THE MONITOR

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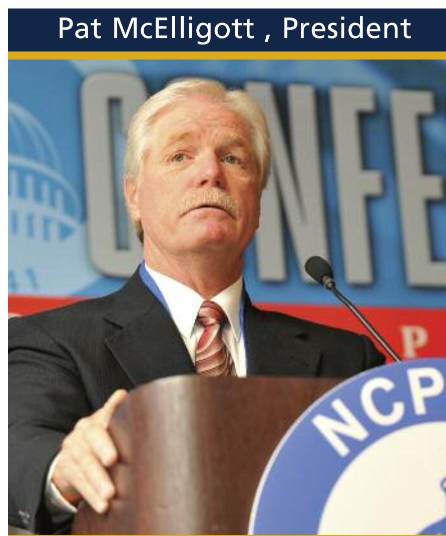
2009 Legislative Conference a Great Success

The 2009 Legislative Conference this year kicked off with enthralling keynote remarks by veteran political analyst Charlie Cook. The more than 200 NCPERS members who convened at the Hyatt on Capitol Hill in Washington, DC were treated to an upbeat and humorous take on the recent elections, what the new Administration means for Congress, and what he views as likely ripe for Congressional action this year.

Mr. Cook pointed out that the historic election of 2008 was the result of a perfect storm for Democrats of a charismatic nominee, fear and concern over the economy, and extraordinarily low approval ratings for the incumbent president and his party. He cautioned that despite the rhetoric of hope and change that abounded upon the election and inauguration of President Obama, it would likely be a difficult haul for the new administration, and the timeline for working to make things better was very short. Should things not appear to improve, he suggested, Democrats could be looking at a replay of the 1994 mid-term elections, where Republicans made significant gains based on what many viewed as President Clinton's inability to pass meaningful legislation.

After a brief break, Bob Klausner, NCPERS general counsel, stood up to talk about a piece of legislation that was introduced in the House of Representatives the week before the Legislative Conference. The bill, H.R. 710, introduced by Representative Gary Ackerman (D-NY), would allow pension funds to buy preferred stock in Troubled Assets Relief Program (TARP)-approved financial institutions directly underwritten by the Department of the Treasury, with a guaranteed 8.5 percent return. If the bank can meet the guaranteed 8.5 percent dividend, Treasury would not be required to step in. However, if the bank could not pay all of the dividend, Treasury would provide the amount required to meet the minimum guaranteed.

Pat McElligott , President



The bill also provides smaller funds, who ordinarily may not be able to benefit from a program such as this, with the ability to form investment pools with other smaller entities, allowing them to join in on the offering. Stocks purchased under the program would be locked-up for three years, meaning that a pension fund that purchased stock in a TARP-assisted financial institution through this program would be required to hold the investment for three years.

"The idea of this bill, is for public pension funds—which are still the primary capital investors in this country—to be able to put money into circulation to help all of our members, to help businesses we invest in, and to help our members get money to buy cars and homes and school loans, which as you know, credit is nearly impossible to get," said Klausner.

According to Klausner, if enough interest is expressed by public pension funds, the initial $50 billion could be increased. The bill was sent to the Financial Services Committee, where it has the support of Chairman Barney Frank (D-MA). Mr. Klausner encouraged those with Hill appointments to speak with their congressional delegations about the legislation.

After Mr. Klausner's presentation, David Driscoll, principal and consulting actuary in the Boston office of Buck Consulting Services, discussed the Governmental Accounting Standards Board and what can be expected from that standards-making organization. According to Mr. Driscoll, in 2006 GASB started an internal research project to determine how effective its existing standards for pension plan accounting had been in improving

accountability and providing useful decision-making. This project led to GASB undertaking a formal project in 2008 to consider improvements to the standards of accounting and financial reporting for post-employment benefits.

The project would cover benefit plans themselves as well as to those covering their governmental sponsors, including GASB 25 and 27 as well as GASB 43 and 45.

According to Driscoll, GASB has suggested that it is interested in achieving more transparency regarding the effects of employers' commitments and actions related to pension benefits and other post employment benefits. Overall, GASB wishes to "achieve improved usefulness of the information provided under their standards for decision-making by users of such information." Mr. Driscoll suggests that GASB embarked on this course because GASB Statements 25 and 27 were due for a review, having been in effect for ten years, and that although the Statements on OPEB reporting were not fully in effect, that because OPEB reporting was so closely linked to pension fund reporting, they should be reviewed together. Another reason he suggested, was that other financial accounting standards organizations, such as FASB and IASB, had already made—or were in the process of making—changes to their statements on these issues.

After giving a rundown on the key features of current GASB statements, Driscoll turned his attention to how the changes might be approached by the organization. While it is not certain how GASB may change its standards, the impact of changes could be significant. For example, if the standards were changed to require discount rates based on prevailing yields on low- or no-risk bonds instead of expected returns, it would cause the measure of liabilities to increase as well as higher costs for the fund. It is also expected that GASB could review its stance on asset smoothing, and move toward an unadjusted market value to determine the fund's assets, liabilities and, ultimately, costs. Most public plans prefer a certain amount of smoothing, as it allows the funds to determine whether market volatility while ensuring that costs to the plan remain relatively stable. There is also conjecture that GASB would shorten the period of amortization of unfunded liabilities in the calculation of accounting cost, leading to higher costs for plans with unfunded liabilities.

Mr. Driscoll indicated that GASB could take a step toward requiring Market Value of Liabilities calculation. This would require funds to disclose the current market value of benefit liabilities, measured using the current yield on low- to no-risk investments of similar duration. He suggested that if this were required, it would be a radical change. As an alternative to requiring funds to adopt the MVL calculation as a funding standard would be to require that MVL be reported as a supplement to the financial statements. He indicated that it was very widely supported by those who advocate for the financial economics school of thought. Generally, public pension funds are opponents of this MVL disclosure, because it doesn't take into account the fundamental difference between public funds and private sector pensions—that is, public funds have methods to increase revenue and are sponsored by organizations that do not go out of business. Furthermore, providing different figures to the public could lead to confusion and misuse of the financial disclosures, irreparably harming public opinion of the system, its long-term viability, and affordability of benefits.

Mr. Driscoll suggested that attendees involve themselves by staying up-to-date on where GASB stands, and to avail themselves of the public comment mechanism GASB has in place, as well as attend public hearings, which are expected in July.

The next session featured Mark Goldberg of the National Coalition on Health Care, which is an umbrella group representing about 80 organizations—including major companies, unions, retirement systems, medical institutions, higher education institutions, and healthcare organizations—interested in healthcare reform. He started out discussing a political theory called the "policy window," which is a theory that suggests that any wholesale change occurs at specific points in time, on specific issues, when there is widespread belief that the issue involved is at a crisis point, and that there be reasonable auspicious political circumstances which would allow the changes to move forward. He started out with this discussion because he believes that the United States is currently at a policy window that would allow massive changes to American health care policy.

Among the areas that NCHC is focused on in true reform begin with coverage. The coalition takes the position that coverage should be truly universal and implementation should be as quick as possible, reflecting the importance of

the issue and that coverage should be comprehensive—it should include preventive measure, early detection and screening, and the full range of services that are associated with a good benefit package. To get to universal coverage, according to Goldberg, it will have to be required. "No country in the world has gotten to universal coverage through a voluntary program," he said.

The second area of focus reflects the escalating costs in healthcare and health coverage. The coalition believes in the investments to make a better and more cost effective system, such as Healthcare IT, better information about quality, and more research—measures that are popular on both sides of the political aisle. The NCHC also supports short term measures that slow the rate of increase in costs, including measures that would slow the rate of increase in the reimbursement of care.

The Coalition is concerned that ever-spiraling healthcare costs adversely effects other economic objectives and that the current economic situation heightens the need to do something about healthcare, especially to help those that are experiencing anxiety over their healthcare needs. NCHC also is making an investment case for reform, suggesting that cost of doing nothing will be far more expensive than if reform is achieved. He also suggested that despite the initial outlays—subsidies, for example—the cost savings of reform will begin to be seen in just a few years. Mr. Goldberg concluded his discussion with a list of concerns about how reform can be realized. For example, whether reform is taken on all at once in one bill, or whether it is done incrementally.

Mildeen Worrell

Mildeen Worrell, Benefits and Tax Counsel for House Ways and Means Committee, was next up to discuss the issues expected to affect pension plans in the 111th Congress. She began by discussing some of the tax provisions in the stimulus package that would be of interest to the attendees. Her first order of business was a discussion on the expansion of HELPS to all public sector retirees. She suggested that any effort there might be included in the broader healthcare reform package expected this year. She also mentioned that public plans and funding would be an issue that legislators might turn an eye to this year. She noted that many articles she reads on funding issues related to public plans have a very negative tone to them, and as a result, public employees really need to be involved to ensure that their interests are protected.

She also suggests that fee disclosure will be something that could spur legislative activity, noting that GAO is reviewing all fees paid by all plans other than 401(k) plans, and then will do a comparison of the universe of fees paid. She again encouraged the attendees to keep up with what is going on in that area to ensure that if anything occurs, they will be able to meet the challenges head-on instead of playing catch up. Ms. Worrell also noted that there were regulatory changes made in the last administration that likely will be rolled-back, if possible. She believes that there will also be a push for Automatic IRAs for all Americans. She indicated that the push hadn't been substantial enough in the past, but this year it may really get the support necessary for passage. She noted that one of the issues with requiring workers to save their own money in a product like an Automatic IRA was that it creates a division in the employer-employee relationship, and would require setting up new protections for the employee, who would be risking his or her own money in the process.

After a networking luncheon, Bill Bortz of the Department of Treasury took the stage to explain what the administration outlook is for pension and retirement security tax issues in the coming year. He began by discussing recent legislation, including the stimulus bill that recently passed as well as the TARP bill passed last year, as well as regulatory changes that Treasury is working on, such as new rules in the pipeline affecting cash balance plans. He also talked about the issue of Code Section 414(d), which deals with the definition of what constitutes a governmental plan. Three governmental agencies—Department of Treasury, Department of Labor, and the Pension Benefit Guaranty Corporation—all have some jurisdiction over pensions, but it became apparent that the three agencies were using various interpretations of 414(d) to determine whether a plan qualified as

governmental. He suggested that at some point in the future, there will be a call for comments describing the rules that the agencies should use in determining how best to define a governmental plan.

After a question from an attendee, Mr. Bortz clarified that the new normal retirement age regulations, which go into effect in 2011, would affect only those plans that had in-service distributions. He also noted that, due to pre-ERISA rules, a government retirement plans "literally have to have a normal retirement age of a defined benefit plan of a government, any retirement plan of a government." He suggested that normal retirement age could be a variable age, pointing out that a plan could convert its early retirement definitions, which has an age and a service component to it, to a normal retirement age definition by using a date of participation (e.g., the 20th anniversary of the date upon which someone begins participation in the plan) rather than years of service.

Mr. Bortz was followed by Dean Shahinian, a senior staffer on the Senate Banking Committee. He discussed the issues that the committee had taken early in the 111th Congress. He noted that the committee had already moved forward with confirmation hearings, a hearing on Bernard Madoff, as well as hearings on releasing to the Treasury the second $350 billion that was approved in the TARP. With regard to the confirmation hearing on Mary Schapiro, now SEC Chairman, he explained that it was her intention, based on formal testimony and subsequent questions for the record, to focus on enforcement of securities

Dean Shahinian

law, preserve and protect shareholders rights through shareholder proposal provisions, as well as revisit the issue of proxy access for shareholders.

He mentioned that the Banking Committee would largely be devoted to administering the TARP funds as well as focusing its legislative agenda on regulatory modernization. Mr. Shahinian mentioned that Committee Chairman Christopher Dodd (D-CT) would be holding regular hearings "for the foreseeable future" on regulatory modernization efforts, the first of which was held the week of the Legislative Conference. He also pointed out that the issue of executive compensation was of interest to members of the committee, because it is viewed with public concern and therefore Capitol Hill concern. He noted that the executive compensation restriction in recent legislation for firms that receive TARP funds likely will be strengthened, and there is discussion that legislation will arise that will restrict companies who receive TARP funds from providing bonuses to certain top executives, provide for compensation committees composed of independent directors, and require say-on-pay proposals in annual proxy.

Anthony Roda, a lawyer with Williams & Jensen, discussed DROP implementation issues for Public Safety Retirees. Certain changes to the tax law in the Pension Protection Act of 2006 resulted in two issues that have adverse affects. First, public safety employees between the ages of 50 and 55 who rolled their distributions into a 457 plan and subsequently took distributions from the 457 plan are subjected to a 10 percent early distribution tax until age 59 1/2. Second, public safety employees who retired before age 55 and before enactment of the Pension Protection Act, and opted to annuitize their benefit to avoid the 10 percent early distribution tax; and then who after the enactment of the legislation decide to take a modified distribution from their plans are subjected to a 10 percent recapture tax on the previous annuitized distributions. Mr. Roda discussed how he, in conjunction with NCPERS and others, have worked to introduce legislation that would fix these issues.

Rep. Kendrick Meek

Next on tap was Congressman Kendrick Meek (D-FL), who did introduce that legislation. He discussed that briefly, as well as the stimulus package and other pieces of legislation that he said would help states and localities weather the economic turmoil. He also expressed his gratitude for public employees, and how serving as a Member of Congress and his family's history of public service has made him more aware of how important public employees are to America. He also mentioned his desire to continue as a public servant and his decision to run for the Senate in the 2010 election. Another Member of Congress joined us at the Legislative Conference. Representative Earl Pomeroy (D-SD) was recognized as the NCPERS Legislator of the year for his efforts to shore up retirement security for America's workers. He noted that he has been an advocate of defined benefit pensions for many years, and was vocal in his disdain for the Pension Protection Act of 2006, saying "I hate it." He went on to say, "I call it the 'Pension Prevention Act'."

Congressman Pomeroy also noted that 80 percent of the public sector is served exclusively by defined benefit plans, as opposed to 60 percent of the private sector, which is served exclusively with a defined contribution plan. "I believe a way of diminishing this disparity is to continue to work to shore up the role of the defined benefit in the private sector plans," he said. "This is at sharp odds with many who think the way to eliminate the dichotomy is to take down public sector pension plans. And that certainly has been the overarching public policy driven out of the executive branch consistently and tenaciously over the last many years." Rep. Pomeroy lauded the attendees for their leadership in fighting against efforts to replace defined benefit plans with defined contribution plans, and encouraged trustees to continue their work on corporate governance issues, calling it "meaningful outside pressure on the conduct taking place in boardrooms."

Rep. Earl Pomeroy

Last to speak was Gerri Madrid-Davis of the National Public Pension Coalition. She gave a brief history of the nearly two year old organization, which was founded by a group of six national unions and works with state-based coalitions to develop strategic plans to fight efforts to take away or diminish defined benefit plans, especially for new hires. She explained that the Coalition has been active in 4 states: Nevada, New Hampshire, Alaska and Rhode Island. She went on to detail the threats that may have an adverse impact on defined benefit plans in the coming year. According to Ms. Madrid-Davis, "Our biggest threat is the national recession and state budget shortfalls." The drive for Market Value of Liabilities remains a threat that should be taken seriously, though the downturn in the economy may dampen enthusiasm for those efforts. She warned that we need to be sure to stop legislators and the press from providing false choices: "if we pay the full pension contribution, we'll have to cut other necessary services."

She also noted that there are a number of defined contribution proposals, but those have waned in recent years. However, she pointed out that instead, the number of proposals to create new tiers or to increase age and service requirements are increasing. She then explained that despite the relative quiet from those advocating a move to DC, they likely will start encouraging shifting again in the near future. Ms. Madrid-Davis also suggested that board challenges—where trustees are challenged because they aren't pension experts—are becoming more commonplace.

She mentioned that many states that are targeted for legislative initiatives affecting DB plans have larger funding liabilities than states that are relatively safe from attack, and she noted that the fight now seems to be moving towards cities such as Atlanta, San Diego, and Philadelphia. Part of that, she said, may be the result of cities wondering how they are going to cope with their OPEB liabilities in addition to the pension costs. She ended her presentation suggesting that we have the tools, resources, and position to really be effective in making sure pensions remain safe, and that we all have to be active in making sure that we are out there as good advocates for pension plans.

In the STATES

Florida

Florida's massive state pension system is easing out of fixed-income holdings by as much as $1 billion a month and purchasing more equities, the state's new investment chief said recently. According to Ash Williams said Florida has been selling $500 million to $1 billion of fixed-income assets monthly since November. The fixed-income sales are continuing and are mostly aimed at aligning the state's investments with long-term asset allocation plans, which derailed by turmoil in equities and other markets, according to Williams. With 280,000 retirees, the Florida state retirement system had about 28 percent of its assets in fixed-income, or about one percentage point more than the managers' target, at the end of 2008. Equity holdings totaled about 51 percent of retirement investments at year's end, or about four percentage points below the target allocation.

California

CalPERS and CaLSTRS are seeking to lead a class action lawsuit against Bank of America Corp., alleging the bank's management "misstated or omitted" important information about Merrill Lynch & Co.'s financial health to shareholders prior to the investment bank's takeover. The two large public pension funds filed a joint motion recently in the U.S. District Court for the Southern District of New York to be designated as lead plaintiff. They said it is an effort to protect the retirement security of their more than two million members. CalPERS, which had approximately $173 billion in assets as of January 31, administers retirement for California's 1.6 million state workers. CalSTRS, with a $114 billion portfolio, administers retirement, disability and survivor benefits for California's 833,000 public school educators and their families.

Illinois

Governor Pat Quinn has proposed suspending contributions to the state's five retirement systems in an effort to shore up the state's balance sheet. Quinn proposal would cut approximately $2.5 billion in contributions through June 2010. The $29 billion Teachers' Retirement System of the State of Illinois has spoken out against the cuts and is demanding that state pay its contributions, along with the $2.3 billion in funding cuts that were made in 2006 and 2007. "These amounts must be repaid to the retirement systems with interest," said TRS executive director Jon Bauman. "If $1.3 billion is cut from TRS during fiscal year 2010, it will cost the state $5.8 billion over the 35 years remaining in the statutory funding plan." Governor Quinn also called for state employees to increase their pension contributions by 2 percent, and said he would consider issuing pension obligation bonds.

Maryland

Three Baltimore public safety unions reached an agreement with the city to scale back retirement payouts for police officers and firefighters who work longer than 20 years. The compromise, fueled in part by the economy, is expected to save the city between $4 million to $7 million yearly while preserving the plan's DROP provision. The DROP program was designed to retain police and firefighters after their 20 years of service — a date at which many retire because they become eligible to earn 50 percent of their salary as a pension. The proposed legislation reduces the guaranteed return on the DROP plan from 8.5 percent to 5.5 percent. Police and fire pension plan assets have dropped from approximately $2.4 billion last summer to about $1.5 billion. Stephan Fugate, the head of the fire officers union and a frequent critic of the administration, noted that labor and management worked "collaboratively" in "a cleaner process" than in the past to make sure that an agreeable reform was possible.

New Jersey

Governor Jon Corzine signed into law on March 17 a bill allowing financially strapped New Jersey towns and school districts to delay half their payments to the public employee pension system. The bill passed the Senate 21-17 and by 42-36 in the Assembly. Corzine proposed the legislation last year as a way to provide property tax relief to municipalities during the recession. It stalled after some lawmakers contended that deferring the payments would be bad fiscal policy. Corzine's $29.8 billion budget proposal reduces the state's contribution to the chronically underfunded pension system by $895

In the STATES continues ◗

Executive Director's Corner

Hank H. Kim, Esq.
Executive Director
& Counsel

Since the start of 2008, 4.4 million Americans have lost their jobs, putting the unemployment rate at 8.1 percent, the highest it's been since December 1983. With all of the recent reporting about the economy causing fear and uncertaintly among workers, it is surely difficult to find news that helps to set minds at ease. As a result, we're interested in finding out how public pension funds are responding to the crisis. Are you increasing communications to your plan participants to ensure that they understand how the economy affects them? Is your fund providing more information regarding the safety of their retirement, explaining that their benefits are protected? Have you changed the methods of contact plan participants?

Another area of interest we have regards your investment allocation. Since the markets have taken a battering, it is not implausible that public funds have viewed a reallocation of assets as necessary or appropriate. We are wondering whether your fund has discussed a change in investment strategies with investment advisors, and if change is afoot, to what extent? Not only do the answers to these questions help us serve you, they allow us to better understand--from small funds to large--how the playing field has changed. We would encourage you to let us know the answer to these and other burning issues of the day by sending in your thoughts to info@ncpers.org. We see this as a sort of "best practices" pipeline that we will be able to share with others. If a course of action embarked upon is working for you, perhaps your fellow fund trustees and administrators would appreciate knowing about it.

On another note, I encourage everyone to attend the Annual Conference in Beverly Hills, CA, May 3-7. This is just the type of gathering where fund trustees and administrators have the opportunity to learn from industry experts, as well as from colleagues from across the country. Given the economic concerns shared by all, we think attendance at the Annual Conference is a sound investment in your fund's future. We hope to see you there.

In the STATES continued

million from last year's $1.1 billion contribution. The budget also decreases aid to schools by $94 million, largely by deferring pension contributions for school employees. The value of pension system funds was $59.2 billion as of Feb. 20. As of June 30, it was underfunded by $28.4 billion. Bill Dressel, executive director of the New Jersey League of Municipalities, estimated that as many as half of New Jersey's 566 municipalities would opt to defer half the pension payment due in April.

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