



NCTR 88th Annual Convention

Federal Legislative Report

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Overview:

- Looking Back
- Looking Ahead
- Looking at What Needs to be Done



WHY DOES IT MATTER TO YOU?





LOOKING BACK – the Last 12 Months

- Healthcare Reform
- Financial Markets Reform
- IRS/Treasury
- Securities and Exchange Commission
- Other New Laws
- GAO
- GASB





Healthcare Reform

- Game Changer? Major changes, many yet to be implemented
- The devil is in the details: years of new regulations to come
- Major influence on retirement decisions
- 2018 excise tax: sleeper issue; administrative nightmare; difficult to change





Financial Markets Reform

- Another “Game Changer?” Major changes, many yet to be implemented
- The devil is in the details: years of new regulations to come
- Major implications for investment decisions
- Corporate governance success story



IRS/Treasury

- “Governmental Plans Compliance Initiative” course change; plan survey, report halted
- Foreign Bank and Financial Accounts (FBAR) reporting exemption for governmental plans
- Mark Iwry, Deputy Assistant Treasury Secretary for Retirement and Health Policy
- Determination letter process identifies issues needing clarification





Securities and Exchange Commission

- New “Municipal Securities and Public Pensions” Enforcement Division Unit created
- Final Pay-to-Play Rules approved
- Proxy Access Rules adopted, then suspended
- New Jersey Settlement





Other New Laws

- Iran Divestment
- Roth 457 Plans
- Private Sector Pension Funding Relief



GAO Reports

- Public Pension Plans' Governance Practices and Long-term Investment Strategies
- Sudan Divestment
- Section 218 Agreements and Public Employee Social Security Coverage



GASB

- Preliminary Views Released
- Written Comments on PV
- Public Hearings (10/13, 10/14, 10/27)



Looking Ahead – What to expect in 2011

- New Congress
- Healthcare
- Investments
- IRS/Treasury
- SEC
- GASB





A New Congress

- GOP control of House? Senate? Both?!!
- Loss of key friends of public pensions?
- Anti-government/anti-public employee mood



A New Congress

- *"The Federal government bailed out Illinois and other states with stimulus money. They can't tell Congress it has no business demanding reform of these unsustainable pension plans."* Congressman Mike Quigley (D-IL)
- *"[E]ligibility for [any further round of Federal assistance to the states] should be conditioned on the states and municipalities putting in place plans to address their long-term structural pension deficits..."* New America Foundation
- *"And [\$50 billion in new Federal aid to States, localities to avoid layoffs of teachers, public safety employees] can be designed with appropriate safeguards to ensure that they achieve their objective of keeping people working, rather than rewarding states for poor past policy choices."*
President Barak Obama





Healthcare

- Grandfathering
- Reinsurance
- Reporting Cost of Healthcare



Healthcare: Grandfathering

- Grandfathered status can be lost if:
 - GH plan increases the percentage cost-sharing requirements on participants above the percentage in effect on 3/23/2010, for any benefits under the plan;
 - GH plan makes significant increases in fixed-amount cost-sharing requirements above the amount in effect on 3/23/2010;
 - Employer or employee organization decreases its contribution rate for any tier of coverage for any class of similarly situated individuals by more than five percent below the contribution rate in effect on 3/23/2010;





Healthcare: Reinsurance

- Early retiree reinsurance program (ERRP) to reimburse plan sponsors for 80% of claims between \$15,000 - \$90,000 for pre-Medicare retirees (55-64)
- Can ERRP reimbursements can be placed into ongoing reserves established by self-funded plans to fund the health benefits of plan participants? HHS says “we are unsure.”
- If the ERRP proceeds used to reduce sponsor costs, sponsors must maintain level of financial effort.
- What if the \$5 billion runs out before 2014 (State Exchanges)?





Healthcare: Reporting Health Costs

- Employers originally required to report the value of health care benefits on employees' W-2 tax statements in 2011; IRS has now extended this for one yr.
- Unclear if this requirement will apply to 1099-R's
- Likely use in connection with excise tax on "Cadillac" benefits suggests that 1099-R's will ultimately be affected



Investments

- Further major changes unlikely
- Continued scrutiny of credit rating agencies
- Impact of say-on-pay, other governance reforms
- Housing finance reform?



IRS/Treasury

- Compliance manual
- Definition of governmental plan
- Normal retirement age
- Orange County pick-up issue
- 3% withholding





IRS/Treasury – Compliance Manual

- Topical index completed; waiting for Commissioner's approval
- Grid of IRC sections applicable to governmental plans with cross-references to regs, guidance
- Review and comment
- Identify where clarifications, changes are necessary; holes that need filling





IRS/Treasury – Definition of Governmental Plan

- Group project of IRS, DOL and PBGC
- “Imminent” for over one year
- Focus on “governmental” nature of employer; right to levy taxes
- De minimus rule?
- What about trustees paid by unions?





IRS/Treasury – Normal Retirement Age

- IRS insists pre-ERISA vesting rules require “age”
- Determination ltr issues re: support for age
“reasonably representative of the typical retirement age for the industry in which the covered workforce is employed”
- Treasury: “Just call it ‘early retirement.’”





IRS/Treasury – Normal Retirement Age

NCTR position:

- DB plans not subject to the ERISA vesting rules (i.e. public plans) would not be required to define normal retirement age.
- For those "non-ERISA plans" that do define a normal retirement age or date, such normal retirement age or date may be based on age, service, or a combination of age and service.
- Whether or not normal retirement age or date is specifically defined for a "non-ERISA plan," in-service distributions would be permitted when made on or after the earlier of age 62 or the date on which the participant is permitted to receive unreduced benefits under the plan.





IRS/Treasury – Orange Co. Pick-up Issue

- Revenue Ruling 2006-43, in clarifying the employer pick-up rules, also imported 401(k) cash/deferral rules.
- IRS therefore says allowing current employees to individually elect to participate in a new DB tier with a different employer contribution rate violates 414(h)(2) pick-up rules because it allows a cash or deferred election. Result is that employees can ONLY be offered such a choice if the new tier is a DC plan.
- Proscriptive outline by Treasury of the timing, circumstances, financial condition, etc. under which a new tier can be offered could also send the wrong message as to a single one-size-fits-all Federal solution to state and local pension issues.





IRS/Treasury – 3% Withholding

- Requires Federal and State governments, including any agencies thereof, to withhold three percent on payments made for most goods and services beginning in 2012, regardless of the amount spent. Local governments and subdivisions that spend more than \$100 million annually on goods and services will also be subject to this withholding.
- In 2006, when passed, estimated to raise \$7 billion; thus, repeal would have to find way to offset costs.
- Numerous legislative and regulatory measures put in place since enactment that have focused on increasing tax compliance and enhancing transparency for companies that have received government payments, thus obviating need for provision.





SEC

- Pay-to-Play
- Proxy Access
- NJ Settlement
- Dodd-Frank Implementation



SEC: Pay-to-Play

- Two Year “Time Out”: March 2011; Third-Party Marketers Ban: Sept. 2011
- Swaps
- Appointees Who Appoint Trustees
- Impact on plans



SEC: Proxy Access

- Chamber of Commerce/BRT Lawsuit
- SEC delays implementation pending outcome of legal challenge in order to avoid “potentially unnecessary costs, regulatory uncertainty, and disruption that could occur if the rules were to become effective during” the court challenge.
- Decision next spring? In the meantime, focus on say-on-pay, say-when-on-pay.



SEC: NJ Settlement -- Implications for the Future

- Confirmation of “San Diego” View of the Public Pension World
- Bad Disclosure or Bad Numbers?
- SEC’s Political Agenda



SEC: NJ Settlement -- Impact on GASB Rulemaking

- Smoothing, Amortization, Market Valuations
- *“Actuarial value did not accurately present the current value of the pension funds.”* (Finding 43)
- GASB’s Independence: Reading the Tea Leaves



SEC: Dodd-Frank Implementation

- Swaps Dealer's Relationship with "Special Entities"
- Hedging Risk or Speculating?
- Suitability



SEC: Dodd-Frank Implementation

- Suitability: Where Do Lines Get Drawn?
- 457 Plans: Stable Value Funds
- Federal Legal Lists



GASB

- What now?
- Employer engagement still critically important
- Exposure Draft next June?



WHAT WE – YOU, NCTR, AND THE PUBLIC SECTOR -- NEED TO DO

- New Congress – new relationships
- Stay involved; keep informed; spread the word
- New NCTR/NASRA External Relations effort
- GASB: still the most critical issue

