



# BCG Retirement News Roundup

February 2015, Volume 4, Issue 2

Boomershine Consulting Group, 3300 North Ridge Road, Suite 300, Ellicott City, Maryland 21043

[www.boomershineconsulting.com](http://www.boomershineconsulting.com)

410-418-5525

Boomershine Consulting Group (BCG) provides this monthly news roundup of highlighted significant articles from the retirement industry – for clients and friends. Retirement plan news has become increasingly pertinent for many audiences these days, including:

- Retirement Plan Sponsors – addressing both private and public sector issues
- Employers – dealing with complicated decision making for their plans
- Employees – educating the Boomer generation that is nearing retirement
- Industry Practitioners - helping to understand and resolve today's significant challenges

We review numerous industry news services daily and will include a collection of timely and significant articles each month concerning compliance, actuarial plan costs (including assumption debates), plan design change issues and benefit trends, as well as other related topics. If you would like to discuss any of these issues, please contact us.

## INSIDE THIS ISSUE

### Public Sector/Government Plans

**NIRS: Shifting to DC did not save money for states**

**Detroit Pension Cuts From Bankruptcy Prompt Cries of Betrayal**

**U.S. Public Pensions Return 6.8% in 2014 for Six Years of Gains**

**United States: IRS Guidance On Governmental DROP Plans And Code Section 415(c)**

**IRS To Permit State And Local Governmental Plans To Cover Charter School Employees**

### Private Sector

**Feds place 150 union pension funds in 'critical' status**

**White House Budget Proposal Includes Many Retirement-Related Provisions**

**Final Annual Funding Notice Requirements for Defined Benefit Plans**

**Kimberly-Clark enters into pension buyout, reduces \$2.5 billion in liabilities**

**While about 70 percent of Americans plan to work in retirement, the outlook for older workers is mixed**

## Public Sector/Government Plans

### NIRS: Shifting to DC did not save money for states

Three states that shifted to defined contribution from defined benefit plans did not save money, said new case studies from the National Institute on Retirement Security.

NIRS researchers looked at Alaska, Michigan and West Virginia, which switched new employees to defined contribution-only accounts to deal with pension underfunding and rising costs. After looking at demographic changes, benefit costs, actuarially required contributions, plan funding levels and retirement security, NIRS found the switch exacerbated pension funding problems and increased pension costs to employers and taxpayers.

“People still have this misperception that switching will save you money. Switching to a DC plan does not solve the problem,” said NIRS Executive Director Diane Oakley in an interview. “The real problem is you've got to find a way to fund the plan.” She added that DC plans cost more for sponsors when providing a similar level of retirement security as participants get from a DB plan. “It will save you money only if you significantly cut benefits,” Ms. Oakley said.

In 2006, Alaska moved all new employees into DC accounts to address unfunded liabilities caused in part by inadequate employer contributions. The total unfunded liability has since doubled to \$12.4 billion.

In 1997, Michigan closed its overfunded DB system to new state employees, who were offered a DC plan. The DB plan's funded status dropped to about 60% by 2012 but has been improving in recent years, while retirement security for DC participants has decreased, NIRS said.

In 1991, West Virginia closed its teachers retirement defined benefit system to new entrants, who were offered a DC plan. The DB plan was reopened to all teachers in 2008 after a study showing that providing equivalent benefits would be less expensive in the DB plan. Because of improved funding, the teachers pension plan is expected to be fully funded by 2034 and projected to save \$1.2 billion within 30 years by moving participants back to the DB system.

Copyright © 2015 Crain Communications Inc

### Detroit Pension Cuts From Bankruptcy Prompt Cries of Betrayal

Pension checks will shrink 6.7 percent for 12,000 Detroit retirees beginning in March. Making matters worse, many also must pay back thousands of dollars of excess interest they received.

It's a bitter outcome of Detroit's record \$18 billion municipal bankruptcy for David Espie, 58, who will repay the city \$75,000 in a lump sum while his \$3,226 monthly pension is cut by \$216.

As retirement costs swallow larger portions of U.S. city budgets, Detroit's bankruptcy plan resolved a pension crisis with creative strokes, though at a cost to retirees who thought their benefits were untouchable.

"I feel betrayed," said Espie, who may abandon plans to move to Alabama. He recounted family get-togethers he missed during the 30 years he spent in the Department of Public Works picking up trash and plowing snow. He also pays \$500 a month more for health insurance than a year ago.

"It's devastating to me; it's affecting my health," Espie said.

In addition to absorbing pension cuts, almost 11,000 retirees and current employees must repay an estimated \$212 million in excess interest they accrued in a city-run savings plan, which is separate from the pension fund. The annuity plan guaranteed a 7.9 percent annual return even when the pension lost money, and employees also received bonus interest in some years.

#### Not Unprecedented

They can either pay the money back in a lump sum or have it deducted gradually from their monthly pension check with 6.75 percent interest.

The savings plan drained \$756.2 million from the pension fund from 1985 through 2007 to pay for what former Detroit emergency manager Kevyn Orr said was excess interest. The savings fund produced six-figure nest eggs for some -- on top of their pensions -- including at least two \$1 million accounts. Pensions for general employees, or workers other than police and firefighters, averaged about \$19,000 a year.

The clawback is unusual but not unprecedented. About 28,000 Oregon public retirees have had to pay back a combined \$156 million after the state Supreme Court ruled in 2011 that the retirement system overpaid them in 1999 with a 20 percent return, instead of 11.3 percent, said David Crosley, a spokesman for the Oregon Public Employees Retirement System.

#### More Soup

To make do, Detroit retiree Elaine Williams, 63, said she'll buy more soup and eat cheaper food when her \$1,200 monthly pension check is cut by \$158. That includes \$78 to pay back almost \$10,000, a monthly debt she'll face for 17 years.

Williams, who was a customer-service representative in the water department, said she retired in 2012 to a \$950-a-month apartment in Phoenix near her children. She worries about medical costs, having endured several surgeries.

“It’s wrong that they would mess with our pensions,” she said in a phone interview.

Henry Gaffney, 61, a retired bus driver, said he’ll pay back \$56,000 of the \$300,000 he saved by deducting \$428 from his monthly \$3,100 pension check for 19 years. He said he pays \$375 more for health insurance each month.

“I may have to find a part-time job,” said Gaffney, former president of Detroit’s bus-driver union. “I guess the city wants us to work until we’re dead.”

Detroit’s bankruptcy erased \$7.2 billion of debt, of which \$1.7 billion was pension liabilities. The city will pay \$100 million toward pensions until 2023, while \$900 million comes from the Water Department, foundations, the state of Michigan and the Detroit Institute of Arts.

#### Art Collection

The deal, dubbed the grand bargain, reduced cuts in pension checks and shielded the city’s valuable art collection from a forced sale to pay creditors.

The result is a 4.5 percent pension cut for general employees and rollback of a 2.25 percent annual cost-of-living increase that took effect last year while the bankruptcy was pending. Police and fire retirees get no pension cut, though they’ll lose half of their cost-of-living benefit.

Detroit is an extreme situation that’s unlikely to establish a precedent, said Jean-Pierre Aubry, assistant director of state and local research at the Center for Retirement Research at Boston College.

“The benefit cuts in Detroit are being made in the context of municipal bankruptcy, a very different legal and fiscal environment than that of most cities or towns making pension reforms,” Aubry said in an e-mail.

#### Court Challenge

A group of Detroit employees and retirees is challenging the cuts in federal court.

“It’s a clear violation of the state constitution,” said William Davis, head of the Detroit Active and Retired Employee Association, which filed the appeal.

U.S. Bankruptcy Judge Steven Rhodes ruled that Detroit's pensions could be cut, even though the state constitution prohibits reducing retirement benefits.

The bankruptcy plan created new investment committees for Detroit's pension funds, appointed by the pension boards and the state. The funds now assume a 6.75 percent annual rate of return on investments, instead of the 7.9 percent and 8 percent rates that were used, respectively, by the general and police and fire funds.

While the pension funds are now more secure, the cost to retirees stirs resentment.

Louis Ali, 64, said his monthly \$1,775 pension check will be reduced by \$345, mostly to pay back \$38,200 he owes in excess interest. Ali, who was a water department technician, said the city should have sold some of its art rather than cut pensions.

"If it comes down to my check being cut or that painting staying on the wall, give me my money," he said.

© [www.bloomberg.com](http://www.bloomberg.com)

## U.S. Public Pensions Return 6.8% in 2014 for Six Years of Gains

U.S. public pensions reported median returns of 6.8 percent last year, the sixth year in a row of gains after the financial crisis, according to Wilshire Associates.

The gains, though, are less than the annual investment returns of 7.5 percent to 8 percent that many state and local governments count on to pay benefits for teachers, police and other employees. In the 10 years through Dec. 31, public pensions had a median return of 6.6 percent.

"A lot of the plans can't be satisfied with a return of less than 7 percent," said Bob Waid, a managing director at Santa Monica, California-based Wilshire, adding that a portfolio containing 60 percent U.S. stocks and 40 percent U.S. bonds returned 10 percent. "I'm a huge advocate of diversification, but you have to wonder sometimes when you see that the guy who did 60/40 beat you."

While the Standard & Poor's 500 Index of U.S. stocks returned 13.7 percent, public pensions were dragged down by international investments. Stagnation in Europe and a strong dollar led to losses of almost 4 percent on foreign stocks, according to Wilshire.

Assets of the 100 largest U.S. public pension funds rose to \$3.31 trillion in the third quarter of 2014 from \$3.06 trillion in the same period of 2013, according to the U.S. Census Bureau. The

average funding of state and local pensions has deteriorated even though investment returns have improved, partly because of inadequate contributions by governments, according to a report last year from Moody's Investors Service on the 25 largest public plans. Unfunded liabilities tripled to almost \$2 trillion from 2004 through 2013.

Nationwide, state and local pensions had a median allocation of 45.4 percent in U.S. stocks and 13 percent in foreign stocks, according to Wilshire's Trust Universe Comparison Service.

Foundations and endowments, which allocate a greater portion of assets to hedge funds and private equity, returned 5.36 percent for 2014, according to Wilshire. The HFRX Global Hedge Fund Index lost 0.58 percent last year.

Copyright ©www.bloomberg.com

## United States: IRS Guidance On Governmental DROP Plans And Code Section 415(c)

A recent IRS memorandum addresses the application of Internal Revenue Code section 415(c) contribution limits to DROP plans. <http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1114-0029%5b1%5d.pdf>. The IRS memo is a welcome development because it reaches conclusions that generally do not disrupt the operation of DROPs, and it allows the IRS to process determination letter requests for DROP plans that have been pending for over six years in some cases.

A "DROP" is a feature of a defined benefit plan that allows an employee who is eligible to retire and receive a pension to continue working, while the pension payments the employee would receive if retired accumulate for future payment from the "DROP" account. Because the DROP creates an account within a defined benefit plan, it raises the question: are contributions to the DROP account subject to the contribution limits of Internal Revenue Code section 415(c)? Before this new memo, some IRS reviewers refused to issue favorable determination letters to governmental pension plans unless the plans were amended to state that all contributions to the DROP account are subject to the limits of Code section 415(c). This posed a serious problem for plans that credit a DROP account with annual defined benefit pension amounts exceeding the 415(c) limit. For example, a plan could not credit a DROP account with a participant's defined benefit pension of more than \$52,000 in 2014, because that amount would exceed the 415(c) limit for 2014.

The IRS memo instructs IRS employees reviewing governmental DROP plans not to apply the limits of Code section 415(c) to a participant's defined benefit pension amounts that are credited to the DROP.

The IRS memo also explains how 415(c) limits apply to amounts other than a participant's defined benefit pension that may be credited to a DROP, such as employer or employee contributions to the DROP. Because employee and employer contributions to a DROP rarely, if ever, approach the limits of Code section 415(c), this aspect of the memo should not present obstacles to the administration of most DROP plans.

Although this recent IRS memo states that it "is not a pronouncement of law," it offers a workable solution to the complexities of applying Code section 415(c) to governmental pension plan DROP provisions.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Copyright 2015 Mondaq Ltd.

## IRS To Permit State And Local Governmental Plans To Cover Charter School Employees

The IRS has announced (Notice 2015-7) that it plans to propose regulations allowing state and local retirement systems to cover employees of a charter school within a governmental plan under Section 414(d). The notice describes the guidance being considered, which would allow charter school employees to participate in a state or local retirement system if certain requirements were met. The requirements being considered include the following:

- The school is a nonsectarian, independent public school that serves a governmental purpose by providing tuition-free elementary or secondary education, or both.
- The school is established and operated in accordance with a specific state statute authorizing charter or independent public schools.
- Participation in the state or local retirement system by the school's employees is expressly required or permitted under applicable law.

The IRS said the final rules under Section 414(d) will apply prospectively and will include a delayed effective date. The final regulations are also expected to provide that a plan will qualify as a governmental plan under Section 414(d) if it covers employees of a public charter school and meets the requirements of the guidance in Notice 2015-7 for periods starting on and after the effective date of the final regulations, even if the plan covered those employees for periods before the final regulations' effective date, when the public charter school didn't meet the requirements.

© Mondaq® Ltd 1994 - 2015



## Private Sector

### Feds place 150 union pension funds in 'critical' status

The Labor Department says 150 union multi-employer pension funds are in "critical status," meaning that they lack enough assets to meet at least 65 percent of their future obligations.

Another 85 funds are listed as being "endangered," meaning they lack the assets to meet at least 80 percent of their future obligations.

"These are lists of plans whose own funding [levels] puts the plan at risk," said Norman Stein, senior policy adviser to the Pension Rights Center, a nonprofit consumer watchdog group. That status gives the trustees the option of cutting some benefits as part of a rehabilitation plan to get the program back to health. They are not obligated to make cuts, though, Stein notes.

The determinations were based on reports to the department from the pension plans' actuaries, which the department has posted online. Several report that the plans have been troubled for several years.

The Indiana State Council of Carpenters Pension Plan, for example, reports: "This is the fourth year the plan has been in critical status. The law permits pension plans to reduce, or even eliminate, benefits called 'adjustable benefits' as part of a rehabilitation plan."

The Central New York Laborers Pension Fund is now in its fifth year of being in critical status and the International Brotherhood of Electrical Workers Pacific Coast Pension Fund passed its six-year anniversary in April.

The notices, mostly brief form letters, give few details as to why the programs are in trouble or the depth of the problem. The actuaries are not required to state in the notices exactly how underfunded the plans are, just that they pass the threshold to be listed as critical.

It is not something the plans are eager to talk about, either. Calls by the Washington Examiner to representatives of the funds were mostly unreturned. The few who did respond said they were not allowed to talk.

"I don't have authority to do that," said Tobie Weiland, administrator for the Central New York Laborer's Pension Fund, explaining she would have to get permission from the trustees. "It would be a wonderful story because there are so many pension plans that are in trouble," she added.

A September study by Boston College's Center for Retirement Research estimated that 27 percent of multi-employer pension plans overall were in critical status and another 14 percent were endangered.

Diana Furchtgott-Roth, former chief economist of the Labor Department and now a senior fellow at the Manhattan Institute for Policy Research, says there are several reasons for the programs' under-funding

"The first is that they have declining membership," Furchtgott-Roth said, noting that according to the Labor Department, unions account for just 11.1 percent of all workers, a three-decade low. "So when you have a larger pool of retirees that you have to pay benefits and a smaller pool of new members, you have problems."

Other causes include the 2008 recession and the failure of union leaders to negotiate for more payments into the plan.

The silver lining for union members looking to retire is that the number of critical plans this year is down from previous years and the overall trend suggests the number will continue to decline should the economy continue to recover. The department listed 232 plans as critical in 2013 and 240 as critical in 2012. The number of critical plans hit a peak of 283 in 2010.

Copyright 2015 Washington Examiner

## White House Budget Proposal Includes Many Retirement-Related Provisions

On February 2, 2015, the White House released its Fiscal Year 2016 Budget, which includes a number of tax code changes targeting retirement savings. If enacted as presented, the proposals would have a significant effect on current retirement-related tax incentives. The stated intention of the suggested changes is to simplify the Internal Revenue Code and use the resulting savings to pay for other reforms of the tax code.

This On the Subject provides a summary of the retirement-related proposals (for more detailed explanations of all of the budget proposals, see the U.S. Department of the Treasury's Green Book).

Tax Reform for Families and Individuals

Provide for Mandatory IRA Auto-Enrollment for Certain Small Businesses and Related Tax Credits

The proposal would require an employer that has been in business for at least two years and has more than 10 employees to offer an automatic IRA option to its employees if it doesn't already offer another type of employer-sponsored retirement plan (e.g., 401(k) plan). Employers that already sponsor a qualified retirement plan would not be required to offer the automatic IRA option. However, if any portion of the employer's workforce is excluded from participation in a plan, the employer would be required to provide the automatic IRA option to those excluded employees. The proposal would allow for certain employees to be excluded from the automatic IRA; the exclusions in the proposal are similar to the exclusions permitted for qualified plans.

Under the proposal, any employee who did not provide an election would automatically be enrolled at a default rate of 3 percent. Employees could choose a lower or higher contribution rate up to the IRA dollar limits or choose to opt out of the IRA program. Employees could select either a traditional IRA or a Roth IRA, with Roth being the default.

The proposal would give employers that have no more than 100 employees and offer an automatic IRA arrangement (or another plan with an automatic enrollment feature) a temporary non-refundable tax credit and would provide a tax credit for the "start-up costs" of the automatic IRA arrangement (or other plan).

This proposal would become effective after December 31, 2016.

#### Expand Penalty-Free Withdrawal Exception for Long-Term Unemployed Individuals

The proposal would expand the exception from the 10 percent early withdrawal penalty tax to cover distributions from an IRA or defined contribution plan to long-term unemployed individuals. An individual would be eligible for this exception if he or she has been unemployed for more than 26 weeks and has received unemployment compensation for that period (or, if less, for the maximum period for which unemployment compensation is available under applicable state law) and meets certain other requirements. Eligible distributions would be limited to a maximum of \$50,000 per year during each of the two years when distributions are permitted under this exception, for a total of \$100,000 with respect to any single period of long-term unemployment.

This proposal would apply to eligible distributions made after December 31, 2015.

#### Require 401(k) Plans to Allow Long-Term Part-Time Workers to Participate

The proposal would require section 401(k) plans to allow employees who work at least 500 hours per year with the employer for three or more consecutive years to make salary reduction contributions. Employers would not be required to make matching or nonelective

contributions for these employees. These part-time employees would also be credited with a year of service for purposes of vesting in any employer contributions for each year in which they complete 500 or more hours of service. Employers would receive nondiscrimination testing relief with respect to these newly covered employees (similar to that provided under existing law for plans covering otherwise excludable employees), and could exclude them from top-heavy vesting and top-heavy benefit requirements.

This proposal would apply to plan years beginning after December 31, 2015.

#### Facilitate Annuity Portability

Under current law, a 401(k) plan generally cannot distribute amounts attributable to a participant's salary reduction contributions before (1) the employee's death, disability, severance from employment, hardship or attainment of age 59½, or (2) termination of the plan.

The proposal would permit participants under a plan that initially offered an annuity investment option, but later eliminated that option, to effect a direct rollover of the amounts attributable to that annuity investment to an IRA or other retirement plan without regard to whether such a distribution would otherwise be prohibited under the 401(k) distribution rules.

The proposal would be effective for plan years beginning after December 31, 2015.

#### Simplify Minimum Required Distribution Rules

Required Minimum Distributions (RMDs) for most participants must commence in the year that immediately follows the year the participant reaches age 70½ or, if later, the year of retirement. The proposal would exempt an individual from the RMD requirements if the aggregate value of the individual's IRA and tax-favored retirement plan accumulations does not exceed \$100,000 (indexed for inflation after 2016) on a specific measurement date. For this purpose, benefits under defined benefit pension plans that have commenced would be excluded in determining the dollar amount of the accumulations.

Under current law, no RMDs are required from Roth IRAs prior to death. Importantly, the proposal treats Roth IRAs in the same manner as all other tax-favored retirement accounts, requiring RMDs to commence at age 70½. In addition, individuals would not be permitted to make additional contributions to Roth IRAs after they reach age 70½.

The proposal would be effective for taxpayers attaining age 70½ on or after December 31, 2015, and for taxpayers who die on or after December 31, 2015, before attaining age 70½. This proposal will be of particular concern to non-grandfathered taxpayers who have made rollovers to Roth IRAs in part to avoid pre-death RMDs.

### Allow Inherited Plan and IRA Balances to Be Rolled Over Within 60 Days

Generally, assets can be moved from a qualified retirement plan or an IRA into an IRA or another qualified retirement plan without adverse tax consequences. Under current law, a surviving non-spouse does not have the same options as a surviving spouse when moving assets from one arrangement to another. To eliminate these differences, the proposal would allow a surviving non-spouse beneficiary under a qualified retirement plan or IRA to move inherited plan or IRA assets to a non-spousal inherited IRA through a 60-day rollover.

The proposal would be effective for distributions made after December 31, 2015.

### Loophole Closures

#### Require a Five-Year Distribution for Non-Spouse Beneficiaries of Retirement Plans and IRAs

When a participant or IRA owner dies before distributions have begun, the entire remaining benefit generally must be distributed to a non-spouse beneficiary either within five years of the participant's death or over the life expectancy of the beneficiary, with payments starting no later than one year following the participant's death. In cases where the beneficiary is much younger than the participant or IRA owner, the current rules permit the beneficiary to "stretch" the receipt of distributions over many years and to benefit from the tax-favored accumulation of earnings over long periods of time.

Under the proposal, non-spouse beneficiaries would generally be required to take distributions over no more than five years. This mandatory five-year distribution requirement would not apply to any beneficiary who is not more than 10 years younger than the participant or IRA owner, a minor child, disabled or chronically ill. For these beneficiaries, distributions would be allowed over the life or life expectancy of the beneficiary beginning in the year following the year of the death of the participant or owner. In the case of a minor child, the account would need to be fully distributed no later than five years after the child reaches the age of majority.

The proposal would be effective for distributions with respect to participants or IRA owners who die after December 31, 2015. An exception applies for participants whose benefits are determined under a binding annuity contract in effect on the date of enactment.

#### Limit the Total Accrual of Tax-Favored Retirement Benefits

The proposal would prevent any new contributions to a defined contribution plan or IRA, or benefit accruals under a defined benefit plan, if such contributions or benefit accruals, when combined with the existing accumulation, would exceed the amount necessary to provide the maximum annuity permitted for a tax-qualified defined benefit plan payable in the form of a 100 percent joint and survivor annuity commencing at age 62. For 2015, this amount is

\$210,000, which is adjusted annually for cost of living increases. Once an individual reached the maximum permitted accumulation, no further contributions or accruals would be permitted. However, the retirement accumulation could increase with investment earnings and gains.

This proposal is sometimes described as the “\$3.4 million cap on retirement savings,” which is based on the current \$210,000 annuity limit and, more importantly, current interest rates. The proposal would limit the retirement accumulation to an amount large enough to provide the maximum annuity benefit at age 62. In today’s low interest environment, this equates to a maximum allowable accumulation of \$3.4 million at age 62. However, rising interest rates will reduce the maximum permitted accumulation. Based on the historical interest rates that the government uses for annuity calculations, the limit could be as low as \$300,000 for a 35-year-old employee. A relatively young high-income earner could easily reach the maximum limit before turning 40 years old.

Contributions and/or accruals in excess of the applicable limitation would be treated in a manner similar to the treatment of excess 401(k) deferrals under current law. The excess amount would be currently includible in income unless withdrawn from the plan during a specified grace period. If not withdrawn, the excess amount would be subject to tax when distributed without any adjustment for basis.

The proposal would be effective with respect to contributions and accruals for taxable years beginning after December 31, 2015.

#### Limit Roth Conversions to Pre-Tax Dollars

Under the proposal, after-tax amounts held in an employer-sponsored retirement plan or a traditional IRA could not be converted to Roth amounts.

The proposal would apply to distributions occurring after December 31, 2015.

#### Eliminate the Deduction for Dividends on Stock of Publicly Traded Companies in ESOPs

The proposal would repeal the deduction for dividends paid with respect to employer stock held by an Employee Stock Ownership Program (ESOP) that is sponsored by a publicly traded corporation. Rules allowing for immediate payment of an applicable dividend would continue, as would rules permitting the use of an applicable dividend to repay a loan used to purchase the stock of the publicly traded corporation.

The proposal would apply to dividends and distributions that are paid after the date of enactment.

### Repeal Exclusion of Net Unrealized Appreciation in Employer Securities

Net Unrealized Appreciation (NUA) is the excess of the market value of employer stock at the time of distribution over the cost or other basis of that stock to the trust. Under current law, NUA that is received as part of a lump-sum distribution from a tax-qualified retirement plan is excluded from gross income in the year of the distribution. NUA is generally taxed as a capital gain at the time the employer stock is ultimately sold by the recipient.

The proposal repeals this exclusion for NUA. The stated reason is that the exclusion encourages a concentrated investment in employer stock, which subjects retirement benefits to increased risk (potentially the same risk that could affect participants' job security) without necessarily offering a commensurate return.

The proposal would apply to distributions made after December 31, 2015. Importantly, participants who have attained age 50 on or before December 31, 2015, would not be affected by the proposal.

### Reforms to Capital Gains Taxation, Upper-Income Tax Benefits and Taxation of Financial Institutions

#### Reduce the Value of Certain Tax Expenditures – 28 Percent Maximum Tax Benefit

The proposal effectively creates a 28 percent limit on the tax benefit for salary reduction contributions to 401(k) plans and IRA contributions. For taxpayers in the 33 percent, 35 percent or 39.6 percent tax brackets, this limitation would reduce the value of the exclusions and deductions to 28 percent of the contribution. Other income exclusions limited by this provision include tax-exempt state and local bond interest and employer-sponsored health insurance paid for by employers or employees' salary reduction dollars.

If the exclusion for contributions to retirement plans and deduction for contributions to IRAs is limited by this proposal, then the taxpayer's basis (within his or her retirement account) is adjusted to reflect the additional tax imposed. The proposal provides no guidance as to how such a basis adjustment would be made. Presumably, the affected participants would be required to provide information to the plan administrator regarding their marginal tax rates.

The proposal would be effective for taxable years beginning after December 31, 2015.

### Tax Gap Reduction and Reforms

#### Require Form W-2 Reporting for Employer Contributions to Defined Contribution Plans

This proposal would require employers to report on Form W-2 the total amounts contributed to a participant's account under a defined contribution plan. This additional information is intended to facilitate compliance with the annual limits on additions to defined contribution plans.

The proposal would be effective for information returns due for calendar years beginning after December 31, 2015.

#### Conclusion

The retirement-related budget proposals are not yet law and may never become law. It is possible, however, that certain of these proposals may be enacted by Congress to raise revenue to pay for additional reforms.

© 2015 McDermott Will & Emery

## Final Annual Funding Notice Requirements for Defined Benefit Plans

On January 30, 2015, the DOL issued final regulations implementing the annual funding notice requirements for defined benefit pension plans under ERISA Section 101(f). The final rule is applicable to notices for plan years beginning on or after January 1, 2015 (that is, for calendar year plans, the annual funding notice provided in 2016). However, plan administrators may elect to comply with the final requirements prior to this date. Overall, the final regulations are substantially similar to the proposed regulations (issued in November 2010), but there are some changes and modifications. Some of the highlights of the final regulations are as follows:

- **Plan Mergers or Consolidations.** The final regulations confirm that a plan that is merged or consolidated into another plan does not have a funding notice requirement for its final plan year. Only the surviving plan is required to issue a notice for the year in which the assets are transferred into the surviving plan, and this notice will provide an explanation of the merger or consolidation.
- **Good Faith Errors or Changes in Actuarial Assumptions.** In the preamble, the DOL indicated that in its view, when there is a change in the funding percentage due to a good faith error or changes in actuarial assumptions between issuance of the annual funding statement and filing of the Form 5500, a plan administrator is not required to reissue the funding notice for that year. Because this position was expressed in the preamble rather than the regulations, it does not necessarily have the effect of law, but it provides informal guidance to consider should a difference arise between what is reported on the annual funding notice and the Form 5500.



- **Investment Policy.** While ERISA does not explicitly require plans to have a formal investment policy, DOL reaffirmed that it would be “rare” for a plan not to have one, which reflects a de-facto requirement to have such an investment policy.
- **Material Event Administrative Guidance.** As in the proposed regulations, the annual funding notice must disclose events occurring after the end of the plan year that have a material impact on funding. This generally includes an event that either results in an at least a 5% increase or decrease in assets or liabilities from the valuation date, or in the judgment of the plans’ actuary, has a material impact on the plan’s funded status. Generally, material events result from plan amendments, like increasing benefits. The final regulations clarify some aspects of the material event disclosures:
  - The final regulations clarify that they do not result from market fluctuations.
  - The final regulations also add a rule of administrative convenience under which a material event will not be required to be disclosed unless it is known by the plan administrator at least 120 days before the due date of the notice.
  - Where an actuary has determined that a material event has occurred, the final regulations give plan administrators the option of including an explanation of why the actuary considers an event to be “material” rather than projecting the effect on plan liabilities to the end of the current plan year.

Copyright ©Sarah Lowe in IRS Examinations, Retirement Plans

## Kimberly-Clark enters into pension buyout, reduces \$2.5 billion in liabilities

Kimberly-Clark Corp., Dallas, announced Monday it has purchased group annuity contracts from Massachusetts Mutual Life Insurance Co. and Prudential Insurance Co. of America to transfer defined benefit plan benefits of about 21,000 U.S. retirees.

The company also announced it will make a contribution of between \$400 million and \$475 million to the U.S. pension fund as part of this transaction. When the transaction is complete, the company said its projected benefit obligation will be reduced by about \$2.5 billion.

Prudential will begin making benefit payments June 1 as the annuity administrator, while overall liabilities will be split between MassMutual and Prudential, said a Kimberly-Clark news release.

State Street Global Advisors was the independent fiduciary representing the retirees, while Deutsche Bank and Towers Watson served as strategic advisers for Kimberly-Clark.

In its 10-K filing Feb. 18, the company had not split its U.S. and non-U.S. defined benefit plan assets and reported \$5.914 billion in assets and \$6.86 billion in projected benefit obligations as of Dec. 31 for a funding ratio of 86.2%.

Officials at Kimberly-Clark did not respond to requests for further information, and SSgA spokeswoman Alicia Curran Sweeney did not return phone calls by press time. Towers Watson declined to comment.

Copyright © 2015 Crain Communications Inc

## While about 70 percent of Americans plan to work in retirement, the outlook for older workers is mixed

Dennis Tosto searches for jobs on the Internet at his home in Delaware County, Pennsylvania.

Antonia Williams-Gary, 65, pictured at her home in Dallas, moved to the area from Miami to pursue a new career.

The Carney Group, run by Nanette and John Carney, helps older people seeking to rejoin the workforce. They say they have learned to counter the stereotypes that are in the minds of many prospective employers.

Working longer is a mantra these days for many Americans hoping to build greater retirement security. Staying on the job even a few years beyond traditional retirement age makes it easier to delay filing for Social Security; it also can mean more years contributing to retirement accounts and fewer years of depending on nest eggs for living expenses.

But since the Great Recession, staying employed has been easier said than done for all workers. The economy has continued to mend gradually, and the job market has improved. How are older workers faring? The picture is mixed. If you're in the ramp-up years to retirement and aspire to stay employed past traditional retirement age, here are five key trends to watch.

### 1. Unemployment is down

Joblessness for older workers is lower than the overall national unemployment rate. In November, the unemployment rate for the 55-plus workforce was 4.5 percent - considerably lower than the overall 5.8 percent rate, and below the 4.9 percent 55-plus jobless rate a year ago, according to the U.S. Bureau of Labor Statistics (BLS).

And fewer older workers are worried about layoffs than their younger counterparts: A recent Gallup survey found just 13 percent of workers over age 50 are worried about layoffs, compared with 29 percent of people under age 35, and 15 percent of 35- to 54-year-olds.

"If you have a job, chances are pretty good you will be able to hang on to it," says Sara Rix, senior strategic policy advisor for the AARP Public Policy Institute. "Many companies went through disruption during the recession - changing hands and letting go of people. But the labor force data tells us that the older population has been faring pretty well."

## 2. Desire to work longer is rising

Reasons for work in retirement - An AARP survey released earlier this year found that 70 percent of Americans plan to work in retirement. But that doesn't necessarily mean sticking to the schedule - or work - that they're doing now. Twenty-nine percent plan to work part time because they enjoy working; 23 percent said they'd work part time because they need the income. Thirteen percent intend to start a business or work for themselves; 5 percent expect to retire and work full time in a new career.

Participation in the labor force - that is, the percent of people working or actively seeking work - has been rising slower among older workers. In November, 40.1 percent of 55-plus workers were in the market, up from 38.9 percent when the recession started.

## 3. Length of joblessness is longer

Many older workers without a job, however, have had a hard time finding one. Long-term unemployment remains a critical problem for the 55-plus crowd. Workers age 55 and older needed 51.1 weeks, on average, to find new work, according to the November BLS jobless report - much longer than the 30.6 weeks needed for younger people to find new work.

And when older workers do secure new jobs, they're likely to earn less. One study found that displaced workers will earn 14 percent to 19 percent less for the rest of this decade than workers who stay employed continuously - and that they are up to 8 percent more likely to experience another layoff.

## 4. Age discrimination remains a major worry

The federal Age Discrimination in Employment Act (ADEA) of 1967 makes it illegal for employers to discriminate based on age in hiring or firing practices. Cases of discrimination in hiring are nearly impossible to prove, and the number of complaints filed with the U.S. Equal Opportunity Employment Commission alleging age-related discharge has stayed fairly steady in recent years - 1,185 cases were filed in 2013.

But the AARP survey (which queried workers age 45-74) found that 64 percent have seen or experienced age-based discrimination in the workplace - and nearly everyone thinks it is commonplace.

The key implication: If you're hoping to work longer, hang on to your current job for dear life.

"Anyone in the boomer generation who anticipates working to an advanced age either by choice or out of necessity would be well advised to stay with the current job, whether on a full-time or part-time basis, unless he or she has the wherewithal to become an entrepreneur," says Elizabeth Fideler, a research fellow at Boston College's Sloan Center on Aging & Work.

#### 5. Over-70 crowd is pushing the envelope

Working longer isn't just for people in their 60s. Increasing labor force participation rates actually are most dramatic among men and women in their 70s and 80s, according to Fideler, author of "Women Still at Work: Professionals Over Sixty" and "On the Job" and a companion volume about older male workers.

"Seniors enjoying good health and the prospect of greater longevity stay on the job because they can," she says.

"When they love what they do, they don't want to stop."

Copyright © 2015 LexisNexis, a division of Reed Elsevier Inc.