

National Association of Public Pension Attorneys  
Legal Education Conference  
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(Melanie Symons)

**Federal Legislative Update – Leigh Snell**

- **The State of Public Pensions**
  - The 2015 Wilshire Report on State Retirement Systems shows that the average funding ratio for 131 state defined benefit retirement systems increased from 74% in 2013 to 80% in 2014.
  - State and local retirement trusts held \$3.7 trillion in assets as of September 30, 2014.
  - Public plans distributed more than \$1 trillion in benefits to more than 8 million retirees while costing only 3.9% of all state and local direct general spending
  - According to Moody's, over the next 30 years the alleged pension shortfall of \$67 billion a year is about 0.26% of GDP.
  - More than half of surveyed public plans have decreased their assumed rate of return since 2008, with a median ROR of 7.75%
  - Since 2009, 36 states have increased required employee contribution rates
- **Danger Ahead for Public Pension Plans** – The “new” Congress will be looking for revenue offsets to “pay for” any future debt limit increases or to help with budget balancing efforts, as well as possibly adopting tax reforms that may affect retirement savings.
  - Pension Revenue Offsets may include lower caps on tax-deferred contributions to DC plans, the repeal of the “employer pick-up” and a limit on the total amount an individual can save in tax-favored retirement accounts
  - Tax reforms may include suspension of inflation adjustments on the 415 limits until 2024, coordination of DC plan contribution limits, application of the 10% early distribution tax to governmental 457 plans and limits on retirement security incentives
- **Possible Pension Add-Ons**
  - **Public Employee Pension Transparency Act (PEPTA) (Nunn)** would require plan sponsors to report funding information to the Treasury using market value of liabilities with no asset smoothing (similar to GASB requirements)
  - **Secure Annuities for Employee (SAFE) Retirement Act (Hatch)** would allow state and local governments to replace DB pension plans with an “Annuity Accumulation Retirement Plan” by purchasing fixed annuity contracts from insurance companies. The Life Insurance industry would pay the pensions and bear all investment risk.
- **2014 Regulatory Issues**
  - **Normal Retirement Age (NRA) regulations** – Focus is on “in-service distributions” before age 62, retirees who return to work, part-time work and DROPS
  - **Definition of “Governmental Plan”** Still no actual proposed regulations other than those addressing public charter schools

**Benefit Reform Litigation**

- Presenters reviewed the status of “contract rights” litigation in several states, explaining the differences in legislation that resulted in different outcomes. For instance, since the Colorado legislature has changed the COLA many times, the Court found no expectation of a set COLA rate and thus no impairment of contract rights. In contrast, Oregon determined that the reduced COLA could be prospective in nature only. Applying the reduction to retirees impaired their contract rights. State summary included Montana’s AMRPE District Court decision.

## **Tax Hot Topics**

- Pension Obligation Bonds (POBs) – Discussion of the advantages and the risks of using Pension Obligation Bonds to fund public retirement
- Prefunding Retiree Health Obligations with a Code Section 115 Trust - Discussion of the benefits and risks involved.
- The Service’s Determination Letter (DL) decision - The IRS has determined to stop issuing Determination Letters effective January 1, 2017. Our pending Cycle E rulings will be the last DLs we receive from the IRS. We will also not be able to obtain DLs related to amendments to our retirement systems. Exceptions include DLs for new plans, terminating plans and prototype retirement plans.

## **Insurance**

- Immunity based on state statute
- Indemnity – Plan indemnifies Trustees and employees if they act within the scope of their employment, in good faith, without malice and in the interest of the public entity.
- Types – general liability; fiduciary liability; E & O, Cyber Insurance
- Cyber Insurance – Controls are necessary or company will challenge in order to avoid coverage
- Claims Made – be sure to timely report all claims

## **DC Plan Affinity Group – Fiduciary Duty Hot Topics**

- Evolution of the “Qualified Default Investment Alternative” (QDIA) after the Pension Protection Act of 2006. Montana is representative of most public retirement systems, moving from a stable value fund to a balanced fund and finally to an age-appropriate target date fund as the system’s QDIA
- Roadblocks to Auto-Enrollment and Auto-Escalation