

**TULARE COUNTY EMPLOYEES' RETIREMENT ASSOCIATION (TCERA)
PLACEMENT AGENT POLICY**

Investment managers in both the public and private markets use placement agents to help them raise capital from previously untapped sources. The Board finds that it is consistent with the fiduciary responsibilities of the Board to bring transparency to placement agent activity in connection with TCERA's investments and to help ensure that all investment decisions are made solely on their merits.

A. Definition of Placement Agent

California law generally defines a placement agent as "any person directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager, and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a board or an investment vehicle."ⁱ The terms "board," "external manager," "investment fund," "investment vehicle," and "person" are also defined in the law.ⁱⁱ These additional terms are used in this policy in the same manner as defined by law.

The only exception in the law to the definition of placement agent is "an individual who is an employee, officer, director, equityholder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager."ⁱⁱⁱ This means that the definition, for purposes of this policy, must include not only independent contractors hired by an external money manager as placement agents, but also the client services personnel employed by the manager.

For purposes of this policy, however, the definition is limited as follows:

- 1.** While an external manager does need to disclose as placement agents in accordance with this policy the manager's client services employee or employees, the manager is required to report regarding only the individual employee or employees who provide the principal services to TCERA.
- 2.** An external manager is required to disclose in accordance with this policy all independent contractors who are placement agents under this policy.
- 3.** Service providers other than those hired to manage a portfolio of securities or other assets for compensation, or who offer or sell an ownership interest in an investment vehicle or investment fund to TCERA, are excluded from the definition. These service providers include the custodial bank, the investment advisor, and other similar vendors.

B. Responsibilities of External Manager

Prior to TCERA investing with an external manager, the manager shall provide to TCERA a written representation, in a form acceptable to TCERA, stating whether or not the external manager has used a placement agent in connection with TCERA's investment. If the external manager has used a placement agent, the written statement shall also disclose the following:

- 1.** If the placement agent is an independent contractor, the statement shall include the following:
 - a.** The name of the placement agent.
 - b.** A resume for each officer, partner or principal of the placement agent which details the person's education, professional designations, regulatory licenses, and investment and work experience.
 - c.** A description of the services performed or to be performed by the placement agent.
 - d.** A description of any and all compensation of any kind paid or payable to the placement agent.
 - e.** Assurance that only the external manager, and not TCERA or a limited partnership, is obligated to pay the fee.
 - f.** The name of any current or former TCERA Board member, employee, or consultant, or a member of the immediate family of any such person, who is either employed by or receiving compensation from the placement agent.
 - g.** The names of any current or former TCERA Board members, employees, or consultants who suggested the retention of the placement agent.
 - h.** The regulatory agencies the placement agent or any of its affiliates are registered with, such as the SEC, FINRA, or any similar regulatory agency. If the placement agent is registered, the details of that registration shall be provided. If the placement agent is not registered, the statement shall explain why no registration is required.
 - i.** Whether the placement agent, or any affiliate of the placement agent, is registered as a lobbyist with any state or the federal government.
 - j.** Assurance that the external manager has made the placement agent aware of the provisions of section C of this policy, and a description of the placement agent's response to the external manager's inquiry as to whether or not the

placement agent has made any campaign contributions or given any gifts which would be reportable under this policy.

2. If the placement agent is an employee of the external manager, the statement shall include the following:
 - a. The name of the placement agent.
 - b. Assurance that only the external manager, and not TCERA or a limited partnership, is obligated to pay any compensation to the placement agent.
 - c. Assurance that the external manager has made the placement agent aware of the provisions of section C of this policy, and a description of the placement agent's response to the external manager's inquiry as to whether or not the placement agent has made any campaign contributions or given any gifts which would be reportable under this policy.

C. Responsibilities of Placement Agent

Under California law, a placement agent must disclose certain campaign contributions and gifts. Accordingly, prior to acting as a placement agent in connection with any potential investment by TCERA, a placement agent shall disclose to the Board the following:

1. Campaign contributions

All campaign contributions made by the placement agent to any elected member of the Board during the prior 24-month period. Additionally, any subsequent campaign contribution made by the placement agent to an elected member of the Board during the time the placement agent is receiving compensation in connection with a system investment shall also be disclosed.¹

2. Gifts

All gifts, as defined in California Government Code Section 82028, given by the placement agent to any member of the Board during the prior 24-month period. Additionally, any subsequent gift given by the placement agent to any member of the Board during the time the placement agent is receiving compensation in connection with a TCERA investment shall also be disclosed.

¹ Elected members of local retirement boards are not subject to California state laws regarding reports of campaign contributions, and TCERA does not have any policies requiring filing of reports regarding campaign contributions. (Individual elected members of the Board may or may not be obligated to report campaign contributions as gifts on their annual financial disclosure forms.)

D. Responsibilities of Staff

In the event a placement agent is expected to receive remuneration for a TCERA investment, Staff will notify the Board prior to Board action regarding the investment.

If an external manager breaches the Placement Agent Policy, Staff will notify the Board at the next scheduled meeting of the Board following the discovery of the breach. The Board shall take such action as it deems consistent with its fiduciary responsibilities at that time.

The Board finds that it is consistent with the fiduciary responsibilities of the Board to require its external managers to agree to TCERA's Placement Agent Policy and to prohibit entering into an agreement with any external manager which does not agree in writing to comply with this Placement Agent Policy. Accordingly, Staff will obtain written agreements from TCERA's existing external managers acknowledging the requirement to comply with TCERA's Placement Agent Policy.

Approved by the Board of Retirement March 24, 2010.

Amended by the Board of Retirement January 11, 2012.

Note

Neither the County of Tulare nor TCERA has any local ordinance or other requirement for reports or registration by lobbyists. Accordingly, placement agents and external managers (and their affiliates) may disregard the provisions of Gov. Code, § 7513.87 regarding local lobbyist regulations.

ⁱ Gov. Code, § 7315.8, subd. (f)(1).

ⁱⁱ Gov. Code, § 7315.8.

ⁱⁱⁱ Gov. Code, § 7315.8, subd. (f)(2).

**WEST'S ANNOTATED CALIFORNIA CODES
GOVERNMENT CODE
TITLE 9. POLITICAL REFORM
CHAPTER 2. DEFINITIONS**

*Current with urgency legislation through Ch. 745 of 2011 Reg. Sess.
and all 2011-2012 1st Ex. Sess. laws*

§ 82028. Gift

(a) “Gift” means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term “gift” does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed “informational material.”

(2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 of this title.^[2]

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

² Local retirement board members are not subject to campaign reporting requirements under these statutes, so campaign contributions to them may be gifts.

Credits

(Added by Initiative Measure approved by the electors June 4, 1974, eff. Jan. 7, 1975. Amended by Stats. 1978, c. 641, p. 2101, § 1; Stats. 1979, c. 373, p. 1324, § 172; Stats. 1986, c. 654, § 1; Stats. 1997, c. 450 (S.B. 124), § 2, eff. Sept. 24, 1997.)