Fiduciary Liability Insurance
What Is It? Am I Covered? Do I Need It?

During the last several months, PMRS staff has received inquiries from several municipal contacts as to whether or not it is necessary for the municipality to purchase fiduciary liability insurance to cover their exposure associated with the administration of their retirement plans when PMRS is administering the pension plan. Here is a brief overview of the fiduciary responsibilities of local government officials and municipal pension administrators, the state and federal laws and regulations affecting the System’s municipalities, and whether fiduciary liability insurance should be considered for PMRS-enrolled municipalities. We begin, however, with the standard disclaimer: the following is not to be construed as legal advice. It is a discussion of the law which local officials should review with their solicitors before making any decision on the purchase of fiduciary liability insurance.

It is important that we first understand what a fiduciary is and then we can better appreciate the reasons for having fiduciary insurance. A fiduciary is described by the federal Department of Labor as one that “exercises discretionary control or authority over plan management or plan assets, anyone with discretionary authority or responsibility for the administration of a plan.” This means that PMRS is considered a fiduciary since it administers pension benefits. Fiduciaries are responsible for prudently planning and implementing investment strategies that aid in the growth and protection of the assets contributed to the fund while considering members’ and beneficiaries’ best interests.

The retirement law associated with fiduciary responsibilities that is most visible to the general public is the federal Employee Retirement Income Security Act of 1974 (ERISA). Congress established this law to hold fiduciaries responsible for their actions in administering employee benefit plans and to safeguard the promised retirement benefits of millions of Americans. Fiduciaries who do not act within the scope of their duties when administering a pension plan could possibly face serious legal repercussions. Since fiduciaries are obligated to comply with ERISA, it is important that they consider fiduciary liability insurance in order to protect themselves and the funds with which they are entrusted.

While ERISA establishes standards for pension administrators, the law pertains directly to private pension plans. (Article continued on page 3...)

Survivor Benefits
Spouse’s Benefit

The final installment in our series on survivor benefits will focus on an option that is more often found in a police or fire fighter plan – the “Spouse’s Benefit.” The Spouse’s Benefit provides that, upon the death of the retired member, either 50% or 100% (depending on the plan provisions) of the member’s benefit will continue to the surviving spouse (or minor children in the absence of a spouse).

As explained in the Fall 2008 article on survivor benefits, in plans that provide the standard survivor options, the Single Life Annuity guarantees the benefit for the life of the member and provides the maximum monthly benefit. Other standard options are available (Options I, II and III) that allow retirees to provide additional survivor benefits with a reduction in the retiree’s monthly benefit. Options II and III provide for the continuation of either 50% or 100% of the member’s benefit to a “joint annuitant.” The joint annuitant must be selected at the time of retirement and cannot be changed. Under Options II and III, the total value of the benefit being paid is the same as with a Single Life Annuity benefit. However, since this value is spread over two lifetimes (the retiree and the joint annuitant), the retiree must take a reduced monthly benefit to provide for the joint annuity.

The Spouse’s Benefit is similar to Options II and III in that it provides for a continuing monthly benefit upon the retiree’s death. However, with a Spouse’s Benefit, the retiree’s benefit is NOT reduced to provide a joint annuity for a surviving spouse. (Article continued on page 2...)

The Pennsylvania Municipal Retirement System is currently in the process of reviewing and updating all of our forms. In addition to revising each form so that it requests only the information necessary to process the requested service, PMRS wants to increase the usability of our forms by making all forms “user-friendly.” The term “user-friendly,” in this context, means that a user will be able to type information directly onto the form as accessed from our website.

The Application for Membership Form (PMRB-1) is now available on the web in a user-friendly format. Visit our website and click on “Forms.” When you click “download” next to PMRB-1, you will be able to type your information directly onto the form, print a copy for us and one for yourself, sign it and mail it!

PMRS is requesting that all of our municipal contacts provide us with your correct e-mail address! Please send an e-mail to Tim Brulia at thrulia@state.pa.us providing him with your current contact information so that we can keep you up-to-date! ✿
Instead, the cost to fund the benefit is increased in order to guarantee the benefit for both the retiree and the spouse’s lifetimes.

If a member chooses the Spouse’s Benefit upon retirement, the survivor annuity is available only to the retiree’s spouse (no other individual – other than minor children in the absence of a spouse – can receive the survivor benefit). However, in most plans that provide for a Spouse’s Benefit, members who are not married or who simply wish to select a different option may select a reduced Option I, II or III in lieu of the Spouse’s Benefit. Members who select a Single Life Annuity in a plan with the Spouse’s Benefit will automatically receive the Spouse’s Benefit if the retiree has a spouse or minor children at the time of death.

Since the value of a retirement benefit with the Spouse’s Benefit is greater than for a standard Single Life Annuity, a cost study is required if a municipality is considering adding the Spouse’s Benefit to the plan. Please contact PMRS if you would like to discuss the survivor options or any other benefit provisions of your plan.

**In The Know**

Q. How and when are PMRS’s investment losses in 2008 going to affect our plan’s Minimum Municipal Obligation (MMO)?

A. The short answer to that question is, “not at all, for at least the next several years.”

PMRS certainly shared in the pain of some of the worst markets in decades, with the portfolio returning a negative 24.8% for 2008. However, the Pennsylvania Municipal Retirement Board (Board) set the regular interest rate at 6% for 2008. This means that, even though PMRS’s investments lost money in 2008, all accounts were credited with 6% in 2008. PMRS retains a portion of the investment earnings in the good years to allow us to continue to pay the regular interest in the bad years. Since the actuarially-assumed rate of return is 6% (the same as the regular interest rate), our member plans will have no actuarial losses due to investment performance on the January 1, 2009 valuation. The Board has also approved a regular interest rate of 6% for 2009.

It is possible that costs could increase in the future if the Board decides that it needs to reduce the regular interest rate, which would then also reduce the actuarially-assumed rate. If the actuary is assuming less investment return, then the contributions must be increased to make up for the reduced investment income. The earliest that this change could be made would be on the January 1, 2011 valuations, which would first affect the MMOs in 2013. Visit www.pmrs.state.pa.us for further details.

Q. If a retiree wishes to return to work, will their retirement benefits be affected?

A. If a member retires from a PMRS-administered plan and returns to work for a different municipality, the member’s retirement benefit is not affected. If the member returns to work for the same municipality, even if in a different plan (such as if the member retired from the police department and returned to work for the street department of the same municipality), the retirement benefits may be affected. According to the Pennsylvania Municipal Retirement Law, Act 15 of 1974, if a member returns to employment on a regular full-time basis in the same municipality, the member’s retirement benefit must cease. In that case, the value of the member’s benefit at the time of the member’s return to work would be calculated. This amount would be placed in the member’s account as a “frozen present value.” The member would return to active status in the pension plan and begin to earn credited service again. When the member subsequently retires again, the “frozen present value” would be converted back to a monthly benefit and added to any benefit earned based on the new service.

The law further provides that, in order for the member’s retirement benefits to continue, retirees returning to work for the same municipality must be re-employed on a temporary or seasonal basis and the gross post-retirement earnings from such reemployment during the calendar year must be less than five thousand dollars ($5,000), or such other maximum as the Board may establish. The PA Municipal Retirement Board has established a limit of 30% of the annual salary paid to the member in the calendar year prior to the year in which the member retired, or $17,000, whichever is greater.

If a member returns to work for the same municipality on a temporary or seasonal basis, once that individual’s earnings for the calendar year reach the Board-established limit of the greater of $17,000 or 30% of the member’s annual salary from the last full year of employment, the retirement benefits will be suspended for the remainder of that calendar year. The retirement benefits would begin again in January of the following year and would continue until the member again reaches the earnings limit in the following year.

The municipality rehiring an individual who had retired from the same municipality enrolled in PMRS must notify PMRS that the retiree is returning to work, and state the individual’s employment status. If PMRS determines that the member does not have to be returned to active status in the pension plan, the municipality will be required to report the retiree’s earnings to PMRS on a monthly basis so that PMRS can insure that the earnings do not exceed the allowable limits. The complete policy concerning limits for retirees returning to work can be found at www.pmrs.state.pa.us.

Questions for “In the Know” can be e-mailed to us at ra-staff@state.pa.us” (please insert in the Subject line: “In the Know”) or they can be sent to:

In the Know column  
c/o PMRS  
P.O. Box 1165  
Harrisburg, PA 17108-1165
 Anyone seeking to sue state or local government entities or officials may do so under strict guidelines. The complaint must fall under one of the specific exceptions which the General Assembly has allowed. Most importantly, however, is that no one is safe from prosecution when an act is taken “outside the scope of duties.” This means that sovereign immunity will not protect government employees who engage in acts that are intentional and criminal in nature.

The question remains - should local governments who have enrolled in PMRS purchase fiduciary liability insurance? PMRS, our Board members, and staff are protected by sovereign immunity. The officials of PMRS are also covered by “The Employee Liability Self-Insurance Program” created by the state and administered by the Department of General Services for those actions that fall within the nine exceptions to the sovereign immunity coverage. Additionally, in May of 2004, the Board adopted a Policy on Indemnification. PMRS believes that we have acted in all ways possible to safeguard our employees and officials and, most importantly, to protect and secure the assets of those pension plans which we administer. Having PMRS manage your local government’s pension will reduce the fiduciary risk exposure your local government officials face. It does not, however, eliminate the fiduciary role.

Purchasing fiduciary insurance is like any other insurance purchase – the risk exposure must be weighed against the cost of obtaining coverage for that exposure. Undoubtedly, the risk exposure to our member local government officials is significantly less than that associated with a self-administered pension plan. Is the cost of the fiduciary liability insurance worth the gamble? Only your local government officials can make that decision. Our goal is to provide important information that may be used in determining whether the insurance is a good investment for your municipality. If, at any point, your officials are considering the purchase of fiduciary insurance and questions as to our role are raised, please do not hesitate to contact us. ✴

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**Best of Luck to Ben Mader**

PMRS’s Municipal Services Division Chief Announces His Retirement

It has been said that we should not determine a man’s stature by measuring his height; rather a truer measure would be to examine the shadow he casts. These words come to mind when we think of our mentor, co-worker, and friend, Benjamin F. Mader, PMRS Municipal Services Division Chief. It was with his usual understated style that Ben announced to the PMRS Board at its January meeting his intent to retire after almost thirty-five years of service to the Pennsylvania Municipal Retirement System. When Ben departs on March 27th, he will take with him not only the best wishes of his colleagues, but also the institutional history of the organization.

PMRS came into existence in May of 1974 and, while Ben was not the first employee, he surely was among the first. In his tenure, there hasn’t been a member’s file he hasn’t touched, a major decision on which he hasn’t had input or a co-worker who hasn’t held him in high esteem. If we can make an analogy to Ben’s favorite pastime, Ben has been PMRS’s ultimate utility infielder. He has served as Operations Division Chief, Membership Services Division Chief, and Municipal Services Division Chief. He even helped out as the agency’s Assistant Secretary for a period of time. PMRS Secretary Jim Allen said that working along side Ben has been a true pleasure. He, too, commented on Ben’s commitment to the agency, his desire to serve, his ability to get along with people and his loyalty. “Many individuals strive to be leaders and fail miserably. Ben devoted his efforts to serving and, by doing so, he became a true leader and a respected comrade,” said Jim. “He truly deserves to live a full and healthy retirement. And we wish him nothing less.”

Thanks Ben and good luck! Like your beloved Phillies – you are a champion. ✴
Calendar of Events

April 1
Deadline for filing the ad hoc reimbursement form (AG-490) with the Auditor General’s Office.

April 29
Retiree checks mailed from PMRS.

April 30
Directly deposited pension payments deposited to retirees’ accounts.

May 1
Deadline for returning the Quarterly Reports for the 1st Quarter to PMRS.

May 21
Pennsylvania Municipal Retirement Board Meeting.

May 25 – Holiday: Memorial Day
Office closed

May 28
Retiree checks mailed from PMRS.

May 29
Directly deposited pension payments deposited to retirees’ accounts.

June 22
Quarterly Reports for the 2nd Quarter mailed to municipalities.

June 29
Retiree checks mailed from PMRS.

June 30
Directly deposited pension payments deposited to retirees’ accounts.