NOVEMBER 2013

The poor performance of www.healthcare.gov continued to dominate much of the discussion in Washington, D.C., in November. The Obama administration announced that only 106,000 people had selected an insurance plan in the state-level exchanges during the first month of enrollment – including just 27,000 in the 36 exchanges operated by the federal government – about one-fifth of the 500,000 that had been projected. President Obama made allowances for people to keep policies that would otherwise be cancelled for not complying with new minimum benefits standards, but it is unclear how effective – or, even, how widely implemented – this will be. Government employees and contractors, meanwhile, raced to get the exchange website to the point where it could handle "the vast majority of users" by the end of November, in order to fulfill a pledge made frequently by administration officials since the site's technical problems became obvious in early October.

ISSUES AND EVENTS

Federal Exchange Enrollments Under 27,000 in 1st Month

Fewer than 27,000 people enrolled in health insurance plans through the federally-operated exchanges in October.

One of the key provisions of the 2010 Patient Protection and Affordable Care Act (ACA) establishes state-level exchanges – also known as marketplaces – in which people who are not able to get group coverage can buy insurance. Of the 51 exchanges – all 50 states plus the District of Columbia – 36 are either federally run or are joint federal-state operations. The online portal for those 36 exchanges at www.heatlhcare.gov has been plagued by major technical problems since open enrollment began on October 1.

The Department of Health and Human Services (HHS) announced on November 13 that 26,794 people selected a plan in a federally-run exchange between October 1 and November 2, and 79,391 selected a plan in a state or D.C.-run exchange. While all of those 106,185 people have chosen a plan, not all have paid for their first month of coverage.

Officials had projected that 500,000 people would enroll in a plan during the first month. The Congressional Budget Office has projected that 7 million people will sign up for coverage through the six-month open enrollment period that ends March 31.

HHS Secretary Kathleen Sebelius offered optimistic comments about a site that the department continues to work on and that they say will be much more functional by November 30.

"Even with the issues we've been having, the marketplace is working, and people are enrolling," Sebelius said. "As we make continuous improvements to healthcare.gov, we have every reason to believe that more people will enroll."

California, which has a state-run exchange, had 35,364 people select a plan, the most of any state during the first month. New York was second at 16,404. Florida had the largest number among states with a federally-run exchange, at 3,571. The lowest number of enrollments was 42 in North Dakota, which has a federal exchange. Four other states with federal exchanges were also in double digits.

Republicans used the enrollment announcement to again criticize the administration and the health care reform law.

"The dismal enrollment figures released by the administration are further proof the president's health care law is a train wreck," House Education and the Workforce Committee Chairman John Kline, R-Minn., said. "The administration has failed to meet its own deliberately low expectations. In any classroom, this kind of poor performance would receive an F, and in most private businesses, someone would be shown the door."

Some Democrats, though, sought to focus on the positive, with House Minority Leader Nancy Pelosi of California saying, "Even with the difficulties of the website, we have seen tremendous demand for what the Affordable Care Act has to offer."

The HHS report stated that the first month's results compared favorably with the first month of Massachusetts' Commonwealth Care, a program launched in 2006 that had features similar to the ACA including an individual mandate.

"While these figures are lower than originally projected because of the website issues, Massachusetts' implementation of health care reform shows that we can expect enrollment to grow through the next five months," Pelosi said. "As access to the website improves, millions of Americans will see the quality, affordable coverage available to them on the marketplaces."

HHS also reported that:

- 846,184 applications for coverage were received for 1,509,883 people (519,561 applications for 993,635 people in federal exchanges)

- 1,081,591 of those applicants were determined to be eligible to buy coverage in the exchanges (702,619 federal); 2 percent of applications had not been processed when the report was released
- 326,130 of those applicants were found to be eligible for tax credits to help cover the costs of coverage (237,177 federal)
- 975,407 of those deemed eligible had not yet selected a plan
- The exchange websites had just over 30 million visitors, including 26.9 million on the federal site

"These early enrollment-related statistics suggest that, in spite of recent information system and website issues, interest in the Marketplaces is high," the HHS report stated. "Marketplace enrollment is expected to increase as technical issues are resolved."

Executive Order Could Exempt Non-ACA Compliant Insurance Policies in 2014

President Obama in mid-November announced that his administration would allow insurance companies to extend for one year policies they had cancelled or planned to cancel because they didn't meet new benefits requirements.

The ACA requires that, starting in 2014, insurance policies meet several new benefits standards. As a result, insurers have cancelled policies – numbering in the hundreds of thousands or more, mostly if not entirely in the individual market – that would not meet the requirements. (Although the law contains a grandfather clause, the clause cannot be applied if an insurer has made any changes to a policy, even minor ones.) This has led to heavy criticism of President Obama, who said many times before and after the bill was enacted that if people liked their insurance, they would be able to keep it. In addition, the problems with the online portal for the new health care exchanges at www.heatlhcare.gov could mean that people with canceled policies could have a difficult time securing coverage by January 1.

President Obama said during a November 14 speech that, under the terms of an executive order he had signed, "insurers can extend current plans that would otherwise be canceled into 2014, and Americans whose plans have been canceled can choose to re-enroll in the same kind of plan."

"With respect to the pledge I made that if you like your plan, you can keep it, I think – and I've said in interviews – that there is no doubt that the way I put that forward unequivocally ended up not being accurate," President Obama said. "It was not because of my intention not to deliver on that commitment and that promise. We put a grandfather clause into the law, but it was insufficient. Keep in mind that the individual market accounts for 5 percent of the population. So when I said you can keep your health care, I'm looking at folks who've got employer-based health care, I'm looking at folks who've got Medicare and Medicaid – and that accounts for the vast majority of Americans."

Administration officials have noted that the individual market typically has a high "churn" rate that would have resulted in policy cancellations even in the absence of the health care reform law, and that policies that comply with the law's standards provide superior benefits. They also are typically more expensive, though.

The announcement has received mixed reviews, and its impact is uncertain since the executive order leaves the ultimate decision regarding exemptions up to state insurance commissioners. National Association of Insurance Commissioners President Jim Donelon said his organization "has been clear from the beginning that allowing insurers to have different rules for different policies would be detrimental to the overall market and result in higher premiums."

"This decision continues different rules for different policies and threatens to undermine the new market, and may lead to higher premiums and market disruptions in 2014 and beyond," Donelon said. "In addition, it is unclear how, as a practical matter, the changes proposed today by the president can be put into effect. In many states, cancellation notices have already gone out to policyholders, and rates and plans have already been approved for 2014. Changing the rules through administrative action at this late date creates uncertainty and may not address the underlying issues."

While officials in some states have announced that they will implement the order, others have indicated that they will not allow renewals of non-compliant policies. Still others are still trying to decide how to handle the issue.

"I have serious concerns about how President Obama's proposal would be implemented and, more significantly, its potential impact on the overall stability of our health insurance market," Washington state Insurance Commissioner Mike Kreidler said. "I do not believe his proposal is a good deal for the state of Washington. In the interest of keeping the consumer protections we have enacted and ensuring that we keep health insurance costs down for all consumers, we are staying the course. We will not be allowing insurance companies to extend their policies."

America's Health Insurance Plans President and CEO Karen Ignani, like Donelon, cautioned that "Changing the rules after health plans have already met the requirements of the law could destabilize the market and result in higher premiums for consumers," while American Academy of Actuaries Senior Health Fellow Cori Uccello said that, "Changing the ACA provisions could alter the dynamics of the insurance market, creating two parallel markets operating under different rules, thereby threatening the viability of insurance markets operating under the new rules."

On November 15, the House voted 261-157 to pass the "Keep Your Health Plan Act" (H.R. 3350), which would allow insurers to continue to offer individual policies that do not meet ACA standards in 2014 – as long as they were being sold on January 1, 2013 – to new customers as well as existing ones. The Republican-backed bill was supported by 39 Democrats.

"This problem cannot be papered over by another ream of Washington regulations," Speaker of the House John Boehner, R-Ohio, said. "Americans losing their coverage because of the president's health care law need clear, unambiguous legislation that guarantees the plan they have and like will still be allowed."

The legislation awaits action by the Democrat-controlled Senate. President Obama has promised to veto the bill if it reaches his desk.

Dates for 2015 Enrollment in Exchanges Revised

The Obama administration in November announced that it is changing the health insurance exchanges' open enrollment dates for the 2015 calendar year.

Enrollment for 2015 is now scheduled for November 15, 2014, through January 15, 2015. It had been scheduled for October 15, 2014, through December 7, 2014.

The change is intended to give insurance companies "more time to assess the pool of people who are getting insurance through the marketplaces and make decisions about what rates will look like in the coming year," White House spokesman Jay Carney said.

The state-level exchanges were created by the ACA to provide an insurance marketplace for consumers who cannot get affordable group coverage.

The revision does not affect the enrollment period for 2014, which began on October 1 and is scheduled to end on March 31, 2014. This enrollment period has gone poorly as the online portal for the 36 exchanges that are operated by the federal government at www.healthcare.gov has been plagued by major technical problems. Because of the glitches, only about 27,000 people enrolled through the federal exchanges during October, and just 100,000 enrolled in all exchanges – those 36 plus the 15 operated by individual states and the District of Columbia. The administration's goal had been to have 500,000 people sign up for coverage during the first month.

Republicans were quick to note that next year's enrollment period – along with the unveiling of prices and plan options for 2015 – will now begin after the November 4 mid-term elections.

"Clearly, President Obama does not want voters to see increased prices, more cancellations and decreased options under Obamacare before they go to the ballot box," House Majority Leader Eric Cantor, R-Va., said. "If Obamacare is so great, why are Democrats so scared of voters knowing its consequences?"

The administration also announced a minor change for the current enrollment period: consumers will be able to enroll as late as December 23 and still have coverage begin on January 1. The deadline to sign up for coverage beginning the first of the year had been

December 15. The change, a Centers for Medicare and Medicaid Services (CMS) spokesman said, was made because of the difficulties that people have encountered when using the exchange website.

CMS is continuing to work on the site, and the man brought in to oversee the fix – Jeffrey Zients, a federal government veteran who is to become director of the National Economic Council in January – said on November 22 that the agency is "on target for our goal of healthcare.gov serving the vast majority of users by the end of the month."

GOP Senators Want HHS Secretary Fired

Ten Republican senators wrote to President Obama on November 7 to urge him to fire the head of the Department of Health and Human Services (HHS).

HHS Secretary Kathleen Sebelius has been heavily criticized for the failed rollout of www.heatlhcare.gov, the online portal for the new health care exchanges, which are also known as marketplaces.

The senators, led by Pat Roberts of Kansas, wrote that the problems "were diagnosed early and ignored," and that Sebelius "refused to give credence to these warnings."

"In the days immediately following the launch, when it was apparent that problems were deep-seeded, Secretary Sebelius misled the public by claiming the issues were the result of high volume," they wrote. "According to her statements to the press, she even failed to inform you, the President under whom she serves, until days after the website launch that there were systemic problems needing millions more dollars and man hours to fix. ... If a similar rollout from any other national company or private sector business resulted in overwhelming and sustained problems, a high profile dismissal would be expected and appropriate."

Separately, Sebelius appeared before the Senate Finance Committee on November 6, telling lawmakers that a list of "a couple of hundred functional fixes" to the website had been compiled and noting "We're not where we need to be. It's a pretty aggressive schedule to get to the entire punch list by the end of November."

Administration officials have pledged that the website will be fully functional by the end of November.

Sebelius told committee members that she is accountable for "a miserable five weeks" since open enrollment in the exchanges began on October 1 and for the "excruciatingly awful" performance of the website. Her comments echoed statements made at a House Energy and Commerce Committee hearing on October 30, during which she said that she is "as frustrated and angry as anyone with the flawed launch of healthcare.gov. So let me say directly to these Americans: You deserve better. I apologize."

Despite the website's problems, Sebelius, at the Finance Committee hearing, rejected suggestions that further implementation of the ACA be delayed.

"Delaying the Affordable Care Act would not delay people's cancer or diabetes or Parkinson's disease," she said. "It would not delay the need for mental health services or cholesterol screenings or prenatal care."

While the administration has been the target of predictable criticism from Republicans, who have opposed the health care reform law from the start, several Democratic supporters of the law are also expressing frustration.

"Let me say right off the bat – this is unacceptable," said Finance Committee Chairman Max Baucus, D-Mont., one of the main authors of the reform law. "It has been disappointing to hear members of the administration say they didn't see problems coming. ... Make no mistake, I believe in this law. I spent two years of my life working on the Affordable Care Act. There is nothing I want more than for it to succeed. But months ago, I warned that if the implementation didn't improve, the marketplaces might struggle. Other senators on this committee voiced similar concerns. When we asked for updates on the marketplaces, the responses we got were totally unsatisfactory. We heard multiple times that everything was on track. We now know that was not the case. But that's in the past. Now it's time to move forward and figure out how to fix it."

Baucus rejected suggestions that Sebelius should lose her job, saying that she should "stay at HHS and help get the marketplaces working."

Senators Drafting Bipartisan Chronic Care Bill

A pair of senators are reportedly planning to introduce bipartisan legislation that would overhaul Medicare's coverage of people with chronic conditions.

Patients with chronic conditions, such as diabetes and heart disease, are responsible for more than 90 percent of Medicare spending, according to the CMS, and Sens. Ron Wyden, D-Ore., and Johnny Isakson, R-Ga., want Medicare to use a more coordinated approach to their care in order to improve outcomes and reduce costs. The proposal being drafted by Wyden and Isakson would assign each patient a "coordinator" – at Medicare's expense – who would be responsible for such things as scheduling doctors' visits, ensuring that information is shared among providers, and setting up ancillary services, such as nutrition counseling or transportation, *CQ* reported.

"We will shortly introduce a piece of legislation that basically takes the debate about Medicare in an alternative direction," Wyden said at a November 13 roundtable hosted by the National Coalition on Health Care, a group in which CalPERS is a member.

Two members of the House, Reps. Peter Welch, D-Vt., and Erik Paulsen, R-Minn., are working on a similar track, Wyden said.

Wyden has sought to have the plan considered by the House-Senate budget conference committee that was formed as part of the agreement to end the partial government shutdown in October, *The Oregonian* reported.

In June, Wyden said that a provision in the ACA prevents accountable care organizations (ACOs) – which are intended to improve care coordination – from specializing in patients with chronic conditions by requiring them to "serve everyone coming through the door."

"Our objective should be to make the adverse selection issue disappear by creating specific consumer protections for seniors in plans that specialize in senior chronic care, while fully retaining the current protections against discrimination for all other seniors under the current law," Wyden said at that time.

He also said that ACOs are not being established in all of the areas of the country where they are most needed – those with large populations of seniors with chronic conditions – and that Medicare reimbursements "should be reconfigured to target areas with the highest incidence of chronic illness, and reward practitioners, in those areas, who improve care and hold down costs." In addition, he said, "individual care plans" – which are now only provided to individuals who are judged to be "high-risk" – "need to be the rule, rather than the exception, for seniors with more than one chronic condition," and ACOs should be allowed to provide incentives to encourage patients to properly manage their conditions.

Regulators Still Struggling to Reach Consensus on Volcker Rule

Regulators may have a difficult time meeting the year-end deadline they have been given to complete work on the Volcker Rule.

The Volcker rule, which was included in the 2010 Dodd-Frank Act, would generally prohibit banks from engaging in proprietary trading. Five regulatory agencies – the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation, the Federal Reserve, the Office of the Comptroller of the Currency and the Securities and Exchange Commission (SEC) – are writing the rule, which was supposed to have been completed by July 21, 2012. One of the challenges that has contributed to the delay has been carving out exceptions to the regulation that allow for hedging activities and market-making but are tightly written enough not to allow all proprietary trading to be conducted under another label.

In September, Treasury Secretary Jacob Lew met with regulators from the agencies that are working on the rule and gave them a series of deadlines aimed at ensuring completion of the rule by the end of 2013.

A "final" draft of the 1,000-page rule is being circulated, but CFTC Chairman Gary Gensler is objecting that the rule is not tough enough. He has, according to *The Wall Street Journal*, not only sent proposed changes to other regulators but also distributed to other CFTC commissioners a proposed draft that incorporated his revisions. CFTC commissioners learned that the document had been altered by Gensler several days after receiving it, much to the ire of at least one commissioner.

"My rising frustration has been to find out that we were not sent the version that the rest of the prudential regulators are looking at, and we don't know the differences" between the two versions, Republican CFTC Commissioner Scott O'Malia said.

Regulators at other agencies, meanwhile, have expressed annoyance that Gensler did not get involved in the process until about two months ago, the *Journal* reported.

Gensler's term ends in early January. President Obama has nominated Assistant Treasury Secretary Timothy Massad to replace him.

CFTC Commission Bart Chilton, a Democrat who plans to leave the commission by the end of the year, has also rejected the latest draft, saying, "There would be no sense even doing a final rule if what is currently being considered on hedging remains the same."

"If we voted on it today, I'd oppose it," Chilton said. "It opens the door for proprietary speculative bets under the guise of hedging, exactly what Congress told us to avoid."

SEC Commissioner Kara Stein, a Democrat who joined the commission in August, is also pushing for tougher language.

"To be clear, the rule we are evaluating now is not the rule I would have written," Stein told the American Bar Association. "My hope is that when it comes time to vote on it, that the rule will be strong enough and faithful enough to Congress' direction, that I will be able to support it."

Without Stein's support, the rule would most likely not be able to win approval from the SEC, since the two Republicans on the five-member commission have already said that they plan to oppose it.

Financial Times, meanwhile, reported that the Federal Reserve is considering delaying for one year the requirement that banks comply with the Volcker rule. Even though the rule's release is 16 months late and counting, banks, as of now, will still be expected to adhere to the ban on proprietary trading starting in July 2014. A delay until July 2015 would likely come with requirements that banks make good-faith efforts to move toward compliance during that year, according to *Financial Times*.

Supporters of the Volcker rule – mostly Democrats – say it is needed to prevent the type of excessive risk-taking that contributed to the 2008-09 financial crisis, while opponents – mostly Republicans – argue that it will drive capital out of the United States and have a negative impact on the U.S. economy.

CFTC Proposes Position Limits Rule

The Commodity Futures Trading Commission (CFTC) on November 5 voted to propose a new position limits rule.

The CFTC adopted a position limits rule in 2011 to cap the number of derivatives contracts a trader could hold on 28 commodities as a way to discourage speculative trading – which some say drives up the prices of certain items – but it was struck down in September 2012 by a federal judge who determined that the agency "fundamentally misunderstood and failed to recognize the ambiguities in the statute." The case turned on whether Congress, in the 2010 Dodd-Frank Act, directed the commission to implement the rule or instructed the agency to do so only if it determined that such action was needed.

The commission voted 3-1 to propose the new rule, which will now be open for public comment for 60 days. The CFTC had been appealing the 2012 court ruling, but it is now dropping the appeal.

"Position limits further protect the markets and clearinghouses, as such limits diminish the possible burdens when any individual participant may need to sell or liquidate a position in times of individual stress," CFTC Chairman Gary Gensler said. "Thus, position limits help to protect the markets both in times of clear skies and when there is a storm on the horizon."

The new rule addresses the court ruling by stating that the commission is "using its experience and expertise to resolve the ambiguity the district court perceived in" Dodd-Frank.

"The Commission believes that it is reasonable to conclude from the Dodd-Frank amendments that Congress mandated limits and did not intend for the Commission to make a necessity finding as a prerequisite to the imposition of limits," the rule states. "The Commission's interpretation of its mandate is also based on congressional concerns that arose, and congressional actions taken, before the passage of the Dodd-Frank amendments."

Citing several investigations conducted by Congress that "concluded that excessive speculation accounted for significant volatility and price increases in physical commodity markets," the rule asserts that "it is reasonable for the Commission to conclude that Congress did not intend for it to duplicate investigations Congress had already conducted, and did not intend to leave it up to the Commission whether there should be federal limits."

In addition, the commission proposed, "as a separate and independent basis for the proposed Rule, a preliminary finding herein that such limits are necessary to achieve their statutory purposes," citing the 1979-80 silver market and the 2006 natural gas market as examples of instances in which position limits would have been effective.

Commissioner Scott O'Malia, a Republican, voted against the rule, saying it "continues to chip away at the commercial and business operations of end-users and the vital hedging function of the futures and swaps markets."

"I cannot support the position limits proposed rule that is before the commission today because the proposal, one, fails to utilize current, forward-looking data and other empirical evidence as a justification for position limits; two, fails to provide enough flexibility for commercial end-users to engage in necessary hedging activities; and, three, fails to establish a useful process for end-users to seek hedging exemptions," O'Malia said.

O'Malia also objected that the justifications for the rule – specifically, the two historical examples – are "glaringly insufficient."

"I fail to see how we can be 'experts' if we do not have the data to back us up," he said. "I fear that this reliance on a new legal strategy, instead of evidence-based standards, does little to affirm the commission's self-proclaimed 'expertise' and could result in another long and costly court challenge that will strain our limited resources."

Also on November 5, the commission unanimously approved an "Aggregation of Positions" rule, which would "address the policy for aggregation under the Commission's position limits regime for futures and option contracts on nine agricultural commodities."

Panel Backs Fed Chairman Nominee

The Senate Banking, Housing and Urban Affairs Committee on November 21 backed President Obama's nominee to be the next chairman of the Federal Reserve.

The panel voted 14-8 in favor of Janet Yellen's nomination. Three Republicans voted with 11 Democrats to support Yellen. Democrat Joe Machin of West Virginia opposed the nomination.

Yellen now awaits a confirmation vote by the full Senate. She will need the support of only a simple majority of the Democrat-controlled Senate, since the chamber voted 52-48 on November 21 to eliminate the use of filibusters to block presidential nominations, with the exception of U.S. Supreme Court justice nominees.

If confirmed, Yellen would become the first woman to chair the Federal Reserve.

"Dr. Yellen is a model candidate for chair of the Fed," Banking Committee Chairman Tim Johnson, D-S.D., said. "She has devoted a large portion of her professional and academic career to studying the labor market, unemployment, monetary policy and the economy."

Yellen told members of the Banking Committee during a nomination hearing on

November 14 that she supports the Fed's aggressive actions to stimulate the economy, and that she credits "the wise and skillful leadership" of Federal Reserve Chairman Ben Bernanke for helping to "stabilize the financial system, arrest the steep fall in the economy and restart growth."

Yellen, now the Fed's vice chair, is regarded as a supporter of "loose" monetary policies aimed at lowering unemployment, and she has broad support among liberals. Many conservatives, though, fear that a Yellen-led Federal Reserve would drive up inflation.

House Financial Services Committee Ranking Democrat Maxine Waters and 37 Democratic colleagues, all of them women, including 14 from California, wrote to President Obama in July to ask him to consider Yellen, a professor emeritus at the University of California at Berkeley, as Bernanke's replacement when his term ends on January 31, 2014.

"In her tenure on the board, Vice Chairman Yellen has served excellently in both her duties as a regulator of America's financial institutions and as a steward of our nation's monetary policy," the lawmakers wrote. "Her institutional knowledge and working relationships with current Board members would provide for a smooth transition at a time when financial markets and middle class Americans are counting on the Federal Open Markets [sic] Committee to demonstrate thoughtful and deliberate leadership to steer our economy on the road to a full economic recovery."

The representatives also credited Yellen with foresight leading up to the financial crisis of the late-2000s, stating, "During the subprime bubble, at a time when many economists were optimistic about unprecedented growth in the economy, she saw the bubble for what it was and predicted disaster in the banking system."

President Obama Nominates New CFTC Chairman

President Obama on November 12 nominated a Treasury Department official to be the next chairman of the Commodity Futures Trading Commission (CFTC).

If confirmed, Treasury Department Assistant Secretary Timothy Massad would succeed Gary Gensler as CFTC chairman. Massad has overseen the winding down of the Troubled Asset Relief Program (TARP).

"I have every confidence that he is the right man to lead an agency designed to prevent future crises, because I think it's safe to say that he never wants to have to manage something like TARP again," President Obama said. "I urge the Senate to confirm Tim as soon as

possible. Let him get right into the vital work of protecting America's economy and the American people."

The CFTC has become much more prominent in recent years, playing a key role in implementing major provisions of the 2010 Dodd-Frank Act. It is continuing to work with other regulatory agencies to complete the Volcker rule, which will prohibit proprietary trading by banks.

Gensler's term expires in early January, and Commissioner Bart Chilton announced in early November that he plans to leave the CFTC – which already has one empty seat on its five-member panel – "in the not too distant future." President Obama has nominated J. Christopher Giancarlo to fill the empty spot. No successor to Chilton has been named. Nominees will have to be confirmed by the Senate in order to join the commission, so lengthy confirmation processes could conceivably leave the CFTC with just two commissioners.

SEC Names New Public Pensions Unit Chief

The Securities and Exchange Commission (SEC) has named the new leader of its Enforcement Division's Municipal Securities and Public Pensions Unit.

LeeAnn Ghazil Gaunt is the unit's new chief. Gaunt has worked in the unit since it was created in 2010.

"In her 13 years with the SEC, LeeAnn has demonstrated tremendous judgment and leadership as a valued member of our enforcement team," said Andrew Ceresney, co-director of the Division of Enforcement. "We are delighted that she has agreed to lead the Municipal Securities and Public Pensions Unit, which has amassed a strong record of enforcement actions and is an important focus for the division."

Gaunt previously worked in the SEC's Boston office for 13 years. Before that, she was in private law practice in Boston.

Elaine Greenberg led the unit from the time of its creation until July. During that time, the SEC brought its first enforcement actions against states, charging New Jersey and Illinois with misleading bond investors about the funding of their public pensions.

John Cross, director of the SEC's Office of Municipal Securities, said in September that public pensions will be "a continuing and very significant theme of the SEC."

"I can't overemphasize the significance and, at least, the need to focus on pension liabilities because of the sheer magnitude of the numbers," Cross said.

Social Security Benefits to Increase 1.5% in 2014

Social Security benefits are to increase by 1.5 percent in 2014, the Social Security Administration has announced.

The cost-of-living adjustment (COLA) will apply to retirement benefits and Supplemental Security Income (SSI) benefits.

The COLA calculation is based on a modified version of the consumer price index. The COLA was 1.7 percent in 2013 and 3.6 percent in 2012. Benefits were flat in 2011 and 2010.

RELATED NATIONAL AND INDUSTRY NEWS

Many Large Public Pensions Reducing Return Projections: Milliman

Nearly a third of the nation's 100 largest public pension funds have reduced their investment return projections recently, according to a study from Milliman.

The 2013 Milliman Public Pension Funding Study found that 29 of the 100 largest public plans in the United States lowered their return assumptions compared to the data in the 2012 report, causing the average projection for all 100 funds to dip from 8 percent to 7.75 percent. Milliman stated that this reduction is "in line with a generally declining market consensus on expected long-term investment returns."

This decrease in expected returns reduced the overall long-term funded ratio. Using the market value of assets, the reported funded ratio for all 100 funds was 69.8 percent in 2012 ($1.09 trillion shortfall) and 68.5 percent in 2013 ($1.19 trillion shortfall). Using the actuarial value of assets, the ratio dropped from 75.1 percent in 2012 ($0.89 trillion shortfall) to 72.4 percent in 2013 ($1.04 trillion shortfall).

The 100 funds had assets totaling a reported $2.58 trillion, based on market value, up from $2.51 trillion in 2012. The actuarial value of assets was $2.73 trillion, up from $2.71 trillion a year earlier.

The study identified the market value of CalPERS' assets, as of June 30, 2011, as $241.7 billion and the actuarial value as $271.4 billion. Its market value funded ratio at that time was 74 percent ($86.9 billion shortfall), and its accrued value funded ratio was 83 percent ($57.2 billion shortfall), according to the study.

Milliman recalibrated the reported funding and value figures using its own methodology, but did not find major differences when compared to the numbers supplied by states and localities. In addition, Milliman gave its blessing to the discount rates used by public pensions, saying "most plans have set their interest rate assumptions and measured their pension liabilities in a realistic, actuarial manner that is consistent with long-term market return expectations."

"This year's study reflects a consensus move toward more conservative assumptions," study author Becky Sielman said. "This is evident in the average reduction in interest rate assumptions since last year's study. ... As was the case last year, our independent analysis of these pension plans indicates that most of the plans are realistically approaching their funding calculations, with the Milliman analysis only 2.6 percent larger than the cumulative accrued liability reported by the plans. While that still leaves a sizeable funding hole – these plans are 70.6 percent funded – at least it offers a realistic view of the road ahead."

CALIFORNIA CONGRESSIONAL DELEGATION NEWS

Three House Democrats Back Disclosure Rule for Energy Companies

Three senior House Democrats are pushing for Congress to retain a disclosure rule for energy companies.

In 2012, the U.S. and Mexico signed the Transboundary Hydrocarbons Agreement, which concerns oil and gas exploration in the Gulf of Mexico. The House passed a bill in June that would implement the pact and would also exempt energy companies from a law requiring firms to report payments to foreign governments related to the development of oil and gas fields. The Senate passed a version of the legislation in October without the exemption. Lawmakers are now seeking a compromise bill.

Reps. Peter DeFazio of Oregon, Maxine Waters of California and Eliot Engel of New York – the ranking Democrats on the House Natural Resources Committee, House Financial Services Committee and House Foreign Affairs Committee, respectively – wrote to Senate Majority Leader Harry Reid, D-Nev., on November 18 to urge him to reject House Republican efforts to include the exemption in the compromise bill.

"Resource revenue transparency allows shareholders to make better-informed assessments of risks and opportunity costs, threats to corporate reputation, and the long-term prospects of the companies in which they invest," the three Democrats wrote. "Public disclosure of extractive revenues is also fundamental to improving governance, curbing corruption, improving revenue management, and allowing greater accountability from governments for spending that serves the public interest."

The oil industry supports implementation of the agreement – which, among other things, would open up 1.5 million acres for development and clarify certain legal uncertainties – so much so that it is backing off its advocacy of the exemption. An American Petroleum Institute (API) spokesman recently said, "We are urging the transboundary agreement to get passed by both sides. I think the cleanest way you would see that occur is through a bill that doesn't have the ... [exemption] attached to it."

The SEC approved a rule in August 2012 that would have implemented the disclosure requirement, but in July, a federal judge struck the rule down in a case brought by API, the

U.S. Chamber of Commerce, the National Foreign Trade Council and the Independent Petroleum Association of America. The commission's analysis of the rule's potential impact, the judge concluded, "was arbitrary and capricious and independently invalidates the Rule." The SEC is working on a new version of the rule.

The disclosure requirement was included in the 2010 Dodd-Frank Act to increase the transparency of money flowing to regimes that may be more likely to pocket it than use it for the good of their nations.

CalPERS, in February 2011, wrote to the SEC to support the rule, which was then under consideration by the agency, stating that it "is especially vital for companies operating in countries where governance is weak resulting in corruption, bribery and conflict that could negatively impact the sustainability of a company's operations and our ability to more effectively make investment decisions."