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Are Defined Contribution Plans the Answer to Our Pension Problems?

You Asked for It...

Our Newest Service Offered in Response to Client Requests

Mockenhaupt Benefits Group's **Total Administrative Services Package** is designed to assist municipalities with all aspects of pension plan administration, from preparing filings and monitoring MMO deposits to updating administrative forms/records and providing audit assistance. If you're having difficulty staying on top of these tasks, or are a newly-appointed Chief Administrative Officer looking to become familiar with them, contact Mockenhaupt Benefits Group to learn how we can help.

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Most government employers who sponsor defined benefit plans have had to make difficult budget decisions this past year because of the explosion of pension costs, which can be attributed to investment losses in 2008. And it doesn't look like these costs will be going away soon. As a result, governing bodies are scrambling to come up with ideas for major changes in an attempt to curb costs.

Employers, pundits and taxpayers have been coming out with the idea of doing away with defined benefit pension plans in favor of defined contribution plans. *Is this really the answer?* Let's take a look.

Defined Benefit Plan Defined

A defined benefit plan (DB plan) is a type of plan where an employee is entitled to a specific amount of money at retirement. The benefit amount is defined based on a formula, often a percentage of the employee's final monthly average compensation, and may incorporate years of service. The benefit is typically paid monthly for the rest of the

retiree's life. An employee becomes entitled to the benefit after achieving a minimum age and/or years of service specified by the plan. A DB plan may also have other features, such as early retirement, disability retirement, death/survivor benefits, or DROP (deferred retirement option plan).

Because the amount and length of time a benefit will be paid to an employee is contingent on so many unknown factors about the future (age at retirement, age at death, salary at retirement, possibility of becoming disabled, likelihood of terminating before retirement eligibility, etc.), an actuary must be employed to determine the assumptions to use to calculate those probabilities. An assumption must also be made as to what the earnings will be on plan assets and future contributions. Even after the actuary determines the appropriate funding level and contribution requirement, as we all know... things change.

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H.R. 567 - Public Employee Pension Transparency Act

Bill in U.S. Congress - Introduced Feb. 9, 2011

- Requires plan sponsors of a state or local government employee pension benefit plan to file with the Secretary of the Treasury an annual report setting forth:
 - A schedule of the funding status of the plan.
 - A schedule of contributions by the plan sponsor for the plan year.
 - Alternative projections for each of the next 20 plan years relating to the amount of annual contributions, the fair market value of plan assets, current liability, the funding percentage, and other matters specified by the Secretary.
 - A statement of the actuarial assumptions used for the plan year.
- A statement of the number of plan participants who are retired or separated from service and are either receiving benefits or are entitled to future benefits and those who are active under the plan.
- A statement of the plan's investment returns.
- A statement of the degree to which unfunded liabilities are expected to be eliminated.
- A statement of the amount of pension obligation bonds outstanding.
- For the reporting purposes above, plan assets must be valued at fair market value and plan liabilities must be valued using interest rates based on US Treasury Obligation interest rates.
- Directs the Secretary to develop model reporting statements and create and maintain a public website, with searchable capabilities, for purposes of posting plan information required by this Act.
- Amends the Internal Revenue Code to deny tax benefits relating to bonds issued by a state or political subdivision during any period in which such state or political subdivision is noncompliant with specified reporting requirements for state or local government employee pension benefit plans.

The bill is sponsored by Rep. Devin Nunes (R-CA) and currently has 42 co-sponsors. It was referred to the House Ways and Means Committee.

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Don't Call It a Comeback – Asset Smoothing in 2011

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After the shock of 2008's market crash, the strong markets over the last two years have been good news for most investors, including sponsors of defined benefit pension plans. So after seeing annual pension costs skyrocket after the Jan. 1, 2009 actuarial valuations, local government employers can be looking forward to contribution relief after the Jan. 1, 2011 actuarial valuations, right? Not so fast.

Many pension plans use an asset smoothing technique that defers gains and losses over a period of years, often four or five, to determine the actuarial value of assets (AVA). For instance, if a plan uses a common four-year smoothing method then the 2011 valuation will only reflect 25 percent of investment gains/losses from 2010, 50 percent of investment gains/losses from 2009, and 75 percent of investment gains/losses from 2008. For many plans that use asset smoothing, the deferred asset losses of 2008 will still outweigh the portion of the asset gains of the last two years that can be recognized.

Let's look at an example:

Snowmageddon Borough has a pension plan that has invested 60 percent of their assets in equities. The valuation interest rate is 7.50 percent. The Actuarial Value of Assets is based on four-year asset smoothing with an 80 - 120 percent of market value corridor (limitation of AVA relative to market value).

Rates of return for the pension plan have been as follows:

2006	7.5%
2007	7.5%
2008	-22.0%
2009	18.0%
2010	10.0%

As of Jan. 1, 2009, Snowmageddon Borough had \$1 million in assets. Under the asset smoothing method with the 20 percent of market value corridor, they

only recognized \$178,000 of their \$378,000 investment loss in the 2009 actuarial valuation. While their costs based on the Jan. 1, 2009 actuarial valuation were much higher than the costs based on the Jan. 1, 2007 valuation, they were not as high as they would have been had they used market value of assets as their AVA.

For many plans that use asset smoothing, the deferred asset losses of 2008 will still outweigh the portion of the asset gains of the last two years that can be recognized.

After two good years of investment return, 18 percent and 10 percent, Snowmageddon expected to see investment gains reflected in their Jan. 1, 2011 actuarial valuation; instead they realized an investment loss of almost \$69,000 (about five percent of their new AVA). That's because the 2011 valuation recognized more of the 2008 investment losses that had previously been deferred while deferring portions of their investment gains of the last two years.

In addition to possible investment-related actuarial losses being realized for plans on asset smoothing, most plans (smoothing and non-smoothing) can expect to see actuarial losses due to contributions in the 2011 valuations. Why? Because the 2009 Minimum Municipal Obligations (MMOs) were calculated based on Jan. 1, 2007 valuation reports due to the advance budgeting requirement of Act 205. The 2007 valuation reports, in most cases, would have indicated significantly lower contribution requirements than what the plan actually needed (according

to the 2009 report). The 2010 and 2011 MMO, for many local governments was also based on the 2007 valuation. That's why Snowmageddon refused to reduce the amortization payment in their 2010 (and 2011) MMO, even though they were allowed to based upon their distress level under Act 44 of 2009.

Asset smoothing was a nice tool for Snowmageddon Borough (and many others) to manage the volatility of the markets. It gave them time to prepare for the higher costs to come. Being wise stewards, they were prepared for the results of their 2011 actuarial valuation. They know that there are still investment losses from 2008 that will be realized in the 2013 valuation. They also know that there are investment gains that will be realized in future valuations as well.

Snowmageddon Borough is planning to take the following steps to mitigate any further losses and drastic fluctuations in contribution requirements:

- Stay with the asset smoothing for 2011 and into future valuations, even if the results would be more favorable under Market Value.
- Have their actuary get the 2011 valuation done early and use the results to calculate the 2012 MMO, even if it's higher than if based on the 2009 valuation.
- Elect not to reduce the amortization payment by 25 percent as permitted by Act 44 of 2009.
- Look for ways to accumulate funds during the year to make contributions in excess of the MMO.

These types of funding policies can be adopted by an employer to improve the pension solvency by putting more money in the plan.

Plan sponsors that used asset smoothing most likely saw lower contribution requirements (for years that the MMO was based on the 2009 actuarial valuation) than had they used market value as the AVA. Using asset smoothing during this period of large market fluctuations reduced the volatility in contribution requirements, but didn't lower the overall amount of funding required by a pension plan.

The Patient Protection and Affordable Care Act (PPACA) was signed into United States law by President Obama on March 23, 2010. Most mandates from the law are effective for plan years beginning after Sept. 23, 2010, in most cases beginning Jan. 1, 2011.

The extent to which a mandate is applicable depends upon whether the plan is subject to PPACA and if so, whether the plan was in effect on March 23, 2010. That said, most plans are subject to the mandates.



Health Care Reform – Are You on Top of Things?

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What is a grandfathered plan?

A grandfathered plan is a health care plan that was in place on March 23, 2010. Grandfathered plans are exempt from some, but not all of the health plan mandates under PPACA. Grandfathered status can be lost if there are changes made to plan design or cost sharing. New health plans that are set up on or after March 23, 2010 are subject to all of the mandates. Have you established whether your plan is grandfathered or not; and, have you notified your employees of this? Sample employee notices can be found on the www.meit-pa.com website along with a grid on provisions taking affect through 2018.

What mandates apply to my group?

Both grandfathered and non-grandfathered groups are subject to:

- **Coverage of Dependent Children to age 26** - Requires plans that provide

dependent coverage for children to continue to make this coverage available to them until age 26. (Until 2014, grandfathered plans do not have to provide coverage for dependents that are eligible to enroll in an employer-sponsored plan.)

- **Elimination of Lifetime Limits**
- **Elimination of Annual Dollar Limit Restrictions** – Prohibits annual limits on dollar value of essential health benefits
- **Elimination of Pre-Existing Condition Exclusions on Children to Age 19** – Plans cannot impose any preexisting conditions exclusions for children enrolled under age 19.
- **Elimination of Coverage Rescissions** – A group health plan cannot rescind coverage except in the case of fraud or intentional misrepresentation of a material fact.

Non-grandfathered groups are also subject to:

- **Choice/Direct Access Requirements** – Members are able to designate any participating primary care physician or pediatrician. Female members cannot

be required to obtain a referral or prior authorization to visit a participating OB/GYN.

- **Coverage for Emergency Services** – Health plans covering emergency services cannot require a referral or prior authorization or any additional cost-sharing regardless of whether the provider is in the plan's network.
- **Elimination of Cost-Sharing for Certain Preventive Services** – Health plans are required to provide certain minimum coverage for these services without imposing any cost-sharing requirements (copays, coinsurance or deductibles). This is commonly referred to as “first-dollar coverage.” First dollar coverage is not required if the care is out of network.
- **Prohibition on Discrimination in Favor of Highly Compensated Individuals** – Prohibits discrimination in terms of participation and benefits, in favor of highly compensated individuals.

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Local Government Pension Plan Status

— Q & A —

The Public Employee Retirement Commission (PERC) released their most recent Status Report on Local Government Pension Plans in January 2011. This report presented a summary and analysis of 2008 County Pension Plan data and 2009 Municipal Pension Plan data. A section of their report that is of particular interest given the publicity that public pension funding has received over the last few years, concerns the number and percentage of Pennsylvania municipalities at each Distress Level as determined pursuant to Act 44 of 2009. Each municipality's Distress Level score was calculated based on the aggregate funding ratio (pension plan assets/pension plan liabilities) of the municipality's pension plan(s) as follows:

Funding Ratio	Score	Distress Level
90% and greater	0	No Distress
70% to 89%	1	Minimal Distress
50% to 69%	2	Moderate Distress
Less than 50%	3	Severe Distress

Q: Are there any municipalities classified as *Not Distressed* (Level 0)?

A: 53.9 percent of Pennsylvania municipalities receiving Distress Level scores (776 of 1,439) are not distressed.

Q: Which Distress Level applies to the fewest number of municipalities?

A: Only 27 municipalities are classified as Severely Distressed (Level 3).

Q: Overall, how many municipalities sponsor pension plans with a combined funding ratio of 70% or greater (Level 0, Not Distressed, or Level 1, Minimally Distressed)?

A: 86.8 percent of municipalities (1,250 of 1,439). Level 0 and Level 1 plans are not required to utilize any of the recovery methods provided by Act 44 of 2009. Distress Level 1 municipalities were permitted to elect to utilize a subset of the recovery methods.

Q: Will a municipality's Distress Level score change at any time?

A: The Distress Level scores will be calculated biennially, after each valuation filing period, as required by Act 44 of 2009. Therefore, each municipality's score could potentially change every two years.

Health Care Reform

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- **Internal Appeals/External Reviews Process** - Required to be in place for coverage determinations and claims decisions. The individual's coverage must be continued pending the appeal outcome.

Additional items for 2011:

- **Small Business Health Care Tax Credit** – Qualified employers with less than 25 full-time equivalent employees (FTE) for the tax year and average annual wages of less than \$50,000 per FTE who purchase health insurance for their employees may receive a sliding scale tax credit that generally can be claimed beginning with the 2010 tax return.
- **Disclosure of Average Value on W-2** – Employers must disclose the value (employee plus employer portion) of employer-sponsored health coverage on the employee's W-2 beginning with those issued in January 2012.
- **Changes to HSA, HRA and FSAs** - Over-the-counter medications and products, other than insulin and medicine prescribed by a doctor, will no longer be eligible for reimbursement from these accounts. In addition, the tax on

non-qualified HSA and FSA distributions increases from 10 percent to 20 percent for tax years 2011 and later.

- **Medical Loss Ratio Rebates** – Insurers providing coverage to large groups must use at least 85 percent of premium dollars for clinical services and quality improvement activities. For individual and small groups, the percentage is 80. Plans must provide rebates to subscribers if they fail to meet these requirements. Self-funded plans are exempt from this provision.

While this is a lot to take in, learn and comply with, please keep in mind there are penalties for non-compliance. At a minimum, these penalties could be \$100 per day per person for failure to comply with a mandate. Additional mandates and provisions under PPACA run to the year 2018. With two lawsuits challenging the provisions under PPACA, we may still be in for more change.

If you have questions, contact your benefits consultant or broker. There are many resources on the Internet as well, including www.meit-pa.com.

Defined Contribution Plans

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Defined Contribution Plan Defined

A defined contribution plan (DC plan) is a retirement program where each employee has an individual account with employer and/or employee contributions deposited. The contributions are invested and earnings are credited to the account. The amount of contribution made is defined, usually based on a percentage of compensation or a specified dollar amount. The benefit at retirement is determined solely on the value of the account at that time.

When we think about DC plans, 401(k) usually comes to mind. However, Internal Revenue Code Section 401(k) plans may not be provided by government employers. Instead, they would have to use a Section 401(a) money purchase plan or profit sharing plan, or a Section 457 deferred compensation plan. Section 457 plans are not eligible for state funding in Pennsylvania.

In the case of a DC plan, the age at retirement, life expectancy, or possibility of disablement have no impact on the contribution level because contributions are fixed and the employer does not guarantee any specific benefit level or payment period. Employer contribution levels are also not affected by market downturns (or upturns). Instead, employees must adjust their retirement savings goals to make up for investment losses or to enable them to retire early.

Predictability

Contribution requirements for DC plans are more predictable since they'll usually be a percentage of payroll or a dollar amount per participant. So they'll generally only fluctuate due to number of employees and payroll changes. Contributions for DB plans are based on the actuarial cost components from the most recently filed valuation report. But the cost components are adjusted each valuation to reflect actual plan experience relative to the assumptions. So, for example, the target funding level set in the Jan. 1, 2007 valuation had to be dramatically adjusted in the Jan. 1, 2009 valuation for most plans to account for investment returns that were much less than the assumed rate of return, typically 7-8 percent per year. Because

the costs are always changing in response to the plan's experience, they are less predictable.

Do DC Plans Cost Less than DB Plans?

Defined contribution plans can be, but are not necessarily, less expensive than defined benefit plans. A DC plan would only be less costly if the contribution rate is set so that the resulting contribution is less than the DB plan Minimum Municipal Obligation (MMO). However, as previously mentioned, DB plan costs change based on plan experience, so attempting this comparison is like chasing a moving target. Generally, a DB plan MMO is the

actuarial cost for the year (normal cost). Favorable experience (ex. higher investment returns than assumed) can reduce this cost; and unfavorable experience (ex. lower investment returns than assumed) or benefit improvements increase the cost. Continued or very large gains from favorable experience can actually eliminate the need for a contribution for a period of time. That would never be the case for a DC plan.

So How Can the Pension Plan Costs be Reduced?

Constitutional issues prevent government employers from unilaterally changing plans or reducing benefits for current employees. So, generally speaking, changes that could result in lower benefits can only be considered for new hires. To reduce pension costs for new hires, an employer could change to a DC plan with an employer contribution rate that is less than the DB plan normal cost percentage net of the employee contribution rate. This would not be an option for certain plans that are established by statute and must be a defined benefit type of plan, such as those required under Act 600, Third Class City Code or the County Code. Another option would be to amend the DB plan to reduce benefits for new hires. Examples of changes that could be made

include: increase the age and/or service requirements for retirement, lower the benefit formula, or cut back the compensation basis for benefits (ex. eliminate overtime pay from pension calculations or extend the averaging period).

A revised plan for new hires is mandatory for Distress Level 3 municipalities under Act 44, and is optional for Level 2 municipalities. Interestingly, the Act does not require that the new plan be less expensive than the existing plan (however, it would stand to reason that lower net cost to the municipality would be the goal), but it does require that employees contribute between 30 – 50 percent of the normal cost. And, it must be negotiated with the bargaining unit, if there is one. Although not explicitly stated, it was the position of the Department of the Auditor General that new plans for new employees established under this provision in the original Act 205 recovery plan were not constrained by the statutory mandatory benefits applicable to current employees. Presumably, since the description of this remedy was not amended by Act 44, that would continue to be the case.

If a municipality does decide that changing from a defined benefit to a defined contribution plan makes sense for a particular employee group, and they are not prevented by law from offering a DC plan, and there is buy-in from the union, there are a number of issues that should be considered first. Will the DC plan be only for new employees, or will existing defined benefit participants be permitted to switch or transfer to the DC plan? Will the DC plan contributions be aggregated with the DB plan assets, or will they be segregated and invested separately? Is completely converting the plan from DB to DC for all employees

an option? These questions, and many others, should be thoroughly discussed with your actuary to make sure the desired savings can be achieved, that the proper steps are taken to accomplish it, and that employees fully understand the changes. The municipality's solicitor and/or labor attorney should also be consulted to ensure compliance with state and federal pension laws and contractual obligations.

“Constitutional issues prevent government employers from unilaterally changing plans or reducing benefits for current employees.”

“A well-intended but hastily implemented change may end up failing to accomplish the intended objective.”

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News & Notes

GASB Changes to Come:

In 2006 the Governmental Accounting Standards Board began the process of reviewing and re-writing the pension accounting standards known as GASB Statements 25 and 27 as part of their Postemployment Benefit Accounting and Financial Reporting project. Preliminary Views were issued by the Board in June 2010, with an Exposure Draft expected in June 2011 and final Statements expected in June 2012.

According to tentative decisions of the Board, the revised Statements will focus on a liability concept - with GAS 27 requiring a calculation of Net Pension Liability (NPL) rather than Net Pension Obligation (representing differences between Annual Required Contributions (ARC) and actual contributions) as is currently required. The Statements will include specifications for the measurement of a plan's NPL, including the actuarial cost method, factors that must be incorporated in projection of expected future changes, discount rate, asset valuation method, and recognition method for experience gains/losses, investment gains/losses in excess of 15 percent of market value, assumption changes, and plan amendments.

Required supplementary information tentatively includes 10-year schedules for the following:

- Detailed changes in the NPL - presenting for each year the beginning and ending balances of plan net assets and total pension liability; effects of service cost, interest, contributions and other factors on the plan net assets and total pension liability; and the ending net pension liability.
- Total pension liability, plan net assets held in trust for pension benefits, NPL, ratio of assets to total pension liability, covered payroll, and NPL as a percentage of covered payroll.
- Actuarially calculated employer contributions, actual employer contributions, difference between actuarially calculated and actual employer contributions, covered payroll, and employer contributions made as a percentage of covered payroll (with additional requirements potentially applying to cost-sharing multiple-employer plans).

Proposed changes to GASB Statements 25 and 27 will significantly impact the information municipalities will be required to present in the annual financial statements of their pension funds. As the second phase of the project, the GASB Board is scheduled to deliberate OPEB accounting and financial reporting issues beginning in August 2011. You can obtain additional information and follow these projects through completion on the GASB website - www.gasb.org.

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Defined Contribution Plans

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In Conclusion

The employer bears the investment burden for a DB plan, where the employee does in a DC plan.

Changing a defined benefit plan to a defined contribution plan can help reduce pension costs over time, but only if it is designed with a substantially lower contribution rate than the current DB plan costs. Keep in mind that current DB plan costs likely include higher amortization payments because of 2008 investment losses. If pension plans recoup those investment losses, eventually those costs should mitigate. The goal of reducing costs could also be achieved by simply cutting back benefits in the existing DB plan. If instead, the goal is to make the plan costs more predictable over time, then changing to a DC plan may be

the way to go. Note however, that if you only change to a DC plan for new hires, the DB plan costs for the current employees will still fluctuate for the foreseeable future until that group dies off or annuities are purchased.

It is important that any proposed changes are carefully thought through and planned out, and that all of the pros and cons be considered from the employer and employee perspective (the pros and cons of DB vs. DC plans could be the subject of another entire article, maybe for a future publication). A well-intended but hastily implemented change may end up failing to accomplish the intended objective. Again, local officials should work with an experienced benefits consultant to help guide them through all of the issues involved in such a decision.

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News & Notes

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Look for MBG Consultants at these Upcoming Conferences:

- Public Employer Labor Relations Advisory Service (PELRAS) – **March 23-25**
- Allegheny League of Municipalities (ALOM) – **April 7-10**
- Government Finance Officers Association of PA (GFOA-PA) – **May 1-4**
- Association of PA Municipal Management (APMM) – **May 17-19**
- PA State Association of Township Commissioners (PSATC) – **June 19-22**
- PA League of Cities and Municipalities (PLCM) – **June 22-24**

For more information about representatives who'll be attending each conference, as well as upcoming speaking engagements, please visit our website at www.mockenhauptbenefits.com and go to the "Resources" page.

Reminders:

The following forms are used in determining each municipality's pension state aid allocation and ad hoc COLA reimbursements:

- Form AG-385 must be received by the Auditor General by **March 31**
- Form AG-490 and Form AG-64 must be received by the Auditor General by **April 1**

All Distress Level 2 and Level 3 municipalities and those Level 1 municipalities that elected optional remedies should make sure that a copy of the PC-204 form submitted to PERC in 2010 is also provided to your pension consultant/actuary prior to preparation of the January 1, 2011 pension plan valuation reports.

National Healthcare's Impact on Pennsylvania Local Government

The Municipal Employers Insurance Trust (MEIT) presents a Dynamic Web-Based Impact Analysis of the "Patient Protection and Affordable Care Act" with particular focus on the impact it will have on Pennsylvania Local Government. Visit MEIT-PA.com to review an implementation timeline and the latest rulings, regulations, carrier reactions and interpretations as they are released. If you'd like to automatically be notified via e-mail when the website is updated, e-mail **Judy Ghion** (Judy.Ghion@mbgbenefits.com) to enroll in the MEIT's E-notice program.