



## The Permanent University Fund and Available University Fund

This issue brief describes the Permanent University Fund (PUF) and the Available University Fund (AUF), particularly as used and administered by The University of Texas System.

### PERMANENT UNIVERSITY FUND:

#### Nature of the Fund

The PUF is an endowment benefitting institutions within The University of Texas System (UT) and The Texas A&M University System.<sup>i</sup> Created by the Texas Constitution,<sup>ii</sup> which prescribes the governance, investment and use of the PUF, the PUF includes more than 2.1 million acres located in 24 counties, primarily in West Texas, plus the accumulated value of investments and of income credited to the PUF. The PUF is the largest endowment of public institutions of higher education in the United States.

#### Income Streams

The PUF lands produce two income streams: mineral income, which comes mainly from oil and gas bonuses, rentals and royalties, and surface income such as income from grazing leases, easements, wind power generation and a commercial vineyard and winery.

The constitution requires that mineral income be added to the corpus of the PUF.<sup>iii</sup> As a result, growth in oil and gas revenue during a “boom” increases the size of the PUF but, because of constitutional limitations designed to protect the corpus, it only incrementally increases the bonding capacity of the PUF<sup>iv</sup> or the amount that may be distributed to the AUF. Surface income is deposited in the AUF.<sup>v</sup>

#### Investment

Investment of the PUF is a constitutional responsibility of the UT System Board of Regents, subject only to constitutional limitations and a constitutional “prudent investor” standard.<sup>vi</sup>

Pursuant to statutory authority,<sup>vii</sup> the UT System Board of Regents contracts for investment services with the University of Texas Investment Management Company (UTIMCO), a non-profit corporation whose sole purpose is the management of UT System investment assets. UTIMCO is governed by nine directors, two appointed by the Texas A&M Board of Regents and seven appointed by the UT Board, including three regents. One appointee of the Texas A&M System and three of the UT System must have substantial investment experience. UT System appointees may include the chancellor. The UT Board retains the ultimate fiduciary responsibility for the PUF, and UTIMCO services are governed by UT Board investment policies, including asset allocations.<sup>viii</sup>

#### Management of PUF Lands

Statute provides the UT System Board of Regents with the “sole and exclusive management and control of the lands set aside and appropriated to, or acquired by” the PUF.<sup>ix</sup> The University Lands Office (UL) of the UT System



manages the operational aspects of generating mineral and surface income. This office is responsible for the timely deposit of all PUF Lands revenue and allocation of revenue to the proper leases and accounts. UL audits oil and gas production, reconciles oil and gas royalty payments, and monitors lease compliance.

### **Use**

As an endowment, the PUF may not be directly expended except to pay the expenses of managing the land and investments.<sup>x</sup> The two Systems may issue a limited amount of bonds secured by the PUF and use the bond proceeds for construction and other specifically identified capital expenses, including acquisition of land, capital equipment and library material.<sup>xi</sup> Accordingly, PUF bond proceeds may not be used for operational expenses. The constitution expressly prohibits use of PUF bond proceeds for student housing, intercollegiate athletics or auxiliary enterprises.<sup>xii</sup> PUF bond proceeds may be used for the authorized capital expenses at any of the institutions of the two Systems other than institutions that benefit from a constitutional appropriation for other systems and institutions, commonly referred to as the Higher Education Assistance Fund (HEAF).<sup>xiii</sup> (No UT System institutions are HEAF eligible.)

### **PUF Debt Capacity**

UT System PUF bonds, at the time of issuance, are limited by the constitution such that they may not exceed 20 percent of the cost value of the investments and other assets of the PUF, not including the value of the PUF lands (surface or minerals).<sup>[i]</sup> Because constitutional capacity is based on cost value, changes in the market value of the PUF do not have material impact on it. Debt capacity is continually monitored by the UT System, which estimates constitutional capacity over six years after meeting the requirements of the AUF spending policy and the System budget.<sup>[ii]</sup>

### **Governance**

The constitution vests governance of the PUF in the Board of Regents of The University of Texas System.<sup>xiv</sup>

## **Available University Fund:**

### **Nature of the Fund**

The AUF is also established by the constitution.<sup>xv</sup> It is separate from the PUF and consists of distributions from the PUF made by the UT System Board of Regents, including net surface income.

### **Distributions**

Under the constitution, the UT System Board of Regents determines the amount to be distributed from the PUF to the AUF in any year.<sup>xvi</sup> The distribution is made from the total return on PUF investments, including interest, dividends and capital gains, plus the PUF surface income.<sup>xvii</sup>

Distributions are subject to specific constitutional restrictions.<sup>xviii</sup> The distributions must provide a stable and predictable stream of income to the AUF while preserving the purchasing power of both the AUF and the PUF. In addition, distributions may not increase year to year if the purchasing power of PUF investments has not been



preserved over the preceding 10-year period. The distributions must be sufficient to pay principal and interest on PUF bonds, to which the AUF is legally pledged.

The total distribution to the AUF in any year may not exceed 7 percent of the average net fair market value of the PUF's investment assets, as determined by the UT Board of Regents.

Under UT System Regents' Rules, a default annual distribution rate of 4.75 percent of the average value of PUF investments over the preceding three years is reported to the Board, increasing to 5 percent if investment returns are greater than expected.<sup>xxix</sup> In the exercise of the Board's constitutional authority, the actual distribution may vary, depending on growth of the PUF and investment performance.<sup>xx</sup>

### Investment

The AUF is held in the State Treasury and invested by the comptroller of public accounts in the same manner as other state funds.

### Use

The constitution requires that two-thirds of the annual distribution to the AUF be appropriated to the UT System, and one-third to the Texas A&M System.<sup>xxi</sup> After payment of the debt service on PUF bonds, the remainder of the systems' respective shares must be appropriated to the systems for specific purposes.

Other than PUF bond debt service, the UT System share may be used only for "support and maintenance" of UT Austin and UT System Administration.<sup>xxii</sup> UT System Administration has both general and specific statutory responsibilities, including the general oversight and coordination of institutional activities, planning and evaluation, and the provision of services such as legal and financial services.<sup>xxiii</sup> The AUF may not be used for support and maintenance of institutions of the UT System other than UT Austin.

UT System Regents' Rules require that no less than 45 percent of the UT System AUF share be allocated to UT Austin, subject to exceptions for availability of sufficient debt service for PUF bonds and for a minimum balance.<sup>xxiv</sup> In addition to that default share for UT Austin, the UT Board frequently allocates additional amounts to UT Austin. For instance, in fiscal year 2018 the UT Board approved the allocation of AUF to UT Austin equal to 53 percent of the UT System share of AUF, which includes the current allocation of an additional 3 percent or \$25 million a year, whichever is greater, for the UT Austin Dell School of Medicine.<sup>xxv</sup>

### Governance

The constitution vests decisions about distributions to the AUF in the University of Texas System Board of Regents.<sup>xxvi</sup> Allocation and use of respective shares of the AUF within each System are governed by the rules and policies of the applicable boards of regents, subject to the described constitutional restrictions.

The AUF is appropriated by the legislature and is subject to details, limits and restrictions imposed by appropriation.<sup>xxvii</sup>



## Key PUF and AUF Numbers: The University of Texas System

### PUF Investment Asset Market<sup>1</sup> Values last 7 years

8/31/2011	8/31/2012	8/31/2013	8/31/2014	8/31/2015	8/31/2016	8/31/2017
\$12.69 B	\$13.47B	\$14.85B	\$17.36 B	\$17.49 B	\$17.88 B	\$19.91 B

### AUF Distributions last 7 years (rate and amount)

2011	2012	2013	2014	2015	2016	2017
4.75%	5.50%	5.69%	7.00%	5.50%	5.00%	5.00%
\$506.4 M	\$575.5M	\$644.3M	\$877.4 M	\$763.6 M	\$772.9 M	\$887.3 M

### PUF Bond debt last 7 years

8/31/2011	8/31/2012	8/31/2013	8/31/2014	8/31/2015	8/31/2016	8/31/2017
\$1.71 B	\$1.75 B	\$1.82 B	\$1.96 B	\$2.17 B	\$2.62 B	\$2.70 B

### PUF Bond capacity<sup>2</sup> last 7 years

8/31/2011	8/31/2012	8/31/2013	8/31/2014	8/31/2015	8/31/2016	8/31/2017
\$479.4 M	\$603.3 M	\$691.7 M	\$794.6 M	\$785.5 M	\$419.0 M	\$574.0 M

### UT System Capital Improvement Program (CIP)<sup>3</sup>

2011	2012	2013	2014	2015	2016	2017
\$6.5 B	\$6.1 B	\$6.5 B	\$6.4 B	\$6.8 B	\$6.3 B	\$6.3 B

<sup>1</sup> AUF distributions are determined on the market value of investment assets, which typically exceeds the book value of those assets. Under the constitution, limits on PUF debt are based on book value.

<sup>2</sup> Constitutional PUF debt limit minus PUF debt outstanding. Excludes authorized but unissued PUF debt.

<sup>3</sup> A six-year projection of major new construction and repair and rehabilitation projects to be implemented and funded from institutional and Systemwide revenue sources.



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## Endnotes

- <sup>i</sup> The Texas A&M University System currently includes institutions that do not benefit from the PUF because the institutions were added to the system after a 1984 constitutional amendment that listed the benefiting institutions. The 83<sup>rd</sup> Legislature enacted legislation entitling The University of Texas Rio Grande Valley to participate in the PUF to the same extent as all other UT System institutions. Legacy institutions, UT Pan American and UT Brownsville, were supported by the Higher Education Assistance Fund.
- <sup>ii</sup> Article VII, Section 11.
- <sup>iii</sup> Article VII, Section 12; *Theisen v. Robinson*, 8 S.W. 2d 646 (Tex. Sup. 1928).
- <sup>iv</sup> The constitutional PUF debt limit minus the PUF debt outstanding.
- <sup>v</sup> Article VII, Section 18(e): “The [AUF] consists of distributions...including the net income attributable to the surface.”
- <sup>vi</sup> Article VII, Section 11b.
- <sup>vii</sup> Section 66.08, Education Code.
- <sup>viii</sup> Regents’ Rules Series 7000 (Rules 70101-70401)
- <sup>ix</sup> Section 66.41, Education Code.
- <sup>x</sup> Article VII, Section 18(e): “The expenses of managing permanent university fund land and investments shall be paid by the permanent university fund.”
- <sup>xi</sup> Article VII, Section 18(b): “acquiring land, either with or without permanent improvements, constructing and equipping buildings or other permanent improvements, acquiring capital equipment and library books and library materials, and refunding bond or notes issued under this section.”
- <sup>xii</sup> Article VII, Section 18(d).
- <sup>xiii</sup> Article VII, Section 18(a) and (b). The Higher Education Fund is a popular name for the constitutional appropriation for the same capital expenses at institutions outside the two systems participating in PUF. See Article VII, Section 17. New universities, such as UTRGV, may be included in the PUF with a 2/3 vote of the legislature under Article VII, Section 18(c).
- <sup>[i]</sup> Article VII, Section 18(b). Under Article VII, Section 11(a), Texas A&M System PUF bonds may not exceed 10% of PUF cost value.
- <sup>[ii]</sup> The AUF spending policy is Regents’ Rule 80303. Capital needs are evaluated in the Capital Improvement Program with a six-year horizon.
- <sup>xiv</sup> Article VII, Section 11b: “Notwithstanding any other provision of this constitution, in managing the assets of the permanent university fund, the Board of Regents of The University of Texas System may...”
- <sup>xv</sup> Article VII, Section 18(e).
- <sup>xvi</sup> Article VII-7, Section 18(e): “The amount of any distributions to the ... [AUF] shall be determined by the board of regents of The University of Texas System...”
- <sup>xvii</sup> Article VII, Section 18(e). A 1999 constitutional amendment allowed the AUF to include capital gains as opposed to only interest and dividends.
- <sup>xviii</sup> *Id.*
- <sup>xix</sup> The net asset value is measured over a trailing twelve-quarter period.
- <sup>xx</sup> Regents’ Rule 80303. The rule requires the Board to be provided with a report showing the default distribution rate and a higher rate of 5% if investment returns are 25 basis points greater than expected. Rule 80303 does not limit the constitutional authority of the Board to determine the distribution amount, and in practice the Board has exceeded the policy rate on occasion.
- <sup>xxi</sup> Article VII, Section 18(f)
- <sup>xxii</sup> *Id.* The Texas A&M System share may be used only for support and maintenance of Texas A&M University, Prairie View A&M University, and Texas A&M System Administration.
- <sup>xxiii</sup> See Sections 65.16, 51.353(b), Education Code. See also Chapter 1601, Insurance Code (group health insurance), Chapter 503, Labor Code (workers’ compensation), and Chapter 59, Education Code (medical malpractice).
- <sup>xxiv</sup> Regents’ Rule 80303.
- <sup>xxv</sup> Motion from Open Session, July 12, 2017. The motion provided that this funding was inclusive of the annual allocation (the greater of \$25 million or 3%) for the UT Austin Dell Medical School. Pursuant to a prior motion from Open Session, May 3, 2012, the Dell Medical School funding stream is to be reviewed 10 years after its establishment.
- <sup>xxvi</sup> Article VII, Section 18(e).
- <sup>xxvii</sup> Article VII, Section 18(f): “Out of the annual distribution...there shall be appropriated...” Pursuant to rider in the General Appropriations Act, the UT System prepares for the legislature and the governor a comprehensive Available University Fund Report. The UT System also submits a legislative appropriation request (LAR) for the AUF.