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CalPERS Retirement Policy Update – May 2015

Key Senate Democrats Raise Concerns on Department of Labor (DOL) Proposal on Fiduciary Rules; DOL Extends Comment Period

Senate Democrats met with DOL Secretary Thomas E. Perez to argue that the proposed rule could backfire and make it harder for retirement savers to get investment advice. Senator Tester (D-MT) expressed concern the rule would interfere with the ability of brokers to charge commissions and said any new rules should conform with guidance from the Securities and Exchange Commission. Joining him at the meeting were Senators Ben Cardin (D-MD), Joe Manchin (D-WV) and Gary Peters (D-MI).

The Department of Labor announced that it would extend the initial comment period by 15 days on the proposed rule related to defining the term “fiduciary.” The initial comment period on the proposed rule, which was published in the Federal Register on April 20, 2015, will now be 90 days. In addition, DOL reiterated that there will be a public hearing within 30 days of the close of the initial comment period, after which the comment period will reopen until approximately two weeks after the hearing transcript is published. This process will provide an additional 30-45 days to the public comment period.

The House and Senate agree on a Budget Resolution for Fiscal Year 2016

The Budget Committee does not have the authority to authorize policy changes. However, it makes its policy priorities known in views and estimate letters. Reserve funds are a way to accommodate those requests when the specific funding and revenue impact of certain policies are unknown. The House-Senate conference report on the budget resolution contains a deficit-neutral reserve fund to prevent the use of federal funds for the bailout of improvident state and local governments. This was the amendment offered by Sen. Ron Johnson (R-WI).

The conferees included language on tax reform: "The conference agreement assumes that the tax-writing committees will adopt a tax reform proposal that reduces marginal rates but broadens the tax base to create a fair, efficient, competitive, and pro-growth tax regime that is revenue neutral. Any revenue-neutral tax reform would include a repeal of the harmful tax increases in the President's health care law.

The House included a prohibition on consideration during fiscal year 2016 of legislation that would reduce the actuarial balance of the Federal Old-Age and Survivors Insurance (OASI) Trust Fund by at least .01 percent of the present value of future taxable payroll for the 75-year period included in the most recent annual report of the board of trustees, except in situations where such legislation would improve the actuarial balance of the combined balance in the OASI Trust Fund and the Federal Disability Insurance Trust Fund for the same 75-year period.

House Holds Hearing on Multiemployer Pension Reform

The House Committee on Education and the Workforce’s Health Education Labor and Pensions Subcommittee held a hearing entitled “Examining Reforms to Modernize the Multiemployer Pension System.” The hearing examined potential reforms to the multiemployer pension system following the enactment of the Multiemployer Pension Reform Act of 2014.

At the hearing, the executive director of the National Coordinating Committee for Multiemployer Plans (NCCMP) proposed a hybrid plan with features from both defined contribution and defined benefit plans. The proposed hybrid plan would replace traditional multiemployer defined benefit plans. Subcommittee Ranking Member Jared Polis (D-CO) called the proposal “phase two” of Congress’s efforts to improve the viability of multiemployer pension plans.

Additional topics discussed in the hearing included, but were not limited to: (1) the negative effects of withdrawal liability; (2) the benefits of allowing composite plans; (3) annuities; and (4) meeting legacy costs.

President Obama signed the Don't Tax Our Fallen Public Safety Heroes Act

On May 22, President Obama signed the Don't Tax Our Fallen Public Safety Heroes Act (Public Law 114-14) into law. The new law, which was originally introduced by Rep. Erik Paulsen (R-MN), amends the Internal Revenue Code to exempt money paid out under Section 1201 of the Omnibus Crime Control and Safe Streets Act from the calculation of gross income for the purposes of federal taxes. The exemption also applies to similar state programs that provide compensation for surviving dependents of a public safety officer who died as the direct and proximate result of personal injury sustained in the line of duty.

The U.S. House of Representatives has also passed another bill that relates to the federal tax treatment of benefits to public safety employees. H.R. 2146 would modify the exemption in Internal Revenue Code section 72(t)(10) for public safety employees from the early withdrawal penalty. The bill would make three changes to the existing exemption. The bill would: (1) add federal public safety employees to the exemption; (2) include distributions from DC plans; and (3) allow retirees to modify a stream of substantially equal periodic payments without incurring a recapture tax penalty. The Senate has not yet taken action on this legislation.

Tax Overhaul Should Spur Small Employers to Offer Retirement Plans

On May 6, Senate Finance Committee Chairman Orrin Hatch (R-UT) said the top priority for savings and investment is to make it easier and cheaper for small employers to provide retirement plans for workers.

He pointed to legislation he introduced in 2013 that would have created "starter" retirement plans modeled after 401(k)s in which employees could save up to $8,000 a year in the starter plans. The plans would be subject to fewer regulatory requirements for employers.

EBRI Study Finds Retirement Plans Increase Confidence in Ability to Retire Comfortably

The Employee Benefit Research Institute (EBRI) found confidence in retiring comfortably has increased to 22 percent. Twenty-eight percent of workers with a retirement plan say they are very confident they will have enough money to retire compared to only 12 percent of those without a plan. Retiree confidence in having a financially secure retirement has also increased.

NCPERS Releases Report on Income Inequality

The study reviewed pension trends in the private sector, i.e., the massive shift from DB to DC plans, and "reforms" at the state and local level, which include reductions in benefits, increased employee contributions, and the conversion of DB plans into DC plans. The study then analyzed these changes in the context of their implications for increasing the problem of income inequality.

DOL's Proposed Rule on Lifetime Income Expected This Summer; Bipartisan Legislation Introduced

The Department of Labor (DOL) released an advanced notice of proposed rulemaking in May 2013 to solicit ideas from the retirement community on how best to show participants what their account balances would translate into in the way of monthly income during retirement. The proposed rule would require that pension benefit statements for defined contribution plans include life-time income illustrations. The DOL expects that the proposed rule will be released this summer. Numerous comments were submitted and various provisions, including the safe harbors, are likely to be modified in the proposed rule.

In related activity, on May 13, Senators Johnny Isakson (R-GA) and Chris Murphy (D-CT) introduced the Lifetime Income Disclosure Act (S. 1317), which would require sponsors of 401(k) plans to give participants an annual projection of how their account balance would translate into a monthly income stream in retirement. The bill was praised by the American Council of Life Insurers. Senator Isakson introduced similar legislation in 2011 and 2013. A companion bill (H.R. 2317) was introduced in the House on May 14 by Rep. Luke Messer (R-IN), who is the Chairman of the Republican Policy Committee. The legislation has bipartisan support.

Senate Democrats Send Letter to the President Calling for Clarification for State Retirement Efforts

Twenty six Democratic Senators, led by Ron Wyden (D-OR) and Patty Murray (D-WA), the ranking members of the Finance and HELP Committees, respectively, wrote to President Obama regarding the state of retirement saving in the U.S. The Senators point out that almost half of all employees work for an employer that does not sponsor a retirement plan and Congress has thus far failed to address the problem. They note that states, including California, have begun to work to solve the crisis by making saving easier, less expensive and more automatic for private sector workers. They ask the President to direct the Departments of Labor and Treasury to remove any potential uncertainty with respect to the application of federal law to the state-based initiatives. This would include providing guidance on whether state-based vehicles would be subject to ERISA.

IRS Determination Letter Program to Tighten Focus Due to Budget Cuts

The IRS is considering eliminating periodic individually-designed determination letters beginning after the current 2015-16 submission period for Cycle E. The IRS plans to put out its yearly cumulative list of changes in plan qualification requirements and put out model language for plans in a timely manner. Plans would then be able to adopt the model language and the IRS would not be required to review each individual amendment. The IRS intends to issue guidance this summer detailing the change for 2017 and asking for comments. Robert S. Choi, director of employee plans at the TE/GE Division, cautioned that the IRS will still review certain amended plans.

Foreign Pension Funds Would Be Exempt From U.S. Investment Tax Under New Bill

Reps. Kevin Brady (R-TX) and Joe Crowley (D-NY) introduced the Real Estate Investment and Jobs Act (H.R. 2128), which would increase from 5 percent to 10 percent the share of ownership a foreign investor may have in a U.S. publicly-owned real estate investment trust without triggering the 35 percent tax under the Foreign Investment in Real Property Tax Act. The exemption would also be extended to certain foreign collective investment vehicles. A similar bill was introduced in the last Congress and had the support of the Obama Administration. Real estate industry groups have praised the legislation.