



Agenda Item 5

October 16, 2012

ITEM NAME: Board Confidentiality Policy

PROGRAM: Board Governance

ITEM TYPE: Action

RECOMMENDATION

Staff recommends the Committee approve the Board Confidentiality Policy (Attachment 1).

EXECUTIVE SUMMARY

One of the recommendations of the Board Governance Project conducted in 2011 was the adoption by the Board of an explicit policy concerning confidentiality for matters which legitimately should be kept confidential, such as personnel matters, litigation, contract negotiations, and sensitive investment information. The Board Confidentiality Policy (Policy) is designed to ensure that CalPERS Board Members are aware of the restrictions on the use of Confidential Information.

BACKGROUND

From March through September 2011, the Board engaged Funston Advisory Services LLC, with the assistance of outside fiduciary counsel, to develop a set of recommendations to improve the effectiveness of the Board by improving oversight, clarifying accountability, and improving decision-making. One of the recommendations was that the Board adopt a policy that prohibits the use of Confidential Information for personal gain or for the benefit of outside interests.

ANALYSIS

CalPERS Board Members regularly receive and have access to information about contracting agencies, employers, CalPERS employees, CalPERS members, other state agencies, investment partners, and contracting vendors. These and similar communications must be kept confidential under the law and in order to meet fiduciary duties. The proposed Policy is established to ensure that CalPERS Board Members understand and honor their legal and fiduciary responsibilities with respect to Confidential Information.

“Confidential Information” within this Policy collectively refers to:

- Confidential contract, financial, investment, and legal information;
- Member data, account, and health information;

- Information about individual members which relates to their personal lives or which identifies or describes an individual;
- Confidential information (including proprietary information) about service providers, investment partners, contracting public agencies, and other state agencies;
- Employee personnel, medical, or other personally identifiable information;
- Information covered by the attorney-client privilege between CalPERS and its legal advisors;
- Information technology, including systems and methods used to safeguard the security of information at CalPERS and at service providers, investment partners, contracting public agencies, and other state agencies; and
- Other information identified as confidential.

The Policy also outlines procedures for Board Members to follow in order to protect Confidential Information as well as disciplinary action under the Governance Policy if the Policy is violated.

The same restrictions on the use of Confidential Information should apply to the CalPERS staff. Therefore, the Chief Executive Officer will be issuing a similar policy covering the staff over the next 30 days.

BENEFITS/RISKS

Adoption of the Policy will mitigate the risk of a perception that Board Member's access to Confidential Information could cause a conflict of interest in their decision-making and leadership. The Policy will also facilitate transparency and ensure Board Members are not using Confidential Information for private gain or the advantage to others.

Without the proposed Policy, Board Members may not fully understand their duty to protect Confidential Information and may not fulfill their role as responsible fiduciaries to CalPERS members. Additionally, disclosure of Confidential Information could subject CalPERS, CalPERS Board Members, staff, and external service providers to legal liability and could damage CalPERS relationship with members, contracting agencies, employers, other state agencies, and contracting vendors.

ATTACHMENTS

Attachment 1 – Board Confidentiality Policy

PETER H. MIXON
General Counsel