THE LUSSIER GROUP, INC.

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Federal Retirement Policy Report for CalPERS Board

January 2016

I. DEVELOPMENTS IN PROTECTING PUBLIC SECTOR DEFINED BENEFIT PLANS

1. **S. 2381 – The Puerto Rico Assistance Act –** Sections 202 and 203 of the proposed legislation would advance versions of the Public Employee Pension Transparency Act and the Secure Annuities for Employees (SAFE) Act both of which have been opposed by CalPERS. In December, CalPERS CEO Anne Stausboll wrote to several key Members of the California Congressional Delegation in opposition to the provisions. In addition, 17 national organizations – including public employee retirement associations and public employer and employee organizations – have written Congressional leaders expressing strong opposition to the public pension requirements contained in S. 2381.

   New Developments Since Last Report:

   - On January 5, representatives from The Lussier Group and Williams & Jensen participated in a meeting of the ad hoc Public Pension Network, which includes national public pension associations, employer groups, labor unions and related interest groups, such as the AARP. The lion's share of the meeting was a discussion of S. 2381, which includes the threat of PEPTA (mandatory requirement for state and local pensions to report their funding status to the U.S. Treasury Department) and Senator Orrin Hatch's annuity accumulation plan.
   - On January 12, the House Committee on Natural Resources Subcommittee on Energy and Mineral Resource held a hearing on Puerto Rico energy prices. The hearing demonstrates continuing interest in Puerto Rico's fiscal problems; however, there was no discussion of the public pension provisions contained in Senator Hatch's legislation.
   - Also on January 12, Sen. Harry Reid (D-NV) addressed a letter to Majority Leader Mitch McConnell (R-KY) urging him to appoint six to eight Senators to a bipartisan Senate Task Force on Puerto Rico to develop a reasonable solution to the Puerto Rico financial crisis by the end of February.
   - The House Committee on Natural Resources has scheduled a second subcommittee hearing for February 2, entitled "The Need for the Establishment of a Puerto Rico Financial Stability and Economic Growth Authority."

   CalPERS Implications and Next Steps:

   House Speaker Paul Ryan has said that he wants legislation on Puerto Rico to be approved by the House by the end of March. Given the continued presence of these public pension provisions in the Senate Puerto Rico Assistance Act, CalPERS retirement policy consultants will monitor any Puerto Rico related legislation and will continue to work closely with key Congressional staff and with the broad range of public sector advocacy groups to educate Members of Congress and staff regarding the negative impact these provisions could have on public retirement plans, plan members and their families, and on public employers.

2. **Normal Retirement Age –** The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued final regulations defining normal retirement age in 2007; however, in response to objections from state and local governmental plans, the application of this rule has been repeatedly delayed for governmental pension plans. In 2012, the IRS and Treasury issued a notice which described modification to the 2007 regulation with respect to governmental plans.

New Developments Since Last Report:

- On January 27, the Treasury and IRS published the long-awaited proposed regulations regarding the 'Applicability of Normal Retirement Age Regulations to Governmental Pension Plans.'

CalPERS Implications and Next Steps:

Since CalPERS will be required to comply with this regulation, this rulemaking is very important to CalPERS and to all state and local governmental plans. While the 2012 guidance certainly suggested that revised guidance would ultimately address public plan concerns regarding the application of the original 2007 regulation, a thorough review of the new proposal is very important. CalPERS retirement policy consultants have begun a discussion with appropriate staff and will work with them to complete an assessment of the proposed rule on CalPERS, to develop comments for submission to Treasury and the IRS, and to coordinate with industry allies.

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.

   - House lawmakers from both parties have introduced legislation that would block the Department of Labor's (DOL) fiduciary rule while also addressing conflicts of interest through new provisions. Both bills would prevent the DOL rule from going into effect until Congress approves a bill or joint resolution ratifying it. Both proposals create a best-interest standard for financial advisers and subject violators to liability under the Employee Retirement Income Security Act (ERISA). The Affordable Retirement Advice Protection Act (H.R. 4293) would amend ERISA and the Strengthening Access to Valuable Education and Retirement Support Act of 2015 (H.R. 4294) would amend the tax code.

   CalPERS Implications and Next Steps:

   CalPERS retirement policy consultants will continue to monitor activity regarding the proposed DOL rule. The next step will be for DOL to issue a final rule, which we expect in the late spring or early summer. In the meantime, consultants will also monitor these related legislative proposals and will advise CalPERS regarding appropriate engagement.

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 January 15, CalPERS CEO Anne Stausboll sent a letter to the U.S. Department of Labor expressing support for the proposed rule.
   - New Jersey's Legislature became the latest state legislature to approve legislation creating a state-run, retirement program for private sector workers. New Jersey joins California, Massachusetts and Illinois in this regard. On January 19, Governor Chris Christie signed legislation creating a retirement plan marketplace to make it easier for small businesses to select a tax-deferred savings program for employees. The original bill, rejected by the Governor, would have mandated that businesses with 25 or more employees offer a state-run retirement program to its workers if it did not already provide access to a retirement plan. The revised program is modeled after a similar effort in Washington State. The

marketplace must offer at least two types of plans and each provider must offer at least two investment options.

- On January 26, the Obama Administration highlighted a number of proposals they believe will make it easier for Americans to save for retirement. In addition to a number of ideas that will likely be included in the president's upcoming budget, they also reiterated their plan to write rules making easier for states to come up with their own ideas to boost retirement saving.

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 activity regarding the proposed rule and will communicate with CalPERS staff to determine whether additional engagement is appropriate.

In addition, given CalPERS believes that all employees should have effective means to pursue retirement security, we will evaluate other opportunities, especially those which could result from the president's budget proposals, for CalPERS to engage in this important national discussion.

III. OTHER UPDATES AND INFORMATION

1. **Further Guidance on Determination Letter Program –** On January 4, the Treasury Department and Internal Revenue Service issued Notice 2016-3, which relates to the upcoming changes to the determination letter program. The Notice provides that (1) expiration dates for determination letters issued before January 4, 2016, are no longer operative; and (2) future guidance will clarify the extent to which an employer may rely on a determination letter after a subsequent change in law of plan amendment. Employers may rely on this guidance until Revenue Procedure 2007-44 is updated to reflect this Notice**.**

   The Advisory Committee on Tax Exempt and Government Entities launched an online survey about the IRS's decision to stop accepting determination letter applications for most individually-designed retirement plans other than at initial qualification and plan termination. Survey results will be provided to the IRS.

3. **Center for American Progress Hosts Book Launch for Retirement on the Rocks –** The Center for American Progress, which is a leading progressive think tank founded by former President Clinton Chief of Staff John Podesta, hosted a discussion of senior fellow Christian Weller's new book, Retirement on the Rocks. In his book, Weller discusses the current retirement crisis. He explains that the crisis is too often blamed on individuals for not saving, despite public policies that often ignore economic impacts or fail to protect retirement savings. Weller discussed ways in which the tax code could be changed to better help low-income individuals save for retirement. He asserted that negative opinions of defined benefit plans could be mitigated by creating meaningful, low-cost, and low-risk retirement plans for private sector workers.