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Federal Retirement Policy Report for CalPERS Board

April 2016

I. Developments in Protecting Public Sector Defined Benefit Plans

1. **H.R. 4822 – The Public Employee Pension Transparency Act (PEPTA)/The Puerto Rico Assistance Legislation –** All eyes continue to be focused on efforts in the House of Representatives to craft a piece of legislation to provide financial relief for Puerto Rico. Since all of the proposals have included some reference to the sustainability of the Puerto Rico pension systems, proponents of PEPTA have been working aggressively to attach the substance of H.R. 4822.

   Late last year, Senator Orrin Hatch proposed The Puerto Rico Assistant Act (S. 2381) which included a version of PEPTA and the Senator's annuity accumulation plan.

   New Developments Since Last Report:

   - Rep. Sean Duffy (R-WI) introduced the Puerto Rico Oversight, Management and Economic Stability Act (H.R. 4900), which would establish an oversight board to assist Puerto Rico with its finances.
   - Included in the bill is a section allowing the oversight board to request an analysis by an independent actuary of a pension system in Puerto Rico, provided it determines that the system is materially underfunded.
   - The analysis must include an actuarial study of pension liabilities and a funding strategy projecting at least 30 years of pension payments, sources of funding to cover such payments, review of existing benefits and their sustainability, and a review of the system's legal structure and operational arrangements. The analysis must also include the fair market value and liabilities using an appropriate discount rate.
   - At this point, the bill does not contain any PEPTA-like, reporting requirements for state and local governmental pension plans.
   - House Speaker Paul Ryan (R-WI), Democratic Leader Nancy Pelosi (D-CA) and Treasury Department officials continue to try to find common ground on this legislation. Although the Speaker had expressed a desire to approve a bill by the end of April, House Majority Leader Kevin McCarthy (R-CA) recently expressed his hope to move a Puerto Rico bill before July 1st.

   CalPERS Implications and Next Steps:

   Although the most recent House legislation doesn't include the full version of PEPTA, we assume that Mr. Nunes and several anti-DB pension advocates will continue their efforts to amend the Puerto Rico legislation to include some version of PEPTA. We also assume that Senator Hatch will continue to pursue these provisions during Senate consideration of Puerto Rico assistance legislation.

   CalPERS retirement policy consultants will continue to 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 prevent the inclusion of unrelated retirement provisions that would threaten the independence of state and local pension plans.

II. Developments in Advancing Retirement Savings and Retirement Security

1. **Fiduciary Rule –** The Department of Labor (DOL) has released a rule that would impose a fiduciary standard on financial firms and advisers providing retirement advice.

   New Developments Since Last Report:

   - On April 6, the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA), released its final conflict of interest rule and related proposed prohibited transaction exemptions. The Department made a number of changes in response to industry concerns.
   - Changes to the Rule include, but are not limited to: clarifying what qualifies as a "recommendation;" permitting the use of asset allocation models to identify specific investment products or alternatives; expanding the seller's exception for recommendations to independent fiduciaries of plans and IRAs; and permitting the best interest contract to be signed at the same time as other account-opening documents. EBSA also released a chart illustrating key changes.
   - DOL Secretary Tom Perez held a briefing to discuss the details of the rule saying EBSA responded to industry comments, "while remaining true to our North Star" of an enforceable best interest standard. Senators Patty Murray (D-WA), Elizabeth Warren (D-MA), Corey Booker (D-NJ), and Rep. Xavier Becerra (D-CA) also spoke in support of the rule during the briefing.
   - Nevertheless, soon after the rule was released several Republican leaders expressed their concerns about the impact the rule would have on middle income Americans seeking financial advice. House Majority Leader Kevin McCarthy (R-CA) issued a press release, stating the rule would "raise barriers on investment advice to unreasonable heights," adding that "the committees will review it thoroughly and consider legislative options as appropriate." Senate Majority Leader Mitch McConnell (R-KY) said in a statement on the Senate floor that, "From its initial proposal at a campaign-style event to its roll-out regulation seems to have always been more about politics than good policy."
   - At a hearing before the Senate Appropriations Committee, Securities and Exchange Commission (SEC) Chair Mary Jo White stated that agency staff has presented commissioners with an outline of a fiduciary rule that will apply to broker-dealers. The SEC has authority under the Dodd-Frank Act to impose such a standard. Chair White also said that she needs the support of two other commissioners in order to promulgate a regulation. That is not yet guaranteed on this issue.
   - At an April 21 markup the Education and the Workforce Committee approved H.J. Res. 88, a resolution disapproving the DOL's Fiduciary Rule. This measure was approved by the full House on April 28 on a party line vote, 234-183. H.J. Res 88 faces an uncertain future in the Senate.
   - The Congressional Review Act created an expedited legislative process by which Congress may overrule a federal regulation. To do so, a Congressional resolution of disapproval must either be signed by the President or passed over the President's veto.

   CalPERS Implications and Next Steps:

   CalPERS has supported DOL's effort to advance the Fiduciary Rule. Retirement policy consultants will continue to monitor the progress of H.J.Res. 88 and will advise CalPERS if any additional engagement is advisable.

III. Other Updates and Information

1. **GASB Issues New Statement on Pensions -** On April 11, the Governmental Accounting Standards Board (GASB) announced that it has formally issued guidance addressing practice concerns regarding implementation of GASB's pension accounting and financial reporting standards for state and local governments.

The new guidance, in the form of GASB Statement No. 82, "Pension Issues," relates to the presentation of payroll-related measures in required supplementary information; classification of payments made by employers (AKA "employer pick-ups") to satisfy plan member contribution requirements; and the selection of assumptions and the treatment of deviations from guidance in Actuarial Standards of Practice for financial reporting purposes.

2. **GAO Releases Report on Lifetime Benefits for Lower Earners -** The Government Accountability Office (GAO) released a new report entitled Shorter Life Expectancy Reduces Projected Lifetime Benefits for Lower Earners. The study found life expectancy varies substantially across different groups, e.g., lower-income men approaching retirement live, an average, 3.6 to 12.7 fewer years than higher-income men. The shorter-than-average life expectancy of the lower-income group reduced their projected lifetime benefits by as much as 11 to 14 percent.

3. **New Florida Allows Local Sales Tax to Fund Pensions -** Florida Governor Rick Scott (R) has signed a new law that will allow municipalities to propose a local sales tax, which then must be approved by voter referendum, to aid underfunded local pension plans. In order to take advantage of the tax, pension plans must prohibit new hires from enrolling in a defined benefit plan, must be below 80 percent funded, and must require employees to contribute at least 10 percent of their salaries to the retirement plan. The new law goes into effect July 1.