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CalPERS Retirement Policy Update – April 2015

The U.S. Department of Labor (DOL) Issues Anticipated Fiduciary Rule

On April 20, the U.S. Department of Labor (DOL) issued a proposed rule defining the term fiduciary and proposing a conflict of interest rule for retirement investment advice. The Notice of Proposed Rulemaking would require the "fiduciary" or best interest standard across a broad range of retirement advice to protect more investors. The proposal includes broad, flexible exemptions from certain obligations associated with a fiduciary standard that will help streamline compliance while still requiring advisers to serve the best interest of their clients.

According to Timothy D. Hauser, Deputy Assistant Secretary for Program Operations in the Employee Benefits Security Administration at the Department of Labor (DOL), the Department will take a principles-based approach to any exemptions associated with its fiduciary rule. The prohibited transaction exemption package will be one that applies flexibly to a wide variety of circumstances. According to Hauser, "the aim is to recognize and accommodate the fact that there is a huge array of financial practices…" while at the same time tamping down on the harmful effects of conflicts of interest.

Supporters and critics of the proposed DOL rule have already started to express their opinions on the rule. Senator Elizabeth Warren (D-MA) has been a vocal supporter whereas groups such as the Investment Company Institute, Financial Services Institute, and the National Association of Plan Advisors have spoken out against it. Some practitioners have called for DOL to make the fiduciary proposal requirements less confusing and complex, address narrowness of prohibited exemptions, and general investment education.

The Securities and Exchange Commission (SEC) has said that it will move ahead with its own similar rule for broker-dealers. Chair Mary Jo White said the SEC will seek to create a protective rule without limiting the ability of small and mid-size investors to "access reliable, reasonably priced advice."

Meanwhile, the U.S. Supreme Court declined to review a Third Circuit opinion which is potentially at odds with the proposed rule. The Third Circuit declined to impose fiduciary status on John Hancock Life Insurance Co. in a proposed class action claiming that the insurance company charged excessive fees to Section 401(k) plan clients.

Comments on the DOL rule are due on July 6, 2015.

EBRI Computes Savings Needed for Retirement

The Employee Benefit Research Institute found that an unmarried 25-year-old man earning $40,000 with no previous savings would need a combined employer-employee contribution of 14 percent of his pay to the employer's defined benefit contribution plan until he retired to have a 90 percent chance of having enough money for retirement. EBRI defined sufficient retirement income as having enough money to meet average retirement expenditures, including out-of-pocket, health-related expenses, as well as nursing home and home health care costs. The calculations excluded net housing equity and defined benefit plan accruals. A 25-year old woman in comparable circumstances would need a combined 15 percent contribution to the plan to get to the 90 percent confidence level.

American Benefits Council and SPARK Institute Call for Death Master File To Be Made Available to Plan Sponsors

The American Benefits Council and the SPARK Institute submitted a comment letter on the Department of Commerce's proposed rule that would require individuals, organizations, and governments that request access to the Federal government's Death Master File (DMF) to demonstrate a legitimate fraud prevention interest or a legitimate business purpose for the information. The letter noted that all parties involved in the administration of a retirement plan have a participant's name, Social Security number, and date of birth. The commenters stated that though often burdensome to obtain, an individual's date of death is regularly reported in public sources, so gathering the information from the DMF does not increase the risk of fraud. They contend that it would be overly burdensome to require every retirement plan sponsor and their service providers to meet the certification requirements of the master file. A similar letter from Aon Hewitt asserted that the date of death be accessible to those who have independently obtained all other information including name, Social Security number, and date of birth.

Hedge Fund Billionaire John Arnold May Launch Campaign to Reform Public Pensions

Reuters announced it has seen documents suggesting former Enron trader and hedge fund billionaire John Arnold may soon launch a national publicity campaign to educate U.S. voters on the need to reform public pensions. Arnold has given tens of millions of dollars to politicians and groups backing public pension reform since 2008. He supports finding long term structural solutions that are fair to all parties and bring fiscal sanity to public pensions. Reuters obtained a Request for Proposal document issued by Arnold's $1.3 billion philanthropic organization for a national pension reform campaign with an April launch date. The campaign would involve market research, polling, and focus groups to test views about public pensions and develop a bipartisan coalition. Officials from the foundation declined to comment on whether a campaign is being launched.

How Will Longer Lifespans Affect State and Local Pension Funding?

Americans are living longer creating new funding challenges for state and local pension plans. Private sector plans are already required to utilize new mortality tables which account for increased longevity when formulating their cost estimates. A new issue brief from the Center for State and Local Government Excellence, *How Will Longer Lifespans Affect State and Local Pension Funding?,* examines the impact that incorporating longevity improvements into their costs estimates would have on the funded status of state and local defined benefit plans.

The brief explores what public plan liabilities and funded ratios would look like under two alternative scenarios: if public plans were required to use the new mortality tables designed for private sector plans; and if public plans were required to go one step further and fully incorporate expected future mortality improvements.

Key findings include:

- Using the private sector standard, public plans underestimate life expectancy by only 0.5 years, reducing the 2013 funded status of state and local plans from 73 to 72 percent.
- Incorporating future mortality improvements would increase life expectancy by 2.3 years and reduce the funded ratio of public plans from 73 to 67 percent.
- Public sector plans appear to be making a serious effort to keep their life expectancy assumptions up to date.

Eighteen national public pension, employer, and labor union groups wrote to the Senate Finance Committee's tax reform working group on savings and investments.

The letter detailed the importance of public plans to the economy, discussed the breadth of modifications that states and localities have already taken to ensure the sustainability of the plans, and recommended that any actions taken by Congress should preserve the ability of states and localities to design their plans to meet the unique needs of their workforce.

The letter was in response to a request for public input by the Chairman of the Senate Finance Committee, Orrin Hatch (R-UT), and the ranking Democrat on the Committee, Senator Ron Wyden (D-OR), as part of their bipartisan effort to help advance comprehensive tax reform efforts in the 114th Congress.

White House Conference on Aging hosts webinar on best practices for a secure retirement.

On April 23, the White House Conference on Aging hosted a webinar to discuss the current state of retirement savings and possible solutions to increase people's preparedness. Presentations suggested creating automatic enrollment or escalation policies along with better incentives for people to save. The Conference is planning to issue a policy brief in the coming weeks discussing these issues.

Public Plans Data Website Launches

On April 23, the Center for State and Local Government Excellence (SLGE), the Center for Retirement Research at Boston College (CRR), and the National Association of Retirement Administrators (NASRA) announced launch of the enhanced Public Plans Data website (PPD). PPD aggregates data to provide policymakers and others a comprehensive view of public sector retirement plans. The site includes:

- "Quick Facts," including asset allocations and funded ratios at the national, state, and plan levels;
- Individual and aggregated data on more than 150 state and local pension plans; and
- An interactive browser which allows users to explore data from a variety of tables.

Users can access downloadable Comprehensive Annual Financial Reports (CAFRs) and Actuarial Valuations (AVs) for every plan included in the database.

NCTR-NCPERS Formally Oppose Hatch Annuities Legislation

The National Council on Teacher Retirement (NCTR) and the National Conference on Public Employee Retirement Systems (NCPERS) have advised Senate Finance Committee Chairman Hatch, who authored legislation in the last Congress creating an optional, Federally-regulated "Annuity Accumulation Retirement Plan" for State and local governments, that they oppose the concept. Title 1 of S. 1270 (113th Congress), , the "Secure Annuities for Employees (SAFE) Retirement Act," contained the Annuity Accumulation Retirement Plan.

The organizations explain that they appreciate the Senator's support for a retirement security model based on a benefit that a participant cannot outlive. They also thank Hatch for his interest in removing Federal barriers that "might constrain States in their efforts to fashion pension reforms that meet their own unique needs." However, the NCTR/NCPERS letter goes on to underscore that "any Federal action intended to enhance this overall process should be as free as possible from any restrictions or mandates, and should preserve, to the maximum extent possible, the ability of each state to design the program that best addresses its unique interests and requirements."

NCTR-NCPERS "very much object to a Federally-mandated structure that would impose an administratively burdensome, overly restrictive 'one-size-fits-all' process on the purchase of annuities from private sector companies" should a government elect to adopt the Hatch approach. As a result, the letter states that NCTR and NCPERS "respectfully oppose it as currently drafted."

Senator Hatch has yet to reintroduce the legislation in the current Congress, although he has indicated that he intends to do so. Furthermore, the proposal is expected to be revised from its earlier version, according to Hatch's key staffer on the issue, but will likely still contain Federal rules for the manner in which such an alternative annuity program must be structured and implemented.