

National Association of Public Pension Attorneys

Legal Education Conference

June 21-24, 2016 – New Orleans, LA

(Kate, Bill, Melanie)

Tuesday – June 21, 2016

New Member and Associate Counsel Sessions

- **Pension Basics** - Public Pension Systems – responsible for investing the assets of their plans to provide retirement benefits to the members and beneficiaries of the plan.
- Public pension plans invest over \$3 trillion in pension assets in diversified portfolios containing various classes of investments.
- Most public retirement systems were established by legislative action and are governed by statutory schemes controlled by state, local, or municipal elected officials.
- Pension assets are subject to the IRS “exclusive benefit rule.”

- **Characteristics of Investments** – Public Markets – publicly traded, high degree of liquidity, daily pricing. Alternative Investments – Higher potential of return and risk than traditional assets, not publicly traded, generally an illiquid investment, quarterly reporting, valuation uncertainty, transparency issues, higher fees.
- Investment Process – Investment policy statement
 - Include any delegations of authority
 - Prudent person or prudent expert standard of care
- Asset allocation plan
- Administrative and investment team duties defined and procedures established
- External consultants, investment managers, custodians, actuaries, auditors, and legal counsel relationships established
- Monitoring, reporting and compliance programs in place

- **Fiduciary Relationships** – Fiduciary considerations should be the guiding principle behind the actions of the Board of Trustees, both individually and collectively. The primary duty of a pension fund lawyer is to ensure that the trustees fulfill their fiduciary responsibilities and obligations to the members, retirees, and beneficiaries of the retirement system. The duty of care requires trustees to act with care, skill, and prudence exercised by similar fiduciaries in investment-related matters, including diversification of investments. Fiduciary relationships are created and defined under the following areas of law:
 - Law of Trust – Restatement of Trusts (Third), 1992.
 - By Contract
 - By Statute – Federal Statutes – ERISA, 1974, Uniform Prudent Investors Act (UPIA), 1994. Uniform Management of Public Employees Retirement Systems Act (UMPERSA), 1997.
 - Retirement Plan enabling statutes
 - State statutes, local ordinances.

- **Considerations For Defined Benefit Plans** – There are several points a new practitioner must be aware of when providing legal advice to assist with the administration of a defined benefit plan, these areas include:
 - Federal Laws Affecting Government Plans
 - State Laws Affecting Benefits Administration
 - Exemption from many Federal Law Requirements
 - Calculating Retirement Allowances in a Traditional Defined Benefit Plan
 - Dealing with Errors in Administration of Benefits
- Relevant Federal laws affecting government plans include:
 - **Contract Clause** – Article I § 10 clause 1 of the United States Constitution states “No State shall pass any . . . Law impairing the Obligations of Contracts.” Most states, but not all, have general contract

clauses that are analogous to the federal Contract Clause. The majority approach is that pension benefits are contractual in nature.

- **Internal Revenue Code** - If the Plan intends to be a “qualified plan” under Section 401(a) of the Internal Revenue Code (“IRC”), in order to enjoy tax exempt status under IRC § 501(a), the Plan must meet many IRC requirements. However, governmental plans are also exempt from many of the IRC requirements that apply to non-governmental plans.
- **ERISA** - Governmental plans are exempt from most key provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”): (1) Title I of ERISA which deals with mandatory requirements for pension plans, (2) Title IV of ERISA dealing with plan termination insurance, and (3) certain tax provisions in Title II that were made inapplicable to governmental plans.
- **ADEA, ADA, and USERRA** - Governmental plans are subject to many other provisions of federal law, including but not limited to the Age Discrimination in Employment Act (“ADEA”), the Americans with Disabilities Act (“ADA”), the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), the Civil Rights Act, and the Family and Medical Leave Act (“FMLA”).
- Relevant State laws affecting government plans include:
 - **“Plan Document”** - State statutes (or local ordinances) establishing the defined benefit plan are generally considered to be the “Plan document.” Regulations or administrative materials may amplify and assist in interpretation of the plan. In some jurisdictions, legislation authorizes the board to adopt the plan language. The plan document generally covers the benefits offered by the Plan, how the Plan is funded, how the Plan is governed, and how the assets are managed.
- **Dealing with Errors in Administration of Benefits:**
 - Under the IRC, a qualified plan is required to be administered in accordance with the written plan document.
 - Many plans have a provision requiring correction of errors: For example, common plan language often includes the following: “If, because of an error in the records, a retiree or beneficiary receives a benefit that differs from the benefit the retiree or beneficiary is entitled to receive, the plan shall correct the error.”
- **Protecting a Retirement System’s Qualified Status** - Most governmental retirement systems are established and maintained as qualified governmental plans under IRC §§ 401(a) and 414(d). Qualification is vitally important and ensures that 1) employer contributions are not taxable to members, 2) earnings/income are not taxed to the trust or members, 3) favorable tax treatments may be available to members upon plan distributions, and 4) employers/members do not pay employment taxes when employer contributions are made or benefits are paid.
 - Plan counsel has previously been able to determine that there plans are qualified by submitting IRS application Form 5300 to request a determination letter from the IRS that confirms the qualified status of a plan.
 - The IRS gave sponsors of individually designed governmental plans the option of electing to use:
 - Cycle C (Feb. 1, 2013 – Jan. 31, 2014) or
 - Cycle E (Feb. 1, 2015 – Jan. 31, 2016)
- However, on July 21, 2015, the IRS issued *Announcement 2015-19*, which ends the five year remedial amendment cycles for individually designed plans effective January 1, 2017. For remedial amendment cycles beginning after 2016, plan sponsors will no longer be able to apply for determination letters on their individually designed defined contribution and defined benefit plans, except for initial qualification and qualification upon termination.

Disability Law and Investments

- **Disability Law**
 - Interesting discussion of different definitions of disability. Main presenter was from San Diego where the test requires that the disability be “predominately” caused by the job. This test is designed to address situations where job dangers and personal habits may mix to cause the disability: for example – firefighters with lung issues due to smoke inhalation who also smoke cigarettes.
 - New Jersey indicated they have a \$3 billion dollar fraud problem with respect to disability claims in general.
- **Investments**
 - Discussion centered on issues to consider when entering into investment contracts. Of particular concern is whether to include “Offering Memos” in the contract; understanding fees and costs; underwriting risks; long-term change out of funds or managers; terminology; and attorney involvement.
 - Presenters outlined four core principles: design; best practices; elimination of risks; and fees.

Wednesday – June 22, 2016

Ethics Panel – Lessons Learned from the City of Bell, CA Corruption Scandal

- Panelists summarized events leading up to and following discovery of broad spread corruption in Bell, CA, where officials paid themselves grossly exorbitant, unauthorized salaries which resulted in extreme financial hardship for the City. Discussion focused on importance of:
 - thorough, regular ethics training for organizations;
 - ensuring all documents associated with board action are publicly available; and
 - that discussion about items occurs in noticed meetings.

Cyber Security – Addressing the Risk

- Speakers provided an overview of the average time to detect malicious data attack in the US (256 days vs. 158 days to identify data breaches caused by human error) and average cost of US data breach including component costs (\$6.5M fix vulnerability and securely restore system, cyber ransom, notification to participants, monitoring service cost to those impacted).
- Suggestions for risk mitigation included:
 - Using Incident Response Plans to reduce time to identify and correct, cost per record and increase eligibility for cyber insurance coverage at a more reasonable premium;
 - Providing ongoing education for staff and IT security managers; and
 - Hiring an independent 3rd party to conduct a risk assessment.
- Recommended items to review in vendor contracts included:
 - the terms of data use (own/access)
 - understanding cyber insurance is not treated like traditional insurance; and
 - policies vary vastly in terms of coverage and cost and each must be carefully read and aggressively negotiated

Update on Benefit Error Corrections and Recovering Fund Assets

- System has a duty to follow law, administer benefits according to its plan document. *City of Pleasanton v. Board of Admin.* (2012) 211 Cal.App.4th 522, 544-545.
- A System has no authority to create benefits that do not exist in the plan documents. The scope of the Board's power as to benefits is limited to administering the benefits set by the City. *San Diego City Firefighters, Local 145 v. Board of Admin.* (2012) 206 Cal.App.4th 594, 620.
- Fiduciary duty recap – fiduciaries must:
 - follow the plan documents;
 - carry out duties prudently; and
 - act solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them.
- When a System administers benefits improperly (e.g., it overpays a retiree), it has in essence exceeded its authority and must make a correction.
- Additional reasons to correct beyond compliance with error correction statutes:
 - To ensure the Member or Retiree receives their proper benefit;
 - To ensure assets are available to pay other benefits; and
 - Avoid a gift of public funds.
- Most recent restatement of EPCRS is set forth in Rev. Proc. 2013-12, 2013-4 I.R.B. 313.
 - This 2013 revenue procedure included modified procedures for correcting overpayments and addresses when an employer contribution is required to correct an overpayment.
 - Rev. Proc. 2015-27 further modified procedures for correcting overpayments, confirmed that a plan may use correction methods other than the correction methods in Rev. Proc. 2013-12, and requests comments on recoupment of overpayments.
- RESOURCES

- https://www.irs.gov/irb/2013-04_IRB/ar06.html
- https://www.irs.gov/irb/2015-16_IRB/ar06.html
- <https://www.irs.gov/Retirement-Plans/EPCRS-Overview>.
- <https://www.irs.gov/Retirement-Plans/Voluntary-Correction-Program-General-Description>
- <https://www.irs.gov/Retirement-Plans/Correcting-Plan-Errors-Self-Correction-Program-SCP-General-Description>
- <https://www.irs.gov/Retirement-Plans/Audit-Closing-Agreement-Program-General-Description>

Boards Gone Wild –

Interesting discussion of various techniques legal counsel employ to keep their board members on track.

Benefits Admin in the e-Age – Are you receiving me?

- “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Oral communications or recordings do not qualify as electronic records except as otherwise provided by law. 15 U.S.C. § 7006(5)
- “Consumer” is defined under the Consumer Credit Protection (15 USC 7001) to include pension plan participants
- Federal requirements:
 - All parties must consent to doing business electronically
 - Certain disclosures are required
 - Option for non-electronic form
 - Right to withdraw
 - Whether consent applies to one or more transactions
 - How a paper copy may be obtained
 - Consumer must be provided w/ a statement of the hardware and software requirements; and
 - Consents electronically; and
 - Following any changes in hardware/software requirements
 - System must provide the consumer w/ a statement of the revised requirements AND
 - Right to withdraw consent AND
 - Again gives consent
- Under the Uniform Electronic Transactions Act, a notary requirement is satisfied if the electronic signature of the person authorized to perform those acts is attached to or logically associated with the signature or record.
- Missouri SERS and LA County have member portal in place to accept e-transactions
- Suggested best practices for implementing process through similar portals:
 - Determine high volume docs w/ need for e-acceptance
 - Draft a consumer disclosure w/ request for a response to satisfy the legal consent requirements
 - Begin accepting e-signed docs for limited transactions not involving transfer of funds
 - Pilot program – use portal w/ password/pin required
 - Verify portal has a time out and require users to re-register if they don’t use their account for a certain period, i.e. more than two years.

A. Public Safety Affinity Group – “Don’t tax our fallen public safety heroes”

- A recent amendment to broaden the tax exemption for benefits to survivors of a public safety officers killed in the line of duty doesn’t appear to impact qualification under any MPERA plans; reporting for tax purposes and underlying process for verifying qualification is already in place here.
- DROP qualification review by IRS recently focused on likeness of plans to DC plans and impact of applying 415(c) limit to DROP; although some plans would have exceeded this limit, ultimately no plans were disqualified.

B. DC Plan Affinity Group –

- Chief Legal Counsel from Kansas, Laurie McKinnon provided an overview of the issues Kansas faced when implementing a DC plan. Issues basically mirrored those encountered in Montana and provided an outline of concerns for states anticipating the addition of a dc plan. Issues of particular concern included financial hardships, loans and employers’ responsibilities.

- Illinois State Universities Retirement System discussed the benefits and problems of having multiple recordkeepers. Each recordkeeper followed its own plan document and used its own investment line-up so education of members regarding the differences proved to be a major hurdle.
- Mary Beth Braitman of Ice Miller closed with an outline of areas to address before the IRS comes to audit. Common areas of weakness include consistency between multiple payroll centers, the number of vendors who actually handle deferrals and the lack of central management. Specific items of interest to the IRS include the aggregation of contributions and the application of 401 limits as well as compliance with required minimum distribution laws.

Thursday – June 23, 2016

Ethics – It Ain’t Easy Being You: Managing the Attorney-Client Relationship at a Public Pension Fund

This session focused on a range of legal issues surrounding the attorney-client relationship in the context of public pension counsel. Issues discussed included the rules governing the protection of the attorney-client confidentiality held by public pension fund boards, the legal and practical challenges raised by single issues, as well as potentially contentious interactions between fund counsel and the fund’s executive director.

- **Model Rules of Professional Conduct, Rule 1.13 Organization As Client**
 - A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
 - In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.
 - A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7 [dual representation rules]. . . .
- **Role of the Public Plan General Counsel**
 - Provides legal advice to the Board of Trustees and to the Executive Director.
 - Serves the interests of both because the GC is not the lawyer for those individuals but for the entity.
 - Additional Responsibilities Include:
 - Designing a legal services function that works efficiently
 - Discerning legal trends and projecting their impact on the plan
 - Working on governmental/regulatory affairs and interfacing with public agencies
 - Managing legal risks associated with the public face of the plan
 - Educating the plan’s various constituencies regarding the legal rules that govern plan operations
 - Helping defend the plan and its officers and employees by helping it to avoid liability
 - Helping establish the proper “tone at the top” for the system
 - Being the de facto ethicist for the organization

No Plan Is An Island: Why Puerto Rico Tolls for Thee

This session focused on the territory of Puerto Rico’s fiscal and pension funding crisis. Today, the commonwealth’s pension system is only 7 percent funded and may run out of money by 2018. Puerto Rico’s near junk-status credit rating reflects its failed pension system, as does the massive penalty rate it pays to borrow money

- Consolidated Pension Liabilities for the three systems stand at \$45.5 Billion at the close of FY 2014 and growing.
- Of the above total, the Commonwealth Government, from its General Fund is responsible for \$34.2 Billion or 75% of the total.
- By Fiscal year 2018-2019 all projections indicate that the systems will not be able to pay pension benefits from their own funds.
- Total pay-as-you-go pension benefits due in FY 2019 would total \$2.4 Billion, 75% of which or \$1.8 Billion would have to come from the General Fund.
- Questions: Will the General Fund be able to make these benefit payments and also make

employer contributions of \$1.1 Billion that year, from which POB debt service is covered?

Reform Efforts in the Commonwealth

Law 3 of April 4, 2009 - first significant solution to PRGERS actuarial liabilities.

- Features: freeze of all DB program, immediate enactment of a new DB program for all employees (increased employee contribution, non-contributory and mandatory lifetime annuity actuarially developed, no lump sums).
- Law 3 funding solutions: reduced OPEBs, created a new additional charge to all employers based on number of pensioners.
- Added a new actuarially developed yearly additional uniform contribution (AUC) to offset the annual cash on cash deficit and avoid total exhaustion of the systems' portfolios used to pay pensions. *NOTE – The AUC due from the Commonwealth Government has not been contributed as required, due to the moratorium imposed by Law 21 – 2016.

Law 160 – 2013 Reform of Teachers Retirement System

- – Converts Teachers existing DB plan to a DC plan, freezing all existing accrued benefits. Basically a clone of Law 3 on all aspects, including reductions in OPEBs

Law 162 – 2013 Reform of Judiciary Retirement System

- – Same as Teachers and Employees, freezes judges DB plan and starts a nonmatched DC plan, reduces OPEBs

Hot Tax Topics for 2016 and Beyond

With the end of the determination letter process, retirement system attorneys will have to focus on certain “forward-looking” issues. This session focused on the following topics: Tax qualification strategies in a post-determination letter world (self-correction, PLRs and other tricks of the trade), Divergent legislative initiatives leading to and following the 2016 elections. Retirement benefits for the growing class of “highly compensated” public employees.

Limited Oversight

- Definition of “governmental plan” IRC 414(d)
 - 11/08/11 Proposed Regulations-Major Factors/Minor Factors
 - 01/23/15 Notice of Intent to issue Proposed Regulations-charter schools
 - Final Regulations will be prospective only, with delayed effective date and transition relief
- Internal Memo – Applying 415 to Defined Benefit Plans with DROP Features Director Robert Choi to All EP Employees 12/08/14
- Determination Letter is not a ruling on governmental plan status Rev. Proc. 2016-6, Section 5.04.
- Currently, no current targeted IRS audit projects for governmental plans
- 2016 IRS Priorities Include only 403(b) and Early Retirement Incentive Programs
- IRC section 7805(b) Relief-Current Determination Letter Helps Rev. Proc. 2016-4, Section 14.02

Self-Correction

- EPCRS Applies
 - 401(a) Plans
 - 403(b) Plans
 - 457(b) Plans
- Current Determination Letter may be required
 - Now Only Initial Determination Letters (or on Plan termination)
 - “Expired” Determination Letters-No guidance yet

IRS Guidance

- Good Faith Compliance, e.g.:
 - 1.401(a)(9)-1 Q&A 2 (QP RMD Rules)
 - 1.403(b)-6(e)(8) (403(b) Plan RMD Rules)

- Retroactive Correction, e.g.:
 - 457(b) Eligible Deferred Compensation Plan
 - Notice by Secretary, Correction Permitted within minimum of 180 days
 - Rev. Proc. 2013-12, Section 4.09, allows some plan sponsors of 457(b) governmental plans, under limited circumstances, to submit requests for voluntary correction (VC) to IRS.

Private Letter Rulings

- Rev. Proc. 2016-1; Rev. Proc. 2016-4
 - How to Obtain-Rev. Proc. 2016-1
 - Rev. Proc., Section 6.05 Before regulation/guidance issued. Not issued for issue that “cannot be readily resolved”.
- Determination Letter not issued for “governmental plan” status, “pick-up” contributions, qualified excess benefit arrangement
- PLR can be requested for
 - IRC 414(h)(2) “pick-up” contributions
 - IRC 414(m)(3) qualified excess benefit arrangement

Recoupment of Overpayments in Bankruptcy

This session focused on the recovery of benefit overpayments in situations in which a plan member has filed a petition for bankruptcy and listed a plan’s debt as one to be discharged in the bankruptcy proceeding. The session covered topics including the basics of bankruptcy law as well incorporating and applying the doctrine of recoupment in a system’s recovery efforts.

- Bankruptcy Considerations for Public and Pension Attorneys – Under Title 11 of the Bankruptcy Code there are three major types of bankruptcy cases: 1) Chapter 7 – Liquidation, 2) Chapter 11 – Reorganization, and 3) Chapter 13 – Repayment Plan (36-60 months).
- Recoupment - Equitable doctrine in bankruptcy allowing one party to a transaction (usually the creditor) to withhold funds due another party (usually the debtor) where the debts arise out of the same transaction. It allows a creditor to recover a pre-petition debt out of payments owed to the debtor post-petition.
 - Not considered to be a violation of the stay in bankruptcy.
 - The pre-petition debt owed to the creditor and the post-petition payments owed to the debtor must arise out of the same transaction. (Other courts have added that the source of the claim must be a contract and not a governmental entitlement program.)
 - The debt has to arise from the same income stream. For example, recoupment would not apply when recovering a disability benefit overpayment from a service retirement allowance.
 - The pension or disability payment is usually going to be considered as a contract and not a governmental entitlement program.

GASB Session

The session concentrated on GASB Statements 67 and 68 and how they significantly changed the way retirement systems and governmental employers account for public employee pension plans. Lessons learned through the implementation of Statements 67 and 68, including recent updates from GASB were shared by panelists. In addition, this session also focused on new Statements 74 and 75 for OPEB plans, which are to be implemented in 2017 and 2018 and examined the implementation issues associated with these new standards. The new OPEB Statements are similar to disclosure requirements under Statements 67 and 68.

GASB 67 & 68

- GASB 67 and 68 - In June 2012, the GASB approved two new accounting and reporting standards for pensions provided by state and local governments
 - Statement 67, Financial Reporting for Pension Plans, amends Statements 25 and 50
 - Effective for fiscal years beginning after June 15, 2013
 - Statement 68, Accounting and Reporting for Pensions, amends Statements 27 and 50
 - Effective for fiscal years beginning after June 15, 2014

- The Statements changed pension accounting and financial reporting standards for state and local governments
- Requires employers to recognize a Net Pension Liability (NPL) on their balance sheets
- Requires employers to recognize a new measure of the Pension Expense (PE) on their income statements
- Replace most of the current note disclosures and required supplementary information

Lessons Learned

- Accounting results under a much bigger microscope due to greater impact on employer financial statement
 - Deeper plan audit along new audit requirements
 - More questions for actuary and system from employer and employer's auditor
- Valuation timelines
 - Calculations more complex
 - Completely different set of actuarial valuation results
 - Tracking of deferred inflows/outflows
 - Cost sharing plans will have to track changes in proportionate shares
- Timing and Linkage Still Evolving
 - Plan accounting needs to consider actuarial valuation date and measurement date
 - Employer may have a choice at their FYE of which plan measurement date to report
 - Each option has plusses/minuses
- Important for system, auditor and actuary to collaborate
 - Many of the rules and much of the guidance is still evolving
 - AICPA still issuing audit guidance
 - GASB considering amendments to Statements

GASB 74 & 75

- On June 2, 2015, GASB Statement No. 74 (GASB 74) and GASB Statement No. 75 (GASB 75) were unanimously adopted by the GASB Board.
- GASB 74: Financial reporting for OPEB **plans**.
 - Effective date for plans is fiscal years beginning after June 15, 2016 (e.g., fiscal year ending June 30, 2017).
 - Final implementation guide scheduled to be released February 2017.
- GASB 75: Accounting and financial reporting for **employers** who have OPEB plans.
 - Effective date for employers is fiscal years beginning after June 15, 2017 (e.g., fiscal year ending June 30, 2018).
 - Final implementation guide scheduled to be released November 2017.
- Net OPEB Liability (NOL) moves to balance sheet of employers.
- If current and expected future plan assets related to current members are insufficient to cover future benefit payments, the long-term rate of return cannot be used as the discount rate.

Small/Medium Fund Affinity Group – Unique Issues to Small and Medium Funds

The session concentrated on relevant topics unique to small and medium sized funds: client HR issues, such as staffing concerns, succession planning, etc., ethics, investments, such as liquidity issues, diversification, and investment expertise and political hot topics.

Succession Planning

- Encouraged to always identify key roles in your organization
 - Analyze your risk if key employees leave
 - Develop skills and experience needed to fill key roles
- Document processes and develop standard operating procedures for those left behind

Investment Issues

- Ensure you are large enough to invest
 - Consider whether you can afford to conduct on-site due diligence trips?

- Consider whether the investment manager will negotiate terms with you, or if your investment is too small to allow such negotiations. Fees are a good example where the larger you are the more the manager is willing to negotiate.
- If you invest in too many areas do you dilute any real investment returns?
 - Typical Type of Investments
 - US Bonds
 - International Equity
 - Hedge Funds
 - Real Estate
 - Fund of Funds v. Direct Investing
 - US Domestic Equity
 - Private Equity
 - MLP's/Energy
 - Emerging Markets

Contract Issues

- Open Records Law – Consider whether your plan is subject to Open Records law, and if so, what are the expectations for investments?
- Standard of Care – ensure implementation of fiduciary or similar language
- Contracts/Authority to Bind – Do you have policies and procedures to process contracts? Who has authority to sign for your plan?

Friday – June 24, 2016

Federal Legislative Update

- Leigh Snell, NCTR's Director of Federal Relations gave his annual review of events on Capitol Hill.
- Several bills exist but none seem destined to become law until after the elections, if at all
 - PEPTA – Public Employee Pension Transparency Act
 - SAFE – Secure Annuities for Employees Retirement Act - allowing retirement systems to purchase fixed annuities from insurance companies
 - PROMESA – Puerto Rico Oversight, Management and Economic Stability Act
 - WEP Reform – introducing a new Windfall Elimination Provision (WEP) formula
 - Taxation of tax-exempt contributions to offset fewer or no taxes on corporations
- Retirement Issues gaining attention include:
 - Normal Retirement Age (NRA) safe harbors
 - Public Safety NRA
 - Impact of NRA on Return to Work (RTW) rules and limits
 - Impact of RTW rules on the definition of severance of employment
 - Definition of Governmental Plans remains unresolved; charter school specific rules have not yet been finalized
 - When member elections create impermissible Cash or Deferred Arrangements (CODAs)
- Telling a Positive Story
 - 3.5 trillion dollars of retirement liability is funded
 - Bring private sector into the fold

Public Pension Fund Involvement in the Legislative Process

- This panel provided a stark contrast to a panel at a previous NAPPA conference by advocating for retirement plans to be involved in the legislative process. Presenters provided outlines of who lobbies for the retirement plans and how.

Litigation Update

- This session is an annual update of cases of interest from the various states.
- Two contrasting decisions follow:
 - *Good v. Indiana Teachers' Retirement Fund* – Member was improperly advised regarding the amount of retroactive retirement benefit she would receive in the event she postponed retirement. The benefit was small than anticipated. Court upheld correct of benefit, stating that equitable estoppel and unjust enrichment did not apply because the member had access to the same knowledge as the retirement system employee; and the employee owed the member no fiduciary duty as the employee had no discretion with respect to interpretation of statute.
 - *Zagorski v. NJ PERS* – Zagorski was employed in 2 PERS-covered positions, but only 1 employer paid contributions. Zagorski terminated employment with that employer and retired. Upon learning of the 2nd, non-reported employment, the retirement system stopped Zagorski's retirement benefits and billed him for six years of retirement benefits paid plus the employee contributions that should have been paid by the second employer. The Court determined the employer and the retirement system, and not Zagorski, were at fault and that the retirement system could not benefit from its delay in the discovery of the error. The matter was remanded with instructions to lower the penalty based only on those years when Zagorski exceeded the \$15,000 limit for working retirees.