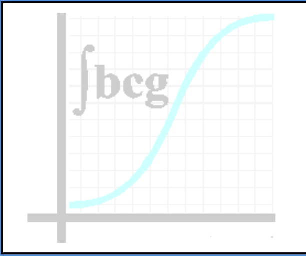

BCG Retirement News Roundup

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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.

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Public Sector/Government Plans

Borenstein: Pension reform win? Court rules California can trim current public employees' retirement

In a potential game-changer for pension reform advocates, the state Court of Appeal has ruled that the Legislature can trim public employee retirement benefits for workers who are still on the job.

The unanimous decision last week rejects widely held assumptions that benefits cannot be reduced once employees start working. That constraint has hindered attempts statewide, and in charter cities such as in San Jose, to meaningfully stem soaring taxpayer costs for pensions.

"So long as the Legislature's modifications do not deprive the employee of a 'reasonable' pension, there is no constitutional violation" of government workers' rights, the three-justice panel concluded.

If union lawyers appeal, it could set up a state Supreme Court fight over whether future public employee pension accruals across California can be altered.

The decision came in a Marin County case pertaining to pension spiking, the inflation of workers' final salaries on which the retirement payment calculations are based. The case stems from 2012 legislation passed to correct a gaping loophole I exposed in Gov. Jerry Brown's proposed pension plan.

The appellate court decision affects similar spiking lawsuits in Contra Costa, Alameda and Merced counties. But, much more significantly, the decision might allow alteration of underlying pension formulas statewide.

To understand those formulas, consider, for example, most public safety officers in California. If they retired at age 50, their starting pension amounts used to be 2 percent of final salaries for every year on the job. Starting around 2000, the multiplier was retroactively increased to 3 percent.

So, before 2000, police and firefighters with 30 years experience and a final salary of $100,000 a year would retire with a starting annual pension of $60,000. Now it's

$90,000. Other government workers hired before 2013 received similar but less generous increases.

The cost of the extra benefits and the failure to properly set aside funds to later pay the benefits has left California taxpayers with hundreds of billions of dollars of debt -- what the appellate court called "the alarming state of unfunded public pension liabilities."

So, why not roll back to the old formula for employees' future years of work? It would be unfair to cut benefits for the work employees have already put in. The issue is whether pension accruals for future labor could be reduced to more affordable levels.

But the state Supreme Court ruled more than two decades ago that future accruals are promises that government cannot impair without violating the contract clauses of the state and federal constitutions. Essentially, workers' pension formulas can be increased during their working years but never decreased.

It has been dubbed the "California Rule," what University of Minnesota law professor Amy Monahan calls "one of the most protective legal approaches for public employee pension benefits of any state in the country."

Some experts have questioned the legal foundation of the California Rule and suggested the state Supreme Court should revisit it. The Court of Appeal in the Marin case just teed up that issue.

"While a public employee does have a 'vested right' to a pension, that right is only to a 'reasonable' pension -- not an immutable entitlement to the most optimal formula of calculating the pension," wrote Associate Justice James Richman.

The decision upholds pension-law changes passed on the last day of the legislative session in 2012. At the time, Brown was pressing to control pension costs.

But details of his plan were kept secret until the last moment. On the eve of the vote, I reported in this column that Brown's package had a loophole that would increase pension-spiking opportunities.

A last-minute scramble for corrective legislation produced AB 197, authored by then-Assemblywoman Joan Buchanan, D-Alamo. The bill, affecting 20 county-level pension systems across California, limited the pay items that could be counted as compensation when calculating public employees' pensions.

The Marin Association of Public Employees sued, claiming that, under the California Rule, historical pension spiking could not be stopped unless employees' losses were offset by comparable new compensation.

The appellate court disagreed. "Short of actual abolition, a radical reduction of benefits, or a fiscally unjustifiable increase in employee contributions," changes can be made up until the time the worker retires.

If that stands, it would dramatically alter the chances for pension reform in California.
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Pennsylvania's state retirement systems are in for a "stress test" from the Auditor General

Pennsylvania Auditor General Eugene DePasquale said Monday he is launching a performance review of the state's two major public sector employee retirement systems.

Taken together, the Public School Employees Retirement System and the State Employees Retirement System have been one of the largest cost drivers for state government over the last decade.

They will account for more than $2.8 billion in general fund spending this year, or about 9 percent of the total budget.

That's mostly the result of poor policy decisions by the state's elected officials, starting with a lucrative 2001 increase in retirement benefits for handed out to all teachers, state workers and lawmakers.

Still, DePasquale said it is timely now to do an independent stress test of the systems, their investment strategies, and the use of external, third-party managers to try to maximize returns.

The announcement comes just four days after federal prosecutors announced charges against ex-state Treasurer Barbara Hafer - once a major player in the systems' governance - and Richard Ireland, whose firm marketed the services of private investment managers to state government and shared in the fees.

Ireland's dealings, according to court filings available to date, were mostly with the Treasury Department itself.

DePasquale said those charges are not motivating this review, which has been in the planning stages for some time.

"I have ordered this audit because we want to do everything we can to try to help with this situation," DePasquale said Monday, noting neither fund has met its investment targets for the last year and both have significant unfunded liabilities.

"The main thing we want to answer is, are there ways they can do things better that actually saves them a lot of money, so they can put that money back into the (respective) systems," the auditor general said.

DePasquale added that he's not pre-judging the funds' performance, but "obviously they're not meeting their targets and that's creating huge financial problems for the state."

DePasquale said he also will examine pension forfeitures, both to make sure that law is being applied correctly, and whether Pennsylvania's current statute should be strengthened to promote better behavior among public officials.

The systems were last put through this kind of a review more than a decade ago, ironically, after a lengthy legal fight between then-Treasurer Hafer and then-Auditor General Robert P. Casey Jr. over the AG's authority.

As of their most recent annual reports, the two systems' have a combined unfunded liability - total obligations less the value of all current assets - of $56.8 billion.

That's been driving record payment taxpayer-funded payments into the funds over the last several years, sending fiscal shock waves through the state and school district budgets.

SERS reported investment gains of just 0.4 percent for 2015, well below its 7.5 percent benchmark. The system's 10-year performance, which includes the major economic downturn in 2008, is 5.2 percent.

PSERS, meanwhile, posted a gain of 3 percent in fiscal 2015, also against a target return of 7.5 percent.

Spokesman for both funds, however, like to point out that they have met their investment return goals over longer time horizons.

The private money management contracts have been an issue in state government for

some time.

The chase for contracts by money managers have been a part of long-running federal investigation into pay-to-play practices in Pennsylvania that has seen charges brought not only against Hafer, but also former Treasurer Rob McCord.

McCord pleaded guilty in February 2015 to threatening to blackball potential contractors he felt weren't making significant contributions to his failed 2014 gubernatorial campaign.

Gov. Tom Wolf has also expressed an interest in working with the systems and the Legislature to try to wring savings out of external managers' fees.

PSERS's most recent annual report shows it spent $455 million on external investment managers in the 2014-15 fiscal year.

While that cost has dropped in each of the last two years, PSERS's report also notes its managers beat their benchmarks - earnings expected from a more passive investment of the funds placed with them - by $497 million, after all fees were paid.

SERS, meanwhile, paid $159 million in fees to external managers in calendar year 2015.

DePasquale said he had no independent information that taxpayer dollars were abused. But he said one goal of the audit is to determine whether the fees paid by SERS and PSERS are in line with peers in other states.

Together, the two retirement funds serve more than 700,000 active and retired workers.

DePasquale said he hopes to be able to report his findings by early 2017.
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Chicago mayor's big plan to save its pension fund

Chicago Mayor Rahm Emanuel unveiled a plan on Wednesday that he called "an honest approach" to save the city's biggest retirement system from insolvency with a water and sewer tax to be phased in over five years starting in 2017.

The municipal retirement system, which covers about 71,000 current and former city workers, is projected to run out of money within 10 years as it sinks under an unfunded liability of $18.6 billion.

The new tax would generate $56 million in its first year and increase to $239 million

annually by 2020, the mayor's office said.

"Today, one of the big question marks that hung around the city because of past decisions — or past decisions that were not made — we have addressed," Emanuel told an investor conference in Chicago.

"Every one of the city's pensions has a dedicated revenue stream ... to keep the promise not only to the employees, but to the city's future and do it in a way that does not undermine the economic well-being of the city," he said.

The plan would require approval by Chicago's city council, which Emanuel said he intends to seek in September. Chicago then needs the Illinois legislature to approve a five-year phase-in of the city's contribution to the pension system to attain a 90 percent funding level by 2057.

The tax comes on top of an increase in water and sewer rates between 2012 and 2015 to generate money to repair and replace aging infrastructure. Revenue rose from $644.1 million in 2011 to $1.125 billion in 2015.

The rescue plan for the municipal system follows previous action by the city to boost funding for police and fire pensions through a phased-in $543 million property tax increase, and its laborers' system through a hike in a telephone surcharge.

Chicago's big pension burden was a driving factor in the downgrade of the city's credit rating last year to the "junk" level of 'Ba1' by Moody's Investors Service. Standard & Poor's warned in June it may cut the city's 'BBB-plus' rating in the absence of a comprehensive pension fix.

The task of fixing the city's pensions became harder after the Illinois Supreme Court in March threw out a 2014 state law that reduced benefits and increased city and worker contributions to the municipal and laborers' funds.

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Sweeney: No pension vote until transportation funding resolved

Without a resolution to a transportation funding stalemate, Senate President Stephen Sweeney said Thursday that he remained opposed to calling a vote on a proposed constitutional amendment that would require the state to make bigger payments into its pension system.

Sweeney (D., Gloucester) did not explicitly rule out posting the amendment Monday - the deadline for a vote on the measure, which public-sector unions are calling for, to get on the November ballot.

But Sweeney said he would not support the amendment before reaching a deal to replenish the depleted Transportation Trust Fund.

Sweeney and Assembly Speaker Vincent Prieto (D., Hudson) previously agreed on a bill to more than double the state's gasoline tax, to 37.5 cents per gallon, while also cutting taxes on estates and retirement income for seniors.

Sweeney said Thursday that he did not have enough votes to override an anticipated veto by Gov. Christie, who has advocated for a sales tax cut to offset the gas tax hike. Sweeney contends that cut would put too large a hole in the budget.

Until the transportation funding impasse - which spurred Christie to shut down road projects - is resolved, "we can't in good conscience put a constitutionally guaranteed pension payment on the ballot," Sweeney said at a Statehouse news conference. "It would fail."

Of whether he could garner the 27 votes he needs for the transportation bill in time to post the pension amendment Monday, Sweeney said, "I've been holding out hope each day, but we're almost out of time now."

Even without the amendment, the state is ramping up its payments into the pension system, Sweeney said. He said there would be no harm in waiting a year on the amendment, which was intended to help stabilize the long-underfunded system.

"I think I've proven myself over the years," Sweeney said of his commitment to public workers. "I care about pensions."

Sweeney drew backlash from leaders of unions including the New Jersey Education Association - which Sweeney had accused a day earlier of trying to bribe lawmakers to force a vote on the pension question.

Sweeney "has betrayed every New Jersey public employee," Wendell Steinhauer, the president of the teachers' union, said in a statement Thursday. "His excuses, rationalizations, and shifting positions don't change the fundamental fact that he lied." Steinhauer said Sweeney had promised to put the question on the ballot.

Hetty Rosenstein, state director of the Communications Workers of America, said Sweeney was wrong to link the pension amendment to the transportation funding situation.

"The fact that Senate President Sweeney - at the eleventh hour - will not post it for a vote is the exact reason we're demanding a constitutional amendment," she said in a statement.

Sweeney, who sponsored the proposed amendment, said the state could afford both the amendment and the transportation "bill we have right now," which he said would phase in tax cuts over four years.

What would be unaffordable, Sweeney said, is the proposal Christie supports - which Prieto had agreed to - that would cut the sales tax one percentage point in exchange for the 23-cent-per-gallon gas tax increase. New Jersey's 14.5-cent-per-gallon tax on gasoline is the second-lowest in the country.

Without knowing how much a final transportation agreement will cost, Sweeney said, it would be irresponsible for him to move forward with the pension amendment.

"Say we compromise," and the transportation plan ends up costing more, Sweeney said. "So I've got to face reality."

Construction groups joining Sweeney at the news conference said they needed the state to solve the funding issue.

Since Christie ordered the road-project shutdown last month, "we have hundreds of firms that are affected. We have thousands of employees that are laid off," said Robert Briant, CEO of the Utility and Transportation Contractors Association of New Jersey.

With workers needing to make money now to carry them through winter, "we need this resolution. We needed it yesterday," he said.

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Pew: Funding for state pension funds improves in 2014

The funding shortfall for state retirement systems totaled $934 billion in 2014, down $35 billion from 2013, said a brief released Wednesday by The Pew Charitable Trusts.

Data for 238 public-sector pension funds was examined; 2014 is the most recent year for

which complete data are available.

The overall funding increase was primarily driven by strong investment returns for the year with plans returning 17% on average, Pew researchers said.

Among the 50 states, South Dakota, Oregon, Wisconsin, Tennessee and North Carolina posted the highest funding ratios at 107%, 104% 103%, 99% and 99%, respectively. Illinois, Kentucky, New Jersey, Connecticut and Alaska reported the lowest funding ratios at 41%, 41%, 42%, 51% and 60%, respectively.

While most states saw their funding ratios increase, Pew researchers noted that “pension debt remains large” and few states are contributing enough to their plans to reduce unfunded liabilities.

Preliminary data for 2015 show plans' aggregate deficit rising to more than $1 trillion on the back of weak investment returns (3% to 4% on average). Investment performance has been even weaker in 2016, the brief noted.

“Many states face significant challenges in meeting their pension promises to workers,” said Greg Mennis, director of Pew's public-sector retirement systems project, in a news release. “The volatility and low investment returns are a reminder that policymakers cannot count on investment returns to close the pension funding gap.”

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Private Sector

Terminated Participants: Out of Sight, Out of Mind – That is the Problem

With all of the merging, acquiring and partnering that continues to impact many industries, retirement plans are not always top of mind for organizations. While a retirement plan review is often a part of the thorough due diligence process in any entity transaction, these reviews frequently occur towards the end of the process when there is less time to analyze the full extent of potential retirement plan issues.

As such, issues regarding terminated participants tend to receive even less scrutiny on a regular basis. This is potentially problematic as the Department of Labor (DOL) has recently launched an initiative to audit retirement plans to confirm whether or not they have terminated, vested participants that might be owed plan benefits. If such owed distributions "slip through the cracks," it has the potential to run afoul of both DOL and Internal Revenue Service (IRS) requirements, exposing the plan to potential penalties and loss of tax qualification status.

Background

When a participant terminates service with a plan sponsor, he/she has the choice whether or not to keep the accumulated retirement assets in the plan or to roll over the assets to an IRA or some other retirement plan. The participant can also elect to withdraw the assets and pay taxes on the distribution.

If the participant has less than $5,000 in the account, the plan sponsor can force the assets out of the plan (assuming such a provision is included in the plan document). But for accounts over $5,000, the participant decides whether or not to keep the assets in the plan or move them somewhere else.

For a retired participant, the assets must begin to come out of the plan in the year following the year the participant turns age 70 ½. (Note: if a participant is over 70 ½ and still working, this distribution commencement may be delayed until termination of employment). These Minimum Required Distributions (MRDs) that are part of Internal Revenue Code section 401(a)(9) begin the process of liquidating the participant's account. It also enables the IRS to begin collecting some of the deferred taxes on these assets.

If a participant fails to begin receiving MRDs, he/she faces a stiff penalty. There is an excise tax of 50% of what the participant should have taken out for the distribution. Because of

this penalty, most participants follow the regulations when they are aware of them. But many participants are unaware of the requirement, or potentially forget that they have reached the age when they must begin to take MRDs from their retirement plan assets.

Typically, the plan recordkeeper sends a notice to participants who are required to take a distribution. This is the alert that reminds the participants that they are subject to this requirement and gets them to begin the distribution process. However, not all participants keep their contact information up to date with the recordkeeper. If they change home and/or email addresses, they may neglect to inform the plan recordkeeper about the change. They are even less likely to notify their former employer. This is how plan participants become "lost."

Having lost participants is a very common condition for retirement plans. Whenever we begin working with a new client, we always check to confirm if all participant contact information is up to date. We have yet to encounter a situation where the recordkeeper did not have at least one "bounce-back" on the emailing of statements, or returns from the postal service for statements sent through the mail. We always encounter some lost participants, whose contact information has not been kept current.

From the IRS's perspective, this leads to a problem because the MRDs for these participants may not begin on time, and thus, the IRS will not collect taxes in the time frame that it should. From the DOL's perspective, this is also a problem because the vested benefits that these participants have earned are not being paid in the time frame expected. When left unchecked, it is possible that the benefits do not get paid at all and remain unclaimed in the plan.

This brings us back to the recent audit initiative. The DOL has been examining plans to confirm that the plan sponsor has the procedures in place to locate plan participants and to pay them their vested plan benefits when required. Many retirement plans do not have the written description in place about how the sponsor will work to locate lost participants, the time frames and responsibilities. And many of those that do have such procedures in place are not completing the process on the regular timely basis specified in the plan document.

Plan sponsors, particularly organizations that are in the midst of, or have just completed, merger/acquisition transactions, should review their plan document to confirm whether or not there are written procedures in place to locate terminated vested participants who have become lost. If they have not done so in a while, if ever, they should work with their recordkeeper to determine if they have any lost participants, and then follow the process to attempt to locate those individuals. Once they have implemented the process to obtain up-to-date contact information for lost participants, it is important to establish a process to

ensure that such a review will be completed on whatever regularly scheduled timeframe is outlined in the plan documents.

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Internal Revenue Service Provides Guidance on the Scope of the New Determination Letter Program for Individually Designed Plans

The IRS issued Revenue Procedure 2016-37 on June 29, 2016, which provides much anticipated guidance on the elimination of the determination letter program for individually designed retirement plans effective January 1, 2017. The following is a summary of Revenue Procedure 2016-37 in order to assist plan sponsors with making timely decisions with respect to their individually designed retirement plans and to alert them to the new compliance requirements.

Elimination of Staggered Five-Year Remedial Amendment Cycle

The staggered five-year remedial amendment cycle system for individually designed retirement plans is eliminated, meaning that a plan sponsor will not be permitted to apply for a determination letter once every five years. The last cycle permitted to file under the current system is the Cycle A submission period (for plan sponsors with employer identification numbers ending in 1 or 6) beginning February 1, 2016 and ending January 31, 2017. Controlled groups and affiliated service groups that maintain one or more plans may submit determination letter applications for such plans during Cycle A in accordance with prior Cycle A election(s).

Determination Letter Requests on or after January 1, 2017

Limited Access to Determination Letter Program

A plan sponsor of an individually designed retirement plan may submit a determination letter application to the IRS only in the following limited circumstances:
•Initial Plan Qualification. An application for initial plan qualification on a Form 5300 will be accepted by the IRS if a favorable determination letter has never been issued for the plan (including any favorable determination letter issued pursuant to Form 5307).
•Qualification Upon Plan Termination. A determination letter filed in connection with a plan termination on Form 5310 will be accepted by the IRS if the filing is made no later than the later of (i) one year from the effective date of the termination, or (ii) one year from the date on which the action terminating the plan is taken, but in any case not later than twelve months after the date that substantially all plan assets have been distributed in connection

with the plan termination.
•Other Circumstances. The IRS will consider whether determination letter applications will be accepted for individually designed retirement plans under circumstances other than initial qualification or plan termination. The IRS indicates that it will consider several factors when making this consideration including, for example, significant law changes, new approaches to plan design, the inability of certain plans to convert to a pre-approved plan document, and the IRS's case load and resources available to process determination letter applications. The IRS and Treasury intend to solicit comments on a periodic basis on the scope of these additional circumstances and will announce the additional circumstances in an annual Internal Revenue Bulletin. However, at this time, the IRS will only accept requests for determination letters for individually designed retirement plans in the case of Cycle A submissions (through January 31, 2017), initial plan qualification and qualification upon plan termination.

Scope of IRS Review of a Plan on Determination Letter Request

For an individually designed retirement plan for which a determination letter has been requested, the IRS's review will be based on the "Required Amendments List" (described below) issued during the second calendar year preceding the submission of the application. The IRS's review will also consider all previously issued Required Amendments Lists (and Cumulative Lists issued prior to 2016). In addition, a terminating plan will be reviewed for amendments required to be adopted in connection with plan termination (discussed below). Plans submitted for initial qualification in 2017 will be reviewed based on the 2015 Cumulative List. Individually designed retirement plans (except terminating plans) must be restated to incorporate all previously adopted amendments when a determination letter application is submitted.

Reliance on a Favorable Determination Letter

Effective January 4, 2016, favorable determination letters issued by the IRS to sponsors of individually designed retirement plans will no longer contain expiration dates, and expiration dates in determination letters issued prior to January 4, 2016 are no longer operative. A plan sponsor maintaining an individually designed plan for which a favorable determination letter has been issued and that is otherwise entitled to rely on the determination letter may not continue to rely on the determination letter with respect to any plan provision that is subsequently amended or is subsequently affected by a change in the law. However, the plan sponsor may continue to rely on such determination letter for plan provisions that are not amended or affected by a change in the law.

Plan Amendments Guidance

Elimination of Interim Amendments

Plan sponsors of individually designed retirement plans are no longer required to adopt interim plan amendments as described in Revenue Procedure 2007-44 with adoption deadlines on or after January 1, 2017.

Extension of Remedial Amendment Period

A “disqualifying provision” generally is a provision, or the absence of a provision, in a new plan or an amendment to an existing plan that causes a plan to fail to satisfy the requirements of the Code as of the date the plan or amendment is first effective. Additionally, a disqualifying provision includes a plan provision that has been designated by the IRS as a disqualifying provision by reason of a change in those requirements. Effective for any disqualifying provision that is first effective on or after January 1, 2016, the remedial amendment period for an individually designed plan (excluding a governmental plan) is extended as, follows:

•New Plan. The remedial amendment period is extended to the later of (i) the fifteenth day of the tenth calendar month after the end of the plan’s initial plan year or (ii) the “modified Code Section 401(b) expiration date,” defined below. ◦Plan Not Maintained by a Tax-Exempt Employer: The modified Code Section 401(b) expiration date generally is the due date for the employer’s income tax return or partnership return of income, determined as if the extension applies.

◦ Plan Maintained by a Tax-Exempt Employer: The modified Code Section 401(b) expiration date generally is the due date for the Form 990 series, determined as if the extension applies or, if no Form 990 series filing is required, the fifteenth day of the tenth month after the end of the employer’s tax year (treating the calendar year as the tax year if the employer has no tax year).

•Existing Plan. The remedial amendment period for a disqualifying provision related to an amendment to an existing plan which is not on the Required Amendments List generally ends on the last day of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

•Change in Qualification Requirements. The remedial amendment period for a disqualifying provision related to a change in qualification requirements which is on the Required Amendments List generally ends on the last day of the second calendar year following the year the list is issued.

Remedial Amendment Period Transition Rule

The remedial amendment period for disqualifying provisions identified in Revenue Procedure 2007-44 that was set to expire on December 31, 2016, is extended to December 31, 2017, except for a disqualifying provision that is on the 2016 Required Amendments List. The remedial amendment period for a disqualifying provision on the 2016 Required Amendments Lists ends on the last day of the second calendar year that begins after the issuance of the Required Amendments List.

Disqualifying Provisions

The deadline for a plan sponsor to adopt an amendment to an individually designed retirement plan (excluding a governmental plan) with respect to any disqualifying provision is generally the date on which the remedial amendment period (described above) expires, unless otherwise provided by statute, regulations or other guidance.

Discretionary Amendments

The deadline for a plan sponsor to adopt a discretionary amendment (generally, any amendment not related to a disqualifying provision) to an individually designed retirement plan (excluding a governmental plan) is the end of the plan year in which the amendment is operationally put into effect, unless otherwise provided by statute, regulations or other guidance. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment (rather than existing plan terms). This generally is the current rule applicable to the deadline for discretionary amendments under Code Section 401(b) except in the case of amendments that reduce or eliminate benefits.

Required Amendments at Plan Termination

A plan sponsor's termination of an individually designed retirement plan generally ends the plan's remedial amendment period. As a result, retroactive remedial plan amendments or other required plan amendments for a terminating plan must be adopted in connection with the plan termination even if such amendments are not on the Required Amendments List. This means that a plan sponsor should include all required amendments with its Form 5310 filing.

New Annual IRS Lists

Annual Required Amendments List

The IRS and Treasury intend to publish an annual Required Amendments List beginning with changes in qualification requirements that become effective on or after January 1, 2016. The Required Amendments List will establish the date that the remedial amendment period (described above) expires for changes in qualification requirements contained on the list. In general, an item will appear on a Required Amendments List after guidance with respect to that item (including any model amendments) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin, except as otherwise determined at the discretion of the IRS.

Annual Operational Compliance List

Although the deadline for amending an individually designed plan retroactively to comply with a change in plan qualification requirements is the last day of the remedial amendment period (described above), a plan must be operated in compliance with a change in qualification requirements as of the effective date of the change. To assist plan sponsors in achieving operational compliance, the IRS intends to issue an annual Operational Compliance List to identify changes in qualification requirements that are effective during a calendar year. Plan sponsors remain responsible for complying with all relevant qualification requirements, even if the requirement is not included on an Operational Compliance List.

Next Steps for Plan Sponsors of Individually Designed Retirement Plans

In light of the changes made by Revenue Procedure 2016-37, plan sponsors who continue to maintain individually designed retirement plan documents should consider taking the following steps:

•Conduct annual reviews of their plan documents for compliance with the current (and any applicable prior) Required Amendments List and determine whether plan amendments are required, and if so, the applicable remedial amendment period.

• Conduct annual compliance reviews to evaluate compliance with the current (and any applicable prior) Operational Compliance List and determine if any failures need to be corrected in accordance with IRS guidelines.

•If applicable, evaluate the need for and timing of a determination letter request for a new or terminating individually designed retirement plan.

•Update their administrative procedures to monitor compliance with plan document and other qualification requirements in the absence of a favorable determination letter and

consider the impact on the representations made in mergers and acquisitions, in the annual benefit plan audit, and in correcting errors under the IRS's Employee Plans Compliance Resolutions System ("EPCRS") (the IRS should issue guidance on the impact of these changes on EPCRS in the future).

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Social Security Changes Likely Soon

Recently, six members of the House of Representatives, led by Representative Reid Ribble (R – WI), introduced the Save Our Social Security Act (also known as the S.O.S. Act). Key provisions of the Act, with my thoughts, are outlined below. Although the Act may not pass in the near future, it begins to set the template for changes which will be required to keep Social Security afloat.

A higher wage base

A significant provision of the Act is the proposal to expand the maximum wage base Social Security taxes are applied to. In annual increases from now until 2020, the Act would nearly double the maximum compensation subject to Social Security taxation.

This is by far the easiest and most commonly proposed fix to Social Security. It continues to baffle me why Social Security taxes have a wage base limit at all. In the search for new revenues to fund Social Security, this is low hanging fruit.

Delayed full retirement age

The Act proposes moving the age at which recipients can collect a full Social Security retirement benefit from 67 to 69. Reduced benefits will still be collectible at earlier ages, including age 62. Discussed for many years, this is another easy to understand fix. Many Social Security experts believe that the full benefit age needs to be increased soon for demographic as well as financial reasons. Americans are living longer and enjoying better health. As a result, we will all probably need to work longer.

COLA change

A change in the method used to calculate cost of living adjustment (COLA) increases from CPI-W to C-CPI-U. No surprise, the new method is expected to result in lower COLA increases. A minor adjustment overall and one likely to cause very little pain to existing as

well as future recipients.

What else could happen?

The S.O.S. Act charts a course of least resistance in the changes it proposes to keep Social Security solvent. If these changes don't result in a meaningful improvement in Social Security's funding outlook, the following more painful changes may be in the offing:

● Means testing. Most government benefits are subject to some sort of means testing formula to ensure that they are only received by those who truly need them. Social Security benefits are still collectible by all Americans with an eligible work history, regardless of their compensation in retirement. Subjecting Social Security applicants to some sort of means testing seems reasonable and overdue.

● Increases to the payroll tax. It is probably just a matter of time until the payroll tax percentage itself will be increased. This adjustment is most painful to all, businesses as well as individuals.

● Longevity indexing. Since we all can expect to live longer than prior generations, at some point in time it will probably make sense to adjust the benefit we earn through Social Security to that longer life expectancy. The result will be a smaller monthly benefits.

● Incentives to keep working. Most of the proposals for change are of the "stick" variety as opposed to the "carrot". Many experts believe that Social Security taxes should not be deducted from older Americans (e.g.; those age 65 and older) who choose to work to incent them to continue working.

In every employee education session I lead there is at least one employee who asks whether I think Social Security will be around long enough for him/her to collect. My answer has always been the same — worry about something else, Social Security will be there for you! There is nothing I can think of that Americans across all political beliefs, races and genders agree upon more uniformly than the expectation of receiving their Social Security retirement benefits. As a result, I believe our elected representatives will do everything possible to ensure that Social Security is there for us to collect.

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Group Pension Buy-Out Sales Top $1 Billion for Fifth Straight Quarter: LIMRA Secure Retirement Institute Survey

LIMRA Secure Retirement Institute announced today that second quarter 2016 group pension buy-out sales exceeded $1 billion, the fifth consecutive quarter they've surpassed the billion-dollar mark.

"Pension buy-out activity for the first six months of this year is higher than it has been in the last five years," said Michael Ericson, analyst for LIMRA Secure Retirement Institute. "More companies of all sizes are looking to transfer their pension risk which has increased sales activity in the first half of the year."

Traditionally, buy-out sales have had a strong seasonality with most sales occurring in the fourth quarter. Activity in the first six months of 2016 is up 22 percent compared with the first half of 2015. Through the second quarter of this year, 131 plan sponsors have converted their defined benefit (DB) pension plans to group annuity contracts, surpassing the previous high-water mark of 107 contracts sold in the first six months of 2015.

The second quarter results of $1.03 billion are less than the $3.8 billion in sales for second quarter 2015 primarily because of one "jumbo" deal. Last year Kimberly-Clarke transferred its pension into group annuity contracts with two insurance companies. These "jumbo" deals can have a significant impact on sales for the quarter.

Several years of low interest rates and a volatile market have made it difficult for plan sponsors to keep their DB plans properly funded. In addition, the Pension Benefit Guarantee Corporation (PBGC) has significantly increased its premiums and changed to new mortality tables which are less favorable to plan sponsors.

"All of these factors have made DB plans more expensive and burdensome," said Ericson. "That's why an increasing number of companies are transferring their pension risk to an insurer by purchasing a group annuity."

LIMRA Secure Retirement Institute conducts the Group Annuity Risk Transfer Survey each quarter with participation from 13 financial services companies that provide group annuity contracts for this market.

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Facilitating State Efforts to Help Workers Save for Retirement

Today, the U.S. Department of Labor finalized rules enabling states to establish retirement savings programs, while proposing new rules to allow some larger cities to create plans of their own. Today's announcement will ensure that millions more Americans are able to save for retirement at work and better prepare for their golden years.

The president firmly believes Americans should be able to enjoy a secure and dignified retirement after a lifetime of hard work. That's central to middle class economics. While Social Security is and must remain a rock-solid benefit that all Americans can rely on, the fact remains that too many Americans reach retirement age without enough savings to supplement their Social Security checks. In fact, fewer than one-third of individuals ages 65 to 74 have any savings in a retirement account, and those that do have a median savings balance of just $49,000.

This administration has proceeded on two tracks to help ensure that all Americans are prepared for retirement. First, we're protecting workers' savings so that families who have done all the right things can enjoy a dignified retirement. To that end, this spring, we made real progress protecting workers' savings when the Department of Labor finalized rules requiring financial planners to provide advice that is truly in their clients' best interest. These rules will help minimize conflicts of interest that cost savers an estimated $17 billion each year.

Second, we're making it easier for workers to save for retirement in the first place. Right now, about one-third of all workers do not have an opportunity to save for retirement through their employer. Today's final rule facilitating state retirement savings programs fulfills a commitment the president made last year and marks a major step towards ensuring that every American can save for retirement at work.

Eight states – California, Connecticut, Illinois, Maryland, New Jersey, Oregon, Massachusetts, and Washington – have already passed laws creating their own retirement savings arrangements. The states have taken action, even while Congress has failed to move forward on the president's proposals to automatically enroll workers who don't have access to workplace savings plan in an individual retirement account.

Today's rule will clarify the status of existing state efforts, and will enable more states to create their own programs. The Department is also publishing a proposed rule that would allow some larger cities to establish their own retirement savings programs.

These state-level efforts will go a long way toward giving more Americans a secure retirement. For example, in just Maryland and Connecticut alone, almost 1.5 million people who were previously unable to save for retirement at work will now be automatically enrolled in a retirement account. If every state created a retirement savings plan like these, tens of millions more Americans would be able to save for retirement at work.

Today's announcement is another example of this administration's commitment to helping state and local governments support working families in areas where Congress has refused to act. While Congress has failed to raise the federal minimum wage – though it has been almost a decade since the last minimum wage law was passed – 18 states and the District of Columbia have raised their minimum wage since the president called for an increase in 2013. And thanks to today's announcement, more states will be able to take action to help their citizens better prepare for retirement.

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