California Constitution regarding retirement boards of public pension and retirement systems, including the duties to:
    - act for the exclusive purpose of providing benefits to participants and beneficiaries; and
    - engage in a prudent process for making all decisions related to the operation of the plan, including decisions related to the plan's investments and services.
- We then discuss how those rules apply to fiduciaries responsible for the investment of money and/or administration of section 457(b) plans.
- Finally, we conclude by describing best practices for fiduciaries in administering 457(b) plans consistent with their obligations under California law.

[1] Government plans are exempt from ERISA. Therefore, we will analyze the federal law for guidance where the state provisions are identical or substantially similar to those under ERISA.

2. *Executive Summary*

The California Constitution provides that retirement boards (and their members) of public pension and retirement systems, including 457(b) plans, have a duty to:

- invest the assets of the plan;
- administer the plan;
- act for the exclusive purpose of providing benefits to participants and beneficiaries; and
- engage in a prudent process for making all decisions related to the operation of the plan, including decisions related to the plan's investments and related services.

The primary duty is the obligation to act for the exclusive purpose of providing retirement benefits to the participants. That is, the other duties must be fulfilled in a manner consistent with the provision of secure, yet meaningful, retirement benefits.

The conduct of fiduciaries in fulfilling that objective is measured under the prudent person standard. Although this standard is not well-developed under California law, the duty to act prudently under ERISA requires that fiduciaries make informed and reasoned decisions about all issues related to management of the plan, for example, plan investments, participant education, expenses, and plan administration. Applying these prudence requirements to California governmental plans, fiduciaries of 457(b) plans must determine the information that is relevant (or needed) to making a particular decision, gather that information, and evaluate the information – in order to make an "informed" decision. The decision must also be "reasoned," that is, the decision must bear a rational relationship to the relevant information that was reviewed by the fiduciaries. Once they have engaged in that process, the fiduciaries have a duty to take action to implement their decisions.

The prudent process requirement applies to all fiduciary decisions, including the selection and monitoring of the investments in the plan. This means that fiduciaries of 457(b) plans are required to use generally accepted investment theories and prevailing practices within the investment community when selecting or reviewing the investment options for the plan. Generally accepted investment theories include concepts such as modern portfolio theory (MPT) and strategic asset allocation. Prevailing investment industry standards include both qualitative and quantitative analysis of the investments. Fortunately, fiduciaries are not required to be experts on those issues, but instead may rely on competent consultants – and may rely most heavily on independent advisors (that is, advisors who are not affiliated with the plan providers and/or who are not compensated through the investments that are “bought” by the plan).

The prudent person standard also requires that fiduciaries consider the circumstances prevailing from time to time. This means that fiduciaries must review their decisions periodically – to monitor the choices they previously made – to ensure that their decisions continue to be appropriate for the purpose of providing retirement benefits for the participants.

Because of the complexity of the investment process and the potential losses if imprudent decisions are made, fiduciaries are well-advised to retain the services of prudent experts (and particularly of independent experts) to assist them in the selection and monitoring of the investments.

3. *Discussion*

3.1 Fiduciary Duties under California Law

Under the Internal Revenue Code, 457(b) plans can be sponsored by governmental entities and by tax-exempt entities.[2] ERISA provides a statutory exemption for government plans, including governmental 457(b) plans, from its fiduciary and prohibited transaction provisions.[3] As a result, state law governs the fiduciary requirements for the operation and investment of 457(b) plans sponsored by governmental entities.

While ERISA does not regulate the conduct of fiduciaries of government plans, it is the most detailed, comprehensive, and developed body of law concerning the management of retirement plans. As a result, courts often look to ERISA authorities for guidance on fiduciary issues. Further, the California Constitution and Government Code place duties and obligations on fiduciaries (*e.g.,* retirement boards) that are virtually identical, in both concept and wording, to those in ERISA. Thus, to the extent the state law is not well-developed or particularly informative, this White Paper discusses guidance under ERISA.

Subsections (a), (b) and (c) of Article XVI, §17 of the California Constitution contain the provisions governing the fiduciary duties for the administration of public pension and retirement systems.[4] One obvious question is whether 457(b) plans are subject to these provisions. This is answered in Section 53609 of the Government Code, which provides that deferred compensation plans are "public pension or retirement funds" for purposes of Article XVI, §17 of the California Constitution. In particular, Section 53609 provides:

> "Notwithstanding the provisions of this chapter or any other provisions of this code, funds held by a local agency pursuant to a written agreement between the agency and employees of the agency to defer a portion of the compensation otherwise receivable by the agency's employees and pursuant to a plan for such deferral as adopted by the governing body of the agency, may be invested

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2 IRC §457(e)(1).
3 ERISA §4(b).
4 Section 31476 of the California Government Code provides the definition of retirement system: "'Retirement system' means each of the systems created and established pursuant to this chapter [This chapter refers to the County Employees Retirement Law of 1937] or its predecessor. The retirement system for county employees created by Chapter 677 of the Statutes of 1937, as amended, is continued in existence under this chapter."

> in the types of investments set forth in Sections 53601 and 53602 of this code, and may additionally be invested in corporate stocks, bonds, and securities, mutual funds, savings and loan accounts, credit union accounts, life insurance policies, annuities, mortgages, deeds of trust, or other security interests in real or personal property. Nothing herein shall be construed to permit any type of investment prohibited by the Constitution.
>
> **Deferred compensation funds are public pension or retirement funds for the purposes of Section 17 of Article XVI of the Constitution."** [Emphasis added.]

Thus, if a plan includes deferred compensation funds, section 53609 would apply the requirements of Article XVI, §17 to the fiduciaries of the plan. Since 457(b) plans are deferred compensation plans for state and local governments, 457(b) plans satisfy the definition of public pension and retirement funds for purposes of the California Constitution. This means that the retirement boards, and their members, who are responsible for 457(b) plans (for ease of reference, we refer to retirement boards, committees or other responsible fiduciaries of 457(b) plans as the "board") are fiduciaries subject to the duties and obligations under Article XVI, §17.

The Constitutional provision describes the following fiduciary duties of public retirement boards:

1. The members of the board have the fiduciary responsibility for the investments of plan assets and administering the plan. The Constitution provides:

> "Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to all of the following:
>
> > (a) The retirement board of a public pension or retirement system shall have the **sole and exclusive fiduciary responsibility over the assets** of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries." [Emphasis added.]

2. The assets of the plan must be held for the exclusive purpose of providing retirement benefits and defraying reasonable expenses. The duty owed to the participants takes precedence over any other duty. The language of the Constitution states:

> **"The assets of a public pension or retirement system** are trust funds and **shall be held for the exclusive purposes of providing benefits to participants** in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.
>
> "(b) The members of the retirement board of a public pension or retirement system **shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries,** minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. **A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.**" [Emphasis added.]

3. The board's standard of care, as to its fiduciary duty to administer the plan, is the "prudent person" standard. This standard is described as follows:

> "(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system **with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.**…." [Emphasis added.]

The duties imposed on the governing bodies of California public sector retirement plans, including 457(b) plans, by the California Constitution are discussed in the following sections of this White Paper.

3.2 The Exclusive Purpose Rule

Subsection (b) of Article XVI, §17 of the California Constitution provides that fiduciaries must act for the exclusive purpose of providing benefits to participants and beneficiaries. This is referred to as the exclusive purpose rule.

In 1992, Article XVI, §17 was amended by Proposition 162, which added the last sentence to subsection (b) indicating that a "retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty." Prior to the addition of that last sentence, the three duties of providing benefits to participants, defraying reasonable expenses of administration and minimizing employer contributions were of equal importance. The addition of this sentence clarified that the "exclusive purpose" requirement, to provide benefits to members of the retirement system, has priority over a retirement board's other obligations.

This interpretation echoes the interpretation of the exclusive purpose rule under ERISA. The U.S. Department of Labor (DOL) (the federal agency authorized to interpret and enforce the provisions of ERISA) has explained:

> "The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries **as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives**."[5] [Emphasis added.]

Consistent with Article XVI, §17 of the California Constitution, the Government Code §53216.6 provides that the assets of a public retirement system are trust funds and should be held for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the pension system. That section reads as follows:

> "The assets of the pension trust are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.
>
> "The legislative body, trust, or other body authorized to make investments for a pension trust, shall discharge its duties with respect to investing the assets of the pension trust:
>
> "(a) **Solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the trust**." [Emphasis added.]

---

[5] DOL Interpretive Bulletin 94-1

In light of these “exclusive purpose” requirements, every action that fiduciaries (*i.e.*, members of retirement boards) take and every decision that they make must be consistent with that purpose. Thus, the exclusive purpose rule establishes the fiduciary objective; that is, providing retirement benefits for the participants.

In order to meet this objective when making decisions regarding the plan, such as investment selection, the board must focus on the goal of accumulating retirement savings. As stated earlier, this duty takes precedence over other duties and considerations. For example, a board cannot prioritize other benefits or payments, or the interests of other parties, over the interests of the participants. To do so would be a fiduciary breach. As another example, board members, as fiduciaries, must diligently and rigorously evaluate the plan and investment expenses and pay no more than is reasonably required for the successful operation of the plan. The failure to gather and evaluate the expense information is also a breach of fiduciary responsibilities. As a practical matter, fiduciaries need to obtain information from the marketplace about the expenses charged by 457(b) providers in order to understand and compare expenses.

In the case of 457(b) plans, in which the individual participants direct the investments, although participants can decide which of the offered investments to use, they cannot decide which investments are available; that is the job of the board. Thus, in evaluating investments, the board must select, monitor and dispose of investments for the exclusive purpose of providing retirement benefits. The board’s conduct in fulfilling this objective is measured under the prudent person standard, which requires that the board act with “care, skill, prudence and diligence” and make informed and reasoned decisions, as discussed in the next section.

3.3 Prudent Person Rule

Subsection (c) of Article XVI, §17 of the California Constitution contains the “prudent person” requirement by which the conduct of the board members in fulfilling the exclusive purpose requirement is measured. The prudent person rule in the California Constitution has a number of elements:

- It requires that fiduciaries of 457(b) plans act with “care, skill, prudence, and diligence.”

- It requires them to do so in the context of the "circumstances then prevailing."
- It requires that they do so in the same way that "a prudent person acting in a like capacity and familiar with these matters would use."
- It requires that these steps be taken in connection with the "conduct of an enterprise of a like character and with like aims."[6]

Unfortunately, California law is not well-developed in terms of either case law or administrative guidance, regarding fiduciary responsibility issues under the California prudent person standard. Fortunately, other than a substitution of the word "person" for the word "man," the language of the prudent person rule under the California Constitution is identical to the prudent man rule under ERISA. Thus, in order to provide meaningful guidance to fiduciaries of 457(b) plans, we are able to refer to DOL guidance and case law interpreting ERISA.

The DOL has described the steps that a fiduciary must take in fulfilling the prudent man rule, with regard to investments, as follows:

> "the requirements of the [prudent man rule] are satisfied if the fiduciary (A) has given **appropriate consideration to those facts and circumstances** that...the **fiduciary knows or should know are relevant to the particular investment** or investment course of action involved...and (B) **has acted accordingly**."[7]

Thus, the prudent man rule requires fiduciaries to be prudent both substantively and procedurally. As indicated in the DOL regulation, fiduciaries need to determine what information is material and relevant to making a particular decision; they must gather that "relevant" information; they must examine and understand the information; and then they must make an informed and reasoned decision.[8] In the context of investments, the fiduciaries must understand generally accepted investment principles and prevailing investment industry practices,[9] which form the "backbone" of a prudent process for investment decisions. Therefore, fiduciaries must engage in a process of determining and gathering the data relevant to make an informed decision

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[6] CA Const. Article XVI, §17(c)
[7] DOL Regulation Section 2550.404a-1(b)(1).
[8] *See, e.g.*, DOL Reg. §2550.404a-1(b); 29 CFR 2550.404a-1(b).
[9] DOL Interpretive Bulletin 96-1

and of evaluating that information to make a reasoned decision. Fiduciaries may use competent consultants and advisors to assist them in fulfilling that standard (*see* Part 3.5 of this White Paper).

Below is a list of factors fiduciaries (such as boards of 457(b) plans) should consider in fulfilling their duty to engage in a prudent process for making decisions:

1. The board must determine which “facts and circumstances” are relevant to making a decision on the issue (*e.g.*, the investments or services to be offered to participants).

2. The board then must gather the relevant information. The collected information must include not only what the board “knows” is significant to the decision, but also what the board “should know” is relevant. The “should know” requirement creates an obligation on the board members to either investigate the issues and facts themselves or to hire an experienced and knowledgeable advisor in order to fully understand the issues and to gather the information that is relevant to the decision.

3. The board must then give “appropriate consideration” to the relevant information. That is, they must review and evaluate the relevant information in order to make a decision that is informed. As part of this process, they may engage experts to assist them in the analysis, but they must prudently select the experts and evaluate their advice; they may not rely “blindly” on their advisors. However, as a practical matter, if the advisors are well-qualified, then the board may place great weight on their recommendations.

4. The board must then reach a decision on the basis of the analysis they have undertaken and the assessment they have made of the information they have considered and the advice they have received. This is the essence of a “reasoned” decision.

5. Finally, the board must implement that decision.

The steps in this process are orderly and logical. While these steps require that board members take a diligent and disciplined approach to managing the plan, they are not overly burdensome. Nevertheless, they do require a level of expertise – expertise in selecting investments and services that will produce meaningful retirement benefits in the context of a participant-directed plan, taking into account the unique needs of the employees covered by the plan. Thus, the key to the prudent process is deciding on and gathering the information that a prudent and knowledgeable fiduciary would determine is needed in order to make an informed and reasoned decision. And, where the rules require the collection and analysis of data, boards may substantially reduce that burden by working with competent advisors.

3.3.1 Prudence Regarding Plan Investments

As stated in Article XVI, §17 of the California Constitution,

> "the retirement board of a public pension or retirement system **shall have plenary authority and fiduciary responsibility for investment of moneys** and administration of the system…"[Emphasis added.]

As the highlighted language indicates, boards have the "fiduciary responsibility" for the investment of assets and the administration of the plan. In discharging their duties to invest the assets of the plan, boards must act in accordance with the "exclusive purpose requirement," which means that a board must prudently manage investments for the exclusive purpose of accumulating retirement benefits for the participants. As explained in a previous section, the prudent person standard requires that the board engage in a prudent process in making decisions. This prudent process requirement applies to both the selection and monitoring of the investments offered by a plan and for how those investments are actually used by the participants (*see,* Part 3.5). And, when handling those duties, board members must keep in mind that the decisions, including the investment decisions, must be made with an eye to whether they are effective in terms of producing retirement benefits.

The California Constitution also notes that boards have plenary authority for the investment of plan monies. Courts have been careful to point out that the "plenary authority" granted to boards is not an unchecked power. As one court explained, "Plenary power does not mean un-reviewable power."[10] Thus, although boards have plenary authority and fiduciary responsibility over the investments and administration of plans, such duties and obligations are subject to judicial review and oversight.

Based on both legal guidance and our observations of the practices of fiduciaries, the primary investment duties for fiduciaries of participant-directed plans are:

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[10] *Board of Retirement v. Santa Barbara County Grand Jury*(1997) 58 Cal.App.4th 1185, 1193; *See also, Singh v. Board of Retirement* (1996) 41 Cal.App.4th 1180, 1190.

- The development of an investment policy for the plan.
- The selection of the investment alternatives to be offered to the participants.
- The selection of investment services for the participants.
- The selection of a "default" investment.
- The selection of advisors if the fiduciary desires assistance or does not have the relevant expertise.
- The monitoring and, if necessary, the removal of investment options.

Each of those activities is a fiduciary act. As such, each must be done according to the prudent person standard – which means that the board must engage in a prudent process to consider and decide each issue. They must review the right information in the right way and reach a reasoned decision. Or, alternatively, they must seek outside help.

Looking to the ERISA requirements related to investments, fiduciaries are required to use generally accepted investment principles, including modern portfolio theory, and prevailing practices within the investment community to establish a plan's investment policies and to select the investment options.[11] By "generally accepted investment theories," we are referring to the fundamental principles underlying modern concepts of proper investing. These include modern portfolio theory and strategic asset allocation – looking at an investment portfolio as a whole and taking into account diversification within the portfolio. When this guidance is applied to a board, the members of the board must ensure that the number and types of investments are adequate to allow participants to use those investments to properly balance risk and reward according to their individual needs.

For example, in establishing the plan's investment policy, the board would need to select investment classes in various equity and debt categories that would permit the creation of well-diversified portfolios at the participant level.

If the board does not have a grasp of these theories and principles, it will be difficult, if not impossible, for its members to prudently select the investments to be offered for participant direction. In those situations the board should consider selecting an advisor, especially since the

[11] DOL Interpretive Bulletin 96-1.

duties of board members do not end with the selection of the investments. Instead, those duties include an ongoing duty to monitor the investments. This duty to monitor is discussed below.

3.4 The Duty to Monitor

In light of the requirement under the prudent person standard that fiduciaries take into account the "circumstances then prevailing," boards have an ongoing duty to periodically review the investments and services offered by the plan and to decide whether their initial decisions remain valid in light of changed circumstances. In describing the obligations of fiduciaries, the courts have said that "ERISA fiduciaries must monitor investments with reasonable diligence and dispose of investments which are improper to keep."[12] And again: "Once an investment has been made, a fiduciary has an ongoing duty to monitor investments with reasonable diligence and remove plan assets from an investment that is improper."[13]

This means that fiduciaries have a duty to remove specific investments when, under the prudent person standard, they should no longer continue to be available as investment options for participants. It states by the DOL:

> "Thus, for example, in the case of look-through investment vehicles, the plan fiduciary has a fiduciary obligation to prudently select such vehicles, as well as a residual fiduciary obligation to periodically evaluate the performance of such vehicles to determine, based on that evaluation, whether the vehicles should continue to be available as participant investment options."[14]

This means that it is not enough for the members of the board to act prudently and in the best interests of the participants in the initial selection of investments. They must periodically review their decisions, gather more relevant information and go through a process of monitoring the performance of the selected investments to determine whether to reaffirm or change their original decision.

[12] *Morrissey v. Curran*, 567 F.2d 546, 548-49 (2d Cir. 1977).
[13] *Harley v. Minnesota Mining and Manufacturing Company*, 42 F.Supp.2d 898, 906 (D.Minn. 1999).
[14] Preamble to ERISA 404(c) regulation 57 FR 46924 FN.27.

3.5 Delegation of Investment Direction to Participants

As discussed above, the California Constitution and the Government Code provide that the basic fiduciary responsibility of the board in selecting investments is to engage in a prudent process. That process includes an appropriate investigation of the investments, prudent selection of the investments that are to be offered to the participating employees, and the selection of advisors to help in the process.

In our experience, 457(b) plans almost universally delegate investment direction to the participants. That is, while the board members, as fiduciaries, select the investment options for the plan, the participants decide which investments to actually use in their accounts. In that regard, the law contemplates that, consistent with modern portfolio theory,[15] the participants will select from among the investment options to craft portfolios in their accounts which balance their needs for return with their tolerance for risk.[16]

The California Government Code recognizes that the board may delegate control over the use of the investments to the participants. However, the Government Code also requires that, for the fiduciaries to avoid liability for potential imprudent investment decisions by the participants, the board must satisfy a number of conditions:

> "Notwithstanding any other provision of law, participants choosing individually directed investments shall relieve the trustee and local agency of responsibility under the terms of the plan and trust**. That relief shall be conditioned upon the local agency compliance with communication and education requirements similar to those prescribed in subdivision (c) of Section 1104 of Title 29 of the United States Code for private sector employers**."[17] [Emphasis added.]

The provision of federal law referred to in that section is also known as ERISA Section 404(c). Section 404(c) provides that fiduciaries of a retirement plan are relieved of liability for losses that are the direct result of a participant's exercise of control over his account . . . if certain requirements are met.

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[15] *Laborers Nat. Pension Fund v. Northern Trust Quantitative Advisors, Inc*., 173 F.3d 313 (5th Cir 1999). *See, also, In re Unisys Sav. Plan,* 1997 WL 732473 (ED Pa), *Chao v. Moore,* 2001 WL 743204 (D Md), and *In re Enron Corp. Securities,* 2003 WL 222245394 (SD Tx); DOL Regulation 29 CFR §2509.96-1.
[16] DOL Regulation 29 CFR 2550.404c-1(b)(2)(i)(B)(1)(ii).
[17] Ca. Govt. Code § 53213.5(b)

It is important to note that the relief offered to fiduciaries under Section 404(c) of ERISA is limited, because participant investments in a participant-directed plan are limited to the investment options selected by the plan fiduciary. As the DOL has stated:

> "All of the fiduciary provisions of ERISA remain applicable to both the initial designation of investment alternatives and investment managers and the ongoing determination that such alternatives and managers remain suitable and prudent investment alternatives for the plan. Therefore, the particular plan fiduciaries responsible for performing these functions must do so in accordance with ERISA."[18]

The DOL has issued a regulation under Section 404(c) (referred to as the 404(c) regulation) discussing the conditions that must be satisfied for the relief from liability granted by that section to be available. In general, the requirements are that the plan provide the participants with an "opportunity to exercise control" and an opportunity to select from a broad range of investment options. There are roughly 20 more detailed requirements in the regulation that must be met in order for fiduciaries to be relieved of liability for losses resulting from participants' exercise of control over their accounts. In general, the requirements relate to the information that must be provided to participants in order for the participants to make informed investment decisions and the disclosure of restrictions that may be imposed on the participants' ability to exercise control over their accounts.

In considering the application of the requirements under the section 404(c) regulation to a 457(b) plan, it is important to note that Government Code Section 53213.5 states that the governing body or trustee will be relieved of liability if the plan complies with requirements "similar" to those imposed by ERISA section 404(c). Although it is not entirely clear what is contemplated by the use of "similar," it appears that substantial compliance with the conditions of the 404(c) regulation would be required.

As a word of warning, our experience is that few boards of California 457(b) plans are aware of this provision. As a result, almost none are complying with the 404(c) conditions. Because of that failure, most boards, and their members, are responsible, as fiduciaries, for the prudence of

[18] Preamble to ERISA 404(c) regulation 57 FR 46922.

the investment decisions made by the participants. (This is in addition to the responsibility for the selection and monitoring of the investments offered to the participants.)

With that in mind, to avoid liability for potential imprudent investment decisions by the participants, boards for California 457(b) plans should comply with the 404(c) requirements with assistance from providers, advisors and benefits lawyers. Additionally, boards should work with their advisors and providers to assist participating employees in prudently investing their accounts, for example, through the use of asset allocation models, age-based lifecycle funds and risk-based lifestyle funds and through investment education advice.

4. *Best Practices*

Although not an exhaustive list, the following is a summary of best practices that boards of 457(b) plans should consider:

Practice No. 1: Hold quarterly or semi-annual meetings with consultants, providers and other advisors (such as benefits attorneys) to review information about the operation and investment activities of the plan and to evaluate methods for improvement. Report to their appointing authority regarding the board's activities at least once a year.

Practice No. 2: Prudently select the investment options (including the default investment option) to be offered by the plans offered to participants:

- The options should constitute a broad range of investment categories;
- The options should be prudently selected and monitored (which includes removing and replacing investment options that are performing poorly); and
- Options should be suitable and appropriate for the participants.
- The investment considerations and decisions should be based on generally accepted investment theories and prevailing investment industry practices. Competent advisors should be engaged to assist in understanding and applying these principles.

Practice No. 3 Prepare an Investment Policy Statement for the Plan.

Practice No. 4: Establish a process designed to monitor the performance of the investment options in accordance with the criteria and benchmarks set forth in the Investment Policy Statement.

Practice No. 5: Prudently select independent, competent advisors to assist the board. Once the advisor is selected, monitor the performance of the advisor, and remove and replace the advisor if it fails to perform adequately or properly.

Practice No. 6: Document activities including the process of selecting and monitoring investments, because regardless of the process used, the fiduciary should be able to demonstrate compliance with the legal standards.

Practice No. 7: Comply with the requirements under ERISA section 404(c) to obtain relief for the board for liability for losses that are the direct result of a participant's exercise of control over his account.

5. *Conclusion*

The fiduciary duties imposed on a board with respect to a 457(b) plan of a governmental unit under California law are significant and are similar to the duties and obligations of ERISA fiduciaries. Thus, boards have an obligation to prudently perform their duties for the exclusive purpose of providing retirement benefits to participants and beneficiaries. This obligation encompasses a number of separate tasks, including:

- To act for the exclusive purpose of providing retirement benefits to participants. This obligation takes precedence over all other duties.
- To comply with the law's prudent person standard when carrying out their duties. This duty requires board members to engage in a prudent process when making decisions.
- To prudently select and monitor the investment alternatives offered under the plan. This duty requires that the members of the board develop criteria and policies for selecting investments. The chosen investment options should: constitute a broad range of investment categories; be prudently selected and monitored (which includes removing and replacing investment options that are performing poorly); and be suitable and appropriate for the participants.
- To seek help from competent consultants and advisors.

In addition, boards of 457(b) plans should obtain relief similar to that offered under section 404(c) of ERISA as protection from imprudent participant investment decisions. However, that relief is limited to losses that are the direct result of a participant's exercise of control over his account. Thus, even in those situations, boards remain responsible for the prudent selection and monitoring of the investment options in the plan. Therefore, boards of 457(b) plans should consider adopting practices similar to the "Best Practices" described in this White Paper.

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Bylaws

Bylaws (Draft) #79

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1.0 FORMATION

1.1 The Resolution creating the Deferred Compensation Management Council ("Council") was adopted by the Fresno County Board of Supervisors on April 17, 2012.

2.0 PURPOSE

2.1 The purpose of the Council is to exercise administrative oversight of the County of Fresno 457(b) Deferred Compensation Plan.

2.2 Pursuant to Section 11 of the Plan Document, the Council has the following duties and responsibilities:

- 2.2.1 Enforcement of the provisions of the Deferred Compensation Plan Document;
- 2.2.2 Direction of the third-party administrator on behalf of the County to make disbursement of Deferred Compensation Plan benefits;
- 2.2.3 Selection and review of any investment currently offered or under consideration to be offered as an investment option under the Deferred Compensation Plan;
- 2.2.4 Make recommendations to the Board of Supervisors, as appropriate, regarding the appointment of such agents, advisors, and counsel, including a third-party administrator as necessary for the administration and operation of the Deferred Compensation Plan.

3.0 DEFINITIONS

3.1 "Board" means the County of Fresno Board of Supervisors.

3.2 "Council" means the Deferred Compensation Management Council.

3.3 "County" means the County of Fresno.

3.4 "Participant" means an employee or a former employee who has entered into a participation agreement and who has a balance in their investment accounts.

3.5 "Plan" refers to the County of Fresno Deferred Compensation Plan.

3.6 "Staff" refers to employees within the County providing support to the Council in its administration of the Plan.

4.0 MEMBERS

4.1 The Council shall consist of seven (7) voting members as follows:

- 4.1.1 Auditor-Controller / Treasurer-Tax Collector
- 4.1.2 County Administrative Officer
- 4.1.3 Director or Deputy Director of Personnel Services
- 4.1.4 Retirement Administrator or Assistant Retirement Administrator

4.1.5 One (1) department head appointed by the County Administrative Officer

4.1.6 Two (2) members at-large appointed by the Board of Supervisors; the two members at-large appointed by the Board of Supervisors must be Participants in the Plan

4.2 The appointed Council members shall serve one (1) 3-year term. Council members may be reappointed at the end of the designated term.

4.3 Vacancies in the office of a member of the Council shall occur upon such member's absence from two (2) regular meetings within a twelve (12) month period unless excused by the Council, or if any of the following events occur before the expiration of their term of office:

4.3.1 Resignation of the member.

4.3.2 The member ceases to discharge the duties of his or her office for a period of three (3) consecutive months except with the consent of the Council.

4.3.3 The member being convicted of a felony or of any offense involving a violation of his or her official duties.

4.3.4 The death of the member.

4.3.5 Any inability of the member to carry out their duties.

4.4 No Council member shall receive compensation for their attendance at Council meetings or for any other purpose or purposes.

5.0 Officers

5.1 The officers of the Council shall be a Chair and Vice-Chair.

5.2 The Chair and the Vice-Chair shall be elected by the members of the Council at the first meeting of each calendar year.

5.3 The Chair shall preside at all Council meetings and shall have other powers and duties as may be prescribed from time to time by a vote of the Council.

5.4 The Vice-Chair shall have all powers and duties of the Chair in the event of the absence or disability of the Chair.

5.5 In the event of the absence or disability of the Chair and Vice-Chair, at any meeting or hearing of the Council, the Council shall elect one of its members as Chair Pro Tempore to preside over such meeting or hearing.

5.6 The Secretary of the Council shall be the Director of Personnel Services or their designee.

5.7 The Secretary or their designee shall have the following powers and duties:

5.7.1 Schedule all meetings of the Council.

5.7.2 Serve meeting notices to the Council members.

5.7.3 Post meeting agendas as required pursuant to the Brown Act.

5.7.4 Attend all meetings and hearings of the Council or of subcommittees, and keep a record or minutes of all that transpires at such meetings or hearings.

5.7.5 Keep and have custody of all books, records and papers of the Council, and certify true copies thereof whenever necessary.

6.0 Meetings

6.1 The Council shall hold its regular meetings at the Fresno County Employees' Retirement Association building, at 1111 H St. in Fresno.

6.2 The Council shall meet at least two (2) times per year, and shall set its meeting schedule as far in advance as possible.

6.3 Special meetings of the Council may be called at any time by the Chair, or by a majority of Council members, whenever in their opinion the business of the Council requires it.

6.4 Four (4) Council members shall constitute a quorum, provided that no action shall be taken without the affirmative vote of at least three (3) Council members.

6.5 Agenda items to be presented to the Council at regular meetings shall be given or delivered to the Secretary at least ten (10) business days in advance of the Council meeting, and agenda items to be presented to the Council at special meetings shall be given or delivered to the Secretary at least seven (7) business days in advance of the special Council meeting.

6.6 All meetings of the Council shall be called, held and conducted in accordance with the provisions of the Ralph M. Brown Act (Gov. Code, § 54950 et seq.). No action or discussion shall be undertaken on any item not appearing on the posted agenda except that members of the Council may briefly respond to statements made or questions posed by persons exercising their public comment rights or to ask a question for clarification, refer the matter to Staff or to other resources for factual information or request Staff to report back at a subsequent meeting concerning any other matter.

6.6.1 Public Comment – Matters not on Agenda. Members of the public may comment on any item not appearing on the agenda. Under state law, matters presented under public comment cannot be discussed or acted upon by the Council at that time. No person shall be permitted to speak unless he or she is recognized by the Chair and given permission by the Chair to speak.

6.6.2 Public Comment – Agenda Items. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Council consideration. Upon being recognized by the Chair, such person may speak or present evidence relevant to the matter being heard.

6.6.3 Right to Speak. No person shall be denied the right to speak because he or she declines to disclose their name, address or telephone number.

6.6.4 Time Limit. Any person addressing the Council will be limited to a maximum of three (3) minutes so that all interested parties have an opportunity to speak with a total of fifteen (15) minutes allotted for the public comment period. However, the Chair, in their discretion, may extend such time as they may find reasonable under the circumstances or may further limit the time if the time anticipated to complete the agenda is unusually long.

6.7 Robert's Rules of Order shall govern the proceedings of the Council in its transaction of business unless otherwise provided herein or by general law.

6.8 Minutes shall include the time and place of each Council or subcommittee meeting, the names of the members present, all official acts of the Council, votes given by Council members except where the action is unanimous, and when requested, a member's dissent or approval with their reasons. The minutes shall be presented for approval at the next regular Council meeting. The minutes, or a true copy thereof, approved by the Council and signed by the Chair, shall form part of the permanent records of the Council.

6.9 No proxy or substitute may vote in place of a Council member.

7.0 Subcommittees

7.1 The Council shall have the power to create one or more subcommittees from time to time which shall serve at the pleasure of the Council. The members of the subcommittees shall be appointed by the Chair with the approval of the Council.

7.2 Standing Subcommittees. The Council shall have the power to create one or more standing subcommittees in order to assist the Council in its decision-making related to the administration, interpretation and application of the Plan by performing such functions as conducting research, developing reports, making recommendations or providing other assistance as determined by the Council. The Secretary shall post the agenda for any standing subcommittee meeting in accordance with Section 5.7 above.

7.3 Quorum for Subcommittees. A quorum to conduct subcommittee business shall consist of two (2) members, but a lesser number may constitute a quorum for the purpose of adjourning a meeting or adjourning a meeting to a stated time. In any case in which a subcommittee takes action on any matter with only two members present, the subcommittee's report to the Council shall reflect the number of members actually voting.

7.4 Officers. Each subcommittee shall have a Chair and Vice-Chair, and such other officers as may be required who shall be selected by, and serve at the pleasure of, the subcommittee. Such officers shall have such powers and duties as the subcommittee may from time to time determine.

7.5 Ad Hoc Subcommittees. The Chair of the Council shall have the power, with the approval of the Council, to appoint such ad hoc subcommittees as are necessary for the purpose of furthering the objectives of the Council.

7.6 Attendance. Each member of a subcommittee shall attend meetings of the subcommittee as scheduled. If a member of a subcommittee fails to attend two (2) consecutive meetings, the member may be replaced by appointment of a replacement member by the Chair of the Council with the approval of the Council, or, in the case of absence from two (2) consecutive meetings of an ad hoc subcommittee, the replacement member may be appointed by the Chair.

8.0 Amendment of Bylaws

8.1 Approval by the Council. An amendment to these Bylaws may be proposed at any time. The amendment shall be presented to the Council at two (2) regular meetings, with at least one week between meetings. At least five (5) members of the Council must vote in favor of the amendment at each reading in order for it to be sent to second reading or approved. If the proposed amendment is altered at the first reading, the altered version shall be presented for first reading at the next regular meeting. Corrections of typographical or clerical errors are not alterations within the meaning of the section.

8.2 Adoption by the Board. If the Council approves an amendment to the bylaws, the amendment shall be submitted to the Board. The amendment shall become effective immediately upon adoption by the Board.