



# Report to the PSCOBA State Board

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# *Legal Framework*

- PEBTF established by an Agreement and Declaration of Trust
- Entity separate and apart from the Commonwealth and the Unions representing Commonwealth employees
  - Governed by an 18 member Board of Trustees, 9 appointed by the Commonwealth and 9 appointed by various unions
- Trust Agreement, among other things, specifically prohibits the return or reversion of trust fund assets to the Employer, i.e., the Commonwealth

# ***PEBTF Regains Financial Health***

- Dead broke as of June 2002
  - \$12 Million *negative* net worth
- Huge changes in 2003
  - Employee contributions, along with significant increases in Commonwealth contributions
  - New employees in the HMO with right to “buy-up” into the PPO
  - Disease management program “Get Healthy” introduced
- By June 2009,
  - \$368.2 Million in net assets, \$298 Million in net, net assets after employees made almost \$59 Million in contributions
- By June 2010,
  - \$488.6 million in net assets, \$410 Million in net, net assets after employees made \$66 Million in contributions that fiscal year
  - Nearly 6 months in reserve

# *A New “Piggy Bank”?*

- PEBTF’s financial health turns into the Commonwealth’s opportunity
  - Financial crisis of 2008 into 2009
- The “20% deferral” and the Commonwealth’s promise to pay
  - 2010 Audited Financial Statements of the PEBTF contain the following Note:
    - “A memorandum of Agreement between the Commonwealth and the various unions permitted contributions to the Trust Fund to be reduced, on a temporary basis, by 20% of the applicable Employer contribution rate effective with the April 2009 monthly payment and continuing through and including the June 2010 monthly payment. The parties agree that the deferred contributions will be paid to the Trust Fund in fifteen monthly installment payments over the period commencing with the December 2010 payment to the Trust Fund.”
  - As of June 30, 2009 and 2010 respectively, \$42.6 million and \$177.3 Million were carried as an asset on PEBTF’s books as a receivable from the Commonwealth

# *Trading PEBTF Assets for Jobs*

- The retroactive reduction of Commonwealth contributions to PEBTF from \$440 per pay to \$400
  - November 2010, AFSCME enters into an Agreement with the Commonwealth to reduce the Commonwealth contribution rate for AFSCME represented employees by \$40 per pay, retroactive to July 2010 and going through to June 2011.
  - Retroactive reduction = ~\$14 Million
  - PEBTF Board meeting for January 2011 postponed until February due to inauguration ; retro agreement announced at that meeting
  - 20% deferral pay back was scheduled to start December 2010, but never happened

# *Request for Legal Opinion*

- March 2011
  - Request made to PEBTF legal counsel for an opinion as to whether acceptance of retro agreement negatively impacted the fiduciary obligations of the PEBTF Trustees to Fund participants
- May 2011
  - Legal counsel opines “No problem” -- trust agreement obligates the Trustees to enforce the contributory obligations in force at that particular time
  - Ignores the issue of no reversion of trust assets to the Employer

# ***Inquiry to US Dept of Labor***

- Request to DOL to determine if it has jurisdiction over PEBTF
  - PEBTF files a Form 5500 as a “multiple employer plan” under Title I of the federal ERISA statute
- Referred to National office for review and recommended action
- DOL requests info from your PEBTF Trustee
- DOL requests info directly from PEBTF
  - December 2011 request answered in January 2012
    - PEBTF asserts DOL has no jurisdiction because PEBTF is a “government plan” exempt from the federal ERISA statute
  - April 2012 additional informational request answered May 5, 2012
  - DOL has yet to definitively rule on whether it has jurisdiction to investigate the PEBTF
- But that isn't all . . .it gets worse

# ***Remember the 20% Deferral?***

- February 2012 PEBTF Board Meeting
  - 2011 audited Financial Statements presented
  - Write-down of **\$172 Million** in receivables from the Commonwealth; Why?
  - As explained in the Notes to the financial statements:
    - “A prior Memorandum of Agreement between the Commonwealth and the various unions permitted the contributions to be reduced by 20% of the applicable employer contribution rate effective with the April 2009 monthly payments and continuing through and including the June 2010 monthly payment. Both memoranda [*referring to the retro reduction agreement between AFSCME and the Commonwealth*] stated that the reduced contribution would be deferred and paid at a later date. However, the bargaining agreements reached with most unions for the year beginning July 2011 supersede the original bargained contribution rates as well as both of those memoranda, in accordance with applicable law pertaining to collective bargaining.”
  - In other words: **“Poof!”**
  - ***Of course, no contribution holiday, deferral or reduction for employees in their contribution to PEBTF . . .***
- June 2011 financials show net assets of \$428.6 Million and net, net assets of \$346 Million compared to \$488.8 and \$410 Million the year before
  - 5-6 month reserve, now down to 4.5 going down to 2.9 months by 6/30/15
  - \$63 Million decrease in net, net assets, even with nearly \$89 Million in participant contributions that year

## ***What Now?***

- The PSCOA is presently considering several options to redress this situation and shall keep you advised of all developments as they occur.