

Notes on the IRS Public Pension Plan Conference in Washington

The conference had approximately 130 people attending. There were quite a few attorneys there; no list was available of the attendees. Jeanne Markham from NASRA, Greg Kaufman from NCPERS, Leigh Street from NCTRS and Gary Findlay from MOSERS, were in attendance. There were also a few members of the press. This was the first conference ever held for public pension plan systems by the IRS.

The IRS's biggest concern is on compliance. Surprisingly, most public pension plans do not have favorable letters of determination, or for the ones that do have them, many have not updated them in several decades. (In the private sector, there are over 1,000,000 qualified plans, based on the number of Form 5500s that have been submitted to the IRS.) One IRS agent quoted: "We don't even know how many government plans are out there."

The IRS will be sending out a survey/questionnaire to public pension systems later this fiscal year on compliance and qualification issues. (This will be their first electronic survey they have ever sent.) They will not be surveying every plan. They mentioned that audits will not be conducted based on the answers received from the questionnaire. Once the questionnaires are summarized however, they will follow up with enforcement, through a compliance check that is likely to be implemented a year or two later. They believe that most of the larger public plans are in good shape, it is the smaller plans of cities and counties that they expect problems.

Two problem areas that were discussed extensively included 415(m) and 401(a) (17) compensation limits and those public systems that are not in compliance in these areas. 415(m) is the limit on how much a public plan retiree can receive in a year on his/her pension; and 401(a) (17) is the limit on how much compensation an active member can earn in a year for their retirement calculation.

Other problem areas discussed included: (1) that a member receiving a refund, be provided a written explanation on rollovers to other retirement plans, apparently a lot of systems don't provide this. (2) Notification to the plan members that they are eligible for a pension. (3) Participation in the plan of ineligible members who were not active employees and thus not entitled to a pension, (4) Failure to update the plan document with changes in the federal law. The IRS put emphasis on the plan document as one of the key pieces they focus on when reviewing letters of determination and how closely the pension plan operates in regards to the plan document. The area of voluntary correction through their Self Correction Program was discussed; much of the focus is on the areas discussed above.

Gary Findlay from MOSERS spoke on a panel at the end, he discussed problem areas concerning who can you go to at the IRS for sections of the code that don't make sense, specifically the 415 sections, and what's the business purpose of such a code as applicable to public plans. Gary also brought up the fact that no public pension systems have eliminated and shut down their plans, in reference to PBGC and private plans terminating and shifting the payments to PBGC. Other systems raised their concerns on the public information aspect of the determination letter and its availability to the media on plan qualifications, and how that could be presented in news articles. The IRS acknowledged that this concern was not one they had anticipated.

The Pension Protection Act was brought up, and while not specifically mentioned nor discussed, I had a sense they would like to see some of the regulations of the private sector be implemented in regards to required contributions and funding for public plans.