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Federal Retirement Policy Report for CalPERS Board
March 2017

I. Developments in Protecting Public Sector Defined Benefit Plans

CalPERS' 2017 Federal Retirement Security Priorities advocate for the preservation of defined benefit retirement plans and against federal incentives or options to replace defined benefit pension plans and federal intervention in state and local pension plans.

1. New Developments Since Last Report:

- The American Legislative Exchange Council (ALEC) and the Heritage Foundation have announced their partnership to bring together researchers and policymakers to discuss best practices and develop free market solutions to address the pension crisis. Both groups are well known for their criticism of defined benefit pension plans at the state and local level. For example, the Heritage Foundation previously hosted an event on ALEC's report, Unaccountable and Unaffordable: How State and Local Governments Have Racked Up Nearly $5.6 Trillion in Unfunded Pension Promises and What They Can Do About It.
- NRTA: *AARP's Educator Community* has developed new infographics aimed at effectively communicating several important messages about the desirability of defined benefit plans and the shortcomings of the defined contribution approach to retirement savings. Various topics include comparing defined benefit and defined contribution plans; keeping public employee retirement plans financially strong; widespread economic benefits of defined benefit plans; and the importance of pensions to women, who often face unique challenges in retirement years.

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.

3. CalPERS/Federal Representative Actions:

- The ad hoc Public Pension Network, which is a group of national public pension organization, labor unions, employer groups and other stakeholders, met to discuss the key federal issues that could impact state and local pension plans. Your federal representative Tony Roda (Williams & Jensen) attended the meeting and provided updates on tax reform and other legislation.
- Your federal representative Tony Roda (Williams & Jensen) met with Rep. Judy Chu (D-CA) and with Rep. Linda Sanchez (D-CA) to remind them of CalPERS' legislative priorities on retirement policy. They both serve on the House Ways and Means Committee, which has jurisdiction over tax-related retirement issues.

4. Recommendations for Next Steps:

The CalPERS' retirement policy consultants will continue to monitor any legislation to prevent the inclusion of unrelated retirement provisions that would threaten the independence of state and local pension plans and/or establish federal incentives or options to replace defined benefit pension plans.

II. Developments in Advancing Retirement Savings and Retirement Security for All Employees

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 result in lower reductions for future retirees through the application of a new formula based on each worker's actual work history.

2. Specific changes/developments since last report:

   There have been no specific developments since the last report. *[NOTE – Based on conversations with staff for Mr. Brady and Mr. Neal, it's likely there won't be any developments on this legislation until later in 2017.]*

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:

   Your federal representative Tom Lussier (The Lussier Group) met with staff for Congressman Richard Neal, the Ranking Member of the House Ways & Means Committee and the primary co-sponsor of HR 711 in the 114th Congress, to discuss the re-introduction of the Equal Treatment of Public Servants Act and strategy for moving forward this year.

5. Recommendations for Next Steps:

   Discussions are ongoing regarding 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. The rule will become effective on April 10, 2017.

2. Specific changes/developments since last report:

   On March 2, the Department of Labor (DOL) published its proposed rule to delay the fiduciary rule's applicability date for 60 days. DOL will also be conducting an overall review of the rule, as directed by the President in his February 3rd Memorandum.

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 rules to facilitate the creation of state and political subdivision-based retirement plans such as California's Secure Choice plan. The rules are intended to enable states and significant political subdivisions to initiate innovative ideas that will boost overall retirement savings.

2. New Development Since Last Report:

   - The National Institute on Retirement Security published a study, Retirement Security 2017: America's View of the Retirement Crisis and Solutions, which reports that Americans are politically united when it comes to economic security in retirement. According to a poll of 800 Americans, 76 percent of those polled are concerned about their ability to achieve a secure retirement, with that level of concern at 78 percent for Democrats and 76 percent for Republicans. Some 88 percent of Americans agree that the nation faces a retirement crisis.
   - Senate Finance Committee Chairman Orrin Hatch (R-UT) introduced two resolutions pursuant to the Congressional Review Act to disapprove of Department of Labor (DOL) regulations for state and political subdivision-run retirement plans for private sector workers.
     - S.J. Res 32 relates to savings arrangements established by states.
     - S.J. Res. 33 relates to savings arrangements established by eligible political subdivisions.

     The timetable for Senate consideration of these resolutions is unclear.
   - On March 30, the Senate voted on H.J. Res. 67 (the House version of S.J. Res. 33) – a resolution that disapproves the DOL rule regarding retirement savings programs established by eligible political subdivisions. The resolution, which was previously adopted by the House of Representatives, passed by a vote of 50 to 49. President Trump is expected to sign H.J. Res. 67 into law.

3. Implications for CalPERS:

   As a leader in the retirement security arena, CalPERS has an interest in the implementation of the DOL rules 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 rules 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 S. J. Res. 32 and S. J. Res. 33. 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

- **Aspen Institute Hosts Retirement Tax Incentive Discussion -** On March 2, The Aspen Institute's Financial Security Program hosted a panel discussion on Reexamining Retirement Tax Incentives. Members of the panel discussed topics including the effectiveness of current tax incentives, the role of mandatory savings beyond Social Security, and expanding the eligibility of the Saver's Credit. Panelists also weighed in on the nature of current retirement tax expenditures, and debated the pros and cons of various tax reform proposals.

- **Puerto Rico's Pensions -** Retirees in Puerto Rico may face steeper cuts than those in U.S. municipal insolvencies. The current benefit structure is viewed as unsustainable. Puerto Rico's Oversight Board, which was established in the Puerto Rico Oversight Management and Economic Stability Act (PROMESA), voted unanimously to direct the Puerto Rican government to cut its public pension system by 10 percent and take additional measures to curtail spending, unless the government can generate other types of savings. The Board and Puerto Rico's government still disagree about cuts to the public pension system, which currently faces $50 billion in liabilities and is expected to run out of money by year's end. The Board will make recommendations next month on what kind of pension changes will be implemented. It is inclined to switch to a pay-as-you-go funding method and enroll teachers and public safety workers in Social Security by 2020.

- **Teamsters' Pension Benefits -** White House officials spoke recently with members of the National United Committee to Protect Pensions (NUCPP). The NUCPP represents retirees of the Central States, Southeast and Southwest Areas Pension Fund in their effort to change the Multiemployer Pension Reform Act of 2014 (MPRA). A White House official said the "administration is working toward finding the best solutions to combat the issues facing everyday Americans across the country." Legislative attempts to change the MPRA have been proposed. Senator Rob Portman (R-OH) has introduced the Pension Accountability Act (S. 489), which is designed to modify the pensioners' voting procedures under MPRA. Senator Bernie Sanders (I-VT) and Rep. March Kaptur (D-OH) introduced legislation in the previous Congress calling for MPRA's repeal (S. 1631, H.R. 2844).

- **Miami Police Pension Benefits -** The Florida Supreme Court overturned a lower court ruling that upheld Miami's 2010 declaration of financial urgency, which is a state law permitting administrators to open union contracts and impose concessions on employees. It was used to cap police pensions at $100,000. The Court's ruling does not specifically say Miami violated the law, but the City now must prove that there are no other reasonable means to deal with its budget shortfall and then must use the impasse dispute-resolution procedure before it can modify public contracts.

- **Funding for the IRS -** The recently-released White House budget outline proposes $239 million in funding cuts to the IRS. The outline provides few details as to where the funding cuts would be targeted. Treasury Secretary Steven Mnuchin testified during his confirmation hearing that the IRS needs increased funding, specifically for cybersecurity and personnel. However, after the White House's budget proposal was released, he stated that the funding was sufficient to "ensure that we have the resources we need to enforce the nation's tax laws, while investing in cybersecurity and prioritizing resources on initiatives that promote technology, efficiency and modernization across the agency."

- **Updates to IRS Employee Plans Compliance Resolution Systems -** On March 22, the DC Bar Taxation Section hosted an event discussing updates to the Employee Plans Compliance Resolution Systems (EPCRS) program. One noteworthy change is that the IRS will no longer issue determination letters on retroactive amendments under the Voluntary Correction Program. The IRS intends to issue compliance statements that will guarantee a plan's qualifications up to the date of such a letter, but offer no future certainty on a plan's qualification status.