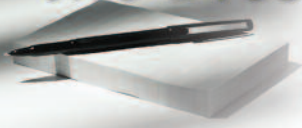




## MESSAGE FROM *the President*



# Looking Toward a Positive Future in Protecting Public Pension

As we enter the New Year, the fiscal and political reality is that in 2011 public pensions will face greater media scrutiny, tougher budgetary pressures, and increased calls for the elimination of “rich benefits for the elite public employees”.

While we acknowledge that the Great Recession has exposed some concerns for a few public plans, on the whole the vast majority of public plans are in good shape. However, the November election results all but assure that in most states the truth about public plans will not be told. In fact, policymakers at the state and federal levels, Republicans and Democrats will try to appease Tea Party constituents and perpetuate public pension fallacies and falsehoods.

NCPERS is prepared to vigorously defend against any attacks on our members. As public pension plans

continue to face increased scrutiny and criticism on a number of fronts, NCPERS has taken action. We convened a group of public pension stakeholders in 2010 to discuss and respond to concerted and sustained attacks on public plans. This NCPERS led initiative provides a forum for our industry to share intelligence, collectively identify the broad areas of attack, develop winning responses, and provided our members with the tools to fight back themselves.

NCPERS is proud to be the initiator in bringing this coalition together on behalf of our industry. Like the age-old phrase, “united we stand, divided we fall,” we will gain strength and credibility by standing together



and speaking with one voice. Through this coalition, we are charting a steady course for the future that will position us to successfully meet both the challenges – and opportunities – that lie ahead.

As always, I appreciate your efforts on behalf of the nation’s public funds, trustees, and the public servants that they represent, and I welcome your continued input on the direction of this great organization. ❖

Pat McElligott,  
NCPERS President

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# Best Governance Practices for Public Retirement Funds

Quietly and without fanfare, a number of public retirement systems are implementing leading edge governance and risk management practices to position their funds for improved performance, while addressing risks related to the financial markets and global economy. There is good reason for it.

Governance is on the front burner for corporations, regulators and pension funds alike. In the private sector, lapses evidenced by overexposure to mortgage related securities, excessive leverage and lack of adherence to risk controls led to the collapse of Bear Stearns and Lehman Brothers and contributed to a meltdown that at one point eliminated \$4

trillion from pensions worldwide.<sup>1</sup>

Among retirement funds, boards and stakeholders are focusing on considerations such as board practices, standards of conduct, risk management and actuarial practices. In the current environment, there are several points for board members and officials to consider:

- The link between best practices and improved performance is strong. Research has found that effective governance may improve investment returns by 1% to 2.4%, annually.<sup>2</sup>
- Beyond investments, best practices such as fiduciary training and risk assessments may drive improved performance across

administrative, member service and compliance functions

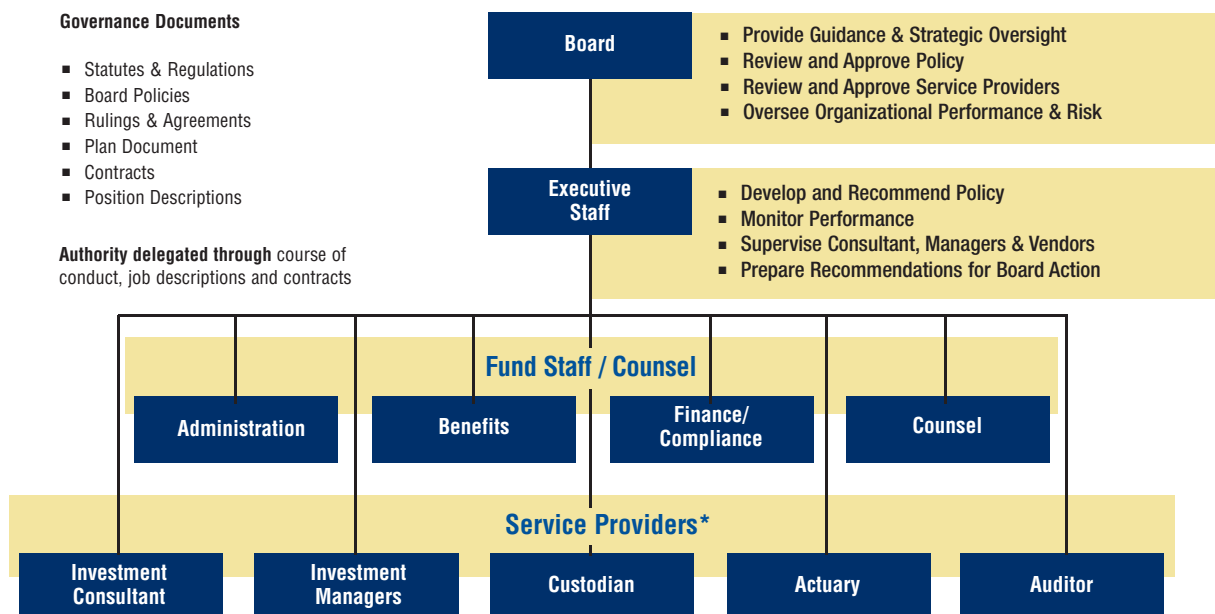
- The current focus on fund governance is likely to increase in light of public policy debates that are increasingly focused, largely without merit, on public employee benefit levels
- Managing reputation risk is an increasingly important challenge for public funds. A fund may reduce the probability and severity of risk events by implementing a formal risk framework
- Notwithstanding public funds' record of implementing best practices, the need for communicating how these work to benefit members and the public has never been greater

## Governance Structure and Trustee Oversight Roles

### Governance Documents

- Statutes & Regulations
- Board Policies
- Rulings & Agreements
- Plan Document
- Contracts
- Position Descriptions

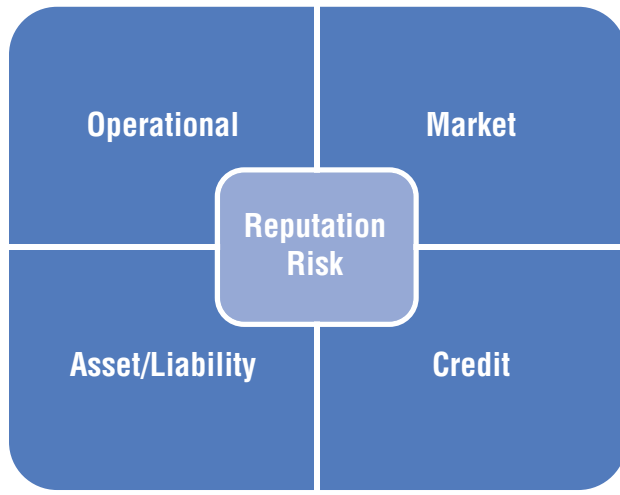
Authority delegated through course of conduct, job descriptions and contracts



\*Service Provider Roles (not all inclusive)

- Perform specialist functions in accordance with contractual terms
- Manage, measure and report on risk within span of operations
- Recommend risk tolerances to Board and Staff

## Managing Reputation Risk



*“Compliance failures are the biggest source of reputational risk.”*

*—Reputation: Risk of Risk,  
The Economist Intelligence Unit*

**Operational Risk** - Risk of loss resulting from inadequate or failed internal processes, people and systems or from external events.

**Market Risk** - Risk related to adverse movement in market factors, such as asset prices, currency or interest rates.

**Credit Risk** - Risk of loss due to failure of obligors to honor their payments.

**Asset / Liability Risk** - Risk that liquidity will not be adequate to meet operational requirements or financial obligations.

**Reputation Risk** - Risk that the organization’s brand will be diminished. Reputation risk is often the result of events in other risk categories.

### GOVERNANCE AND RISK DEFINED

Governance and risk are abstract, so it makes sense to define them. Governance may be defined as *the structures and relationships that drive organizational performance and the system by which organizations are directed and managed*. Corporate governance, as distinct from *fund governance*, is externally focused on public companies, while *fund governance* is internal.

As illustrated above, a fund’s *governance structure* is typically comprised of its board, executive and functional staff and contracted service providers. Within this structure, the board sets strategy, approves implementation plans and oversees performance and risk. The *governance system* (or framework) is comprised of statutes, rulings, agreements, regulations, policies, contracts and other documents that regulate system operations.

Risk may be defined as the chance of something happening that will impact an organization’s ability to achieve its objectives. By breaking

risk into distinct categories - operational, market, credit and asset / liability risk - as defined below, a fund can more effectively measure and manage risk toward the end of reducing the probability and severity of losses. A board’s tolerance for each risk type is typically included in key governance documents such as the investment policy, which sets thresholds for acceptable market risk among other things.

### STATE AND LOCAL RETIREMENT SYSTEM INITIATIVES

In the face of funding challenges, constrained budgets and heightened reputation risk, public funds and stakeholder groups are placing increasing scrutiny on board practices, standards of conduct, risk management and actuarial practices. In 2009 and 2010, a number of large systems, including funds in California, New York and Pennsylvania announced new ethics rules aimed at tightening interactions with service providers. At the same time, key stakeholders, the

American Federation of State, County and Municipal Employees (AFSCME)<sup>3</sup> and the Government Finance Officers Association (GFOA)<sup>4</sup> issued well-laid out recommendations on board practices. The U.S. Government Accountability Office issued a report focused largely on fund governance in August 2010.<sup>5</sup> In addition, in separate actions, a number of systems, one state regulator<sup>6</sup> and the Securities and Exchange Commission (SEC) proposed or approved rules to tighten regulations on placement agents.

In consideration of the market shock of 2008 that reduced the value of the S&P 500 by 37% and of potential future tail risk events, institutions are implementing a more systematic approach for managing risk. For example, a recent report found that 89% of institutional investors established a chief risk officer role to centralize accountability.<sup>7</sup> Among state systems, CALPERS, Florida and Wisconsin reported the establishment of distinct risk units. Smaller systems

are likely strengthening risk management through equivalent, more resource constrained measures.

In the area of actuarial practices, a number of funds announced reductions to their return assumption in late 2010 based on a more conservative market outlook and the objective of reducing market and liquidity risk. Moreover, as reported by NCPERS, the Governmental Accounting Standards Board (GASB) is considering alternative standards that include public employers using a more conservative, “risk free” discount rate in calculating obligations.<sup>8</sup>

### MANAGING REPUTATION RISK

Reputation risk is the risk that an organization’s brand will be diminished. As evidenced by pay-to-play scandals, compliance failures are the leading cause of reputation risk. All things being equal, a strong reputation will help a fund gain support from stakeholders to address funding challenges and protect benefits. Notably, NCPERS plays a leadership

role in this area by advocating for public funds in the media and among legislators and by making resources available to members.

An organization has the ability to reduce the probability and severity of reputation risk by implementing a risk framework for managing operational, market, credit and asset / liability risk that includes the following components:

- A risk governance approach that sets board risk tolerances and documents accountabilities
- Risk assessments (e.g. audits) to test controls and outcomes of potential market events
- Key risk measures that correspond to the board’s established tolerances
- Risk reporting that provides the board with transparency into key risks
- Information technology to collect and distribute risk data across the governance structure

### CONCLUSION

Effective governance and risk management can significantly improve a fund’s performance through market cycles and management changes. The measure of a fund’s performance, of course extends beyond long-term investment returns to include measures in the following areas:

- Quality and consistency of services the fund delivers to beneficiaries
- Strength of the fund’s system of internal controls
- Cost-effectiveness of the fund’s investment portfolio and operations
- Compliance with applicable statutes, regulations and contractual obligations
- Strength of the actuarial process and of decision making that determines future liabilities

The board’s role includes the duty to continuously improve the fund’s governance structure. There are a num-

*[continued on page 12](#)*

## Governance and Fiduciary Practices\*

Initiative*	Value Added
Fiduciary / Governance Assessment	Review fund’s organization, structure and fiduciary practices
Fiduciary Education & Training and skill sets	Adds to board members’ existing experience
Governance Principles	Best Practice for communicating governance framework
Investment Policy	Strengthen accountabilities, guidelines & reporting requirements
Risk Management Approach	Improve board’s transparency into major risks
Standards of Conduct (e.g. conflicts of interest, ethics, disclosure)	Clear articulation of duty to act in members’ best interests
Risk Assessment	Assess integrity of internal control environment
Stress Testing	Integrates risk management with strategic planning

*\*Notes: Samples initiatives*

*Recurring practices include but are not limited to actuarial studies, asset allocation reviews, audits, compliance, control testing, strategic planning etc.)*

# Updating Health Plan Designs Can Cut Short-term Costs and Long-term Liabilities

By William SaintAmour, Executive Director, Cobalt Community Research

Although the economy shows signs of recovery, community leaders face more than minor belt tightening. 2011 and 2012 will be years of significant budget cuts.

According to the newly released 2010 National Survey of Local Governments, the revenue and employment expectations of local governments continue to reveal significant challenges:

- 50% of responding local governments expect their revenues to decline over the next year and 16% expect the decline to be greater than 5%. Interestingly, a greater percentage of respondents from larger governments expect revenues to decline than

respondents from smaller governments.

- 19% of responding local governments expect employment levels to decrease over the next year.
- 26% of responding local governments expect workforce changes through consolidation/shared services.
- 23% expect employment declines through attrition.

## STRATEGIES TO ADDRESS HEALTH COSTS

With shrinking budgets and fewer staff, local officials are closely examining the costs of employee and retiree health care. While health costs may not be the biggest expense, they are significant.

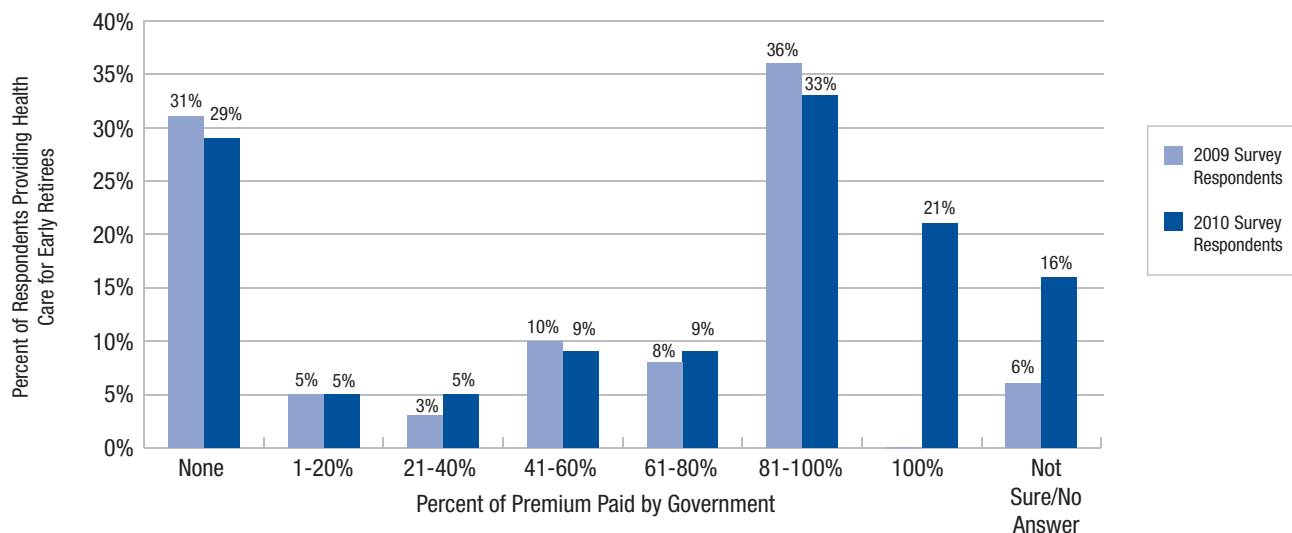
Current and future employee and retiree costs are exerting growing political and financial pressure as elected officials target employee benefits and rating agencies reexamine bond ratings.

In 2010, the nonprofit Cobalt Community Research gathered more than 1,950 responses from local governments across the county who shared the changes they are making. Now in its 4<sup>th</sup> year, the study offers an extensive menu of potential changes that communities can consider. Some improve quality of care. Some reduce coverage.

The most frequently used methods for controlling health care costs include:

Figure 1

For governments providing health care for early retirees (pre-Medicare), what percent of the premium is paid by the local government? (Q13)



Note: The 2009 survey requested information regarding respondents paying 81-100% of the premium. The 2010 survey requested information regarding respondents paying 81-99% and 100%. Both are shown above for comparative purposes.

- Increasing deductibles and copays
- Increasing the employees' share of premium costs
- Implementing wellness programs
- Expanding use of generic drugs
- Implementing HSAs and HRAs
- Negotiating lower costs with current carriers
- Educating employees/retirees to make better health care decisions.

Fewer than 4 percent of respondents plan to close health plans to new employees or eliminate coverage for the employee, retiree or dependents. But local governments appear to be shifting a higher share of premium costs to early retirees. These are individuals who retire from their employer, but are not yet eligible for Medicare (see figure 1).

While many local governments are implementing cost-containment strategies, there are several

untapped strategies with promise such as implementing disease management initiatives.

According to Paul Zorn, Director of Governmental Research at Gabriel Roeder Smith & Company, there is growing focus on preventative care and managing chronic illnesses. Chronic illnesses are a major driver of health care costs. Wellness and disease management programs can be reasonable approaches to control overall health care costs while improving quality. The challenge is that many small and medium-sized governments do not have a large enough group or solid analytics to convince people of such strategies' effectiveness.

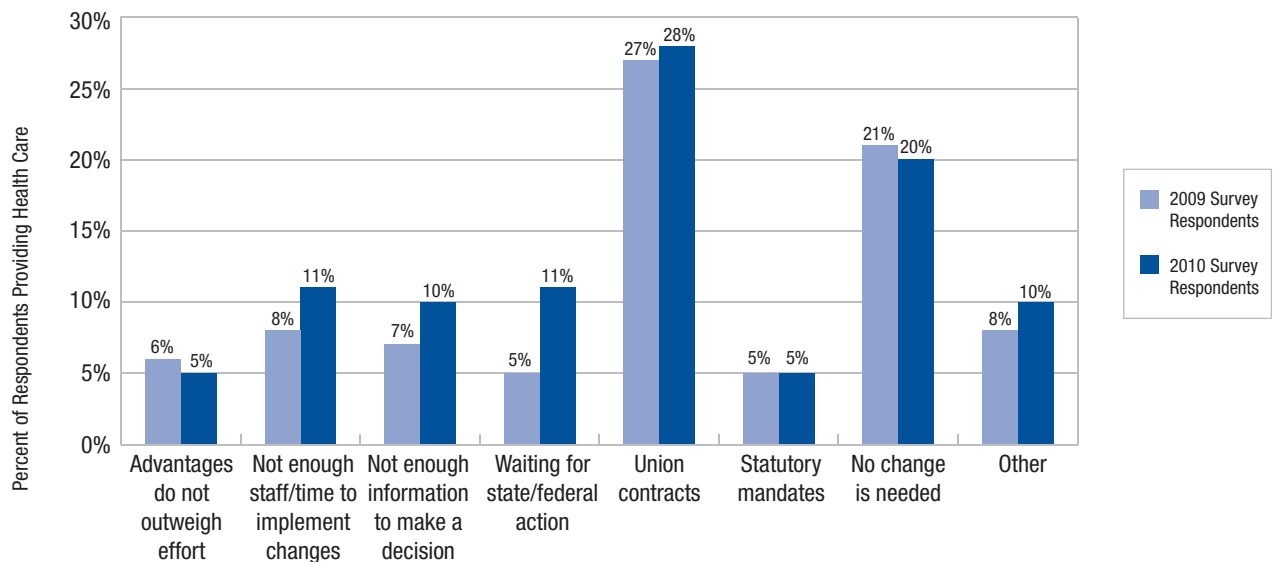
Despite the potential of these approaches, the Cobalt study shows these areas as opportunities for improvement. Only 8 percent have implemented disease management programs over the last two years, and only 21 percent have implemented wellness programs.

What gets in the way to changing health benefit levels? The answer varied by state and size of government, but union contracts were flagged as the number one challenge. Number two: "No change is needed." (See figure 2.)

As local governments address what can be painful budget choices, it is no longer practical to leave benefits alone to grow at high historical rates as revenue continues to fall. An emerging strategy is to actively engage employees and retirees to modify a benefit package to optimize the perceived value of benefit provisions for the dollars available. Cobalt offers an employee engagement program to help. It looks at an individual community's benefit package, and based on employee feedback, plots satisfaction and importance of each, with the cost of each component represented by bubble size (see figure 3 for an example).

**Figure 2**

**What are significant barriers to health plan design changes? (Q32)**



In addition, the program allows local governments to review elements of plan design to reduce costs while maximizing value (see figure 4 for an example of potential health plan design components).

Both types of analysis allow the data to be filtered based on job type (public safety, public works, etc.), years of service, employment status (part time, full time, retired) and age.

In addition to the strategy above, consider two examples from Michigan, where local units have become experts in cutting budgets.

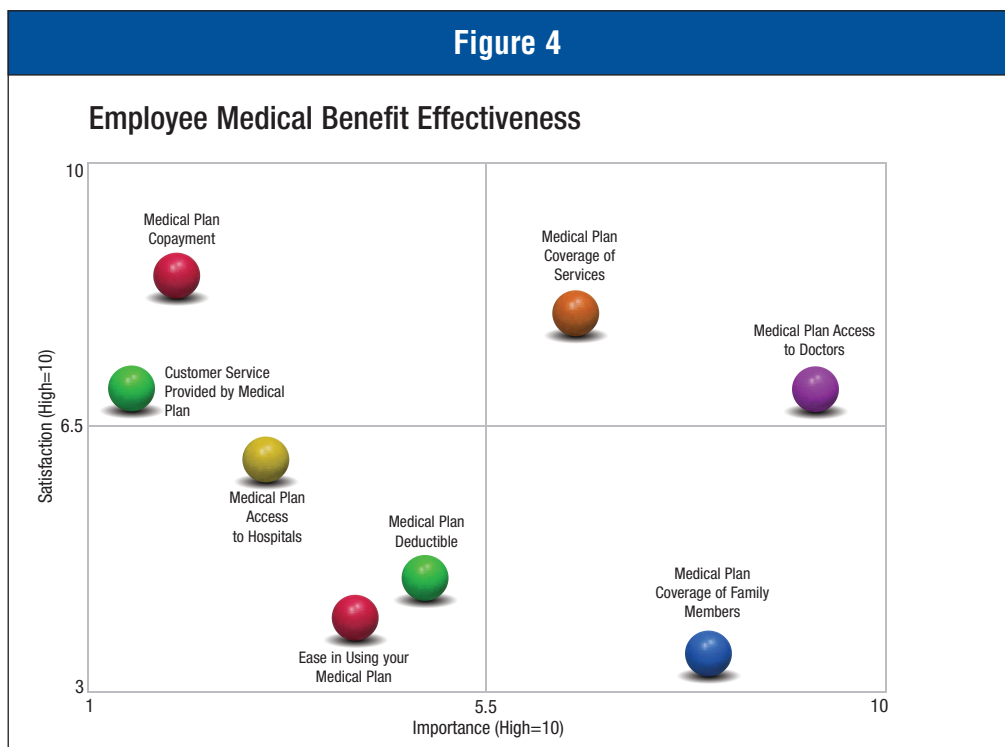
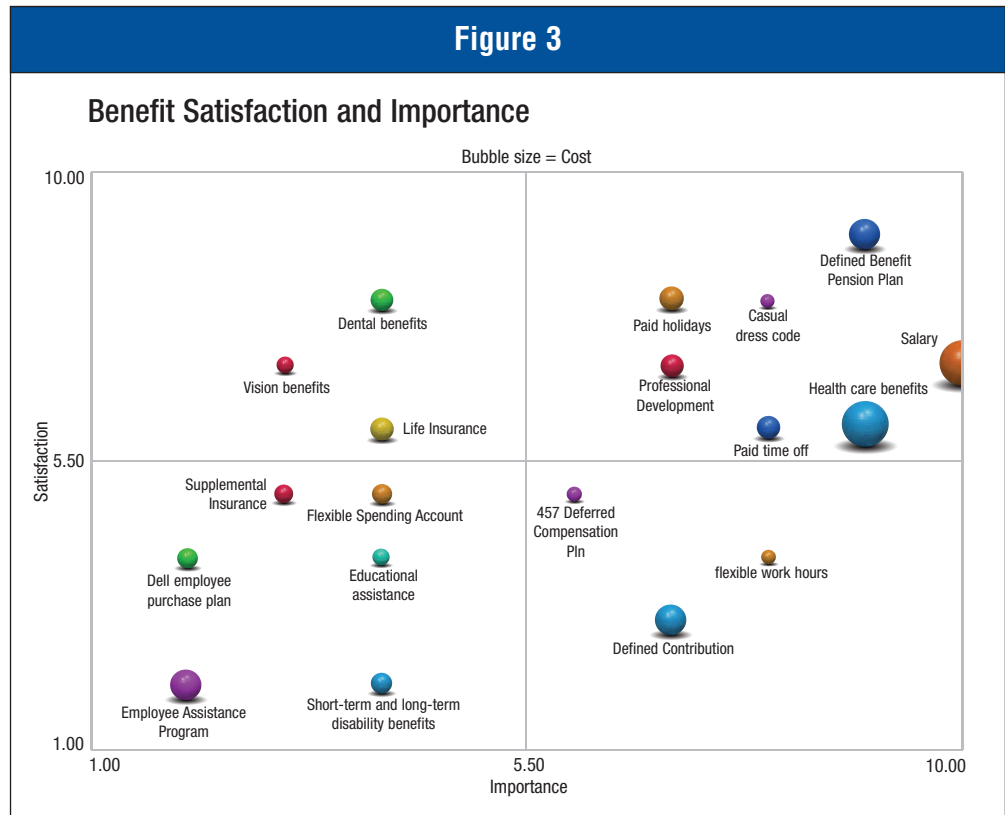
- A mid-Michigan school district negotiated a cap in the employer share of the health plan. When rates went up, employees and the union had to work out the benefit design changes to address it: higher employee premiums, higher copay/deductible, or lower levels of coverage.

- The Wayne County Airport Authority moved to a defined-contribution style of funding for retiree health costs. Existing employees had the option to leave the employer provided retiree medical insurance program. Those who chose to opt out, along with new hires, receive annual pre-tax deposits into individual health accounts from the Authority. The accounts are invested tax-free, carry over annually, and are payable at retirement or separation. The distribution is tax-free for health insurance premiums or other IRS-approved medical expenses. Nearly

150 Michigan communities have signed up for this new vehicle to replace or offset retiree health costs.

### GASB 45

An important goal for the Cobalt study is to track awareness of GASB 45. In 2004, the Governmental

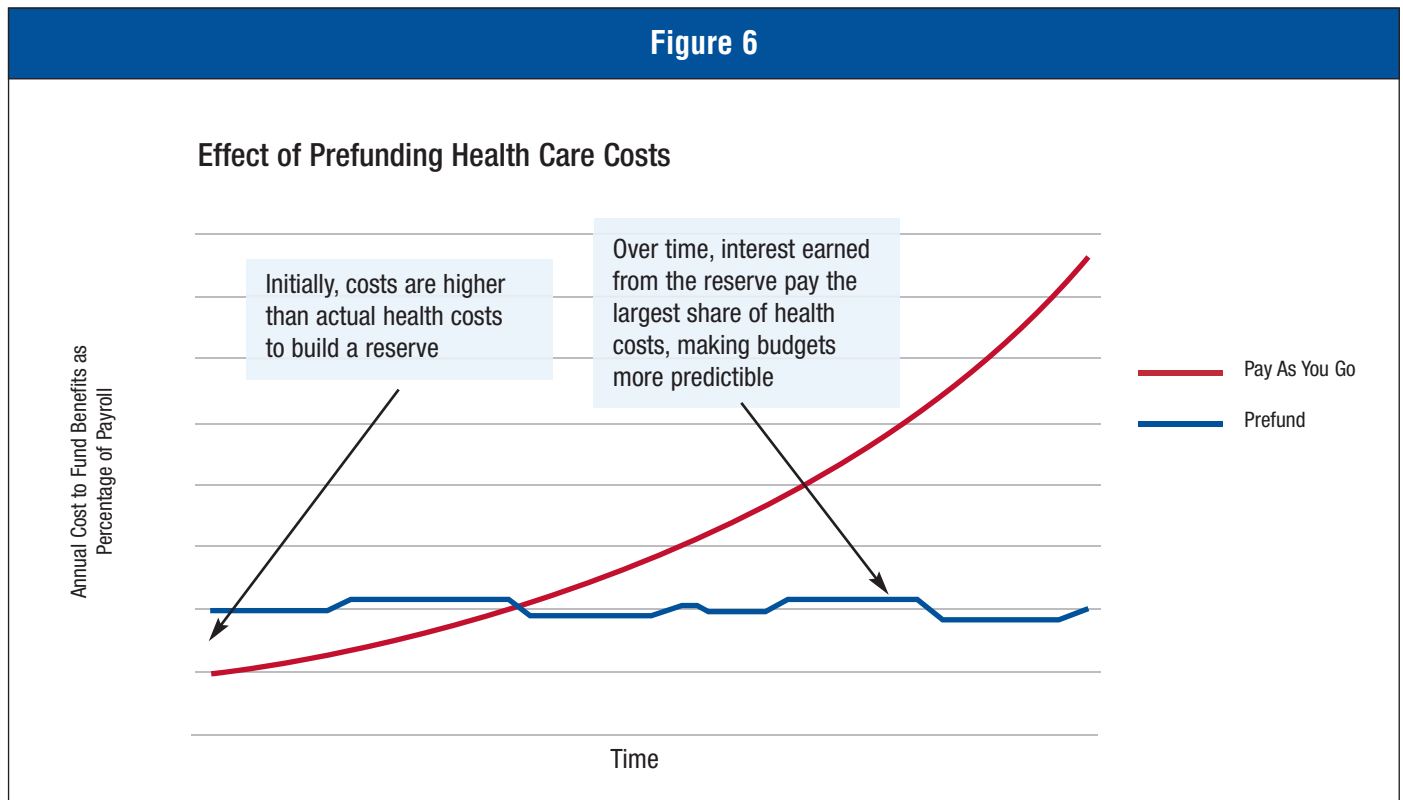
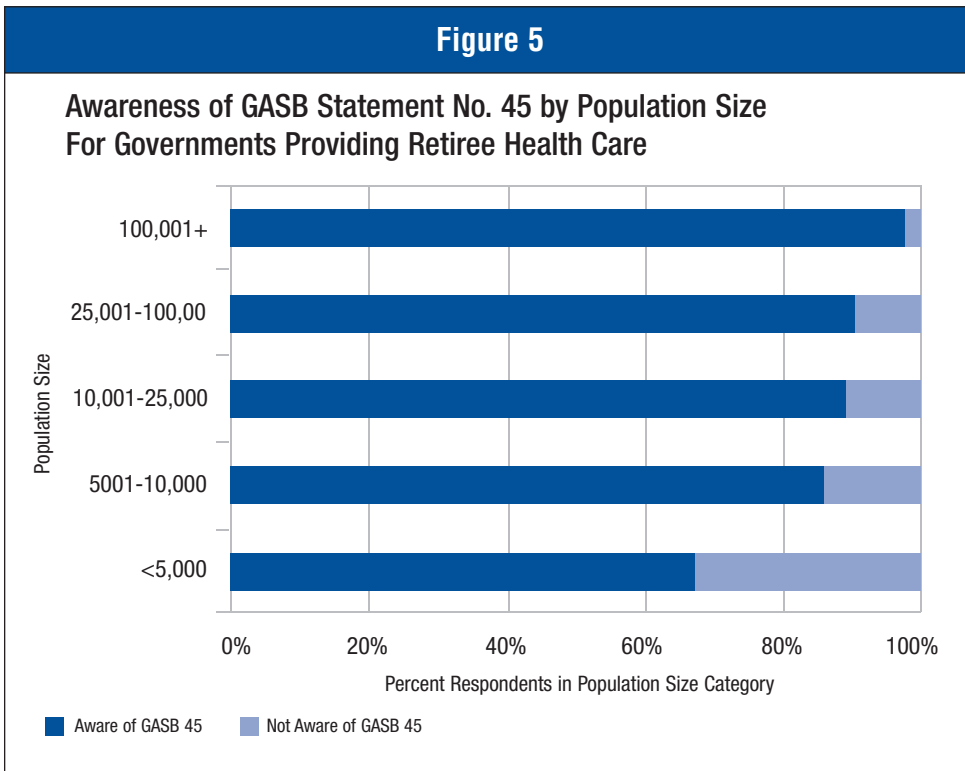


Accounting Standards Board (GASB) issued Statement No. 45, “Accounting and Financial Reporting by Employers for

Postemployment Benefits Other than Pensions (OPEB).” This statement created a national standard for the measurement and disclosure of state

and local government OPEB liabilities, especially in the area of health care for retirees. When Cobalt began tracking awareness in 2008, only 74% of local governments who provide retiree health care were aware of the GASB 45 requirements. In 2010, 87 percent were aware of these requirements. Today, nearly all larger communities are aware, while more than 35 percent of small communities still need to learn more (see figure 5). With most people thinking about the long-term costs of providing retiree health care, they are also thinking about ways to prefund them (see figure 6). Prefunding (also called advance funding or actuarial funding) offers several significant benefits. It makes budgets more stable over time. It reduces overall OPEB liability. It builds community assets and bond ratings.

*continued on page 10*



# Potential Health Care Strategies

## Eligibility changes:

- Close plan to new hires
- Increase age/service requirements
- Prorate benefits based on years of service
- Close plan to dependant with other coverage
- Delay or extend enrollment coverage date (waiting period)

## Contribution changes:

- Increase deductibles for out of network care
- Increase health co-pays except for preventative care
- Increase drug co-pays except for preventative care
- Increase employee share of premium costs
- Increase employee out-of-pocket limits for out-of-network care
- Increase employee share of premium costs
- Cap employer contributions
- Prorate employer contributions based on years of service
- Drop or raise employee share of premium costs based on wage level
- Higher paid pay more, lower paid pay less
- Eliminate employer contributions to family coverage and part time employees
- Establish premium incentives for non-tobacco users, users who take bio-metric screening, users who take a health risk assessment completion activity and for completion of annual dental prevention activity.
- Pay incentive to employee to waive insurance and obtain other coverage elsewhere.
- Pay tax free incentive to choose health savings account.
- Jurisdiction will contribute to those that have a health savings account
- Fix contribution amounts on the choice of the most economically efficient health plan but allow employees to buy-up with own funds to a less economically efficient health plan
- Decrease health co-pays for preventative services to zero. Reduce barriers to care.
- Decrease co-pays for using designated economically efficient and high quality specialty networks
- Decrease drug co-pays for generic drugs and preventive maintenance drugs
- Establish pharmacy health reimbursement arrangement account and fund a pharmacy credit amount
- Eliminate zero premium plans except for health savings accounts
- Create funding incentive for employees to enroll in flex spending accounts IRC section 125

## Design changes:

- Reduce benefit levels especially for lifestyle prescriptions (Viagra, etc.)
- Offer a Medicare wraparound plan
- Offer a Medicare Advantage plan (require in vendor bids)
- Require Medicare Part D coverage for eligible retirees
- Implement disease management initiatives for diabetes,

cardio, asthma, and obesity

- Implement wellness initiatives such as on-site clinic and pharmacy, on-site fitness center, on-site mobile dentistry, mammography and prostate cancer screening
- Implement health savings accounts or health reimbursement arrangements in either general medical, pharmacy, or both
- Tighten provider networks and negotiate performance incentives/guarantees
- Implement a special drug network (Rx carve out)
- Motivate employee use of generic drugs
- Implement a drug formulary and retain drug rebates
- Offer only catastrophic coverage
- Offer alternative medicine coverage
- Consolidate the EAP (employee assistance program) and behavioral health contract
- Carve out prescription and behavioral health benefit and contract from the general medical contract

## Purchasing changes:

- Join a health purchasing coalition/pool
- Shift from fully-insured to self-insured coverage and retain savings in employers self-insured trust fund
- Negotiate lower costs with current carrier/health plan/third-party administrator
- Re-bid or change carrier/health plan/third-party administrator
- Educate/motivate employees/retirees to make better health care purchasing decisions
- Change responsibility for administering benefits to a union group and put the union at risk for the short-term and long-term funding outcomes
- Seek to cap contractor cost increases in return for longer term contract
- Seek performance guarantees and performance incentives for wellness activity performance, administrative activity performance, and employee satisfaction performance

## Benefit elimination:

- Eliminate health benefits for active employees, pre-Medicare retirees, or Medicare-eligible retirees
- Eliminate family coverage for active employees, pre-Medicare retirees, or Medicare-eligible retirees
- Eliminate dental/vision for active employees, pre-Medicare retirees, or Medicare-eligible retirees
- Require employee or retiree to pay 100% of family coverage premium
- Eliminate subsidy for retiree coverage
- Eliminate blending retiree utilization rate with active employee utilization rate
- Pay off tax free unused sick-leave accruals and or early retirement incentives into a VEBA health account upon employee retirement

To view the full report visit

<http://www.ncpers.org/News/?newsid=118>.

*continued from page 8*

Unfortunately, in the current economic environment, it is becoming more difficult for local governments to find the extra dollars to prefund or partially prefund. This is clear from the 2010 study (see figure 7).

According to Mr. Zorn, if health cost and revenue trends continue, we will likely see higher deductibles and copays — tools local governments have been using in the past and will continue to use. Employees and retirees are likely to pay a higher share of the premium; however, strategies such as preventative care, disease management programs and education have to potential of reducing costs while increasing quality of care.

For many local governments, changing benefit levels is a challenge because of contractual obligations and perceived benefit promises made to retirees. It is helpful,

though, to consider a broad range of adjustments available to address health costs. Changes today soften harder choices down the road.

*The Health and OPEB Funding Strategies: 2010 National Survey of Local Governments* report is based on responses from more than 1,950 city, county, township and special district governments across the country randomly polled in 2010. It was sponsored by Gabriel Roeder Smith & Company, the Government Finance Officers Association, the International Foundation of Employee Benefit Plans, the Municipal Employees' Retirement System of Michigan, the National Conference on Public Employee Retirement Systems, the Employee Benefit Research Institute, and Tegrity Financial Group. **For a free PDF of the survey results,** visit [www.CobaltCommunityResearch.org](http://www.CobaltCommunityResearch.org).

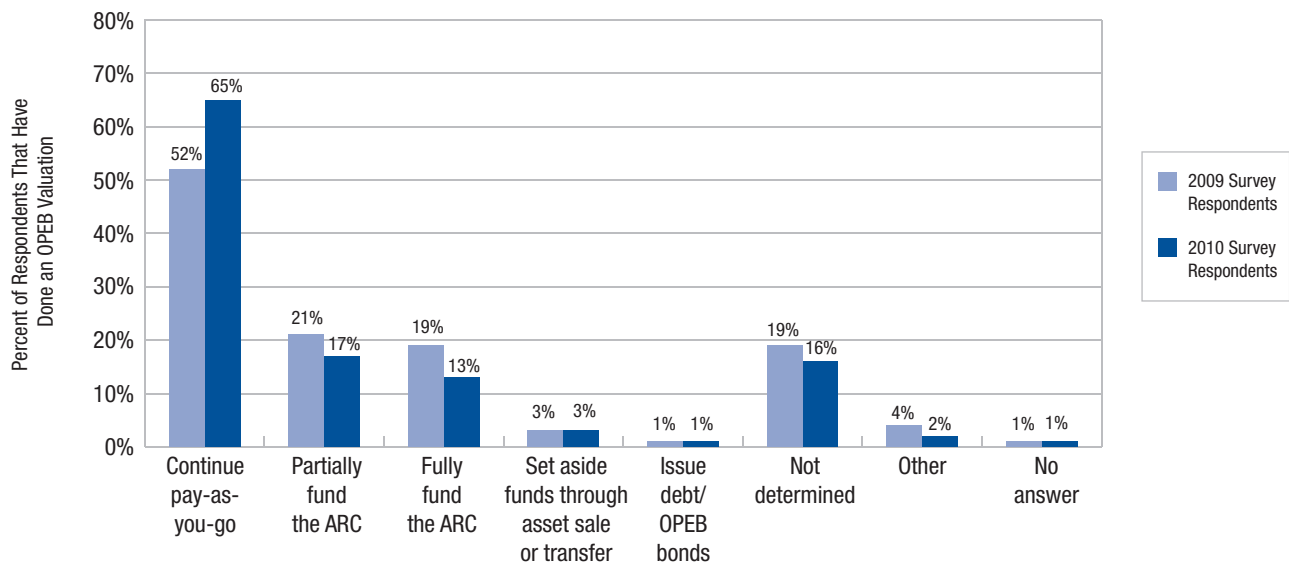
William SaintAmour serves as Research Director at the Municipal

Employees' Retirement System of Michigan (MERS) and as Executive Director of Cobalt Community Research. He also has served the State of Michigan Department of Management and Budget, the Michigan Office of Retirement Services, and ADP. He has worked in the Research and Communications fields over 20 years.

Mr. SaintAmour earned an executive certificate from the University of Michigan Ross Business School, a master's from Michigan State University, and a bachelor's from the University of Michigan in Dearborn. He has a Certificates of Achievement in Public Plan Policy in employee health and employee pensions, holds the professional research certificate from the Market Research Association, and is a professional member of the World Future Society in Washington, DC. ♦

**Figure 7**

**For governments that have done an OPEB valuation, how do you plan to fund your OPEB liability? (Q21)**



Note: Percentages do not add to 100% due to multiple applicable responses.

# Double Standards and Labor Relations: A Manageable Risk?

## INTRODUCTION

With a highly globalized economy, pension funds have new opportunities to invest in global companies. The reach of these firms creates due diligence requirements that challenge investors to determine whether companies in their portfolios operate by ethical and sustainable principles. In some instances, companies have made lofty commitments to high road principles and it is important to ascertain if they are living up to their aspirations.

The telecom industry has been characterized by explosive growth over the last decade as consumers choose from an ever expanding array of increasingly powerful and sophisticated phone devices. In the U.S. market, the “high-road” approach is characterized by significant investment in technology, infrastructure and employees. T-Mobile USA – the subsidiary of Deutsche Telekom (DT) – has unfortunately not chosen this path as it tries to expand market share. Its aggressive union avoidance stance raises a significant question for investors: do these practices represent a long-term, sustainable pathway for the Company as it seeks to improve its position in the U.S.?

When DT entered the U.S. market in 2001 with its purchase of VoiceStream, the Communications Workers of America supported its application, based on the Company’s good relations with its labor unions in Germany and the corresponding expectation that DT would pursue a similar understanding with its U.S. employees. Unfortunately, T-Mobile’s record since then has fallen far short of DT’s respect for worker rights in Germany and its stated commitment to respect Freedom of Association principles.

## DEUTSCHE TELEKOM BACKGROUND

Deutsche Telekom is a German multinational telecommunications company with \$90 billion in annual revenues with locations in 50 countries and 260,000 employees. Its U.S. subsidiary T-Mobile USA accounts for 24% of DT’s total revenues while employing 37,000 workers. With 33 million subscribers, T-Mobile is the fourth-largest wireless communications firm in America.

## T-MOBILE BACKGROUND

An examination of T-Mobile’s recent troubles underscores corporate governance problems:

- In October 2009, a server error resulted in T-Mobile’s Sidekick users losing personal data and contacts, forcing the Company to suspend sales of the phone for a month.
- The following month, millions of T-Mobile subscribers experienced widespread voice and data outages caused by a “software glitch.” While competitors AT&T and Verizon have been steadily gaining customers in recent years, T-Mobile’s customer base has stagnated.
- In September 2010, German authorities searched the apartment of CEO René Obermann, looking for evidence that he knew about bribery incidents in the Eastern European country of Montenegro.
- In November 2010, a former DT security manager was convicted in Germany of violating privacy rules and improperly using funds for his involvement in spying on journalists and supervisory board members at the Company. The Company announced that it would compensate victims of the

corporate spying affair and that it would make a €1.7 million (\$2.3 million) contribution to charity.

As importantly for investors, T-Mobile lags behind competitors in revenues and customer base, while its “churn rate” (customer turnover) exceeds those of its three principal competitors (AT&T, Verizon, and Sprint). Despite a competitive need to build out its 4<sup>th</sup> generation network, the Company’s capital expenditures continue to decline over recent quarters.

## LABOR RELATIONS AT T-MOBILE

T-Mobile managers have consistently and aggressively fought T-Mobile employees who have sought to form an organization or join a union. T-Mobile’s relentless union avoidance has alienated employees, who are often driven to leave the Company because of their managers’ arbitrary decisions and mistreatment of workers. T-Mobile has a history of defying not only U.S. labor law, but also international labor standards.

These activities have included:

- 2003: anti-union manual developed, providing managers with a comprehensive guide to blocking union activities;
- 2005: anti-union human resources job postings used in recruiting potential managers, including such job functions as union avoidance training;
- 2006: National Labor Relations Board found that T-Mobile violated the law when security guards told employees not to take union handbills and then recorded the automobile license plate numbers of employees who did take literature;

*continued from page 11*

- 2008: continued record of anti-union activity, including monitoring of union organizers in Company parking lots by security guards and cameras, among other tactics;
- 2010: workers disciplined for “questionable company loyalty” for accepting union literature.

Such intimidation is not conducive to good employee relations. Over time, it erodes the morale of T-Mobile employees and compromises the customer service they provide.

#### AMERICAN RIGHTS AT WORK REPORT

In December 2009, American Rights at Work released a study [“Lowering the Bar or Setting the Standard”] that examined T-Mobile’s relations with its U.S. workforce and found:

“Since entering the U.S. market in 2001, T-Mobile USA has lowered its parent company’s standards of decency, meeting labor organizers with hostile practices that contradict Deutsche Telekom’s track

record of corporate responsibility in Europe. Instead of lifting American workers to the same level as its European employees, DT—via T-Mobile USA—has engaged in eight years of aggressive anti-unionism.”

#### HUMAN RIGHTS WATCH REPORT

In September 2010, Human Rights Watch issued a report highly critical of Deutsche Telekom and T-Mobile for its double standard and lack of respect for workers in the United States. The report – “A Strange Case: Violations of Workers’ Freedom of Association in the United States by European Multinational Corporations” – concluded, “company policy has translated into practices that leave the workforce fearful about even seeking union representation.” [<http://www.hrw.org/en/reports/2010/09/02/strange-case-0>]

#### CONCLUSION

Despite efforts to improve sustainability practices, a number of major global companies have established double standards – respecting workers rights to organize and treating workers in their home market much more equi-

tably and fairly than similarly situated workers in foreign markets. Such practices present dangers for long-term investors:

- Growing reputational risk for the company;
- Growing competitive threat as high employee turnover degrades the quality of customer service;
- Increasing focus on the short term that prevents the development of a stable customer base and long-term success.

Only when investors speak out and communicate concerns to a company engaging in such practices will global firms understand the long-term costs they incur by adopting such a double standard. ❖

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*continued from page 4*

ber of mechanisms boards may use for achieving these objectives. These include periodic fiduciary assessments, board self-evaluations, governance principles (governance manuals), investment policy reviews, member surveys, fiduciary education, stress testing, and risk management policies.

These and other practices, when carried out in a logical sequence, can position funds for improved performance, effective risk oversight, strengthened accountability and transparency. ❖

<sup>1</sup>*Pensions & Investments*, November 13, 2008  
<sup>2</sup>*The Ambachtsheer Letter, How Much is Good Governance Worth?*, June 2006

<sup>3</sup>*Modernizing Pension Fund Legal Standards for the Twenty-First Century*, Keith L. Johnson and Frank Jan de Graaf, *Rotmam International Journal of Pension Management*, Spring 2009

<sup>4</sup>*Enhancing Public Retiree Pension Plan Security, Best Practice Policies for Trustees and Pension Systems*, AFSCME, December 2009

<sup>5</sup>*Best Practice, Governance of Public Employee Post-Retirement Benefits Systems*, GFOA, March 2010

<sup>6</sup>*State and Local Government Pension Plans, Governance Practices and Long-Term Investment Strategies Have Evolved Gradually as Plans Take on*

*Increased Investment Risk*, U.S. GAO, August 2010  
<sup>7</sup>*PERAC Pension News*, No. 25, Massachusetts Public Employee Retirement Administration Commission, October 2010

<sup>8</sup>*Pensions & Investments*, August 3, 2010

<sup>9</sup>*Pension Community Responds to GASB Accounting Reforms Preliminary Views*, The Monitor, NCPERS, October 2010

*Julian M. Regan, Senior Consultant, Marco Consulting Group*  
*Julian Regan joined the Marco Consulting Group (“MCG”) in 2009 as part of the firm’s expanding commitment to the public and jointly trustee retirement plan market. During his 20 plus years in the retirement fund industry he has provided leadership, overseen investments, managed risk, and developed regulations for some of the nation’s most sophisticated institutional investment organizations.*

*Between 2001 and 2006, he served as Executive Director for the New York State Deferred Compensation Board, where he ran the state’s 159,000-mem-*

*ber \$8 billion supplemental retirement plan and regulated 250 local plans. Julian also served as chief divisional risk officer for Fidelity Institutional Retirement Services Company (FIRSCO), and as Assistant General Manager and Budget Director for the Massachusetts Bay Transportation Authority.*

*In 2005, Julian was appointed by the U.S. Treasury Secretary to the Internal Revenue Service (IRS) Advisory Committee on Tax Exempt and Government Entities. He received his BSBA and MBA from Suffolk University and has been a member and frequent speaker for numerous industry organizations.*



# The Assault on Public Pension Takes New Twists and Turns

Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Securities Exchange Act of 1934 (“Exchange Act”) to require certain Municipal Advisors to register with the Securities and Exchange Commission (“Commission” or “SEC”) and the Municipal Securities Rulemaking Board (“MSRB”).

Following the adoption of the Dodd-Frank Act, the SEC published proposed rules and registration forms that would implement the new law. In the introduction to the proposed rules the SEC observes that based on census data, public pension plans invest over \$2.2 trillion of assets and represent one-third of all U.S. pension assets.

The burning question **under the proposed rules** is whether pension board members will be defined as “Municipal Advisors” and required to complete this registration. A Municipal Advisor is defined **under the proposed rules** as any financial advisor, broker, placement agent or solicitor that engages in Municipal Advisory Activities, defined as providing advice to a Municipal Entity.

Public pension plans may be treated as a Municipal Entity, as they fit the definition “any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof.” The SEC has stated that this definition includes public pension funds, local government investment pools and other state and local governmental entities or funds, including 529, 403(b) and 457 plans.

The Dodd-Frank Act requires a Municipal Advisor to register with the SEC if they provide advice to a

Municipal Entity with respect to either Municipal Financial Products or the issuance of Municipal Securities, or if they solicit a Municipal Entity or Obligated Person.

Under the proposed rules, pension board members may be deemed to provide advice to a Municipal Entity concerning Municipal Financial Products. Municipal Financial Products are defined as “municipal derivatives, guaranteed contracts, and investment strategies.” The current comments from the SEC have expanded the definition of “investment strategies” to include “plans, programs, and pools of assets [that] are generally funded from sources other than proceeds of municipal securities, such as ... pension contributions from employees and state and local government employers,” noting that these public plans are “subject to the same risks regardless of whether those funds are the proceeds of municipal securities.”

**While pension board members may be subject to registration requirements**, some pension board members may be exempt from registration as Municipal Advisors. It would appear that board members who serve by virtue of elective office are exempt from registration. It is unknown, however, whether elected participant members or appointees are covered by this exception, or whether it is limited to persons such as legislators, finance officers, etc. Inquiry to the SEC yielded no definitive answers. In addition, board members who are already registered investment advisors are also exempt from further filings.

The open comment period on the final rule is open until February 22, 2011. NCPERS is preparing a comment on the proposed rule. There is a temporary rule, but to date the SEC is

unable to give advice as to the filing status of public pension trustees.

Within the two-hundred and thirty pages of text accompanying the proposed rules, the SEC has requested input and comments on a variety of issues. For example, the SEC has asked for input on the following questions:

- The Commission notes that the definition of “municipal entity” includes, but is not limited to, public pension funds, local government investment pools and other state and local governmental entities or funds as well as participant-directed investment programs or plans such as 529, 403(b), and 457 plans. Is the Commission’s interpretation of “municipal entity” for purposes of the proposed definition of “municipal advisor” appropriate? Is additional clarification necessary? If so, how should the Commission further clarify this interpretation?
- The Commission is proposing to exclude from the definition of “municipal entity” elected members of a governing body of a municipal entity, but to include appointed members of a municipal entity’s governing body unless such appointed members are ex officio members of the governing body by virtue of holding an elective office. Are these distinctions appropriate? Please explain. Are there other persons associated with a municipal entity who might not be “employees” of a municipal entity that the Commission should exclude from the definition of a “municipal advisor”?

*[continued on page 14](#)*

# NCPERS Announces New Enhancements to Its Family Protection Plus Plan

Effective October 1, 2010 the popular NCPERS' Family Protection Plus (FPP) Group Voluntary Life Insurance Plan will automatically include an *EstateGuidance Program* benefit. *EstateGuidance* will give FPP Plan participants the ability to create a simple will at no cost. This new benefit offers participants the ease and simplicity of online legal document preparation from their own PCs. Additionally, FPP Plan participants will be able to develop living wills and power of attorneys for a small additional fee. These services are provided by ComPsych, a national benefits firm, in conjunction with the Prudential Insurance Company, the insurer for the NCPERS Life Insurance Plans.

The NCPERS FPP Plan is designed especially for public safety employees. It offers a supplementary survivor's benefit to augment retirement benefits. It helps protect retirement systems' active and retired members and their families by augmenting pension benefits.

Family Protection Plus provides life insurance and accidental death & dismemberment (AD&D) Insurance for the member and eligible dependents—all for just \$17 a month. The plan is available for active employees and retirees, and coverage is in effect 24/7—on or off the job. There is no

physical required, no health questions to answer, no minimum enrollment requirements and the premium never increases.

The FPP Plan pays maximum benefits in younger years and a gradually decreasing benefit amount in older years. The AD&D coverage pays a benefit for loss of life or other injuries resulting from a covered accident. In the case of an accidental death, both benefits are paid. For example, for a member 24 years old who dies in an accident, there would be a \$225,000 life insurance benefit plus a \$100,000 AD&D insurance benefit—a total of \$325,000.

The dependent life insurance provides decreasing term coverage for the insured's spouse or domestic partner (where allowed by state law) and a flat benefit for dependent children.

The NCPERS Life Plan is designed for easy implementation and administration. Premium payments are made directly by the plan participants with no payroll/pension deductions required.

Since its introduction in 2009, these NCPERS member retirement plans have elected to offer the FPP Plan for its active and retired participants:

- Arkansas Local Police and Fire Retirement System
- Chattanooga Fire and Police

- Pension Fund
- Dallas Police and Fire Pension System
- Illinois Public Pension Fund Association

In addition to the above, the NCPERS Group Voluntary Life Insurance Plan is offered by these state retirement systems:

- Idaho Public Employees Retirement System
- Illinois Employees Retirement System
- Illinois Municipal Retirement Fund
- Minnesota Public Employees Retirement System
- Wyoming Retirement System

NCPERS encourages you to consider the FPP Plan for your retirement system. It is a valuable additional benefit of your NCPERS membership that you can provide for your active and retired participants at no direct cost to your plan. It provides an opportunity for your retirement system to offer a substantial new program in a time when there are pressures to freeze or even reduce benefits.

For additional information or a proposal, please contact Bill Robinson of Gallagher Benefit Services at (800)628-5691 or [Bill\\_robinson@ajg.com](mailto:Bill_robinson@ajg.com). ♦

*continued from page 13*

While the SEC issue is pending, there have been calls for changes to the bankruptcy laws to allow states to declare insolvency for the express purpose of avoiding pension liabilities. While this would drastically affect the municipal bond markets, which is the ostensible purpose of the registration requirements explained above, there has been little

discussion of anything other than the avoidance of pension responsibilities. This also poses substantial questions of unconstitutional impairment of state and federal contract rights. There is also a major issue of federalism presented by attempted congressional regulation of pensions when previous laws have excluded public pension plans on state law grounds. ♦

*This article is a regular feature of PERSIST. Robert D. Klausner, a well-known lawyer specializing in public pension law throughout the United States, is General Counsel of NCPERS as well as a lecturer and law professor. While all efforts have been made to insure the accuracy of this section, the materials presented here are for the education of NCPERS members and are not intended as specific legal advice. For more information go to [www.robertdklausner.com](http://www.robertdklausner.com)*

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