ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

AGENDA

NOTICE OF COMBINED PUBLIC MEETING AND POSSIBLE EXECUTIVE SESSION OF THE ARIZONA STATE RETIREMENT SYSTEM BOARD

3300 North Central Avenue, 10th Floor Board Room
Phoenix, AZ 85012

April 29, 2016
8:30 a.m.

Pursuant to A.R.S. § 38-431.02 (F), notice is hereby given to the Trustees of the Arizona State Retirement System (ASRS) Board and to the general public that the ASRS Board will hold a meeting open to the public on Friday, April 29, 2016, beginning at 8:30 a.m., in the 10th Floor Board Room of the ASRS offices at 3300 N. Central Avenue, Phoenix, Arizona 85012. Trustees of the Board may attend either in person or by telephone conference call.

The Chair may take public comment during any agenda item. If any member of the public wishes to speak to a particular agenda item, they should complete a "Request To Speak" form indicating the item and provide it to the Board Administrator.

Pursuant to A.R.S. § 38-431.03(A)(3), the ASRS Board of Trustees may vote to go into executive session, which will not be open to the public, for the purpose of obtaining legal advice on any item on the Agenda.

This meeting will be teleconferenced to the ASRS Tucson office at 4400 East Broadway Boulevard, Suite 200, Tucson, Arizona 85711.

The Agenda for the meeting is as follows:

1. Call to Order; Roll Call; Opening Remarks.....Mr. Kevin McCarthy
   Board Chair

2. Approval of the Minutes of the March 25, 2016 Public Meeting and Executive Session of the ASRS Board *(estimated time 1 minute)*.....Mr. Kevin McCarthy

3. Approval, Modification, or Rejection of Recommended Administrative Law Judge's Decision Regarding Ms. Mary Jo Kuzmick's Appeal Regarding Average Monthly Compensation *(estimated time 20 minutes)* .....Ms. Jothi Beljan
   Assistant Attorney General
   .....Mr. Rex Nowlan
   Agency Counsel Section Chief, Attorney General's Office

4. Presentation, Discussion, and Appropriate Action Regarding the 2016 ASRS Legislative Initiatives and Legislative Update *(estimated time 15 minutes)*.....Mr. Patrick Klein
Assistant Director External Affairs
.....Mr. Nicholas Ponder
Government Relations Officer

5. Presentation Regarding PRIDE Award for Professionalism (*estimated time 5 minutes*).....
.....Mr. Paul Matson
Director
.....Mr. Anthony Guarino
Deputy Director and Chief Operations Officer

Regarding the following agenda item, pursuant to A.R.S. § 38-431.03(A)(2), notice is hereby given to the ASRS Board of Trustees and the general public that the ASRS Board may vote to go into executive session, which will not be open to the public.

6. Presentation, Discussion and Appropriate Action Regarding the ASRS Long Term Disability Program Administration Contract Award *(estimated time 15 minutes)*.....Mr. Paul Matson
.....Mr. Anthony Guarino
.....Ms. Martha Rozen
Chief of Administrative Services
.....Mr. Dave King
Assistant Director, Member Services Division

7. Presentation, Discussion, and Appropriate Action Regarding the Director's Report as well as Current Events *(estimated time 5 minutes)* .....Mr. Paul Matson
.....Mr. Anthony Guarino

   A. 2015 Investments Report
   B. 2015 Operations Report
   C. 2015 Budget and Staffing Reports
   D. 2015 Cash Flow Statement
   E. 2015 Appeals Report
   F. 2015 Employers Reporting

8. Presentation and Discussion Regarding Informational Updates from Prior and Upcoming Committee Meetings *(estimated time 15 minutes)*
   a. Operations and Audit Committee (OAC) .....Mr. Jeff Tyne, Chair
   .....Mr. Anthony Guarino
   The next OAC Meeting will be held on June 14, 2016.

   b. External Affairs Committee (EAC).....Dr. Richard Jacob, Chair
   .....Mr. Patrick Klein
   The next EAC Meeting will be held on May 13, 2016.

   c. Investment Committee (IC) ..... Mr. Tom Connelly, Chair
   .....Mr. Karl Polen
   The next IC Meeting will be held on June 20, 2016.

9. Board Requests for Agenda Items *(estimated time 1 minute)* .....Mr. Kevin McCarthy

10. Call to the Public.....Mr. Kevin McCarthy

    Those wishing to address the ASRS Board are required to complete a Request to Speak form before the meeting indicating their desire to speak. Request to Speak forms are available at the sign-in desk and should be given to the Board Administrator. Trustees of the Board are prohibited by A.R.S. § 38-431.01(H) from discussing or taking legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action. As a result of public comment, the Board may direct staff to study and/or reschedule the matter for discussion and decision at a later date.

11. The next regular public ASRS Board meeting is scheduled for Friday, May 27, 2016, at 8:30 a.m., at 3300 N. Central Avenue, in the 10th Floor Board room, Phoenix, Arizona.

The Board will take a 15 minute recess while the meeting moves to the 14th floor conference room, where the balance of the meeting and possible executive sessions will take place.

Regarding the following agenda item, notice is hereby given to Trustees of the ASRS Board and the general public that the ASRS Board may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the attorney(s) of the public body, which will not be open to the public.

12. Presentation, Discussion, and Appropriate Action Regarding *Mary Wade and Marla Paddock v. Arizona State Retirement System* Arizona Court of Appeals Opinion *(estimated time 20 minutes)* .....Mr. Paul Matson
    .....Ms. Jothi Beljan

Regarding the following agenda item, notice is hereby given to Trustees of the ASRS Board and the general public that the ASRS Board may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the attorney(s) of the public body, which will not be open to the public.

13. Presentation, Discussion, and Appropriate Action Regarding Arizona State University's Notice of Appeal to the Arizona Court of Appeals on the Interest Rate Applied to the Judgment in *Arizona State University v. Arizona State Retirement System (estimated time 20 minutes)*.....Mr. Paul Matson
    .....Ms. Jothi Beljan

Regarding the following agenda item, notice is hereby given to Trustees of the ASRS Board and the general public that the ASRS Board may vote to go into executive session pursuant to A.R.S. § 38-431.03(A)(3) for discussion or consultation for legal advice with the attorney(s) of the public body, which will not be open to the public.

14. Presentation, Discussion, and Appropriate Action Regarding ASRS Actuarial Services *(estimated time 20 minutes)*.....Mr. Paul Matson
.....Ms. Jothi Beljan

15. Adjournment of the ASRS Board.

A copy of the agenda background material provided to Board Trustees (with the exception of material relating to possible executive sessions) is available for public inspection at the ASRS offices located at 3300 North Central Avenue, 14th Floor, Phoenix, Arizona and 4400 East Broadway Boulevard, Suite 200, Tucson, Arizona. The agenda is subject to revision up to 24 hours prior to meeting. These materials are also available on the ASRS website (https://www.azasrs.gov/web/BoardCommittees.do) approximately 48 hours prior to the meeting.

Persons(s) with disabilities may request a reasonable accommodation such as a sign language interpreter or alternate formats of this document by contacting Tracy Darmer, ADA Coordinator at (602) 240-5378 in Phoenix, at (520) 239-3100, ext. 5378 in Tucson, or 1-800-621-3778, ext. 5378 outside metro Phoenix or Tucson. Requests should be made as early as possible to allow time to arrange the accommodations.

Dated April 22, 2016

ARIZONA STATE RETIREMENT SYSTEM

Signed Copy on File
Melanie A. Alexander
Board Administrator

Signed Copy on File
Paul Matson
Director

Agenda Item #2

ARIZONA STATE RETIREMENT SYSTEM

3300 NORTH CENTRAL AVENUE • PO BOX 33910 • PHOENIX, AZ 85067-3910 • PHONE (602) 240-2000
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Paul Matson
Director

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MINUTES
PUBLIC MEETING
ARIZONA STATE RETIREMENT SYSTEM BOARD

Friday, March 25, 2016
8:30 a.m., MST

The Arizona State Retirement System (ASRS) Board met in the 10th Floor Board Room, 3300 N. Central Avenue, Phoenix, Arizona. Mr. Kevin McCarthy, Chair of the ASRS Board, called the meeting to order at 8:32 a.m., Arizona Time.

The meeting was teleconferenced to the ASRS office at 4400 E. Broadway, Tucson, Arizona 85711.

1. Call to Order; Roll Call; Opening Remarks

Present: Mr. Kevin McCarthy, Chair
Mr. Clark Partridge
Professor Dennis Hoffman
Mr. Lorenzo Romero
Dr. Richard Jacob
Mr. Robert Wadsworth
Mr. Tom Connelly (via teleconference)
Mr. Tom Manos (via teleconference)

Absent: Mr. Jeff Tyne, Vice Chair

A quorum was present for the purpose of conducting business.

2. Approval of the Minutes of the February 26, 2016 Public Meeting of the ASRS Board

Motion: Mr. Clark Partridge moved to approve the Minutes of the February 26, 2016 Public Meeting of the ASRS Board. Dr. Richard Jacob seconded the motion.

By a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 excused, the motion was approved.

3. Presentation, Discussion, and Appropriate Action Regarding the ASRS Proposed Legislation for the 2016 Legislative Session

Mr. Patrick Klein, Assistant Director, External Affairs Division, and Mr. Nick Ponder, Government Relations Officer, provided a brief update to the Board regarding the 2016 Legislative agenda.

The following bills were discussed:

- **HB2104: ASRS; Retention of Credited Service** – The ASRS worked with legislative counsel on amending the language which was offered that will allow elected and appointed public officials who are retired from the ASRS to return to work without having their pension suspended. The bill passed through the Senate March 15, 2016, and has been forwarded back to the House for a final reading.
- **HB2159: ASRS; Rulemaking Exemption** – This bill was dual assigned to the Senate Finance Committee and the Senate Government Committee. Mr. Ponder met with the chairs of both Committees who agreed to put this on their agendas; in addition, Mr. Ponder met with each member of the Committees in an attempt to secure their support for the bill. It has passed both Committees and is waiting for a third read in the COW.
- **HB2160: ASRS; Eligible Rollovers** – This bill passed through the Senate and is awaiting its third read in the COW.
- **SB1037: ASRS; Board Delegation; Benefit Determinations** – This bill passed through the Government and Higher Education Committee March 3, 2016, and is awaiting its third read in the COW.
- **SB1038: ASRS; Reinstatement; Contribution Amount** – This bill passed through the Government and Higher Education Committee March 3, 2016, and is awaiting its third read in the COW.
- **SB1144: ASRS; Contributions; Adjustments** – This bill passed through the Government and Higher Education Committee March 3, 2016, and is awaiting its third read in the COW.
- **SB1151: ASRS; Continuation** – This bill passed through the House Government and Higher Education Committee March 3, 2016, and is awaiting its third read in the COW.
- **HB2243: ASRS; LTD Program Liability** – This bill did not get approved by the House.

The following are bills that affect the ASRS but not initiated by the ASRS:

- **HB2115: Public Employees; Misappropriation; Penalty** – Initially, the offered amendment removed the term “pension benefits”; however, retained the term “annuity payment.” Although it was not the intent to interpret annuity as pension, the bill sponsor acknowledged how it could be interpreted as such and an amendment was offered when the bill was presented to the Senate Judiciary Committee, striking the annuity language. This bill is awaiting its third read in the COW.
- **HB2617: Israel; Boycotts; Contracts; Investments** – This bill prohibits public entities from entering into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel. By April 1 of each year, each “public fund” (defined as the State Treasurer or a retirement system) is required to prepare a list of "restricted companies" (defined as companies that boycott Israel) and provide a copy of the list on request. The State Treasurer and each retirement system are required to sell, redeem, divest or withdraw all direct holdings of a restricted company from the assets under their management in an orderly and fiducially responsible manner within three months after preparing the list. An amendment was offered in the Senate Finance Committee to require the retention, rather than the publication, of a list of all known companies who are boycotting Israel. This bill passed through the Senate, was returned back to

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the House and the House concurred with the Senate amendments. The Governor signed the bill on March 17, 2016.

Based on questions from the Board, a discussion took place with regards to the ability to compile a list, which Mr. Ponder stated would be a challenge due to the legal liability. It becomes more complicated due to the list being reviewed and updated only once per year. It is not clear whether the ASRS could potentially be in violation if a company the ASRS is in business with that is not on the list as of April 1 but boycotts Israel at some point during the year and it is not known to the ASRS until the next review. There are still some questions left to be answered.

- **HB2666: Governor's Economic Opportunity Office; Consolidation** – This bill creates the Governor's Economic Opportunity Office (GEOO). It creates the Arizona Finance Authority (AFA) with the GEOO. The AFA would establish a non-profit corporation, the Arizona Industrial Development Authority (AIDA). A proposed amendment would allow any current ASRS participants who become employed with AIDA as a result of the bill, but not future employees of AIDA, to continue participation in the ASRS. An amendment was offered in the Senate Commerce and Workforce Development Committee and passed. It also passed through the Senate Finance Committee and is awaiting the COW for its third reading. It will then need to go back to the House for the House to concur with the amendments that were offered in the Senate.
- **SB1257: Misconduct Involving Weapons; Public Places** – This bill allows a person who possesses a valid concealed weapons permit to openly carry a weapon into a public establishment other than a vehicle, or craft, or at a public event. This does not prevent leasing tenants within a public building to create signage outside their offices that would prohibit weapons within their office. There are two changes from last year's bill. One change is an added exemption for State and County Municipal and Judicial Departments and Correctional Facilities. The second change is the removal of the exemption of special healthcare district facilities. This bill passed through the House Judiciary Committee on March 16, 2016, and is awaiting its third read in the COW.

4. Presentation, Discussion, and Appropriate Action Regarding the Board Governance Policy Handbook Annual Responsibilities Review

Mr. Paul Matson provided a brief overview of the Board Governance Policy Handbook Annual Responsibilities and noted that the Board, the Committees and the Director have met subtantially all of the objectives in the Governance Handbook and completed all required tasks. Mr. Matson also highlighted a typographical error contained on page 1, #5 of the report, indicating the second to the last line should read, "December 31, 2019" not "December 31, 2020." The same error is contained on page 14, #11 of the report, in the second to the last line of the page.

5. Presentation, Discussion, and Appropriate Action Regarding the Director's Report as well as Current Events

Mr. Paul Matson introduced Mr. Karl Polen, the new Chief Investment Officer (CIO). Mr. Polen was previously the Real Estate Portfolio Manager and Private Equities Portfolio Manager. Mr. Matson stated that Mr. Polen's expertise and knowledge made him the ideal candidate to fill the CIO position. Mr. Matson noted that there will be significant investment engagement with himself, Mr. Polen, Mr. Tom Connelly, Chairman of the Investment Committee, and Mr. Allan Martin with NEPC, to ensure investment ideas are explored and implemented in a timely fashion when appropriate.

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Mr. Matson responded to Prof. Dennis Hoffman's request to provide an update on the fiscal year-to-date investment returns.

6. Presentation and Discussion with Respect to Informational Updates from Prior and Upcoming Committee Meetings

a. Operations and Audit Committee (OAC)

Mr. Clark Partridge announced the next OAC meeting will be held on April 12, 2016 at 10:30 a.m. in the 14th floor conference room to discuss internal audits, long term disability contract award recommendations and the external IT risk assessment.

b. External Affairs Committee (EAC)

Dr. Richard Jacob announced the next EAC meeting will be held on April 8, 2016 at 10:30 a.m. in the 14th floor conference room to discuss updates on legislation and the regulatory agenda regarding rule making.

c. Investment Committee (IC)

Mr. Tom Connelly announced the next IC meeting will be held on April 25, 2016 at 2:30 p.m. in the 14th floor conference room and the draft agenda is still in progress.

7. Board Requests for Agenda Items

No requests were made.

8. Call to the Public

No one from the public requested to speak.

9. The next regular ASRS Board meeting is scheduled for Friday, April 29, 2016, at 8:30 a.m., at 3300 N. Central Avenue, 10th Floor Board Room, Phoenix, Arizona.

The Board took a recess from 9:14 a.m. to 9:24 a.m. to transition to the 14th floor conference room for the final agenda topic to be held in executive session.

Mr. Tom Manos adjourned from the meeting prior to Agenda Item #10 and did not participate in the discussion.

10. Presentation, Discussion, and Appropriate Action Regarding the 2015 review of the Director of the ARS

Motion: Dr. Richard Jacob moved to go into Executive Session for the purpose of the Director's review. Prof. Dennis Hoffman seconded the motion.

By a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 excused, the motion was approved.
The Board convened to Executive Session at 9:24 a.m.

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The Board reconvened to Public Session at 9:30 a.m.

11. Adjournment of the ASRS Board

Motion: Mr. Clark Partridge moved to adjourn the March 25, 2016 Board Meeting at 9:31 a.m. Prof. Dennis Hoffman seconded the motion.

By a vote of 7 in favor, 0 opposed, 0 abstentions, and 2 excused, the motion was approved.

ARIZONA STATE RETIREMENT SYSTEM

Melanie A. Alexander Board Administrator	Paul Matson Director

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Confidential Materials were provided to the Board and not included in this book.

Agenda Item #3

Recommended Decision

Ms. Mary Jo Kuzmick v. ASRS

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

Mary Jo Kuzmick Appellant, v. Arizona State Retirement System, Respondent.	**No. 16F-007-ARB** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: March 15, 2016, at 8:00 a.m. The record was held open to allow sufficient time for the preparation and filing of the transcripts of the hearing.

APPEARANCES: Mary Jo Kuzmick (hereinafter "Appellant" or "Ms. Kuzmick") appeared on her own behalf. The Arizona State Retirement System was represented by Assistant Attorney General Jothi Beljan.

ADMINISTRATIVE LAW JUDGE: M. Douglas

FINDINGS OF FACT

1. As set forth in the relevant statutes (A.R.S. § 38-711 *et seq.*), the general purpose of the Arizona State Retirement System ("ASRS") is to provide retirement benefits to eligible employees and officers of the State of Arizona and its political subdivisions.
2. Appellant is a member of the ASRS.
3. On June 14, 2013, ASRS issued an estimate that if the Appellant retired on June 1, 2015, she would have 27.98 years of credited service with an average monthly salary of $4,979.47. The estimate provides that without any partial lump sum payment Appellant would receive a Straight Life Annuity monthly benefit payment in the sum of $3,065.16. The estimate provides in bold capital letters as follows: THIS IS AN ESTIMATE ONLY, USING UNAUDITED DATA-NOT AN INCOME COMMITMENT***.[1]

[1] See Exhibit A (6/14/13 benefit estimate).

4. On March 4, 2015, ASRS issued a second estimate that if the Appellant retired on July 2, 2015, she would have 28.06 years of credited service with an average monthly salary of $4,979.47. The estimate provides that without any partial lump sum payment Appellant would receive a Straight Life Annuity monthly benefit payment in the sum of $3,073.93. The estimate provides in bold capital letters as follows: THIS IS AN ESTIMATE ONLY, USING UNAUDITED DATA-NOT AN INCOME COMMITMENT***.[2]

5. On or about May 14, 2015, Appellant filed an application for retirement with ASRS and a new Retiree Ending Payroll Verification Summary was submitted on her behalf by the Town of Gilbert on July 9, 2015.[3]

6. On August 31, 2015, ASRS issued a benefit letter after audit to the Appellant.[4] The letter provides, in relevant part, as follows:

> The following details the components used to calculate your regular gross monthly benefit:
>
> | | |
> |---|---|
> | Retirement points | 80.229 |
> | Years of Service | 28.06 |
> | Graded Multiplier | 2.2 |
> | Average Monthly Salary | $4,874.29 |
> | Benefit Option Factor | 1 |
> | Your Monthly Annuity | $3,009.00 |

7. On or about November 18, 2015, Appellant field an appeal letter with the Assistant Director of ASRS.[5] Appellant's letter provides, in relevant part, as follows:

> Prior to retiring, besides doing the online estimator (every month for approximately 1 year prior), I met with Margaret Bellum at ASRS in person and she told me my monthly annuity would be $3,074 per month, as did the online estimator. I also met with Doug Marshall, Gilbert's then Human Resources Benefits Coordinator and he got the same exact figure per the spreadsheet and formula, thus all three were identical. I originally picked June 2 as my date which was $3,065 per month, but I decided to work a month longer which came to $3,074 per month. The letter dated Aug. 31, 2015 from ASRS states that I will receive $3,009

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[2] *See* Exhibit B (3/4/15 benefit estimate).
[3] *See* Exhibits C (5/14/15 Application for Retirement) and D (New Retiree Ending Payroll Verification Summary).
[4] *See* Exhibit E (8/31/15 benefit letter after audit).
[5] *See* Exhibit F (11/18/15 letter to Assistant Director Dave King).

> per month, thus a $65.00 per month difference, which you could imagine is disappointing.
>
> Please see attached document that I printed, as it states my average monthly salary was $4,979.47 from my highest 3 consecutive years within my last 10 years.

8. ASRS responded to Appellant's concerns on November 27, 2015.[6] The ASRS response provides, in relevant part, as follows:

> Following a thorough review of your case, we find that the final audited calculation of your retirement benefit is correct and is less than the benefit stated on your most recent estimate from March 2015. Therefore, the ASRS cannot increase your monthly benefit to the amount stated on your benefit estimate. We will, however, attempt to explain as thoroughly as possible why your monthly benefit is less than the benefit estimate amounts.
>
> Arizona Revised Statutes §38-711(5)(b) states, "For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were **remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service**. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked."
>
> In the case of all new retirees, the ASRS conducts a post-retirement pension audit following the member's retirement. The audit of your account revealed a difference in the average monthly salary amount used in the estimate versus the final audit. The final audit determined an accurate average monthly salary of $4,874.29. This accurate, audited average monthly salary resulted in a gross Straight Life

[6] *See* Exhibit G (11/27/2015 ASRS Response).

> Annuity Option monthly benefit of $3,009.00, as noted in our August 31, 2015 correspondence to you.
>
> The average monthly salary is derived from the highest 36 consecutive months of salary in the past ten years of contributing service. In your specific case, the highest 36 months are August 2005 through July 2008 and your ten-year timeframe, as outlined in statute, is August 2005 through July 2015. July 2005 was a three pay period month and initially was included in your ten-year timeframe, but when you worked and contributed in July 2015, July 2005 had to be dropped from the ten-year statutory period. The estimate you received in March 2015 continued to include the unusually high July 2005 salary, compared to subsequent months, in the ten-year period, even though a July 2, 2015 retirement date should assume an August 2005 through July 2015 ten-year timeframe. Due to this inclusion, your estimates from March 2015 forward were overstated as it included ineligible salary in the average monthly salary calculation.

9. Ms. Kuzmick appealed ASRS' determination. ASRS upheld its determination and denied Ms. Kuzmick's appeal. Appellant requested a hearing and this matter was thereafter scheduled for administrative hearing before the Office of Administrative Hearings, an independent State agency.

10. The Notice of Hearing issued by ASRS delineates the issue to be addressed at hearing as:

> Due to the Arizona State Retirement System (ASRS) Director's determination that Appellant's average monthly compensation is $4,874.20 and that her retirement date is July 2, 2015, the ASRS has requested that the Office of Administrative Hearings conduct a formal hearing March 15, 2016, at 8:00 AM to 12:00 PM at 1400 W. Washington, Suite 101, Phoenix, Arizona, to determine whether grounds exist to justify the ASRS' appealable agency action and its application of A.R.S. §§ 38-711(5)(b), 38-757(A), 38-764(A) and 38—765.

11. Ms. Kuzmick testified that in 2010 she started attending ASRS seminars because she wanted to be fully prepared for retirement. Ms. Kuzmick stated that she purchased other service from the State of Ohio which cost her nearly $20,000.00 to add

a year to her ASRS fund. Ms. Kuzmick said that on June 14, 2013, she had an in-person appointment with Margaret Bellum of ASRS. Ms. Kuzmick said that she was informed that is she selected the date of June 2nd, 2015 for retirement from ASRS that her straight life annuity per month would be $3,065.16 based on an average monthly salary of $4,979.47.

12. Ms. Kuzmick testified that on March 4th, 2015, she went online and performed another benefit calculation on the ASRS site and that the benefit calculation stated that if she retired on July 2, 2015, one month after her 80 points of full retirement, her straight life annuity per month would increase to $3,073.93. Ms. Kuzmick stated that she decided to work the extra month to get the additional $11.00 per month the rest of her life.

13. Ms. Kuzmick testified that she applied for retirement on May 14, 2015, based on an average monthly salary of $4,979 and a straight life annuity of $3,074.00 per month. Ms. Kuzmick stated that on August 31, 2015, she received notice from ASRS that her average monthly salary was $4,874.29 and that her monthly annuity check would be $3,009. Ms. Kuzmick said that she was very confused and requested an explanation.

14. Ms. Kuzmick reviewed the November 27, 2015 response letter from ASRS. Ms. Kuzmick testified that she worked until July 2, 2015 based on the calculations provided by ASRS. Ms. Kuzmick stated that as a result of working the extra month the July 2005 month, which had three pay periods, dropped off which reduced her average monthly salary and her monthly annuity check. Ms. Kuzmick said that she was originally going to retire on June 1, 2015, which would have resulted in a monthly annuity of $3,065.00 per month. Ms. Kuzmick said that she is now going receive a monthly annuity of $3,009.00 per month. Ms. Kuzmick said that she would never had worked the extra month if she had known that it was going to cost her money each month for the rest of her life. Ms. Kuzmick asserted that she detrimentally relied on statements by ASRS employees and the information provided in the ASRS on-line website which will cause her financial harm for the rest of her life.

15. Jenna Orozco (hereinafter “Ms. Orozco”) testified that she is a Member Advocate for ASRS. Ms. Orozco stated that a retirement benefit is calculated using a formula which takes a member’s average monthly salary, a member’s years of service, and a

graded multiplier based off of that member's years of service and calculates a continuing monthly benefit for the member based off of those factors. Ms. Orozco said that she is familiar with the matter at issue.

16. Ms. Orozco reviewed A.R.S. §§ 38-757 and 38-711. Ms. Orozco testified that Appellant's salary history was higher near the end of her 10-year period that the ASRS must look at for the average monthly salary than it was at the time Appellant retired. Ms. Orozco stated that ASRS estimates provided to Appellant were only estimates which are based on unaudited salary data that ASRS provides in an attempt to be helpful to members. Ms. Orozco said that the estimates state that "This is an estimate only, using unaudited data. Not an income commitment."

17. Ms. Orozco testified that even if ASRS made a mistake and overpaid a member, that A.R.S. § 38-765 requires that if a member receives more than they are entitled to the ASRS has to correct the mistake and collect any overpayments. Ms. Orozco reviewed the ASRS exhibits and stated that highest consecutive 36 months of salary for the Appellant were from August 2005 through July 2008. Ms. Orozco said that the ASRS database estimate overinflated Appellant's salary by including the month of July 2005. Ms. Orozco said that July 2005 was unique because it included three pay periods rather than two.

18. Ms. Orozco reviewed Exhibit K.[7] Ms. Orozco testified that on May 31, 2013, ASRS advised the Appellant that because her highest salary years were in the past, the longer she worked at the lower salary, those higher years drop off because they exit the 10-year window. Ms. Orozco stated that the final audited average monthly salary for Appellant is the sum of $4,874.29, that the finally audited years of service is 28.06 years and that her fin al graded multiplier is 2.20. Ms. Orozco said that the final straight life annuity pension amount is the sum of $3,009 for the rest of Appellant's life.

19. Ms. Kuzmick asserted that she relied on information from ASRS to her detriment and worked an extra month in July 2015. Ms. Kuzmick stated that she would never have worked the extra month if she had known it would be detrimental to her long-term income.

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[7] *See* Exhibit K (Log of Appellant's contacts with ASRS).

20. ASRS takes the position that it is not responsible for advising its members as to what retirement date they should choose due to all of the unique variables relating to each of its members. ASRS argued that it provides proper notification to its members regarding the calculation method utilized by ASRS to determine average monthly compensation for its members.

CONCLUSIONS OF LAW

1. Ms. Kuzmick bears the burden of proof and, as such, must establish by a preponderance of the evidence that ASRS improperly calculated her average monthly compensation for purposes of determining her retirement benefit.[8]

2. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[9] A preponderance of the evidence is "evidence which is of greater weight or more convincing than evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."[10]

3. A.R.S. § 38-711(5)(a)(ii) states the following in relevant part:

> "Average monthly compensation" means:
>
> (a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:
>
> . . . .
>
> (ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. . . . Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay which, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984,

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[8] *See* A.R.S. § 41-1092.07(G)(3); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 249 P.2d 837 (1952).

[9] MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

[10] BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

> do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

4. Pursuant to A.R.S. § 38-764, "retirement is deemed to commence on a date elected by the member."

5. Ms. Kuzmick argued that she detrimentally relied on statements by ASRS employees and the information provided in the ASRS on-line website which will cause her financial harm for the rest of her life and ASRS failed to advise her of the significance of the date she chose for retirement. ASRS argued that its calculation of Ms. Kuzmick's average monthly compensation is in accordance with statute, that all of ASRS' members receive proper notification regarding its calculation methodology, and it is up to each individual member to determine their own retirement date.

6. A.R.S. § 38-711(5)(a)(ii) sets forth ASRS' calculation of average monthly compensation. In the instant matter, ASRS calculated Ms. Kuzmick's average monthly compensation by determining her highest 36 consecutive months of salary in the past ten years of contributing service. ASRS determined that the highest 36 consecutive months of salary for the Appellant are August 2005 through July 2008 and that Appellant's ten-year time frame, as outlined in statute, is August 2005 through July 2015. ASRS' calculation was in accordance with A.R.S. § 38-711(5)(a)(ii). Further, as to Ms. Kuzmick's contention that ASRS failed to properly advise her of the retirement date that would maximize her annuity, ASRS members, not ASRS, choose their retirement dates.

7. The Administrative Law Judge concludes that in the absence of controlling authority to the contrary, Appellant failed to establish by a preponderance of the evidence that ASRS improperly calculated her average monthly compensation.

RECOMMENDED ORDER

Based on the foregoing, it is recommended that the ASRS Board affirm its denial of Ms. Kuzmick's appeal.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be five (5) days from the date of that certification.

Done this day, March 31, 2016.

/s/ M. Douglas
Administrative Law Judge

Transmitted electronically to:

Paul Matson, Director
Arizona State Retirement System

Appellant’s Submission to the Board

Stephanie Saliba

From: Mary Jo Kuzmick <cactusdiver63@gmail.com>
Sent: Monday, April 11, 2016 9:14 AM
To: Stephanie Saliba
Cc: Mary Jo Kuzmick
Subject: Re: Kuzmick v. ASRS; 16F-007-ARB

April 11, 2016

To: ASRS Board

From: Mary Jo Kuzmick

In response to the April 4, 2016 letter, here is a summary on my position.

I did my due diligence and relied on the information from the Arizona State retirement system employees through: in person meetings at their office, seminars at the town of Gilbert, webinars and the website benefit calculation to act in good faith and make this very important, imperative decision on what date to pick to be my last day, as this benefit would last for the rest of my life. I never would have worked a day longer on July 1, 2015 if I had known I would be making $65 less per month for the rest of my life! The information provided to me by the ASRS benefit calculation was incorrect (see benefit salary worksheet, exhibit 8 prepared on March 4, 2015, exhibit 3 and exhibit 4 which were all consistent) . It was this information I used to make this very important decision. I worked for the Gilbert Police Department which was a very stressful environment and never would have worked the extra day July 1, if it was not necessary and would be detrimental to my long-term income.

Dave King said that I am one in 10,000 people this may happen to and that their calculation was 2% off which adds up to a lot of money over time. He also said that the Arizona State retirement system would have to change their online benefit calculation system which would be too costly for their return on investment.

He said "I am a test case to point out the problem, but not benefiting from a solution". I feel like the guinea pig in a case study. Mr. King mentioned that the error of their average monthly salary of $4979.47 was incorrect which was very rare and uncommon. He suggested I present this to you.

I'm asking you to take this into consideration, as it was clearly the ASRS error (3 times) which provided me the information to pick my retirement date.

Injustice would be avoided by awarding me a consistent amount based on the Arizona state retirement benefit calculation as shown in Exhibit 3, 4 and 8 of $3073.93 per month for the rest of my life.

I, Mary Jo Kuzmick, make the motion that the ASRS board award me the original benefit calculation of $3073.93 per month for the rest of my life, based on the average monthly salary of $4,979.47 that the ASRS calculated to me, because it is the right thing to do. The ASRS admittedly made the calculation, not me.

I would also like to point out they have my first place of employment in September, 1988 as working for the city of Glendale, which is incorrect, I worked for the city of Chandler.

Thank you

Mary Jo Kuzmick, member since Sept. 1988.

Stephanie:

Please respond that you received this. Thank you.

On Mon, Apr 4, 2016 at 11:36 AM, Stephanie Saliba <StephanieS@azasrs.gov> wrote:

Dear Ms. Kuzmick, attached please find a letter from Ms. Beljan dated April 4, 2016.

Also, attached is the Administrative Law Judge's Decision from the March 15, 2016 at 8:00 a.m. hearing. The Arizona State Retirement System Board will review this Decision at its Friday, April 29, 2016 meeting.

If you have any questions, please call me at (602) 240-2151.

Sincerely,

Stephanie Oropeza Saliba

Legal Assistant to Jothi Beljan

Office of the Attorney General

Agency Counsel Section (ASRS)

ASRS Memo to the Board

ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

MEMORANDUM

TO: Mr. Kevin McCarthy, Chair, Arizona State Retirement System ("ASRS") Board

FROM: Mr. Paul Matson, Director
Ms. Jothi Beljan, Assistant Attorney General

DATE: April 8, 2016

RE: **Agenda Item #3**: Approval, Modification, or Rejection of Administrative Law Judge's Decision Regarding Mary Jo Kuzmick's Appeal Regarding Average Monthly Compensation

Purpose

To approve, modify or reject the Administrative Law Judge's ruling to uphold the Director's determination that Mary Jo Kuzmick's average monthly compensation is $4,874.29 for purposes of calculating her ASRS retirement benefit.

Applicable Law

The ASRS applied the definition of average monthly compensation as required by A.R.S. § 38-711(5)(b) and calculated a monthly retirement benefit using the formula in A.R.S. § 38-757(B).

Facts of the Case

A. Mary Jo Kuzmick retired from the ASRS on July 2, 2015. Her ASRS monthly retirement benefit is $3,009.00 and is calculated by multiplying her average monthly compensation of $4,874.29, 28.06 years of service and a 2.20 percent multiplier.

B. A.R.S. § 38-711(5)(b) defines "average monthly compensation" as the monthly average of compensation during a period of thirty-six (36) consecutive months during which a member receives the highest compensation within the last one hundred twenty (120) months of credited service. Ms. Kuzmick's last one hundred twenty (120) months of credited service were August 2005 to July 2015, and her highest thirty-six (36) consecutive months of compensation were August 2005 to July 2008 resulting in an average monthly compensation of $4,874.29.

C. On May 31, 2013, the ASRS verbally advised Ms. Kuzmick that because she had taken a lower paying position, Ms. Kuzmick's highest compensation months begin dropping off after July 1, 2013 or in other words, removed from the ASRS benefit calculation.

D. Ms. Kuzmick received ASRS benefit estimates in June 2013 and March 2015 that used an average monthly compensation amount of $4,979.47 based on Ms. Kuzmick's historical salary information. The March 2015 estimate provided a monthly retirement benefit estimate of $3,073.93. Both estimates include the following statement at the top of the estimate in bold font, capital letters, with asterisks: ***THIS IS AN ESTIMATE ONLY, USING

UNAUDITED DATA – NOT AN INCOME COMMITMENT***."

E. Ms. Kuzmick is seeking a monthly ASRS retirement benefit of $3,073.93 as provided in her March 2015 estimate rather than her actual benefit of $3,009.00 based on the statutorily mandated calculation.

F. In his Recommended Decision dated March 31, 2016, Administrative Law Judge Mike Douglas upheld the ASRS Director's determination and denied Ms. Kuzmick's appeal.

ASRS Recommended Motion

The ASRS Board accepts the Administrative Law Judge's Decision.

Agenda Item #4

ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

MEMORANDUM

TO: Mr. Kevin McCarthy, Chair, Arizona State Retirement System (ASRS) Board

FROM: Mr. Paul Matson, Director
Mr. Patrick Klein, Assistant Director, External Affairs
Mr. Nick Ponder, Government Relations Officer

DATE: April 15, 2016

RE: **Agenda Item #4**: Presentation, Discussion and Appropriate Action Regarding the 2016 ASRS Legislative Initiatives and Legislative Update

Purpose
To discuss the ASRS 2016 legislative initiatives as well as discuss legislative proposals by other organizations or persons that affect the ASRS.

Recommendation
Information item only; no action required.

Background
The ASRS staff has been working with legislative council, legislative staff, and legislators to move ASRS 2016 legislative initiatives forward.

An updated hard copy of the ASRS Bill Tracker will be provided at the meeting. The link to the most up-to-date bill tracker can be found any time at https://www.azasrs.gov/content/legislation.

Agenda Item #5

ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

MEMORANDUM

TO: Mr. Kevin McCarthy, Chair, Arizona State Retirement System (ASRS) Board

FROM: Mr. Paul Matson, Director

DATE: April 18, 2016

RE: **Agenda Item #5**: Presentation Regarding PRIDE Award for Professionalism

The ASRS employee recognition program recognizes employees who exemplify various PRIDE characteristics (Professionalism, Results, Improvement, Diversity, Excellence) throughout the year. The first award in the series is the PRIDE Professionalism award.

Krystal Mungia-Olivarez; Lisa King; Brian Crockett, Edennes Montanez, Marcia Kumamoto; Leticia Dominguez; Megha Choudhari, NIS (Michelle Roshto, Nick Dalmolin, Robert Virgil, Sean Stevens, Andrew Bruner, Michael Zych, Brandon Wilson, Thomas Neith, John Davis), Marcia Kumamoto, and Jennifer Chang were nominated by staff who feel they exemplify the professional qualities listed below:

PROFESSIONALISM

We promote, strive for and expect individuals, teams, and divisions to possess these qualities and skills in order to lead the organization:

- ☐ Displays a positive demeanor (friendly, responsive, courteous) even when confronted by adversity
- ☐ Has subject matter expertise
- ☐ Possesses good communication and active listening skills
- ☐ Is a trusted contributor (manager, leader, SME, analyst, teammate)
- ☐ Takes personal accountability
- ☐ Has proactive and responsive approach to internal and external customer needs
- ☐ Has critical thinking skills
- ☐ Has an honest, fair and non-judgmental mindset.
- ☐ Is adaptable to change that benefits members, associates and stakeholders
- ☐ Adheres to the ASRS code of Conduct.

Chosen from the nominees as winner of the ASRS PRIDE Professionalism award is Megha Choudhari. We invite the Board to join the ASRS staff in recognizing Megha as the PRIDE Professionalism award recipient.

Nominees for the PRIDE Professionalism Award

The Professionalism Award is the first of our annual bimonthly awards. The following employees were nominated by staff who feel they exemplify the professional qualities listed below:

PROFESSIONALISM

We promote, strive for and expect individuals, teams, and divisions to possess these qualities and skills in order to lead the organization:

- ☐ Displays a positive demeanor (friendly, responsive, courteous) even when confronted by adversity
- ☐ Has subject matter expertise
- ☐ Possesses good communication and active listening skills
- ☐ Is a trusted contributor (manager, leader, SME, analyst, teammate)
- ☐ Takes personal accountability
- ☐ Has proactive and responsive approach to internal and external customer needs
- ☐ Has critical thinking skills
- ☐ Has an honest, fair and non-judgmental mindset.
- ☐ Is adaptable to change that benefits members, associates and stakeholders
- ☐ Adheres to the ASRS code of Conduct.

KRYSTAL MUNGIA-OLIVAREZ

Displays positive demeanor (friendly, responsive, courteous) even when confronted by adversity:

Krystal is known throughout ASRS for her positive and responsive demeanor. She is actively involved in the ASRS Work Environment team and shares her own version of cheerful PRIDE by assisting with Work Environment flyers, sending emails and participating in all of the projects. This positive demeanor is present in all of the activities Krystal volunteers to help including UAT and project implementation. During the Employer Secure Messaging transition, Krystal volunteered to add real life employer email examples into the Test database for staff to practice assignments. Three times the data base was refreshed and each time Krystal re-added the 80 messages that had been removed. Not once did Krystal become upset or frustrated but stated she understood the reasons for the refresh.

Has subject matter expertise:

Krystal is a subject matter expert on various areas. She helped with the FileNet UAT, ESM UAT (helped creating real-life scenarios for teams to practice), and other Records Management UATs as needed.

Is a trusted contributor (manager, leader, SME, analyst, teammate):

Krystal has taken an ownership of updating an abandoned money list. She has assisted the program manager on pulling data, scheduling meetings and cleaning the data.

Has proactive and responsive approach to internal and external customer needs:

Krystal has a proactive and responsive approach to customer needs. There have been several occasions when she received a call regarding enrollment questions that have lasted over 45 minutes from the same customer, and will patiently explain in detail how to reach the resolution. Often the question is one which has previously been explained to the customer. Nevertheless, Krystal will re-explain it as if it's the first time the customer is hearing it. During these interactions Krystal remained very calm and professional. The customer kept saying he didn't understand why it happened and demanded more explanation. Krystal repeated answers in very professionally and calmly.

LISA KING

Displays positive demeanor (friendly, responsive, courteous) even when confronted by adversity:

Lisa consistently displays a friendly, responsive and courteous demeanor. She works with a significant number of varying personalities on a variety of assignments and is able to keep the projects moving despite participants who may veer off-course during planning sessions.

Has subject matter expertise:

Lisa possesses extraordinary subject matter expertise in a variety of business functions for the organization. This assists her in working with projects that transcend the organization.

Possesses good communication and active listening skills:

Lisa consistently demonstrates strong communication and listening skills as she is often called upon to compose documents based upon discussions she is leading and/or in which she is participating.

Is a trusted contributor (manager, leader, SME, analyst, teammate):

Lisa is a trusted analyst; a number of executive and senior staff depend upon her to complete projects and deliver final materials that are professional in appearance and in content. She often is asked to lead a presentation to the ASRS Board of Trustees and/or a committee of the ASRS Board on various projects and topics as a representative of the work efforts of executive or senior management.

Takes personal accountability:

Lisa is very organized and ensures that projects move along smoothly and that participants have materials ahead of meetings. She communicates often and tracks progress when others are not as responsive or as timely as they need to be.

Has proactive and responsive approach to internal and external customer needs:

Lisa continues to respond timely to requests for assistance; requests for information; requests for guidance on “how to do” something.

Has critical thinking skills:

Lisa is able to analyze and research and ultimately provide direction and suggestions for improvement to processes and/or project plans.

Has an honest, fair and non-judgmental mind-set:

I have observed that Lisa consistently appears honest and fair and non-judgmental in her approach to working with various personalities and individuals.

Is adaptable to change that benefits members, associates and stakeholders:

Lisa often is asked to change direction and/or move scheduling around. She is always happy to adapt and communicate to all stakeholders new directions and/or changes.

BRIAN CROCKETT, EDENNES MONTANEZ, MARCIA KUMAMOTO:

As Product Owners for the Business Intelligence Conversion Project Over the last five months working alongside the conversion project development team, all three have been instrumental in providing subject matter expertise across multiple areas of the organization. They have consistently made themselves available to the team to answer questions – providing insight into how data is captured and processed through the organization. This results in better quality reporting, and where possible, the elimination of duplicative work for their respective areas. Additionally, it is because of having such strong Product Owners that the project is on track and code quality/design improved. We are very fortunate that they took on these added responsibilities (daily stand up meetings, demos, testing, design sessions) at the same time as keep up their normal, everyday job functions. They’ve all been a pleasure to work with.

LETICIA DOMINGUEZ

Displays positive demeanor (friendly, responsive, courteous) even when confronted by adversity:

Leticia is often confronted with members from all walks of life, Spanish and English speaking, every member is treated with respect on an individual basis. Leticia is always smiling so it's difficult to know if she is having a bad day. She is always pleasant and pleasing to work with.

Has subject matter expertise:

Leticia's members leave here with all they need to know to begin their road to retirement because she takes her time to carefully explain the retirement process. She is always willing to assist the front desk receptionist with member retirement concerns without being asked.

Possesses good communication and active listening skills:

Leticia listens and communicates very effectively both in English and Spanish.

Is a trusted contributor (manager, leader, SME, analyst, teammate):

Leticia is a natural leader and trusted teammate.

Takes personal accountability:

In between appointments Leticia uses her time efficiently to complete LTD & DRO estimates as needed.

Has proactive and responsive approach to internal and external customer needs:

Leticia prepares for each member visit by having all applicable information on hand prior to her member meetings.

Has critical thinking skills:

Leticia is not one to be rushed to judgement too quickly when providing retirement information to the members. She takes the time to ensure that she is giving retirement information to the best of her knowledge.

Has an honest, fair and non-judgmental mind-set:

Leticia is very honest and treats co-workers and members in a fair, non-judgmental manner. She maintains a professional mindset even when we are overwhelmed by member walk-ins and appointments.

Is adaptable to change that benefits members, associates and stakeholders:

Change is the name of the game and Leticia keeps herself well informed by asking direct questions so that she is confident about change and how they will affect her day-to-day relationship with her members and associates. She understands the importance of the stakeholders' decisions regarding change.

Adheres to the State and ASRS Code of Conduct:

Leticia is a true role model for the type of employee any organization would desire and adheres to the agencies policies.

I have worked in the same department with Leticia for years and she has always been kind and generous with her time. She has a positive attitude about her work and her teammates. She is always willing to educate others with her knowledge as a Benefit Advisor. I feel that she is someone I can comfortably turn to when I have questions or concerns about member retirement issues. Leticia is a joy to know and work with!

MEGHA CHOUDHARI

Megha is a subject matter expert on many important ASRS processes like Pension. She also has a working knowledge of every ASRS system because as the manager of the production support area she must be equipped to support everything in order to do her job at the level she

performs. Megha is available and responsible to ensure that any payroll issue gets resolved immediately and works with the business users to complete the payroll each month.

Megha listens to the business and solves their problems to the best of her team's ability quickly and efficiently. Megha takes her role very seriously and is fully committed to the wellbeing of ASRS and its members. Megha provides excellent customer service by meeting with a group of business users on a regular basis to prioritize the backlog of Production Support issues and to communicate status. Megha responds to the needs of the business users by working on the production support issues that are most important to them. She is honest and realistic when dealing with the business and when managing her team.

Megha took a very proactive approach to her new duties as the manager of the production support team by implementing official processes and learning aids for how to submit issues and services requests to TSD. These changes have benefited TSD and all business units.

Megha consistently delivers good results. The number of unresolved Production Support issues has dropped this calendar year from 553 at the beginning of the year to 459 at the end of the year. Megha has a personal goal to keep the number of unresolved Production Support issues to under 500. Megha consistently gets her Production Support incidents, service requests and improvements to Release on time each month, effectively managing the development and user acceptance testing of these issues.

NIS

(MICHELLE ROSHTO, NICK DALMOLIN, ROBERT VIRGIL, SEAN STEVENS, ANDREW BRUNER, MICHAEL ZYCH, BRANDON WILSON, THOMAS NEITH, JOHN DAVIS)

Displays positive demeanor (friendly, responsive, courteous) even when confronted by adversity:

This team on a daily basis interacts with all of the ASRS as well as outside vendors. They show professionalism, respect for others and encourage and help each other on a daily basis.

Has subject matter expertise:

This team is packed full of SME's. Together they maintain our websites and applications and in the event something is down they all come together to get it back up and working, so the impact is as minimal as possible. They learn from mistakes and continue to improve in each of their areas.

Possesses good communication and active listening skills:

This team listens to the other departments and they try to make changes and adjustments as they come to improve all processes, to help make everyone's job that much easier at the end of the day. From creating scripts to changing what printer the daily Printops goes to. They are always there for the customer.

Is a trusted contributor (manager, leader, SME, analyst, teammate):

This team functions like a machine. They all work and brainstorm together with each other and with other departments. They assist in daily, monthly and yearly activities with other departments. Providing that SME insight.

Takes personal accountability:

If a mistake is made, the team acknowledges that mistake and comes up with ways to keep it from happening again.

Has proactive and responsive approach to internal and external customer needs:

As the team comes along problems, they creatively think of ways to improve the process and how the team could catch any issues before they happen. There is always an individual on the team that checks the system on a daily basis to make sure that they are up and running.

Has critical thinking skills:

This is a must for this team, the various applications that they must ensure are up and running and the 150 plus servers that they maintain, sometimes issues that come along that are not the norm, they have to “think outside the box.”

Has an honest, fair and non-judgmental mind-set:

This group helps users with simple to complex issues and they always leave the users with information that could help them going forward.

Is adaptable to change that benefits members, associates and stakeholders:

They strive to improve the interaction with all members, associates and stakeholders with the ASRS.

Adheres to the State and ASRS Code of Conduct:

They display this in the work that they do on a daily basis.

This group of individuals strives to keep the applications and other systems up and running at all times. They often stay late and work extra hours in order to get this done. They work as a team. Once a month, they work with the development team to deploy new and updated applications to the users. They stay late and come in early and are often overlooked. I feel they display all the qualities of Professionalism.

JENNIFER CHANG

Jennifer has demonstrated a great deal of professionalism when working collaboratively with other business units. I have not only observed the professionalism, but also received specific feedback that Jennifer has really helped out other business units by understanding their processes and applying the learned knowledge to her work, so that she can do research that would normally be done by others and help both identify and resolve discrepancies timely and accurately. Her experience and positive attitude have been exhibited and confirm her dedication to developing and maintaining a professional contribution to the agency!

MARCIA KUMAMOTO

I am nominating Marcia for her proactive efforts and professional demeanor when working with both internal and external parties. I have spent quite a bit of time working with and learning from Marcia to better understand information that is received from employers and the different methods in which we receive information and moneys. Further, I have benefited from Marcia’s expertise in understanding what resources employers have when it comes to understanding their reporting capabilities in the employer portal. I have also benefited a great deal from Marcia’s assistance with individual employers in helping resolve and prevent issues. Specifically, I have observed Marcia proactively identify upcoming issues that may not be publicized so that others can plan, as well as I have seen Marcia volunteer to help contact employers when there are complex issues to address. My observations of Marcia’s professionalism extend to the treatment of her peers, direct reports, and other business units. Marcia knows and understands her role and works hard to maintain a positive and professional performance.

Agenda Item #6

ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

MEMORANDUM

TO: Mr. Kevin McCarthy, Chair, Arizona State Retirement System (ASRS) Board

FROM: Mr. Jeff Tyne, Chair, Operations and Audit Committee
Mr. Dave King, Assistant Director, Member Services Division
Ms. Martha Rozen, Chief Procurement Officer and Assistant Director, Administrative Services Division

DATE: April 19, 2016

RE: **Agenda Item #6**: Presentation, Discussion and Appropriate Action Regarding the ASRS Long Term Disability (LTD) Program Administration Contract Award

Purpose
To review and accept the recommendation of the Evaluation Committee for the ASRS LTD Program Administration contract award.

Recommendation
Accept the Evaluation Committee's recommendation.

Background
The ASRS will conclude a five-year contract for LTD administration services with Sedgwick Claims Management Services, Inc. on June 30, 2016. As required by Arizona statutes a solicitation for requests for proposals for the LTD Program Administration services was issued on January 20, 2016 through the Arizona State Procurement Office's online procurement system (ProcureAZ).

Three firms submitted Offers by the due date of February 29, 2016:

- Broadspire Services, Inc.
- Reed Group Management LLC
- Sedgwick Claims Management Services, Inc.

All three firms were determined to be responsible, responsive, and susceptible for award.

The Evaluation Committee, comprised of five staff members and advised by eleven staff members, met throughout February, March and April to evaluate the Offers based on the evaluation criteria, as set forth in the solicitation documents, which included: experience and qualifications, cost, and methodology/administrative capability.

A detailed summary of the Evaluation Committee's evaluation process and recommendation may be found on the attached confidential exhibit.

Confidential Materials were provided to the Board and not included in this book.

Agenda Item #7

Director's Report

7a - Investments

7b - Operations

7c - Budget & Staffing

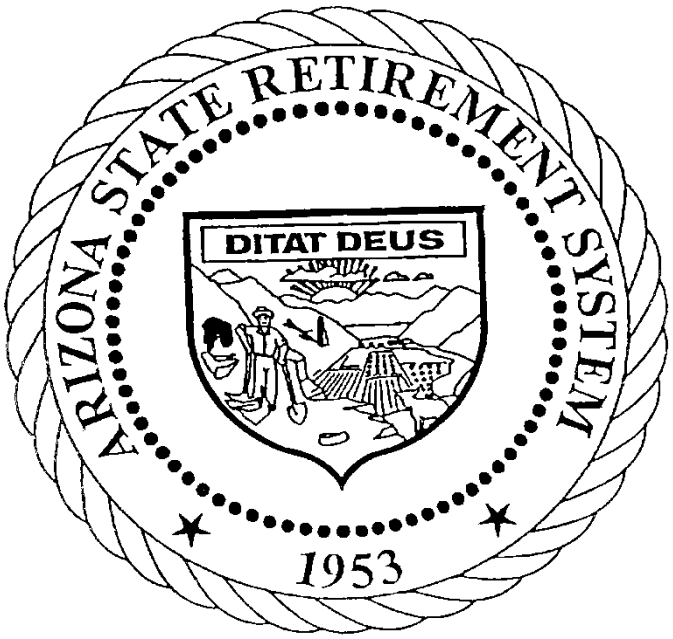
7d - Cash Flow Statement

7e - Appeals

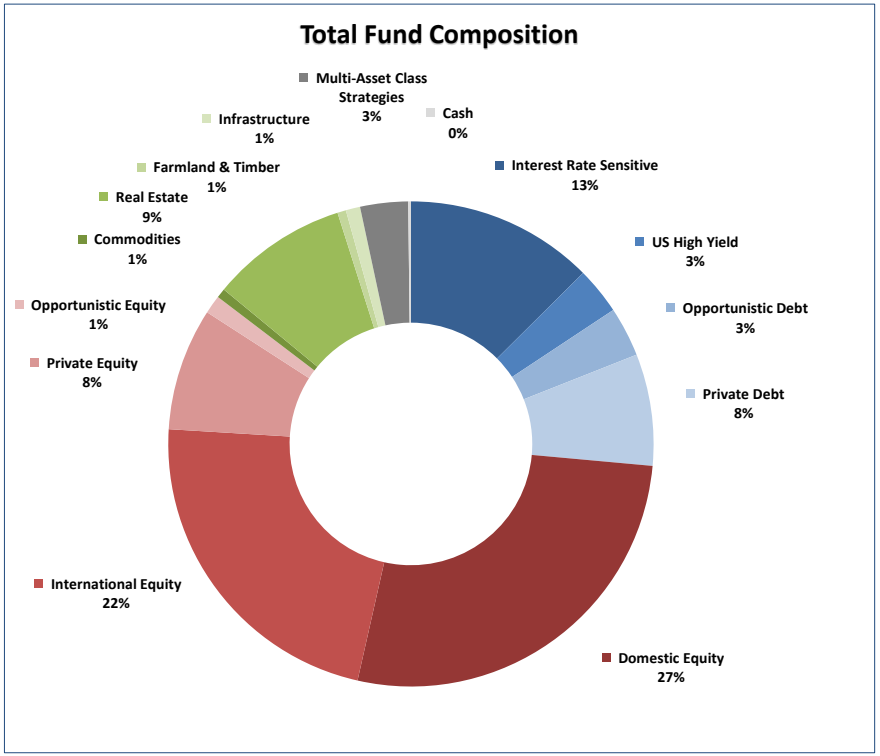
7f - Employers Reporting

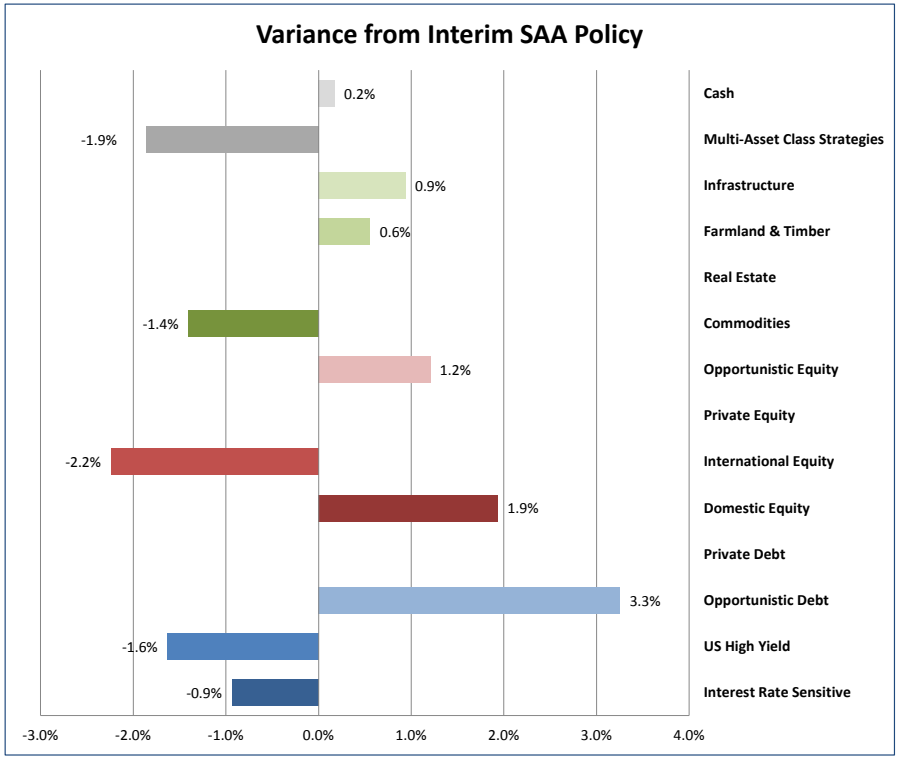
Agenda Item #7a

Director's Report
Investments



Total Fund Positioning March 31, 2016





All Private Markets asset classes' market values are reported on a quarter-lag basis and adjusted to include the current quarter's cash flow.

Pension (Plan, System, HBS Assets) — ASRS Market Value Report — Thursday, March 31, 2016

Account Manager	Account Manager Style	Fixed Income Active	Fixed Income Enh/Passive	Equity Active	Equity Enh/Passive	Inflation Linked Active	Multi-Asset Active	Total	Pct of Fund
State Street B&T: Boston	Tactical Cash (non-assetized)							0	0.00%
								Tactical Cash Policy Range: 0% - 3%	**0.00%**
	Operating Cash (non-assetized)		58,929,081					58,929,081	0.18%
	Cash Total							**$59,047,994**	0.18%
								Cash Policy: 0%	**0.00%**
Blackrock: San Francisco	Treasuries (Long Duration)		382,034,763					382,034,763	1.14%
	Treasuries (Long Duration) Total							**$382,034,763**	1.14%
								Treasuries (Long Duration) Policy Range: 0% - 10%	**0.00%**
Blackrock: San Francisco	Passive (Intermediate Gov Credit)		24,956,362					24,956,362	0.07%
Operating Cash (assetized)	US Treasuries		229,161,280					229,161,280	0.68%
ASRS: Phoenix	Enhanced Passive F2		1,927,204,588					1,927,204,588	5.73%
Blackrock: San Francisco	Passive (US Debt Index)		1,589,042,507					1,589,042,507	4.72%
	Core Fixed Income Total							**$3,770,364,736.78**	11.20%
	Interest Rate Sensitive							**$4,152,399,499.87**	12.34%
								Interest Rate Sensitive: 11%	**11.00%**
Columbia: Minneapolis	Active	691,144,083						691,144,083	2.05%
JP Morgan: Indianapolis	Active	346,999,234						346,999,234	1.03%
	High Yield Fixed Income Total							**$1,038,157,079**	3.08%
								High Yield Fixed Income Policy	**4.00%**
	Opportunistic Debt	1,095,898,845						**$1,095,898,845**	3.26%
								Opportunistic Debt Policy:	**0.00%**
	Private Debt Total	2,462,640,526						**$2,462,640,526**	7.32%
								Private Debt Policy Range: 8% - 12%	**10.00%**
	Fixed Income Total							**$8,749,095,950**	26.00%
								Total Fixed Income Policy Range: 18% - 35%	**25.00%**
LSV: Chicago	Active (Value)			703,098,834				703,098,834	2.09%
ASRS: Phoenix	Passive E2				4,937,410,704			4,937,410,704	14.67%
ASRS: Phoenix	Enhanced Passive E7				612,976,420			612,976,420	1.82%
Operating Cash (assetized)	S&P 500				68,748,384			68,748,384	0.20%
ASRS: Phoenix	Enhanced Passive E8				592,446,220			592,446,220	1.76%
	Large Cap Equity Total							**$6,914,680,994**	20.55%
								Large Cap Policy	**20.00%**
Wellington: Boston	Active (Core)			272,494,634				272,494,634	0.81%
ASRS: Phoenix	Passive E3 (Growth)				397,190,708			397,190,708	1.18%
Operating Cash (assetized)	Russell 2000				34,374,192			34,374,192	0.10%
ASRS: Phoenix	Passive E4 (Value)				369,621,398			369,621,398	1.10%
	Mid Cap Equity Total							**$1,073,680,932**	3.19%
								Mid Cap Policy	**3.00%**
TimesSquare: New York	Active (Growth)			341,798,017				341,798,017	1.02%
Operating Cash (assetized)	Russell 2000				34,374,192			34,374,192	0.10%
DFA: Santa Monica	Active (Value)			271,769,619				271,769,619	0.81%
ASRS: Phoenix	Passive E6				325,351,751			325,351,751	0.97%
	Small Cap Equity Total							**$973,293,579**	2.89%
								Small Cap Policy	**3.00%**
	U.S. Equity Total							**$8,961,655,505**	26.63%
								US Equity Policy Range: 16% - 36%	**26.00%**
Brandes: San Diego	Active (Value)			554,121,516				554,121,516	1.65%
American Century	Active (EAFE)			539,288,265				539,288,265	1.60%
Trinity Street	Active (EAFE)			317,036,008				317,036,008	0.94%
Operating Cash (assetized)	MSCI EAFE				73,331,609			73,331,609	0.22%
Thompson Siegel Walmsley	Active (EAFE)			291,178,289				291,178,289	0.87%
Blackrock: San Francisco	Passive (EAFE)				3,906,854,026			3,906,854,026	11.61%
	Large Cap Developed Non-US Equity Total							**$5,682,448,824**	16.89%
								Large Cap Developed Policy	**17.00%**
AQR: Greenwich	Active (EAFE SC)			97,608,300				97,608,300	0.29%
DFA: Santa Monica	Active (EAFE SC)			101,559,564				101,559,564	0.30%
Franklin Templeton: San Mateo	Active (EAFE SC)			217,088,480				217,088,480	0.65%
Blackrock: San Francisco	Passive (EAFE SC)				253,717,148			253,717,148	0.75%
	Small Cap Developed Non-US Equity Total							**$669,976,005**	1.99%
								Small Cap Developed Policy	**2.00%**
William Blair: Chicago	Active (EM)			350,769,585				350,769,585	1.04%
Eaton Vance: Boston	Active (EM)			272,184,753				272,184,753	0.81%
LSV: Chicago	Active (EM)			113,662,968				113,662,968	0.34%
Operating Cash (assetized)	MSCI EM				18,332,902			18,332,902	0.05%
Blackrock: San Francisco	Passive (EM)				315,044,507			315,044,507	0.94%
	Emerging Markets Equity Total							**$1,069,994,715**	3.18%
								Emerging Markets Policy	**5.00%**
	Non-US Equity Total							**$7,422,419,544**	22.06%
								Non-US Equity Policy Range: 14% - 34%	**24.00%**
ASRS: Phoenix	Risk Factor Portfolio				567,997,797			567,997,797	1.69%
	Public Equity Total							**$16,952,072,846**	50.37%
	Private Equity Total			2,699,883,713				**$2,699,883,713**	8.02%
								Private Equity Policy Range: 6% - 10%	**8.00%**
	Opportunistic Equity			406,658,984				**$406,658,984**	1.21%
								Opportunistic Equity Policy:	**0.00%**
	Equity Total							**$20,058,615,543**	59.61%
								Total Equity Policy Range: 48% - 65%	**58.00%**
Gresham: New York						207,016,006		207,016,006	0.62%
	Commodities Total							**$207,016,006**	0.62%
								Commodities Policy Range: 0% - 4%	**2.00%**
	Real Estate Total					3,018,112,990		**$3,018,112,990**	8.97%
								Real Estate Policy Range: 8% - 12%	**10.00%**
	Infrastructure Total					316,552,365		**$316,552,365**	0.94%
								Infrastructure Policy Range: 0% - 3%	**0.00%**
	Farmland & Timber Total					188,451,382		**$188,451,382**	0.56%
								Farmland & Timber Policy Range: 0% - 3%	**0.00%**
	Inflation Linked Total							**$3,730,132,744**	11.08%
								Inflation Linked Policy Range: 10% - 16%	**12.00%**
Bridgewater							1,054,884,309	1,054,884,309	3.13%
	Multi-Asset Class Strategies							**$1,054,884,309**	3.13%
								Multi-Asset Class Policy Range: 0% - 12%	**5.00%**
	TOTAL Amounts	$4,596,696,450	$4,211,447,494	$7,550,712,376	$12,507,903,167	$3,730,132,744	$1,054,884,309	**$33,651,776,540**	**Total Fund**
	TOTAL Percent	13.66%	12.51%	22.44%	37.17%	11.08%	3.13%		

Asset Class	Actual Portfolio	SAAP Target (Range)	Interim SAA* Adj Policy	Actual - Interim SAA** % diff	$ diff	Policy Band check Actual - Adj Policy
Tactical Cash	0.00%	0% (0-3%)	0.00%	0.00%		
Cash	0.18%	0.00%	0.00%	0.18%	59,047,994	
Interest Rate Sensitive	12.34%	11%	13.28%	-0.94%		
High Yield	3.08%	4%	4.72%	-1.63%		
Opportunistic Debt	3.26%	0%	0.00%	3.26%	$1,095,898,845	
Private Debt	7.32%	10% (8-12%)	7.32% (5-9%)	0.00%		
Total Fixed Income	**26.00%**	**25% (18-35%)**	**25.31% (18-35%)**	**0.69%**	**$232,032,416**	**OK**
Large Cap	20.55%	20%	18.91%	1.64%	$550,623,185	
Mid Cap	3.19%	3%	2.78%	0.41%	$138,214,305	
Small Cap	2.89%	3%	3.00%	-0.11%	-$36,259,717	
US Equity	**26.63%**	**26% (16-36%)**	**24.69% (15-35%)**	**1.94%**	**$652,577,773**	**OK**
Developed Large Cap	16.89%	17%	17.30%	-0.41%	-$139,001,940	
Developed Small Cap	1.99%	2%	2.00%	-0.01%	-$3,059,526	
Emerging Markets	3.18%	5%	5.00%	-1.82%	-$612,594,112	
Non-US Equity	**22.06%**	**24% (14-34%)**	**24.3% (14-34%)**	**-2.24%**	**-$754,655,578**	**OK**
Risk Factors	1.69%	0%	1.69%	0.00%		
Private Equity	8.02%	8% (6-10%)	8.02%	0.00%	$0	**OK**
Opportunistic Equity	1.21%	0%	0.00%	1.21%	$406,658,984	
Total Equity	**59.61%**	**58% (48-65%)**	**58.7% (49-66%)**	**0.91%**	**$304,581,179**	**OK**
Commodities	0.62%	2% (0-4%)	2.02%	-1.41%	-$472,960,818	**OK**
Real Estate	8.97%	10% (8-12%)	8.97%	0.00%	$0	**OK**
Infrastructure	0.94%	0% (0-3%)	0.00%	0.94%	$316,552,365	**OK**
Farmland & Timber	0.56%	0% (0-3%)	0.00%	0.56%	$188,451,382	**OK**
Opportunistic I/L	0.00%	0%	0.00%	0.00%	$0	
Total Inflation Linked	**11.08%**	**12% (10-16%)**	**10.99% (9-13%)**	**0.10%**	**$32,042,929**	**OK**
Multi-Asset Strategies* **	**3.13%**	**5% (0-12%)**	**5% (0-12%)**	**-1.87%**	**-$627,704,518**	**OK**
Total	**100.00%**	**100%**	**100.00%**	**0.00%**	**$0**	

Internally Managed Portfolios:	
$9,162,201,790	**27%**

***Interim SAA includes a proration of unfunded Private Equity, Private Debt, and Real Estate**
****Private Equity is prorated to domestic equity; Real Estate is prorated to equity, commodities, and fixed income; Private Debt is prorated to Interest Rate Sensitive and High Yield**

Opportunistic definitions:
An investment in a category that is not included in the ASRS Asset Allocation policy and represents an investment opportunity that is tactical in nature.
Opportunistic investments have a 0% target (0%-10% range), regardless of asset class.

Total Opportunistic		
Opportunistic Debt	**$1,095,898,845**	**3.3%**
Opportunistic Equity	**$406,658,984**	**1.2%**
Opoprtunistic IL	**$0**	**0.0%**
	$1,502,557,828	**4.5%**

ARIZONA STATE RETIREMENT SYSTEM
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ASRS Pension and HBS Assets

Public Securities Markets

Investment Managers Performance Summary

	Benchmark	Market Value ($mil.)	1 Mth	3 Mth	1 Year	3 Year	5 Year	10 Year	ITD	Inception Date
US EQUITY LARGE CAP										
E2 MODEL	S&P 500 INDEX (DAILY)	4,635	-0.13	-6.63	-6.24	10.69	10.11	6.48	7.12	04-01-1997
Excess			0.00	-0.04	-0.05	-0.06	-0.03	0.04	0.07	
LSV ASSET MANAGEMENT	LSV CUSTOM INDEX	656	0.43	-8.37	-11.52	9.74	9.51	6.16	9.74	01-01-2003
Excess			-0.13	-2.41	-3.42	1.37	1.01	1.25	1.86	
E7	MSCI USA High Dividend Yield Index	577	0.87	-1.64	-1.12	11.00			11.70	08-01-2012
Excess			-0.02	-0.16	-0.25	-0.05			-0.04	
E8	MSCI USA Minimum Volatility Index	560	1.05	0.02	1.90	12.67			13.05	08-01-2012
Excess			-0.04	-0.18	-0.18	0.14			0.31	
TOTAL US EQUITY LARGE CAP	**S&P 500 INDEX (DAILY)**	**6,429**	**0.11**	**-5.77**	**-5.62**	**10.78**	**10.04**	**6.47**	**7.23**	**06-01-2002**
Excess			0.25	0.81	0.57	0.03	-0.09	0.03	0.67	
US EQUITY MID CAP										
WELLINGTON MANAGEMENT COMPANY LLP	S&P 400 MIDCAP INDEX (DAILY)	253	1.42	-11.15	-10.54	10.57	8.64	7.84	10.15	07-01-2002
Excess			0.01	-2.81	-0.55	2.38	0.37	0.67	1.03	
E3 MODEL	S&P/CITIGROUP 400 GROWTH	375	0.60	-8.57	-8.14	8.71	8.66	8.35	7.81	12-01-2000
Excess			0.01	-0.11	-0.12	-0.02	0.15	0.49	0.50	
E4 MODEL	S&P/CITIGROUP 400 VALUE	336	2.23	-8.42	-12.29	7.42	7.88	6.64	9.03	07-01-2002
Excess			-0.02	-0.07	-0.08	-0.07	-0.09	0.24	0.17	
TOTAL US EQUITY MID CAP	**S&P 400 MIDCAP INDEX (DAILY)**	**964**	**1.38**	**-9.22**	**-10.30**	**8.62**	**8.20**	**7.18**	**9.08**	**06-01-2002**
Excess			-0.03	-0.87	-0.32	0.43	-0.07	0.01	0.62	
US EQUITY SMALL CAP										
DIMENSIONAL FUND ADVISORS EQFD	DFA BLENDED BENCHMARK	250	2.17	-9.88	-12.97	6.55	6.81	5.86	10.67	09-01-1998
Excess			0.03	-1.11	-2.38	-1.45	-1.81	-0.39	0.76	
E6	S&P 600 SMALL CAP (DAILY)	302	1.10	-9.69	-8.91	9.05	9.25		6.64	02-01-2007
Excess			-0.02	-0.03	0.19	0.03	-0.08		0.32	
TIMESSQUARE CAPITAL MANAGEMENT	TIMESSQUARE BLENDED BENCHMARK	320	-0.81	-13.40	-13.49	6.47	9.01	8.67	10.06	04-01-2005
Excess			-0.10	2.29	3.28	-0.73	1.75	2.29	2.35	
TOTAL US EQUITY SMALL CAP	**ASRS SMALL CAP CUSTOM INDEX**	**872**	**0.69**	**-11.14**	**-11.77**	**7.23**	**8.23**	**6.78**	**9.12**	**06-01-2002**
Excess			-0.43	-1.48	-2.66	-1.80	-1.10	-0.07	0.69	

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Public Securities Markets

Investment Managers Performance Summary

	Benchmark	Market Value ($mil.)	1 Mth	3 Mth	1 Year	3 Year	5 Year	10 Year	ITD	Inception Date
TOTAL US EQUITY	**COMBINED DOMESTIC EQUITY INDEX**	**8,265**	**0.32**	**-6.73**	**-6.62**	**10.23**	**9.70**	**6.83**	**10.93**	**07-01-1975**
Excess			0.03	0.57	0.54	0.07	-0.08	0.07	-0.06	
INTERNATIONAL DEVELOPED LARGE CAP										
BRANDES INVESTMENT PARTNERS INT EQ	BRANDES CUSTOM INDEX	523	-1.39	-8.69	-12.52	4.51	1.58	2.17	7.96	10-01-1998
Excess			0.44	1.47	2.66	4.00	0.76	-0.57	2.91	
AMERICAN CENTURY	MSCI EAFE NET (BLENDED)	507	-2.81	-10.48	-12.72				-8.33	07-01-2014
Excess			-0.97	-0.32	2.46				2.92	
BGI EAFE INDEX	MSCI EAFE NET (BLENDED)	3,647	-1.79	-10.14	-14.93	0.62	0.83		5.80	07-01-2009
Excess			0.04	0.02	0.25	0.12	0.01		-0.01	
THOMSON, SIEGEL & WALMSLEY	MSCI EAFE NET (BLENDED)	269	-2.20	-10.26	-12.74				-9.65	07-01-2014
Excess			-0.37	-0.10	2.45				1.60	
TRINITY STREET	MSCI EAFE NET (BLENDED)	294	-1.58	-10.08	-11.46				-10.22	07-01-2014
Excess			0.25	0.08	3.72				1.03	
TOTAL INTERNATIONAL DEVELOPED LARGE CAP	**MSCI EAFE NET (BLENDED)**	**5,240**	**-1.86**	**-10.03**	**-14.30**	**0.63**	**0.75**			**09-01-2009**
Excess			-0.03	0.13	0.88	0.12	-0.07			
INTERNATIONAL DEVELOPED SMALL CAP										
AQR CAPITAL	MSCI EAFE SMALL CAP NET (BLENDED)	90	-0.97	-6.74	-2.31				6.33	06-01-2013
Excess			-0.85	0.56	3.14				1.74	
BLACKROCK EAFE SMALL CAP	MSCI EAFE SMALL CAP NET (BLENDED)	234	-0.13	-7.31	-5.40	5.34	3.99		9.03	06-01-2010
Excess			-0.01	-0.01	0.05	0.02	-0.15		-0.11	
DIMENSIONAL FUND ADVISORS INTL SC	MSCI EAFE SMALL CAP NET (BLENDED)	94	-0.07	-8.04	-11.74	2.25	1.09	2.50	3.90	09-01-2005
Excess			0.05	-0.74	-6.29	-3.07	-3.05	-0.91	-1.03	
FRANKLIN TEMPLETON INVESTMENTS	MSCI EAFE SMALL CAP NET (BLENDED)	195	-2.35	-10.26	-10.94	1.99			4.17	04-01-2011
Excess			-2.23	-2.96	-5.49	-3.33			-0.05	
TOTAL INTERNATIONAL DEVELOPED SMALL CAP	**MSCI EAFE SMALL CAP NET (BLENDED)**	**613**	**-0.96**	**-8.30**	**-8.04**	**3.96**	**4.13**		**6.18**	**10-01-2009**
Excess			-0.84	-1.00	-2.59	-1.36	-0.01		-0.67	
INTERNATIONAL EMERGING MARKETS										
BLACKROCK EMERGING MARKETS	MSCI EMF NET (BLENDED)	279	-0.19	-8.81	-23.57	-9.08	-5.62		-4.61	10-01-2010
Excess			-0.03	-0.09	-0.16	-0.27	-0.39		-0.37	
EATON VANCE EMERGING MARKET EQUITY	MSCI EMF NET (BLENDED)	244	0.94	-5.26	-21.41	-8.09	-4.66		-4.03	12-01-2010

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ASRS Pension and HBS Assets

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Investment Managers Performance Summary

	Benchmark	Market Value ($mil.)	1 Mth	3 Mth	1 Year	3 Year	5 Year	10 Year	ITD	Inception Date
Excess			1.10	3.46	2.00	0.72	0.57		0.37	
LSV EMERGING MARKET EQUITY	MSCI EMF NET (BLENDED)	100	-0.04	-9.59	-26.84	-10.37	-5.79		-4.70	12-01-2010
Excess			0.13	-0.87	-3.43	-1.56	-0.56		-0.30	
WILLIAM BLAIR & COMPANY	MSCI EMF NET (BLENDED)	316	-1.59	-11.01	-23.44	-6.30	-1.76		-2.58	11-01-2010
Excess			-1.43	-2.29	-0.03	2.51	3.46		2.23	
TOTAL INTERNATIONAL EMERGING MARKETS	**MSCI EMF NET (BLENDED)**	**939**	**-0.36**	**-8.77**	**-23.53**	**-8.38**	**-4.57**		**-4.08**	**10-01-2010**
Excess			-0.20	-0.04	-0.12	0.43	0.66		0.16	
TOTAL INTERNATIONAL EQUITY	**INTERNATIONAL EQUITY INDEX**	**6,793**	**-1.58**	**-9.70**	**-15.16**	**-1.28**	**-0.31**	**1.52**	**5.45**	**04-01-1987**
Excess			-0.40	-0.29	0.95	0.03	0.00	-0.65	0.32	
RISK FACTOR PORTFOLIO										
RISK FACTOR PORTFOLIO		534	0.40	-6.13	-5.20				9.29	06-01-2013
TOTAL EQUITY W/ RISK FACTOR OVERLAY	**MSCI WORLD NET (BLENDED)**	**15,592**	**-0.51**	**-8.03**	**-10.71**	**5.42**	**5.87**	**4.81**	**5.90**	**01-01-1998**
Excess			0.23	0.29	0.30	-0.06	0.61	0.54	0.82	
TOTAL EQUITY W/O RISK FACTOR	**MSCI WORLD NET (BLENDED)**	**15,058**	**-0.54**	**-8.10**	**-10.88**	**5.35**	**5.82**	**4.79**	**5.89**	**01-01-1998**
Excess			0.20	0.23	0.12	-0.13	0.56	0.51	0.81	
INTEREST RATE SENSITIVE										
BLACKROCK LONG GOVT BONDS	Barclays Treasury Long (Daily)	382	2.99	8.03					8.29	09-01-2015
Excess			0.01	-0.11					-0.02	
BGI US DEBT FD	Barclays Aggregate (Daily)	1,578	0.67	1.79	1.58				3.34	05-01-2014
Excess			-0.04	0.03	0.08				0.15	
F2 MODEL	Barclays Aggregate (Daily)	1,910	0.70	1.74	1.85	2.52	3.88	4.96	5.42	10-01-2000
Excess			-0.01	-0.02	0.34	0.31	0.28	0.26	0.17	
BGI GOVT/CRDTBD INDEX	Barclays Gov/Credit Int (Daily)	25	0.47	1.42	1.94	1.77	2.98		4.48	11-01-2008
Excess			-0.02	0.05	0.11	0.13	0.12		0.10	
INTEREST RATE SENSITIVE	**Barclays Aggregate (Daily)**	**3,895**	**0.91**	**2.35**	**2.29**	**2.56**			**2.41**	**01-01-2013**
Excess			0.20	0.59	0.79	0.34			0.37	
HIGH YIELD FIXED INCOME										
COLUMBIA MANAGEMENT INV. ADVISORS, LLC	Barclays Corp High Yield (Daily)	674	1.23	-0.90	-2.69	3.19	5.66		7.86	10-01-2009
Excess			0.66	2.64	5.60	2.48	1.57		0.82	
JP MORGAN HIGH YIELD	Barclays Corp High Yield (Daily)	334	0.37	-3.33	-7.26				1.34	07-01-2013

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ARIZONA STATE RETIREMENT SYSTEM
Investment Management Division
Feb-29-2016
Net Returns
Final

ASRS Pension and HBS Assets

Public Securities Markets

Investment Managers Performance Summary

	Benchmark	Market Value ($mil.)	1 Mth	3 Mth	1 Year	3 Year	5 Year	10 Year	ITD	Inception Date
Excess			-0.20	0.20	1.04				0.36	
TOTAL HIGH YIELD FIXED INCOME	**Barclays Corp High Yield (Daily)**	**1,009**	**0.95**	**-1.72**	**-4.26**	**2.41**	**4.96**		**7.22**	**10-01-2009**
Excess			0.37	1.82	4.04	1.69	0.87		0.18	
TOTAL PUBLIC FIXED INCOME	**ASRS CUSTOM FIXED INCOME BENCHMARK**	**4,904**	**0.91**	**1.50**	**0.67**	**1.19**	**3.39**	**4.84**	**8.23**	**07-01-1975**
Excess			0.10	1.37	4.03	1.45	1.11	0.79		
MULTI-ASSET CLASS STRATEGIES										
BRIDGEWATER ASSOCIATES GLBL TAA	BRIDGEWATER CUSTOM BENCHMARK	1,064	-4.11	-5.52	-8.64	6.11	7.39	7.41	7.80	01-01-2004
Excess			-4.12	-5.56	-7.56	-0.79	0.59	1.98	1.77	
TOTAL MULTI-ASSET CLASS STRATEGIES	**MULTI ASSET CUSTOM INDEX**	**1,064**	**-4.11**	**-5.52**	**-9.70**	**4.73**	**5.95**	**6.21**	**6.73**	**01-01-2004**
Excess			-4.12	-5.56	-7.45	-1.74	-0.60	0.90	0.80	
GLOBAL INFLATION LINKED										
GRESHAM	Bloomberg Commodity Index Total Return	199	-1.12	-7.25	-27.99	-17.83	-13.53		-7.98	09-01-2010
Excess			0.51	-0.99	-1.48	-0.12	0.91		1.37	
TOTAL GLOBAL INFLATION LINKED	**Bloomberg Commodity Index Total Return**	**199**	**-1.12**	**-7.25**	**-27.99**	**-17.82**	**-13.41**		**-7.92**	**02-01-2010**
Excess			0.51	-0.99	-1.48	-0.10	1.03		0.36	
CASH ASSETIZATION										
TOTAL CASH ASSETIZATION	**CASH ASSETIZATION CUSTOM INDEX**	**523**	**-0.18**	**-4.22**	**-8.88**				**-4.80**	**02-01-2015**
Excess			-0.30	-0.59	4.82				4.92	
TOTAL PUBLIC MARKET		**22,306**	**-0.37**	**-5.84**	**-8.66**	**4.01**	**4.92**		**7.48**	**10-01-2009**

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ARIZONA STATE RETIREMENT SYSTEM
Investment Management Division
Feb-29-2016
Net Returns
Final

ASRS Long Term Disability Assets

Investment Managers Performance Summary

	Benchmark	Market Value ($mil.)	1 Mth	3 Mth	YTD	1 Year	3 Year	5 Year	10 Year	ITD	Inception Date
LTD											
BLACKROCK - US DEBT FUND B	Barclays Aggregate (Daily)	36.8	0.66	1.78	2.13	1.50	2.21	3.63		3.59	01-01-2011
Excess			-0.05	0.01	0.03	0.00	-0.01	0.03		0.03	
BLACKROCK - US HIGH YIELD FUND B	Barclays Corp High Yield (Daily)	13.9	0.91	-2.95	-0.54	-8.34	0.68	3.93		4.54	01-01-2011
Excess			0.34	0.58	0.50	-0.05	-0.04	-0.16		-0.12	
BLACKROCK-LTD-EM BD INDX FD B	JPM GBI-EM Global Diversified Index	0.1	1.40	-0.76	1.74	-13.16	-10.29			-9.73	01-01-2013
Excess			-0.04	-0.29	-0.06	-0.65	-0.75			-0.77	
BLACKROCK - RUSSELL 1000 FUND B	RUSSELL 1000 (DAILY)	49.6	-0.02	-7.11	-5.40	-7.15	10.44	9.93		10.85	01-01-2011
Excess			0.01	0.01	0.02	0.06	0.01	0.02		0.02	
BLACKROCK - RUSSELL 2000 FUND B	RUSSELL 2000 (DAILY)	26.3	0.03	-13.32	-8.74	-14.75	5.92	6.29		7.15	01-01-2011
Excess			0.03	0.06	0.06	0.23	0.19	0.18		0.19	
BLACKROCK - EAFE INDEX FUND B	MSCI EAFE NET (BLENDED)	28.5	-1.83	-10.20	-8.94	-15.20	0.38	0.60		1.68	01-01-2011
Excess			-0.00	-0.04	-0.01	-0.02	-0.13	-0.22		-0.22	
BLACKROCK EAFE SMALL CAP FUND B	MSCI EAFE SMALL CAP NET (BLENDED)	3.7	-0.15	-7.34	-7.96	-5.45	5.34	4.00		4.49	01-01-2011
Excess			-0.03	-0.04	0.02	0.00	0.02	-0.14		-0.13	
BLACKROCK MSCI EMERGING MARKETS FUND B	MSCI EMF NET (BLENDED)	9.4	-0.15	-8.82	-6.66	-23.60	-9.14	-5.65		-6.14	01-01-2011
Excess			0.02	-0.10	-0.02	-0.19	-0.33	-0.42		-0.41	
BGI-LTD- R ESTATE FD	WILSHIRE RESI (DAILY)	21.2	-0.93	-2.86	-4.87	-3.62	8.19	9.19	5.47	6.96	01-01-2005
Excess			-0.10	-0.07	-0.22	-0.46	-0.43	-0.82	-0.49	-0.46	
BLACKROCK DJ UBS COMM FUND B	Bloomberg Commodity Index Total Return	2.8	-1.63	-6.40	-3.25	-26.65	-17.97	-14.73		-13.92	01-01-2011
Excess			0.00	-0.13	0.03	-0.14	-0.26	-0.30		-0.29	
LONG TERM DISABILITY - CASH	91 DAY TREASURY BILL (DAILY)	2.4	0.02	0.03	0.03	0.03	0.01	0.03	1.25	2.57	07-01-1995
Excess			-0.01	-0.03	0.00	-0.05	-0.05	-0.05	0.06	-0.05	
TOTAL LTD	**LTD POLICY INDEX**	**194.8**	**-0.18**	**-5.89**	**-4.53**	**-8.91**	**4.03**	**4.96**	**4.03**	**5.59**	**07-01-2002**

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Private Markets Performance Summary - September 30, 2015

Asset Class	Net Asset Value	ITD IRR	ITD Benchmark	Out Performance
Private Equity	$ 2,612,677,353	11.40%	9.47%	1.93%
			Russell 2000	
Real Estate	$ 2,706,475,429	7.49%	6.75%	0.74%
			ODCE - net	
Private Opportunistic Equity	$ 482,107,520	23.90%	8.00%	15.90%
			Absolute 8	
Private Debt	$ 1,994,407,118	11.38%	4.92%	6.46%
			Leveraged Loans + 250bps	
Opportunistic Fixed Income	$ 1,117,410,462	10.31%	8.00%	2.31%
			Absolute 8	

Long Term Disability (LTD)

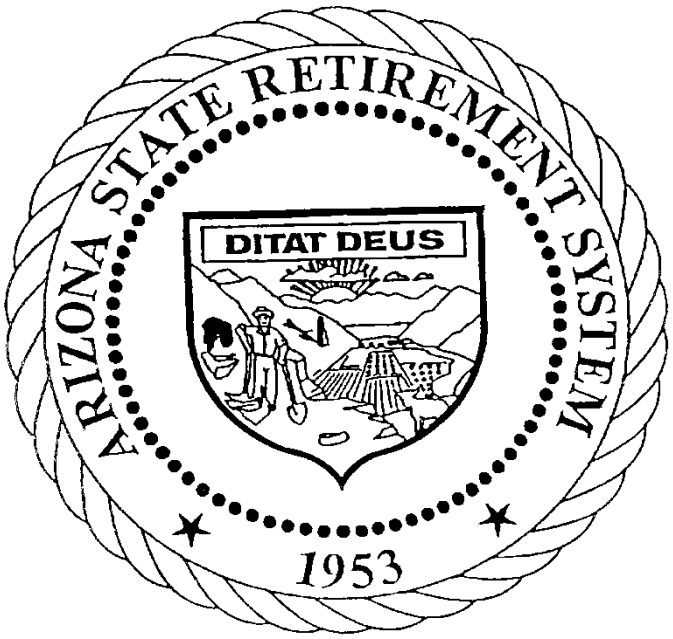
Thursday, March 31, 2016

Account Manager	Account Manager Style	Fixed Income	Equity	Inflation Linked	Total	Pct of Fund	Target (Range)
StateStreet B&T: Boston	Cash	$2,172,700			$2,172,700	1.09%	
BlackRock: San Francisco	Fixed Core (Passive)	$36,990,456			$36,990,456	18.49%	19%
BlackRock: San Francisco	Fixed High Yield (Passive)	$14,513,848			$14,513,848	7.25%	7%
BlackRock: San Francisco	Emerging Market Debt (Passive)	$123,947			$123,947	0.06%	0%
						25.80%	**26% (19-36%)**
BlackRock: San Francisco	Russell 1000 (Passive)		$48,856,387		$48,856,387	24.42%	24%
BlackRock: San Francisco	Russell 2000 (Passive)		$27,384,428		$27,384,428	13.69%	12%
						38.10%	**36% (26-46%)**
BlackRock: San Francisco	EAFE (Passive)		$30,140,145		$30,140,145	15.06%	18%
BlackRock: San Francisco	EAFE SC (Passive)		$3,943,774		$3,943,774	1.97%	2%
BlackRock: San Francisco	Emerging Markets (Passive)		$10,408,810		$10,408,810	5.20%	5%
						22.24%	**25% (15-35%)**
BlackRock: San Francisco	Dow Jones UBS Commodities (Passive)			$2,963,747	$2,963,747	1.48%	2% (0-4%)
BlackRock: San Francisco	US Real Estate (Passive)			$22,600,000	$22,600,000	11.29%	11% (9-13%)
						12.78%	**13% (10-16%)**
	TOTAL Amounts	$53,800,952	$120,733,543	$25,563,746	**$200,098,241**		
	TOTAL Percent	26.89%	60.34%	12.78%			

	Fixed Income	Equity	Inflation Linked
Actual Portfolio	**26.89%**	**60.34%**	**12.78%**
Policy	**26% (19-36%)**	**61% (51-68%)**	**13% (10-16%)**

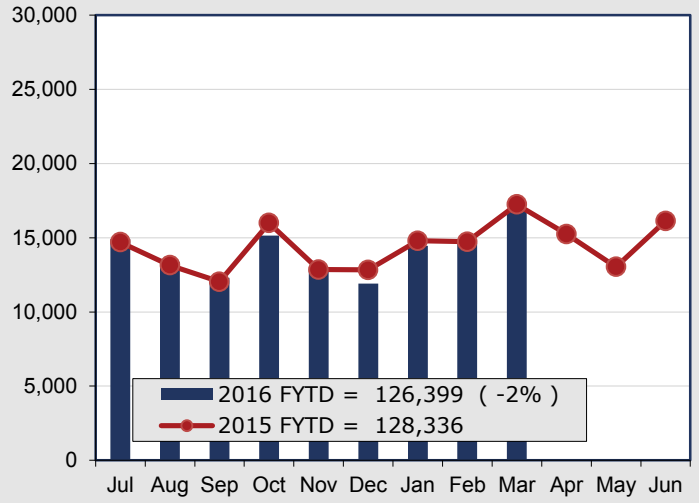
Agenda Item #7b

Director's Report
Operations

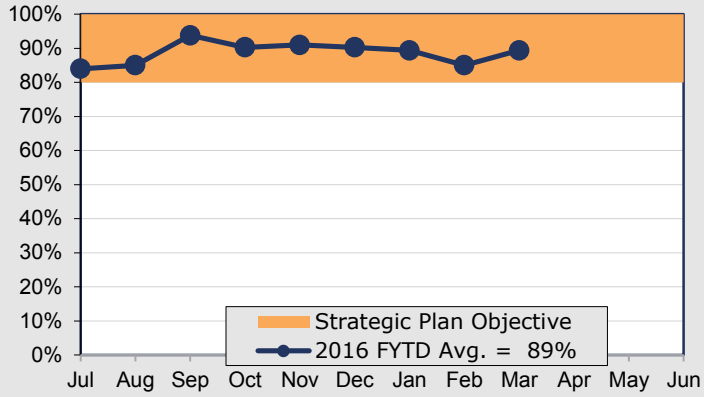


Member Advisory Center: Phone

Volume
comparison of calls by month and year



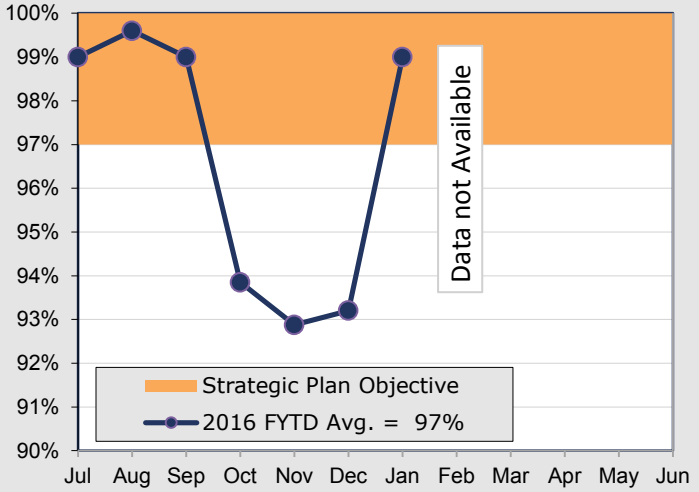
Timeliness
percent answered in 20 seconds or less



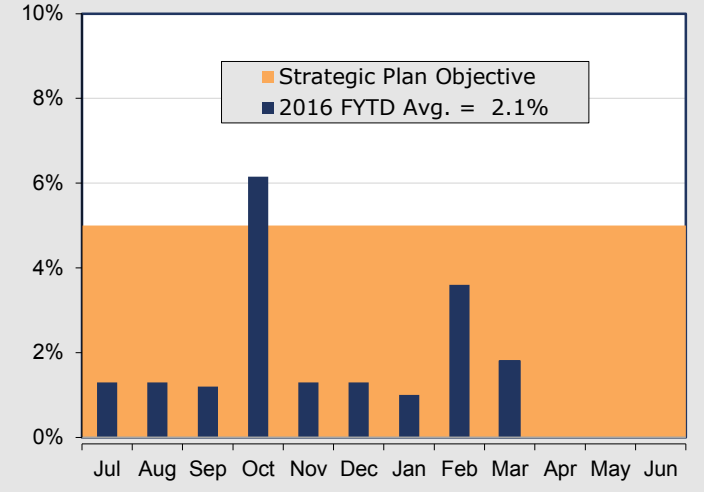
Timeliness (average wait time in seconds)

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
20	20	7	DNA	DNA	DNA	DNA	DNA	DNA			

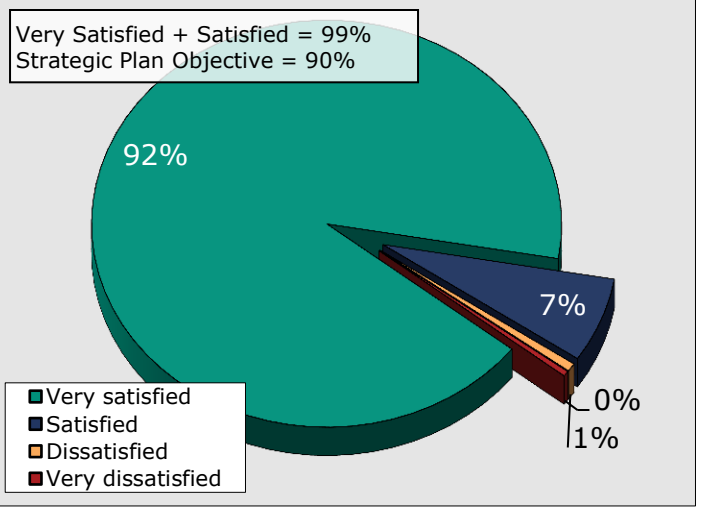
Resolution Rate
percent answered on first contact



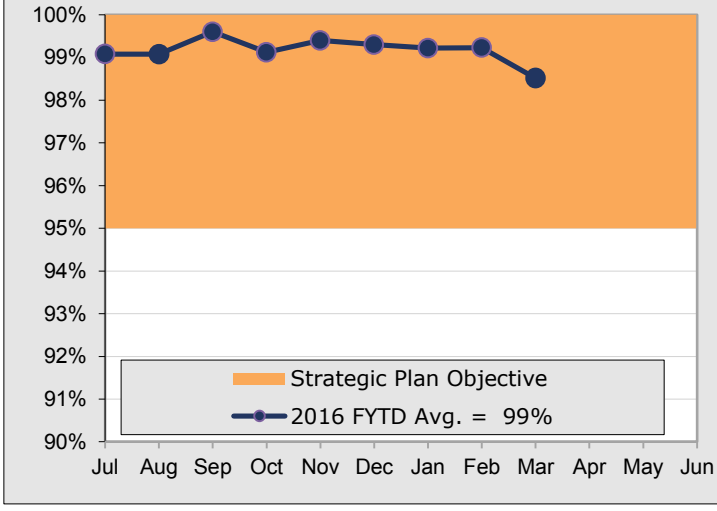
Abandonment Rate
percent of calls abandoned



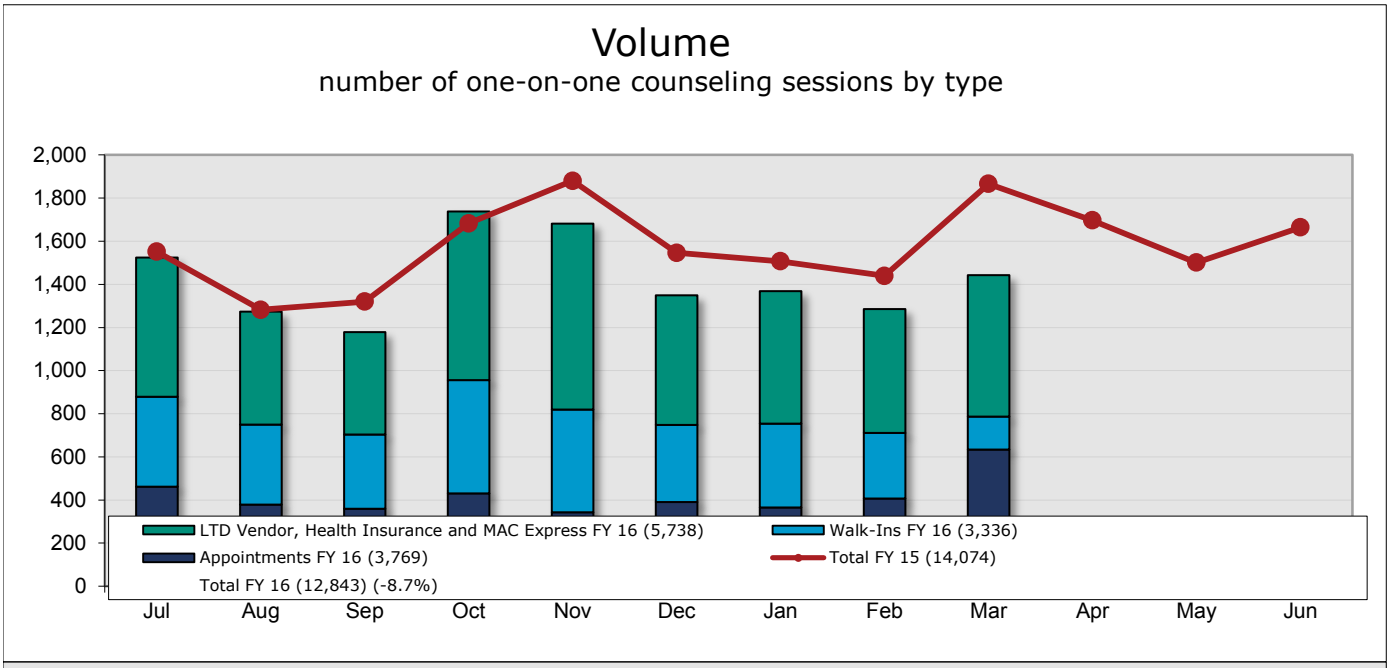
Member Satisfaction
1st Quarter 2016

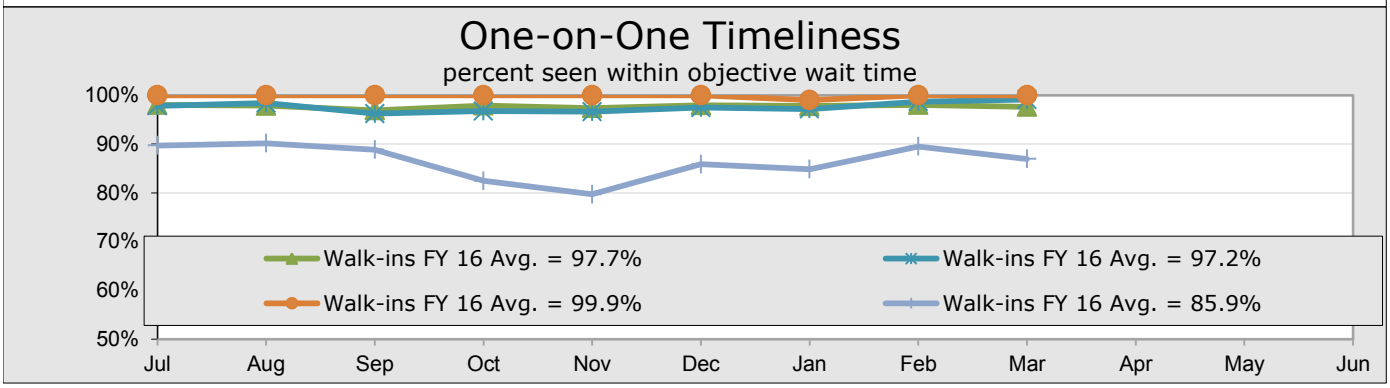


Quality
of agent response to member inquiries



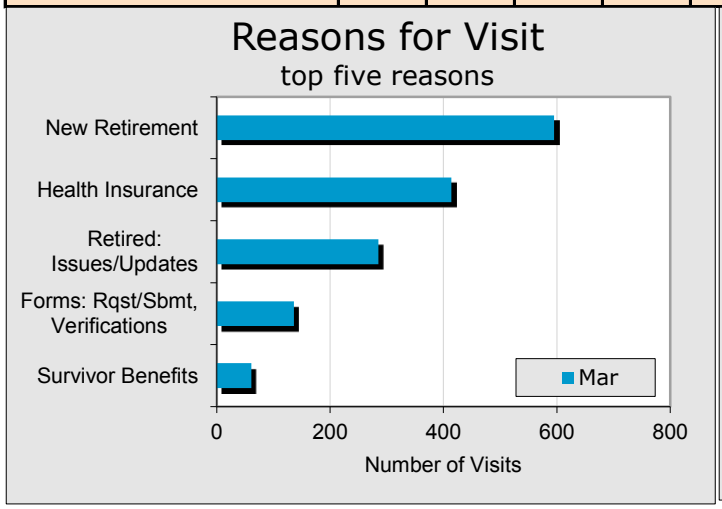
Member Advisory Center: One-on-One

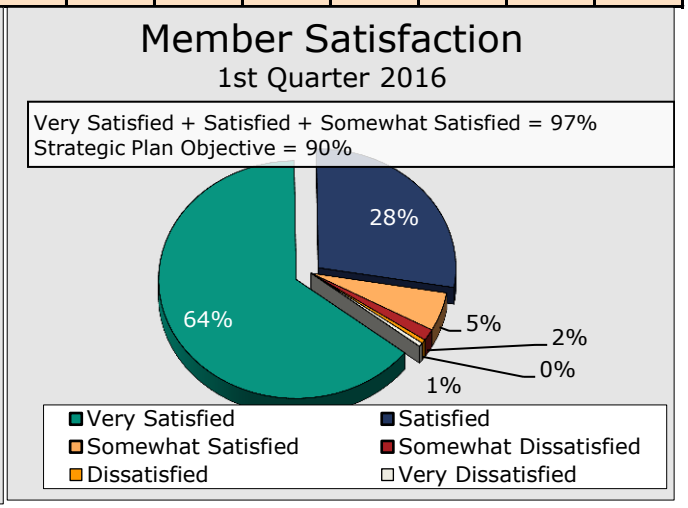




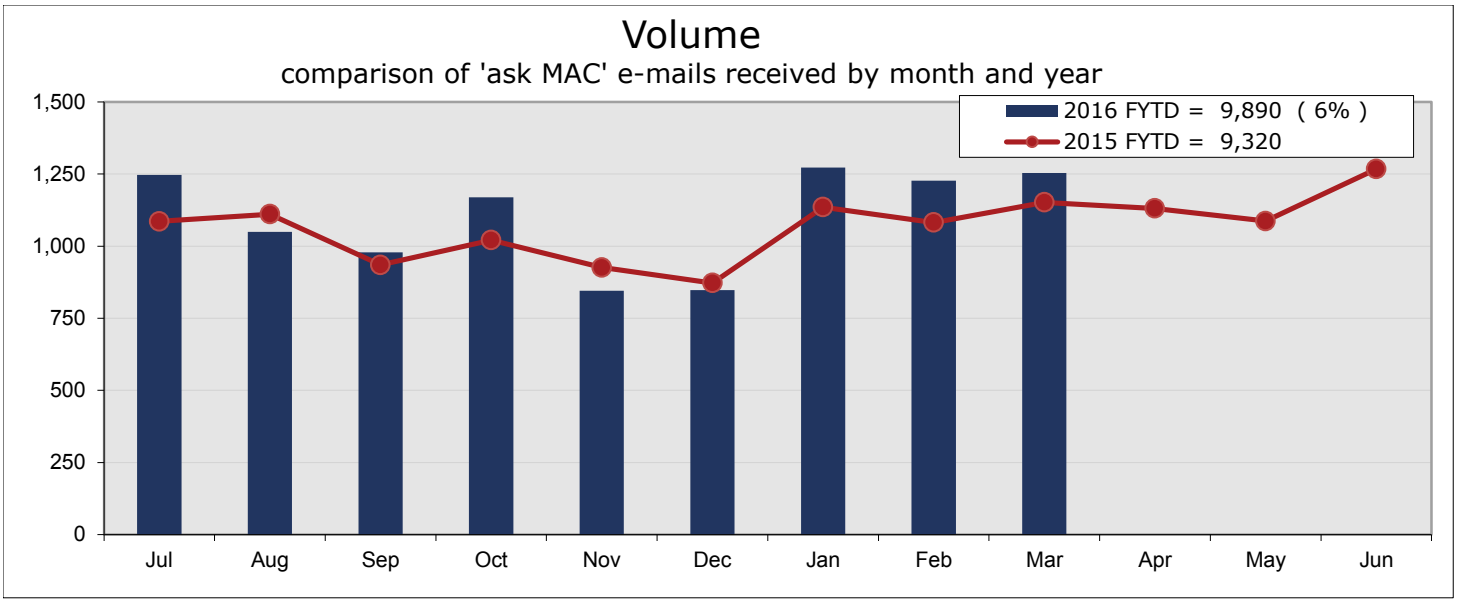
Timeliness (average wait time in minutes)

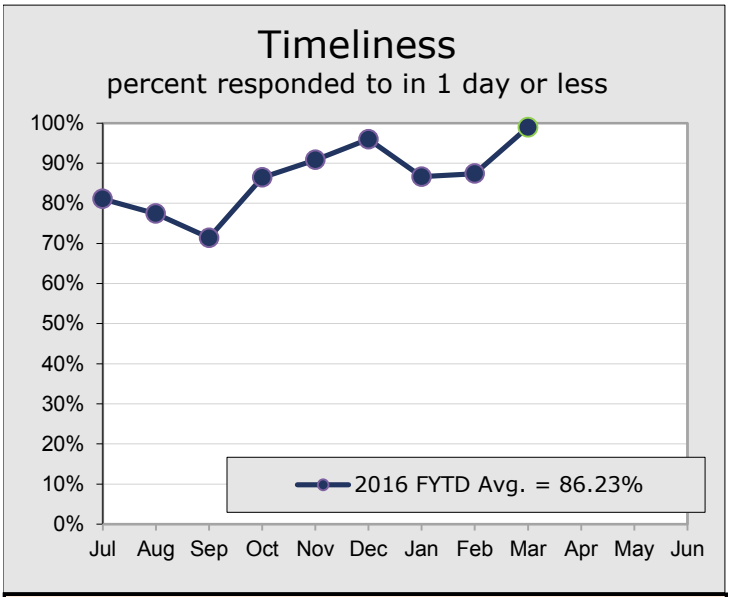
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Appointments	0	0	1	0	1	1	1	0	1			
Walk-Ins	5	5	7	5	5	4	7	4	3			
Reception/MAC Express	0	0	0	0	0	0	0	0	0			
Health Insurance	5	5	7	8	9	6	8	5	7			
LTD Vendor	0	0	0	n/a	n/a	n/a	n/a	n/a	n/a			





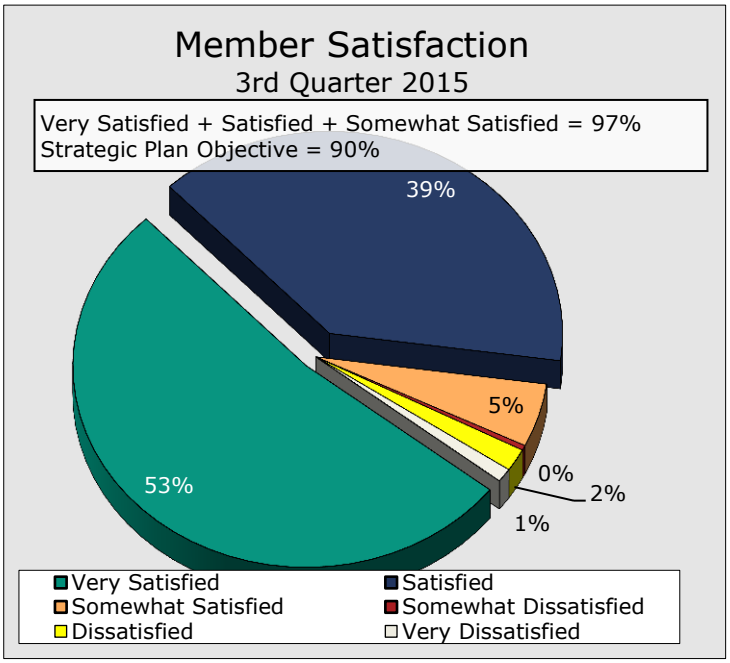
Member Advisory Center: E-Mail

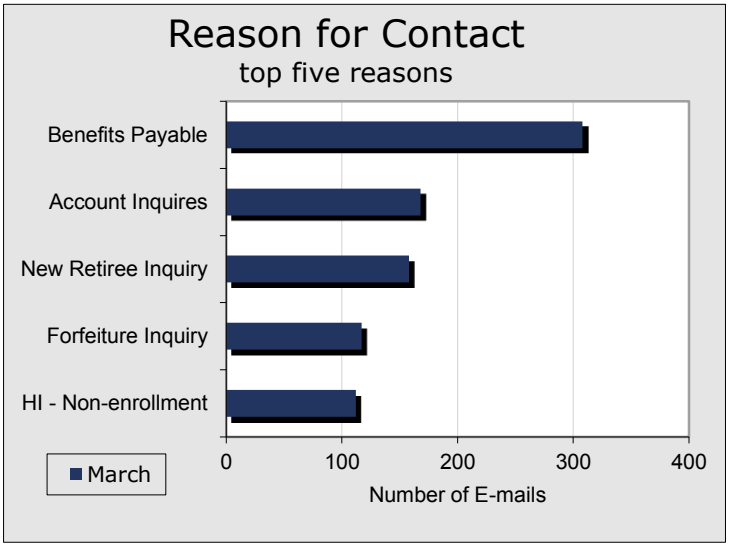




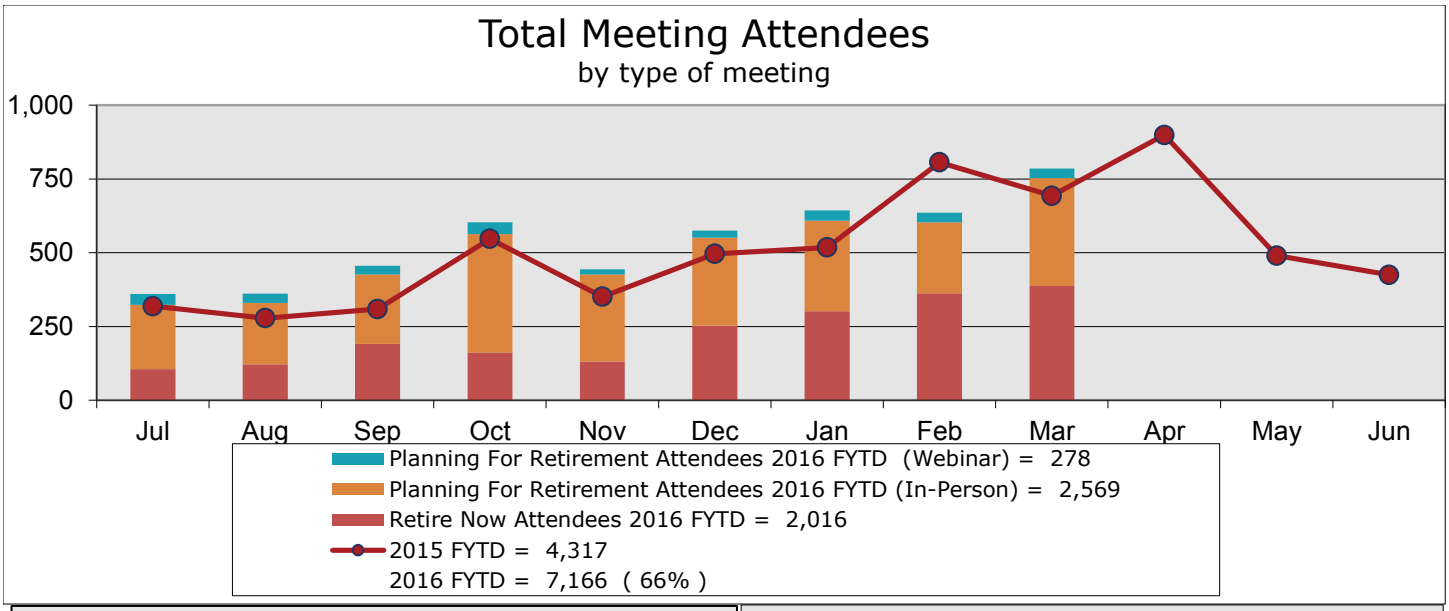
Timeliness (average response in hours)

15	18	20	10	8	7	13	11	4			
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun

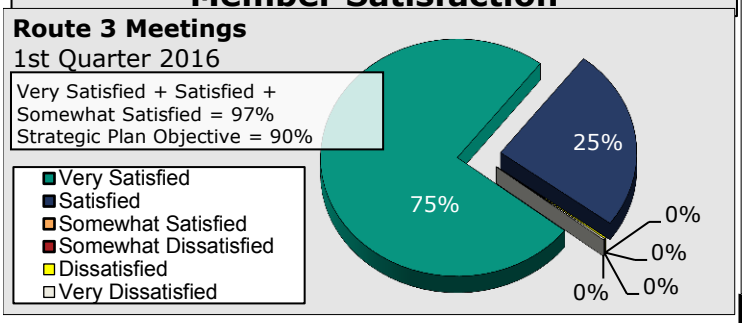


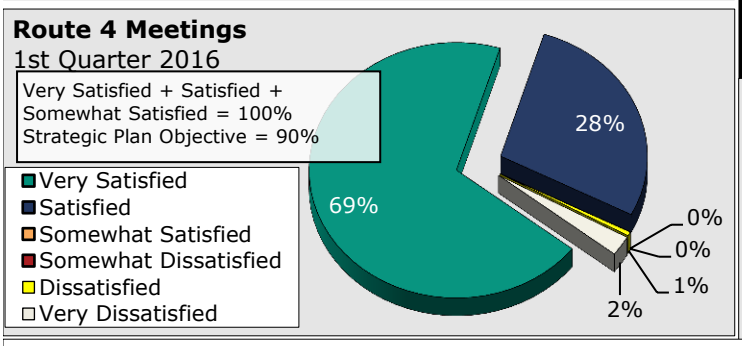


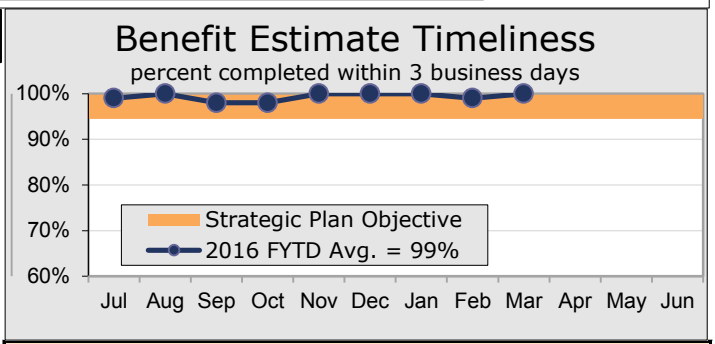
Outreach Education and Benefit Estimates



Member Satisfaction

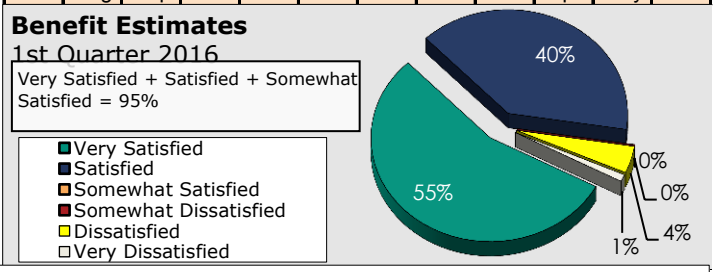


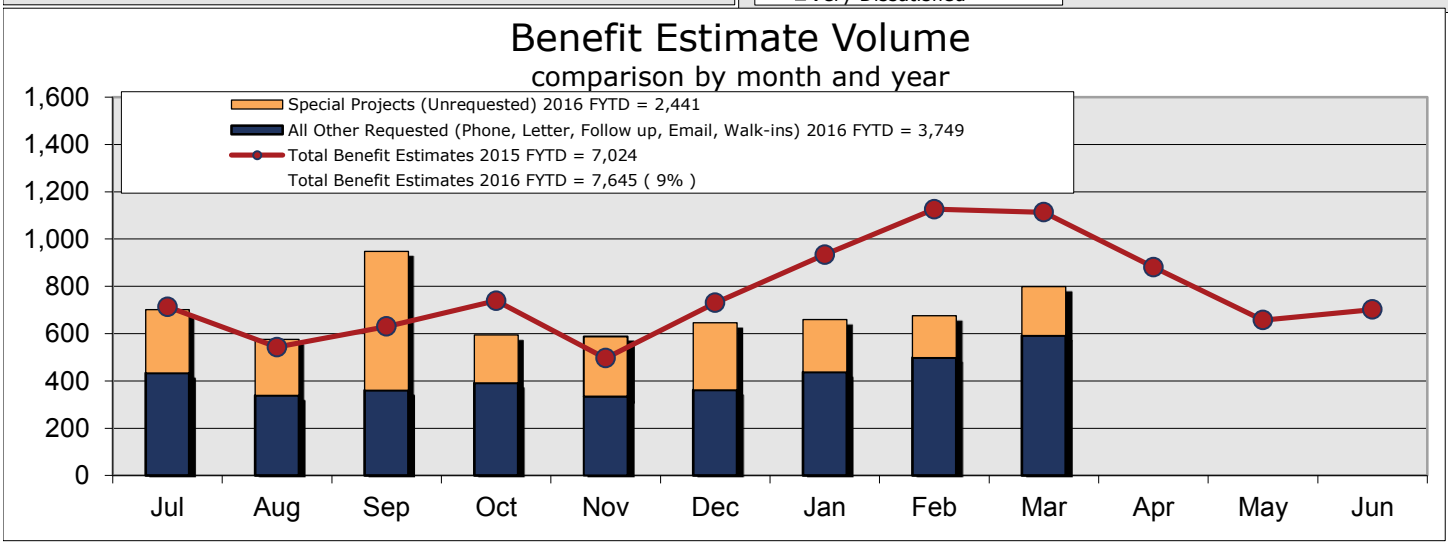




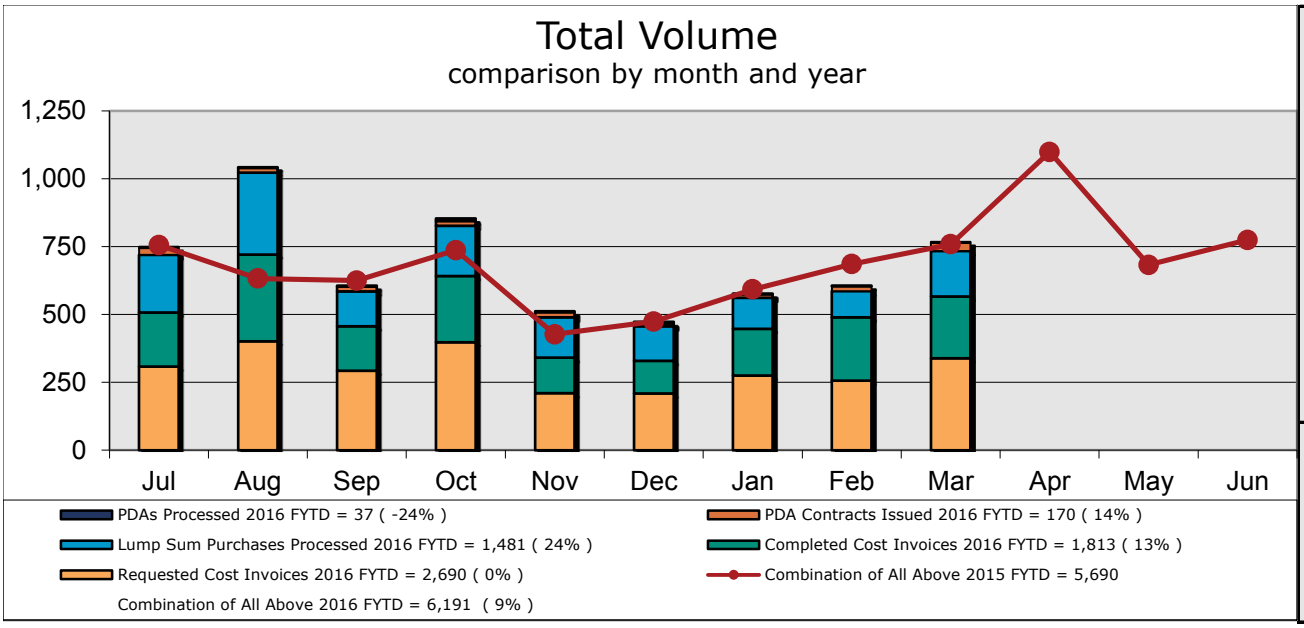
Benefit Estimate Timeliness (average TAT in days)

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
1	1	1	1	1	1	1	1	1			





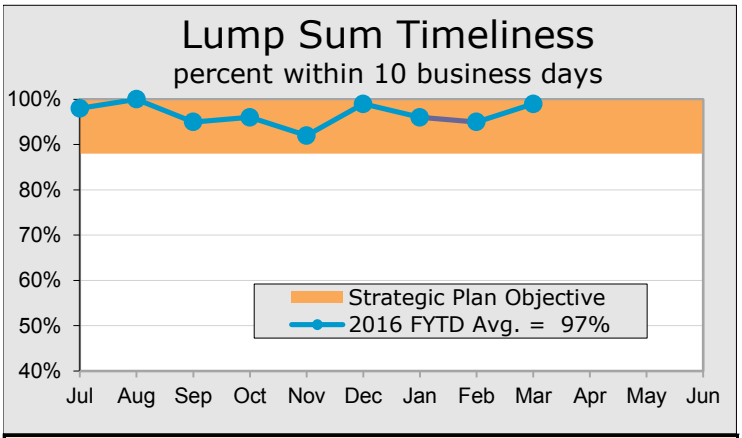
Service Purchase



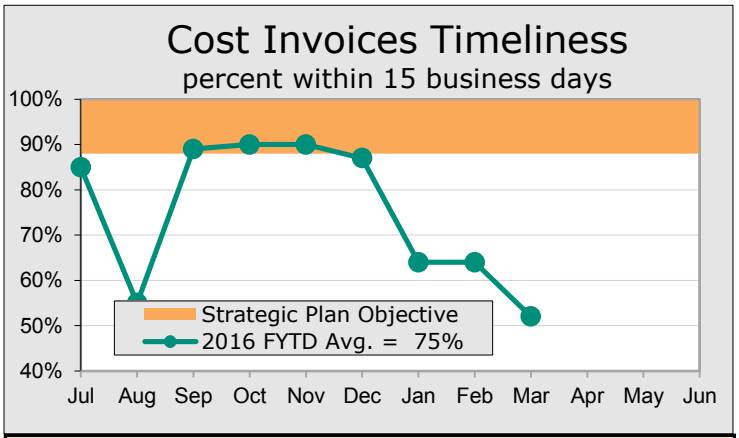
Requests Pending
as of March 31, 2016

Cost Invoices Pending
510

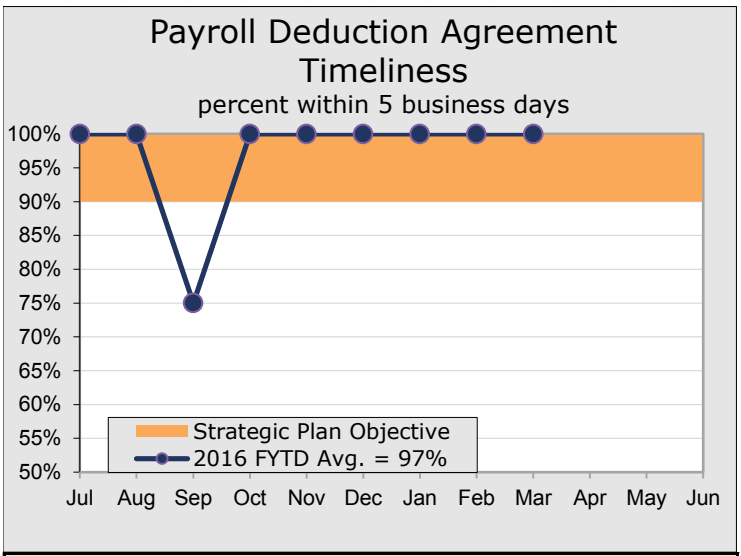
Payments Pending
10



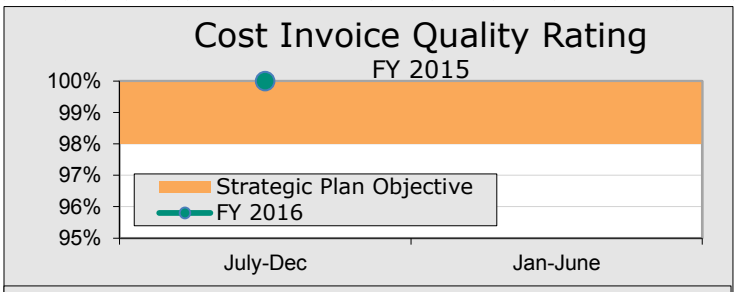
Timeliness (average turnaround time in business days)											
2	2	2	2	3	3	2	3	2			
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun

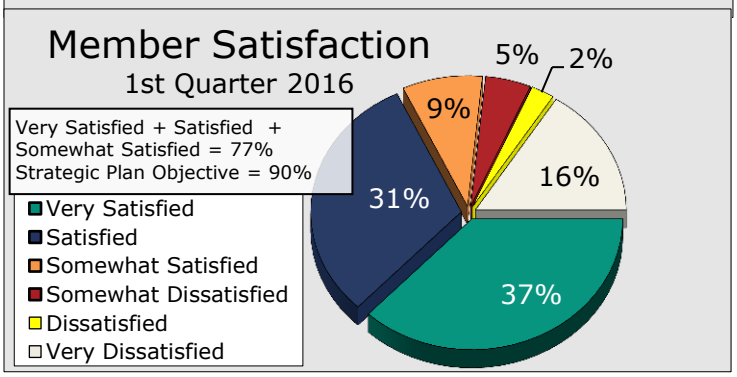


Timeliness (average turnaround time in business days)											
9	11	6	8	8	11	11	21	60			
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun

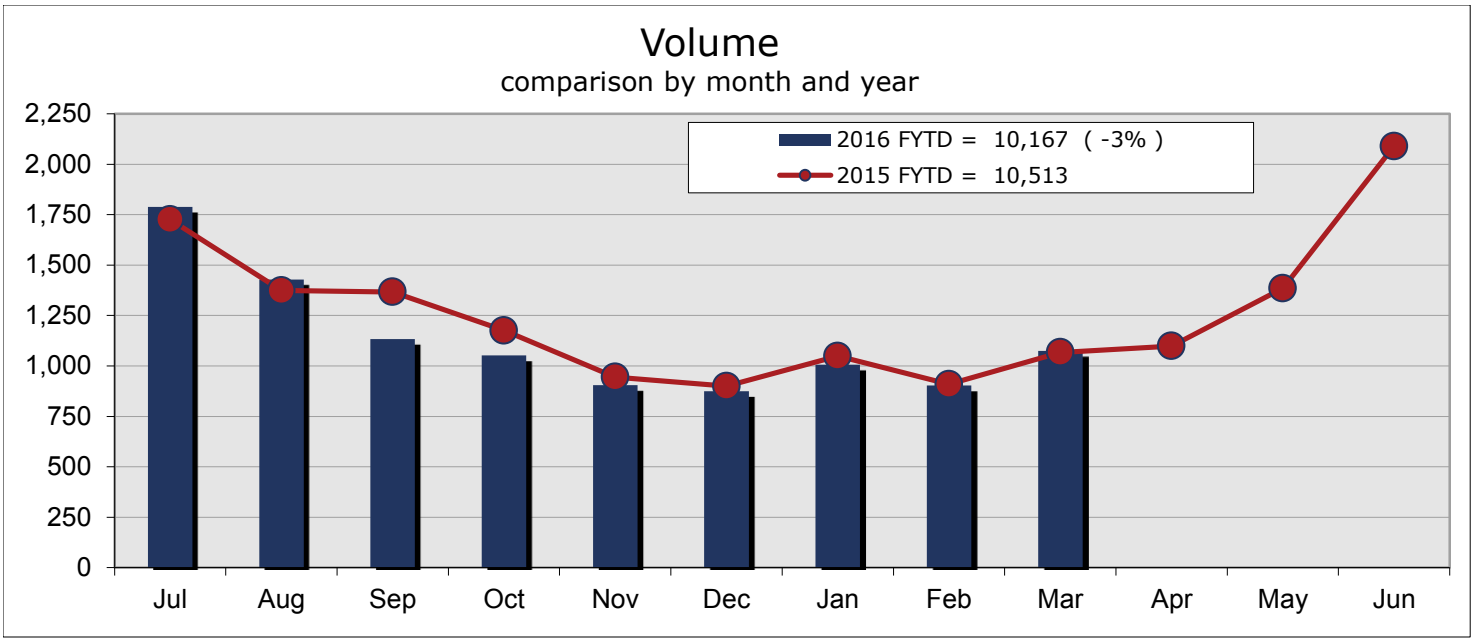


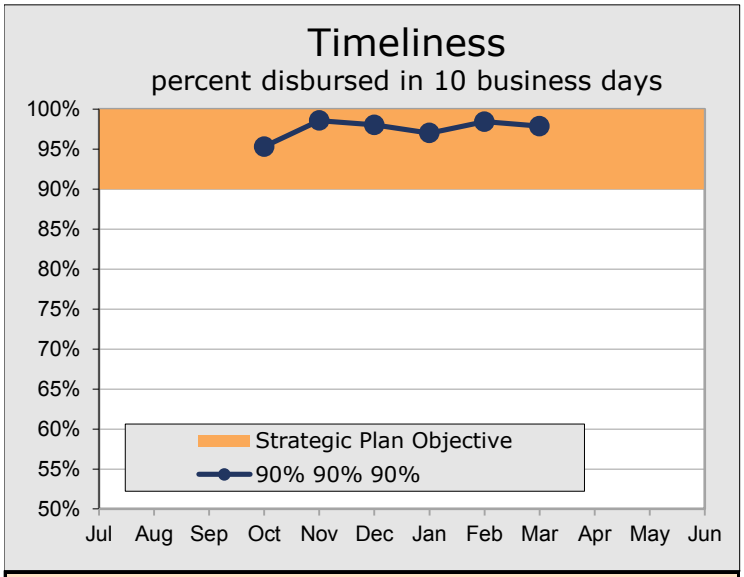
Timeliness (average turnaround time in business days)											
1	2	3	1	1	1	1	2	1			
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun

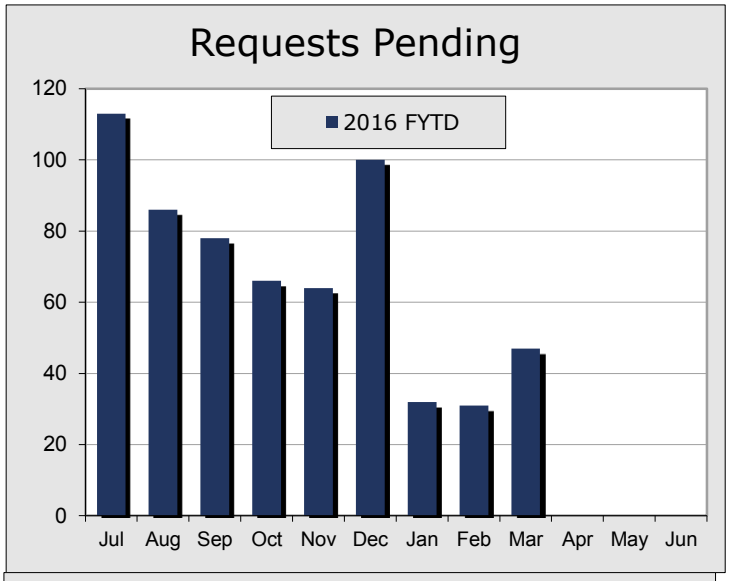




Refunds

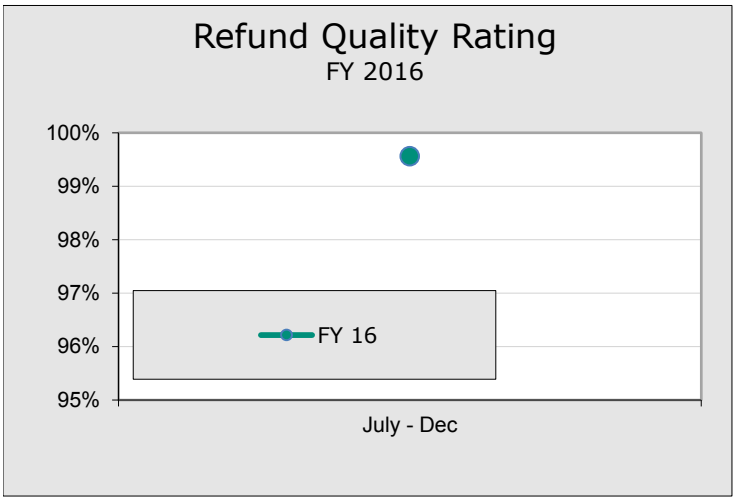


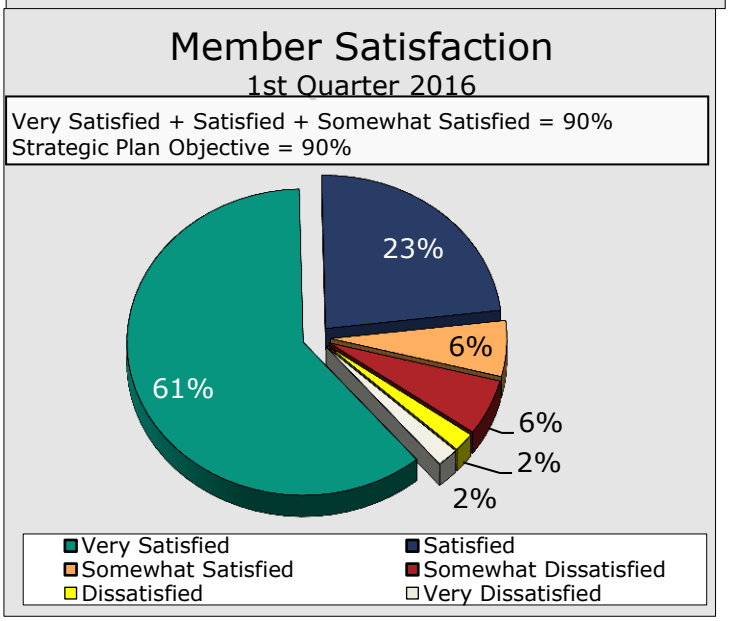




Timeliness (average turnaround time in business days)

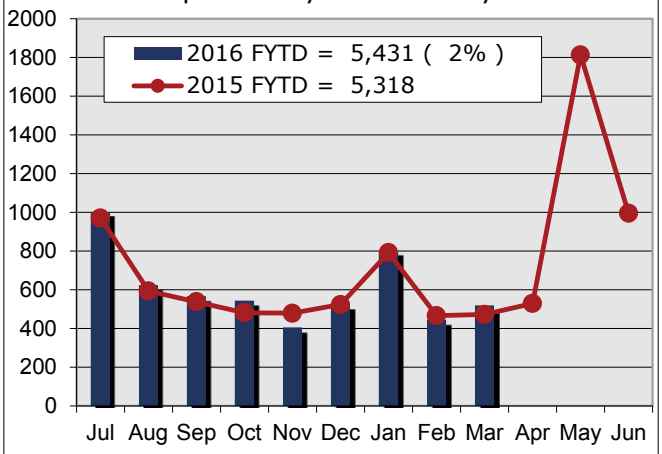
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
DNA	DNA	DNA	3	2	2	2	2	2			



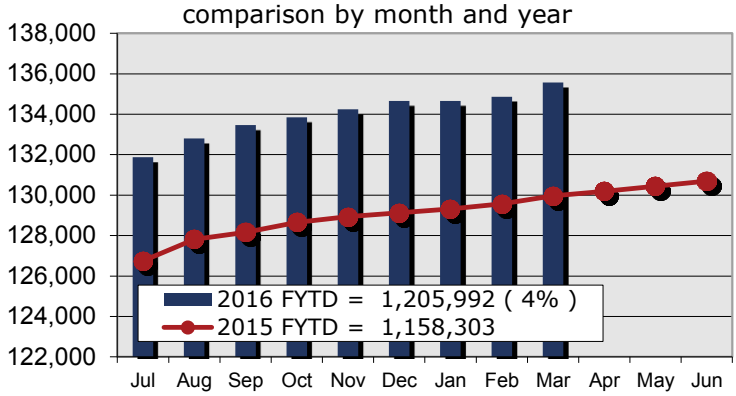


New Retiree and Pension Payroll

First Payment Volume
comparison by month and year



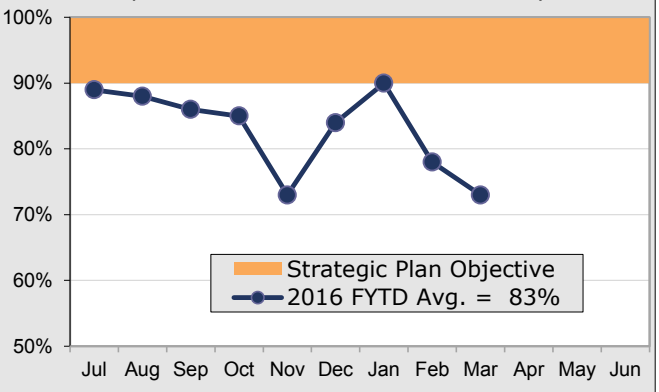
Pension Volume
comparison by month and year



Pension Payment (percent disbursed by 1st of the months)

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
100%	100%	100%	100%	100%	100%	100%	100%	100%			

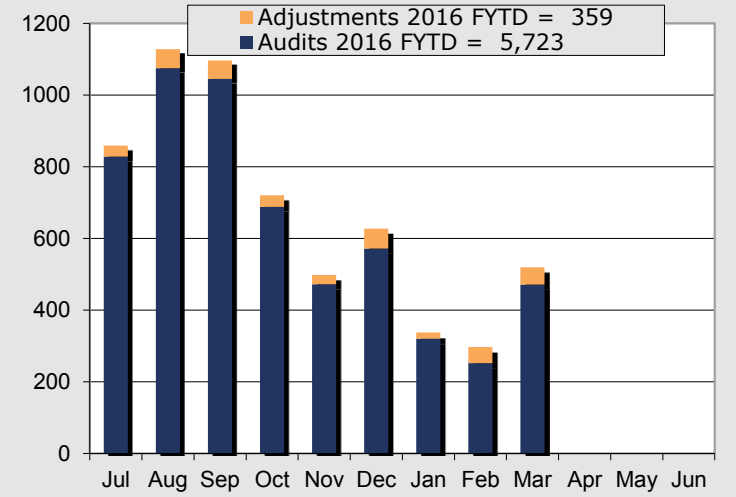
First Payment Timeliness
percent disbursed in 10 business days



First Payment Timeliness (average turnaround time in days)

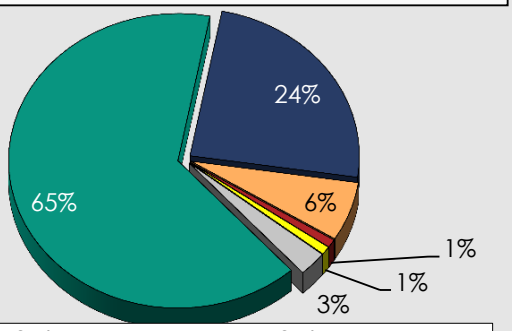
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
5	6	6	7	10	8	5	9	14			

Audits & Adjustments
comparison by month and year



Member Satisfaction
1st Quarter 2016

Very Satisfied + Satisfied + Somewhat Satisfied= 95%
Strategic Plan Objective = 90%

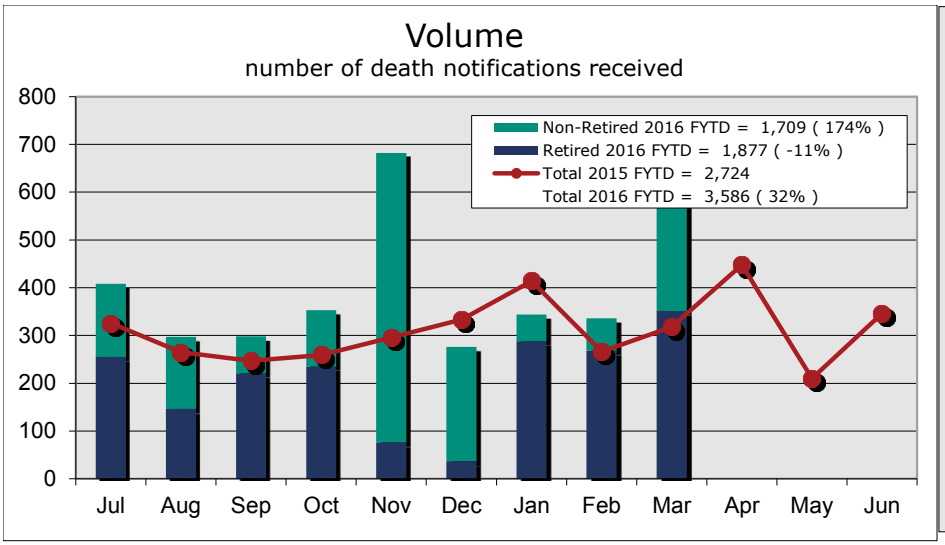


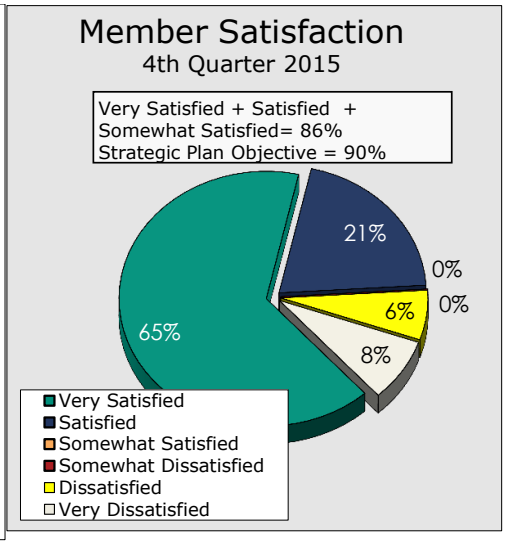
Adjustments Timeliness
Percent completed in 20 business days

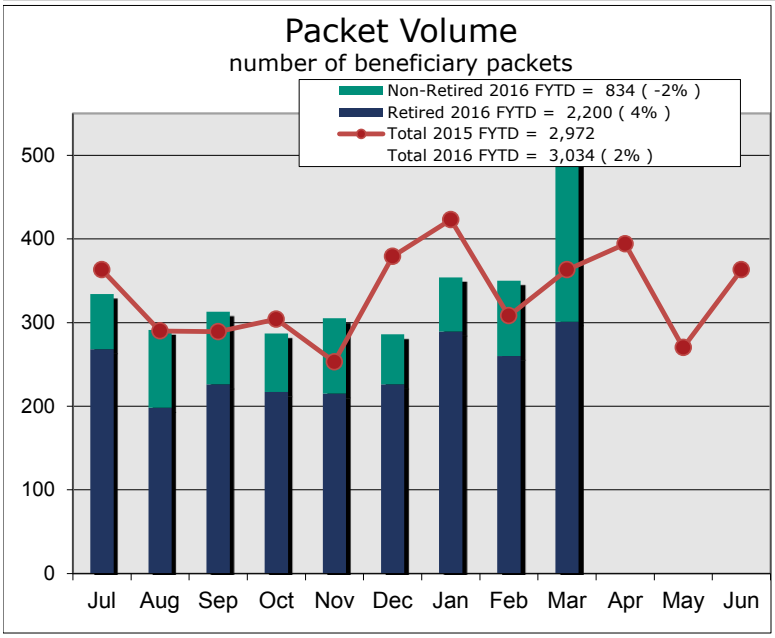
Adjustments Timeliness (average turnaround time in days)

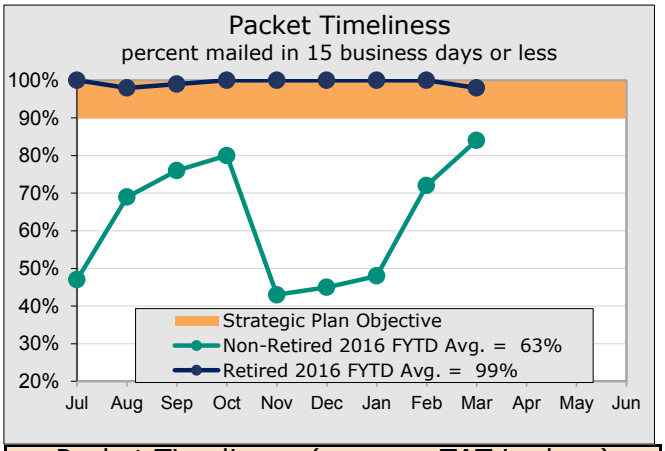
Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
4	5	2	3	4	11	4	6	6			

Survivor Benefits



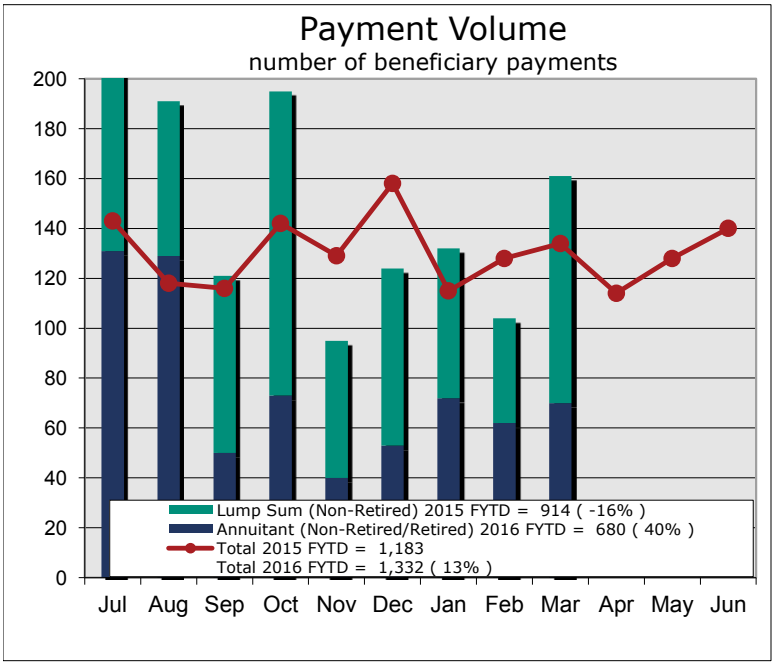


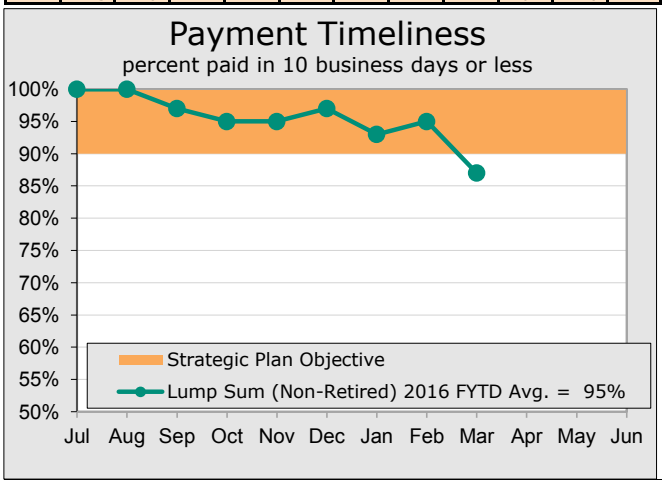




Packet Timeliness (average TAT in days)

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Non Retired	40	40	22	7	20	157	86	39	53			
Retired	2	2	2	2	3	3	2	2	2			

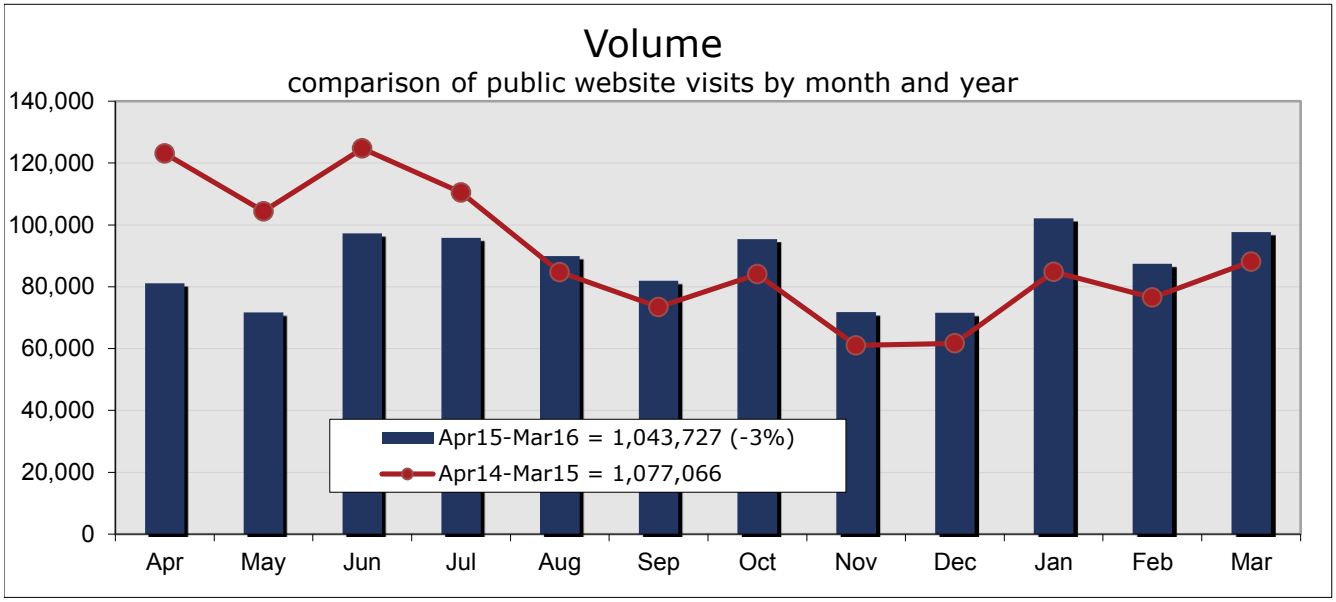


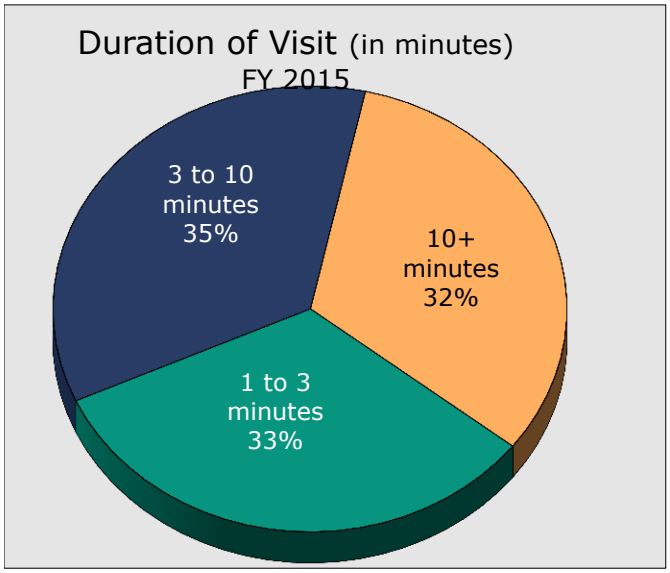


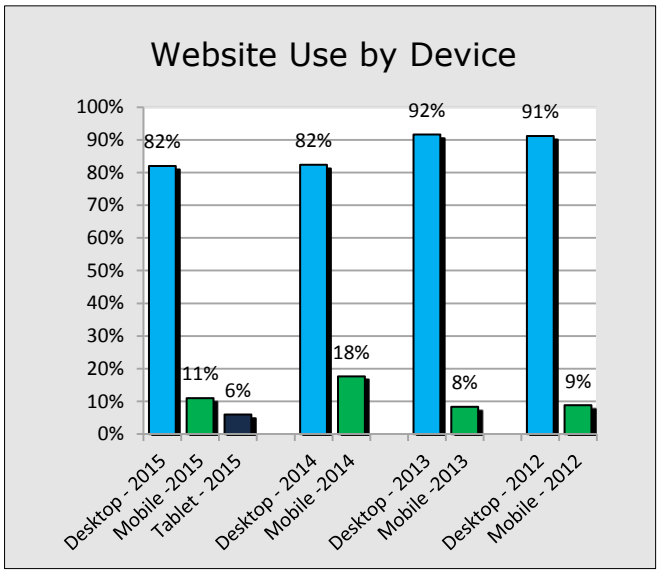
Payment Timeliness (average TAT in days)

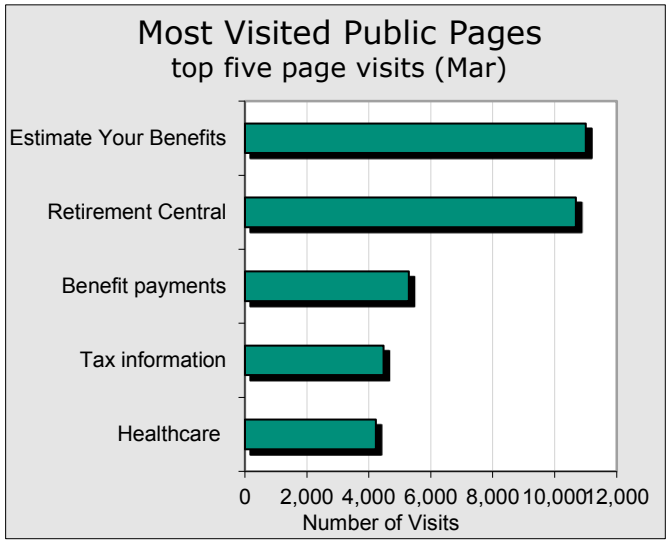
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Lump Sum (Non-Retired)	4	3	5	5	5	5	7	6	7			
Annuity (Retired and Non-Retired)	3	2	4	3	2	3	3	5	6			

Public Website: www.azasrs.gov







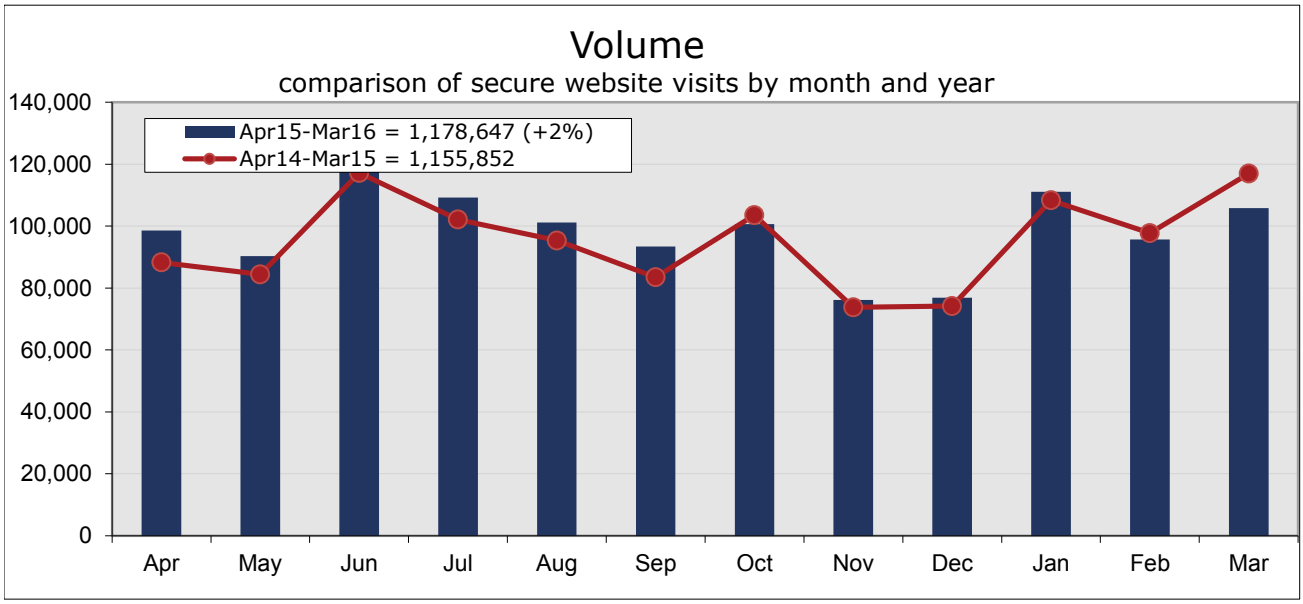


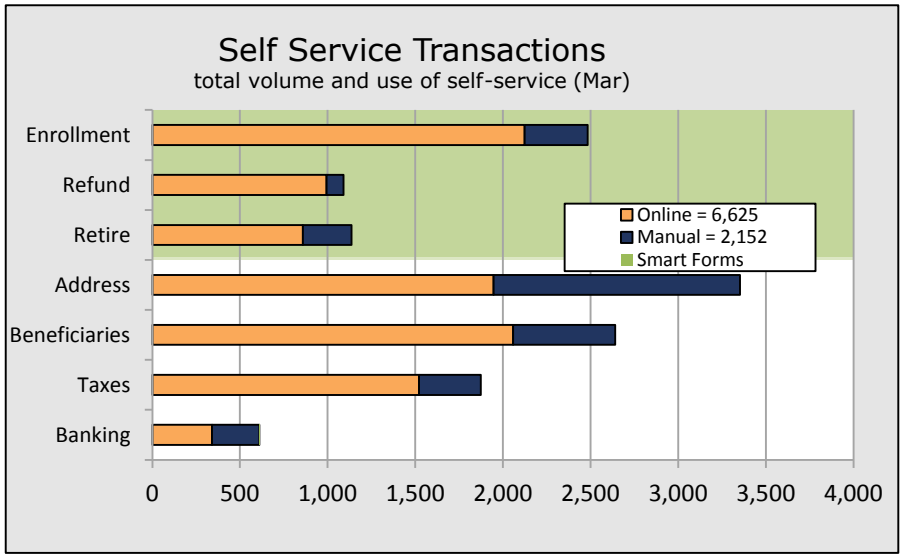
Social Media Feb 2016

facebook Followers: 1,844 (+3%)

twitter Followers: 292 (+3%)

Secure Website: secure.azasrs.gov

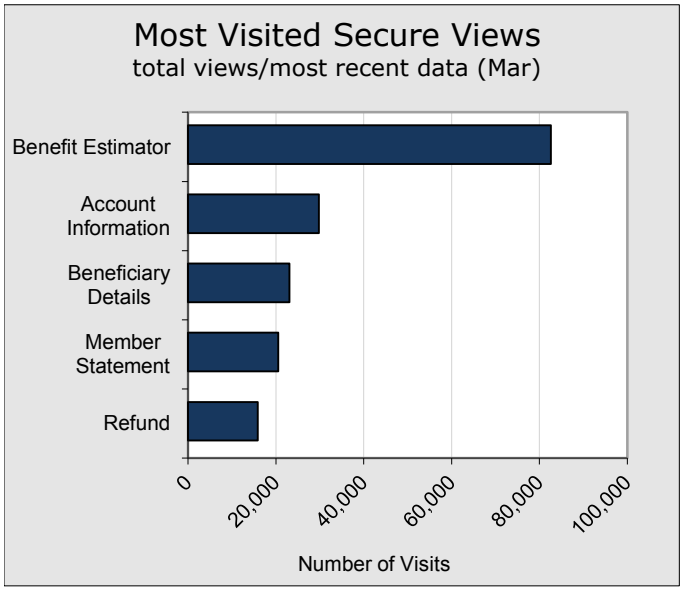


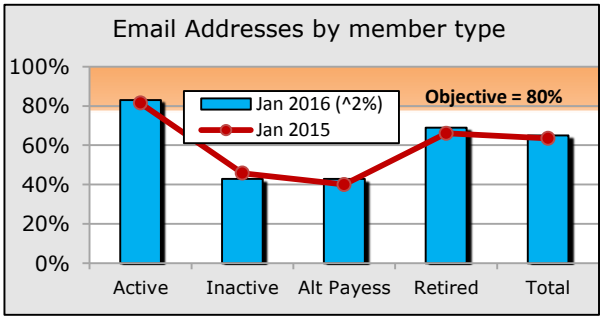


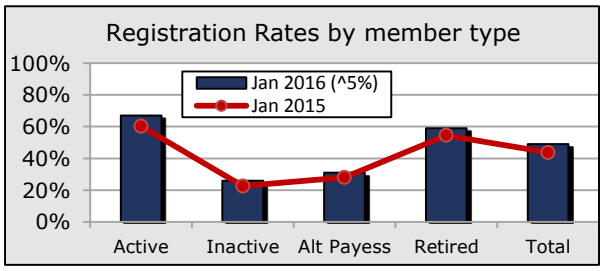
Historical Comparison of Online Usage	This month	12mo Min	12mo Max	12mo Avg	Objective
Enroll	86%	86%	97%	92%	99%
Ref	91%	88%	98%	92%	90%
Ret	76%	69%	79%	72%	90%
Add	76%	70%	86%	77%	75%
Bene	78%	61%	87%	80%	75%
Tax	81%	67%	93%	79%	75%
DD	56%	41%	61%	55%	75%

Total online this month

75%







Agenda Item #7c

Director's Report
Budget & Staffing

Arizona State Retirement System
FY 2016 Appropriated Budget
(as of March 31, 2016)

	APPROPRIATIONS FISCAL YEAR 2016	EXPENDED YTD	% EXPENDED
OPERATING BUDGET			
Personal Services	$ 13,091,900	$ 9,377,600	71.63%
Employee Related Expenses	$ 5,063,500	$ 3,573,100	70.57%
Professional & Outside Services	$ 1,292,400	$ 1,093,800	84.63%
Travel	$ 79,900	$ 70,900	88.74%
Other Operating Expenses	$ 2,732,800	$ 1,330,600	48.69%
Equipment	$ 651,100	$ 197,600	30.35%
Operating Subtotal	$ 22,911,600	$ 15,643,600	68.28%
OTHER APPROPRIATIONS			
Long Term Disability Administration	$ 2,800,000	$ 1,494,400	53.37%
Oracle Forms and Reports Modernization (Yr. 3)	$ 2,270,000	$ 558,100	24.59%
TOTAL FY 2016 Appropriated Funds	$ 27,981,600	$ 17,696,100	63.24%

	APPROPRIATIONS	EXPENDED PRIOR YEARS	EXPENDED CURRENT YEAR	% EXPENDED
PRIOR YEAR APPROPRIATIONS (NON-LAPSING)				
FY 2015 - Oracle Forms and Reports Modernization (Yr. 2)	$ 4,484,500	$ 1,463,600	$ 351,000	40.46%
FY 2011 - HB 2389 - ASRS Plan Design Changes	$ 1,341,700	$ 1,247,100	$ -	92.95%
FY 2011 - ASRS Operating Budget	$ 20,570,100	$ 19,901,200	$ -	96.75%

Budget Summary for Fiscal Year 2016
As of March 31, 2016

Operating Budget
The operating budget information on the previous page is based on funding approved by the Board and the Legislature for fiscal year July 1, 2015 through June 30, 2016. These ASRS operating expenses are distinguished from other areas of ASRS spending authority: such as expenditures for investment management and benefits payments. Administrative salaries and employee benefits, supplies, equipment and ongoing operational costs associated with information and financial systems for the ASRS Board and ASRS employees are funded from the operating budget. Expenditures to date include twenty pay periods (76.9% of the annual payrolls) of fiscal year 2016.

Other Appropriations
Other appropriations, which are considered part of the annual budget, represent other appropriations for specific programs or services authorized by the Board and the Legislature.

- **Long Term Disability Administration Fund**
  The amount appropriated for the administration costs of the LTD program.

- **Oracle Forms and Reports Modernization**
  The amount appropriated (non-lapsing) for the third year of the software modernization project.

Non-Lapsing Appropriations for Legislative Initiatives

The amount appropriated by the Legislature for the implementation of:
- FY 2015 - Oracle Forms and Reports Modernization (Yr. 2)
- FY 2011 - HB 2389 - ASRS Plan Design Changes
- FY 2011 - ASRS Operating Budget and LTD Admin
  - HB 2024, Section 93 modified the FY 2011 ASRS appropriations to be non-lapsing appropriations. The ASRS has the ability to utilize the unspent portion of these appropriations in ensuing fiscal years.

Explanation of Columns

1) The *Appropriations* column represents funds that have been approved by the Legislature and the ASRS Board for FY 2016, and includes prior year legislative appropriations.

2) The *Expended* column represents the expenditures to date.

3) The *% Expended* column identifies the portion of each line item that has been expended to date. This column is intended to be a guide to the rate of spending during the fiscal year.

ASRS FISCAL YEAR 2016, CONTINUOUSLY APPROPRIATED REPORT

(with summarized Appropriated Expenses)

DESCRIPTION	EXPENDED YTD as of 3/31/16	ESTIMATED ANNUAL EXPENSES (Projections updated quarterly)	EST. ANNUAL EXPENSES AS % OF TOTAL AUM	EST. ANNUAL EXPENSES PER MEMBER
Custodial Banking, Security Lending and Master Cash STIF Fees	1,724,000	3,298,000		
Internal Investment Management (Salaries and Benefits)	1,249,000	1,615,000		
Public Markets				
External Investment Management Fees	28,607,000	58,000,000		
Transactional and Other Fees	1,756,000	2,600,000		
Private Markets				
Private Debt and Equity Management Fees	27,839,000	46,000,000		
Private Debt and Equity Performance Incentive and Other Fees	28,520,000	60,000,000		
Real Estate, Farmland and Timber and Infrastructure Management Fees	18,062,000	25,000,000		
Real Estate, Farmland and Timber and Infrastructure Performance Incentive and Other Fees	43,575,000	60,000,000		
Opportunistic Debt and Equity Management Fees	5,389,000	10,000,000		
Opportunistic Debt and Equity Performance Incentive and Other Fees	5,554,000	8,000,000		
Investment Management Expenses	**$ 162,275,000**	**$ 274,513,000**	**0.811%**	**$ 491.17**
Investment Consulting Services	2,339,000	4,177,000		
Investment Related Legal Services	1,149,000	1,350,000		
Investment Electronic Information Services	1,194,000	2,450,000		
External Financial Consulting Services	49,000	115,000		
Investment Related Consulting, Legal and Information Services	**$ 4,731,000**	**$ 8,092,000**	**0.024%**	**$ 14.48**
Rent	**1,181,000**	**1,565,000**	**0.005%**	**$ 2.80**
Actuarial Consulting Fees	**60,000**	**725,000**	**0.002%**	**$ 1.30**
Retiree Payroll (Disbursement Administration)	**2,138,000**	**3,592,000**	**0.011%**	**$ 6.43**
Total Continuously Appropriated Expenses	**$ 170,385,000**	**$ 288,487,000**	**0.853%**	**$ 516.17**
***Total Current Year Appropriated Expenses**	**$ 18,047,100**	**$ 28,981,600**	**0.086%**	**$ 51.85**
* Includes estimated prior year non-lapsing appropriations of $1,000,000 related to the Oracle Forms and Reports Modernization Project				
Total Expenses (Continuously Appropriated and Appropriated)	**$ 188,432,100**	**$ 317,468,600**	**0.938%**	**$ 568.02**

ASRS Estimated Total Market Value of Assets Under Management (AUM) as of December 31, 2015 $ 33,831,814,000

ASRS Total Membership as of June 30, 2015 558,900

Continuously Appropriated Expenses for FY 2016
Estimated Expenditures

The Arizona State Retirement System (ASRS) investment and administrative costs are expended in accordance with Arizona Revised Statutes (A.R.S.), Title 38, Chapter 5, Article 2, Section 38-721. A.R.S. Section 38-721, Subsection C, lists specific expenditures that are continuously appropriated and are allowable in the amount deemed necessary by the Board.

These specific expenditures are described below:

1. **Investment management fees and related consulting fees necessary to meet the Board's investment objectives**

   Internal Investment management
   - ASRS Investment Management Division staff base salaries and employer portion of staff benefits and payroll taxes.

   External investment management fees
   - Public Markets
     - External investment management fees (public).
     - Management fees (public) year-to-date expenditure amounts reflect the fees due for the first quarter and eighty percent of the fees due for the second quarter of FY 2016.
     - Transactional and other fees include foreign taxes and commissions on derivatives and other incidental costs.
   - Private Markets
     - Private Debt and Equity, Real Estate, Farmland and Timber and Infrastructure and Opportunistic Debt and Equity investment management fees.
     - Performance incentive fees include performance incentives and carried interest, which are only paid upon successful performance of the manager after other return hurdles are met. Other fees are the ASRS proportional share of the transactional and operational cost of the underlying investment structure. Each of these fees is only paid if earned or incurred, and therefore may vary each quarter.
     - Management and performance incentive fees year-to-date expenditure amounts reflect the fees due for the first two quarters of FY 2016.

   Consulting fees
   - Includes investment related consulting and legal fees, electronic information services and subscriptions, custodial banking administrative fees, external auditing service fees.

2. **Rent**
   - Costs associated with rent as tenants for occupancy in the 3300 Tower in Phoenix and in the satellite office in Tucson.

3. **Actuarial consulting fees**
   - Costs associated with actuarial services related to plan design, administration and valuations.

4. **Retiree Payroll**
   - Costs associated with administering retiree pension benefits and disbursements, including third-party payroll administration fees, postage and benefit related consulting fees and the beginning phase of the ASRS Benefit Disbursement project.

The report includes projected expenditures for the current fiscal year. Actual expenditures are reported monthly and estimated annual expenses are reviewed and adjusted quarterly. The estimated annual expenses reflected were last updated as of the close of the quarter ending March 31, 2016.

Arizona State Retirement System
Staffing Report
(March 31, 2016)

ASRS by Division	252 Full Time Equivalents (FTEs)	New Hires	New Exits	Vacancies	Vacancy Rate
Administrative Services Division (ASD)	16	0.0	1.0	2.25	14.06%
Director's Office (DIR)	14	0.0	0.0	0.0	0.00%
External Affairs (EAD)	3	0.0	0.0	0.0	0.00%
Financial Services (FSD)	62	1.0	0.0	8.5	13.71%
Technology Services (TSD)	52	0.0	1.0	6.0	11.54%
Internal Audit (IAD)	6	0.0	0.0	1.75	29.17%
Investment Management (IMD)	13	0.0	0.0	2.0	15.38%
Member Services (MSD)	86	0.0	1.25	9.75	11.34%
	252	**1.0**	**3.25**	**30.25**	**12.00%**

Turnover	March 2016 New Hires	March 2016 Exits	Total Exits (Last 12 Months)	Annualized Turnover %
	1.0	3.25	31.25	13.77%

Recruitments

Beginning February 2015, all ASRS recruitments were placed on hold until further notice due to the State of Arizona Hiring Freeze. Specific ASRS positions are critical to the core functions and operations of the agency and if left unfilled will negatively impact the agency's ability to meet goals and objectives. Recruitment for these "mission critical" positions may proceed after hiring supervisors complete and submit appropriate justification documents and upon approval of the agency director. In some instances, these additional steps have extended the recruitment turnaround time and contributed to the yellow or red status of some business units as noted on the following pages. We continue to work within the State of Arizona Hiring Freeze guidelines implemented February 2015.

- Eight positions are under recruitment – ASD Budget Manager, ASD Senior Training and Development Officer, FSD Pension Calculation Specialist I's (2), FSD Pension Calculation Specialist II, MSD Retirement Advisor Supervisor, TSD IT Security Engineers (2)
- One recruitment has not yet commenced – FSD-BA Fiscal Services Specialist III
- Seven positions have been filled with future start dates – FSD Financial Reporting Accountant (start date: 04/18/2016), MSD Retirement Advisor Seniors (5, 3-MAC, 1-MBR ED, 1-Tucson) (start date: 04/25/2016), TSD Software Engineer (start date: 05/09/2016)

Impact of Staffing (Vacancies, Recruitments, Internal Transfers) on ASRS Operational Performance

Agency Divisions	Services and Functions	Staffing Impact	Comments
Impact of Staffing on ASRS Operations:	**Green = Normal risk**	**Yellow = Greater than normal risk**	**Red = Negative impact**
MSD	MAC (Call Center)	○●○	In March 2016, strategic objectives were met through the use of staff drawn from other teams in MSD. Three positions have been approved as Mission Critical and are under recruitment. Greater than normal risk will remain until the three positions have been filled and the new staff is fully trained.
MSD	One-on-one Counseling (Appointments/Walk-ins)	●○○	
MSD	E-mail and Written Correspondence	●○○	
MSD	Outreach Education	●○○	
MSD	Tucson: Appointments/Walk-ins/Outreach	●○○	
MSD	Benefit Estimates	●○○	
MSD	Employer Relations	●○○	
MSD	Health Insurance/LTD Benefits Administration and Communication	●○○	
MSD	Survivor Benefit Processing	●○○	
MSD	Refund Processing	●○○	
MSD	New Retiree Processing	●○○	

Impact of Staffing (Vacancies, Recruitments, Internal Transfers) on ASRS Operational Performance

Agency Divisions	Services and Functions	Staffing Impact	Comments
Impact of Staffing on ASRS Operations:	**Green = Normal risk**	**Yellow = Greater than normal risk**	**Red = Negative impact**
MSD/FSD	Service Purchase Processing	○●○	The Service Purchase process is going through a modernization project which is requiring significant staffing resources. Greater than normal risk will remain until the Service Purchase project is completed.
FSD	Monthly Pension Payroll Processing	●○○	
FSD	New Retiree Processing	○○●	During March 2016, the New Retirees strategic objectives were met; however the post-pension audit objectives were not met. Five positions are vacant and seven FTEs are in training. Negative impact will remain until the vacant positions have been filled and FTEs are fully trained.
FSD	Survivor Benefit Processing	●○○	
FSD	Records Management (data processing/imaging)	●○○	
FSD	LTD/Health Benefit Supplement Processing	●○○	The Records Management staff is meeting strategic goals. However, there has been an increase in not enrolled accounts due to lack of submissions by employers/new employees.
FSD	Transfer Processing	●○○	
FSD	General Accounting	○●○	General Accounting did not meet one of its strategic objectives. Two critical positions were vacant in March (Controller and Financial Reporting Accountant), two other positions were recently filled and one position has been unoccupied based on an approved leave of absence. Greater than normal risk will remain until the Controller and Financial Reporting Accountant positions are fully trained and the recruitment for a recent vacancy, Assistant Controller, is completed and trained.

Impact of Staffing (Vacancies, Recruitments, Internal Transfers) on ASRS Operational Performance

Agency Divisions	Services and Functions	Staffing Impact	Comments
Impact of Staffing on ASRS Operations:	**Green = Normal risk**	**Yellow = Greater than normal risk**	**Red = Negative impact**
FSD	Contribution Collections and Posting	●○○	
TSD	Network Support	●○○	
TSD	IT Security	○●○	The IT Security team is unable to meet all business demands and Strategic Objectives. Three critical security positions are vacant. Recruitment for two positions is currently underway. Greater than normal risk will remain until all positions are filled and staff is fully trained.
TSD	Business Applications Development and Support	●○○	The planned workload requires a complement of 44 total resources (31 FTEs and 13 external resources). Our current complement of resources for March 2016 was 44 (30 FTEs and 14 external resources). One FTE Software Engineer starts in May 2016. Recruitment for a System Tester and a Jaspersoft Report Writer are underway.
IMD	Investment Management	●○○	
DIR	Board/Executive Staff Support	●○○	
DIR	Strategic Planning/Analysis	●○○	
DIR	Strategic Communications	●○○	
DIR	Public Affairs	●○○	
IA	Internal Audit	●○○	

Impact of Staffing (Vacancies, Recruitments, Internal Transfers) on ASRS Operational Performance

Agency Divisions	Services and Functions	Staffing Impact	Comments
Impact of Staffing on ASRS Operations:	**Green = Normal risk**	**Yellow = Greater than normal risk**	**Red = Negative impact**
EA	Rule Writing	● ○ ○	
EA	Legislative Relations	● ○ ○	
ASD	Human Resources	● ○ ○	
ASD	Training and Development	○ ● ○	Training and Development is unable to meet all current business needs and future training requests have been postponed due to limited staffing. Recruitment for one position will start in April 2016. Greater than normal risk will remain until the vacant position is filled and fully trained.
ASD	Contracts and Procurement	● ○ ○	
ASD	Facilities Management	● ○ ○	
ASD	Budget Administration	○ ● ○	The Budget Administration function struggled to meet strategic objectives and business needs due the vacant Budget Manager position. Recruitment for this position will start in April 2016. Greater than normal risk will remain until this position is filled and fully trained.

ASRS Out of State Travel Expenditures Paid Out First Quarter 2016

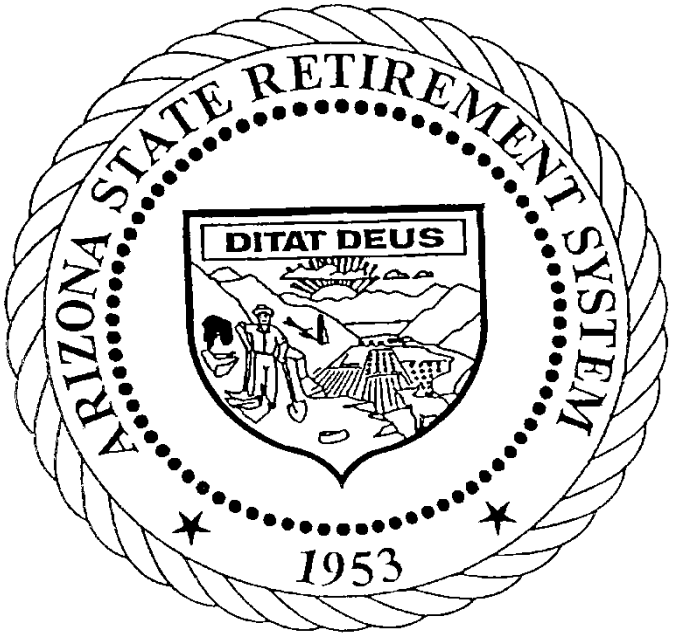
*Numbers are Unaudited

Date	Purpose	Location	Attendee	Cost
February 1, 2016	Fund Manager Due-Diligence	Los Angeles, CA	Eric Glass	$457.71
February 15-17, 2016	Training 2016 Conference	Orlando, FL	Jean Langston	$2,455.17
February 15-17, 2016	Training 2016 Conference	Orlando, FL	Donna McNally	$2,098.95
March 14-18, 2016	Oaktree Conference & Due Dilligence Site Visits	San Diego, CA	Kerry White	$736.97
March 24, 2016	New Mexico Educational Retreat Board	Albuquerque, NM	Paul Matson	$35.00
			Total:	**$5,783.80**

*Final amounts may vary due to adjustments in per diem and reimbursements.

Agenda Item #7d

Director's Report Cash Flow Statement



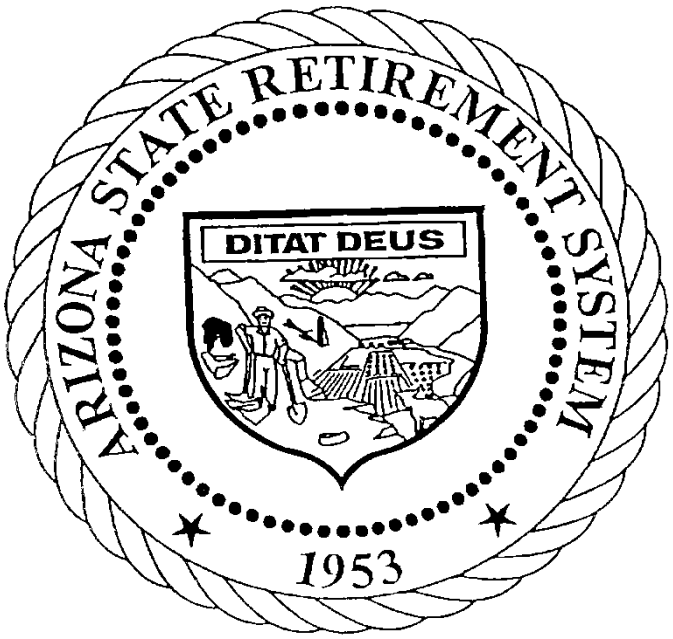
ARIZONA STATE RETIREMENT SYSTEM
COMBINED STATEMENT OF CHANGES IN TOTAL FUND CASH
FOR THE MONTH ENDED MARCH 31, 2016

	Retirement Plan Fund	Retirement System Fund	Health Benefit Supplement Fund	Long-Term Disability Fund	Current Period March	Fiscal 2016 YTD March	Fiscal 2015 YTD March
ADDITIONS							
Contributions							
Member contributions	$ 85,906,071	$ 3,006	$ -	$ 909,285	$ 86,818,363	$ 752,045,491	$ 751,043,333
Employer contributions	82,149,673	3,006	3,784,634	909,296	86,846,609	748,157,449	749,809,578
Alternative contributions (ACR)	2,152,488	-	30,515	14,084	2,197,087	18,235,809	18,846,616
Transfers from other plans	17,390	-	-	-	17,390	1,217,984	501,889
Purchased service	2,109,515	-	-	-	2,109,515	19,755,093	17,446,218
TOTAL CONTRIBUTIONS	172,335,137	6,012	3,815,149	1,832,665	177,988,964	1,539,411,826	1,537,647,633
DEDUCTIONS							
Investment management fees	1,384,726	-	-	-	1,384,726	45,567,610	56,165,037
Custody fees	-	-	-	-	-	480,208	355,000
Consultant and legal fees	515,920	-	-	-	515,920	3,440,246	2,920,199
Internal investment activity expense	7,709	-	-	-	7,709	2,560,570	2,647,985
Retirement and disability benefits	228,481,613	3,141,258	7,909,660	5,193,715	244,726,246	2,190,352,804	2,106,065,772
Survivor benefits	5,578,365	38,351	-	-	5,616,715	30,146,535	25,700,471
Refunds to withdrawing members, including interest	16,369,034	-	-	-	16,369,034	188,423,988	181,863,798
Administrative expenses	3,101,485	-	-	502,567	3,604,052	21,657,677	22,860,382
Transfers to other plans	170,351	-	-	-	170,351	849,914	441,262
Other	4,891	-	-	-	4,891	19,793	10,321
TOTAL DEDUCTIONS	255,614,094	3,179,609	7,909,660	5,696,282	272,399,644	2,483,499,344	2,399,030,226
INCREASE (DECREASE)	(83,278,957)	(3,173,597)	(4,094,511)	(3,863,617)	(94,410,680)	(944,087,518)	(861,382,593)
From securities lending activities:							
Security loan program	430,171	-	-	-	430,171	4,465,422	3,271,805
Security loan interest expense / (Rebate)	(115,369)	-	-	-	(115,369)	(1,211,621)	(398,417)
* Net income from securities lending activities	545,540	-	-	-	545,540	5,677,043	3,670,221
Capital Calls / (Distributions)							
Farmland and Timber	-	-	-	-	-	11,665,010	43,709,092
Infrastructure	-	-	-	-	-	-	300,000,000
Opportunistic Debt	(17,935,185)	(167,548)	(814,594)	-	(18,917,328)	61,895,118	128,114,494
Opportunistic Equity	(108,229,972)	(1,089,859)	(4,813,847)	-	(114,133,678)	(87,479,779)	22,761,358
Private Debt	33,477,029	304,323	1,505,570	-	35,286,922	719,337,202	262,535,623
Private Equity	18,432,031	(8,111)	812,340	-	19,236,259	115,151,319	154,420,932
Real Estate	37,827,182	343,451	1,713,515	-	39,884,147	479,368,031	(73,769,880)
TOTAL Capital Calls	(36,428,916)	(617,745)	(1,597,017)	-	(38,643,677)	1,299,936,901	837,771,619
NET INCREASE (DECREASE)	$ (46,304,501)	$ (2,555,851)	$ (2,497,494)	$ (3,863,617)	$ (55,221,463)	$ (2,238,347,375)	$ (1,695,483,990)

* Securities lending activities reported on a one month lag.

Agenda Item #7e

Director's Report
Appeals



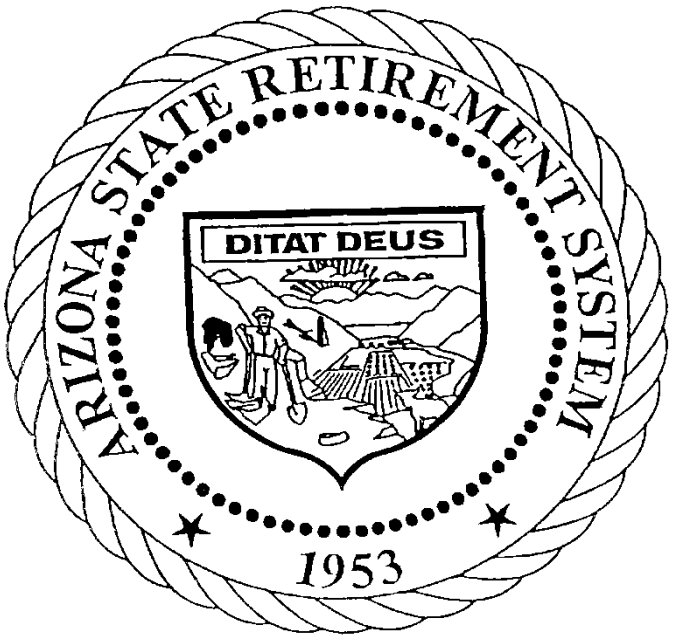
OUTSTANDING ASRS APPEALS

Date Received	Appeals	Issues/Questions Regarding	Status/Comments
04/16/2012	Arizona State University	Appellant is disputing an ASRS employer termination incentive program invoice in the amount of $1,149,000.	ASU appealed to the AZ Court of Appeals 02/12/2014. Case No. CA-CV 14-0083. Final Opinion issued on 05/05/2015 reversing the Superior Court's decision affirming the ruling of the ASRS Board. ASU Application for Attorneys' Fees in the amount of $114,493.00 denied on 7/24/2015. Arizona Supreme Court declined to review the case on 10/27/2015. **Superior Court awarded 4.25% interest and denied ASU request for 10% interest. ASU filed Notice of Appeal to Court of Appeals 04/01/2016 concerning interest.**
07/14/2014	Richard K. Hillis & Sharon Di Giacinto	Appealing the ASRS determination that a Domestic Relations Order term is unacceptable.	Board upheld Administrative Law Judge Decision on 01/30/2015. Appellant filed Notice of Appeal on 02/02/2015 with the AZ Superior Court, Case No. LC2015-000048. Oral Argument held 07/29/2015. Superior Court Decision in favor of the ASRS issued on 9/25/15. Appellant Di Giacinto appealed to AZ Court of Appeals on 9/30/2015. **Appellant Reply Brief filed 4/8/2016. Awaiting Oral Argument to be scheduled.**
12/17/2014	The Griffin Foundation	Appellant is appealing the ASRS determination that the Appellant owes contributions from October 2010 to present for its employees.	OAH hearing held on 05/14/2015 and 07/09/2015**.** ASRS Board accepted the Administrative Law Judge Decision on 12/4/2015. Appellant Griffin Foundation filed an appeal to Maricopa County Superior Court on 1/11/2016.
12/28/2015	Valerie Fields	Appealing ASRS decision regarding service purchase credit.	OAH hearing scheduled for 04/27/2016.
1/28/2016	Mary Jo Kuzmick	Appealing ASRS decision regarding retirement date.	OAH hearing scheduled for 3/15/2016**. ALJ Decision affirming ASRS decision issued on 3/31/2016. Decision on 4/29/2016 Board Agenda.**
2/19/2016	Carol Teel	Appealing ASRS determination that Appellant is no longer disabled and therefore ineligible for ASRS Long-Term Disability benefits.	Informal Settlement Conference held on 3/16/2016. **OAH hearing continued to 7/6/2016.**
3/4/2016	Paula Jeffries	Appealing ASRS decision regarding an overpayment of Long-Term Disability (LTD) benefits.	OAH hearing scheduled for 05/02/2016.
3/14/2016	Carol Kurtis	Appealing ASRS determination that Appellant is no longer disabled and therefore ineligible for ASRS Long-Term Disability benefits.	**OAH hearing continued to June 22, 2016.**

Information as of April 15, 2016. Updates are noted in bold font.

Agenda Item #7f

Director's Report
Employers Reporting



ARIZONA STATE RETIREMENT SYSTEM

3300 NORTH CENTRAL AVENUE • PO BOX 33910 • PHOENIX, AZ 85067-3910 • PHONE (602) 240-2000
4000 EAST BROADWAY BOULEVARD • SUITE 200 • TUCSON, AZ 85711-3554 • PHONE (520) 239-3100
TOLL FREE OUTSIDE METRO PHOENIX AND TUCSON 1 (800) 621-3778
WEB ADDRESS: WWW. AZASRS.GOV

Paul Matson
Director

MEMORANDUM

TO: Mr. Kevin McCarthy, Chair, Arizona State Retirement System (ASRS) Board

FROM: Mr. Paul Matson, Director

DATE: April 14, 2016

RE: Delinquent Employers

As of April 14, 2016, the following employers have failed to remit contributions by a date certain. These employers have received a letter advising them that the ASRS will initiate collection procedures unless they contact us within five days:

NO AZ ACADEMY FOR CAREER DEVELOPMENT	26,000*
GREAT EXPECTATION ACADEMY	13,000*
TELESIS CENTER FOR LEARNING	30,000*
CENTRAL AZ ASSOCIATION OF GOVERNMENT	15,000*
	$84,000*

Additionally, the following employers have filed for Chapter 11 Bankruptcy Protection and are delinquent in their ASRS contributions:

LUZ ACADEMY OF TUCSON	18,600*
STARSHINE ACADEMY	33,200*
TOTAL	135,800*

*Estimated amount

Agenda Items

#8 - 11

Note: There are no materials for these agenda items

Agenda Item #12

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

MARY WADE and MARLA PADDOCK,
Plaintiffs/Appellants,

v.

ARIZONA STATE RETIREMENT SYSTEM;
ARIZONA STATE RETIREMENT SYSTEM BOARD,
Defendants/Appellees.

No. 1 CA-CV 14-0721
FILED 3-31-2016

Appeal from the Superior Court in Maricopa County
No. CV2013-015082
The Honorable Randall H. Warner, Judge

REVERSED AND REMANDED

COUNSEL

Martin & Bonnett, PLLC, Phoenix
By Susan Martin, Daniel L. Bonnett, Jennifer L. Kroll
Co-Counsel for Plaintiffs/Appellants

Robaina & Kresin, PLLC, Phoenix
By Thomas M. Rogers
Co-Counsel for Plaintiffs/Appellants

Arizona Attorney General's Office, Phoenix
By Jothi Beljan
Co-Counsel for Defendants/Appellees

Fennemore Craig, PC, Phoenix
By Patrick Irvine
Co-Counsel for Defendants/Appellees

OPINION

Presiding Judge Peter B. Swann delivered the opinion of the court, in which Judge Lawrence F. Winthrop and Judge Donn Kessler joined.

S W A N N, Judge:

¶1 A.R.S. § 38-711(7) defines the "compensation" on which employee and employer contributions to the Arizona State Retirement System ("Retirement System" or "ASRS") are calculated. The Retirement System interprets that statute to exclude from "compensation" the City of Chandler's payment of contributions to an eligible deferred compensation plan, and the superior court upheld that interpretation. We disagree. We hold that § 38-711(7) defines "compensation" to include money paid by an employer to a deferred compensation plan, even if the employee could not elect to immediately receive the deferred compensation as cash-in-hand.

FACTS AND PROCEDURAL HISTORY

¶2 The Retirement System[1] is a defined benefit plan, as described in 26 U.S.C. § 414(j), that provides retirement benefits to eligible employees of the State of Arizona and participating political subdivisions and subdivision entities. A.R.S. §§ 38-711(3), (13) & (23), -712. The City of Chandler ("the City") participates in the Retirement System. The City also operates an eligible deferred compensation plan, as described in 26 U.S.C. § 457(b) ("Deferred Compensation Plan").

---

[1] This is an appeal from a judgment entered under Ariz. R. Civ. P. 54(b). Our caption, which should be used in all future filings in this matter, identifies only the parties participating in the appeal.

¶3 Marla Paddock is a City employee, as was Mary Wade until she retired; both are members of the Retirement System and the Deferred Compensation Plan. Their annual written employment contracts provided that they were entitled to receive (among other things): a "[s]alary" set at an "annual base" amount; and "annual deferred compensation," expressed in some years' contracts as a dollar amount and in other years' contracts as a percentage of the "base salary." The City deposited the "annual deferred compensation" into the Deferred Compensation Plan in equal bi-weekly payments.

¶4 Historically, the City included the "annual deferred compensation" in its calculation of the employees' annual "compensation" to determine employer and employee contributions to the Retirement System under A.R.S. §§ 38-736(A) and -737(A). In 2011, however, the City ceased this practice based on the advice of a Retirement System employee. Wade and Paddock disputed the changed calculation upon discovering it in late 2012. The City then requested a "more formal opinion" from the Retirement System, and the Retirement System responded by letter that "an employer should not report <u>employer</u> contributions to supplemental defined contribution plans on behalf of its contract employees as compensation for ASRS purposes."

¶5 Wade and Paddock served a notice of claim on the Retirement System, and then filed a special action class-action complaint against the Retirement System, its Board, and the City, seeking mandamus, declaratory and injunctive relief. The Retirement System moved to dismiss, arguing that the plaintiffs had failed to exhaust their administrative remedies. The parties also filed cross-motions for summary judgment on the issue of whether the City's payments to the Deferred Compensation Plan qualified as "compensation" under A.R.S. § 38-711(7) for purposes of Retirement System calculations.

¶6 The court granted the Retirement System's motion to dismiss with respect to Wade, and granted the Retirement System's motion for summary judgment with respect to Paddock. The court held that the definition of "compensation" set forth in § 38-711(7) "is ambiguous, and there are good arguments for both sides' interpretations [, b]ut ASRS's interpretation is the more plausible." The court held that "compensation" under § 38-711(7) includes "salary or wages from which an employee might make deferred compensation payments," but does not include employer contributions made "on top of" the employee's "gross pay."

¶7 The court entered judgment on its rulings under Ariz. R. Civ. P. 54(b), and stayed further proceedings pending appellate review. Wade and Paddock timely filed a notice of appeal.

DISCUSSION

¶8 This appeal is limited to two issues: (1) whether summary judgment was properly entered against Paddock based on the conclusion that "compensation" under A.R.S. § 38-711(7) excludes the City's contributions to the Deferred Compensation Plan; and (2) whether Wade was properly dismissed for failure to exhaust administrative remedies. We answer both questions in the negative.

I. SUMMARY JUDGMENT AGAINST PADDOCK WAS IMPROPER BECAUSE "COMPENSATION" UNDER A.R.S. § 38-711(7) INCLUDES THE CITY'S CONTRIBUTIONS TO THE DEFERRED COMPENSATION PLAN.

¶9 We review statutory-interpretation questions de novo. *Dressler v. Morrison*, 212 Ariz. 279, 281, ¶ 11 (2006). Our primary goal is to determine and give effect to the legislature's intent. *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.*, 177 Ariz. 526, 529 (1994). A statute's own words provide the best and most reliable indicator of the legislature's intent; accordingly, we generally follow the text as written when it is plain and unambiguous. *Id.* "We give words their usual and commonly understood meaning unless the legislature clearly intended a different meaning." *State v. Korzep*, 165 Ariz. 490, 493 (1990). Whenever possible, we must interpret a statute so that "no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant." *State v. Superior Court (Kerr-McGee Corp.)*, 113 Ariz. 248, 249 (1976). When the language of a statute is ambiguous, we may determine the legislature's intent by looking to other statutes *in pari materia*. *Pendergast v. Ariz. State Retirement Sys.*, 234 Ariz. 535, 541, ¶ 18 (App. 2014). We construe public-retirement-system statutes to promote a "robust contractual theory of public retirement system benefits." *Id.* at ¶ 19.

¶10 A.R.S. § 38-711(7) provides:

> "Compensation" means the gross amount paid to a member by an employer as salary or wages, *including amounts that are subject to deferred compensation or tax shelter agreements*, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be

> used for other purposes, but does not include amounts paid in excess of compensation limits established in § 38-746.

(Emphasis added.)

¶11 Our analysis begins with the plain language crafted by the legislature, which specifically includes "amounts subject to deferred compensation" within the meaning of "compensation." Because the payments in dispute were contractually required payments contributed to a deferred compensation plan, they must be treated as compensation unless other language in the statute provides a basis for their exclusion.

¶12 The statute limits "compensation" to the gross amount paid "as salary or wages." The Retirement System reads "salary" as meaning only the deferred compensation that "is already included in an employee's salary or wages." By this, we understand the Retirement System to argue that "salary" includes only amounts that an employee receives or could elect to immediately receive as cash-in-hand.[2] But the statute does not define the term "salary," and no other language supplies the limitation on which the Retirement System relies.[3] Indeed, the remaining language is consistent with an interpretation that all deferred compensation payments are "compensation." For example, if the phrase "amounts that are subject to deferred compensation or tax shelter agreements" were read to mean only "amounts that the employee could otherwise immediately receive in cash," then the statute's express inclusion of amounts "that would have been paid to the member except for the member's election or a legal requirement" would be inconsistent with that definition.

¶13 Moreover, the term "salary," as commonly understood, is not necessarily limited to cash-in-hand payments. *See* Black's Law

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[2] We decide this case as a matter of law, assuming without deciding that the City's payments are employer contributions that the employees could not elect to receive in cash.

[3] *Cf. Ventura Cnty. Deputy Sheriff's Ass'n v. Bd. of Retirement of Ventura Cnty. Employees' Retirement Ass'n*, 16 Cal. 4th 483, 490-91, 494 (Cal. 1997) (construing California statute, which defined "compensation" for retirement-plan purposes as "remuneration paid in cash . . . plus any amount deducted from a member's wages," to exclude employer contributions to a deferred compensation plan).

Dictionary 1364 (8th ed. 2004) (defining "salary" as "[a]n agreed compensation for services -- esp. professional or semiprofessional services -- usu. paid at regular intervals on a yearly basis, as distinguished from an hourly basis"); http://www.merriam-webster.com/dictionary/salary (last accessed January 4, 2016) (defining "salary" as a "fixed compensation paid regularly for services").

¶14 The statute also enumerates multiple types of payments that are excluded from "compensation" -- lump-sum termination payments, grievance or claim payments, payments in lieu of fringe benefits, merit awards and performance bonuses, and salary or wages for which the employer has not paid Retirement System contributions. A.R.S. § 38-711(7)(a)-(e), (14). The exclusion of these various forms of remuneration (which do not include deferred compensation) implies that the term "salary" is to be read according to its ordinary meaning, and that payments not excluded are to be included.

¶15 The Retirement System contends that because most of the exclusions describe exceptional and irregular types of payments, "salary" must be limited to "the income that the employee normally receives or controls." We have no quarrel with the notion that "salary" generally means a predetermined, regularly paid sum. Indeed, the deferred compensation payments at issue were both predetermined and regular. But the fact that the statute excludes only certain specific exceptional payments demonstrates that the legislature intended to limit the term "salary" only as expressly stated. *See Pima County v. Heinfeld*, 134 Ariz. 133, 134 (1982) ("A well established rule of statutory construction provides that the expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.").

¶16 We reject the Retirement System's contention that the statute's reference to amounts "paid to a member" must exclude employer contributions because they are paid directly to the Deferred Compensation Plan. Were we to accept this argument, we would necessarily have to hold that employee contributions are also excluded -- a result that would render meaningless the statute's inclusion of amounts subject to deferred compensation agreements. We also reject the Retirement System's contention that including employer-contributed deferred compensation in "compensation" means that employer contributions to the Retirement System itself must be included in "compensation." Such an interpretation would be absurd, yielding compound contribution requirements that would be all but unlimited.

There is nothing so sinister in the legislature's express inclusion of deferred compensation payments within the definition of compensation.

¶17 The Retirement System next contends that legislative history supports exclusion of employer contributions. It argues that in 1984, Title 38 was revised to exclude irregular payments from the definition of "compensation" but retain a requirement that "compensation" be limited to salary actually and presently received by the member. The Retirement System's argument is inconsistent with the legislative history on which it relies. In addition to enumerating exclusions, the amendment altered the base definition of "compensation" from "the amounts actually received by the participant for remuneration for employment from an employer on an hourly or salaried basis" to "the gross amount paid to a participant by an employer as salary or wages, including amounts which are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or which would have been paid to the participant except for the participant's election or a legal requirement that all or part of the gross amount be used for other purposes." *See* 1984 Ariz. Sess. Laws, ch. 293, § 1 (1st Reg. Sess.). The Retirement System's contention that the pre-1984 requirement of "actual[ ] recei[pt]" remained by virtue of the use of the term "paid to" in the post-1984 statute ignores the balance of the amendment to the base definition.

¶18 We hold, based on the plain language of § 38-711(7), that the term "salary" includes the City's regular contributions to the Deferred Compensation Plan. This construction is consistent with statutes *in pari materia*. Elsewhere in Title 38, in § 38-769(O)(4)(a), the legislature specifically excepted "[e]mployer contributions to a plan of deferred compensation" from a limited-application definition of "compensation." The absence of a similar exception in § 38-711(7) supports the conclusion that § 38-711(7) includes employer contributions. Our interpretation of the term "salary" is also consistent with the concept of compensation used in 26 U.S.C. § 457. Under that statute, *all* deferred compensation below the maximum amount -- regardless of origin -- receives the same beneficial treatment.[4] *See* 26 U.S.C. § 457(a)(1); 26 C.F.R. § 1.457-4(c), Exs. 2

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[4] To be sure, federal tax regulations acknowledge that deferred compensation may take the form of a "salary reduction" or a "nonelective employer contribution" for which the employee could not choose to receive cash -- and in this context, the term "salary" has a more narrow meaning than "compensation." 26 C.F.R. § 1.457-2(b)(1), (i). But the distinction is relevant only to the calculation of the maximum amount of

& 3. And all deferred compensation, including employer contributions, is treated the same with respect to Federal Insurance Contributions Act ("FICA") taxes. *See* 26 U.S.C. §§ 3101(a), 3121(a)(5)(E), (v)(3)(A); *cf. Univ. of Chicago v. United States*, 547 F.3d 773, 782 (7th Cir. 2008) (holding that FICA exception for payments made under or to a § 403(b) annuity contract includes mandatory salary reduction agreements).

II. WADE WAS IMPROPERLY DISMISSED.

¶19 The superior court dismissed Wade's claims against the Retirement System on the theory that because she had retired before the complaint was filed and was therefore receiving benefits under the Retirement System, she had failed to exhaust administrative remedies designed to allow benefit adjustments.[5]

¶20 A.A.C. § R2-8-401 to -405 establish an administrative procedure for challenging "appealable agency actions" taken by the Retirement System. But Wade's challenge to the statutory interpretation that the Retirement System provided to the City is not an "appealable agency action." Under A.R.S. § 41-1092(3), an "appealable agency action" is "an action that determines the legal rights, duties or privileges of a party and that is not a contested case." The definition excludes "interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation." *Id.* The Retirement System's interpretation, and Wade's pursuit of declaratory relief with respect to that interpretation, falls within the statutory exclusion.

¶21 The Retirement System also argues that Wade could have applied under A.R.S. § 38-738(B) to have it issue an invoice to the City to

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deferred compensation for which the employee may receive deferred income-tax treatment under federal law. *See* 26 U.S.C. § 457(b)(2), (c), (e)(5); 26 C.F.R. § 1.457-4(c), Exs. 2 & 3.

[5] The superior court denied the Retirement System's motion to dismiss Paddock. The Retirement System disagrees with that ruling. But it declined to seek appellate relief (available only by way of special action, *N. Propane Gas Co. v. Kipps*, 127 Ariz. 522, 525 (1980)), and it states on appeal that it will apply this court's ruling on the statutory-interpretation issue to any claim that Wade makes in administrative proceedings.

pay any additional amounts due. We disagree. The only applicable provision in that statute for an employee to seek relief deals with underpaid employer contributions. The Deferred Compensation Plan does not distinguish between employer and employee contributions. Moreover, because the Retirement System had advised the City that the Deferred Compensation Plan contributions were not part of compensation for purposes of Retirement System calculations, any such request for recalculation would have been bound to fail. Accordingly, § 38-738(B) does not provide an administrative hurdle which Wade had to surmount before seeking judicial relief.

CONCLUSION

¶22 For the reasons set forth above, we reverse the superior court's dismissal of Wade and its entry of summary judgment against Paddock, and remand for proceedings consistent with this decision.

¶23 The appellants request attorney's fees on appeal under A.R.S. §§ 12-2030, -348(A)(2), and -341.01. The first two statutes do not apply. First, § 12-2030(A) authorizes a fee award when a party prevails in an action to compel a state officer to perform a duty imposed by law. Though the appellants characterize the appeal as one seeking mandamus relief, their dispute with the Retirement System is that it misinstructed the City to omit its deferred compensation contributions from its reports -- not that the Retirement System refused to calculate retirement contributions or pay benefits based on reports that included the City's deferred-compensation payments.[6] The appeal is therefore not actually in the nature of mandamus, *see Fields v. Elected Officials' Retirement Plan*, 234 Ariz. 214, 222, ¶ 40 (2014), and, accordingly, § 12-2030(A) does not apply. Second, § 12-348(A)(2) does not apply. That statute governs fee awards in appeals from administrative decisions, and this is not such an appeal.

¶24 A.R.S. § 12-341.01, however, applies to this case. That statute authorizes fee awards in actions "arising out of a contract." Though the legal issue in this case turns on the interpretation of a statute, the statute

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[6] The appellants cite the superior court's determination that "a mandamus action is the appropriate vehicle." But that conclusion was expressly limited to Paddock's claims against the City only. The City is responsible for managing contribution payments. A.R.S. § 38-735; *see also* A.R.S. § 38-716(2). There is nothing in the record to suggest that Paddock ever sought correction of underpayments under § 38-738(B).

in question defines terms of the appellants' contractual rights to benefits incident to their employment. Article 29, Section 1(C) of the Arizona Constitution provides: "Membership in a public retirement system is a contractual relationship that is subject to article II, § 25, and public retirement system benefits shall not be diminished or impaired." When a statute defines terms of a contract, our supreme court has held that A.R.S. § 12-341.01 applies to disputes over the interpretation of the statute. *A.H. v. Ariz. Prop. & Cas. Ins. Guar. Fund*, 190 Ariz. 526, 529-30 (1997). An award under § 12-341.01 is appropriate here. *See Pendergast v. Arizona State Ret. Sys.*, 234 Ariz. 535, 542, ¶ 23 (App. 2014).

¶25 We therefore award the appellants their reasonable attorney's fees subject to compliance with ARCAP 21. The appellants are also entitled to an award of costs under A.R.S. § 12-341 upon compliance with ARCAP 21.

Ruth A. Willingham · Clerk of the Court
FILED: ama

Agenda Item #13

ASU v. ASRS

Arizona Court of Appeals Final Opinion

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

ARIZONA STATE UNIVERSITY ex rel. ARIZONA BOARD OF REGENTS, a body corporate, *Plaintiff/Appellant*,

v.

ARIZONA STATE RETIREMENT SYSTEM, a body corporate, *Defendant/Appellee*.

No. 1 CA-CV 14-0083
FILED 5-5-2015

Appeal from the Superior Court in Maricopa County
No. LC2012-000689-001
The Honorable Crane McClennen, Judge

REVERSED AND REMANDED

COUNSEL

Osborn Maledon P.A., Phoenix
By Thomas L. Hudson, Eric M. Fraser
Co-Counsel for Plaintiff/Appellant

Office of General Counsel, Arizona State University, Tempe
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OPINION

Judge Patricia K. Norris delivered the opinion of the Court, in which Presiding Judge Margaret H. Downie and Judge Randall M. Howe joined.

N O R R I S, Judge:

¶1 The dispositive question in this appeal is whether Defendant/Appellee, the Arizona State Retirement System, was required to follow the rulemaking procedure set forth in Arizona's Administrative Procedure Act before enforcing a policy under which it charged Plaintiff/Appellant, Arizona State University, for an actuarial unfunded liability reportedly arising when 17 University employees retired. We hold that it was, and because the System failed to follow the rulemaking procedure, the policy is invalid. Accordingly, we reverse and remand to the superior court for entry of an order directing the System to refund the improper charge, with interest thereon if and as authorized by law.

FACTS AND PROCEDURAL BACKGROUND

¶2 The System administers a trust fund which provides retirement and disability benefits in the form of periodic, or lump sum, pension payments to eligible employees of the state and participating political subdivision employers. Ariz. Rev. Stat. ("A.R.S.") §§ 38-711(13), -712, -727, -729, -757, -758, -760, -762 to -764 (2015).[1] The employees, known as "members," may also elect to receive one of several health insurance supplemental benefits. A.R.S. §§ 38-711(23), -783 (2015). Member and employer contributions fund the trust, along with interest on fund assets and investment returns. A.R.S. §§ 38-718, -735 to -737 (2015). To monitor the trust's financial health, the System compares the assets it has accumulated to pay for members' earned benefits with the liabilities it owes for those benefits. *See* A.R.S. § 38-737(A). When liabilities owed for past service exceed assets accumulated to pay those liabilities, an unfunded actuarial accrued liability exists.

[1]Although the Arizona Legislature amended certain statutes cited in this opinion after the events giving rise to the dispute between the parties, these revisions are immaterial to our resolution of this appeal. Thus, we refer to the current version of these and all other statutes cited in this opinion.

¶3 Each year, the System's actuary determines the contribution rates necessary to fund the System's present and future obligations to its members plus payments on any amortized unfunded actuarial accrued liability. A.R.S. §§ 38-736, -737. In determining the contribution rates, the actuary relies on assumptions about members' expected benefit elections, payroll growth, retirement rates, mortality rates, interest rates, and investment returns. The System conducts empirical studies every five years to improve its assumptions. *See* A.R.S. § 38-714(G) (2015).

¶4 The System may incur an actuarial unfunded liability when an employer offers incentives to encourage its employee-members to retire. For example, when an employer increases a member's salary beyond System expectations in exchange for a promise to retire, that member's monthly pension, calculated using the increased salary, *see* A.R.S. § 38-711(5)(ii)(b), -757 to -759 (2015), may likely exceed the amount the System expected to pay out to that member, thus resulting in an unfunded liability.[2] A termination incentive program may also result in an unfunded liability by causing members to retire and collect benefits sooner and for longer than the System expected.

¶5 To address the financial impact of termination incentive programs, *see* Amended Senate Fact Sheet, H.B. 2052, 46 Leg., 2d Reg. Sess. (March 11, 2004), in 2004 the Legislature enacted A.R.S. § 38-749 (2015). 2004 Ariz. Sess. Laws, ch. 106, § 1 (2d Reg. Sess.). Under this statute, "[i]f a termination incentive program that is offered by an employer results in an actuarial unfunded liability" to the System, the employer must pay the System "the amount of the unfunded liability." A.R.S. § 38-749(A). The statute directs the System to "determine the amount of the unfunded liability in consultation with its actuary." *Id.*[3]

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[2]Like the parties, their witnesses, and A.R.S. § 38-749 (2015), we use the term "actuarial unfunded liability" interchangeably with "unfunded liability."

[3]A.R.S. § 38-749, in full, provides:

> A. If a termination incentive program that is offered by an employer results in an actuarial unfunded liability to [the System], the employer shall pay to [the System] the amount of the unfunded liability. [The System] shall

determine the amount of the unfunded liability in consultation with its actuary.

B. An employer shall notify [the System] if the employer plans to implement a termination incentive program that may affect [System] funding.

C. If [the System] determines that an employer has implemented a termination incentive program that results in an actuarial unfunded liability to [the System], [the System] shall assess the cost of the unfunded liability to that employer. If the employer does not remit full payment of all monies due within ninety days after being notified by [the System] of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

D. For the purposes of this section, "termination incentive program":

1. Means a total increase in compensation of thirty per cent or more that is given to a member in any one or more years before termination that are used to calculate the member's average monthly compensation if that increase in compensation is used to calculate the member's retirement benefit and that increase in compensation is not attributed to a promotion.

2. Means anything of value, including any monies, credited service or points that the employer provides to or on behalf of a member that is conditioned on the member's termination except for payments to an employee for accrued vacation, sick leave or

¶6 Although A.R.S. § 38-749 refers to an "actuarial unfunded liability," the statute does not explain how to determine when a termination incentive program results in an actuarial unfunded liability or how to calculate "the amount of the unfunded liability." To answer these questions, the System's executive staff discussed the statute with the System's actuary. They considered two methods of calculating the unfunded liability, one which would discount the charge to employers by the amount of additional benefits a member would have received if he or she had continued working instead of retiring and one which would not provide employers with this discount. As a result of these discussions, the System's executive staff adopted the first method and directed the System's actuary to draft the System's "Policy on Employer Early Termination Incentive Programs" to memorialize how the System would implement A.R.S. § 38-749.

¶7 The Policy requires employers to notify the System of all members who participate in a termination incentive program and to disclose their demographic and salary information, as well as their benefits elections. Using this information, the System's actuary calculates the present value, under System actuarial assumptions, of the member's future benefits as if he or she had not retired ("active liability") and the present value, under System actuarial assumptions, of the member's future benefits taking into account his or her actual retirement date and actual benefit elections ("retired liability").

¶8 Under the Policy, when retired liability exceeds active liability, an unfunded liability results from the member's participation in the termination incentive program, and the employer is liable for the difference. When, however, a member's active liability exceeds his or her retired liability, the employer will receive credit. If credits exceed liabilities, the employer does not receive reimbursement; there is merely no charge. The System has applied the Policy consistently to all System employers.

¶9 In 2011, the University offered one year's salary as an incentive payment to eligible employees if they agreed to retire that year.

> compensatory time unless the payment is enhanced beyond the employer's customary payment.

Seventeen System members accepted the University's offer.[4] Applying the Policy, the System determined the University's termination incentive program resulted in an unfunded liability of $1,149,103, which it then charged to the University. The University paid the charge, but appealed it, arguing the System had, first, adopted a rule without following the rulemaking procedure provided by Arizona's Administrative Procedure Act ("APA"), codified at A.R.S. §§ 41-1001 to -1092 (2013 & Supp. 2014); and, second, charged the University for retirements that did not result in an actuarial unfunded liability.

¶10 At a hearing before the Office of Administrative Hearings, the University's actuarial expert and the System's actuary agreed that "actuarial standards of practice are not detailed enough to give us specific direction about how to interpret a term like unfunded liability." The University's expert offered an alternative method of calculating actuarial unfunded liability, consistent, in her opinion, with generally accepted actuarial standards, the System's actuarial assumptions, and A.R.S. § 38-749. Based on that method, she testified the University's termination incentive program did not result in any unfunded liability because it did not cause more members to retire than the System had projected based on its assumptions.

¶11 The University's expert also testified the System should not charge employers for unfunded liability resulting from members' benefits elections because whether a member elects the benefit option predicted by the System's assumptions or a more expensive option has nothing to do with that member's participation in a termination incentive program. She pointed out the System charged the University for one member's health benefit election, even though, under System assumptions, the member had a 100% chance of retiring that year; and, thus, his retirement was not the result of a termination incentive program.

¶12 The System's actuary and the System's Assistant Director of External Affairs also acknowledged that A.R.S. § 38-749 does not explain how to determine whether a termination incentive program results in an actuarial unfunded liability or how to calculate that unfunded liability. The System's actuary testified that the other method of calculating unfunded liability he had discussed with executive staff before they adopted the Policy, see *supra* ¶ 6, is consistent with A.R.S. § 38-749, the

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[4]This incentive payment was not compensation for the purpose of calculating the members' retirement benefits. *See generally* A.R.S. § 38-711(5)(ii)(b), -757 to -759.

System's actuarial assumptions, and generally accepted actuarial standards. He explained the System had, however, "interpreted" the term "unfunded liability" in the manner reflected in the Policy because it was "less onerous for employers."

¶13 The administrative law judge ruled in favor of the System, finding the University had failed to show the System's "methodology for calculating unfunded liability resulting from a[] . . . termination incentive program . . . [was] unreasonable, or an abuse of discretion, or contrary to law." The administrative law judge also found that because A.R.S. § 38-749 did not require the System to adopt a rule before implementing the Policy, it was not required to do so. The System's board accepted the administrative law judge's findings of fact and conclusions of law with immaterial alterations, and the University filed an action for judicial review in the superior court. *See* A.R.S. § 12-905 (2003). The superior court upheld the board's determination, and this appeal followed.

DISCUSSION

I. The Policy is a Rule

¶14 On appeal, the University argues the Policy is a rule within the meaning of the APA and, therefore, because the System adopted it without following the rulemaking procedure provided in the APA, it is void. Reviewing this issue de novo, but granting deference to the System's interpretation of statutes and its own regulations, *see Carondelet Health Servs., Inc. v. Ariz. Health Care Cost Containment Sys. Admin.*, 182 Ariz. 221, 226, 895 P.2d 133, 138 (App. 1994), we agree with the University.[5]

¶15 The APA defines "rule" as:

> an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or

[5]The University also argues the System's method of determining whether a termination incentive program "results" in actuarial unfunded liability and calculating the amount of that liability is contrary to law and arbitrary and capricious. Given our resolution of the rulemaking issue, we do not need to address this argument.

> practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

A.R.S. § 41-1001(19) (Supp. 2014).

¶16 Thus, barring any exemptions, an agency statement is a rule, subject to the APA's rulemaking procedure, if it, first, is generally applicable, and, second, implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. At the administrative hearing, the System acknowledged it had applied the Policy consistently to all System employers since its adoption, and, thus, the Policy satisfies the general applicability requirement. *See Carondelet*, 182 Ariz. at 227, 895 P.2d at 139 (agency admission that "its methodology is generally applied to all hospitals" satisfies general applicability element).

¶17 The Policy also satisfies the second requirement. As discussed, the System adopted the Policy to implement A.R.S. § 38-749. The ordinary meaning of the word "implement" is "[t]o put into practical effect; carry out." American Heritage Dictionary 880 (4th ed. 2006); *see Stout v. Taylor*, 233 Ariz. 275, 278, ¶ 12, 311 P.3d 1088, 1091 (App. 2013) (court may refer to established and widely used dictionaries to determine ordinary meaning of word). By charging employers under the Policy for an unfunded liability which results from termination incentive programs, the System has put A.R.S. § 38-749 into practical effect. *See* A.R.S. § 41-1001(19); *Carondelet*, 182 Ariz. at 227, 895 P.2d at 139 (agency methodology was a rule because, among other reasons, it implemented a session law).

¶18 Further, the Policy interprets A.R.S. § 38-749. The plain language of the statute leaves open questions such as: how to determine if a termination incentive program "results in an actuarial unfunded liability"; how to calculate the amount of an unfunded liability; and whether to charge employers if members elect more expensive benefit options than the System assumed, even though these elections may not, strictly speaking, be the result of a termination incentive program. *Cf. Sw. Ambulance, Inc. v. Ariz. Dep't of Health Servs.*, 183 Ariz. 258, 261, 902 P.2d 1362, 1365 (App. 1995), *superseded by statute*, 1998 Ariz. Sess. Laws, ch. 57, § 39 (2d Reg. Sess.) (ambulance services rate schedules were rules because they specified "how a fraction of an hour is to be charged, how mileage is to be charged, the assessment of charges for the transport of multiple

patients, what constitutes a minimum charge, [and] when the rate for advanced life support may be charged").

¶19 Like the hospital reimbursement methodology at issue in *Carondelet*, the Policy involves a "complex calculation with subjective components whose inclusion, or even definition, have a significant effect" on the amount the System charges employers. *See* 182 Ariz. at 227, 895 P.2d at 139. And, like the session law at issue in *Carondelet*, the governing statute here, A.R.S. § 38-749, "does not set forth the calculations to be made and leaves much" to the System's discretion. *See id.* at 227–28, 895 P.2d at 139–40. *Carondelet* involved a session law which directed the Arizona Health Care Cost Containment System ("AHCCCS") to adjust its hospital reimbursement multipliers based on new six-month charges and volume reports. *Id.* at 224, 895 P.2d at 136. We held the methodology AHCCCS adopted to implement the session law was a rule because, among other reasons, the session law did "not set forth the calculations to be made" and did not direct "how the amount of reimbursement [was to] be determined." *Id.* at 228, 895 P.2d at 140. Similarly, A.R.S. § 38-749 directs the System to make a calculation, but it does not specify how the calculation is to be made. In other words, to implement A.R.S. § 38-749, one must first interpret it.

¶20 Despite the foregoing, the System contends the Policy does not implement or interpret A.R.S. § 38-749, arguing the statute is self-executing and leaves no room for agency discretion. According to the System, unlike the challenged policies in *Carondelet* and *Southwest Ambulance*, the Policy here does not involve "subjective" judgments and merely applies "the same actuarial assumptions used to operate the entire defined-benefit plan and the same calculation used to calculate the plan's liability."

¶21 The evidence presented at the administrative hearing squarely contradicts this position. As discussed, the System's actuary and Assistant Director of External Affairs both conceded A.R.S. § 38-749 does not explain how the amount of an unfunded liability should be calculated. Both the University's actuarial expert and the System's actuary offered alternative methods of calculating the amount of an unfunded liability that they testified were consistent with A.R.S. § 38-749, the System's actuarial assumptions, and generally applicable actuarial standards of practice. In fact, the System's actuary testified the System considered two methods of making the calculation, and it selected the calculation that appears in the Policy not because it was more consistent with A.R.S. § 38-749 or the System's actuarial assumptions, but because it was "less onerous for employers." Thus, to carry out its mandate under A.R.S. § 38-

749, the System was required to exercise judgment and discretion in crafting the Policy, and it, in fact, did so. *See Carondelet*, 182 Ariz. at 228–29, 895 P.2d at 140–41 (session law not self-executing because it left matters to agency's discretion and did not direct any one particular course of action).

¶22 Accordingly, the Policy was a rule within the meaning of the APA.

II. In the Absence of an Exemption, an Agency Must Comply with the APA

¶23 The System argues that even if the Policy is a rule, it was not required to comply with the APA because the Legislature did not expressly require rulemaking in A.R.S. § 38-749. Although we agree A.R.S. § 38-749 says nothing about rulemaking, the statute's silence does not exempt the System from the APA's rulemaking procedure.

¶24 The rulemaking procedure of the APA "appl[ies] to all agencies and all proceedings not expressly exempted." A.R.S. § 41-1002(A) (2013); *see Carondelet*, 182 Ariz. at 228, 895 P.2d at 140 (rejecting argument that from legislative silence one can infer "the legislature never envisioned the need for an explanatory rule"). Neither A.R.S. § 38-749 nor the APA, *see* A.R.S. § 41-1005 (Supp. 2014), exempt the System from rulemaking; therefore, rulemaking is required before the Policy can be given effect. *See* A.R.S. § 41-1030(A) (2013).

¶25 The System contends *Carondelet* does not support the proposition that rulemaking is required when the Legislature is silent on the question. The System attempts to distinguish *Carondelet* by arguing that the policy at issue in that case implemented a session law which incorporated by reference a prior statute which expressly called for rulemaking. 182 Ariz. at 228, 895 P.2d at 140. The *Carondelet* court, however, merely used this fact to "bolster[]" its conclusion after it had resolved the issue under A.R.S. § 41-1002(A). *Id.*

¶26 Invoking the principle of *expressio unius est exclusio alterius*—a canon of statutory construction that when statutes set forth a requirement in one provision but not in another, a court should assume the absence of the provision was intentional—the System further argues the Legislature intended to exempt it from rulemaking because it expressly required the System to engage in rulemaking in other statutes, A.R.S. §§ 38-735, 755, 764 (2015). *See generally Ezell v. Quon*, 224 Ariz. 532,

541, ¶ 41, 233 P.3d 645, 654 (App. 2010) (discussing this canon of construction).

¶27 When the Legislature's intent is clear, however, interpretative canons of construction are inapplicable. Section 41-1002 provides that in the absence of an express exemption, agencies must comply with the APA, and we cannot ignore this unambiguous language in favor of a secondary principle of statutory interpretation. *See Forsythe v. Paschal*, 34 Ariz. 380, 383, 271 P. 865, 866 (1928) (*expressio unius* should not be applied to contradict "general context" of statute and "public policy of the state"); *Microchip Tech. Inc. v. State*, 230 Ariz. 303, 306–07, ¶ 12, 283 P.3d 34, 37–38 (App. 2012) (because text of statute was clear, resort to principle of *expressio unius* was unnecessary (citing *Sw. Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79–80, 597 P.2d 981, 982–83 (1979) ("The doctrine of 'expressio unius' is not to be applied where its application contradicts the general meaning of the statute or state public policy.")).

III. Compliance with the APA Would Not Require the System to Breach its Fiduciary Duties

¶28 The System also argues that allowing "employer input on unfunded liability calculations" through rulemaking procedure, *see* A.R.S. § 41-1023 (2013), would require it to breach its fiduciary duty to the trust and its beneficiaries under the Arizona Constitution. *See* Ariz. Const. art. XXIX, § 1(A) ("Public retirement systems shall be funded with contributions and investment earnings using actuarial methods and assumptions that are consistent with generally accepted actuarial standards."). In support of this argument, the System cites two California cases, which, for purposes of this appeal, do little more than establish that a state retirement system's fiduciary and contractual duties to its beneficiaries sometimes trump legislative and municipal priorities. *City of Sacramento v. Pub. Emps. Ret. Sys.*, 280 Cal. Rptr. 847, 860–61 (Cal. App. 1991) (retirement system's interpretation of federal labor statutes which tended to increase city's contributions to system did not violate California constitutional provision that system minimize employer contributions because, in part, to do so would require system to favor employers over beneficiaries to whom it owes a fiduciary duty); *Valdes v. Cory*, 189 Cal. Rptr. 212, 221–24 (Cal. App. 1983) (legislation suspending employer contributions to state retirement system violated beneficiaries' vested contractual rights to retirement benefits). Here, however, we are not faced with a situation in which a legislative enactment conflicts with the System's fiduciary duties to the trust and its beneficiaries; the question is simply whether the System must comply with the APA's rulemaking

procedure—a question which is neutral to the interests of the trust and its beneficiaries.

¶29 Moreover, merely following rulemaking procedure would not cause the System to breach its fiduciary duties. *Cf. Carondelet*, 182 Ariz. at 229, 895 P.2d at 141 (rejecting argument that forcing agency to comply with APA would "tie [its] hands" and not allow it to fulfill its statutory mandate). The APA requires an agency to provide meaningful opportunity for public comment on and discussion of proposed rules. A.R.S. § 41-1023(B), (C). The APA does not, however, require an agency to blindly heed any and every suggestion it receives. Rather, the APA merely requires an agency to "consider" public comments before making a rule, A.R.S. § 41-1024(C) (2013), and the agency remains free to "use its own experience, technical competence, specialized knowledge and judgment in the making of a rule." *Id.* at (D).

IV. The System is an Agency Subject to the APA

¶30 The System next argues it is exempt from the APA because it is not a "regulatory state agenc[y]"—in the sense of regulating the general public or any particular industry—and instead it is a state agency that serves a fiduciary function.[6] As defined by the APA, however, "'[a]gency' means any board, commission, department, officer or other administrative unit of this state . . . ." A.R.S. § 41-1001(1). The APA's definition of "agency" makes no exception for agencies that perform fiduciary as opposed to more traditional regulatory functions. Indeed, consistent with the System's status as an agency subject to the APA, the Legislature specifically granted the System authority to "[a]dopt, amend or repeal rules for the administration of the plan" and "this article"—a reference to

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[6]Relying on *Canyon Ambulatory Surgery Ctr. v. SCF Ariz.*, the System argues the APA "governs only those agencies that perform governmental functions," 225 Ariz. 414, 419, ¶ 19, 239 P.3d 733, 738 (App. 2010), and, thus, the APA does not apply to the System insofar as it serves a fiduciary function. The statement from *Canyon Ambulatory* the System quotes, however, was a recitation of the ground on which the superior court resolved that case. *Id.* This court declined to affirm on the issue of whether the State Compensation Fund "is a state agency subject to the APA" and instead decided the case on the basis that the policy at issue there was not a rule. *Id.* at 419–20, ¶¶ 19, 21, 239 P.3d at 738–39.

the statutory article that includes A.R.S. § 38-749. A.R.S. § 38-714(E)(4) (2015).

¶31 The System further argues that forcing it to comply with the APA under the circumstances here would be "absurd" because the APA was not intended to protect the rights of "one division of state government," the University, from the actions of another, the System. The foregoing definition of "agency," however, makes no exception for agencies whose decisions affect the rights of divisions and political subdivisions of the state. *See* A.R.S. § 41-1001(1). Accordingly, we have held that rules promulgated without following the rulemaking procedure of the APA are unenforceable against political subdivisions of the state. *See, e.g.*, *Cochise Cnty. v. Ariz. Health Care Cost Containment Sys.*, 170 Ariz. 443, 445, 825 P.2d 968, 970 (App. 1991). Furthermore, the System's decision to adopt the Policy affects all System members and all System employers—which, as a factual matter, may include state political subdivisions and their subordinate "entities" in addition to divisions of the state. A.R.S. § 38-711(13).

V. The System's Failure to Comply with the APA Renders the Policy Invalid

¶32 "A rule is invalid unless it is made and approved in substantial compliance with [the APA], unless otherwise provided by law." A.R.S. § 41-1030(A); *accord Sw. Ambulance,* 183 Ariz. at 262, 902 P.2d at 1366; *Cochise Cnty.*, 170 Ariz. at 445, 825 P.2d at 970. As discussed, the Policy is a rule, and the System adopted it without "substantial compliance" with the rulemaking procedure of the APA. Accordingly, the Policy is invalid, and the System was not entitled to charge the University for the 17 retirements. *See, e.g.*, *Carondelet*, 182 Ariz. at 229–30, 895 P.2d at 141–42 (agency ordered to compensate hospitals that received reduced reimbursement under policy adopted outside of APA).

CONCLUSION

¶33 For the foregoing reasons, we reverse the superior court's decision affirming the ruling of the System's board and remand to the superior court to enter an order directing the System to refund $1,149,103 to the University, with interest thereon if and as authorized by law—an issue the superior court should address on remand. Contingent upon its compliance with Arizona Rule of Civil Appellate Procedure 21, we award the University its taxable costs on appeal pursuant to A.R.S. § 12-341 (2003).

ASU v. ASRS

Superior Court

Decision Re: Interest

Michael K. Jeanes, Clerk of Court
*** Filed ***
03/14/2016 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000689-001 DT 03/11/2016

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

ARIZONA STATE UNIVERSITY
ARIZONA BOARD OF REGENTS

LISA K HUDSON

v.

ARIZONA STATE RETIREMENT SYSTEM (001)

JOTHI BELJAN

OFFICE OF ADMINISTRATIVE HEARINGS
REMAND DESK-LCA-CCC

HIGHER COURT RULING / REMAND

On May 5, 2015, the Arizona Court of Appeals issued its opinion in this matter which contained the following language:

> For the foregoing reasons, we reverse the superior court's decision affirming the ruling of the System's board and remand to the superior court to enter an order directing the System to refund $1,149,103 to the University, with interest thereon if and as authorized by law–an issue the superior court should address on remand.

On November 6, 2015, the Arizona State Retirement System (ASRS) made payment to Arizona State University (ASU) in the amount of $1,327,190.35, which included a payment of $1,149,103.00 plus interest at 4.25 percent from March 15, 2012, (the date of ASU's payment to ASRS) to November 6, 2015, (the date of payment by ASRS to ASU). On November 18, 2015, the Arizona Court of Appeals issued its mandate.

IT IS THEREFORE ORDERED that ASRS shall refund $1,149,103.00 to ASU (which apparently was already done on November 6, 2015).

IT IS FURTHER ORDERED that ASRS shall pay interest at a rate of 4.25 percent from March 15, 2012, until November 6, 2015, (which apparently was already done on November 6, 2015).

IT IS FURTHER ORDERED, to the extent any party considers this order to be a judgment, it is entered pursuant to Rule 54(c).

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

ASU v. ASRS

ASU Notice of Appeal

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Arizona State University, ex rel. Arizona Board of Regents, a body corporate, Plaintiff, vs. Arizona State Retirement System, a body corporate, Defendant.	No. LC2012-000689-001 DT **NOTICE OF APPEAL** (Assigned to the Hon. Crane McClennen)

Notice is hereby given that the above-named Plaintiff appeals to the Court of Appeals of the State of Arizona from the final order in this action signed on March 11, 2016 and filed on March 14, 2016 concerning interest.

DATED this 1st day of April, 2016.

OSBORN MALEDON, P.A.

By _____
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ARIZONA BOARD OF REGENTS,
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Original filed this 1st day of April, 2016,
with Clerk, Maricopa County Superior Court
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COPY of the foregoing mailed this 1st day
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Agenda Item #14

Confidential Materials are not currently available and will be provided to the Board at the meeting.