

IAC Briefing on Statutory Duties, Fiduciary Requirements & Standards of Conduct

December 2009 Meeting



INVESTING FOR FLORIDA'S FUTURE

→ Statutory Provisions Regarding the IAC

Creation and Duties (s. 215.44, F.S.)

- Members shall possess special knowledge, experience and familiarity with financial instruments and portfolio management
- Duties are “...to review investments made by staff of the SBA and to make recommendations to the board regarding investment policy, strategy and procedures.”

→ The Law - Florida

Section 215.47(10), Florida Statutes

- The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries.
- The board in performing the above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A) through (C).
- In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

→ The Law – ERISA; U.S.C. s. 1104(a)(1)(A) through (C)

§ 1104. Fiduciary duties

(a) Prudent man standard of care

- (1) Subject to sections 1103 (c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and —
 - (A) for the exclusive purpose of:
 - (i) providing benefits to participants and their beneficiaries; and
 - (ii) defraying reasonable expenses of administering the plan;
 - (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; [and]
 - (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so

→ Conflicts of Interest

- Avoid self-dealing
 - Doing business with the trust
- Avoid self-enrichment
 - Monetary gain for yourself, your family, your employer, or business partners or associations
- Avoid the appearance of impropriety
 - Undue pressure or influence
- Full disclosure cures most problems

→ IAC & The Sunshine Law

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The IAC is subject to Florida's Government in the Sunshine Law which provides a right of access to governmental proceedings, including advisory boards.

- The law is applicable to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.
- The three basic requirements of the sunshine law are codified at section 286.011, Florida Statutes:
 - Meetings of public boards or councils must be open to the public;
 - Reasonable notice of such meetings must be given; and
 - Minutes of the meetings must be taken.
- The Sunshine Law extends to the discussions and deliberations as well as the formal action – in short, *any* gathering, including telephonic or electronic, whether formal or casual, of two or more members to discuss some SBA related matter.
- A right of access to meetings of collegial public bodies, as well as public records, is also recognized in the Florida Constitution (Art. 1, Sec. 24).

→ IAC & The Public Records Law

The IAC is subject to Public Records Law (Chapter 119, Fla. Stat.)

- The Legislature has provided that *“it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person.”*
- Public records is defined to include *“all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”*
- Absent a specific statutory exemption, access to public records is virtually unfettered.

→ IAC & The Standards of Conduct for Public Officers

Members of the IAC meet the definition of “*public officer*” and are subject to certain provisions of the Code of Ethics. The standards of conduct for public officers are located in section 112.313, F.S., and include:

- Prohibition against solicitation or acceptance of gifts;
- Prohibition against doing business with one’s agency;
- Prohibition against accepting unauthorized compensation;
- Prohibition against misuse of public position;
- Prohibition against holding or having a conflicting employment or contractual relationship;
- Prohibition against disclosure or use of certain confidential information.

→ IAC & The Standards of Conduct for Public Officers

- Members of the IAC are not required to file a financial disclosure because their charge is solely advisory in nature and there is no budget or appropriation allocated to carry out such charge.
(See section 112.312(1) and 112.3145(1)(c)2, F.S.)
- Members of the IAC are not procurement employees or financial disclosure reporting individuals and, as such, are not subject to state laws or SBA policies prohibiting certain gifts and honoraria.
(See section 112.3148 and 112.3149, F.S.)
- Members of the IAC may be subject to the above requirements by virtue of other public employment or service unrelated to IAC membership.