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Federal Retirement Policy Report for CalPERS Board
November 2015

I. DEVELOPMENTS IN PROTECTING PUBLIC SECTOR DEFINED BENEFIT PLANS

1. **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:

   - The House Republican Caucus selected Congressmen Kevin Brady (R-TX) to be the Chairman of the House Ways and Means Committee, which has jurisdiction over tax and health care law. Mr. Brady has a long history of legislative work related to public employees and their retirement benefits. He is the author of H.R. 711.

   CalPERS Implications and Next Steps:

   CalPERS retirement policy consultants have worked closely with Mr. Brady on the development of H.R. 711 and will continue to coordinate with him and his staff. 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. Efforts are currently underway to develop a national group letter to be signed by retirement plans, retiree organizations, and active employee unions/associations to encourage Members of Congress to become co-sponsors of H.R. 711.

2. **Elementary and Secondary Education Act (ESEA) –** Early this year the House approved legislation to reauthorize ESEA. An amendment was passed to prevent the use of ESEA monies to address underfunding issues related to teacher pensions. It would bar any state that received funds under the ESEA from requiring a local education agency to use those funds to make contributions to a teacher retirement system in excess of normal costs. Normal cost is defined in the amendment to not include any accrued unfunded liabilities. The Senate didn't include a similar provision in its ESEA reauthorization.

   Developments Since Last Report:

   - The House and Senate Conferees on the ESEA bill recently agreed to drop this House provision. The conference report will be filed and voted on in December.

   CalPERS Implications and Next Steps:

   Since the amendment was specific to elementary and secondary teacher funding, CalPERS retirement policy consultants opted not to recommend specific CalPERS engagement regarding the amendment. However, the consultants, together with many in the public pension community, have continued to monitor the legislation carefully. We have been concerned it would establish a precedent for similar treatment of other state and local employees funded by the federal government, such as public safety employees, transportation workers, and other employee positions. National groups and individual pension plans worked in opposition to the amendment.

II. Developments in Advancing Retirement Savings and Retirement Security

1. **Fiduciary Rule –** The Department of Labor (DOL) 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 November 4th, Congressmen Mike Kelly (R-PA) and Sam Johnson (R-TX) introduced the Retirement Choice Protection Act of 2015 (H.R. 3922). The legislation would replace the DOL proposed rule on fiduciary standards with a "best interest" standard. Mr. Kelly is the co-chair of the House Retirement Security Caucus.
   - A bipartisan group of House lawmakers released a set of legislative principles designed to ensure retirement advisors protect the best interests of their clients. Reps. Peter Roskam (R-IL), Richard Neal (D-MA), Phil Roe (R-TN) and Michelle Lujan Grisham (D-NM) issued a statement explaining that, "our legislative proposal will ensure that all Americans have access to the financial advice they need to prepare for retirement, protect individuals from conflicted advice, and require advisors serve the best interests of retirement savers."
   - On November 10th, Mary Jo White, Chair of the Securities Exchange Commission (SEC), said the Commission "is fully engaged in formulating" a uniform fiduciary standard for broker-dealers, but declined to say when such a rule would be proposed. Under the Dodd-Frank Act, the SEC is authorized, but not required to write a rule imposing a "best interest" standard on "all brokers, dealers, and investment advisors, when providing personalized investment advice about securities to retail customers." *(Note – In October, the House passed H.R. 1090, the Retail Investor Protection Act which would prohibit DOL from promulgating a fiduciary rule until after the SEC has done so. The bill was approved on a largely party line vote and isn't expected to be taken up in the Senate.)*

   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.

2. **State-Based Retirement Programs –** The Department of Labor (DOL) 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 November 16th, DOL's Employee Benefits Security Administration published a notice of proposed rulemaking and an interpretive bulletin meant to guide states as they create programs that help private-sector workers for retirement. The proposed regulation would provide a new safe harbor from the Employee Retirement Income Security Act (ERISA) for state-sponsored, payroll deduction IRAs that conform to certain provisions. The proposal would allow for automatic enrollment of employees in such programs as long as they are given the ability to opt-out, and employers are minimally involved.

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. At the October meeting of the Pension and Health Benefits Committee, the Chair asked staff to work with the CalPERS retirement policy consultants to review and comment on the proposed rule.

CalPERS retirement policy consultants will continue to monitor any related activity and will coordinate with CalPERS staff to develop and implement an appropriate engagement strategy.

III. Other Updates and Information

1. **Treasury Launches myRA –** On November 4th, the Department of the Treasury announced that the initial phase of the myRA retirement savings program has concluded and it is now available nationwide. The program is intended to be a simple, safe and affordable new savings option for those who do not have access to an employer-sponsored retirement savings plan.

   In somewhat related activity, J. Mark Iwry, Treasury's deputy assistant secretary for retirement and health policy, told a retirement policy conference in Chicago that the administration is monitoring retirement innovations around the globe – with particular interest in the broad retirement savings initiative launched in the U.K. in 2012. The initiative included the creation of the National Employment Savings Trust (NEST), a low-cost savings platform. All U.K. employers must automatically enroll eligible employees in an approved retirement system, a NEST product, or a traditional pension, and make annual contributions.

2. **Budget Deal Addresses Social Security Disability Insurance (SSDI) Shortfall –** The Bipartisan Budget Act of 2015 temporarily increases the SSDI contribution rates from 1.8 percent to 2.37 percent to address anticipated shortfalls in the program. The Budget Act also closed several loopholes in Social Security's rules related to deemed filing, dual entitlement and benefit suspension in order to prevent individuals from obtaining larger benefits than Congress intended.

3. **CFPB and SSA Discuss "Planning for Retirement" Tool –** On November 4th, the Brookings Institution held an event entitled Helping America Plan for Retirement. Richard Cordray, Director of the U.S. Consumer Financial Protection Bureau (CFBP), and Carolyn Colvin, Acting Commissioner of the Social Security Administration, provided remarks on the recently released Planning for Retirement tool on which both agencies collaborated. A panel was also held with retirement security experts to discuss efforts to improve retirement planning and what additional steps might make retirement planning achievable for the average American.