



MainePERS

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Board of Trustees

Meeting Packet

September 8, 2022

MainePERS Board of Trustees
September 8, 2022
139 Capitol Street, Augusta

AGENDA

9:00 a.m. ¹		CALL TO ORDER		Brian Noyes
9:00 – 9:05 a.m.	1.	<u>CONSIDERATION OF CONSENT CALENDAR</u> <ul style="list-style-type: none">Minutes of August 11, 2022Consideration of Items Removed	ACTION	Brian Noyes
9:05 – 9:10 a.m.	2.	<u>CEO REPORT</u>		Dr. Rebecca M. Wyke
9:10 – 9:20 a.m.	3.	<u>PRIVATE MARKETS REVIEW</u> <ul style="list-style-type: none">Private Markets Activity		Zackery McGuire
9:20 – 9:35 a.m.	4.	<u>INVESTMENT REVIEW</u> <ul style="list-style-type: none">Investment Monthly Review		Zackery McGuire Brian McDonnell, Cambridge Assocs.
9:35 – 10:05 a.m.	5.	<u>QUARTERLY INVESTMENT EDUCATION</u> <ul style="list-style-type: none">Alternative Credit Review		Zackery McGuire Douglas Porter Brian McDonnell, Stuart Cameron, Cambridge Assocs.
10:05 – 10:15 a.m.	6.	<u>MAINESTART</u> <ul style="list-style-type: none">MaineSTART Quarterly Review		Zackery McGuire Michael Colleran
10:15 – 10:25 a.m.	7.	<u>RETIREE HEALTH INSURANCE POST-EMPLOYMENT BENEFITS INVESTMENT TRUST</u> <ul style="list-style-type: none">Agreement with Teacher Plan Trustee	ACTION	Michael Colleran
10:25 – 10:40 a.m.	8.	<u>RULEMAKING</u> <ul style="list-style-type: none">Amendment to Rule Chapter 509Amendment to Rule Chapter 702	ACTION ACTION	Michael Colleran
10:40 – 10:55 a.m.		<u>BREAK</u>		
10:55 – 11:05 a.m.	9.	<u>OPERATIONS AND MEMBER SERVICES REPORT</u>		Michael Colleran Chip Gavin

¹ All times are estimated based upon the anticipated length of each presentation, hearing, discussion, and action. The presiding officer may take agenda items out of order for more efficient or effective conduct of the meeting.

- 11:05 – 11:10 a.m. 10. LITIGATION UPDATE Betsy Stivers
- 11:10 – 12:10 p.m. 11. BOARD SELF-EVALUATION Amy McDuffee,
Mosaic Governance
Advisors
- Executive Session pursuant to 1
M.R.S. §405(6)(A)
- Board moves out of executive session.*
- 12:10 p.m. ADJOURNMENT Brian Noyes
-

MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM

Minutes

Board of Trustees
Board Meeting
August 11, 2022

MainePERS
Augusta
9:00 a.m.

The Board of Trustees met at MainePERS, 139 Capitol Street, Augusta, ME 04332 at 9:00 a.m. on August 11, 2022. Brian Noyes, Chair, presided. Other Trustees participating were Dick Metivier, Vice Chair; Henry Beck, State Treasurer; Shirrin Blaisdell; John Beliveau, Mark Brunton, John Kimball; and Ken Williams. Joining the Trustees were Dr. Rebecca M. Wyke, Chief Executive Officer; Michael Colleran, Chief Operating Officer and General Counsel; Chip Gavin, Chief Services Officer; Monica Gorman, Secretary to the Board of Trustees; and Philip Mantis, Assistant Attorney General and Board Counsel. The Board also was joined for select portions of the meeting by James Bennett, Chief Investment Officer; Zackery McGuire, Deputy Chief Investment Officer; Kathy Morin, Director of Actuarial and Legislative Affairs; Brian McDonnell and Stuart Cameron, Cambridge Associates; Tom Lynch and George Bumeder, Cliffwater; and, Thor Eriksen and Stephen Stuckwisch, ORG.

Brian Noyes called the meeting to order at 9:05 a.m. Henry Beck, participated through video remote access pursuant to 1 M.R.S. § 403-B, having been excused from in-person attendance by the Board Chair due to illness. All other Trustees were physically present.

CONSIDERATION OF THE CONSENT CALENDAR

The Chair called for consideration of the Consent Calendar. The action items on the Consent Calendar were:

- Minutes of July 14, 2022
- Action. Dick Metivier made the motion, seconded by Shirrin Blaisdell, to approve the Consent Calendar. Voted in the affirmative by seven Trustees (Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams) with one Trustee not voting (Beck).

CEO REPORT

Dr. Rebecca Wyke provided an overview of the process used to develop the 5-year Strategic Plan, including the engagement of employees and the solicitation and receipt of comments from members, retirees, employees, employers, and stakeholders. She thanked the staff and particularly the group representatives for all their hard work on the organizational values. Dr. Wyke presented the Plan to the Board for approval.

- Action. Ken Williams made the motion, seconded by Shirrin Blaisdell, that the Board adopt the MainePERS 5-year Strategic Plan. Voted unanimously by eight Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

Brian Noyes thanked the staff and leadership for all their hard work on this project.

PRIVATE MARKETS ACTION

- **Action.** Dick Metivier made the motion, seconded by Mark Brunton, to enter into executive session pursuant to 1 M.R.S. §405(6)(F); 5 M.R.S. §17057(4) to discuss private markets investment information contained in non-public documents. Voted unanimously by eight Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

Board moved out of executive session.

Sprott Private Resources Lending III

- **Action.** Dick Metivier made the motion, seconded by John Beliveau, that MainePERS make a commitment of up to \$30 million to Sprott Private Resources Lending III, subject to final due diligence, legal review and negotiations, and authorize the Chief Executive Officer, Chief Investment Officer, and General Counsel as signatories to execute documents in connection with this commitment. Voted unanimously by eight Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

Hudson Bay Fund

- **Action.** Mark Brunton made the motion, seconded by Shirrin Blaisdell, that MainePERS make a commitment of up to \$100 million to Hudson Bay Fund, subject to final due diligence, legal review and negotiations, and authorize the Chief Executive Officer, Chief Investment Officer, and General Counsel as signatories to execute documents in connection with this commitment. Voted unanimously by eight Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

INVESTMENT REVIEW

Investment Monthly Review

Jim Bennett reported that as of July 31st, the MainePERS fund had a preliminary market value of \$18.6 billion, the preliminary fund return for the month was 1.8%, and the preliminary calendar year-to-date return was -2.3%.

Quarterly Rebalancing Report

Jim Bennett shared the quarterly rebalancing activity report with the Trustees. Jim stated this summary will be provided to the Trustees on a quarterly basis.

Investment Quarterly Review

Stuart Cameron reviewed the quarterly report ending June 30, 2022 with the Trustees. Stuart answered various questions from the Trustees.

Risk Diversifiers Quarterly Review

Stuart Cameron reviewed the risk diversifier quarterly report ending June 30, 2022 with the Trustees.

PRIVATE MARKETS REVIEW

Private Markets Activity

Zack McGuire reviewed the table of private markets funds and co-investments that had closed during the past 12 months. Zack shared there will not be an August Investment Meeting.

Co-Investment Additional Reporting

Zack McGuire shared the co-investment reporting for the period ending June 30, 2022 and reviewed additional reporting. Zack answered questions from the Trustees regarding both.

Real Estate Quarterly Report

Thor Eriksen and Stephen Stuckwisch provided a summary of the Real Estate Portfolio as of March 31, 2022. Thor and Stephen answered questions from the Trustees.

Cliffwater Quarterly Report

Tom Lynch and George Bumeder presented Cliffwater's Quarterly Report as of March 31, 2022. Tom and George answered questions from the Trustees.

RULEMAKING

Brian Noyes reviewed the process for in-person and virtual attendees from the public to participate and comment during the public hearing on rulemaking.

Public Hearing on Proposed Amendment to Rule Chapter 509

Michael Colleran summarized the proposed amendments of Rule 509 (disability retirement applicants and the ability to perform duties of employment position).

Susan Hawes provided oral and written comments against the amendment to Rule 509. She commented that "essential duties" in the proposed rule should be replaced by "essential functions" to be consistent with the statutory language. Brian noted that written comments on the proposed amendments may be submitted by 4:00 p.m. on August 22, 2022.

Public Hearing on Proposed Amendment to Rule Chapter 702

Michael Colleran summarized the proposed amendments of Rule 702 (process for appeals of decisions of the CEO).

Susan Hawes provided oral and written comments against the amendment to Rule 702. She commented that the rule lacks a mechanism to file a complaint about a hearing officer, the word "shall" should be changed to "must" in Section 14 of the rule, and that consensus based rulemaking should be used to address other policy changes. Brian noted that written

comments on the proposed amendments may be submitted by 4:00 p.m. on August 22, 2022.

Amendment to Rule Chapter 414

Michael Colleran provided the Trustees with recommendations for amendments to Rule Chapter 414 (Required Minimum Distributions), which would provide additional guidance on compliance with federal required minimum distribution requirements for defined benefit plans.

- **Action:** Motion made by Dick Metivier, seconded by Ken Williams, that the Board adopt amended Rule Chapter 414 and its Basis Statement. Voted unanimously by eight Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

Public Hearing on Proposed Amendment to Remote Meeting Provisions of Board Policy 1.10

Michael Colleran summarized the proposed amendment to Board Policy 1.10 (the remote meeting policy). Michael stated the statute regarding remote meetings was amended earlier this month. The recommended change to the policy removes the restriction that a board member will be permitted to attend remotely due to individual circumstances no more than two Board meetings in a calendar year and changes the title from Executive Director to Chief Executive Officer.

No members of the public commented on the proposed amended policy.

- **Action.** Motion by Dick Metivier, seconded by Mark Brunton, that the Board approve amended Board Policy 1.10. Voted unanimously by eight Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

COST OF LIVING ADJUSTMENT (COLA)

COLA Update

Dr. Rebecca M. Wyke shared the CPI-U as of June 30, 2022 was 9.1%. The COLA for the State-sponsored plans is capped at 3% of the first \$24,186.25 of benefits. The increase for the PLD Consolidated Plan is capped at 2.5% of the total benefit. The COLA for withdrawn PLD's is capped at 4% of the total benefit. Because the State-sponsored plans did not receive the full COLA, MainePERS will submit the additional cost to fund the full COLA to the Governor and Legislature as required by law.

Adoption of Annual COLA Rates

- **Action.** Motion made by Ken Williams, seconded by Mark Brunton, that the Board adopt cost of living adjustments of 3% of the COLA base for the State-sponsored plans, 2.5% for the PLD Consolidated Plan, and 4% for withdrawn PLDs, effective September of 2022, and that the System provide the Governor with the information and supplemental budget request required when the full COLA is not paid for the State-

sponsored plans because of the cap. Voted unanimously by seven Trustees (Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

FINANCE AND AUDIT COMMITTEE

- **Action.** Motion made by Shirrin Blaisdell, seconded by Ken Williams, that the Board enter into executive session pursuant to 1 M.R.S. §405(6)(D) to discuss labor contracts and proposals between MainePERS and the Maine Service Employees Association. Voted unanimously by seven Trustees (Beliveau, Blaisdell, Brunton, Kimball, Metivier, Noyes, and Williams).

Board moves out of executive session.

Brian Noyes left the meeting at 11:50 a.m. Dick Metivier presided over the remainder of the meeting.

Internal Audit Update

Shirrin Blaisdell stated the Finance and Audit Committee reviewed the Administrative and Investment financial statements for the end of the year. She shared the Committee was provided a presentation from the external auditors, BerryDunn, who reviewed their agenda for the audit. Sherry Vandrell shared that the Committee also met with Wipfli, LLC, internal auditor, who provided a presentation on the internal audit risk assessment and draft audit plan. Shirrin and Sherry answered questions from the Trustees.

OPERATIONS AND MEMBER SERVICES REPORT

Chip Gavin stated great work across the agency by those who have worked on the PLD retroactive COLA. The group has prepared mailings, website postings, and information for incoming calls for those members with questions. Chip thanked the staff for all of their hard work during this process. Chip shared an electronic communication pilot project is underway. The goal is to provide newsletters, COLA information, and general solicitation of feedback from members and retirees via email. Chip stated an email communication was sent out to leaders of school systems informing them of the eligibility of teachers to join MaineSTART.

Michael Colleran reported that we filled eight positions in July, all of which were internal hires. We had three new employees start this week and expect two more to join later this month. Michael shared that the Employer Reporting unit had a busy month in July assisting 10 new or rejoining PLDs and 18 PLDs with new plans while ensuring employer reporting reflected the new contribution rates that went into effect July 1. Michael stated line of business and IT staff have been working to provide Cheiron with information in preparation for annual valuations. He also shared that the migration to Mimecast, the new email archiving system, is complete.

LITIGATION UPDATE

Philip Mantis shared the personnel matter was still in discovery with no new information. Work continues on the email search which, is time consuming due to the number of email accounts and years that need to be searched. Philip stated a conference was held with the

Judge in regards to Ms. Hawes' FOA matters. The Judge reviewed each of the requests and allowed the parties to be heard and stated he would issue an order in the near future. As of this date, no order has been received.

ADJOURNMENT

- Action. Mark Brunton made a motion, seconded by Shirrin Blaisdell, to adjourn the August Board of Trustees meeting. Voted unanimously by seven Trustees (Beck, Beliveau, Blaisdell, Brunton, Kimball, Metivier, and Williams).

The meeting adjourned at approximately 12:15 p.m.

9/8/22
Date Approved by the Board

Dr. Rebecca M. Wyke, Chief Executive Officer

Date Signed

MAINEPERS

BOARD OF TRUSTEES INVESTMENTS MEMORANDUM

TO: BOARD MEMBERS
FROM: JAMES BENNETT, CHIEF INVESTMENT OFFICER
SUBJECT: INVESTMENT REVIEW
DATE: SEPTEMBER 1, 2022

Following this memo is the Monthly Investment Review for August.

POLICY REFERENCE

[Board Policy 2.1 – Investment Policy Statement](#)

[Board Policy 4.5 – Board/Staff Relations](#)

[Board Policy 4.6 – Communication and Support to the Board](#)

MONTHLY INVESTMENT REVIEW: HIGHLIGHTS AND OBSERVATIONS

Preliminary Fund results for the month include:

- Month-end fund value of \$18.4 billion.
- Monthly return of -1.3%.
- Calendar year-to-date return of -3.4%.



Investment Review

September 8, 2022



MainePERS
PUBLIC EMPLOYEES RETIREMENT SYSTEM

Investment Objective

MainePERS' investment objectives balance the System's twin goals of generating investment returns (to ensure growth of the trust funds) and minimizing investment risks (loss of capital and cash flow shortfalls).

The Board recognizes and accepts that these goals are in opposition, and that a trade-off exists between expected risk and return. The Board balances these goals by seeking to optimize portfolio returns consistent with an established targeted portfolio risk level.

Additionally, by optimizing investment returns on trust assets, rather than attempting to maximize them, the Board seeks to maintain contribution rate and funding level volatility at acceptable levels that have been determined from time to time during strategic asset allocation planning and asset/liability reviews.

August 2022 Performance (Preliminary)

The **preliminary** fund value at the end of August is \$18.4 billion.



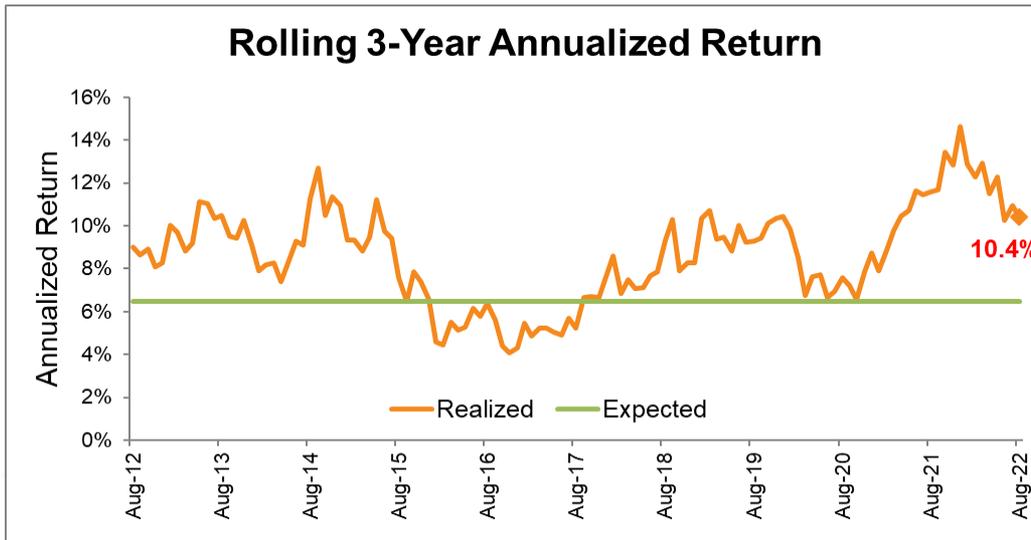
Fund and Benchmark Returns

	Aug-22	CYTD 2022	FYTD 2023
Total Fund	-1.3%	-3.4%	0.6%
Russell 3000	-3.7%	-16.9%	5.3%
MSCI ACWI ex-USA	-3.2%	-18.3%	0.1%
Barclays Agg. Bond Index	-2.8%	-10.8%	-0.5%

Investment Objective Measurement: Risk and Return



Recent observed fund risk remains well below targeted risk level on a rolling 3-year annualized basis.



Investment returns continue to exceed expected values on a rolling 3-year annualized basis.

Note: Rolling 3-year return and standard deviation are calculated at each point in time based on returns over prior 36 months. All figures are annualized.

August 2022 Asset Allocation (Preliminary)

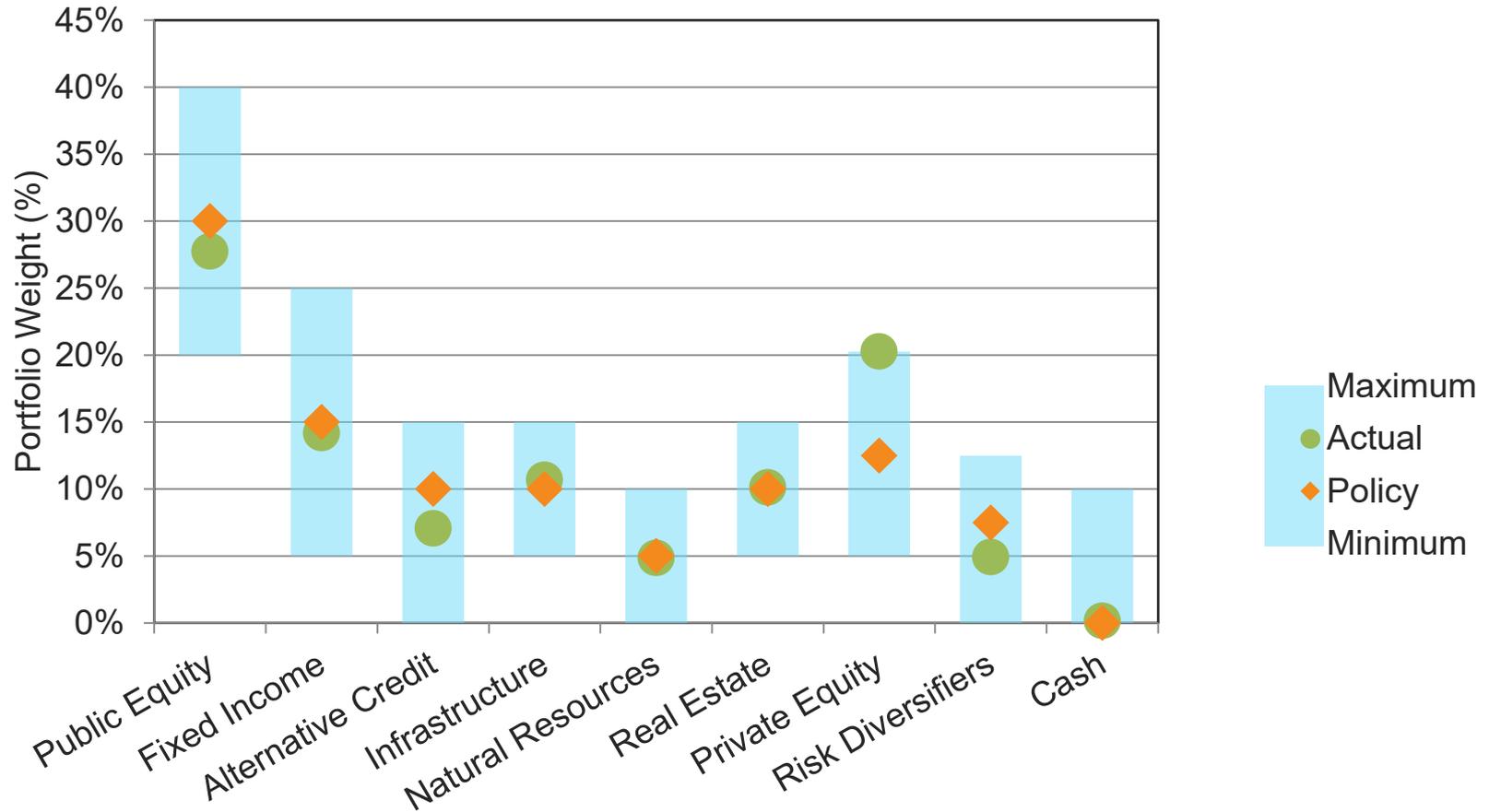
Assets (Millions)	Value	% of Fund	Policy %
MainePERS Portfolio	\$ 18,407	100.0%	100.0%
Domestic Equity	\$ 3,128	17.0%	18.6%
International Equity	\$ 1,931	10.5%	11.4%
Fixed Income	\$ 2,613	14.2%	15.0%
Alternative Credit	\$ 1,307	7.1%	10.0%
Infrastructure	\$ 1,976	10.7%	10.0%
Natural Resources	\$ 897	4.9%	5.0%
Private Equity	\$ 3,731	20.3%	12.5%
Real Estate	\$ 1,867	10.1%	10.0%
Risk Diversifiers	\$ 911	4.9%	7.5%
Cash	\$ 48	0.3%	0.0%

Portfolio weights for most asset classes remain near MainePERS Investment Policy asset allocation weights.

Private equity remains overweight at ~20% of Fund value, and private markets assets in aggregate comprise 53.1% of the overall portfolio, above the 47.5% policy weight.

* Total Public Equity policy weight is 30%, divided across U.S. and non-U.S. equities based on ACWI weights.

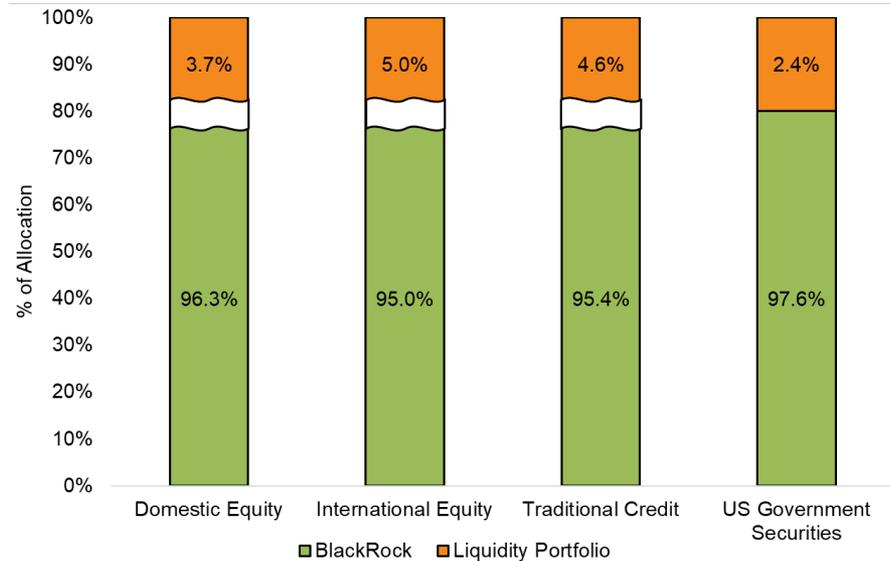
August 2022 Asset Allocation (Preliminary)



Public Securities: Liquidity Portfolio

At the end of August, 1.6% of Fund assets were invested via ETFs and futures contracts in an account managed by Parametric Associates.

The Liquidity Portfolio accounts for 3.8% of MainePERS' total exposure to public securities.



MainePERS Liquidity Portfolio	Market Value (Millions)	Exposure Type
Parametric Domestic Equity	\$116.1	Futures
Parametric International Equity	\$96.6	Futures
Parametric Traditional Credit	\$39.2	ETFs
Parametric US Government Securities	\$41.5	Futures
Total Liquidity Portfolio	\$293.4	

MainePERS has **exposures to derivatives** in the following areas:

- Public Equities, Public Fixed Income, and Risk Diversifiers

MainePERS has **financial leverage** (borrowing and investing) in the following areas:

- BlackRock – Financial leverage in securities lending
- JP Morgan – Financial leverage in securities lending
- Alternative Credit
- Infrastructure
- Natural Resources
- Private Equity
- Real Estate

Investment Related Fees: August 2022

Description	FYTD 23	FY 22	FY 21	FY 20	FY 19
Investment Mgmt. Fees	\$20,426,624	\$119,200,558	\$118,561,261	\$124,480,394	\$106,398,871
Securities Lending Fees ¹	97,394	1,744,317	1,653,172	2,239,396	2,226,826
Consulting Fees	186,667	1,120,000	1,120,000	1,120,000	1,120,000
Broker Commissions ²	16,187	30,833	52,364	37,461	28,970
Placement Agent Fees	0	0	0	0	0
Total	\$20,726,872	\$122,095,708	\$121,386,797	\$127,877,251	\$109,774,667
Percentage of Fund ³	0.67%	0.66%	0.67%	0.87%	0.74%

1. Securities Lending Fees are through 7/31/2022
2. Actual paid commissions reported by JP Morgan
3. Annualized estimated total fees divided by the current fund value for FYTD 23. The prior years' calculations are actual fees divided by the June 30 market value of that year.

Securities Lending: July 2022

	Average Lendable Assets	Average Assets On Loan	Total Sec Lending Revenue	Revenue Split	MainePERS Net Income	MainePERS Net Income, FYTD
BlackRock						
Fixed Income	\$1,850,120,399	\$1,373,482,138	\$127,840	60%/40%	\$76,704	\$76,704
Total Equity	\$1,658,545,267	\$201,251,058	\$114,043	60%/40%	\$76,100	\$76,100
Total Blackrock	\$3,508,665,666	\$1,574,733,196	\$241,883		\$152,804	\$152,804
JP Morgan						
Domestic Equities	\$2,678,473,528	\$122,474,846	\$55,460	85%/15%	\$47,145	\$47,145
Total	\$6,187,139,194	\$1,697,208,042	\$297,343		\$199,949	\$199,949
Total Annualized Securities Lending Income, FY 2023:				\$2,399,384 (0.01%, or 1.3 bps)		
Total Actual Securities Lending Income, FY 2022:				\$3,118,726 (0.02%, or 1.7 bps)		

Liquidity Schedule: August 2022

Term	Market Value	Percent of Portfolio
Liquid ¹	\$7,720m	41.9%
Semi-Liquid ²	\$2,215m	12.0%
Illiquid ³	\$8,473m	46.0%
Total	\$18,407m	100.0%

<u>Sources and Uses of Liquidity</u>		
	Last 12 Months Actual	Next 12 Months Projection
Private Markets Activity		
Capital Contributions	-\$1,700m	-\$900m
Distributions	\$2,002m	\$1,750m
Net Private Markets Activity	\$302m	\$850m
Benefit Payments	-\$350m	-\$420m
Net Cash Flows	-\$48m	\$430m

¹Liquid assets includes public equities and public fixed income

²Semi-liquid assets includes risk diversifiers, open-end real estate investments, and listed alternative credit funds

³Illiquid assets includes closed-end alternative credit, infrastructure, natural resources, private equity, and real estate funds

MainePERS Alternative Investments Summary

<i>as of 08/31/2022</i>	# of Funds	# of GP Relationships
Alternative Credit	22	13
Infrastructure	34	11
Natural Resources	14	9
Private Equity	120	33
Real Estate	34	19
Risk Diversifiers	8	6
Total*	232	82

*GP Total may not add due to overlapping relationships

Currently, MainePERS is invested in 232 funds,
and has 82 distinct manager relationships.

MainePERS Alternative Investments Summary

<i>(in \$millions)</i> as of 08/31/2022	Current Market Value			Unfunded Commitment	
	Dollars	% of Fund	Policy %*	Dollars	% of Fund
Alternative Credit	\$ 1,307	7.1%	10.0%	\$ 709	3.9%
Infrastructure	\$ 1,976	10.7%	10.0%	\$ 754	4.1%
Natural Resources	\$ 897	4.9%	5.0%	\$ 197	1.1%
Private Equity	\$ 3,731	20.3%	12.5%	\$ 1,267	6.9%
Real Estate	\$ 1,867	10.1%	10.0%	\$ 545	3.0%
Risk Diversifiers	\$ 911	4.9%	7.5%	\$ -	0.0%
Total Alternatives	\$ 10,689	58.1%	55.0%	\$ 3,472	18.9%

For more details please see Private Markets Investment Summary at <http://www.maineper.org/Investments/>

*Investment Policy weights approved by the Board of Trustees effective May 2022

Note: Market values shown above are preliminary estimates. Private market asset values are based on 3/31/2022 values, adjusted for subsequent cash flows.

<i>(in \$millions)</i> as of 08/31/2022	Private Market Commitments by Vintage Year				3-Year
	2019	2020	2021	2022	Average ¹
Alternative Credit	\$ 200	\$ 275	\$ 410	\$ 425	\$ 295
Infrastructure	\$ 350	\$ 235	\$ 180	\$ 200	\$ 255
Natural Resources	\$ 175	\$ -	\$ -	\$ -	\$ 58
Private Equity	\$ 240	\$ 276	\$ 438	\$ 218	\$ 318
Real Estate	\$ 230	\$ 80	\$ 285	\$ 180	\$ 198
Total Commitments	\$ 1,195	\$ 866	\$ 1,313	\$ 1,023	\$ 1,125

¹13-Year Average: 2019-2021

MAINEPERS

BOARD OF TRUSTEES INVESTMENTS MEMORANDUM

TO: BOARD MEMBERS
FROM: JAMES BENNETT, CHIEF INVESTMENT OFFICER
SUBJECT: TRUSTEE EDUCATION: ALTERNATIVE CREDIT REVIEW
DATE: SEPTEMBER 1, 2022

Following this memo is a presentation covering the evolution of Alternative Credit markets and the System's approach to investing in this asset class. The presentation reviews the Fund's current Alternative Credit portfolio, and discusses expected portfolio changes and target allocations across various credit subsectors.

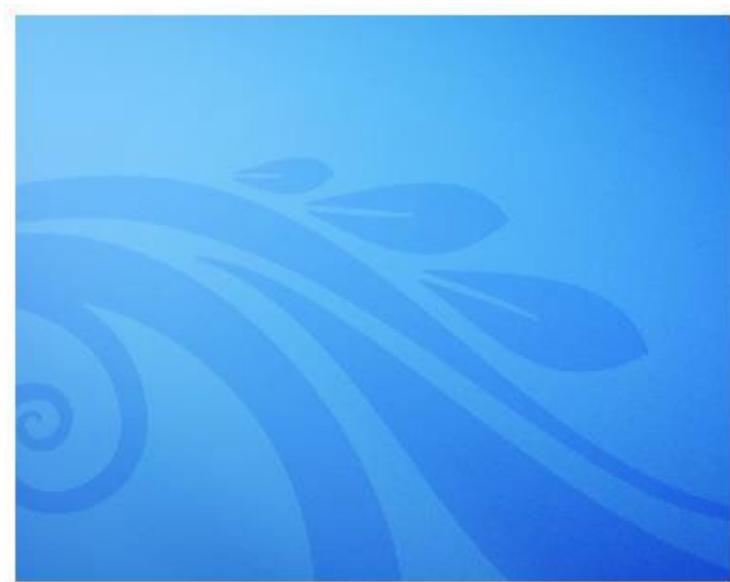
POLICY REFERENCE

[Board Policy 1.8 – Trustee Education](#)

[Board Policy 2.1 – Investment Policy Statement](#)

[Board Policy 4.5 – Board/Staff Relations](#)

[Board Policy 4.6 – Communication and Support to the Board](#)



Alternative Credit Review

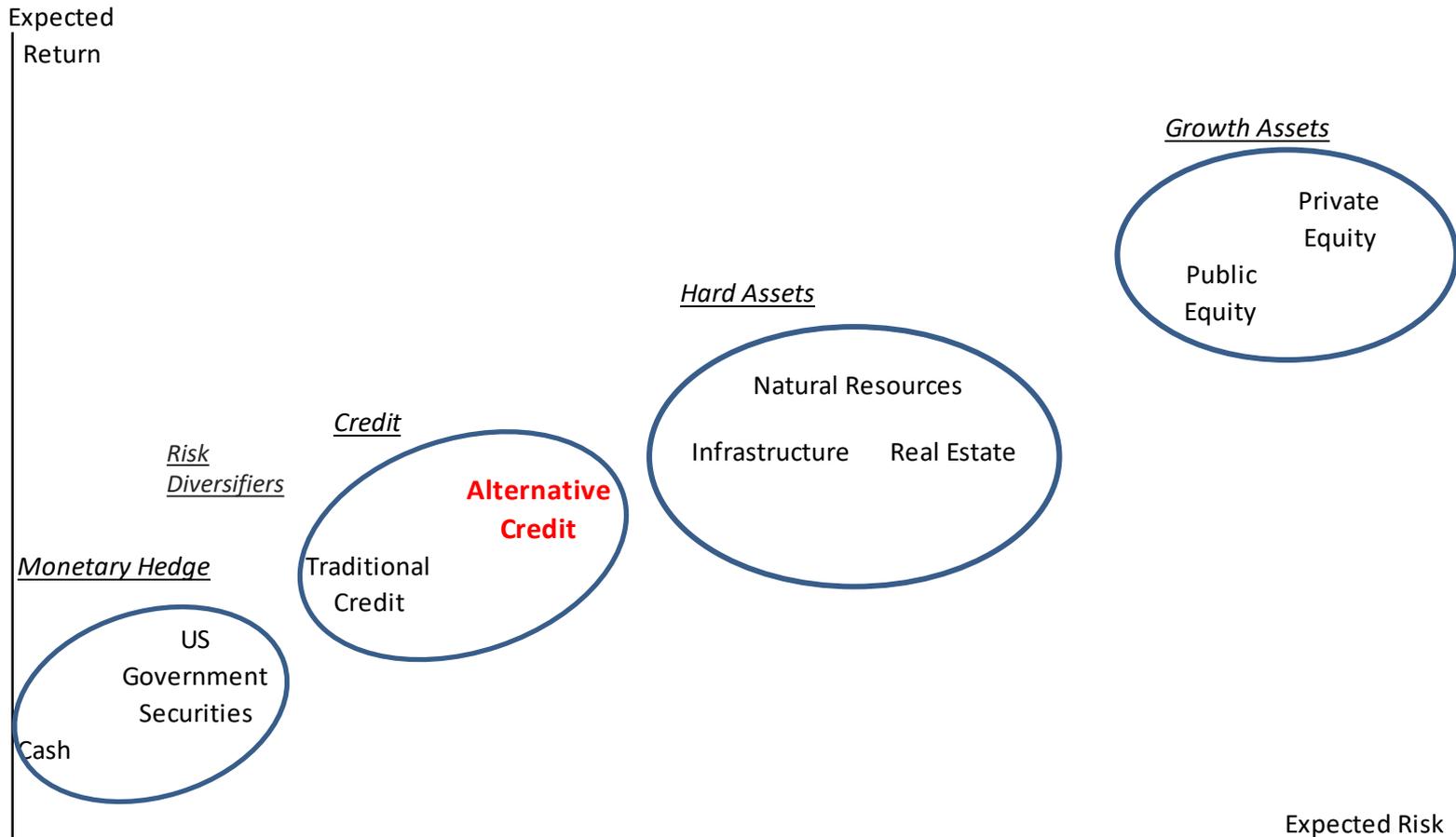
September 8, 2022



MainePERS
PUBLIC EMPLOYEES RETIREMENT SYSTEM

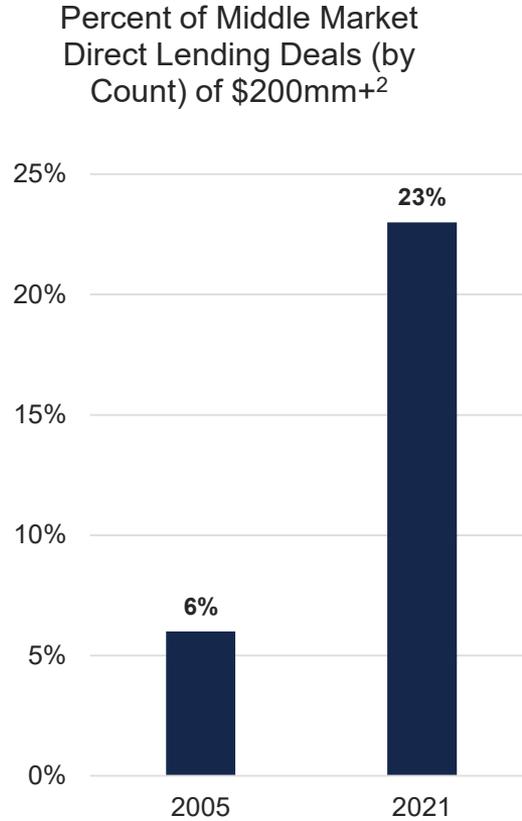
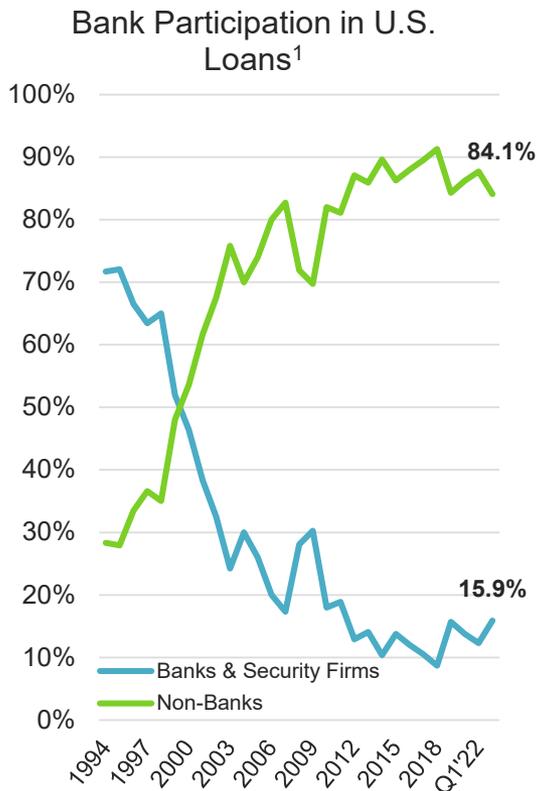
MainePERS Strategic Asset Allocation

Alternative Credit in MainePERS Portfolio:



Credit Market Evolution

The opportunity set is underpinned by secular trends in the credit markets



¹Per S&P LCD 2022 Q1 Quarterly Lending Review.

²Per Preqin and Credit Suisse as of September 2021.

³Per PitchBook: 2021 Annual Global Private Debt Report, 2021 Annual US PE Breakdown.

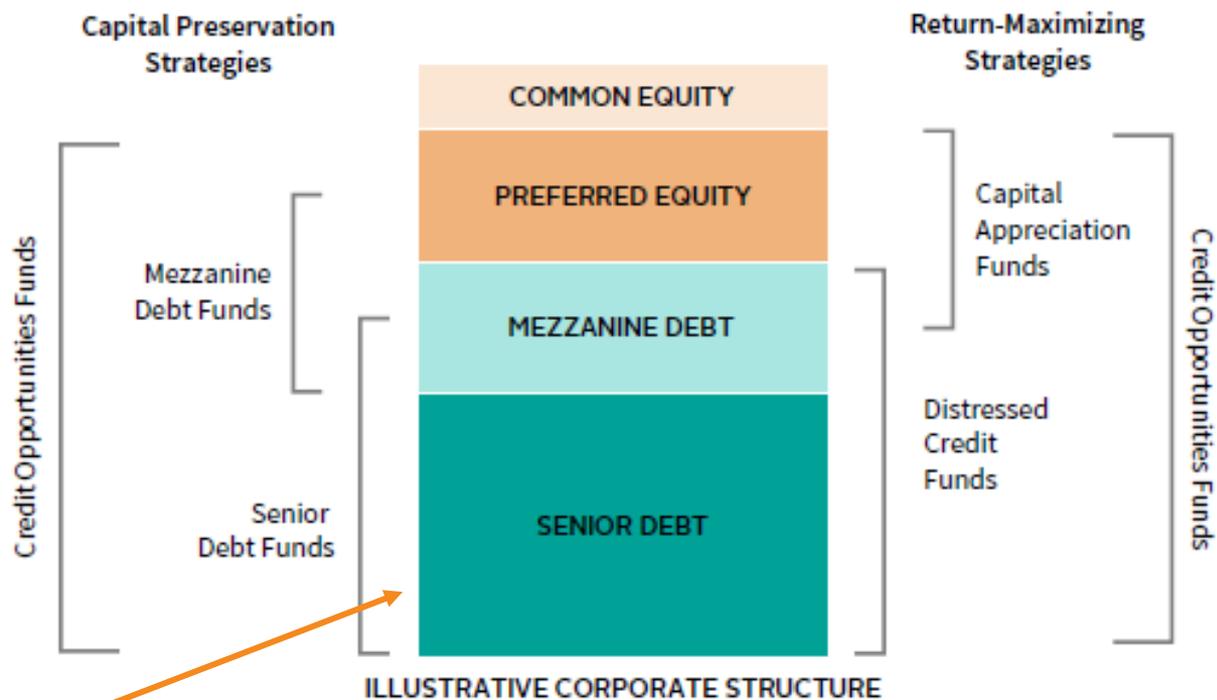
Traditional vs. Alternative Credit

Key differences exist between Traditional Credit and Alternative Credit with respect to control, credit risk, interest rate type, and liquidity.

	Traditional Credit (Bonds)	Alternative Credit (Loans)
Allocation	5%	10%
Debt Securities	✓	✓
Contractual Interest	✓	✓
Distressed or Equity Upside	✗	✗
Return of Principal Expected	✓	✓
Diversification From Growth Assets	✓	✓
Control of Loans	Low	High
Credit Rating	Investment Grade	Below Inv. Grade
Interest Rate	Fixed	Floating
Liquidity	Publicly Traded	No/Limited Trading

MainePERS Investment Approach

Different credit strategies have different risk/return profiles, but MainePERS' philosophy is to "lend money, collect interest, get repaid".



Source: Cambridge Associates LLC.

MainePERS primarily invests in performing senior debt funds, the most conservative strategy that prioritizes capital preservation over maximizing returns.

Alternative Credit History at MainePERS

Alternative Credit was added to MainePERS asset allocation in June 2016 with a 5% target policy weight. The allocation was intended to provide the Fund with the opportunity to earn illiquidity and credit premia by lending to a wide universe of private borrowers.

The target weight was increased to 7.5% in 2021 and then to 10% in 2022.

The Investment Team has made commitments to direct lending, real estate debt, infrastructure debt, and specialty lending strategies.

Alternative Credit currently represents 6.9% of the total Fund.

Alternative Credit has outperformed Traditional Credit by approximately 5% per year¹, but there are important risk considerations:

Risk	Description	Mitigants
Credit	The leveraged loan index has a ~3.5% historical default rate and a 1.5% annual loss rate	-Pricing -Lead lenders -Loan covenants
Illiquidity	Loans are typically held by a small lender group	-Originate and hold until repayment -Control position -Proven and responsible borrowers
Interest Rate	Fixed rate loans typically decline in value when interest rates increase	-Floating rate loans -Interest rate floors
Leverage	Asset and fund-level leverage	-Lower risk/return strategy -Highly diversified portfolios -Managers with a proven record
Strategy Drift	Bigger fund sizes may result in managers pursuing larger loans with lower pricing and less protections	-Monitor/engage active funds -Re-underwrite each new fund

¹MainePERS Alternative Credit 5-year annualized net of fees return versus the Bloomberg US Aggregate Bond Index total return for the 5-year period ended June 30, 2022

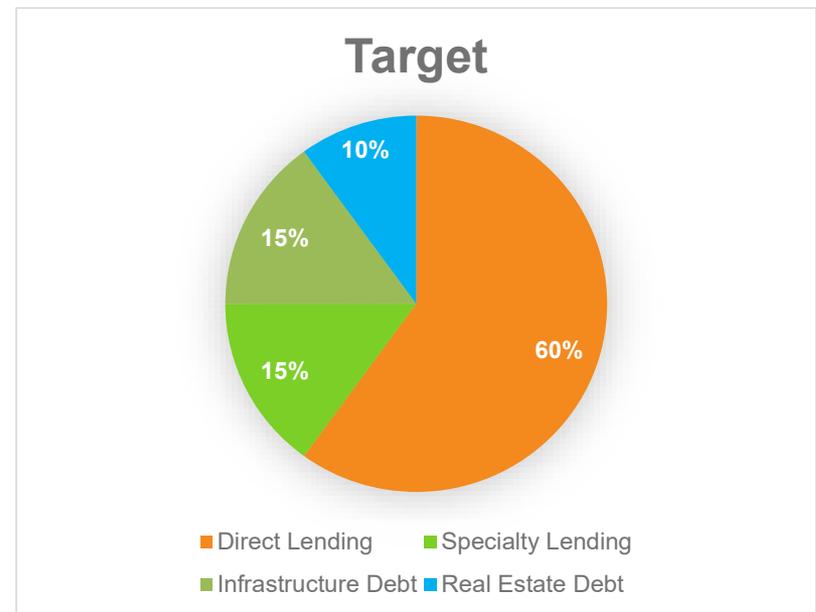
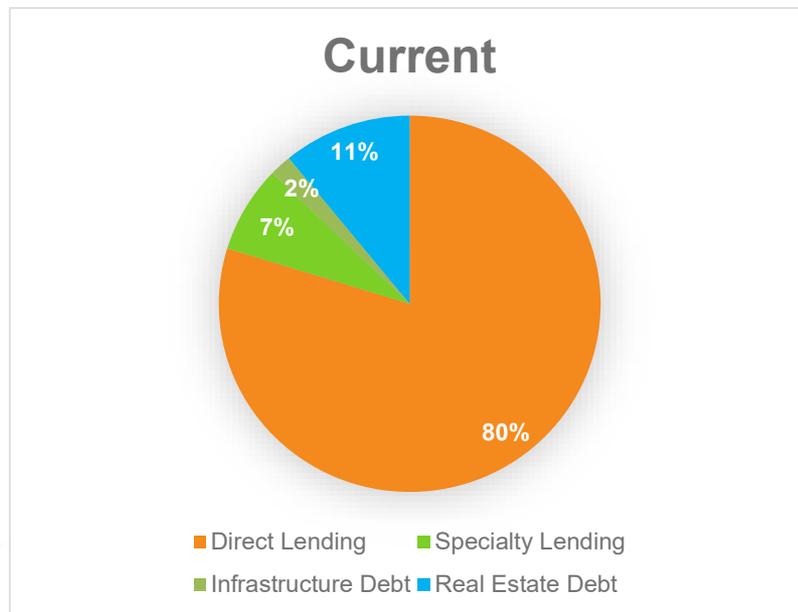
Alternative Credit Portfolio Strategies

Direct Lending: Senior secured cash flow loans to small and medium sized companies.

Specialty Lending: Asset-based lending, life sciences, and lender finance strategies.

Infrastructure Debt: Loans made to essential infrastructure assets with long-term cash flows.

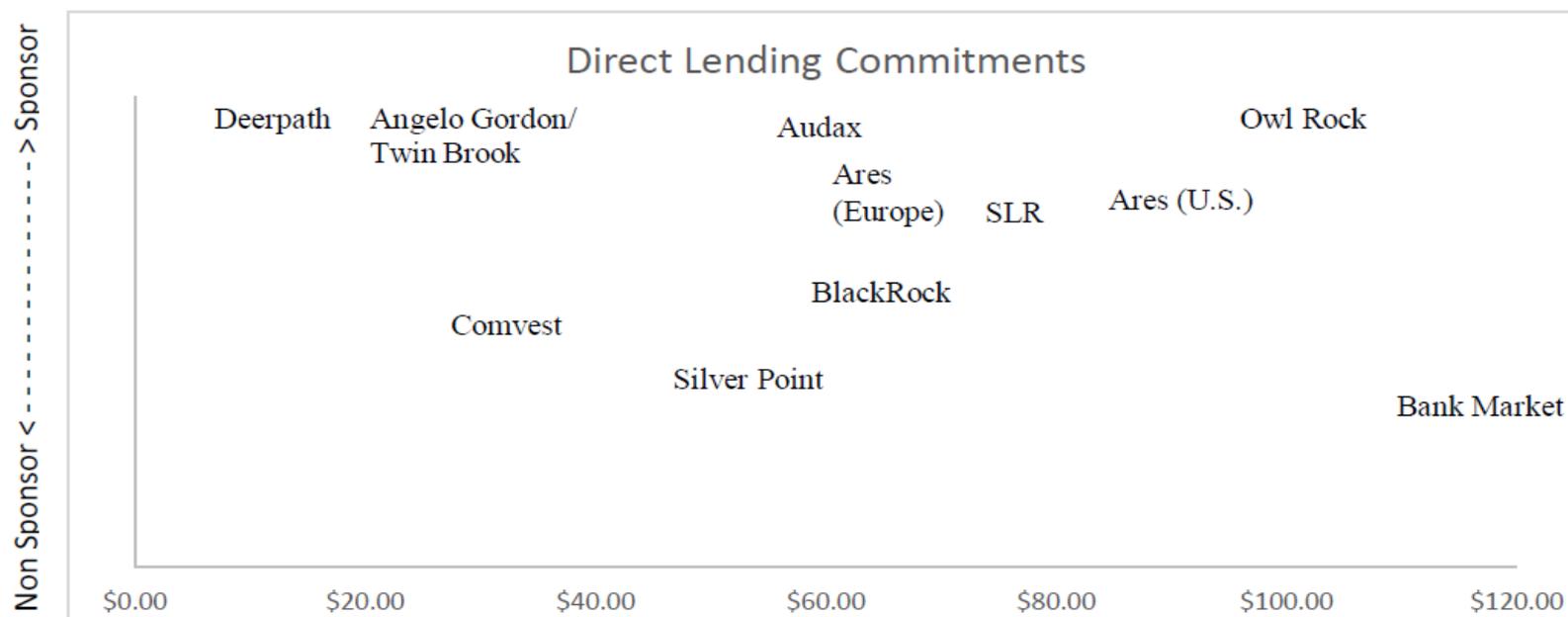
Real Estate Debt: Originate first mortgages on institutional quality properties.



Direct Lending

Direct lending managers typically originate and hold 1st lien senior secured floating rate loans with maturities of 4-6 years to companies that generate EBITDA between \$5-\$100+ million annually.

Commitments have been diversified across managers focused on lending to borrowers of different sizes and type (sponsor and non-sponsor backed companies).



Lower Middle Market <-----> Upper Middle Market
Company Size measured by EBITDA (millions)

Beyond Direct Lending: Additional Strategies

The specialty lending, infrastructure, and real estate debt strategies benefit from asset-rich collateral and provide diversification to direct lending.

	Asset-Based Lending	Life Science Lending	Lender Finance	Infra Lending	RE Lending
Borrowers	Asset-rich corporate borrowers in transition	Late-stage drug and medical device companies	Commercial finance companies	Owners of essential infrastructure assets	Owners of stabilized commercial real estate properties
Loan products	1 st and 2 nd lien secured	1 st lien senior secured	1 st lien senior secured	1 st and 2 nd lien secured	1 st lien mortgages
Loan-to-value	<70%	<30%	60%-90%	60%-85%	~60%
Rate	Floating	Floating	Floating	Floating/Fixed	Floating
Collateral	Receivables, inventory, equipment, RE	IP, lien on cash	Quality loan portfolios	High quality infrastructure assets	Stable commercial real estate
Expected holding period	1-2 years	1-3 years	4-5 years	5-7 years	3-4 years
Managers	SLR, Pathlight	SLR	SLR	GIP, Brookfield	Mesa West

We will continue moving toward 10% target allocation via a combination of

- Evaluating re-ups with current managers and strategies
- Maintaining flexibility to add compelling new managers
- Resizing and/or eliminating current strategies that are not consistent with the program's goals

In October, the Investment Team plans to bring a recommendation to end the System's investment with Audax

- \$100 million commitment made in 2017, into SMA structure
- Inception-to-date IRR of 4.6%
- Non-originated, middle market sponsored focus

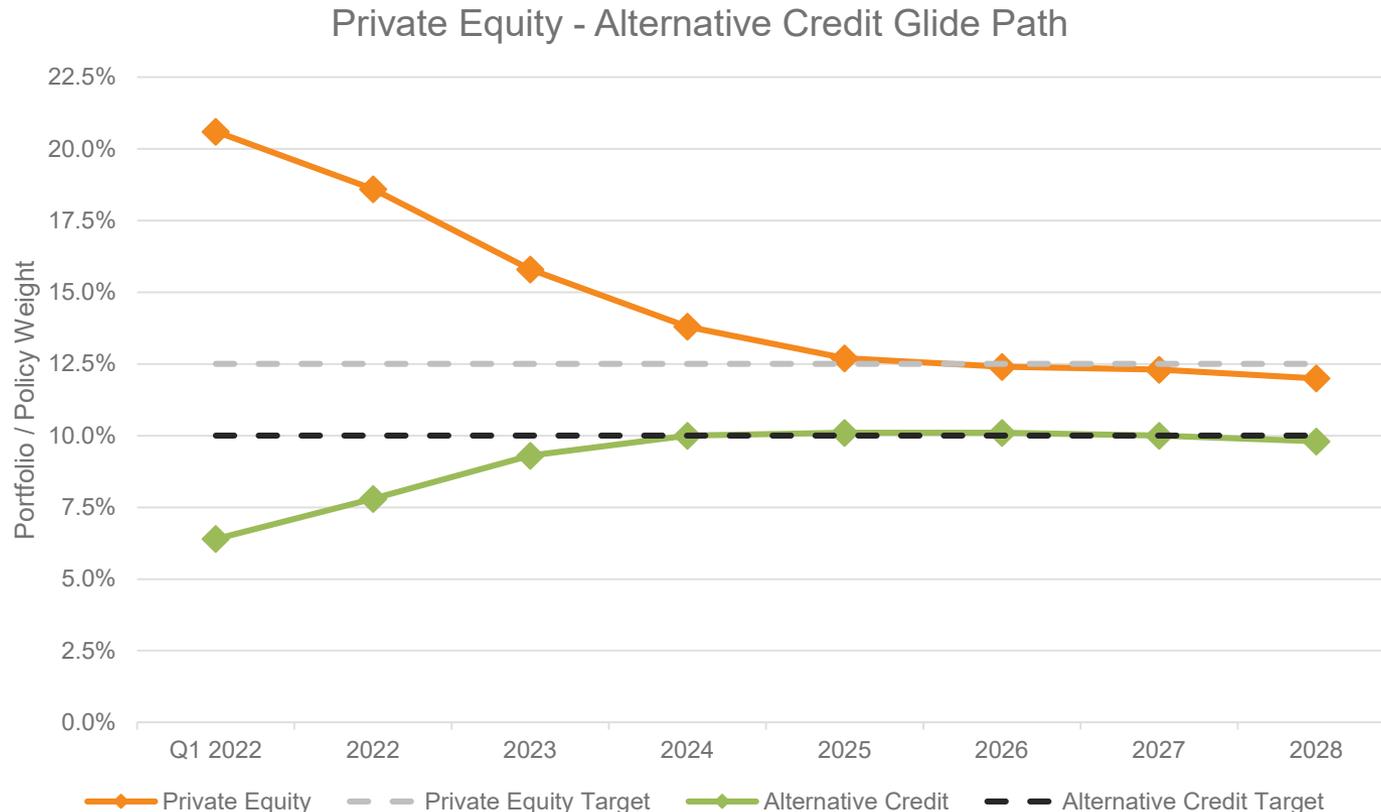
Recommendation concerning exit will involve a combination of

- Natural runoff over time
- Portfolio and / or individual asset sales
- Other potential exit mechanisms

Private Equity – Alternative Credit Glide Path

MainePERS has adjusted its commitment pacing consistent with a glide path to reach policy weights in the coming years

- The policy weight for private equity was changed from 15.0% to 12.5%
- The policy weight for alternative credit was changed from 7.5% to 10.0%
- The Investment Team and Cliffwater estimate the System's portfolio will reach the new policy weights around 2025



MAINEPERS

BOARD OF TRUSTEES MEMORANDUM

TO: BOARD MEMBERS

FROM: MICHAEL COLLERAN, CHIEF DEPUTY EXECUTIVE DIRECTOR AND
GENERAL COUNSEL
JAMES BENNETT, CHIEF INVESTMENT OFFICER
CHIP GAVIN, CHIEF SERVICES OFFICER

SUBJECT: MAINESTART QUARTERLY REVIEW

DATE: SEPTEMBER 1, 2022

Following this memo is the MaineSTART Quarterly Review for the quarter ending 6/30/2022.

POLICY REFERENCE

[Board Policy 2.1-C – DC Plans Investment Policy Statement](#)

[Board Policy 4.5 – Board/Staff Relations](#)

[Board Policy 4.6 – Communication and Support to the Board](#)

RECOMMENDATION

No Board action is required.



MAINE
START



MaineSTART Quarterly Review

For the Quarter Ending 06/30/2022



MainePERS
PUBLIC EMPLOYEES RETIREMENT SYSTEM

Overview of MaineSTART

- ▶ **401(a) Defined Contribution Plan**
 - ▶ **Qualified Plan**
 - ▶ **Higher Contribution Limits**
 - ▶ **Inflexible**
- ▶ **403(b) Tax-Sheltered Annuity Plan**
 - ▶ **Only for Educational and Certain Non-Profit Organizations**
 - ▶ **Flexible**
- ▶ **457(b) Deferred Compensation Plan**
 - ▶ **Flexible**

Participation and Value as of 06/30/2022

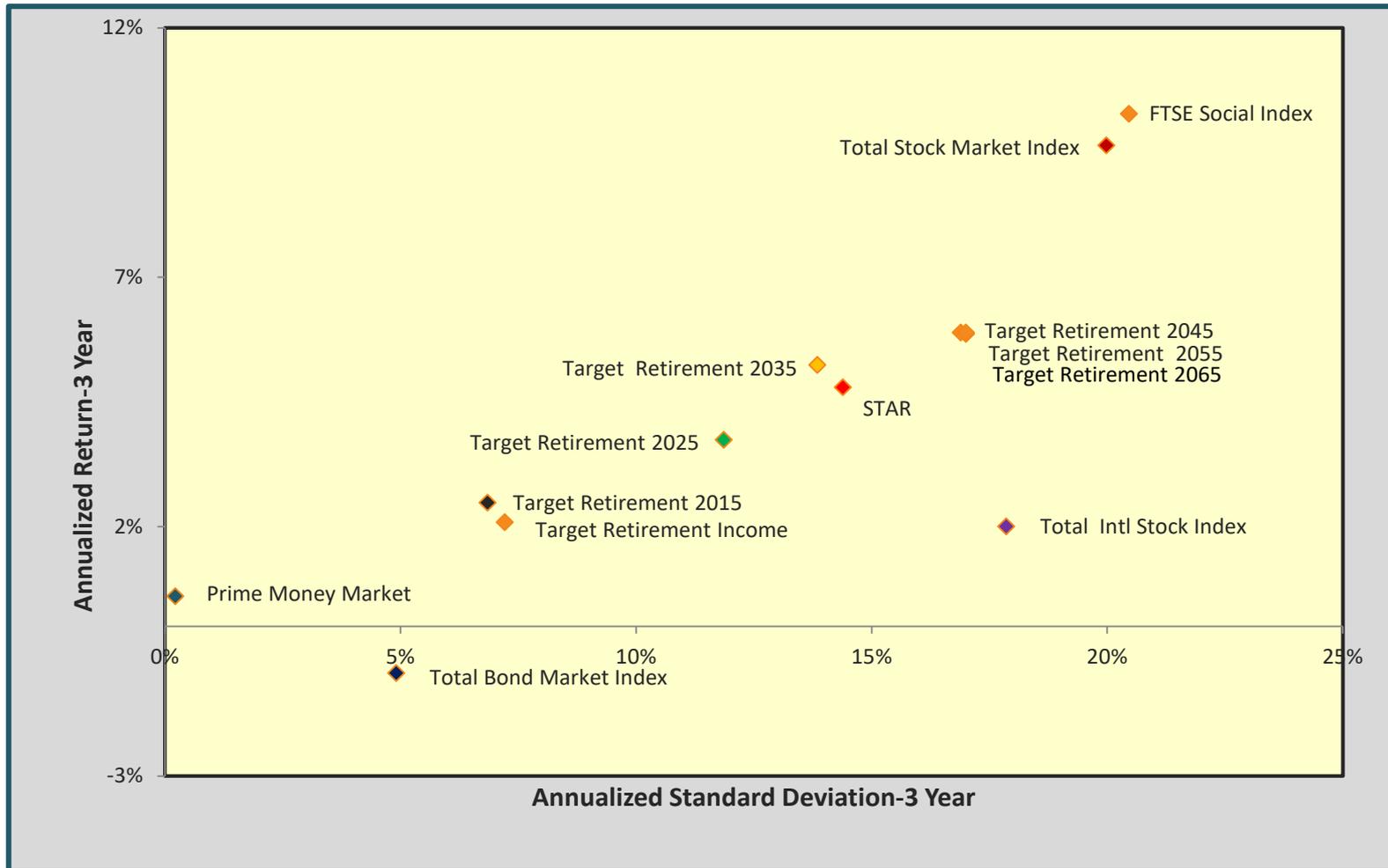
	401(a)	403(b)	457(b)	Total	Change from 06/30/2021
Participating Employers	7	1	72	80*	2
Participating Employees	89	564	926	1,579	101
Total Market Value	\$5,968,588	\$15,792,491	\$32,145,475	\$53,906,555	-\$6,573,998

*26% of PLDs

MaineSTART Investment Options

Fund
Target Retirement
Vanguard Target Retirement 2015
Vanguard Target Retirement 2025
Vanguard Target Retirement 2035
Vanguard Target Retirement 2045
Vanguard Target Retirement 2055
Vanguard Target Retirement 2065
Vanguard Target Retirement Income
US Equity
Vanguard Total Stock Market Index
Vanguard FTSE Social Index
Non-US Equity
Vanguard Total International Stock Index
Balanced
Vanguard STAR
Fixed Income
Vanguard Total Bond Market Index
Cash
Vanguard Cash Reserves Federal Money Market

Risk Profiles – 3 Years Ending 06/30/2022



MaineSTART Review 2Q 2022

Performance as of 06/30/2022 (Target Date Funds)

Total Fund	\$ 53,906,555	% Total	Quarter	1 Yr	3 Yrs	5 Yrs	10 Yrs
Target Retirement Funds							
Target Retirement 2015	\$ 4,082,976	7.6%	-7.4%	-10.1%	2.5%	3.9%	5.6%
Retirement 2015 Benchmark			-7.5%	-10.0%	2.8%	4.1%	5.8%
Target Retirement 2025	\$ 13,798,856	25.6%	-10.7%	-13.2%	3.7%	5.1%	7.1%
Target Retirement 2025 Benchmark			-10.8%	-12.9%	4.2%	5.5%	7.4%
Target Retirement 2035	\$ 8,419,671	15.6%	-12.4%	-14.4%	4.8%	6.0%	8.3%
Target Retirement 2035 Benchmark			-12.6%	-14.1%	5.2%	6.3%	8.6%
Target Retirement 2045	\$ 4,812,713	8.9%	-13.9%	-15.3%	5.9%	6.8%	9.0%
Target Retirement 2045 Benchmark			-14.2%	-15.1%	6.3%	7.2%	9.3%
Target Retirement 2055	\$ 972,317	1.8%	-14.2%	-15.5%	5.9%	6.8%	9.0%
Target Retirement 2055 Benchmark			-14.5%	-15.3%	6.3%	7.2%	9.3%
Target Retirement 2065	\$ 128,253	0.2%	-14.2%	-15.4%	5.9%		
Target Retirement 2065 Benchmark			-14.5%	-15.3%	6.3%		
Target Retirement Income	\$ 346,398	0.6%	-7.4%	-10.1%	2.1%	3.3%	4.1%
Target Retirement Income Benchmark			-7.5%	-10.0%	2.4%	3.6%	4.4%

Tracking Error for all funds remains within expected ranges.

MaineSTART Review 2Q 2022

Performance as of 06/30/2022 (Index and Balanced Funds)

Total Fund	\$ 53,906,555	% of Total	Quarter	1 Yr	3 Yrs	5 Yrs	10 Yrs
US Equity							
Total Stock Market Index	\$ 10,756,638	20.0%	-21.4%	-14.2%	9.6%	10.5%	12.5%
Dow Jones Total Stock Market Index			-21.4%	-14.2%	9.7%	10.5%	12.5%
FTSE Social Index	\$ 672,036	1.2%	-17.8%	-15.1%	10.3%	11.5%	14.0%
FTSE4Good US Select Index			-17.8%	-15.0%	10.4%	11.6%	14.1%
Non-US Equity							
Total International Stock Index	\$ 2,089,605	3.9%	-12.9%	-18.9%	2.0%	2.7%	5.2%
Total International Stock Index			-14.1%	-19.3%	1.9%	2.7%	5.2%
Balanced							
STAR	\$ 2,804,876	5.2%	-12.6%	-17.5%	5.2%	6.3%	7.9%
STAR Composite Index			-11.3%	-12.6%	5.1%	6.1%	7.4%
Fixed Income							
Total Bond Market Index	\$ 2,022,629	3.8%	-4.7%	-10.4%	-0.9%	0.8%	1.5%
Barclays Capital Aggregate Bond Index			-4.7%	-10.4%	-0.9%	0.9%	1.6%
Total Cash							
Cash Reserves Federal Money Market	\$ 2,999,587	5.6%	0.2%	0.2%	0.6%	1.1%	0.7%
Citigroup 90 Day T-Bill Index			0.1%	0.1%	0.4%	0.8%	0.5%

The STAR fund has demonstrated weak performance over the past year. Tracking Error on the other funds remains within expected range.

MaineSTART Review 2Q 2022

Investment Option Fees

Fund Name	Ticker	Market Value	MaineSTART Expense Ratio	Next Threshold Amount	Next Expense Ratio
Vanguard Total Stock Market Index	VITSX	\$10,756,638	0.03%	\$100,000,000	0.02%
Vanguard Total International Stock Index	VTIAX	\$2,089,605	0.11%	\$5,000,000	0.10%
Vanguard STAR	VGSTX	\$2,804,876	0.31%	N/A	0.31%
Vanguard FTSE Social Index	VFTAX	\$672,036	0.14%	\$5,000,000	0.12%
Vanguard Target Retirement 2015	VTXVX	\$4,082,976	0.08%	N/A	0.08%
Vanguard Target Retirement 2025	VTTVX	\$13,798,856	0.08%	N/A	0.08%
Vanguard Target Retirement 2035	VTTHX	\$8,419,671	0.08%	N/A	0.08%
Vanguard Target Retirement 2045	VTIVX	\$4,812,713	0.08%	N/A	0.08%
Vanguard Target Retirement 2055	VFFVX	\$972,317	0.08%	N/A	0.08%
Vanguard Target Retirement 2065	VLXVX	\$128,253	0.08%	N/A	0.08%
Vanguard Target Retirement Income	VTINX	\$346,398	0.08%	N/A	0.08%
Vanguard Total Bond Market Index	VBTLX	\$2,022,629	0.05%	N/A	0.05%
Vanguard Cash Reserves Federal MM	VMRXX	\$2,999,587	0.10%	N/A	0.10%
Newport Group charges \$50 annually and 3 bps on assets.		\$53,906,555			

Record-Keeper and Administrative Fees

- ▶ **Newport Annual Participant Fees: \$50 per participant and 3 basis points on assets**
- ▶ **Newport Distribution Fees: \$75 paid by the participant for a non-periodic distribution; no fee for periodic distributions**
- ▶ **MainePERS Administrative Fees: \$222,200 annually charged to PLDs (equates to .03563% of total PLD payroll)**

Operations and Member Services

- ▶ **Employer audit findings on participation agreements have been resolved for 17 of 18 employers.**
- ▶ **The Vanguard Target Retirement 2015 Fund transition is complete.**
 - ▶ **103 participants with balances totaling \$4.1 million were mapped to the Target Retirement Income Fund.**
 - ▶ **One participant transferred a balance of \$409 to the Target Retirement 2025 Fund in advance of the mapping.**
- ▶ **The initial communication to school units offering MaineSTART to teachers was sent.**
- ▶ **A review of Vanguard STAR Fund will start this month.**

MAINEPERS

BOARD OF TRUSTEES MEMORANDUM

TO: BOARD MEMBERS

FROM: MICHAEL J. COLLERAN, CHIEF OPERATING OFFICER AND GENERAL COUNSEL

SUBJECT: RETIREE HEALTH INSURANCE POST-EMPLOYMENT BENEFITS INVESTMENT TRUST FUND

DATE: SEPTEMBER 1, 2022

Before the Board for approval is a proposed agreement with the trustee of the Irrevocable Trust Fund for Other Post-Employment Benefits for Teachers (the “Teacher Plan”) to govern the relationship between the Teacher Plan and the Retiree Health Insurance Post-Employment Benefits Investment Trust Fund (“Investment Trust Fund”). The Board was informed at the March meeting that an agreement was being drafted and would be brought forward for approval.

POLICY REFERENCE

[Board Policy 2.1-B – RHIT Investment Policy Statement](#)

[Board Policy 4.5 – Board/Staff Relations](#)

[Board Policy 4.6 – Communications and Support to the Board](#)

RETIREE HEALTH INSURANCE POST-EMPLOYMENT BENEFITS INVESTMENT TRUST

The Investment Trust Fund is a trust established in statute to hold and invest funds for the benefit of the Irrevocable Trust Funds for Other Post-Employment Benefits (“Benefit Trusts”), which are separate trusts established to meet the State's unfunded liability obligations for retiree health benefits. The statute names the members of the MainePERS Board of Trustees as the trustees of the Investment Trust Fund.

A Benefit Trust was established for retired State employee health benefits in 2007, and initial funding was received in early 2008. At that time, the trustees of the Investment Trust Fund and the Benefit Trust signed an agreement governing the relationship.

The balance in the Investment Trust Fund as of July 31, 2022, was \$348.6 million. The funds are invested in accordance with Board Policy 2.1-B, which adopts an asset allocation similar to that used for the defined benefit funds, except that public market securities are substituted for illiquid private market investments. No disbursement of funds is expected before the year 2027.

The Teacher Plan now has been established for retired teacher health benefits, and we expect the Investment Trust Fund to receive initial funding in the coming months. We have worked with the Attorney General's Office and the trustee of the Teacher Plan on an agreement patterned after the existing agreement with the Benefit Trust for retired State employee health benefits. The Teacher Plan trustee has agreed to the attached agreement.

RECOMENDATION

That the Board members, as trustees of the Retiree Health Insurance Post-Employment Benefits Investment Trust Fund, authorize the Board Chair to enter into and execute the proposed agreement with the Irrevocable Trust Fund for Other Post-Employment Benefits for Teachers on their behalf.

**RETIREE HEALTH INSURANCE POST-EMPLOYMENT BENEFITS INVESTMENT
TRUST FUND AGREEMENT**

THIS INVESTMENT TRUST FUND AGREEMENT (hereinafter, “Agreement”) is effective the 8th day of September, 2022, between the Trustee of the Irrevocable Trust Fund for Other Post-employment Benefits for Teachers and the Trustees of the Retiree Health Insurance Post-employment Benefits Investment Trust.

W I T N E S S E T H:

WHEREAS, pursuant to 5 M.R.S. § 286-B, the Maine Legislature established an Irrevocable Trust Fund for Other Post-employment Benefits for Teachers (hereinafter, “the Teacher Plan” as defined by 5 M.R.S. § 286-B) for the purposes of meeting the State of Maine’s unfunded liability obligations for retiree health benefits for eligible participants; and

WHEREAS, the Treasurer of the State has selected Harpswell Capital Advisors, LLC as Teacher Plan Trustee pursuant to 5 M.R.S. § 286-B, subsection 3, paragraph B; and

WHEREAS, on July 1, 2007 and pursuant to 5 M.R.S. § 17432, the Maine Legislature established the Retiree Health Insurance Post-employment Benefits Investment Trust Fund as an irrevocable trust for the sole purpose of holding and investing funds appropriated or otherwise provided to the Investment Trust Fund for the benefit of the Irrevocable Trust Funds established in § 286-B; and

WHEREAS, the Investment Trust Fund Trustees are the Trustees of the Maine Public Employees Retirement System; and

WHEREAS, 5 M.R.S. § 286-B and § 17432 direct that the purpose of accumulating assets in the Investment Trust Fund is to provide funding of the State’s unfunded liability obligations for retiree health benefits; and

WHEREAS, the Legislature has determined that the assets of the Investment Trust Fund are exempt from any state, county or municipal tax and the State of Maine intends for the assets and earnings of the Investment Trust Fund to be exempt from any and all federal income taxes pursuant to Section 115 of the Internal Revenue Code,

NOW, THEREFORE, the Teacher Plan Trustee and the Investment Trust Fund Trustees hereby agree as follows:

ARTICLE I - DEFINITIONS AND RULES OF CONSTRUCTION

1.01. Definitions. The following words and phrases shall have the meaning stated below, unless otherwise expressly provided:

- (a) "Act" means P. L 2007, c. 240, pt. RRR, as such provisions are subsequently amended.
- (b) "Board" means the Board of Trustees of the Maine Public Employees Retirement System.
- (c) "Fiscal Year" means the fiscal year of the State as may from time to time be provided by law.
- (d) "Investment Trust Fund" means the Retiree Health Insurance Post-employment Benefits Investment Trust Fund established in 5 M.R.S. § 17432.
- (e) "Investment Trust Fund Trustees" means the Trustees of the Maine Public Employees Retirement System.
- (f) "Irrevocable Trust Funds" mean the Irrevocable Trust Funds for Other Post-employment Benefits established by 5 M.R.S. § 286-B.
- (g) "State" means the State of Maine,
- (h) "Legislature" means the Legislature of the State of Maine.
- (i) "Permitted Investments" mean all assets and properties in which the Investment Trust Fund Trustees may invest as permitted by law from time to time, including, but not limited to, preferred and common stocks, shares of investment companies, bonds, notes, real estate, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general or in any insurance contract policy, annuity, or other investment media offered by an insurance company. Without limiting the foregoing, all investments permitted to be made by the Trustees with respect to assets of the Maine Public Employees Retirement System defined benefit plans constitute Permitted Investments.
- (j) "Eligible Participants" or "Participants" has the same meaning set forth in 20-A M.R.S., chapter 505-A, as amended from time to time.
- (k) "Teacher Plan" has the same meaning set forth in 5 M.R.S. § 286-B, subsection 1, paragraph E.
- (l) "Teacher Plan Trustee" means Harpswell Capital Advisors, LLC and its successors.

1.02. Rules of Construction. Words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate.

ARTICLE II – ACCEPTANCE OF TRUST

2.01. Acceptance of Trust. All appropriations or additions to the Investment Trust Fund ("Trust"), together with the income, gains and all other increments, shall be held, managed, invested, reinvested and administered in trust pursuant to the terms of this Agreement. The Investment Fund Trustees accept the assets contributed to the Trust and will perform the duties, responsibilities, and obligations as trustees under this Agreement and consistent with the Maine Uniform Trust Code, Title 18-B of the Maine Revised Statutes.

2.02. Initial Funding. The Teacher Plan Trustee shall transfer or arrange for transfer to the Investment Trust Fund the initial funds to be invested, and that property and all additions to it from whatever source shall be held by the Investment Fund Trustees in trust for the uses and purposes set forth in the Act and upon the terms and conditions set forth in this Agreement.

2.03. Additions to Trust Fund. Annually, beginning with the fiscal year starting July 1, 2015, the Act provides for the Legislature to appropriate funds that will retire, in 30 years or less from July 1, 2007, the unfunded liability for retiree health benefits for eligible participants in the Teacher Plan.

ARTICLE III – ADMINISTRATIVE PROVISIONS

3.01. Management and Control. The Trust shall be under the management and control of the Investment Trust Fund Trustees. All powers necessary or otherwise advisable for the administration, management and control of the Trust shall be vested solely in the Investment Trust Fund Trustees. Each Investment Trust Fund Trustee shall be entitled to one vote in matters concerning the Trust. Five Investment Trust Fund Trustees shall constitute a quorum for the transaction of any Trust business. Five votes are necessary for any resolution or action by the Investment Trust Fund Trustees at any meeting of the Trustees.

3.02. Trustees. The Trustees of the Investment Trust Fund shall be the members of the Maine Public Employees Retirement System (“MainePERS”) Board of Trustees serving from time to time. Upon the election or appointment to the MainePERS Board, such Board member shall automatically become a Trustee of the Trust. An Investment Trust Fund Trustee shall automatically cease serving in that capacity upon termination of his or her membership on the MainePERS Board of Trustees. No Investment Trust Fund Trustee shall be removed or resign as long as such Trustee is a member of the MainePERS Board. All powers vested in the original Investment Trust Fund Trustees of the Trust shall be vested in and exercisable by successor Trustees. All limitations or restrictions upon the original Investment Trust Fund Trustees of the Trust shall be applicable to any successor Trustee. The Chair of the MainePERS Board of Trustees shall serve as the Chair of the Trustees of the Investment Trust Fund.

3.03. Administration. The Trustees of the Investment Trust Fund, as provided in the Act, may delegate to the Chief Executive Officer, Chief Investment Officer and other staff of MainePERS the responsibility to carry out, as directed by the Trustees of the Investment Trust Fund, the administration of the Investment Trust Fund and its investment and disbursement activities. Associated administrative costs and expenses attributable to the Investment Trust Fund shall be charged to the Investment Trust Fund.

3.04. Policies, Practices and Regulations. The Trustees of the Investment Trust Fund shall hold, invest, reinvest and manage the assets of the Investment Trust Fund in accordance with the Act and shall have the same powers with regard to the management of the Investment Trust Fund as the Trustees of MainePERS have with regard to MainePERS Trust fund.

3.05. Committees. The Investment Trust Fund Trustees may create one or more committees consisting of fewer than all of the Investment Trust Fund Trustees. Each committee may have three or more members, who serve on the Committee at the pleasure of the Investment Trust Fund Trustees. The creation of a committee and appointment of members to it must be approved by a vote of the Investment Trust Fund Trustees. Each committee may exercise the authority specified and delegated by the Investment Trust Fund Trustees.

3.06. Compensation and Expenses of Trustees. The Investment Trust Fund Trustees, as provided in the Act, may incur reasonable investment expenses, which are payable from the assets of the Investment Trust Fund. The Investment Trust Fund Trustees shall be compensated from the assets of the Investment Trust Fund in the same manner as provided for in 5 M.R.S. § 17102(6).

3.07. Continuing Powers Granted Trustees. Except as otherwise provided in this Agreement, the Investment Trust Fund Trustees and any successor(s) shall exercise all powers, privileges and exemptions granted herein and such powers, privileges and exemptions shall remain exercisable until termination of the Investment Trust Fund.

3.08. Liability and Immunity of Trustees. An Investment Trust Fund Trustee is not:

A. Personally liable for any liability, loss or expense suffered by the Investment Trust Fund, unless such a liability, loss or expense arises out of or results from the willful misconduct or intentional wrongdoing of that Trustee of the Investment Trust Fund;

B. Responsible for the adequacy of the investment trust fund to meet and discharge any obligation; or

C. Required to take action to enforce the payment of any contribution or appropriation to the investment trust fund.

The Trustees of the Investment Trust Fund are immune from suit on any and all tort claims seeking recovery of damages to the same extent as governmental entities under the Maine Tort Claims Act.

The exercise of the powers conferred upon the Investment Trust Fund Trustees by the Act and this Agreement is held to be the performance of essential governmental functions.

3.09. Legal Representation and Defense of Trustees. The Maine Attorney General is legal counsel to the Investment Trust Fund Trustees and shall represent and defend the Investment Trust Fund Trustees, as a group and individually, in connection with any claim, suit or action at law arising out of the performance or non-performance of any actions related to the Investment Trust Fund to the same extent as provided for governmental entities in the Maine Tort Claims Act.

ARTICLE IV – POWERS OF THE TRUSTEES

4.01. General Powers. The Investment Trust Fund Trustees shall have all of the powers necessary and proper to carry out and effectuate the purposes and provisions of the Act and this Agreement; provided, however, that in all matters the Investment Trust Fund Trustees shall act in a fiduciary capacity and shall exercise their powers with the reasonable care skill and expertise consistent with the Maine Uniform Trust Code and the Maine Prudent Investor Act. Without limiting the foregoing, the Investment Trust Fund Trustees shall have the same powers with regard to the management of the Investment Trust Fund as the Trustees of MainePERS have with regard to the MainePERS trust fund.

4.02. Investments.

(a) The Investment Trust Fund Trustees are empowered to acquire, by purchase or otherwise, and retain so long as they deem advisable, whether originally a part of the Investment Trust Fund property or subsequently acquired, any kind of Permitted Investment.

- (b) The Investment Trust Fund Trustees shall hold, invest, reinvest, and manage Teacher Plan assets appropriated or transferred to the Investment Trust Fund for the sole benefit of the Teacher Plan and shall not encumber, invest or divest or disburse the funds for any other purpose except for the payment of expenses as set forth in the Act or this Agreement. The Investment Trust Fund Trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any such assets and investments and will provide all necessary services with respect to such assets.
- (c) The Investment Trust Fund Trustees shall manage the Trust assets to further the goals of the Investment Trust Fund, which are the preservation and growth of principal in accordance with long-term investment assumptions established from time to time by the Board for the defined benefits plans of the MainePERS, as considered appropriate by the Trustees of the Investment Trust Fund.
- (d) The Investment Trust Fund Trustees shall determine and revise from time to time as necessary an appropriate Investment Trust Fund investment policy, including but not limited to provisions for asset allocation and investment strategy. This policy must take into account the following factors as established by the Teacher Plan Trustee and as established by the Legislature:
 - 1. A long-term time horizon for the assets of the Investment Trust Fund;
 - 2. A funding plan; and
 - 3. A projected disbursement schedule that does not begin before the year 2027.
- (e) The Investment Trust Fund Trustees shall invest, reinvest and manage the assets of the Investment Trust Fund in accordance with the requirements of subsections (c) and (d) above and in accordance with the Maine Uniform Trust Code and the Maine Uniform Prudent Investor Act under Title 18-B, subject to the guidelines set for the Investment Trust Fund in 5 M.R.S. § 17435.
- (g) The Investment Trust Fund Trustees, in their sole discretion may, without regard for the source of such assets, commingle the Investment Trust Fund assets with the defined benefit plan assets and other investment funds managed by the Board of Trustees of MainePERS or may create a separate investment structure for the Trust assets or may use a combination of both approaches. In the event that the Teacher Plan requires access to liquid assets, the Trustees of the Investment Trust Fund shall sell commingled assets in the most feasible and practical manner, assuring the correct allocation to the Teacher Plan and de minimis collateral effect on the MainePERS assets. Costs attributable to the administration, accounting, management, investment, and the trading of the Investment Trust Fund assets will be charged to the Investment Trust Fund and allocated between the Teacher Plan and other Irrevocable Trust Funds as the Investment Fund Trustees in their sole discretion deem appropriate.
- (h) The Investment Trust Fund Trustees may incur reasonable investment expenses payable from the assets of the Investment Trust Fund, including but not limited to, administrative costs and expenses, services of investment managers, investment consultants, actuaries,

investment counsel, banks and trust companies and other investment professionals or advisors, as they consider necessary and prudent in determining investment policy, in investing funds and in liquidating assets.

4.03. Claims, Compromise and Settlement. The Investment Trust Fund Trustees, after consultation with the Teacher Plan Trustee, may renew, assign, alter, extend, compromise, release, with or without consideration, or submit to arbitration obligations or claims held by or asserted against the Investment Trust Fund Trustees or which affect Investment Trust Fund assets.

4.04. Borrowing Money and Mortgaging Property. The Investment Trust Fund Trustees may borrow money from others, for any purpose that in the opinion of the Investment Trust Fund Trustees will facilitate the administration of the Investment Trust Fund and to pledge or mortgage property as security for any such loans.

4.05. Nominee Registration. The Investment Trust Fund Trustees may hold any or all stocks, bonds, notes, mortgages or other property in bearer form or in the name of the Investment Trust Fund Trustees, or in the name of a nominee, with or without indication of any fiduciary capacity, and the liability of the Investment Trust Fund Trustees shall be neither increased nor decreased by doing so. The Investment Trust Fund Trustees may deposit cash in checking or savings accounts in a bank, without indication of any fiduciary capacity.

4.06. Power to Accumulate. The Investment Trust Fund Trustees may accumulate so much of the income of the Investment Trust Fund as they deem appropriate and to add the accumulated income to the principal of the Investment Trust Fund.

4.07. Corporate Changes. The Investment Trust Fund Trustees may assent to, oppose and participate in any reorganization, recapitalization, merger, consolidation or similar proceeding affecting any corporation or association the securities of which are held under this Agreement, and, in connection with any such proceeding, deposit securities, delegate discretionary powers, acquire or surrender voting rights, pay assessments or other expenses and exchange property, all as fully as might be done by persons owning similar property in their own right.

4.08. Rights and Voting. The Investment Trust Fund Trustees may exercise or sell all rights, options, powers and privileges pertaining to, and vote in person or by proxy upon, any stocks, bonds or other securities, all as fully as might be done by persons owning similar property in their own right.

4.09. Location of Trust Property. Subject to their fiduciary responsibilities, the Trust Fund Trustees may keep any or all of the assets of the Investment Trust Fund at any place or places in Maine or elsewhere with an appropriate depository or custodian at such place or places.

4.10. Power of Absolute Owner. Subject to their fiduciary responsibilities, the Investment Trust Fund Trustees may exercise all other rights, privileges and powers that an absolute owner of the same property would have, and to make, execute and deliver any and all instruments or agreements relating to the Trust.

ARTICLE V – DISTRIBUTIONS AND EXPENSES

5.01. Disbursements. The assets of the Investment Trust Fund shall be held in trust for the benefit of the Teacher Plan, and the Investment Trust Fund Trustees shall not expend or disburse or loan or transfer or use the assets for any purpose other than to acquire Permitted Investments, pay administrative expenses, and make disbursements to the Teacher Plan. Disbursement will be made at the presentation of a lawful payment order by the Teacher Plan Trustee. Assets are accumulated in the Investment Trust Fund for the purpose of providing post-employment health care benefits to eligible participants but the Investment Trust Fund Trustees shall have no responsibility to assure that the stated use or actual use by the Teacher Plan Trustee of disbursements is to fund retiree health benefits. The Investment Trust Fund Trustees' duties are discharged by disbursing money under the terms of this section. The Investment Trust Fund Trustees have no obligation to disburse funds that are in excess of funds held by the Investment Trust Fund.

5.02. Restrictions on Distributions. Notwithstanding anything in this Agreement to the contrary, no distributions from the Investment Trust Fund to the Teacher Plan shall be made before July 1, 2027. Thereafter, disbursements from the Investment Trust Fund shall be made in accordance with this Agreement and the Act but no more often than annually on July 1 of each year.

ARTICLE VI – AMENDMENT AND TERMINATIONS

6.01. Irrevocable Agreement. This Agreement may not be modified or amended except in writing signed by the Teacher Plan Trustee and the Trustees of the Investment Trust Fund.

6.02. Amendment. The parties agree that this Agreement may only be amended upon agreement by the parties that (a) such amendment is necessary or otherwise advisable to obtain any material tax advantage or avoid any material adverse tax result; (b) such amendment is necessary or otherwise advisable to cause the Investment Trust Fund to be considered an irrevocable other post-employment benefits trust in accordance with generally accepted governmental accounting principles, as prescribed by the Governmental Accounting Standards Board or its successor, or (c) if in response to a petition filed jointly by the parties, a court of competent jurisdiction determines that an amendment is necessary or otherwise advisable to accomplish one or more purposes of the Act.

6.03. Termination. This Agreement may be terminated in a writing signed by both parties only in the event that the Legislature repeals, terminates or otherwise ceases to provide retiree health benefits for Eligible Participants for which the Investment Trust Fund was established and there is no future obligation of the State to provide such post-employment health care benefits.

6.04. Reversion on Termination. If the Investment Trust Fund is terminated, the then remaining assets of the Trust Investment Trust covered by this Agreement shall revert to the Teacher Plan or be distributed in such manner as the Legislature may direct.

ARTICLE VII – MISCELLANEOUS

7.01. Financial Statements; Annual Audit. The Investment Trust Fund Trustees shall cause annual financial statements of the Investment Trust Fund to be prepared in accordance with generally accepted accounting principles and shall cause an audit by a qualified independent certified accounting firm to be conducted of those financial statements for each Fiscal Year in accordance with generally accepted auditing standards.

7.02. Anti-Assignment. The assets of the Investment Trust Fund shall not be subject to the claims of creditors of the State, the Board or its members, the Investment Trust Fund Trustees, the Teacher Plan Trustee or Eligible Participants, and will not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

7.03. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine.

7.04. Severability. If any part of this Agreement shall be determined to be illegal or unenforceable for any reason, such determination shall not affect the remaining provisions of this Agreement. The remaining provisions shall be interpreted to effectuate the purpose of the Trust.

7.05. Descriptive Headings. The descriptive headings to this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning of any of its provisions.

7.06. Certified Copies Treated As Original. Anyone may rely upon a copy certified by a Trustee's Affidavit to be a true copy of this Agreement (and of the amendments, exhibits or other writings, if any, endorsed thereon or attached to it), to the same effect as if it were the executed original.

7.07. Integration. This written agreement contains the entire agreement between the parties hereto and supersedes any and all prior written and/or oral agreements.

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned on the dates listed below:

IRREVOCABLE TRUST FUND FOR OTHER
POST-EMPLOYMENT BENEFITS FOR
TEACHERS ("TEACHER PLAN") **TRUSTEE**

Date: August 18, 2022

By: _____
John P. Moore, CFA, Managing Partner

RETIREE HEALTH INSURANCE POST-
EMPLOYMENT BENEFITS INVESTMENT
TRUST FUND ("INVESTMENT TRUST FUND"),
TRUSTEES

Date: September 8, 2022

By: _____
Brian H. Noyes, Chair

MAINEPERS

BOARD OF TRUSTEES RULEMAKING MEMORANDUM

TO: BOARD MEMBERS
FROM: MICHAEL J. COLLERAN, CHIEF OPERATING OFFICER AND
GENERAL COUNSEL
SUBJECT: RULEMAKING
DATE: SEPTEMBER 1, 2022

Amendments to Rule Chapter 509 and 702 are before the Board for consideration. The System published notice of the proposed rulemaking in July, and a public hearing was held at the August Board meeting. One member of the public spoke in opposition to each proposal and also submitted their comments in writing. No other written comments were received by the August 22 deadline.

POLICY REFERENCE

[Board Policy 2.3 -- Rulemaking](#)

[Board Policy 4.5 – Board/Staff Relations](#)

[Board Policy 4.6 – Communications and Support to the Board](#)

RULE CHAPTER 509

Rule 509 provides guidance on determining whether an applicant for disability retirement is unable to perform the duties of their employment position. The proposed amendments conform the rule language to the new disability statutory language, make non-substantive changes, and remove obsolete language.

Susan Hawes spoke in opposition to the proposal at the public hearing and submitted her comments in writing. She said that her opposition was based on the use of the word “duties” in the proposed amended rule instead of the word “functions” as used in the statute. The staff agrees that “functions” is more appropriate, and this change is incorporated in the attached revised version of the proposed amended rule and its basis statement.

RULE CHAPTER 702

Rule 702 sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. The proposed amendments implement two provisions in the new disability law by providing a mechanism for the appellant to participate in selection of the hearing officer and providing a process for a successful appellant to receive attorney's fees. The proposed changes also incorporate the title change from Executive Director to Chief Executive Officer and remove obsolete language. A copy of the proposed amended rule is attached along with its basis statement.

Ms. Hawes also commented in opposition to this proposal at the public hearing and in writing. She advocated for additional amendments to provide a mechanism for filing a complaint against a hearing officer and to change the word "shall" to "must" in section 14 of the rule, which imposes a duty on the hearing officer. She also advocated for consensus-based rulemaking on other policy issues that she said are outside the scope of the proposed amendments.

The staff does not recommend changes to the proposed amended rule in response to these comments for the following reasons.

First, section 16, subsection 2, of the rule already provides a mechanism for filing a complaint that a hearing officer has committed an error, exceeded the hearing officer's jurisdiction, or issued a recommended decision without sufficient factual support.

Second, the use of the word "shall" in section 14 is correct. It is recognized in 1 M.R.S. §71 as an appropriate term to impose a legal duty and is equal in weight to "must." Furthermore, the Revisor's Maine Legislative Drafting Guide (October 2016) states that "(s)hall is properly used to impose a duty on a person or body or to mandate action by a person or body" and that "(m)ust, rather than "shall," should be used when the subject is not a person or body." Since the subject here is the hearing officer, "shall" is the preferred term.

Finally, as Ms. Hawes's testimony noted, the policy issues she wishes to address through consensus-based rulemaking are beyond the scope of the proposed amendments. Consensus-based rulemaking is a voluntary process – an agency is not required to use it. 5 M.R.S. §8051-B. However, we are initiating consensus-based rulemaking on appeals and disability retirement and anticipate bringing new proposals to the Board at a future meeting.

RECOMMENDATIONS

That the Board adopt amended Rule Chapter 509 and its Basis Statement.

That the Board adopt amended Rule Chapter 702 and its Basis Statement.

94-411 MAINE ~~STATE-PUBLIC EMPLOYEES~~ RETIREMENT SYSTEM

Chapter 509: DETERMINATION OF ~~INABILITY/IMPOSSIBILITY~~ TO PERFORM THE ESSENTIAL DUTIES-FUNCTIONS OF THE EMPLOYMENT POSITION

Summary: The purpose of this rule is to specify the standard and definitions to be applied under 5 MRSA §§~~17901~~, 17921, ~~18501~~ and 18521 in determining whether ~~it is impossible for~~ a disability applicant is unable to perform the duties-functions of the employment position with reasonable accommodation.

~~§1.~~ SECTION 1. Standard and Related Definitions.

A disability benefit applicant must meet certain statutory requirements under 5 MRSA §§~~17901~~, 17921, ~~18501~~ and 18521 in order to be eligible to receive disability retirement benefits. One of these requirements is that the applicant must demonstrate that ~~it is "impossible" for~~ the applicant is unable to perform the essential duties-functions of the employment position with reasonable accommodation." The following standard and definitions govern the determination of whether this requirement is met~~impossibility to perform the duties of the employment position~~.

A1. A member shall not be considered incapacitated ~~such that it is impossible to perform the duties of the employment position~~ if the employer agrees to make job modifications as defined below that will enable the member to perform the duties-functions of the employment position.

~~1.A.~~ 1.A. For these purposes, "job modification" means a change or changes to the member's work situation that alters any aspect(s) that, because of the member's physical or mental incapacity, inhibit ability to perform the duties-functions of the employment position. "Job modification" includes but is not limited to modification in the job tasks or duties-functions, change in the way a particular task or duty function is carried out, change to the physical environment, provision of adaptive equipment, and change in the job conditions.

~~2B.~~ 2B. "Employment position" means the position in which the member is employed at the time the member becomes incapacitated or this position as modified by the member's employer in accordance with (1) above, or a position that is made available to the member by the member's employer that is of comparable stature and equal or greater compensation and benefits to the position in which the member is employed at the time the member becomes incapacitated and whose location is of a reasonable commuting

distance and does not require the member to relocate ~~his or her~~their residence.

§2SECTION 2. Application of Standard

- A1. The member who is an applicant for disability retirement benefits has the ultimate burden of demonstrating ~~inability that it is impossible~~ to perform the ~~essential duties-functions~~ of the employment position with reasonable accommodation.
- B2. When a determination is made by the System that job modification would enable the member to perform the ~~duties-functions~~ of the employment position, the System has the initial burden to determine generally the job modifications that would enable the member to perform the ~~duties functions~~ of the employment position. This will be communicated in writing to the applicant and the applicant's employer prior to or at the time that a decision on eligibility for disability retirement benefits is made. If the member disputes the determination, the member then has the burden to demonstrate either that the member has requested the employer to provide the job modifications determined by the System and that the employer has refused to make these job modifications or that the modifications identified by the System would not allow the member to perform the ~~duties-functions~~ of the employment position.
- C3. In the event that the employer refuses to make the requested modifications, a member must also demonstrate that ~~he or she has~~they have requested the employer to provide a position that the member's disability does not prevent ~~him or her~~them from performing and that is of comparable stature and equal or greater compensation and benefits to the member's employment position at the time the incapacity arose and that the employer has refused to offer such a position.

~~§3.~~ Applicability

~~Any party in an appeal pending before the Board in which a pre-hearing conference has not yet been held by a hearing officer on the date this rule goes into effect and in which the System has taken the position that job modification would enable the person to perform the duties of the employment position may have an opportunity to put in additional evidence before the hearing officer on this issue.~~

AUTHORITY: 5 MRSA §§ ~~17901~~ 17103(4), 17921, ~~18501~~ and 18521

EFFECTIVE DATE: June 7, 1997

BASIS STATEMENT FOR ADOPTION SEPTEMBER 8, 2022/STATEMENT OF COMMENTS:

The proposal for rule-making was noticed on July 20, 2022. A public hearing was held on August 11, 2022. One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the August 22, 2022 comment deadline.

This rule specifies the standard and definitions to be applied under 5 M.R.S. §§ 17921 and 18521 in determining whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation. The amendments incorporate the provisions of PL 2021, c. 277 that modified the definition of “disabled.” The amendments also make non-substantive changes and remove obsolete language.

One member of the public¹ presented comments in opposition to one aspect of the proposed amendments to this rule. Specifically, the commenter opined that “essential duties” in the proposed rule should be replaced by “essential functions,” as used in the enacted legislation. The commenter did not offer comment on other proposed amendments to the rule. The staff agreed with the commenter, and the Board further amends the rule language to incorporate the “essential functions” term as used in the statute.

At the Board’s regular meeting held on September 8, 2022, _____ made the motion, seconded by _____ to adopt the amended rule. Voted _____ by those Board members present.

¹ Susan Hawes, Portland, Maine

94-411 MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM

Chapter 702 APPEALS OF DECISIONS OF THE ~~EXECUTIVE DIRECTOR~~CHIEF EXECUTIVE OFFICER

SUMMARY: This Chapter sets out the process for appeals of decisions of the ~~Executive Director~~Chief Executive Officer to the Board of Trustees (“Board”). It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board.

SECTION 1. Purpose and Scope

The purpose of this Chapter is to set out procedures for reaching final agency action on matters initially decided by the ~~Executive Director~~Chief Executive Officer (or designee) of the Maine Public Employees Retirement System (“System” or “MainePERS”). The law governing the System provides that the ~~Executive Director~~Chief Executive Officer’s decisions may be appealed to the Board, which has authority and responsibility to render a decision that will become the final agency action. The person appealing the Decision has the burden to establish, by a preponderance of the evidence, that the ~~Executive Director~~Chief Executive Officer’s Decision is in error. This Chapter applies to appeals by any person aggrieved by a decision of the ~~Executive Director~~Chief Executive Officer.

SECTION 2. Authority

The authority for this Chapter is 5 M.R.S. §§ 9051 - 9064 and 5 M.R.S. §17451, which provide that an appeal under section 17451 is an adjudicatory proceeding subject to the Administrative Procedure Act and 5 M.R.S. §§17106-A, 17106-B.

SECTION 3. Definitions

1. **Appeals clerk.** “Appeals clerk” means the dedicated clerk who acts as liaison between the hearing officer and the parties to an appeal. The appeals clerk shall avoid all communication with System staff, or MainePERS representatives, regarding substantive issues for cases on appeal. The appeals clerk shall address all policy and procedural questions to the clerk~~sher~~ supervisor, the system advisor or Board counsel.
2. **Board.** “Board” means the Board of Trustees of MainePERS.
3. **Board counsel.** “Board counsel” means the attorney general or the designated assistant attorney general assigned to represent the Board and to prepare the Board’s decisions.
4. **~~Executive Director~~Chief Executive Officer.** “~~Executive Director~~Chief Executive Officer” means the ~~Executive Director~~Chief Executive Officer of MainePERS or their~~his/her~~ decision-making designee.

5. **Hearing officer.** "Hearing officer" means an individual who has contracted with designated by the Board to conduct appeal proceedings under this Chapter.
6. ~~**Medical Board.** "Medical Board" means any Medical Board established pursuant to 5-M.R.S. §17106.~~ **Medical review service provider.** "Medical review service provider" means an entity with whom the Chief Executive Officer has contracted for the review of medical records and the provision of recommendations, opinions and certifications by health care providers employed by the entity.
7. **MainePERS or System Representative.** "MainePERS Representative" or "System Representative" means the person or persons advocating for the decision of the ~~Executive Director~~ Chief Executive Officer in an appeal.
8. **Participating Local District.** "Participating local district" means a local district which has approved the participation of its employees in the Retirement System under 5 M.R.S. §18201.
9. **Party.** "Party" means the person bringing an appeal, MainePERS, and any person who intervenes in an appeal. If an appeal involves or affects a participating local district, "party" includes the participating local district, regardless of whether the participating local district actually participates as a party in the appeal.
10. **Person.** "Person" means any individual, partnership, corporation, governmental entity, association or public or private organization of any character, other than the Board or the System.
11. **Record.** "Record" means those materials required by 5 M.R.S. §9059 and this rule to be compiled in the course of an appeal.
12. **Staff.** "Staff" means an employee of MainePERS, other than the MainePERS Representative.
13. **Substantially larger caseload.** "Substantially larger caseload" means that the number of appeals a hearing officer is presiding over is at least five and exceeds the mean hearing officer caseload by at least 30%.
14. **System advisor.** "System advisor" is a System employee who is knowledgeable in System policies, practices and procedures and who is available as an informational resource to assist the hearing officer, the Board and Board counsel. If the hearing officer seeks information from the system advisor, such request shall be in writing and both the request and the response shall be copied to the parties and placed of record.

SECTION 4. Applicability: Who May Appeal

1. **Application.** This Chapter applies to all appeals of decisions of the ~~Executive Director~~ Chief Executive Officer to the Board.
2. **Who may appeal.** Any person whose legal rights, duties or privileges are adversely affected by a decision of the ~~Executive Director~~ Chief Executive Officer may appeal the

decision to the Board. A person may ~~but is not required to represent him/herself or~~ be represented by another person in accordance with 4 M.R.S. §807.

SECTION 5. Bringing an Appeal

1. **Notice.** When notifying a person whose legal rights, duties or privileges are affected by a decision of the ~~Executive Director~~Chief Executive Officer, the System must advise the person of ~~the her/his~~ right to appeal to the Board and of the manner in which the right may be exercised. This notice must comply with 5 M.R.S. §9052.
2. **Statement of appeal.** A person who wishes to appeal a decision of the ~~Executive Director~~Chief Executive Officer must begin the appeal process by sending a written statement of appeal to the Board. Any reasonably clear statement to the effect that the person wishes to appeal a decision of the ~~Executive Director~~Chief Executive Officer, and identifying that decision, shall be treated as a statement of appeal. The only issues that are the subject of an appeal are those that have previously been decided by the ~~Executive Director~~Chief Executive Officer. If the person wishes to raise issues or conditions not previously considered by the ~~Executive Director~~Chief Executive Officer, those additional issues can be added in accordance with section 6(2) below.
3. **Assignment to hearing officer.** When a statement of appeal is received, the System, in a timely manner, will assign the appeal to a hearing officer in accordance with section 8. The System will notify the person of the identity of the assigned hearing officer and alternative hearing officers, describe the process for selecting an alternative hearing officer, briefly outline the appeal process and advise that, if the person fails to appear at any hearing, the appeal may be deemed to have been abandoned and the matter dismissed with prejudice.
4. **Notice to Participating Local District.** If the appeal involves an employee of a participating local district, the System will notify the participating local district that the appeal has been brought, identify the employee and hearing officer and advise that the participating local district is a party to the appeal. The notice must comply with 5 M.R.S. §9052.

SECTION 6. Choice of Appeal Process

At the pre-hearing conference described in section 8(3)(C) of this Chapter, the appellant shall affirmatively elect either the expedited or the unrestricted appeal process. This election becomes irrevocable 10 days after the pre-hearing conference, unless the System agrees to a later request to change the election.

1. **Expedited Appeal.** If the appellant elects the expedited process to pursue an appeal of the issues decided in the decision of the ~~Executive Director~~Chief Executive Officer, the evidence is limited to the appellant's testimony, the testimony of any lay witnesses and the documentary evidence already considered by the ~~Executive Director~~Chief Executive Officer. The parties may not raise any additional issues for decision. It is anticipated that a decision will be issued by the Board within approximately 90 days of the initial pre-hearing conference. Under this option, only non-expert witnesses may provide testimony on behalf of the appellant or the System.

2. **Unrestricted Appeal.** Alternatively, in the unrestricted appeal process, the appellant may raise issues in addition to those decided by the ~~Executive Director~~Chief Executive Officer, and the parties may introduce documentary evidence in addition to the evidence already considered by the ~~Executive Director~~Chief Executive Officer and testimony from expert as well as non-expert witnesses. The unrestricted appeal process is anticipated to take substantially longer than 90 days because some or all of the steps listed below may be required, or duplicated prior to the hearing officer's issuance of a recommended decision. An appellant who chooses to proceed under the unrestricted appeal process must affirmatively accept and acknowledge that this appeal process is likely to take substantially longer than 90 days. The additional steps that might occur in the unrestricted appeal process include, but are not limited to the following:
- A. If the appellant introduces issues not previously decided by the ~~Executive Director~~Chief Executive Officer, the hearing officer will return the appeal to the ~~Executive Director~~Chief Executive Officer for consideration of the new issues and reconsideration of any issues previously decided by the ~~Executive Director~~Chief Executive Officer. The appeal will be stayed pending the issuance of a decision of the ~~Executive Director~~Chief Executive Officer on all issues.
 - B. If the appellant seeks to introduce new documentary medical evidence on any of the issues previously decided by the ~~Executive Director~~Chief Executive Officer, the hearing officer will, at the request of the MainePERS Representative, return the appeal to the ~~Executive Director~~Chief Executive Officer for reconsideration of those issues. The appeal will be stayed pending a reconsidered decision of the issues previously decided by the ~~Executive Director~~Chief Executive Officer. The ~~Executive Director~~Chief Executive Officer may submit the new evidence to the ~~medical review provider~~Medical Board at a regularly scheduled meeting of the Medical Board.
 - C. If any party introduces expert testimony, any other party, upon request to the hearing officer, may be granted additional time to prepare cross-examination of the expert and/or the submission of rebuttal expert testimony. Parties are entitled to a rebuttal hearing on request.

SECTION 7. Public Interest; Notice

If the ~~Executive Director~~Chief Executive Officer or designee determines that an appeal involves an issue of substantial public interest, notice must be given to the public, sufficiently in advance of the hearing date, to afford interested parties an adequate opportunity to prepare and submit evidence and to petition to intervene pursuant to 5 M.R.S. §9054. Notice to the public must be given in accordance with 5 M.R.S. §9052(3). If a party asserts that an appeal involves a matter of substantial public interest, such that public notice is required and the ~~Executive Director~~Chief Executive Officer or designee does not agree, the Board will make the determination in the following manner.

1. **By request.** The ~~Executive Director~~Chief Executive Officer or any other person may request that the Board make a determination of substantial public interest.

2. **Determination after appeal process has begun.** If the Board makes a determination of substantial public interest after the appeal process has begun, the process must be suspended until notice to the public has been given and interested persons have had an adequate opportunity to take action in accordance with this section.

SECTION 8. Hearing officer

1. **Appointment.** The Board shall ~~contract with~~appoint one or more hearing officers to perform the duties and exercise the powers set forth in this Chapter. The hearing officers must have appropriate experience and training, be fair, impartial, unbiased, and demonstrate a continuing ability to conduct a fair, efficient and effective appeal process.
2. **Assignment; Removal; Replacement**
 - A. An appeal will be assigned by the System to a hearing officer who has no personal or financial interest, direct or indirect, in the appeal or its outcome, and who has not been involved directly or indirectly in the matter that is the subject of the appeal. The fact that a hearing officer is the recipient of a MainePERS benefit does not constitute, by itself, direct or indirect personal or financial interest in an appeal or its outcome. The assignment shall be based on balancing caseloads among contracted hearing officers. The appellant within 15 days after notice of the assigned hearing officer may select an alternative hearing officer who has contracted with the Board.
 - (1) The System need not offer as an alternative any hearing officer who has a substantially larger caseload than other hearing officers. The appellant may select a hearing officer who was not offered as an alternative because of a substantially larger caseload if the appellant shows, within the timeframe for selecting an alternative hearing officer, that the hearing officer is uniquely qualified to preside over the appeal.
 - (2) In an appeal with more than one appellant, if the appellants cannot agree on an alternative hearing officer, the hearing officer assigned by the System will serve as hearing officer.
 - B. If a party files a timely allegation of bias, prejudice or personal or financial interest, either direct or indirect, against the hearing officer, the hearing officer will promptly determine whether to remove herself/himself as hearing officer and will include that determination in the record.
 - C. A hearing officer may also independently remove ~~themselves~~herself/himself from the appeal if ~~the hearing officers~~she/he cannot be fair, impartial and unbiased.
 - D. When a hearing officer is removed, terminated or cannot continue, the System will assign the appeal to another hearing officer, and the appellant will have an opportunity to select an alternative hearing officer consistent with paragraph A and section 5(3). The new hearing officer will continue the ongoing appeal process, unless the hearing officer determines that in order to avoid substantial prejudice to any party it is necessary to start the process anew.

3. **Duty and powers of the hearing officer.** The hearing officer has the duty to render a fair and impartial recommended decision to the Board in accordance with section 15. This recommended decision must be based on the record as a whole and resolve all material issues in the appeal. In lieu of a recommended decision, the hearing officer may recommend dismissal. The hearing officer has the following powers:
- A. To resolve an appeal without a hearing; provided that the parties mutually agree to dispense with a hearing, by issuing:
 - (1) a recommended decision which meets the requirements of section 15, to be acted on by the Board under section 16, on the basis of the documentary materials which constitute the record; or
 - (2) a recommended dismissal with prejudice to be submitted to the Board for approval if, pursuant to section 6(2), the ~~Executive Director~~Chief Executive Officer issues a decision that favors the appellant, in whole or in part, and the appellant withdraws the appeal with respect to all portions of the decision of the ~~Executive Director~~Chief Executive Officer that are not in the appellant's favor; or
 - (3) a recommended dismissal, with or without prejudice as circumstances warrant, to be submitted to the Board for approval.
 - B. Upon adequate notice to the parties, to schedule the date, time and place or to change the date, time or place and to continue any conference, hearing, or deadline of any nature;¹
 - C. Generally working through the appeals clerk, to notify parties and hold a pre-hearing conference, of which all parties must be notified and at which they may participate, the purposes of which may include:
 - (1) determining whether the appellant elects the expedited or unrestricted appeal process in accordance with section 6, and explaining the consequences of the choice of appeal process;
 - (2) identifying and clarifying the issues on appeal and determining whether the appellant intends to introduce issues, not previously considered by the ~~Executive Director~~Chief Executive Officer;
 - (3) developing stipulations of fact and admissions as to facts that are not contested;
 - (4) identifying exhibits to apprise the parties as fully as is practicable of the nature of the evidence to be offered by all parties and to eliminate, as far as possible, the element of surprise;

¹ The MainePERS office in Augusta shall be the normal location for hearings, absent a request made in the notice of appeal or at the pre-hearing conference, together with a showing by the requesting party of a compelling need for an alternative venue.

- (5) identifying witnesses and the manner in which the testimony will be provided as described in section 11(2);
 - (6) identifying any potential parties to the adjudication whose joinder may foster economy, efficiency and fairness;
 - (7) identifying and resolving disputes as to production of documents and admissibility of evidence, including the making of evidentiary rulings; and
 - (8) any other action that will encourage and maintain a fair, efficient and effective appeal process.
- D. To order, where relevant and useful, one or more independent medical evaluations, for which the System will, to the extent reasonably practicable, provide the names of three appropriately qualified health care providers, among whom the person appealing will choose and to whom the person will go for evaluation, the costs of which will be paid by the System;
- E. To return to the ~~Executive Director~~Chief Executive Officer or designee for consideration, any issue raised for the first time in the appeal process, as required pursuant to section 6(2)(A);
- F. To rule on any request at any conference, during the hearing or at any other time during the appeal process, prior to delivery of the recommended decision to the Board;
- G. Generally working through the appeals clerk, to set the time for all filings, appearances, and other actions by any party or parties in connection with the appeal process, in accordance with 5 M.R.S. §17451;
- H. To issue subpoena(s) on request of a party or to deny a request when the hearing officer determines that the testimony or evidence is not relevant to any issue of fact in the hearing, or otherwise inadmissible, in accordance with 5 M.R.S. §9060 and section 12 of these rules;
- I. After the close of the evidence, the parties' receipt of a hearing transcript, if any, and the issuance of an ~~Executive Director~~Chief Executive Officer's reconsidered decision as described in section 14, to request that the parties submit briefs on the issues not decided by the ~~Executive Director~~Chief Executive Officer in the appellant's favor, and to request or allow the parties to make oral argument to the hearing officer, when the hearing officer deems oral argument to be necessary or useful;
- J. To refer or re-refer to the ~~medical review service provider~~Medical Board any matter involving medical evidence, questions or issues;
- K. To ascertain the rights of the parties, to identify and notify all parties that may be affected by a decision, to ensure that all parties have a full opportunity to present their claims orally or in writing and to secure witnesses and evidence to establish

their claims, and to assist parties and witnesses in making full and free statements in order to develop all issues which may govern the outcome of the appeal;

- L. To administer oaths or affirmations to all witnesses in all hearings;
- M. To regulate the presentation of evidence, including questioning of witnesses and the participation of parties, in order to ensure an adequate and comprehensive record of the proceedings and to avoid repetition and delay;
- N. To examine witnesses and ensure that relevant evidence is admitted in the record;
- O. To determine the credibility of witnesses and to decide the weight to be given to testimony and all other evidence;
- P. To take official notice of facts in accordance with 5 M.R.S. §9058, and parties shall be copied with the facts noticed, and the source of those facts, which shall be placed of record;
- Q. To rule on the admissibility of evidence;
- R. To ensure that a complete record is made of the hearing, including recording in accordance with 5 M.R.S. §9059;
- S. To consult with the Board's counsel on legal issues; provided that, when an appeal raises issues of equity or constitutionality, the hearing officer must consult with the Board's counsel.
- T. To consult with the System advisor if the hearing officer requires information concerning general System structure, policies or practices if the hearing officer determines that such consultation would be helpful to a determination of the issues on appeal.
- U. To recommend dismissal in the event an appellant fails to appear at a hearing, or otherwise fails to prosecute the appeal, unless there is a showing of good cause under section 10.

SECTION 9. Duties and Responsibilities of the MainePERS Representative

The MainePERS Representative shall:

1. Organize case. Organize the presentation of the ~~Executive Director~~Chief Executive Officer's case;
2. Pre-hearing conference. Participate in the pre-hearing conference;
3. Present witnesses. Present and examine witnesses when appropriate;
4. Provide records. Ensure that relevant records of the System are present at the hearing and that other parties have adequate opportunity to examine the records prior to and during the hearing;

5. Introduce records. Introduce into evidence relevant System records and documents; and
6. Provide evidence. Present and establish relevant facts and circumstances by oral testimony, including that of MainePERS staff, and by documentary evidence.

SECTION 10. Default

1. **Failure to appear.** Except as provided in subsection 2 below, if an appellant fails to participate in a scheduled conference, appear at hearing, or otherwise fails to prosecute his or her case, the appellant may be deemed by the hearing officer to have abandoned the appeal. The hearing officer will so notify the appellant in writing. If within 10 business days of receipt of the notice, the appellant submits information which demonstrates, in the judgment of the hearing officer, that she or he had good cause for failure to appear, the hearing will be rescheduled. On the 11th day following receipt of the notice by appellant and without suitable response, the decision of the ~~Executive Director~~**Chief Executive Officer** will become final and the hearing officer will issue a recommended dismissal with prejudice to the Board.
2. **Hearing in the absence of the appellant.** A hearing may be held in the absence of the person appealing when:
 - A. The person requests or agrees to a hearing in ~~their~~**her/his** absence; or
 - B. The hearing officer, at ~~their~~**his or her** discretion, proceeds with the hearing as the alternative to a default.

SECTION 11. Evidence

1. **Admissibility.** Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
2. **Testimony and Conduct of Hearings.** ~~During the state of emergency declared by the Governor in accordance with Title 37-B, section 742 due to the outbreak of COVID-19 and continuing for 30 days thereafter, all hearings will be conducted using audio or video conferencing.~~ Testimony may be provided telephonically, by deposition, by video, by a sworn written statement, or, after the requirement to conduct hearings using audio or video conferencing has expired, in person, at the discretion of the hearing officer. With the exception of sequestered witnesses, all participants in a hearing conducted by audio or video conferencing must be able to hear the other participants. Parties must ensure that witnesses who provide sworn written statements or testimony be available for cross-examination during the hearing, although the cross-examination of expert witnesses may, at the request of a party, take place at a different time.
3. **Irrelevant or repetitious evidence.** Evidence which is irrelevant or unduly repetitive may be excluded.
4. **No formal rules of evidence.** Formal rules of evidence are not required and need not be observed.

5. **Weight of evidence.** The fact that evidence is admitted shall not limit the authority of the hearing officer to determine the weight to be given the evidence.
6. **Hearsay.** Hearsay evidence shall not be excluded simply because of its hearsay nature. The hearing officer will determine the weight to be given to hearsay evidence.
7. **Rules of privilege.** Rules of privilege as provided in the *Maine Rules of Evidence*, Article 5, shall be observed.
8. **Stipulation of facts.** When all parties stipulate to a fact, the hearing officer may make a finding of fact on the basis of the stipulation. Signed statements or on-the-record oral statements by parties are sufficient as stipulations.
9. **Official notice of facts.** The hearing officer may take official notice of a fact upon her/his own initiative or at the request of a party. Official notice may be taken of any fact of which judicial notice could be taken, and in addition, of any general or technical matter within the specialized experience or knowledge of the hearing officer, and of any statutes, rules and non-confidential public records. The hearing officer will notify the parties when official notice is taken and shall afford the parties an opportunity to contest the reliability, substance and/or materiality of the material noticed.
10. **Rebuttal Evidence.** To the extent that the appellant testifies or introduces evidence on matters or facts not previously known to the System, the hearing officer may, at the request of the MainePERS Representative, hold the record open for a reasonable period in order to allow the System to offer rebuttal evidence.

SECTION 12. Discovery and subpoenas

1. **Access to System documents and records.** A party must have an adequate opportunity prior to hearing, and at the hearing, to examine all of the System's documents and records to be offered as evidence. The System must provide to the person bringing the appeal a copy of the relevant portions of the record without charge.
2. **Request for subpoenas.** Any party may request the issuance of a subpoena by presenting the request to the hearing officer. The request must contain:
 - A. The name and address of the party requesting the subpoena; and
 - B. The name and address of the person to be subpoenaed, or other place where the person to be subpoenaed may be found; and
 - C. A brief statement why the testimony or evidence of the person to be subpoenaed is relevant to an issue of fact in the appeal.
3. **Issuance on approval.** If the hearing officer determines that the request seeks testimony or evidence relevant to an issue of fact in the appeal, and not otherwise excludable, the hearing officer must submit the subpoena for approval by the Attorney General or Deputy Attorney General who is not involved in the appeal.
4. **Requirements.** A subpoena shall comply with the requirements of 5 M.R.S. §9060.

SECTION 13. Hearings recorded

1. All hearings will be recorded in a form susceptible to transcription.
2. A copy of the transcript of a hearing or of expert testimony taken pursuant to section 11(2) will be provided to the parties.

SECTION 14. Reconsideration by the ~~Executive Director~~Chief Executive Officer

After the close of the evidence and the parties' receipt of any transcript, the ~~Executive Director~~Chief Executive Officer shall have 10 working days to reconsider all of the evidence and affirm or reverse, in whole or in part, the decision that is the subject of the appeal. If new grounds for affirming a decision adverse to the appellant are articulated by the ~~Executive Director~~Chief Executive Officer at this stage of the process, the hearing officer shall allow the parties a reasonable time to present additional evidence relevant to the issues raised in the ~~Executive Director~~Chief Executive Officer's reconsidered decision. If, after receiving the appeal evidence and any transcripts, the ~~Executive Director~~Chief Executive Officer consults with the medical review provider~~Medical Board~~, the 10-day period described above begins to run upon the ~~Executive Director~~Chief Executive Officer's receipt of the medical review provider's reports~~Medical Board's memorandum~~.

SECTION 15. Recommended decision of the hearing officer

1. **Contents.** Following the hearing or, if the parties have agreed to waive hearing, following review of the documentary and testimonial record, and following the issuance of the ~~Executive Director~~Chief Executive Officer's reconsidered decision, the hearing officer will prepare a recommended decision, which will include:
 - A. A clear statement of the subject(s) of the appeal and of the issues which must be resolved to decide the appeal;
 - B. A listing of the date, place of hearing, and participants at the hearing or, if no hearing was held, a statement that the parties agreed to proceed without a hearing or other explanation;
 - C. A listing of all evidence admitted and upon which the recommended final decision is based;
 - D. Findings of fact, which must be sufficient to apprise the parties of the basis for the recommended decision;
 - E. A clear statement of result resolving all issues under consideration; and
 - F. A clear explanation of the reasoning underlying the result, including references to applicable law and rules.
2. **Comments, modification, and delivery to the Board**

- A. The hearing officer will furnish a copy of the recommended decision to each of the parties for comment. A party's comments must be in writing and must be received within the time period set by the hearing officer.
- B. If a party believes that the hearing officer's decision contains one or more errors of law, or that the hearing officer has exceeded ~~their~~his or her jurisdiction, or that there is no support in the record for the factual findings of the hearing officer, the party shall so advise the hearing officer in that party's written comments. Identification of the error(s) by specific record citation is required.
- C. The hearing officer may, but is not required to, modify the recommended decision in response to the parties' comments. If in the judgment of the hearing officer, the previously issued recommended decision is substantially modified, the hearing officer will send the recommended decision as modified to the parties for further comment, as provided in paragraph A.
- D. The hearing officer will submit the recommended decision, as originally prepared and as modified, together with the written comments made by the parties, to the Board clerk. Where the recommended decision is not modified, the hearing officer will also deliver to the Board clerk ~~her~~his written response to the parties' written comments. Upon transmittal to the Board, the decision of the hearing officer constitutes the recommended final decision of the hearing officer.
- E. If a party believes that the recommended final decision of the hearing officer contains one or more errors of law, or that the hearing officer has exceeded ~~their~~his or her jurisdiction, or that there is no support in the record for the factual findings of the hearing officer, the party must so notify the Board in writing so that the notification is received by the Board within 10 days after that party's receipt of the recommended final decision, specifying the error(s) by specific citation to the record. In the event no written comments are received by the Board as specified herein, the Board will be compelled to accept the recommended final decision pursuant to 5 M.R.S. §17106-A and will not schedule consideration of the appeal or permit oral argument by the parties.

SECTION 16. Action by the Board

- 1. If the Board is compelled to adopt the recommended final decision of the hearing officer pursuant to 5 M.R.S. §17106-A(1), the Board will do so during its monthly meeting, as time permits, and will not schedule consideration of the appeal or permit oral argument by the parties.
- 2. If a party believes an error exists in the recommended decision pursuant to 5 M.R.S. §17106-A and the alleged error has not been resolved by the hearing officer, that party shall notify the Attorney General's Office, to the attention of MainePERS Board counsel, so that the notification is received within 10 days of that party's receipt of the recommended final decision.
 - A. The Board or Board counsel may on its own initiative, determine that an error pursuant to 5 M.R.S. §17106-A exists in the recommended final decision.

3. Upon review of the record, the Attorney General or designee shall notify the parties, prior to the scheduled Board consideration, whether the Board will be advised that an error of law exists in the recommended final decision.
4. If the Attorney General or designee recommend that the Board find one or more errors in the recommended final decision as described in 5 M.R.S. §17106-A(1), then the following procedures will be followed.
 - A. **Board Consideration.** The Board will consider the recommended final decision, together with the allegation of error(s), on a timely basis and, for an appellant who has chosen the expedited appeal process, will issue a decision within 90 days of the initial pre-hearing conference, when possible.
 - B. **Recommended final decision and record.** In advance of Board consideration, a copy of the recommended final decision with the parties' comments and Board counsel's recommendation, will be forwarded to each Board member.
 - C. **Statement by party.** A party who is present at a scheduled consideration may not offer evidence but may make a statement of position not to exceed 15 minutes in length. Such statement of position may address the alleged error(s) pursuant to 5 M.R.S. §17106-A(1). When a party's statement of position relies on specific portions of the record, the party must provide copies of the relevant portions to the Board and other parties at least 5 days prior to the date for consideration by the Board.
 - D. **Hearing officer present.** If requested by the Board, the hearing officer may be present at the scheduled consideration to assist the Board.
 - E. **Action after consideration.** After considering the recommended final decision, the Board may:
 - (1) adopt the recommended final decision as delivered;
 - (2) modify the recommended final decision;
 - (3) send the recommended final decision back to the same hearing officer if possible, or a replacement hearing officer for the taking of further evidence, for additional consideration of issues, for reconsideration of the application of law or rules, or for such other proceedings or considerations as the Board may specify; or
 - (4) reject the recommended final decision in whole or in part and issue an amended Board decision;
5. Board counsel will draft the decision and order. A decision as issued by the Board under this Section is the final administrative decision in the appeal.

SECTION 17. Attorney's Fees

1. The System is required to pay attorney's fees, up to a total of \$12,000, if an attorney has represented the appellant on appeal of a disability retirement decision and obtained a favorable result. A favorable result is a reversal of a decision of the Board or Chief Executive Officer that results in the grant of benefits to the appellant or otherwise materially advantages the appellant.
2. Attorney's fees under this section may be awarded by a Court on judicial review of a Board decision or by the hearing officer in the case where a decision of the Chief Executive Officer has been reversed by the Board or the Chief Executive Officer.
3. Application to a hearing officer for attorney's fees must be made no later than 30 days after receipt of the Board decision or the dismissal of the appeal following reversal by the Chief Executive Officer.
 - A. The application must be accompanied by proof of the fee arrangement and a statement of attorney's fees incurred in the appeal. The statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services and a statement of the attorney's customary billing rate for similar work.
 - B. The hearing officer may grant the application based on the proof submitted or may hold a hearing and receive argument orally, in writing, or both.
 - C. A decision on an attorney's fee application may be appealed to the Board, who shall affirm the decision unless it is not supported by the record as a whole, the Board is advised by Attorney General that the hearing officer has made an error of law, or the decision exceeds the authority or jurisdiction conferred upon the hearing officer.
 1. The process for Board review shall be consistent with section 16 above to the extent applicable.
 2. The Board's decision constitutes final agency action.

STATUTORY AUTHORITY:

5 M.R.S. §§ 9051-9064, 17103(4), 17106-A, 17106-B and 17451

EFFECTIVE DATE:

June 30, 1992

AMENDED:

March 2, 1994

April 30, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

NON-SUBSTANTIVE CORRECTIONS:

October 3, 1996 - minor spelling and format

AMENDED:

January 5, 1997

May 9, 2007, filing 2007-183

REPEALED AND REPLACED:

March 31, 2010 – filing 2010-108

AMENDED:

December 20, 2013 – filing 2013-296

April 14, 2020 – Section 11(2), filing 2020-095 (EMERGENCY)

July 18, 2020 - Section 11(2), filing 2020-159

BASIS STATEMENT FOR ADOPTION SEPTEMBER 8, 2022/STATEMENT OF COMMENTS:

The proposal for rule-making was noticed on July 20, 2022. A public hearing was held on August 11, 2022. One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the August 22, 2022 comment deadline.

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board. The amendments incorporate the provisions of PL 2021, c. 277 that: (1) include a mechanism for the appellant to participate in selection of the hearing officer, and (2) provide a process for a successful appellant to receive attorney's fees. The changes also incorporate the title change from Executive Director to Chief Executive Officer and remove obsolete language.

One member of the public¹ presented comments in opposition to the proposed amendments to this rule. The commenter did not object to the substance proposed in Chapter 702. Rather, the commenter opined that there should be additional amendments made to the rule, including changing the word "shall" to "must" in Section 14 of the rule. Regulatory rules of construction are provided in 1 M.R.S. § 71. Subsection 9-A states, in part, "(s)hall" and "must" are terms of equal weight that indicate a mandatory duty, action or requirement." Further, the Maine Legislative Drafting Guide² states that "(s)hall is properly used to impose a duty on a person or body or to mandate action by a person or body" and that "(m)ust, rather than "shall," should be used when the subject is not a person or body." Based on this guidance, staff does not believe that any changes to the proposed rule are necessary in response to this comment, and the Board concurs.

The commenter also opined that the existing rule does not provide a mechanism for filing a complaint against a hearing officer. Section 16(2) of the existing rule provides clear guidance as to how a party can address what they believe to be an error in the hearing officer's recommended decision. Staff does not believe that any additional changes to the proposed rule are necessary in response to this comment, and the Board concurs.

The commenter added that consensus-based rulemaking should be used to address further policy issues regarding appeals and the disability program. Consensus-based rulemaking is not required, 5 M.R.S. §8051-B. However, staff is initiating consensus-based rulemaking on these subjects. Because this comment did not identify any reasons why the amendments proposed should not be adopted, the Board adopts the amended rule as proposed.

At the Board's regular meeting held on September 8, 2022, _____ made the motion, seconded by _____ to adopt the amended rule. Voted _____ by those Board members present.

¹ Susan Hawes, Portland, Maine

² Maine Legislative Drafting Guide, Office of the Revisor of Statutes, as revised through October 2016

MAINEPERS

BOARD OF TRUSTEES MEMORANDUM

TO: BOARD MEMBERS
FROM: MICHAEL J. COLLERAN, CHIEF OPERATING OFFICER & GENERAL COUNSEL
CHIP GAVIN, CHIEF SERVICES OFFICER
SUBJECT: OPERATIONS AND MEMBER SERVICES REPORT
DATE: SEPTEMBER 1, 2022

Content in the following paragraphs was selected to provide noteworthy information regarding the System's operations and member services.

POLICY REFERENCE

[Board Policy 4.5 – Board/Staff Relations](#)

[Board Policy 4.6 – Communications and Support to the Board](#)

MEMBER SERVICES

1. PLD RETROACTIVE COLA. The retroactive cost of living adjustment for eligible PLD participants was implemented with the August payroll. This work included and includes substantial communication by various means to both proactively and reactively inform those receiving the payment. Mailings were sent to recipients, information was and is posted on the MainePERS web site, the phone system for incoming calls was and is updated to best assist anyone with questions and the PLD Advisory Committee was briefed at its August meeting.
2. ELECTRONIC COMMUNICATION PILOT PROJECT: With the goal of strengthening our ability to communicate with those we serve, a pilot project to communicate electronically with members occurred in August involving approximately 5,000 randomly selected members and retirees. Also, an article about increased electronic communication is planned for the fall Newsletter. Sensitive information regarding individual accounts or otherwise sensitive information will continue to be handled securely via traditional and encrypted electronic messaging systems, as is the current practice, not via general email.
3. CUSTOMARY SERVICES DATA. The customary member services data points that have been provided to Trustees as part of the operations update in the past are attached to this report.
4. MAINESTART EXPANSION: MaineSTART in August conducted further employer outreach regarding the expansion of MaineSTART eligibility to teachers which is now available. The

initial teacher employers already have started responding and reaching out to pursue possible participation.

FINANCE

1. ACCOUNTING AND FINANCE. We have received the Government Finance Officers Association (“GFOA”) Certificate of Achievement for Excellence in Financial Reporting for our FY21 Annual Comprehensive Financial Report. According to GFOA, the “Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting.” This is the 18th consecutive year we have received this honor. Congratulations and thank you to Director of Finance Sherry Vandrell and the accounting, finance, and investment staff who prepared the report.

The accounting and investment staff have successfully closed FY22, pending final quarter lag values for investments, and the actuarial work and financial statement audit work is underway.

2. EMPLOYER REPORTING. Timeliness of employer reporting was down, with 85% of the defined benefit payrolls due in August uploaded on time, below the fiscal year to date monthly average of 90.6%. It is not unusual to see a dip in timely reporting this time of year. Reports submitted in August address payrolls for July, which is the first month each year under new contribution rates. Some payroll reports had to be returned to employers for correction based on these rates and resubmitted. Employer staff also report staffing shortages and turnover in their offices contributing to delays. For comparison, the rate for August of 2021 was 89%.

The new position of Employer Reporting Training Specialist has been filled with an internal hire, who is focusing attention on training new staff in the unit.

3. EMPLOYER AUDITING. We are resuming new audits after a three-month pause to relieve work pressure on other units.
4. INTERNAL AUDIT. Wipfli has provided a five-year internal audit plan based on their risk assessment and is working on a final report. We have engaged CliftonLarsonAllen to perform the first audits under the plan, which address the disability retirement program.
5. CONTRIBUTIONS AND DISBURSEMENTS. Attached is a report of contributions and member disbursements for the combined defined benefit plans fiscal year to date with a comparison to the same period in FY22.

ADMINISTRATION

1. FACILITIES. One of our two HVAC units suffered a fan motor failure in late August, causing the unit to function at reduced capacity. This resulted in elevated temperatures in part of the building and negative pressure issues. Our Facilities Manager mitigated the impacts through rebalancing and the use of fans and blinds, and our HVAC contractor replaced the fan and restored normal operation within two business days.
2. HUMAN RESOURCES. We had six new employees start in August and have a new Human Resources Generalist scheduled to start at the end of September. We currently have nine

positions in recruitment. Work is underway with ADP to implement the new HR Information System (HRIS), which will automate many manual processes.

INFORMATION TECHNOLOGY

1. ENTERPRISE ASSET MANAGEMENT. We have installed and configured the asset management module of our Manage Engine ticketing platform, which will allow for improved monitoring, patching, and resolution of issues. It currently is under beta testing by a cross section of the organization and all of our information technology staff.
2. SECURITY. Configuration continues on Airgap, which will increase our ability to recover quickly and safely from certain types of cyber attacks. We also are moving ahead with implementation of CyberArk, which will more easily and cost-effectively provide secure vendor access to the MainePERS network.
3. UNINTERRUPTIBLE POWER SUPPLY BATTERIES. We are replacing our current uninterruptible power supply battery backup system in Augusta this week with 10 new batteries. The current system will reach end of life in October.
4. NEW TEST INSTANCE OF V3. Working with our vendor Vitech, we have created a new instance of our V3 line of business environment to assess the viability of utilizing V3 to provide a secure member self-service portal. The addition of this new instance will also allow us to explore other enhancements and updates iteratively.

RECOMMENDATION

No Board action is recommended at this time.

SEPTEMBER 2022 BOT SUPPLEMENTAL NUMBERS

BENEFITS PAYROLL. Monthly pension payments were made to 46,986 recipients in August, totaling \$97,911,532.73.

RETIREMENT SERVICES. One hundred eighty individuals received their first benefit payment in August, with the typical benefit amount being \$2,163. First time recipients averaged 24 years of service. The count of new recipients, payment amount, and service are in line with what has been seen during the same month in recent prior years.

One hundred fifty-five former members received a refund of their contributions in August, typically amounting to \$5,879 as the result of two years of service. The aggregate amount refunded was \$1,877,641.

DISABILITY SERVICES. Eight new disability retirement applications were received in August, and 10 intakes with varying levels of detail and duration were conducted.

SURVIVOR SERVICES. Sixty-nine life insurance claims were sent to our carrier (The Hartford) in August, with a total value of \$1,444,925 in payments due to beneficiaries.

DEFINED CONTRIBUTION PLAN SERVICES. MaineSTART had 1,597 participants at the end of August, with \$55,406,634 of investment assets in the program.

PLD PLAN ADMINISTRATION. Two new employers joined the PLD Retirement Program effective September 1, 2022, and six employers made plan changes that are in effect as of that date in order to enhance the benefits available to their employees.

Maine Public Employees Retirement System
Contributions and Disbursements - Defined Benefit Plans
For the One Month Ended July 31, 2022 and July 31, 2021

	<u>Current</u>	<u>Year to Date</u>	<u>Prior Year to Date</u>
Contributions			
Employer Contributions ⁽¹⁾	\$ 43,499,250	\$ 43,499,250	\$ 41,824,654
Member Contributions	15,897,191	15,897,191	15,790,019
Member Repurchases	(361,749)	(361,749)	(161,398)
Total Contributions	<u>\$ 59,034,692</u>	<u>\$ 59,034,692</u>	<u>\$ 57,453,275</u>
Member Disbursements			
Benefits Payroll	\$ 96,066,644	\$ 96,066,644	\$ 91,001,886
Member Refunds	656,085	656,085	1,509,597
Total Member Disbursements	<u>\$ 96,722,729</u>	<u>\$ 96,722,729</u>	<u>\$ 92,511,483</u>
Net	<u>\$ (37,688,037)</u>	<u>\$ (37,688,037)</u>	<u>\$ (35,058,208)</u>

⁽¹⁾Employer Contributions include both normal cost and UAL contributions.