

Improving Board Meeting Effectiveness

A Facilitated Continuing Education Presentation for the PERSI Board of Trustees

Amy McDuffee & Natasha Smith | September 24, 2025

Objectives

01

Governance Overview and Context

02

Role of a Policy Board

03

Executing Responsibilities and Organizing the Board's Work





Governance Overview and Context

Why Governance Matters

- Governance ensures:
 - fiduciary responsibilities are met,
 - strategic goals are advanced, and
 - risks are managed.
- The quality of public pension fund governance is correlated with organizational performance.*

**The Pension Governance Deficit: Still With Us. By Ambachtsheer, Capelle, and Lum. Published Fall 2008 in the Rotman International Journal of Pension Management.*



Type and Degree of Statutory Authority Varies

Budget

Internal Staff

Plan Funding

**Procurement and
contracting**

Outside advisors

**Open meetings &
public records
laws**

Actuarial matters

**Permissible
investments**

**Ethics laws &
policies**



U.S. Public Pensions: A Shared Governance Structure

Parties with
Involvement

- State Executive Branch
- Legislative Branch
- Board of Trustees
- Executive Director
- Members
- Member & Employer Groups

Where
involvement
is defined

- Applicable laws and rules
- Regulations, charters, policies



PERSI Statutory Authority

| Area | | Authority |
|--|---------------|--|
| Budget | | Admin – None; Investments – Continuous Appropriation |
| Personnel/Staffing | | Limited |
| Compensation | | Limited |
| Procurement/Contracting | | Limited |
| Authority to Hire Advisors and Service Providers | Actuary | Full |
| | Auditor | Full |
| | Custodian | Full |
| | Legal Counsel | Full |

PERSI Statutory Authority *(continued)*

| Area | Authority |
|-------------------------|--|
| Benefits Design | Generally, set by Legislature |
| Benefit Amounts | Limited: May determine discretionary Post-retirement Allowance |
| Funding | Limited: Employer rate only; Statutory requirement to fund the actuarially determined contribution |
| Permissible Investments | Full: Uniform Prudent Investor Act applies |

Why the Degree of Statutory Authority Matters



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graph TD; A[Fiduciary Duty] --> B[Aligned Authority]; B --> C[Effective Decision-Making]; C --> D[Outcomes];
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Fiduciary Duty

Aligned Authority

Effective Decision-Making

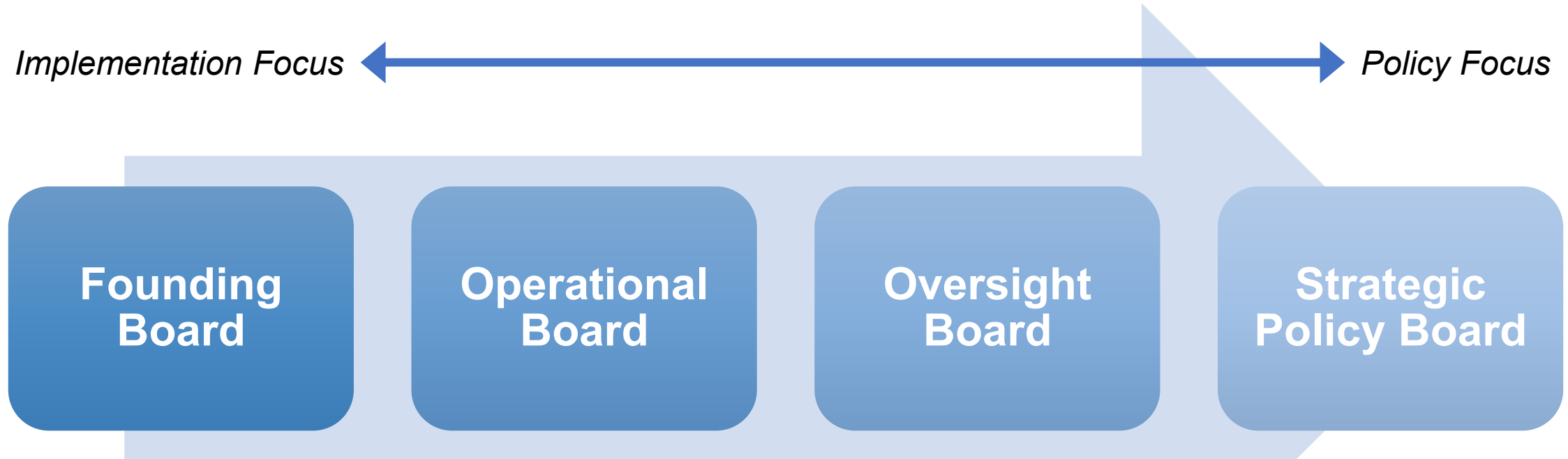
Outcomes





Role of a Policy Board

Public Pension Board Evolution



Where do you see the PERSI Board today?

**Not all pension funds/boards will or should expect to progress through all stages of evolution.*



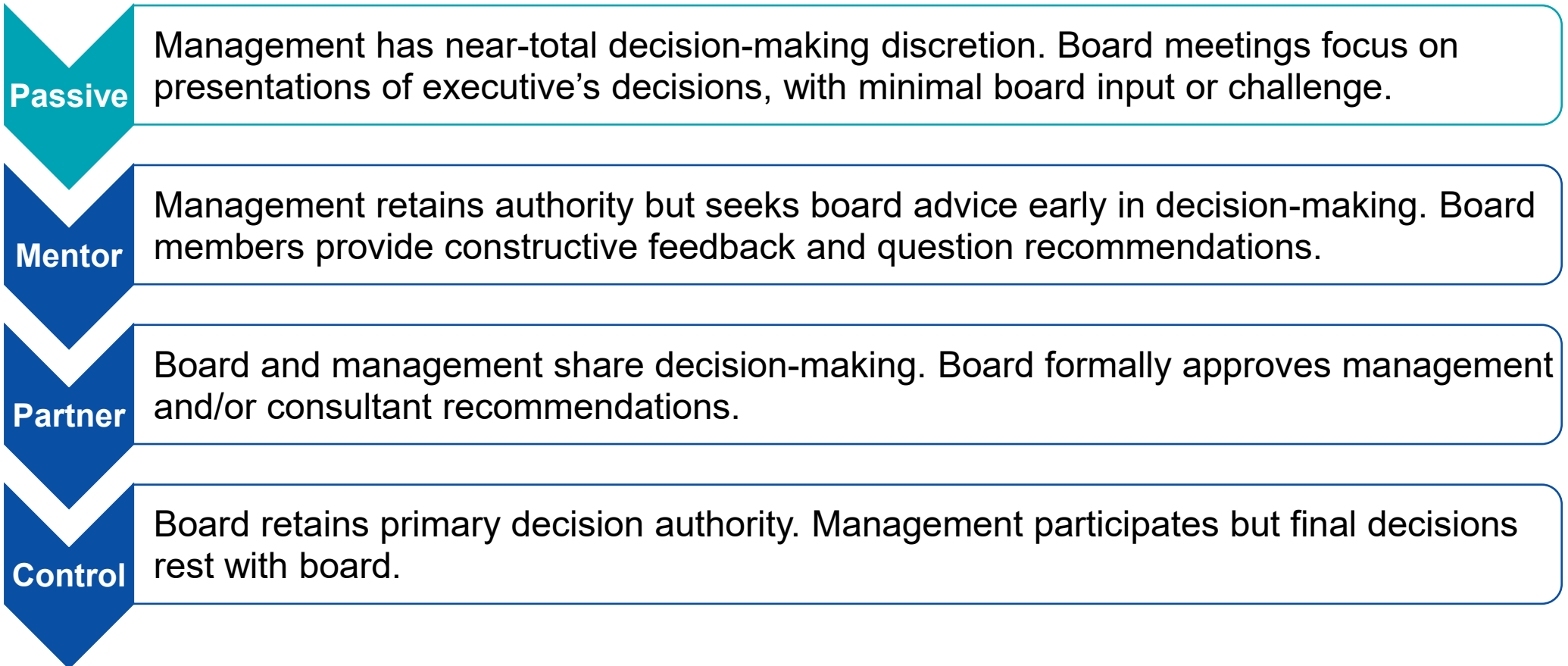
The Role of a Policy Board

- Shape mission and strategic direction.
- Set appetite on key risks for the system and monitor/mitigate emerging risks.
- Ensure leadership, talent, and resources.
- Monitor and advocate for improved organizational outcomes.

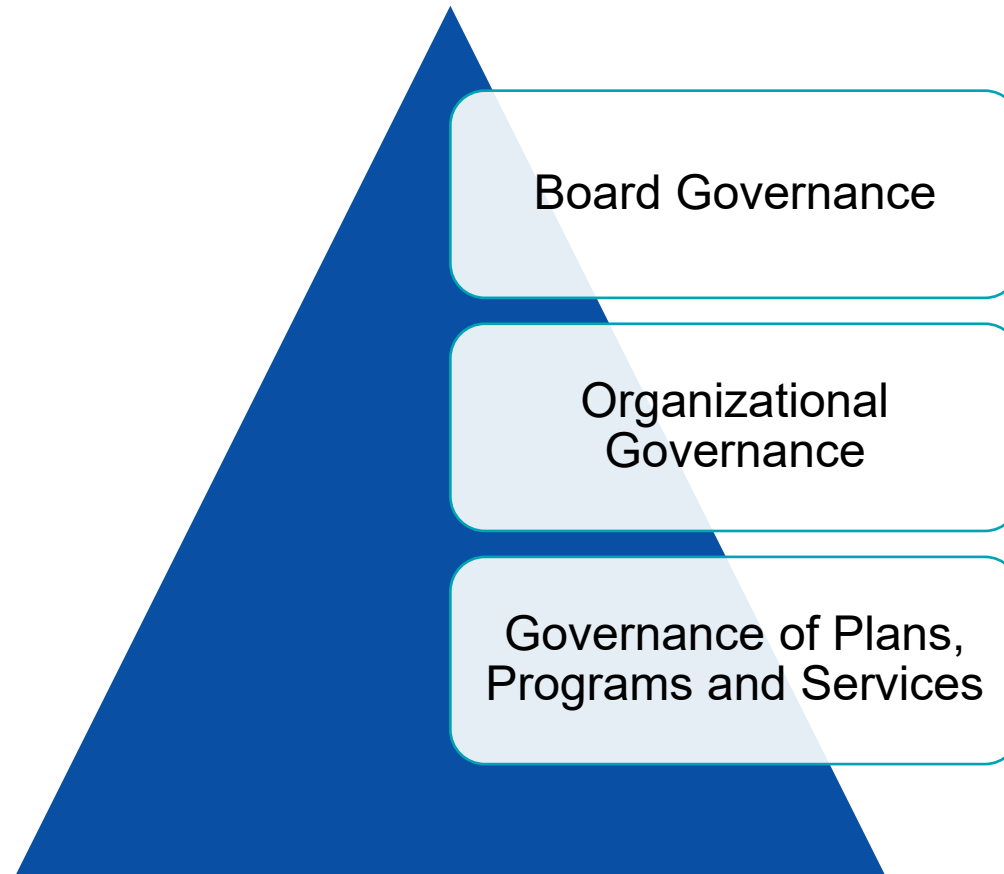


Most Boards Default to a Single Engagement Style*

*Most
common:
46% of
boards*



Common Scope of Board Decision-Making



Discussion *(see handout)*

- As you think about 2026, approximately how should time be allocated across the responsibilities in each of the scope areas?
- ***Next steps:*** Consider Board consensus when discussing Board meeting frequency.





Executing Board Responsibilities and Organizing Board Work

Overview of Current State

- **10 meetings per year.**
- **Using “Board liaison” model to provide additional oversight on priority topics between Board meetings.**
- **Opportunity:**
 - Revisit cadence and focus of Board meetings to better align with Board responsibilities and engagement preferences.
 - Clarify expectations and communication protocols of liaison roles.
 - Discuss reporting preferences that will best support preferred Board engagement.



Board Meeting Frequency Considerations

- **Annual responsibilities**

- Required (*consider timing of when Board action is needed*)
- Routine/Best Practice
- Long-Range Plan
- Periodic/Cyclical
- Continuing Education

- **Preferred board engagement**

- Identify the responsibilities that will require deeper engagement
- Align engagement needs with meeting length



Board Meeting Frequency Considerations *(continued)*

Planning Formula (Annual Board Workplan)

Responsibilities + Engagement Needs

Preferred Meeting Length

= Number of Meetings Per Year

Best Practices

- Use an annual workplan to ensure sufficient coverage of responsibilities.
- Publish an annual meeting calendar in advance of the year; consistently maintain it.
- Schedule annual board education retreats to deepen knowledge and increase governance capacity.
- Evaluate meeting effectiveness and frequency through the annual board self-evaluation.



Discussion

- Is there general agreement around using the planning formula along with the Board's timing preferences?
- ***Next steps:*** Staff and Mosaic can work to develop a 2026 workplan with meeting frequency options for the Board's review.



The Role of Board Liaisons at PERSI

- **Board Liaison:** a trustee assigned to work with staff and consultants between regularly scheduled Board meetings to provide closer board oversight on a specific topic.
 - Enhance Board visibility and engagement on ad hoc, significant projects or standing topics.
 - Serve as a bridge between the Board and staff/consultants.
- **Assignment Criteria**
 - Subject matter expertise
 - Professional background
- **Scope & Authority**
 - No delegated Board authority
 - Carries the voice of the Board, not individual opinion
 - Reports back to the full Board with updates, insights, and recommendations



Board Liaisons and Committees | What's the Difference?

| | Board Liaison (Informal) | Board Committees (Formal) |
|---------------------------------|---|--|
| Purpose | Provide additional board oversight/engagement between board meetings on specific topics | Oversee defined areas of board responsibility (e.g., standing: audit, investments; ad hoc: executive search) |
| Format | One or two trustees; working group style; informal meetings with summaries | Established by board charter/bylaws, may include multiple trustees; public/open meetings with minutes |
| Authority | Advisory only; no delegated board authority | May include delegated authority per charter to act on board's behalf within scope |
| Communications/Reporting | Reports back to full board with updates and recommendations | Reports to board; may make formal recommendations or decisions |
| Selection | Based on expertise, interest or trustee development | Formal appointment process; may require specific qualifications or special training/education |
| Duration | Temporary/ad hoc or ongoing as needed | Standing or ad hoc; typically defined by board action |



Board Liaisons: Best Practices

- **Best Practices**

- Consider expertise and trustee development in the selection process.
- Clearly define the liaison's scope and expectations at the outset.
 - For example, how does the liaison communicate back to the full Board?
- Align liaison activities in alignment with the Board's annual workplan.
- Use liaison roles to support strategic oversight consistent with current Board direction.
- Evaluate effectiveness of liaison role via Board self-evaluation.



Discussion

- What's working well with the current Board liaison format?
- Where could process improvements be made?
- ***Next steps:*** Staff and Mosaic to discuss how to incorporate process improvements.



Aligning Board Reporting and Information Flow – Current State

- The Board receives information to create visibility and awareness of governance-level matters and to support effective decision-making.
- This information is provided between meetings (within the contours of open meetings and public records laws) and in formal Board meeting packets.
- Reporting serves as part of the record of the prudent process undertaken to execute responsibilities.
- Over time, Board reports have been modified in response to specific trustee information requests.
- Regular feedback from the Board helps ensure reporting continues to meet its collective needs.



Key Considerations for Effective Board Reporting

- Information should support board-level oversight and decision-making.
- Provide materials in advance of meetings; send concise updates between meetings.
- Use clear, relevant executive summaries that highlight decisions, trends, and risks.
- Standardize formats and reporting cadence to the extent possible.
- Clearly indicate when board input or decisions are needed.
- Distinguish board oversight from management action.
- Right message, right person – consider how board consultant reporting supports assurance.
- Make effective use of the consent agenda for non-controversial decisions or written updates.
- Invite board input to continuously improve reporting.



Discussion

- What makes a report useful for Board-level oversight?
- What between meeting reports are useful?
- Which existing reports should be prioritized for review? Consider:
 - Frequency of the report
 - Content of the report
- ***Next steps:*** Staff and Mosaic to discuss how to implement and incorporate discussion outcomes.





Closing Comments and Next Steps

Closing Comments

- Good governance is a competitive advantage to drive value, trust and long-term sustainability for PERSI.
- The Board's ability to stay focused at the policy level is what positions PERSI to adapt and thrive.
- The Board's leadership sets the tone for the organization to deliver on its mission.



Next Steps

- Review Board feedback with staff and develop implementation options.
- Share options with the Board for review and further direction.
- On an ongoing basis, discuss refinements through Board self-evaluation.



Thank you!

Amy McDuffee | Natasha Smith
Mosaic Governance Advisors, LLC
www.MosaicGovernance.com



PERSI Board Retreat Base Plan Presentation

Workflow Numbers – Portal is working

- **Tax/Bank Changes**
- **FY 2024 2,641 FY 2025 1,949**
- **Beneficiary Changes**
- **FY 2024 7,355 FY 2025 5,644**
- **Estimates**
- **FY 2024 10,509 FY 2025 8,479**

Call Volume

- **FY 2024**
- **69,082**
- **FY 2025**
- **70,502**
- **Average talk time increased from 5:05 to 6:20**

PERSI Survivor Benefit – Peace of Mind



PERSI Disability Retirement



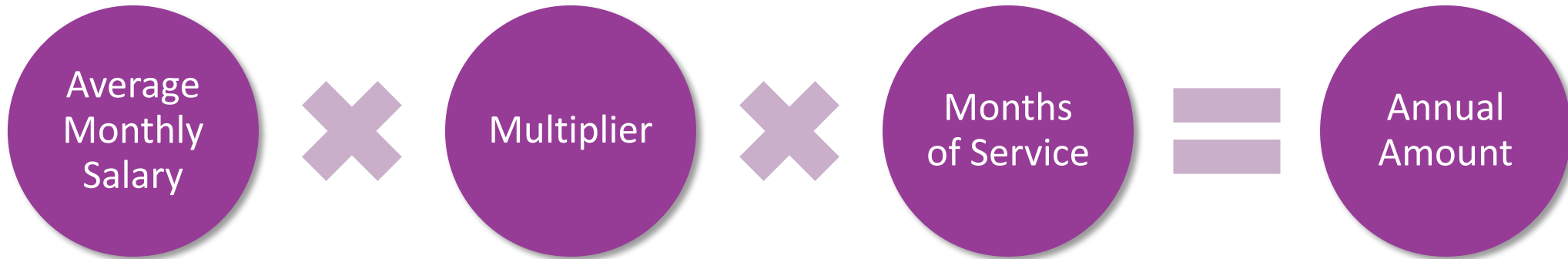
When Can I Retire?

Early Retirement

Rule

Service Retirement

The PERSI Formula



Buyback

Must be “active” to start Buyback

Reinstating service when fully paid

Payment options available

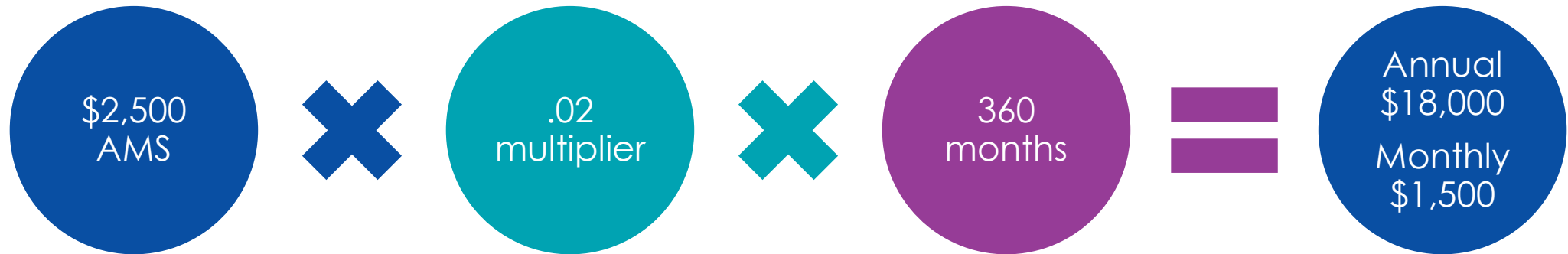
Purchase of Service

Purchase 1-48 additional months

Only 90 days prior to retirement

Must be paid prior to retirement

Example



Contingent Annuitant

Survivor Benefit Option at Retirement

Chosen at retirement

Only ONE person can be chosen

Must be a Living Person

Does not have to be a spouse

Lifetime Benefit

Retirement Options

Regular Retirement

Option 1 – 100% Contingent Annuitant

Option 2 – 50% Contingent Annuitant

Option 3 – Social Security Acceleration

Option 4A – SS Acceleration/ 100% CA

Option 4B – SS Acceleration / 50% CA

Unused Sick Leave Program

- School and State retirees only
- Pays eligible insurance premiums



Working After Retirement

Non-PERSI Employer

No restriction

PERSI Employer

There are rules



2025 PERSI BOARD RETREAT: MYPERSI MEMBER PORTAL

Catherine Atchison
9-2025

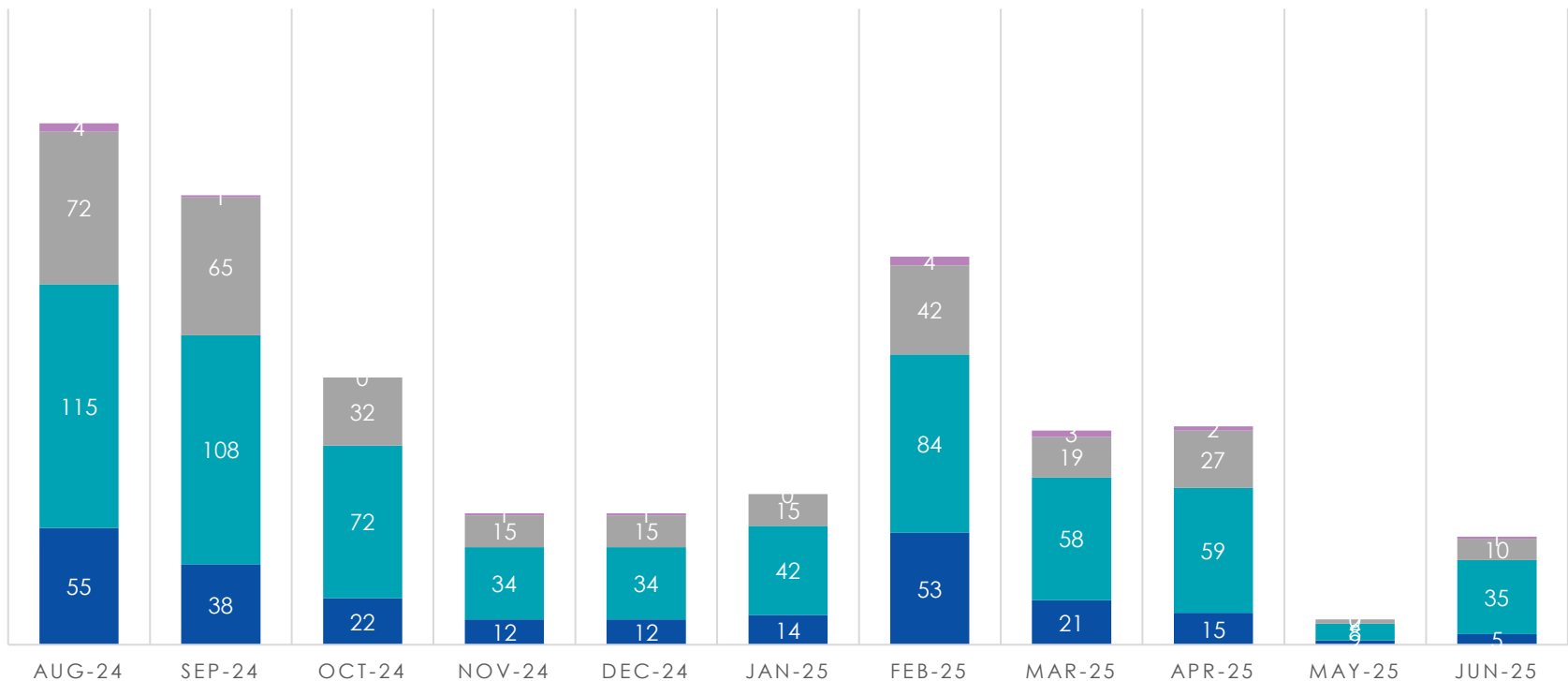
AGENDA

- myPERSI feedback since launch
- myPERSI self-service statistics
- Why the data matters and how PERSI plans to use it
- myPERSI demos featuring:
 - Active Member Dr. Acula and
 - Retiree Frank N. Stein

FEATURE SATISFACTION

FEATURES ON THE WEBSITE

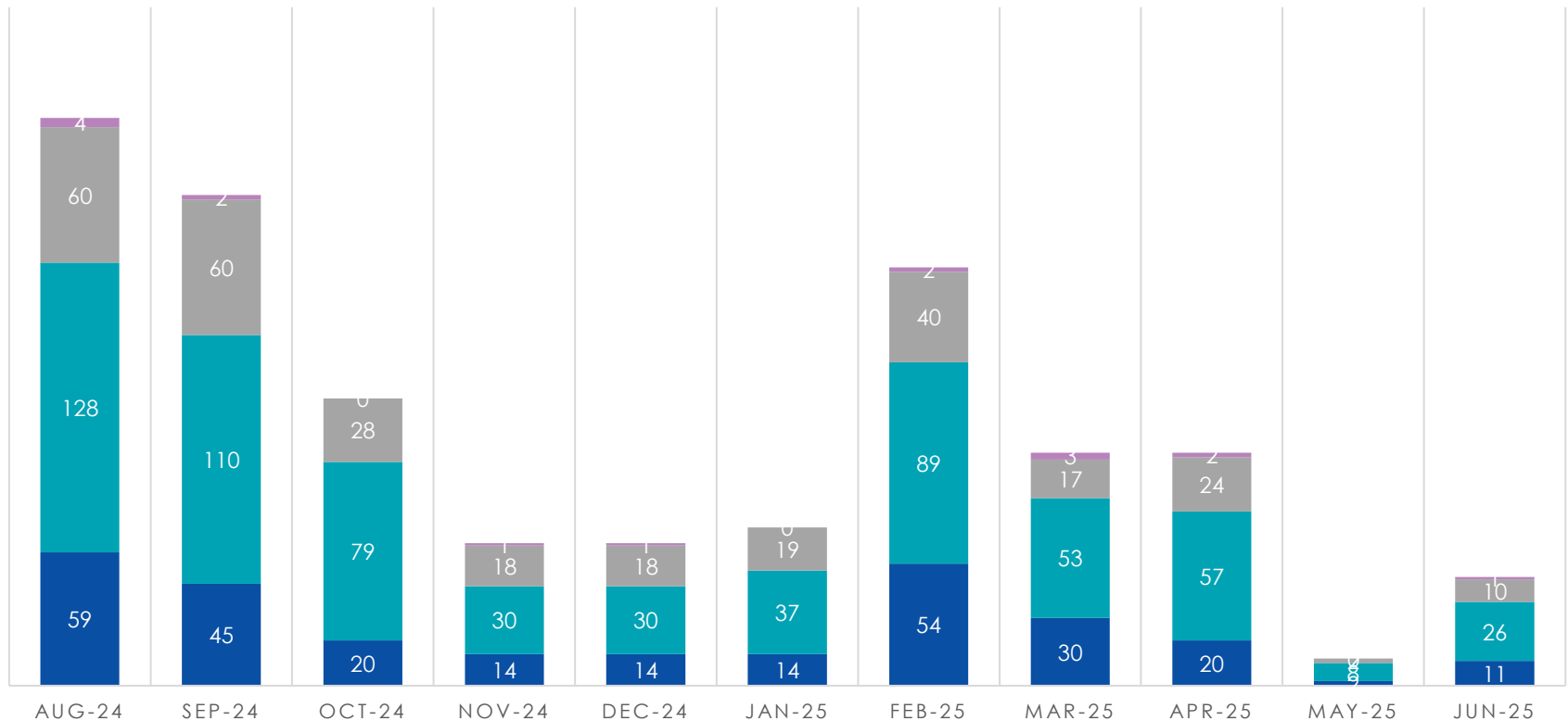
■ Extremely Satisfied ■ Very Satisfied ■ Somewhat Satisfied ■ Not At All Satisfied



FUNCTIONALITY SATISFACTION

FUNCTIONALITY OF MYPERSI WEBSITE

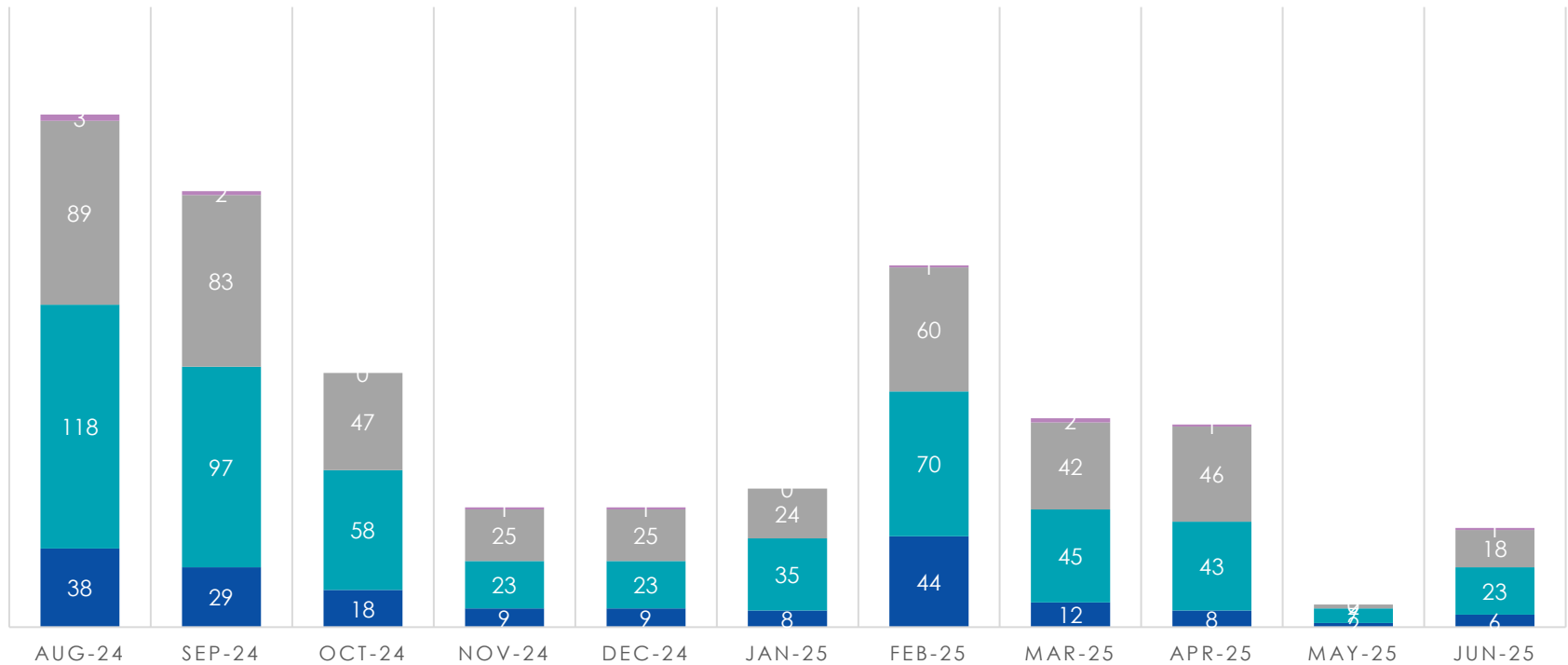
■ Extremely Satisfied ■ Very Satisfied ■ Somewhat Satisfied ■ Not At All Satisfied



NAVIGATION EASE

NAVIGATE THROUGH MYPERSI WEBSITE

■ Extremely easy ■ Very easy ■ Somewhat easy ■ Not easy at all



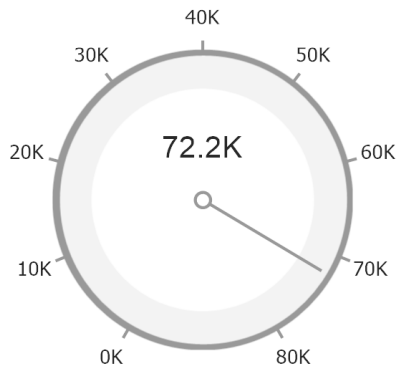
REGISTRATION | CALCULATOR

In Just 14 Months

| | |
|---------------|--------|
| Registrations | 63,000 |
|---------------|--------|

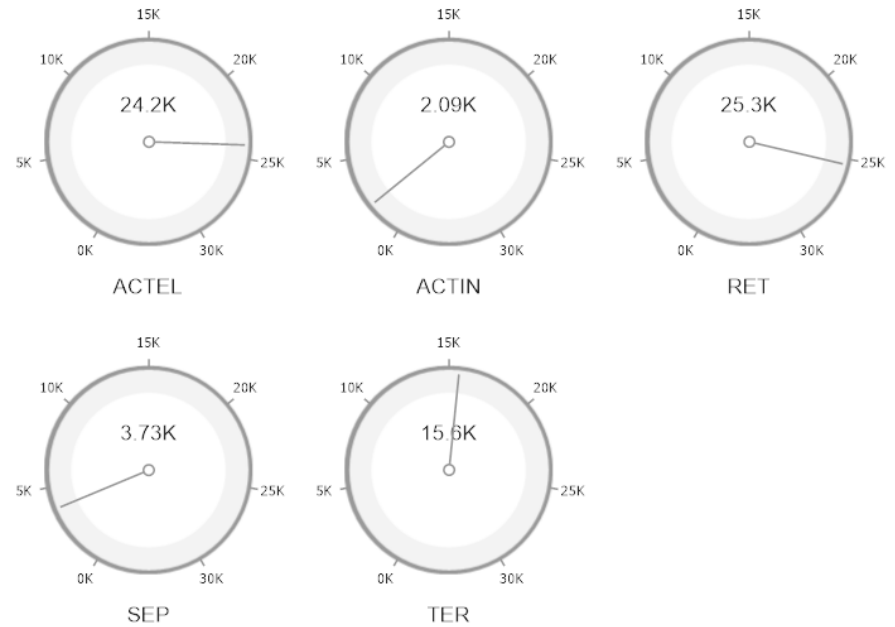
| | |
|-----------------|--------|
| Calculator Hits | 72,200 |
|-----------------|--------|

Total Number of Times Calc Option page has been hit



TOTAL COUNT FOR
CALC OPTION PAGE HIT

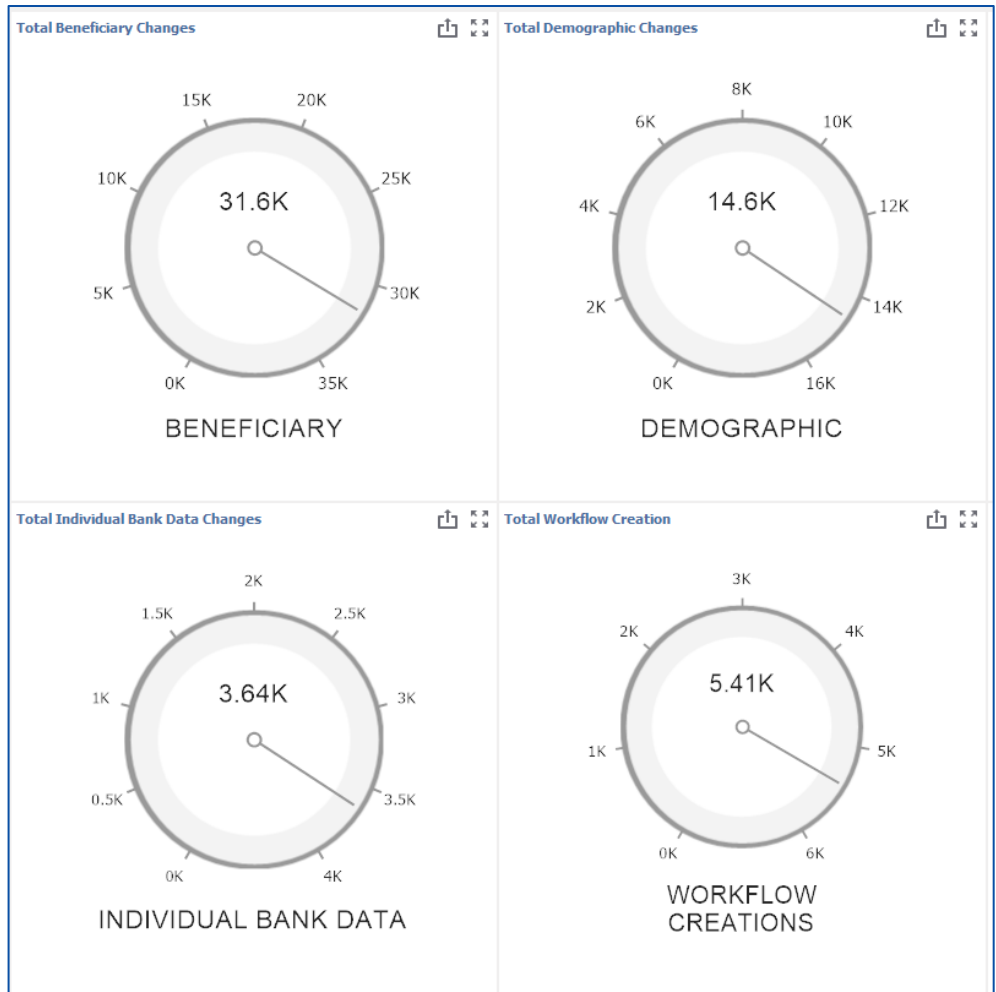
myPERSI Registered based on Individual Account Status



MEMBER SELF-SERVICE

In Just 14 Months

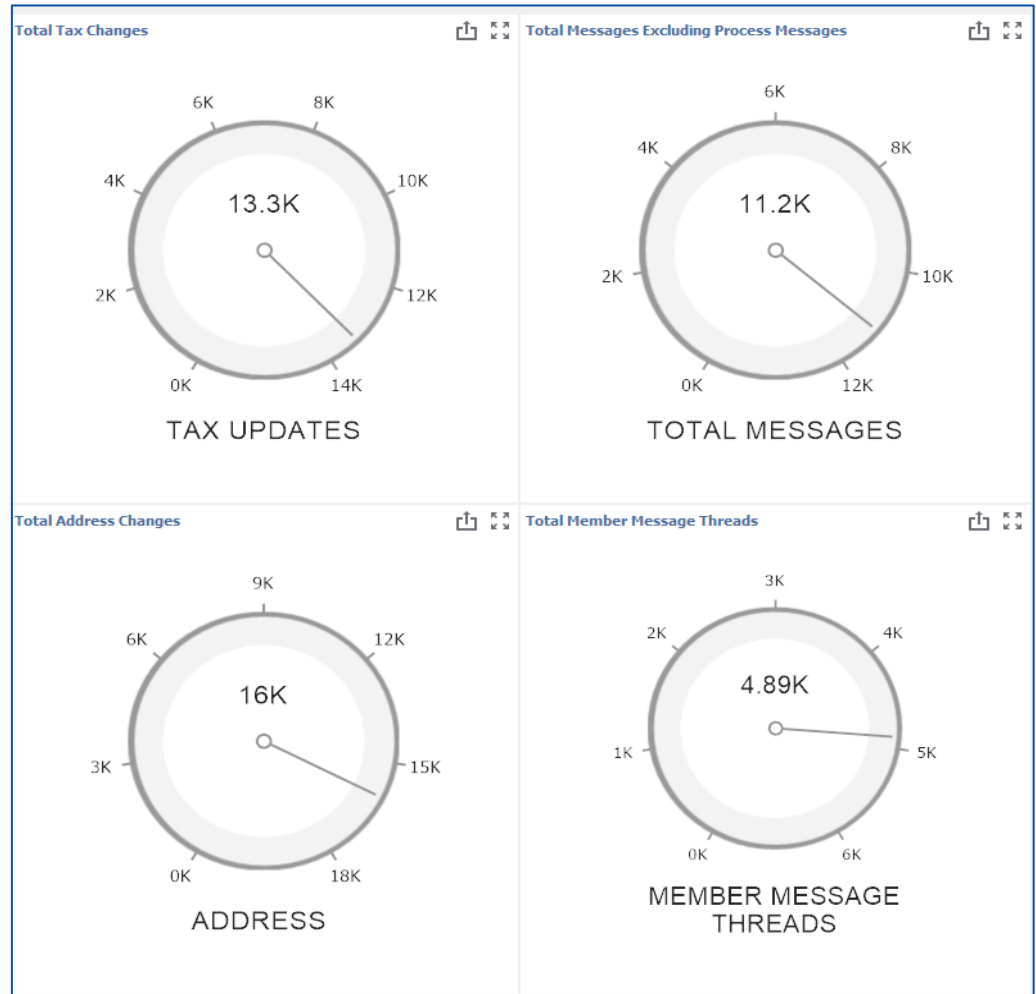
| | |
|---------------|--------|
| Beneficiary | 31,600 |
| Demographic | 14,600 |
| Bank | 3,640 |
| New Workflows | 5,410 |



MEMBER SELF-SERVICE

In Just 14 Months

| | |
|----------|--------|
| Taxes | 13,300 |
| Messages | 11,200 |
| Address | 16,000 |



WE HAVE DATA - NOW WHAT?

- PERSI has never had the opportunity to integrate this data with operational data.
- We have 14 months of data. We see membership engaging at all ages and stages of employment. [72,000 calculator page hits in 14 months.]
- Some trends already actualized, providing avenues for staff growth.
 - As online beneficiary, address, tax, and bank changes increased, related manual workflows have decreased.
 - Staff are positioned for deeper training and other meaningful work.
- Capitalizing to partner within the agency and external resources to further identify throughputs, reassess internal processes, and provide targeted opportunities to the broader membership.

MYPERSI DEMO

myPERSI

Dr. Acula

Active / Contributing

Age: 54

Vested: Yes

Frank N. Stein

Retired 10/2018

Age 68



QUESTIONS?

2025 PERSI Sustainability Modeling

Robert Schmidt, FSA, EA, MAAA

Ryan Cook, FSA, EA, MAAA

SEPTEMBER 24, 2025

Agenda

- Review of 2025 Actuarial Valuation
- Sustainability Modeling
 - Funded Ratio
 - Cumulative PAAs
 - Contribution Rates
 - Conclusions
- Options for Additional Exploration

Review of 2025 Actuarial Valuation

2025 Valuation Results

Liability (AAL) = \$26.6b
Assets (MVA) = \$24.1b
Funded Ratio (MVA ÷ AAL) = 90.6%
Amortization Period = 8.2 years

Valuation makes various simplifying assumptions



Assumption #1 – Contribution Rates

Valuation assumes current schedule remains unchanged

- Canceling currently scheduled rate increases:
 - Increases amortization period to 13.9 years
 - Lowers funded ratio to 90.4%
- Future market volatility may result in other rate changes

Assumption #2 – Postretirement Allowance Adjustments (PAAs)

Valuation includes only the vested automatic PAAs, no future discretionary or retro-PAAs

- Future discretionary or retro-PAAs raise liabilities

Assumption #3 – Investment Returns

Valuation assumes trust will return exactly 6.50%¹ every year

- Market returns will be volatile, with good years and bad years, resulting in funded status volatility

Assumption #4 – Inflation

Valuation assumes inflation will be exactly 2.40% every year

- Inflation levels will vary creating actuarial gains and losses

¹ Net of investment and administrative expenses.

Sustainability Modeling

Overview

We developed a model that projects results based on past practices for discussion purposes at this retreat.

Modeled various market scenarios

Average net investment return¹: 6.50%

Average inflation: 2.40%

Continuation of past practices

During down markets, raise contribution rates

During up markets, grant discretionary PAAs

Average results

Funded ratio improves towards 100%.

Retiree benefits keep pace with future inflation but don't make up the shortfall created by high inflation during the pandemic.

Contribution rates steadily increase over time.

¹ Net of investment and administrative expenses.



Sustainability Modeling

Funded Ratio

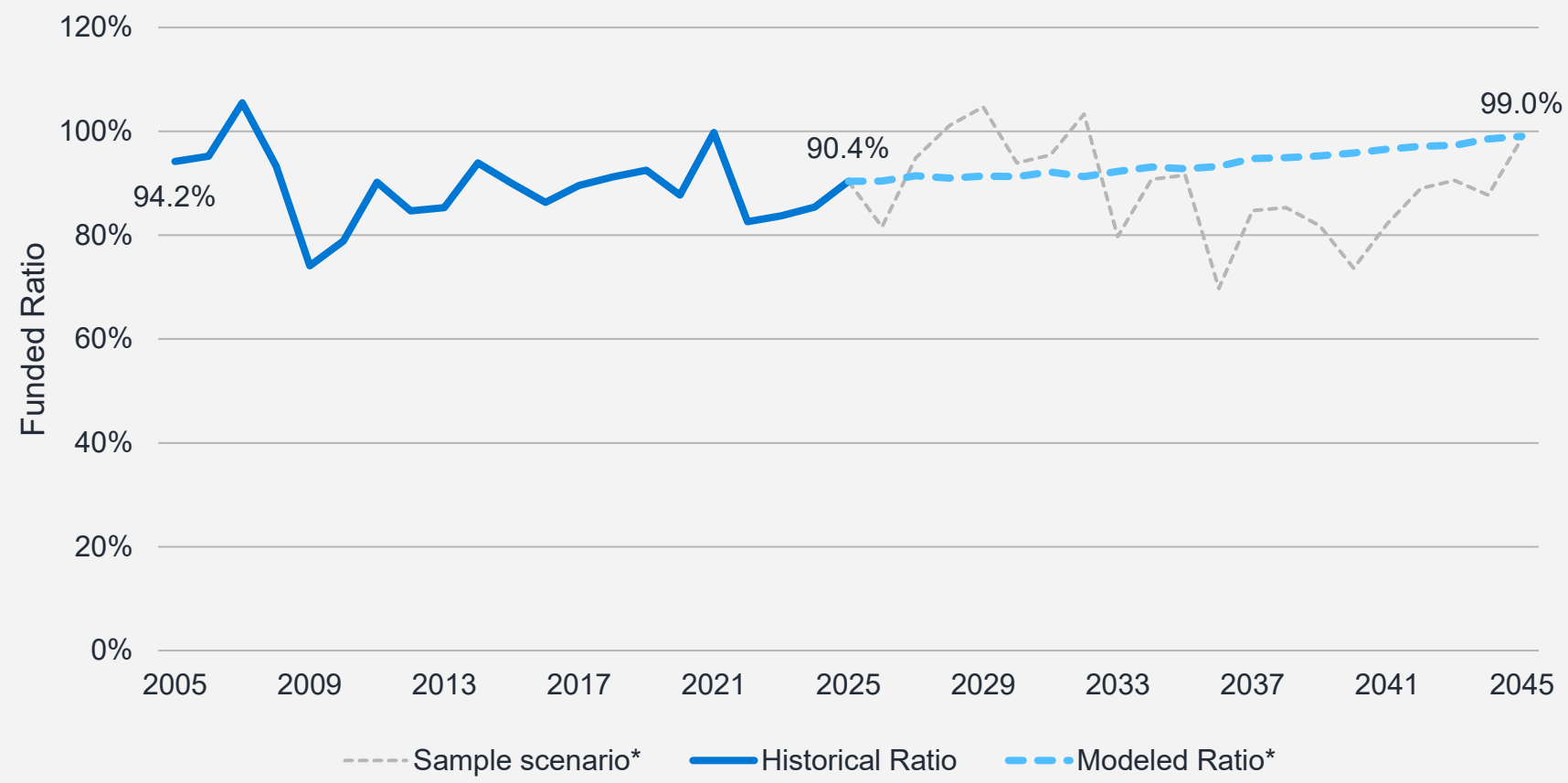
Volatility

While Modeled Ratio line is smooth, each underlying scenario shows volatility.
Like past plan experience

Amortization

2025 valuation showed 13.9-year amortization period (w/o scheduled rate increases).
Discretionary/retro-PAA's slow funding progress, so Modeled Ratio line takes more than 20 years to reach 100%.

*Modeled ratio is the median projected funded ratio as of July 1st based on the assumptions described on assumptions slide. Sample scenario is the funded ratio results from one of the market scenarios we modeled.



Sustainability Modeling

Cumulative PAAs

Cumulative PAAs

Lines show total benefit increases for a member retired in 2025

Vested Automatic PAAs

Only automatic PAA each year equal to the lesser of 1% or inflation

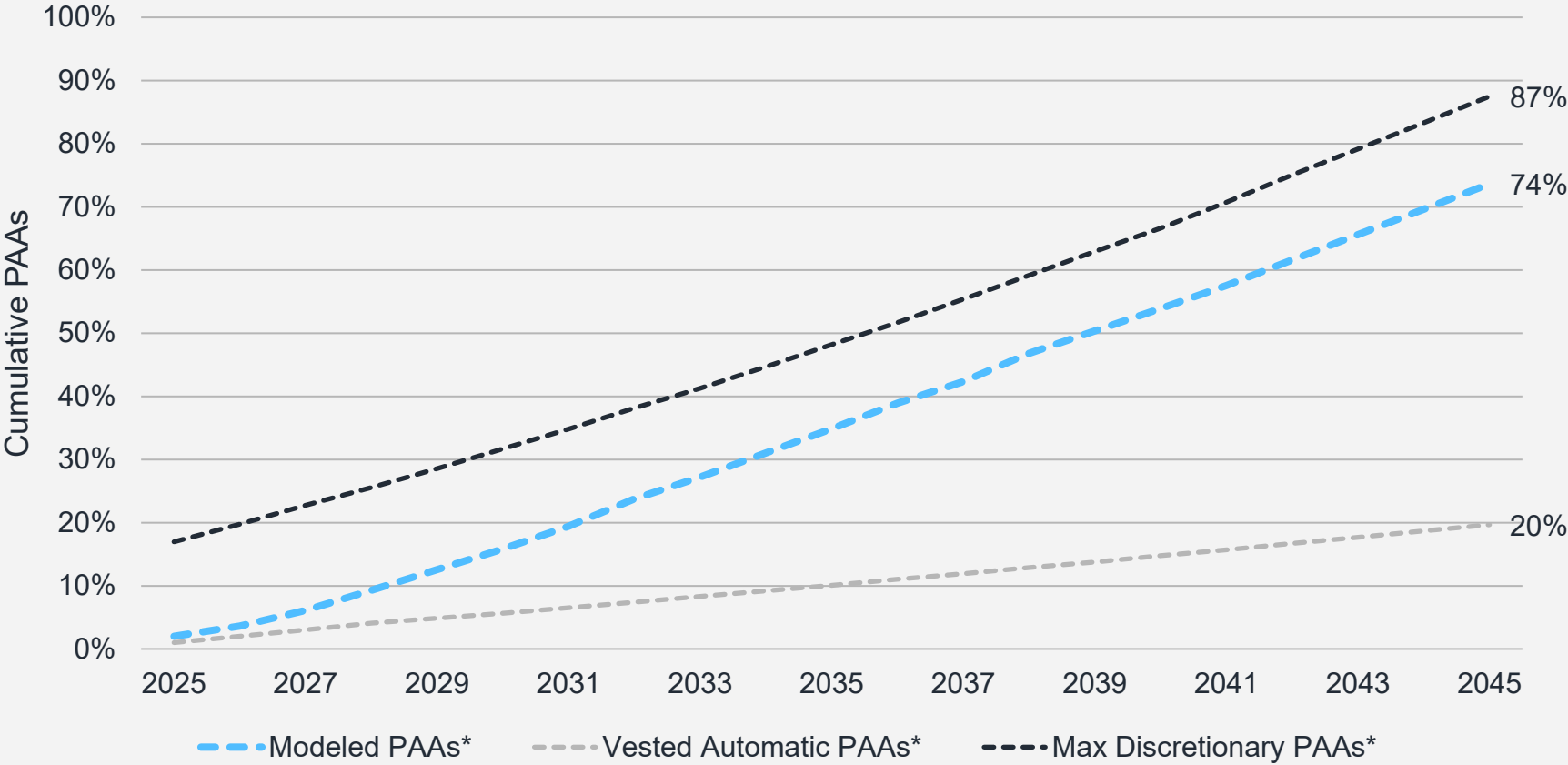
Max Discretionary PAAs

Discretionary plus retros each year to match and catch up to inflation

Modeled PAAs

Discretionary/retros granted only during up markets

*Shows the median projected cumulative PAAs over the projection period. PAAs are labeled based on the year in which they would be approved by the Board (i.e., the year prior to the March 1st in which they are effective). See assumptions slide for more information.



Sustainability Modeling

Contribution Rates

Contribution Rate Increases

Rates projected to increase due to periodic down markets

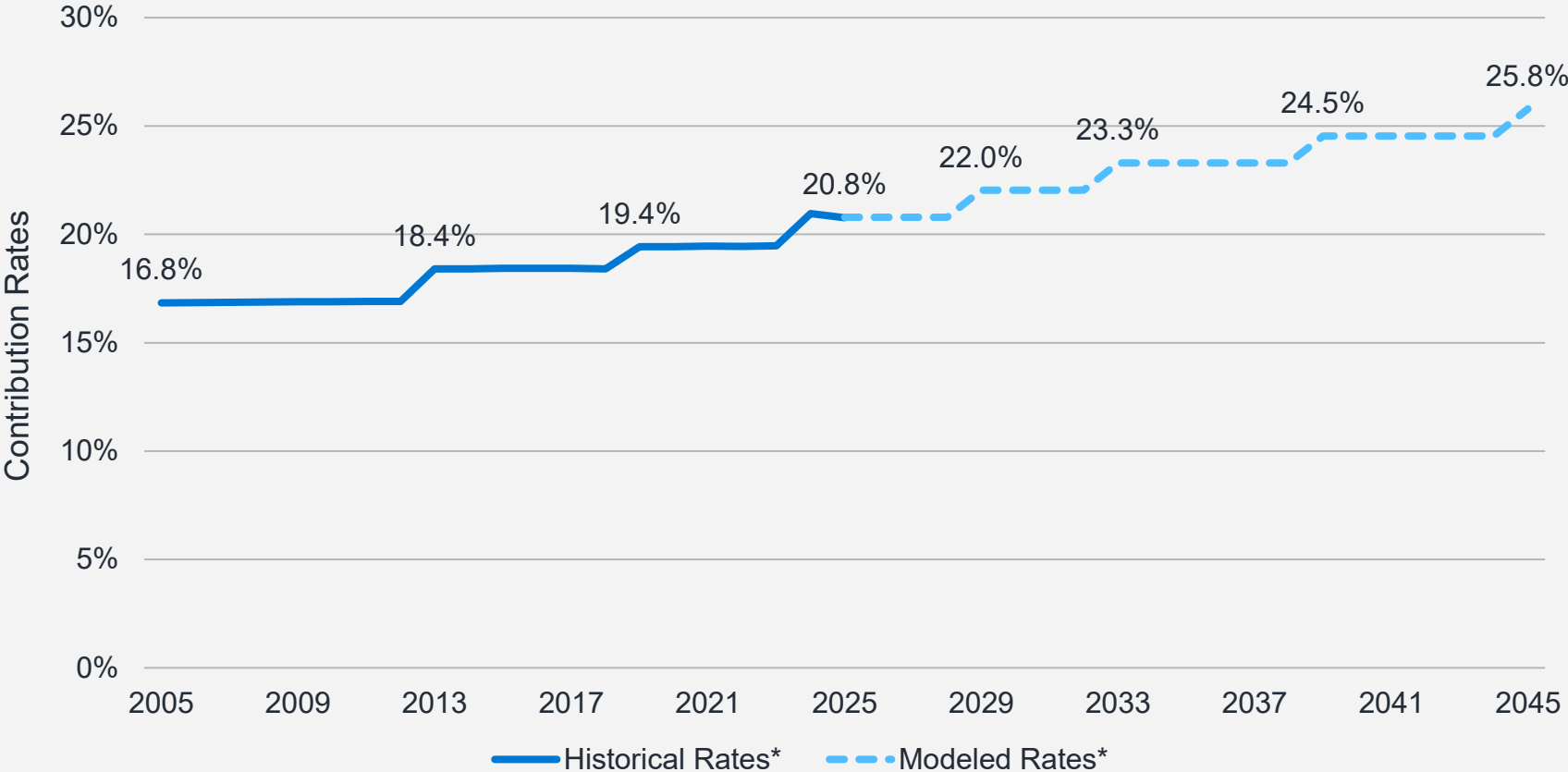
- Up 5% over next 20 years, on average

Consistent with past plan experience

- Up 4% over past 20 years

*Shows total aggregate contribution rate—i.e., the weighted average of the General, Teacher, and Safety employer plus member rates—as of July 1st.

Modeled rates are the median projected contribution rates based on the assumptions described on the assumptions slide.



Sustainability Modeling

Conclusions

PERSI is Actuarially Sustainable

Due to statutorily required contribution rate increases if amortization exceeds 25 years:

- Plan remains able to pay retiree benefits in all 2,000 modeled market scenarios
- Funded ratio is projected to improve on average

Are contribution rates sustainable?

Can employers and members afford higher contribution rates?

Will legislators act?



Options for Additional Exploration

Refine Discretionary PAA Practices

Grant only when contribution rates are “sustainable” and funded ratio exceeds a set threshold

Consider gainsharing as primary method for distributing excess returns instead of discretionary PAAs

Establish Stabilization Fund

Set aside a portion of annual investment gains

Use fund to offset contribution rate increases when amortization exceeds 25 years

Implement Asset Smoothing

Would reduce frequency of 25-year amortization triggers

Pursue Legislative Benefit Changes

Later unreduced retirement age

Increased early retirement reduction factors

Longer compensation averaging period

No PAAs for inactive members prior to retirement

The options shown are illustrative only. They do not constitute Milliman recommendations, nor do they represent an exhaustive list of potential strategies. Before any option is pursued, additional analysis and review should be completed in coordination with PERSI staff and other Board's advisers (e.g., Milliman, legal counsel, investment consultants, and other specialists).

Q&A



Assumptions and Certification



Projection Assumptions

- 2,000 random market scenarios were generated using Callan's 2025 capital market assumptions, adjusted for a mean long term investment return (net of investment and administrative expenses) of 6.50% and mean inflation of 2.40%.
- Past practice has been to raise contributions rates in down markets and grant discretionary/retro-PAA's in up markets. To approximate this, the model assumed the following:
 - Contribution rates were increased by 1.25% each year the amortization period was below 25-years (1-year lag).
 - Model does not automatically incorporate the scheduled contribution rate increases as of July 1, 2025.
 - A 6.0% discretionary/retro PAA was granted each year the amortization period was 0 years, 2.0% each year below 10 years, and 1.0% each year below 15 years (capped by the available PAA's due to inflation).
 - Discretionary/retro PAA's are granted on a first-in-first-out basis.
 - Uses August 2024–August 2025 actual CPI-U (2.9%) to determine the PAA available for 2025
- Uses the data, assumptions, methods, and plan provisions from the July 1, 2025, valuation plus the following projection assumptions:
 - Active membership in each class grows by 1.0% per year.
 - New members have similar demographics to those that joined between July 1, 2022, and June 30, 2025.
- No changes in valuation assumptions.
- No gain sharing.
- No legislative benefit changes.

Certification

The purpose of these forecasts are to give the PERSI Board insight into the projected future of the plan assuming no changes from past practices.

All caveats and limitations from our July 1, 2025, PERSI valuation results letter apply to this presentation.

See the Risk Disclosure sections of our July 1, 2024, actuarial valuation reports for a summary of risks relevant to the plan.

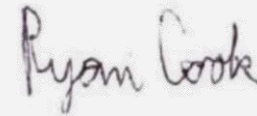
On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board and the Code of Professional Conduct and Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States, published by the American Academy of Actuaries. We are members of the American Academy of Actuaries and meet the Qualification Standards to render the actuarial opinion contained herein.



Robert L. Schmidt, FSA, EA, MAAA
Principal and Consulting Actuary



Ryan Falls, FSA, EA, MAAA
Principal and Consulting Actuary



Ryan J. Cook, FSA, EA, CERA, MAAA
Consulting Actuary



Thank you

Robert Schmidt

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Ryan Falls

ryan.falls@milliman.com

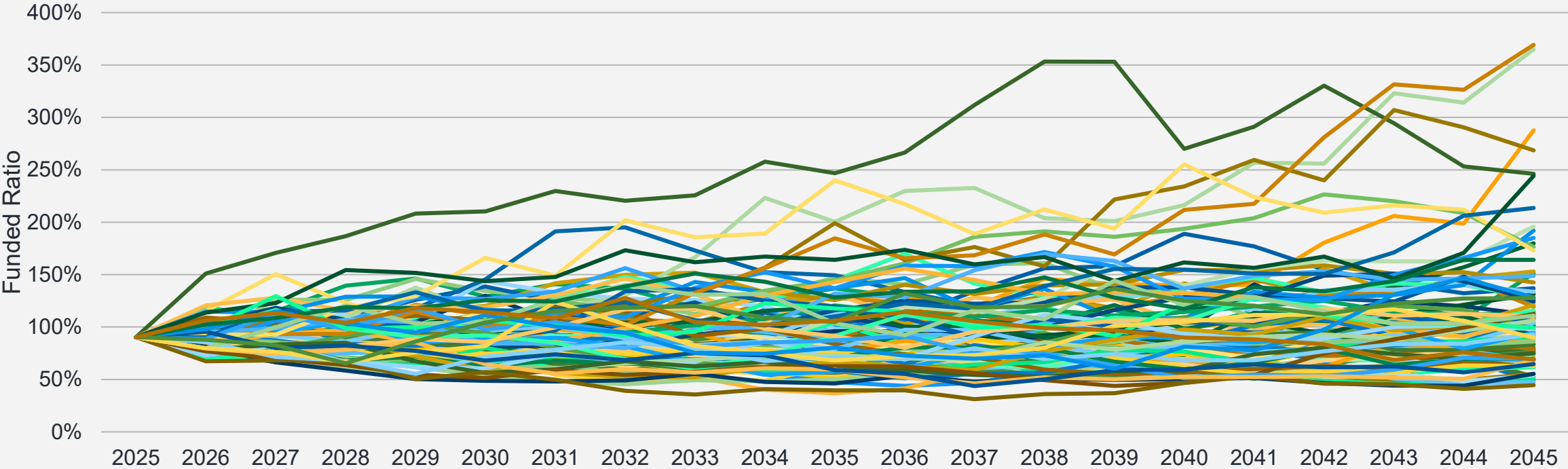
Ryan Cook

ryan.cook@milliman.com

Appendix

Sustainability Modeling

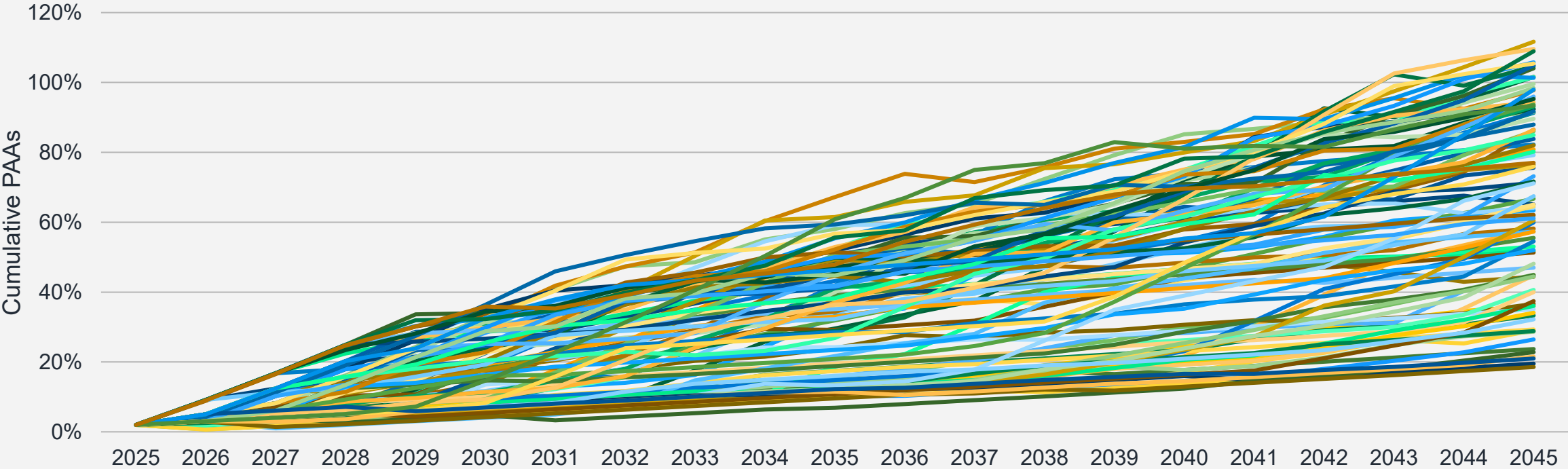
Funded ratios for 100 sample scenarios



Funded ratios are as of July 1st.

Sustainability Modeling

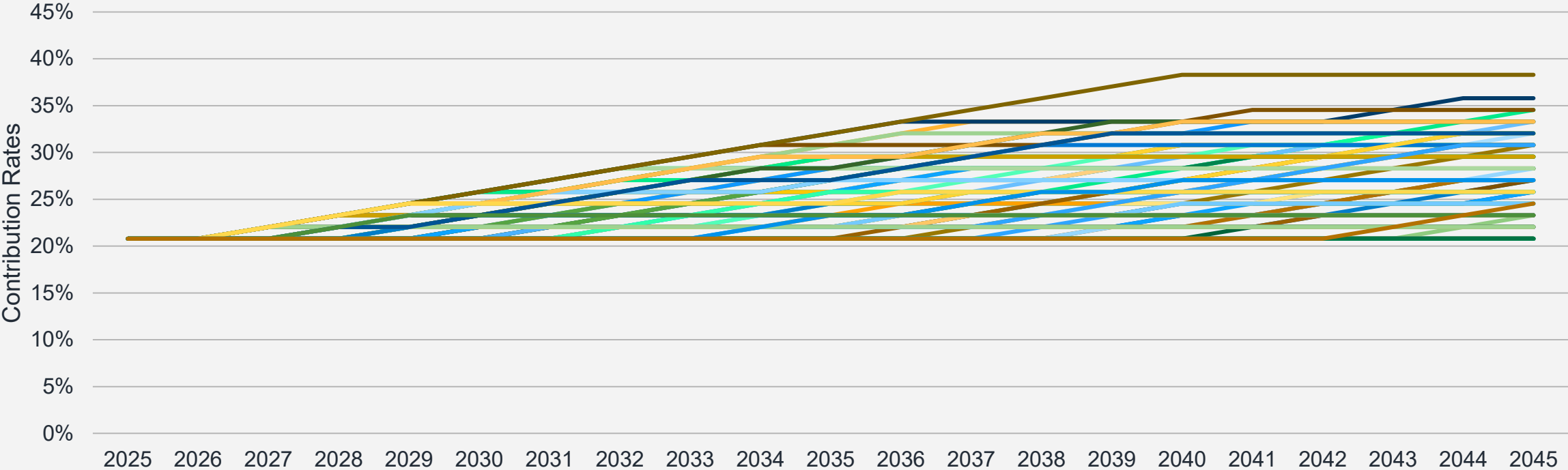
Cumulative PAAs for 100 sample scenarios



PAAs are labeled based on the year in which they would be approved by the Board (i.e., the year prior to the March 1st in which they are effective).

Sustainability Modeling

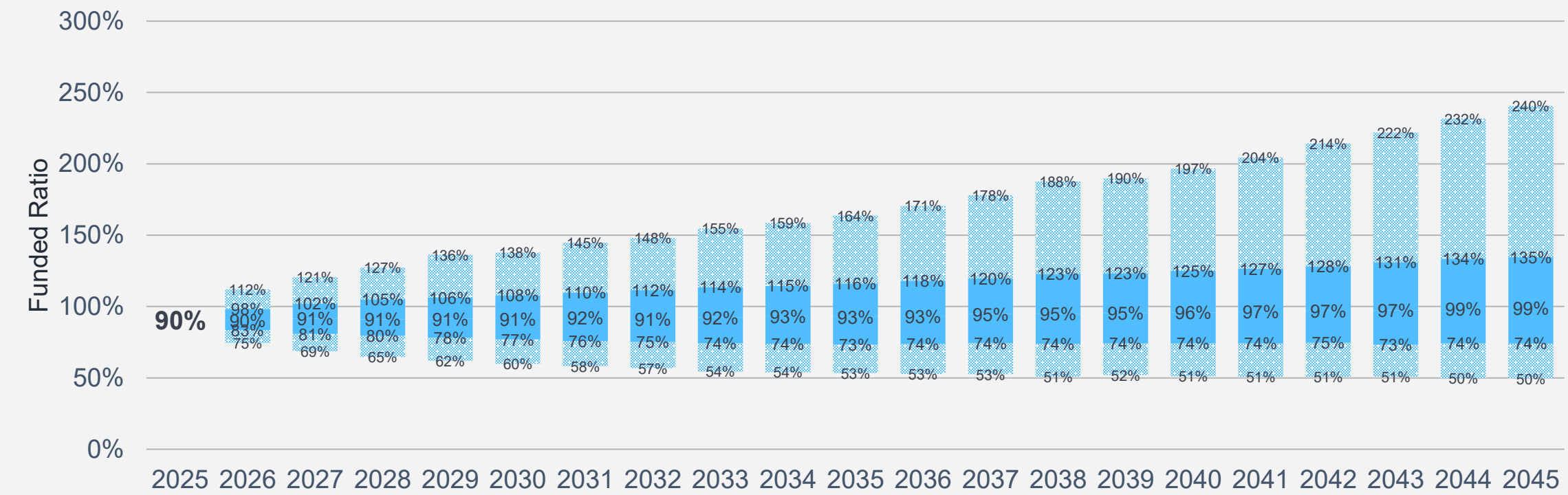
Contribution rates for 100 sample scenarios



Shows total aggregate contribution rate—i.e., the weighted average of the General, Teacher, and Safety employer plus member rates—as of July 1st.

Sustainability Modeling

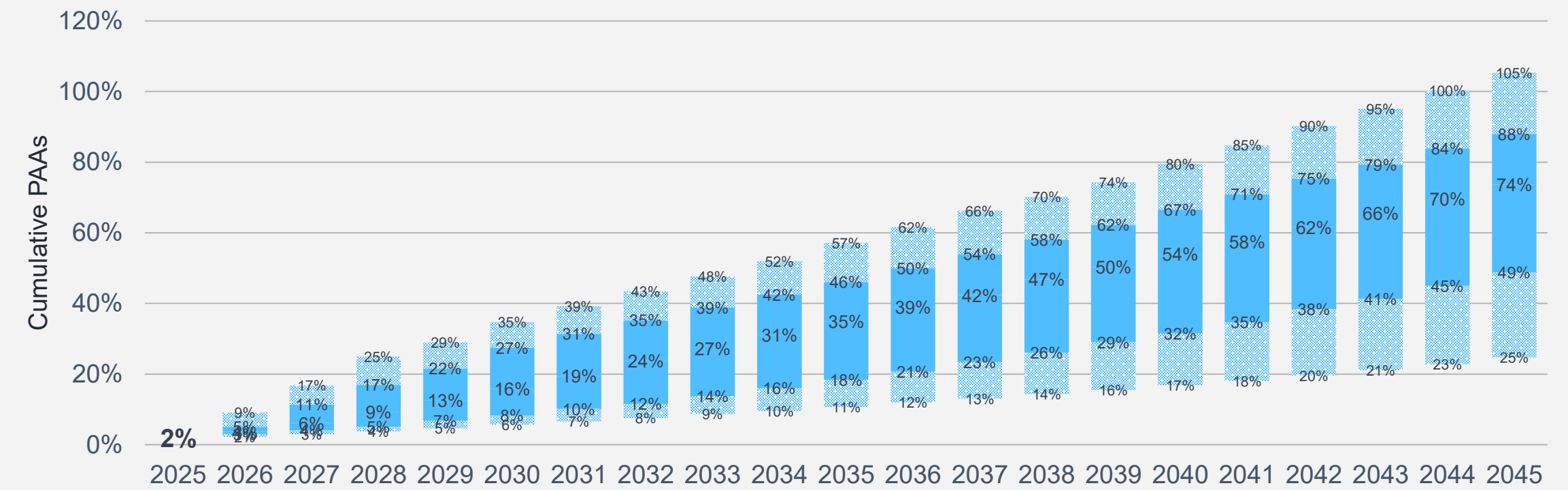
Funded ratio percentiles



Above chart displays the 5th, 25th, 50th, 75th, and 95th percentile funded ratios as of July 1st each year.

Sustainability Modeling

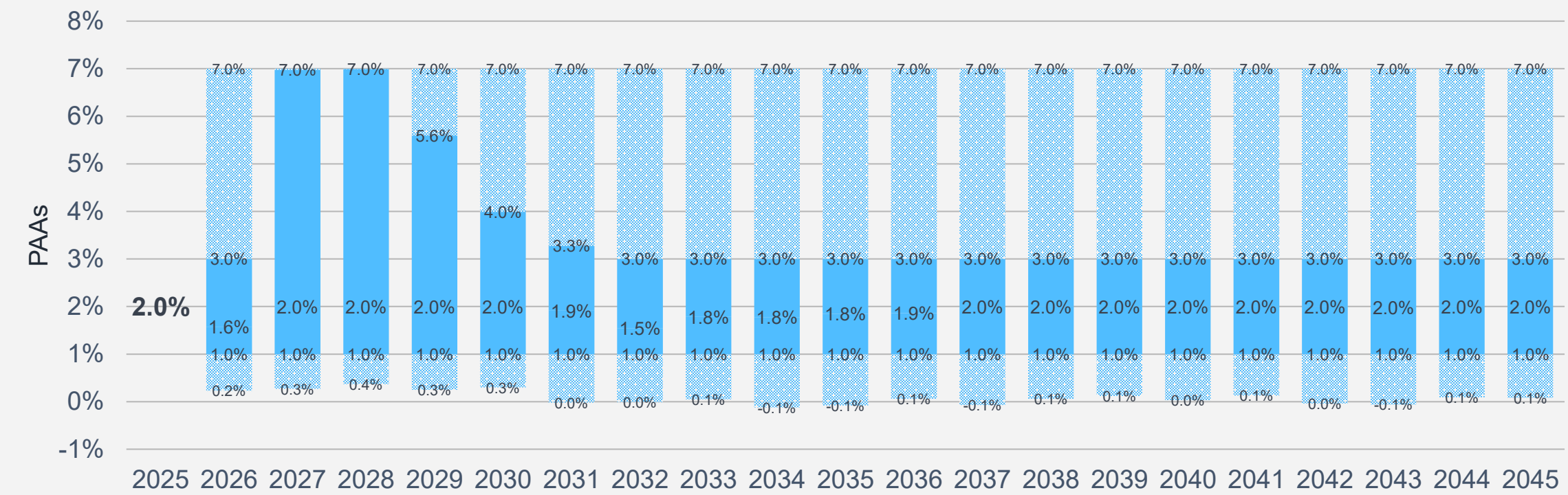
Cumulative PAAs percentiles



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Sustainability Modeling

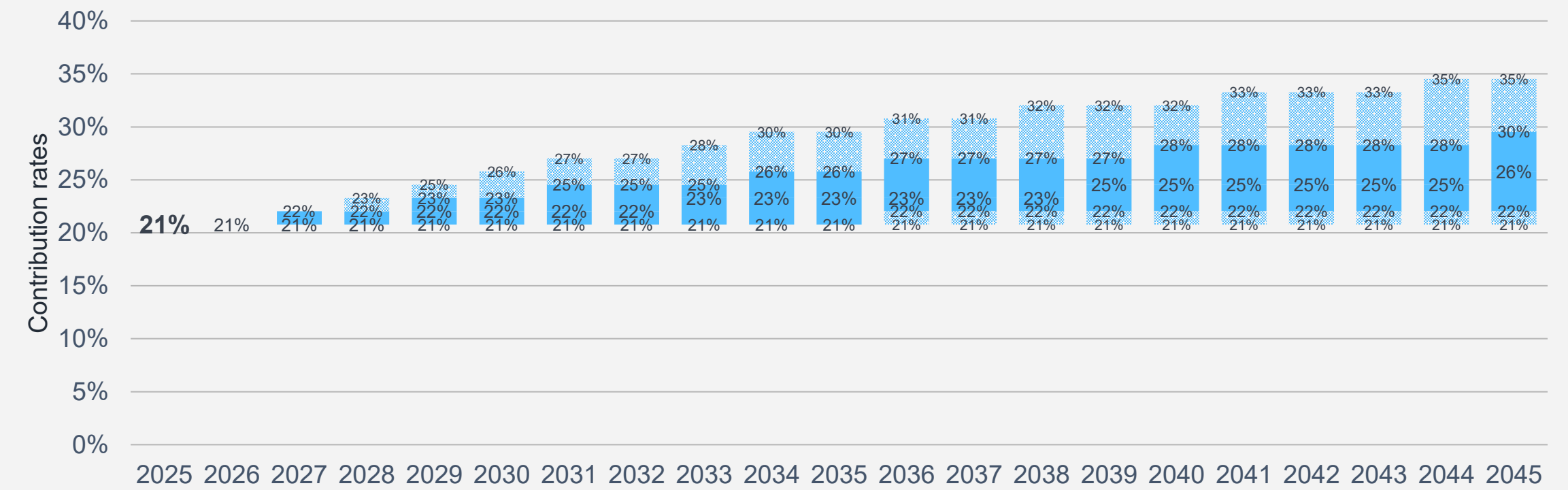
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Sustainability Modeling

Contribution rates percentiles



Above chart displays the 5th, 25th, 50th, 75th, and 95th percentile contribution rates. Shows total aggregate contribution rate—i.e., the weighted average of the General, Teacher, and Safety employer plus member rates—as of July 1st.

Sustainability Modeling

Probability of various contribution rate levels

| Probability that... | 2030 | 2035 | 2040 | 2045 |
|----------------------|------|------|------|------|
| Rates stay at 20.8% | 41% | 26% | 21% | 18% |
| Rates rise above 25% | 8% | 30% | 43% | 51% |
| Rates rise above 30% | 0% | 4% | 12% | 19% |

Based on total aggregate contribution rate—i.e., the weighted average of the General, Teacher, and Safety employer plus member rates—as of July 1st.



Fiduciary Education for PERSI Board of Trustees

Ashley Dunning | PERSI Fiduciary Counsel

Nossaman Partner, Co-Chair, Pensions, Benefits & Investments Group

Michelle Mellon-Werch | PERSI Fiduciary Counsel

Nossaman Partner, Pensions, Benefits & Investments Group

Meeting of the Board of Trustees | Public Employee Retirement System of Idaho, **September 24, 2025**



Your Presenters



Ashley K. Dunning
PERSI Fiduciary Counsel

Nossaman LLP

Partner and Co-Chair, Pensions, Benefits &
Investments Group



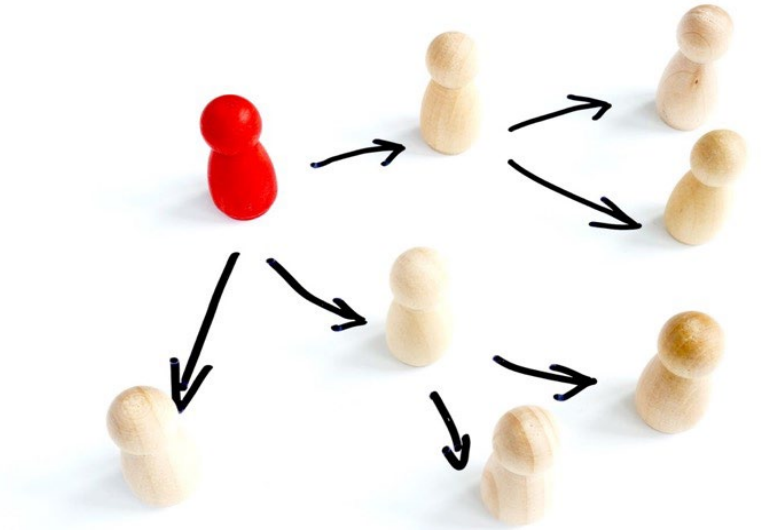
Michelle Mellon-Werch
PERSI Fiduciary Counsel

Nossaman LLP

Partner, Pensions, Benefits & Investments Group

Overview

- Legal Framework
- What and who is a fiduciary?
- Duties of a public plan fiduciary
- Real life application of fiduciary duties/Dos and Don'ts
- Fiduciary breach of duties and consequences
- Emerging fiduciary trends
- Additional resources



Legal Framework

Sources of Fiduciary Duties:

- Federal Law
 - Internal Revenue Code (“Qualified Plans” under IRC 401(a))
 - ERISA (instructive only, non-binding)
- State Law
 - Statutes
 - Common law

Legal Framework

- State Law applicable to PERSI
 - PERSI Act, Firefighters Retirement Fund, Policeman's Retirement Fund, Uniform Prudent Investor Act, etc.
 - Trust Law
 - Ethics Laws, etc.
 - Other Governing Plan Documents
 - Case Law

What is a Fiduciary?

- A fiduciary is any person or organization that has discretionary authority or control over management or disposition of retirement plan assets or plan administration for the benefit of members and beneficiaries of PERSI or that has a duty to put the interests of those members/beneficiaries ahead of all other interests.



Who is a Fiduciary?

- **By definition, therefore:**
 - All PERSI Board members and executive officers:
 - are **fiduciaries**
 - who thus owe **duties of care and loyalty**
 - to PERSI **members and their qualified beneficiaries**
 - with respect to the **benefits due to them**
 - by **the retirement system**.
 - Functional definition also applies, therefore fiduciary status is based on functions performed.

Who is (not) a Fiduciary?

Not everyone who interacts with PERSI is a fiduciary, either to PERSI or its members.

For example: plan sponsors, employee associations, state agencies, investment professionals (unless by contract with PERSI), trustees of *other* public retirement systems, and members themselves (unless they are also PERSI Board or executive staff members) are not PERSI fiduciaries.



Six Duties of a Public Retirement Board Fiduciary

FOR TODAY'S DISCUSSION

1. Duty of loyalty
2. Duty of care
3. Duty to administer plan in accordance with plan terms and other applicable law

WILL NOT BE COVERED TODAY

4. Duty to diversify investments
5. Duty to pay vested benefits
6. Duty to defray reasonable expenses of administering the system



Duty of Loyalty: Exclusive Benefit Rule

- Under the Idaho Code (Title 59, Chapter 13) and other applicable law, a fiduciary must discharge its duties:
 - Solely in the interest of the members and their beneficiaries for the exclusive purpose of providing benefits to members and their beneficiaries
- A trust will constitute a qualified trust only if:
 - Under the trust instruments it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries. (IRS Reg. §1.401-2)
- Once assets, such as contributions, are in the trust, they may not be returned or diverted.

Duty of Loyalty: Primary Duty Rule

- The Board's duty to PERSI members and beneficiaries the overarching principle in Section 59-1301. In trust law, this is referred to as the “primary duty” rule.
- Commonly referred to as the “one-hat” rule.
- Other obligations, including “defraying reasonable expenses” of administering the system and to “diversify the investments of the fund” are secondary and in service of the primary duty.



Duty of Loyalty: One Hat Rule

- Putting a plan sponsor's, union's, other party's, or your own, interests ahead of the overall best interests of members and beneficiaries in the security of their vested PERSI retirement benefits is not consistent with the exercise of a trustee's fiduciary duties.
- Basically a conflict-of-interest rule—fiduciaries cannot have conflicting loyalties. A fiduciary has a duty not to use or deal with trust assets for the benefit of a third person, including that of the plan sponsor, or for any other purpose unconnected with the trust.

Fiduciary Duty of Loyalty: Conflicting Interests Among Various Members and Beneficiaries

- Can be complex and crosscutting.
- Determinations of priorities among members and beneficiaries must serve their overall best interest with respect to the trust purpose.
- Appropriate balance may not be obvious when the interests within the member and beneficiary groups are not the same.



Hypothetical No. 1:

Fiduciary Duty of Loyalty

- Henry is a member of the Board of Trustees (“Board”). Henry also has been active for many years with the union representing active members of the retirement system (“Union”).
- Penny also is a member of the Board, and Penny has been active for many years with the Retired State Employees of Idaho (“RSEI”).
- Bob is the State Auditor, newly appointed to the Board.
- The retirement system’s actuary has completed an experience study and is recommending no changes in actuarial assumptions.
- What are, and are not, fiduciarily appropriate considerations for Board members with respect to this topic?



Hypothetical No. 2

- PERSI Board oversees a staff analysis of strategic initiatives needed to address customer service and related challenges.
- One outcome of the analysis is staff recommendation to add Chief Technology Officer to PERSI staff, and to substantially augment capabilities of PERSI's pension administration system. Board agrees with recommendation.
- PERSI presents requested position, and increase in budget to Governor, who responds that recommendations are inconsistent with state budget priorities.
- What are, and are not, fiduciarily appropriate responses of PERSI and its Board members with respect to this topic?

Fiduciary Duty of Care

- Under Section 59-1301(2)(b), a fiduciary must discharge its duties:
 - “With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims”
 - Carefully consider the particular expertise needed to address a topic within the Board’s jurisdiction.
 - Medical? Legal? Plan administration? Investment? etc.
 - The question is whether the fiduciary, at the time it made the decision, employed the appropriate methods.
 - Reasonable consultation with experts is important, but not a substitute for independent exercise of trustee’s responsibilities



Duty of Care: “Prudent Fiduciary with Experience Dealing with a Similar Enterprise”

- A fiduciary need not be the expert but may need to consult an expert. When using experts, the fiduciary may take into consideration the advice of relevant experts, but the fiduciary is still ultimately responsible.
- Expertise resides both with *in-house* PERSI staff, as well as in PERSI’s outside retained experts.
- Trustees also *develop* their own capability to provide *prudent oversight* through
 - careful review of Board materials;
 - communication with staff on questions about those materials;
 - thoughtful participation in board meetings; and
 - PERSI-provided and other appropriate and cost-effective educational opportunities on topics focused within the Board’s jurisdiction and consistent with PERSI’s policies.



Fiduciary Duty of Care: Process and Soundness of Analysis Matter

- Duty of care does not require a fiduciary to guarantee specific outcomes but does require use of a prudent process.
- Highlights the importance of documenting fiduciary considerations and decision-making.
- However ... (see next slide)



Fiduciary Duty of Care: Process and Soundness of Analysis Matter

- A prudent decision may not be either “arbitrary” or “capricious.”
- Deliberations by fiduciaries should illustrate the relationship between the information presented and the action taken.
 - Courts may review a fiduciary’s decisions substantively, rather than simply deferring to a determination that a fiduciary may make after a prudent process.
 - Not dissimilar from U.S. Supreme Court’s discussion in *Loper* of courts’ duty to “exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” while “[c]areful attention to the judgment of the Executive Branch may help inform that inquiry”.
 - Under Idaho law, courts afford fiduciaries the authority to exercise judgment as to prudent administration of the plan, so long as the administration of the plan comports with the plan design set forth in plan documents. See generally, *Elgee v. Ret. Bd. of the Pub. Empl. Ret. Sys. of Idaho (PERSI)* (2021) 169 Idaho 34; 490 P.3d 1142.

Fiduciary Duty of Care: Process and Soundness of Analysis Matter (cont.)

- What does prudence look like?
 - Acting consistently with laws and plan governance documents, which include Board policies and procedures (and making sure the plan governance documents match each other).
 - Where aspects of fiduciary duty are delegated, periodic and systematic monitoring.
 - Facts, analysis, questions, answers.
 - Documented decision-making.
 - Agendas, staff/consultant supporting materials, minutes, resolutions detailing facts, findings and conclusions are all ways to document procedural prudence.
 - Periodic review and reevaluation of processes and approaches—*continuous process improvements*.

Fiduciary Duty of Care: Consult with Experts

- “To the extent necessary or appropriate to the making of informed investment judgments by the particular trustee, care also involves securing and considering the advice of others [such as legal, actuarial and investment counsel] on a reasonable basis.” Rest. 3d Trusts, *supra*, § 227, p. 15, comment d.
- The implicit corollary to the duty to consult with experts is that if a fiduciary fails to follow the advice of its professional consultants, it must demonstrate an informed, reasonable, and prudent rationale for failing to do so.
- Another implicit corollary is that expert advice from a reasonable source should provide the basis for a Board’s decision to take an alternative course of action on a topic within that area of expertise (e.g., investment, actuarial, legal).

Hypothetical No. 3: The “Prudent Fiduciary with Experience Dealing with a Similar Enterprise”

Good faith is not enough.

- **Example No. 1:** Trustee Nathan, convinced that a specific private equity manager allocation is not morally right (due to union opposition), even though PERSI’s CIO and Investment Consultant have concluded that it is appropriate for PERSI from a risk-adjusted return perspective, advocates to other Board members about “doing the right thing” on the topic. What fiduciary issues are implicated?
- **Example No. 2:** Trustee Claire is an expert in information technology. She has questions regarding the annual update by the System’s Chief Technology Officer on the past year’s activities and a budget planning description of capital expenditures planned for the coming years. How should Trustee Claire engage with the System’s CTO and other Board members on this topic?

Hypothetical No. 4: Duty of Care

- Board member, May, is personal friends with an ailing active member of the retirement system who has applied for disability retirement. May has spoken with the member about the application.
- The competent medical evidence establishes that the member is not permanently incapacitated under the applicable legal standards, and retirement system staff recommends that the Board deny the application.
- The applicant attends the Board meeting at which the application is considered and speaks to the Board about the application, urging the Board to grant it.
- What are, and are not, fiduciarily appropriate considerations for all Board members, and in particular May, with respect to this topic?



Fiduciary Duty to Act in Accordance with Plan Documents and Other Applicable Law

- Fiduciaries have a duty to administer plans in accordance with plan document and applicable law.
 - Important to be familiar with the plan's governing documents and review periodically
 - Typically, fiduciaries are not also designing the retirement plan, which is the role of the settlor (e.g., the legislature)
- Plan document can include:
 - Plan statutes, Administrative law, Idaho common law
- Examples of other applicable law:
 - UPIA, Internal Revenue Code 401(a), Open Meetings/Public Records laws
- Interpretation of Plan documents falls to the Board



Hypothetical No. 5: Act in Accordance with Plan Documents and Other Applicable Law

- A union drafts a bill to modify the statutes that form the plan document to expand benefits to part-time employees that work 800 hours a year from the current 1,000-hour rule. The employer is opposed to the bill. The union wants assistance from staff to review the draft of the bill to ensure it fits with the rest of the plan and can be administered by the plan, if passed by the legislature. Should the Board allow this?
- What is the Board's role at a legislative committee hearing on the bill?
- Gus is Comptroller of the employer, appointed to the Board by the Mayor. He opposes the bill at the committee hearing as a Board member and Comptroller. What fiduciary issues does this raise?

Fiduciary Do's and Don'ts

| Topic | Do's | Don'ts |
|---|--|---|
| Duty of Prudence –Conduct at Board Meetings, Committee Meetings, Legislative Hearings and Public Forums (e.g., church, Rotary meeting, Union meetings). | <ul style="list-style-type: none">• Board & Committee Meetings – Review materials, ask ED & CIO questions, request analysis, and monitor information.• Legislative Hearings and other Public Forums– Clarify your role, if hearing is on system issues and you are so authorized by the system, speak as a Trustee, not a representative of your stakeholder group or employer. | <ul style="list-style-type: none">• Neglect to review Board materials or other communications from the ED or CIO.• Direct work of staff based on priorities you have in a capacity other than as a Board member and/or participate in other activities intended to change PERSI's plan design (expanding or contracting benefits). |

Fiduciary Do's and Don'ts (continued)

| Topic | Do's | Don'ts |
|---|--|---|
| Duty of Loyalty –Communications with members, their beneficiaries and retirees. | <ul style="list-style-type: none">• Communicate general information about PERSI when speaking with members.• Refer members or beneficiaries to staff for any individual or account-specific information.• Ask questions about their concerns, be interested in understanding their concerns. | <ul style="list-style-type: none">• Try to assist individual members with a question specific to their benefits.• Work with members or retirees on their strategies for obtaining or expanding benefits. |
| Duty of Loyalty – in the administration of PERSI | <ul style="list-style-type: none">• Make determinations on actuarial assumptions and methodologies, and contribution requirements, based on actuarial recommendations in the best interests of members and their beneficiaries. | <ul style="list-style-type: none">• Manage staff's daily activities and priorities.• Make decisions based on the interests of your employer, stakeholder group or personal interests. |

Fiduciary Do's and Don'ts (continued)

| Topic | Do's | Don'ts |
|--|--|--|
| Duty of Prudence – Manage administration and investment of the Trust as a prudent person with experience dealing with a similar enterprise | <ul style="list-style-type: none">• Delegate areas that require exceptional expertise, actuarial, investment, or legal analysis, cybersecurity, or benefits processing.• Consider your own experiences and knowledge about the subject.• Provide appropriate monitoring and oversight at the Board level.• Document your Prudent Processes (e.g., minutes, due diligence reviews, scoring sheets, etc.) | <ul style="list-style-type: none">• Allow red flags to go unquestioned (whether it's investment performance, payment delays, or late reporting)• Accept partial or delays on reporting.• Allow questions to go unanswered.• Stay quiet if you don't understand. |

Fiduciary Compliance

- The Board must use *informed judgment* and act in the *overall best interest of system members/beneficiaries* in a manner that is *consistent with applicable laws* when exercising its *plenary authority over the administration* of PERSI and investment of its assets.
- The Board's actions in that regard may not be “arbitrary” or “capricious,” must be *consistent with its fiduciary responsibilities*, and must be *rationally related to the information presented to the Board by PERSI in-house and outside consulting experts*.



Fiduciary Breach of Liability and Consequences

- Breach of fiduciary duty is considered in the context of what was known at the time of the action or decision.
- There may be co-fiduciary liability if you are or become aware of another trustee's breach of fiduciary duty.
- Depending upon level of immunity that may or may not be available under state law (see next slides), as well as circumstances of alleged breach, there may be personal liability to
 - Make up losses suffered by the plan
 - Pay back profits
 - Responsibility for legal fees
 - Courts may have discretion to impose additional consequences

Limitations of Liability

The Board, staff and other committee members “shall jointly and individually, be provided a defense and indemnified against all claims, demands, judgments, costs, charge and expenses, including court costs and attorney’s fees, and against all liability losses and damages of any nature whatsoever that arise out of and in the course and scope of their official duties and functions, ***but only if ... the wrongful act or omission of the person was not intentional, willful or wanton misconduct, fraudulent, or a knowing violation of law.***” Section 59-1305, Idaho Code (emphasis added).

Indemnification

- The Board ***may provide*** defense and indemnity or the Board, as a fiduciary of the trust, ***may refuse*** a defense or disavow and refuse to pay any judgment against a board member, staff or committee member if it is determined that such person was not within the course and scope of their official duties and functions or the conduct was intentional misconduct, willful, wanton, fraudulent or a knowing violation of the law. Section 59-1305, Idaho Code (emphasis added).

Other Ways to Limit Liability

- Key is to understand fiduciary obligations, utilize experts (in-house and outside), and document efforts to comply with such obligations.
- Delegation of duties does not eliminate the responsibility to continue oversight and monitoring.



Emerging Fiduciary Trends

- **Means to an end:** Stakeholder pressure to change (decrease or increase) actuarially assumed rate of return and other actuarial assumptions and methodologies that impact member and employer contribution rates
- **Enhancing benefits:** Increasing pressure to grant non-vested COLAs and other supplemental retirement benefits
- **Claims of fiduciary breach:** Forfeiture account litigation and challenges to investment decisions (primarily as to ERISA 401(k) Plans)
- **Political pressures:** Restrictions on investment allocations, or requirements of investment allocations, for ideological reasons rather than risk-return investment perspective

Additional Educational Resources

- National Conference on Public Employee Retirement Systems (NCPERS) Training for Trustees
- National Council on Teacher Retirement (NCTR)
- National Association of Public Pension Attorneys (NAPPA)
- Institutional Limited Partners Association (ILPA)
- International Foundation of Employee Benefit Plans (IFEBP)
- National Association of Government Defined Contribution Administrators (NAGDCA)
- PERSI Service Providers may also provide educational conferences for clients.



Thank You for Your Time



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