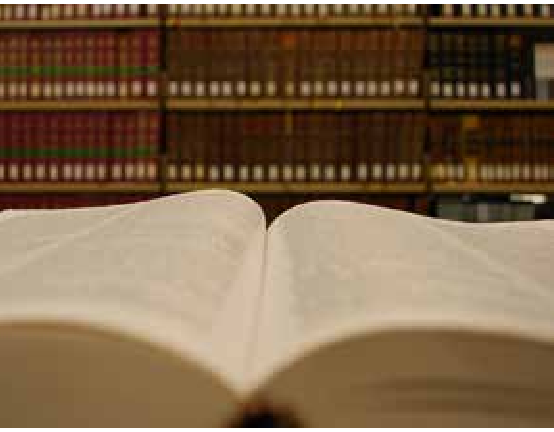

# What are my obligations as a trustee to report suspected pension fraud?

*By Ericka J. Thomas*
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The Illinois pension crisis has become a serious focus of lawmakers, citizens, and pension trustees over the last decade. Pension funds have tightened their review of applications for disability pension benefits and have considered ways to address underfunding in an effort to get their pension funds back on solid ground. However, one area that pension funds may not be looking at closely enough is detecting, curing and reporting fraud within the pension fund.

The word "fraud" is defined by Section 1-135 of the Illinois Pension Code as "Any person who knowingly makes any false statement or falsifies or permits to be falsified any record of a retirement system or pension fund created under this Code or the Illinois State Board of Investment in an attempt to defraud the retirement system or pension fund created under this Code or the Illinois State Board of Investment." (40 ILCS 5/1-135) Fraud under Article 1 of the Illinois Pension Code is a Class 3 felony and is punishable by fines up to $25,000 and imprisonment between 2 and 5 years.

Both Articles 3 and 4 of the Illinois Pension Code also contain specific fraud provisions with nearly identical language that categorize such conduct as Class A misdemeanors. (40 ILCS 5/3-144.5 and 40 ILCS 5/4-138.5) While fraud is generally easily understandable, it is frequently hard to detect or discover. This begs the question of what legal obligations a pension fund and its trustees have to discover and cure fraud.

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The Illinois Pension Code establishes that a pension board owes a fiduciary duty towards its participants and beneficiaries. (40 ILCS 5/1-109) Although it is prudent to conduct an annual review of benefits and paperwork filed by beneficiaries for fraud, accuracy, etc., the Illinois Pension Code does not expect a pension fund and its trustees to become a pension police force. Rather, the Illinois Pension Code only **requires** that pension fund trustees or board members take action when they have a "reasonable suspicion" of a false statement or falsified record concerning a pension matter being submitted or permitted.

When a reasonable suspicion exists, a pension fund trustee is mandated to immediately refer the matter to the board of trustees of the applicable retirement system or pension fund created under this Code or the State's Attorney of the jurisdiction where the alleged fraudulent activity occurred. (40 ILCS 5/1-135) Section 1-135 defines "reasonable suspicion" as:

> [A] belief, based upon specific and articulable facts, taken together with rational inferences from those facts, that would lead a reasonable person to believe that fraud has been, or will be, committed. A reasonable suspicion is more than a non-particularized suspicion. A mere inconsistency, standing alone, does not give rise to a reasonable suspicion. (40 ILCS 5/1-135)

It is important for pension trustees to remember that, once discovered, the Illinois Pension Code mandates that appropriate action be taken to report or cure the fraud. Failure to take any action could result in a claim that the pension board and its trustees have breached their fiduciary duty or a claim that, by ignoring the fraud, the pension board and its trustees have become complicit in the fraud. As with any issue of such a serious nature, it is recommended that legal counsel be consulted concerning the appropriate actions to take if the pension fund or any of its trustees have a "reasonable suspicion" that fraud has occurred. ■