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Federal Retirement Policy Report for CalPERS Board
October 2015

I. Developments in Protecting Public Sector Defined Benefit Plans

1. **Brookings Report Supports Mandatory Social Security –** Proposals to mandate Social Security on newly hired state and local government employees have surfaced from time to time for decades. Such a mandate would represent a massive unfunded federal mandate on state and local governments and would threaten the sustainability of current state and local pension benefits.

   New Developments Since Last Report:

   On October 7th, the Brookings Institution held a policy forum entitled "Are New Directions Needed in State Retirement Policy?" In part, the discussion examined the question of whether state and local government employees should be covered by Social Security.

   CalPERS Implications and Next Steps:

   The implications are twofold – the potential threat mandatory coverage would pose to CalPERS funding and plan design and the ongoing reinforcement of the message that something needs to be done to address the 'significant underfunding' of state and local pension plans.

   CalPERS has historically opposed any federal legislation that would mandate Social Security coverage for all state and local government employees and is a founding member of the Coalition to Preserve Retirement Security (CPRS), a national coalition opposed to efforts to force public employers and their workers to participate in the Social Security program.

   CalPERS retirement policy consultants – separately and in conjunction with CPRS allies – will continue to communicate with relevant congressional staff and industry advocates to monitor any related activity and will advise CalPERS of any appropriate engagement opportunities.

2. **H.R. 711 – The Equal Treatment of Public Servants Act of 2015 –** Passage of H.R. 711 would offer relief to the thousands of CalPERS members who have been adversely impacted by the Windfall Elimination Provision (WEP) of the Social Security Act.

   New Developments Since Last Report:

   Given the election of Speaker Paul D. Ryan, there is currently a race for Chair of the Ways & Means Committee. Both of the leading candidates – Congressmen Kevin Brady (R-TX-8) and Pat Tiberi (R-OH-12) – are deeply committed to H.R. 711; Mr. Brady developed the legislation and would likely move it quickly if elected chairman. Also, two additional Members of Congress, including California Congressman Ted Lieu (D-CA-23), have added their names to H.R. 711 as co-sponsors.

   CalPERS Implications and Next Steps:

   Since CalPERS has endorsed the legislation, it's important to continue to build support for its consideration.

CalPERS retirement policy consultants continue to communicate with California congressional offices and other interested organizations to advance H.R. 711.

II. Developments in Advancing Retirement Savings and Retirement Security

I. **Fiduciary Rule –** The Department of Labor has proposed a rule that would impose a fiduciary standard on financial firms and advisers providing retirement advice.

New Developments Since Last Report:

Consideration of the proposed rule continues to be the subject of considerable debate.

- On September 30, the House Ways and Means Committee's Subcommittee on Oversight held a hearing on the DOL proposed fiduciary rule. Issues discussed at the hearing included: access to investment advice; the impact of the rule on small businesses; the best interest standard; and the economic impact of the rule.
- On October 16th, the Brookings Institution held a policy forum entitled "How Should Retirement Advice be Regulated." Labor Secretary Thomas Perez pointed to empirical academic studies, asserting they support the fact that conflicted advice is costing investors billions of dollars. He said the goal of the rulemaking is to realign the interests of the consumer with those of the advisor. He said the DOL remains flexible as to how best to implement this standard, asserting industry should be able to determine the best way to do so.
- On October 27, the House of Representatives approved the Retail Investor Protection Act, H.R. 1090, which would prevent the Department of Labor (DOL) from creating any rule expanding the ERISA definition of fiduciary until after the Securities and Exchange Commission (SEC) issues a final rule creating a uniform fiduciary standard for brokers and dealers. The legislation passed on a highly partisan vote of 245-186.

CalPERS Implications and Next Steps:

Given CalPERS Pension Beliefs (i.e. inadequate financial preparation for retirement as a growing national concern and a commitment that fiduciaries must be accountable for their actions and perform their duties transparently and to the highest ethical standards), on July 16th CalPERS submitted a letter of support for the proposed rule. The Obama Administration and other interested groups have expressed appreciation for CalPERS leadership.

CalPERS retirement policy consultants will continue to monitor any related activity and will advise CalPERS of any appropriate engagement opportunities.

II. **State-Based Retirement Programs –** The Department of Labor is developing a rule that would help facilitate the creation of state-based retirement plans such as the California Secure Choice plan.

New Development Since Last Report:

- On September 29, U.S. Government Accountability Office (GAO) released a report that found a majority of employees participated when given access to an employer-sponsored retirement plan; while 84 percent of those not in retirement plans either didn't have employer-sponsored plans or didn't qualify for their employer's plan. The GAO suggested that states could promote or require workplace plan access and automatic enrollment, incentivize participation, and simplify retirement programs.
- On September 30, the Chairman of the Ways and Means Committee on Oversight called into question DOL's development of a rule related to state-run pension plans for private sector workers as to the viability of Secure Choice plans. Chairman Roskam asked if there will be a false sense of security for

individuals who are put into Secure Choice plans. The Chairman predicted that clients will want to be in a more secure system. He suggested that Congress review the proposed rule to see what type of latitude is being given to states in applying ERISA protections.

- On October 7th the Brookings Institution held a policy forum that examined options for structuring state-sponsored retirement savings plans for small businesses. Panelists discussed a paper, "Structuring State Retirement Savings Plans – A guide to policy design and management."
- Georgetown University's Center for Retirement Initiatives held a briefing entitled, State and International Strategies to Expand Private Sector Retirement Savings. Panelists discussed a recently released report by the GAO examining coverage and participation rates in workplace retirement savings programs, state initiatives and comparative international strategies to expand retirement savings.
- On October 21, the Bipartisan Policy Center held a roundtable discussion entitled, Rethinking Retirement Plans. A panel of private sector innovators discussed expanding access and participation in workplace retirement plans, while maintaining participant protections.

CalPERS Implications and Next Steps:

As a national and state leader in the retirement security arena, CalPERS has a tangential interest in the DOL rulemaking process and a more specific interest in how such a rule would impact retirement security in California.

CalPERS retirement policy consultants will continue to monitor any related activity and will consult with CalPERS staff once a proposed rule is released.

III. OTHER UPDATES AND INFORMATION

1. **Commenters Oppose IRS Determination Letter Program Changes –** The IRS has proposed to eliminate the staggered 5-year determination letter remedial amendment cycles for individually designed plans effective January 1, 2017. Going forward, the scope of the program will be limited to initial plan qualification and qualification upon plan termination. The ERISA Industry Committee submitted a comment letter expressing concern that the sudden and unanticipated discontinuance of the program would have unpredictable results and could lead to a decline in plan sponsorship.

   CalPERS retirement policy consultants have advised the CalPERS legal staff regarding a comment expressing concerns with the proposed determination letter program changes.

2. **State Pension Funding Improves for Second Consecutive Year** – According to data compiled by Bloomberg, the finances of more than two-thirds of U.S. state pension plans improved in fiscal year 2014. The median state pension plan had 70 percent of the necessary assets to meet promised benefits, up from 69.2 percent in 2013.