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Federal Retirement Policy Report for CalPERS Board
February 2017

I. DEVELOPMENTS IN PROTECTING PUBLIC SECTOR DEFINED BENEFIT PLANS

Throughout the 114th Congress, CalPERS advocated against legislation that would advance the Public Employee Pension Transparency Act (PEPTA) and/or the so-called annuity accumulation plan. The final piece of legislation that was a threat to carry PEPTA and/or the annuity accumulation plan was funding relief for pension and health care benefits for retired coal miners. *(Note: Senate Majority Leader Mitch McConnell (R-KY) has introduced the Helping Ensure Long-term Protection for Coal Miner Health Act (S. 176) to provide permanent funding for retired coal miners' health benefits.)*

1. New Developments Since Last Report:

There have been no specific developments since the last report.

2. CalPERS Implications and Next Steps:

We will closely monitor and advocate against any pension related legislation that proposes PEPTA, the annuity accumulation plan, and/or could serve as a vehicle for similar anti-DB pension plan provisions (such as Senator McConnell's S. 176).

3. CalPERS/Federal Representative Actions:

- The *ad hoc* Public Pension Network met on February 8. Issues discussed included: (1) Congress' effort to overturn Department of Labor (DOL) regulations on state-run, pension plans for private sector workers (H.J. Res. 66 and 67); (2) early regulatory reform efforts of the Trump Administration and the likely result that the regulatory projects on normal retirement age and definition of governmental plan will be stalled for the near-term; and (3) the on-going need to work against the inclusion in tax reform legislation or other pension-related legislation of PEPTA, the annuity accumulation plan or any other problematic proposals.
- The National Association of Public Pension Attorneys (NAPPA) held its winter conference this week in Tempe, Arizona. Your federal representative Tony Roda (Williams & Jensen) provided an update on federal legislative and regulatory affairs at the conference.
- The National Association of State Retirement Administrators (NASRA) and the National Council on Teacher Retirement (NCTR) held a joint legislative conference in Washington. Your federal representative Tony Roda (Williams & Jensen) participated on a panel to discuss tax reform and retirement-related issues.
- Mary Anne Ashley, CalPERS Chief of Legislative Affairs, and Gretchen Ziegler, Assistant Division Chief, Federal Policy, participated in the NASRA-NCTR joint legislative conference.

4. Recommendations for Next Steps:

The CalPERS' retirement policy consultants will continue to monitor any legislation – such as the Helping Ensure Long-term Protection for Coal Miner Health Act – 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

A. The Equal Treatment of Public Servants Act (H.R. 711 – 114th Congress) (Brady-Neal)

1. The Equal Treatment of Public Servants Act - would repeal the current Windfall Elimination Provision (WEP) of the Social Security Act and replace it with a new formula that will fairly account for covered and uncovered employment throughout an individual's career. The legislation will provide relief to current retirees whose Social Security benefits have been arbitrarily reduced by the existing WEP formula and, in general, will provide a less significant reduction to future retirees.

2. Specific changes/developments since last report:

There have been no specific developments since the last report.

3. Implications for CalPERS:

   The passage of the Equal Treatment of Public Servants Act would offer relief to the thousands of CalPERS members who have been – or will be in the future – impacted by the WEP. Current retirees will see their WEP reduction reduced by approximately 15% for the first 10 years and up to 50% thereafter; on average, future retirees will see a reduction approximately 35% less than current law. These benefits have been updated based on a revised SSA actuarial analysis.

4. CalPERS/Federal Representative Actions:

   - The Coalition to Preserve Retirement Security (CPRS), the executive director of which is your federal representative Tom Lussier (The Lussier Group), held its annual meeting in Washington, D.C. CPRS hosted staff from the House Ways & Means Social Security Subcommittee and a member of the Social Security Advisory Board to discuss issues related to possible Social Security reforms, the threat of mandatory coverage for State and local government workers, and the Social Security offsets known as the windfall elimination provision (WEP) and the government pension offset (GPO).
   - Mary Anne Ashley, CalPERS Chief of Legislative Affairs, and Gretchen Ziegler, Assistant Division Chief, Federal Policy, participated in the NASRA-NCTR joint legislative conference.
   - Your federal representative Tom Lussier (The Lussier Group) met with the majority staff director of the House Ways & Means Social Security Subcommittee to discuss the re-introduction of the Equal Treatment of Public Servants Act and the committee's strategy for moving forward this year.

5. Recommendations for Next Steps:

   Discussions are underway to support the reintroduction of The Equal Treatment of Public Servants Act. We will continue to communicate with CalPERS staff as these efforts advance and will continue to include outreach to key members of the California Congressional Delegation as appropriate.

B. Fiduciary Rule –

1. The Department of Labor (DOL) issued a rule that imposes a fiduciary standard on financial firms and advisers providing retirement advice.

2. Specific changes/developments since last report:

   - President Trump issued a memorandum ordering the Department of Labor (DOL) to prepare an updated economic and legal analysis on the fiduciary rule. If there is an affirmative declaration that the rule is likely to harm investors due to a reduction in financial products or advice, has resulted in dislocations or disruptions within the retirement services industry that adversely affects investors or retirees, or is likely to result in increased litigation or higher prices for investors or retirees, then DOL is required to publish for notice and comment a proposed rule rescinding or revising the rule.

- Following the President's order, the Acting Secretary of DOL issued the following statement: "The Department of Labor will now consider its legal options to delay the applicability date as we comply with the President's memorandum."
- On February 8, a federal judge in Texas ruled in favor of the DOL in a lawsuit challenging several aspects of the Obama Administration's fiduciary rule. The federal government is now three-for-three in defending the rule in court, after receiving favorable rulings in separate cases in Kansas and Washington, D.C. The lawsuit (U.S. Chamber of Commerce v. Hugler) came only days after the Trump White House issued a presidential memorandum instructing the DOL to review the rule.
- The Trump Administration DOL submitted two rules to the Office of Management Budget on the Obama Administration's fiduciary rule: (1) Open a 15-day comment period on delaying the applicability date for the rule for 180 days; and (2) Open a new formal notice-and-comment period on the underlying fiduciary rule. These actions are viewed as the Trump Administration's process for significantly revising the fiduciary rule.

3. Implications for CalPERS:

   CalPERS has been supportive of the fiduciary rule. As a national and state leader in the retirement security arena, CalPERS has an interest in the implementation of the rule – especially as it might impact retirement security in California.

4. CalPERS/Federal Representative Actions:

   CalPERS retirement policy consultants will continue to monitor any activity regarding the rule and will communicate with CalPERS staff to determine whether additional engagement is appropriate.

5. Recommendations for Next Steps:

   There are no specific next steps at this point.

C. State-Based Retirement Programs –

1. The Department of Labor (DOL) has finalized a rule to facilitate the creation of state-based retirement plans such as California's Secure Choice plan. The rule is intended to enable states to initiate innovative ideas that will boost overall retirement savings.

2. New Development Since Last Report:

   - On February 7, two House resolutions were introduced that would repeal the DOL's regulations on state-run and political subdivision-run plans for private sector workers. The DOL rules provide for a safe harbor from ERISA for plans that meet certain requirements.
   - The authors of the resolutions, Reps. Tim Walberg (R-MI) and Francis Rooney (R-FL), issued a news release describing the legislation. *(H.J. Res. 66, Disapproving the rule submitted by DOL relating to savings arrangements for non-governmental employees established by states. H.J. Res. 67, Disapproving the rule submitted by DOL relating to savings arrangements for non-governmental employees established by certain political subdivisions of states.)*
   - On February 15, the House passed two resolutions (H. J. Res. 66 and H. J. Res. 67) to block the Obama Administration's Department of Labor (DOL) regulations on state and political subdivision-run retirement plans for private sector workers. The votes were largely along party lines.

- Following the Congressional action, Illinois announced that it will continue to move toward implementation of its secure choice retirement savings program with or without the DOL's safe harbor rule. Illinois will begin a phased-in enrollment process for their workers starting January 1, 2018. Illinois was the first state to require employers that meet certain criteria (in operation for more than two years; more than 25 employees; and do not offer retirement benefits), to automatically enroll workers in Roth IRAs. The program is expected to introduce 1.3 million Illinois workers to retirement savings for the first time.

3. Implications for CalPERS:

   As a leader in the retirement security arena, CalPERS has an interest in DOL rulemaking that will boost overall retirement savings; especially those that would impact retirement security in California. CalPERS retirement policy consultants will continue to monitor any activity regarding the 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 for CalPERS to engage in this important national discussion.

4. CalPERS/Federal Representative Actions:

   CalPERS retirement policy consultant Tom Lussier (The Lussier Group) and CalPERS staff have considered possible engagement strategies regarding H. J. Res. 66 and H. J. Res. 67. They will continue to monitor consideration of the resolutions and any activity regarding the rule to determine whether additional engagement is appropriate.

5. Recommendations for Next Steps:

   There are no specific next steps at this point.

III. OTHER UPDATES AND INFORMATION

1. California Member Named to Ways and Means Committee
Rep. Judy Chu (D-CA) has been named to the House Ways and Means Committee, which has jurisdiction over tax and health care law. She replaces former Rep. Xavier Becerra, who resigned to become the Attorney General of California.

2. Report on Investment Risk
A new report from the Rockefeller Institute's Pension Simulation Project, which is supported by the Laura and John Arnold Foundation and the Pew Charitable Trusts, examines the investment risk-taking by public pension funds and regulatory incentives that encourage risk-taking. The study recommends that policymakers explore ways to change and counter incentives that encourage funds to take risk. It also suggests that funds should analyze and communicate the risk they are taking in ways that can be understood by the government and general public.

3. Multiemployer Plan Approves Pension Cuts
Members of Cleveland-Area Iron Workers Local 17 voted in favor of cutting pension benefits in an effort to keep the pension fund solvent. This marks the first time a multiemployer pension fund has successfully made cuts under the Multiemployer Pension Reform Act (MPRA). Fewer than half of the fund's 2000 participants voted. However, under the Act, non-votes are counted in favor of benefit reductions. Under MPRA, the Treasury Department will permit a participant vote on benefit cuts only if the plan trustees make

the case that all reasonable measures have been taken to avoid insolvency. The Treasury Department is currently reviewing four other applications for benefit cuts to determine whether to permit participant votes. There are approximately 70 additional plans in the "critical and declining" stage and, therefore, eligible to submit applications to Treasury for benefit cuts.

4. Connecticut Teacher Pension Costs

Connecticut Governor Daniel Malloy has proposed shifting teacher pension costs from the state to municipalities to help alleviate a $1.7 billion state budget deficit. Malloy released a biennial budget proposal this week, which seeks to have cities and towns cover $408 million in teachers' pension costs, nearly a third of the total deficit. The plan also calls for $700 million in concessions from unions, warning that 4,200 employees may be laid off if the parties cannot reach an agreement on pension and health benefit cuts.

5. The Push for Roth Accounts

Reports are growing that as part of tax reform legislation House Republicans are seriously considering making it a requirement that all new contributions to defined contribution plans (e.g., IRAs, 401k, 457b and 403b plans) be made under the rules related to Roth accounts. Those rules require that contributions be made with after-tax dollars but are tax-free at distribution. This proposal was part of the 2014 tax reform proposal put forward by then-Chairman of the Ways and Means Committee Dave Camp (R-MI). According to Joint Tax Committee estimates from 2014, such a change applied only to IRAs and in conjunction with repealing the income restrictions on Roth accounts, would raise $16.7 billion over 10 years. Identifying sources of new revenue is critical to the goal of lowering tax rates while ensuring that the overall tax reform legislation is revenue neutral.

6. The "Two-for-One" Executive Order

President Trump's executive order requiring that for each new federal regulation issued two must be identified for elimination is causing numerous practical questions about implementation. At a recent IRS joint tax exempt and governmental entity meeting, Treasury attorney advisor Elinor Ramey said that they are still figuring out how the order will apply to Treasury-IRS guidance on federal tax issues. She added that more will be known once the Assistant Secretary for Tax Policy has been nominated and confirmed.

7. Tax-Related Health Care Issues

House Republicans are considering capping the tax exclusion on employer-provided health insurance in order to finance efforts to repeal and replace the Affordable Care Act (ACA). The proposal would cap the amount employers can exclude from workers' wages for health benefits. A similar idea was proposed by Sen. Ron Wyden (D-OR) during the original debate on the ACA, but it was unsuccessful. Instead, the excise tax on high-cost health care plans, commonly known as the Cadillac tax, was enacted. The cap on the exclusion would be paired with the repeal of the Cadillac tax.