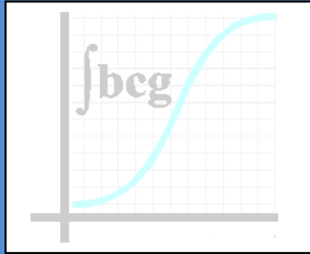

BCG Retirement News Roundup

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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

Wolf takes aim at commission tasked with reviewing pension legislation for public workers

The Wolf administration is moving to close the Public Employee Retirement Commission, which reviews legislative proposals that would affect pension systems for public workers.

When Gov. Tom Wolf signed a partial state budget into law in December, he used a line-item veto to eliminate funding for the commission.

"We are moving forward with the process of shutting down PERC," Jeffrey Sheridan, spokesman for Mr. Wolf, said in an email today.

In a phone interview, Mr. Sheridan said the administration believes the State Employees' Retirement System and Public School Employees' Retirement System already provide thorough actuarial analysis of pension legislation.

"The actuarial analysis provided by PERC is redundant and unnecessary and an expense the commonwealth does not need," he said.

The commission has four employees and one temporary employee, said executive director James McAneny.

Mr. Sheridan said the Office of Administration is working to help employees who want to continue working for the state to find other jobs.

Mr. McAneny said he had not been advised of a plan to close the commission, but noting the line-item veto, he said such a move did not come as a surprise.

"It would require legislation, since our function is assigned by the General Assembly," he said.

He said he would be concerned about the work PERC does in reviewing the thousands of municipal pension plans in the state.

Mr. Sheridan said the administration believes those functions can be performed by the Pennsylvania Municipal Retirement System.

Jennifer Kocher, spokeswoman for Senate Majority Leader Jake Corman, R-Centre, said: "Obviously there's very serious concerns there, especially given their role in municipal pension plans and the payments that need to be made."

Steve Miskin, spokesman for House Republicans, said the administration cannot close PERC without the passage of legislation.

"Unlike an emperor, he cannot just move things around at his whim," Mr. Miskin said.

Mr. Sheridan said legislation is not needed to stop the commission's operations.

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Pew: More public pension fund transparency needed on fees

Public retirement systems need to do a better job making their investment costs more transparent, said a report issued Thursday by the Pew Charitable Trusts.

Pew's public-sector retirement systems project looked at reporting practices of the 73 largest state pension funds, which together have $2.9 trillion in assets, representing more than 95% of all state investment assets, according to the U.S. Census Bureau.

Looking at financial data collected from 2012 to 2014, Pew found a "wide variation" in asset allocation, performance disclosure and reporting of fees. "In many cases, current disclosure policies make it difficult for policymakers, stakeholders and the public to gauge the actual performance of these funds," the report said.

Pew suggested several steps that public pension funds should take to improve transparency, including:

- Adopt fee-reporting standards, such as ones proposed by the Institutional Limited Partners Association;
- Make investment policy statements transparent and accessible;
- Disclose bottom-line performance, both net and gross of fees;
- Include longer-term performance results; and
- Report results by asset class, before and after fees.

More transparency is important now, Pew said, because alternative investments have more than doubled in recent years, representing 25% of allocations in 2013, up from 11% in 2006. Pew defined alternatives to include private equity, hedge funds, real estate and some commodities. In private equity, the treatment of carried interest is "a significant contributor" to

the wide variation in fees reported by the 73 pension funds, Pew said. For all investments, the 73 funds paid more than $10 billion in fees and expenses in 2014, which represents a 30% increase in the past decade, Pew found.

Some public pension funds are better than others in reporting more detailed fees, Pew found, noting that the $28.2 billion South Carolina Retirement Systems, Columbia, and the $9 billion Missouri State Employees' Retirement System, Jefferson City, reported more than just invoiced management fees, and included performance fees.

Among the 73 plans studied, 59 provide online access to investment policies, 27 report 10-year results gross of fees, 13 regularly provide 20-year returns and six provide it by asset class.

With investment returns accounting for an estimated 60% of public pension benefits, "boosting transparency is essential," said the report. "The first steps are to provide bottom line, net-of-fee results because ultimately that's the amount of money that's available for benefits," said Greg Mennis, director of the public sector project, in an interview.

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Policymakers consider 'lockbox' approach for pensions

There's been much talk since last year about a constitutional "lockbox" to prevent future legislatures from pilfering transportation funds for other purposes. The matter may make it onto the voting ballot as early as November.

Now, some policymakers are weighing a similar approach for the state's pension system, which remains among the most underfunded in the country thanks, in part, to past legislatures foregoing annual required contributions (ARC) in lean budget years.

In a recent interview, State Comptroller Kevin Lembo said he wouldn't necessarily support a constitutional amendment, but he's not opposed to other tactics that could force legislators to keep up with annual pension payments, including borrowing money in the form of a pension-obligation bond (POB) with restrictive bond covenants.

The state teachers' pension system used a similar strategy in 2008, issuing a $2 billion POB with covenants that require the state to pay its full ARC each year, which it has done.

The strategy could be replicated for the state employee pension system, known as SERS, which is currently underfunded by $14.9 billion, Lembo said. Such a borrowing would likely be in the range of several hundred million dollars.

Lock the legislature out

"So in the years when the legislature needs $100 million, they would realize pretty quickly" that they couldn't forgo the pension payment to create budget savings, Lembo said. "We can lock them out of that. I'm open to talking about it because of the value it has in locking in good behavior."

Asked for her opinion, State Treasurer Denise Nappier said she is in favor of at least discussing a POB, but that it would require an analysis of whether the returns on invested bond funds would meet or exceed the cost of debt.

"We also must consider the impacts of such a transaction on the state's credit rating and debt levels," Nappier said. "That said, a modestly sized and prudently structured transaction could be a powerful tool if it includes a bond covenant to improve fiscal discipline going forward — as was done with the POBs issued for the Teachers' Retirement Fund in 2008."

Some states, which can usually attract favorable interest rates, have also used POBs as a sort of arbitrage play, investing the borrowed funds and hoping for a higher return in the markets. Lembo and state budget director Benjamin Barnes, however, are cool to that market-timing strategy.

The POB talk comes amid heightened attention on the state's $25.7 billion unfunded pension obligation and the increasing risk of annual retirement contributions swamping the state budget in the not-so-distant future.

Changes to pension funding

Malloy has proposed changes to pension funding that would smooth annual payments but lengthen the payoff schedule. Lembo and Nappier have also released new funding strategies, and they plan to meet with the governor to reach consensus on a path forward.

Lengthening the payoff schedule would mean higher near-term costs. A POB could help the state get over that hump, Lembo said.

While past legislatures failed to sock away enough to meet rising pension costs, the Malloy administration has been making the required ARC payments, which is calculated by actuaries. The annual cost is $1.5 billion, but it's rising thanks to overly optimistic assumptions about stock market returns, lower-than-required contributions and early retirement incentives provided in past years, and a backloaded payoff structure.

Of course, there is a deterrent currently in place if the state fails to make the ARC payment in a given year: It could hurt Connecticut's bond rating, driving up interest rates on state borrowing.

While that is a disincentive for legislators who might want to use some of the money for other programs, Lembo said the POB could be an additional way to build a fortress around the pension funds.

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Treasury Plan for Puerto Rico Favors Pensions Over Bondholders

If it's up to the Treasury Department, public employees in Puerto Rico who were promised pensions could be better off than investors who bought the island's bonds.

A broad plan being put forward by the Treasury Department to ease Puerto Rico's financial crisis would put pension payments to retirees ahead of payments to bondholders — a move that some experts fear could rattle the larger municipal bond market.

The proposal was being driven by evidence that Puerto Rico's pension system is nearly out of money, leaving retirees who are dependent on it financially vulnerable.

"The major problem is, the entire pension system is close to being depleted," said Antonio Weiss, counselor to Jacob J. Lew, the Treasury secretary. "But 330,000 people depend on it. It's unfunded, and they have to be protected."

Shielding retirees from pension cuts, the thinking goes, would not only protect thousands of older residents on the island, but it might also encourage younger retirees to stay there, rather than move to the United States mainland in search of new jobs and incomes.

Out-migration is considered a prime cause of Puerto Rico's financial tailspin, because it shrinks the island's economy, leaving fewer people and fewer dollars to support the crushing debt.

Puerto Rico is said to have about $72 billion of financial debt outstanding, most of it in the form of municipal bonds. By some estimates, it has incurred an additional $43 billion in unfunded pension obligations.

But deciding that pensioners' interests should be put above those of bondholders — if a choice must be made — is not without certain risks.

Some public-finance experts say they fear that if Puerto Rico can renege on promises to pay debts to investors, while sparing retirees, other municipalities might try to do the same, casting

a pall over the larger market in municipal bonds, where American towns and cities have gone for decades to get the money they need to build roads, schools and other public works.

If Puerto Rico gets special treatment, “you have huge contagion risk to the entire municipal market,” Andrew N. Rosenberg, a partner at the law firm Paul, Weiss, Rifkind, Wharton & Garrison, said at a recent gathering of creditor representatives.

Treasury officials said such concerns were unfounded. The framework they are proposing would be designed only for distressed United States territories, like Puerto Rico, and could not be used by states or municipalities on the mainland.

Officials pointed to a report by an investment firm, Nuveen Asset Management, which said, “We believe most institutional investors understand Puerto Rico’s unique situation and the coming debt restructuring will not create widespread credit implications.”

Still, moving public pensions to the top of the stack would infuriate at least some bondholders — especially those who paid close to face value for their bonds years ago, when they were still rated investment grade, and who had expected to hold them to maturity and get all their principal back.

Although the bondholders have often been portrayed as deep-pocketed vultures since Puerto Rico’s debt crisis began, many of them are small investors, themselves trying to save for a comfortable retirement.

“Most Puerto Rican debt is held by individuals,” said Thomas Moers Mayer, a lawyer representing two large mutual fund companies, Franklin Advisers and OppenheimerFunds, which together own about $10 billion in Puerto Rican debt securities. “They are mostly over 65, and they mostly have incomes of less than $100,000 a year. They are not vulture funds. They are your friends and neighbors.”

Some Republican senators — notably Charles E. Grassley of Iowa and Orrin G. Hatch of Utah — whose constituents are among the bondholders, have expressed similar views. Puerto Rico’s debt is unusually widely held because it offered above average yields and interest that was exempt from federal, state and local taxes, no matter where the buyer lived.

Treasury officials have said they are willing to work with Congress to find a suitable way of handling the different categories of creditors.

Financial help for Puerto Rico will be the subject of a hearing on Thursday by the House Committee on Natural Resources. Mr. Weiss is scheduled to be the sole witness.

Any rescue plan would need congressional approval and various committees in the House and Senate are weighing ways to help the island reduce its debt and better manage its economy.

Paul D. Ryan, the Republican speaker of the House, has set a deadline of March 30 for a House version of a bill. A version of Treasury's plan was outlined in a draft bill presented to a Senate committee; it has not been voted on.

The draft, obtained by The New York Times, also calls for a five-member "fiscal reform assistance council" appointed by the president to hold the island to meaningful budgeting, disclosure and fiscal reform practices. The board would have the power to make across-the-board budget cuts if necessary.

Members of Congress, especially Republicans, have expressed concern about whether Puerto Rico has the wherewithal to manage its future finances, even if it gets help in the short term. Credit markets have also been reluctant to invest further in Puerto Rico's bonds without some assurances that the island's finances will be better managed in the years to come.

The idea of an oversight board has rankled residents, however, who say it has overtones of colonialism.

The part of the proposal that gives priority to pensioners has received little attention. Currently, Puerto Rico's laws and Constitution give top priority to general-obligation bonds — the type backed by the government's "good faith, credit and taxing power."

Puerto Rico is not unique in this respect; for decades, the general-obligation bonds of all the states have been marketed as virtually default-proof, safe enough for widows and orphans. The concept was developed after the Civil War, as a way to rebuild investor trust after a number of notorious bond defaults.
Other bonds carry with them varying degrees of legal repayment security. Puerto Rico's debt is extraordinarily complex, but in general, its bonds can be ranked in a hierarchy of eight levels, with general-obligation bonds at the top. The ranking is described in an analysis of the debt by the Center for a New Economy, a nonpartisan research group in San Juan.

Public workers' pensions, the center found, fall on a second hierarchy altogether, which sets priorities for the government's operational disbursements. Here again, however, payments due on general-obligation bonds come first, followed by payments due on legally binding contracts. Outlays for pensions come third.

That means that under existing law in Puerto Rico, if there is not enough money to pay both general-obligation bonds and public retirees' pensions, the money would go to bondholders.

But the Treasury's proposed restructuring framework would change that. It would require that the restructuring plan "not unduly impair the claims of any class of pensioners."

General-obligation bondholders, on the other hand, would get such protection only "if feasible," according to the draft that outlined the plan.

This new legal framework is being created because Puerto Rico, as a United States territory, has no access to bankruptcy laws, where complicated claims by creditors can be worked out in a court under the supervision of a bankruptcy judge.

Puerto Rico has already defaulted on some of its bonds. More payments are due in May and June. Bonds are now nearly impossible to sell, and members of Congress, especially Democrats, as well as financial experts say the island's troubles will become increasingly enormous if some kind of restructuring framework is not approved soon.

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Bill to change state pension system could aid sons of slain Harford deputy

The murders of two Harford County Sheriff's Office deputies earlier this month has prompted the introduction of a bill before the Maryland General Assembly to extend the length of time for paying death benefits from the state pension system to the children of law enforcement officers who die in the line of duty.

House Bill 1581, introduced Monday by Harford County's eight-member delegation, would allow monthly death benefits to be paid to each surviving child until their 26th birthday, instead of 18 as the law currently states, if the officer didn't have a surviving spouse.

The legislation is titled the "Harford County Deputy Sheriff Patrick Dailey Benefits Memorial Act," in recognition of one of the two deputies fatally shot in Abingdon on Feb. 10, the first such violent deaths experienced by the Sheriff's Office in more that 100 years.

Because the bill was introduced after the so-called courtesy introduction deadline, it came in as an emergency measure and was first referred to the House Rules and Executive Nominations Committee, which by Tuesday had referred it to the Appropriations Committee, where a hearing is scheduled for Tuesday, March 1, at 1 p.m. No fiscal impact report had been produced on the bill as of Thursday afternoon.

Senior Deputy Dailey, 52, a 30-year veteran of the Sheriff's Office, and Deputy First Class Mark Logsdon, 43, a 16-year veteran, were killed after Senior Deputy Dailey responded to a call for a suspicious person inside a Panera Bread restaurant and was shot to death by a man police have identified as David Brian Evans, 68. Responding to the call for an officer down, police said, DFC

Logsdon was fatally shot by Evans in a nearby parking lot. Other responding deputies then shot Evans to death.

DFC Logsdon is survived by three children and his wife, Jennifer, who is eligible to receive a state pension system benefit for the remainder of her life.

Senior Deputy Dailey is survived by two sons, Bryan, 20, and Tyler, 17. Their father was divorced many years ago from the sons' mother, who remarried, and both sons were living with their father at the time of his death, according to Del. Rick Impallaria, the Harford delegation chairman. Impallaria knew the senior Dailey from their days as students at Joppatowne High and is a close friend of the late deputy's brother-in-law. Tyler Dailey is a high school senior, and both sons, as was their father, are active in the Joppa-Magnolia Volunteer Fire Company.

Impallaria said he had HB-1581 drafted when he realized the two Dailey sons would receive hardly anything in the way of death benefit payments from Maryland's Law Enforcement Officers' Pension System under its current rules, which are codified in state law. Before introducing the bill, he caucused briefly with the other seven Harford delegates, whom he said all agreed to sponsor it as a group.

"These sons were dependent on their father, who was taken away from them," he said Wednesday. "They lived in his house. Under the current law, Tyler would receive about three months [of death benefits from the state system], Bryan wouldn't get anything. I felt this wasn't right under these circumstances."

The legislation would apply to any children of a parent, if there is not a surviving spouse, who died in the line of duty, retroactive to Feb. 1, 2016. Impallaria said he is confident the retroactive provision will pass legal muster. The cutoff at 26 years of age was selected, he said, because most health insurance plans allow dependent children to be on their parents' plan until they turn 26.

Under the current law, if there is no surviving spouse, the children of an officer who dies in the line of duty are entitled to a benefit of two-thirds of the officer's average final compensation, divided equally among the children, and payable monthly. When each child reaches 18, his or her payments stop. The law also provides for payments to children, if the officer's spouse dies before the youngest reaches 18.

Dean Kenderdine, the state retirement and pension system's executive director, said the system's board of trustees was made aware HB-1581 was going to be introduced when the trustees held their regular monthly meeting on Feb. 16.

Kenderdine said the pension board does not take a position on legislation that affects the benefits structure of the system, unless it presents administrative challenges to the agency.

Prior to requesting that the bill be drafted, Impallaria said he discussed the situation with one of the senior staff at the Sheriff's Office, where Impallaria's brother, Tim, is a deputy. He said he has not discussed the legislation with either Bryan or Tyler Dailey, nor had he said anything about it to the media prior to being interviewed by The Aegis.

"I didn't want to use this tragedy to be seen as promoting something I was doing; this is not what this is about," he said. "These boys don't have a dad any more. Others could be in similar situations in the future."

Both families are eligible for survivor death benefits from the federal and state governments.

The federal Department of Justice Public Safety Officers Benefits Program provides a one-time benefit of $333,604 to the family of a law enforcement officer killed in the line of duty, according to the Officer Down Memorial Page, www.odmp.org. The Maryland Department of Public Safety and Corrections provides a Maryland State Death Benefit Payment of $128,500, according to the same website.

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Private Sector

DOL Focuses Attention on Benefit Payment Practices of DB Plans

The US Department of Labor (DOL) is rolling out an initiative focused on the investigation of benefit payment practices of the defined benefit plans of a number of Fortune 500 companies. The investigations are concentrated on plan procedures in three key areas: (i) locating missing participants, (ii) informing deferred vested participants that a retirement benefit is payable, and (iii) commencing benefit payments when the participant reaches age 70½. The initiative was launched out of the Philadelphia regional office, but the DOL has indicated that it intends to expand the investigation further.

As this initiative continues to build momentum (and gain publicity), plan sponsors and administrators of defined benefit plans should consider whether a review of plan procedures for locating participants and paying benefits would be timely.

Overview of the DOL's Initiative

The issue of benefit payments—and in particular the payment of benefits at the participant's required beginning date (that is, in connection with the participant reaching age 70½)—has long been a focus of Internal Revenue Service retirement plan audits. By contrast, the DOL's interest in this topic is fairly new. According to reports, this interest stems from the influx of inquiries that the DOL receives each month after the Social Security Administration mails Potential Private Retirement Benefit Information Notices to recipients regarding pension benefits that might be owed.

According to the DOL, it has discovered, among other things, that (i) some plans under investigation have procedures for locating missing participants, but the procedures are not being followed in practice; and (ii) at least a few of the plans seemed to have significant recordkeeping problems and could not verify the age of their participants, with the obvious consequence that the plans could not pay participant benefits when required. A representative from the DOL has said that investigators have found numerous problems with plan records, such as individuals who appear to be over 100 years old with birthdays identified by what are clearly "plug" dates. So far, the DOL has identified more than $500 million in unpaid pension benefits that are owed to participants over the age of 70½.

While it's difficult to verify the accuracy of the DOL's claims, corporate transactions, plan mergers, plant closings, and accidental loss or destruction of files are just some of the reasons that plans regularly confront the problems of missing participants/beneficiaries and inaccurate or incomplete plan records. However, as the DOL has emphasized, plan administrators have a

fiduciary duty to maintain adequate records to determine plan benefits and to make a diligent effort to locate missing participants when benefits are due to be paid.

Considerations for Plan Sponsors and Administrators

In light of the DOL investigations and the increased focus on these issues, it may be a good time to revisit plan procedures for addressing both missing participants and gaps in plan records. Plan sponsors and administrators may consider conducting a high-level review of plan procedures relating to the location of missing participants and the adequacy of participant records or, more proactively, a targeted undertaking such as a missing participant search and/or a demographic data clean-up initiative.

Plan sponsors and administrators may want to consider addressing these issues as part of a more comprehensive legal audit of their plans, which could cover both administrative and fiduciary obligations (we have undertaken such audits for many clients). Regardless of the actions taken, fiduciaries should take care to memorialize their activities and document efforts to fulfill their administrative duties. Once written procedures are in place, plan fiduciaries should monitor whether they are being followed in practice.

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Trends in employer costs for defined benefit plans

Defined benefit pension plans can provide financial security to retirees who receive the monthly benefit payments throughout their retirement. Defined benefit plans are pension plans that provide guaranteed income during retirement, and are often based on a formula that considers years of service and a percentage of a worker's salary. Employers have traditionally offered defined benefit plans to their employees, but the high costs associated with these plans have caused many employers to switch to alternate retirement plan options.[1] In March 2015, costs for defined benefit plans for private industry employers were approximately 61 cents per employee hour worked, on average. However, when data are averaged only by the employers that offer these plans, the costs are much higher. In this Beyond the Numbers article, we'll explore how costs fluctuate by industry, occupation, establishment size, and region, and review trends in costs for employees with access to these plans from 2008 to 2015.

Costs for defined benefit plans are collected by the Bureau of Labor Statistics through the National Compensation Survey. For defined benefit plans, the survey collects data on premiums, administration fees, and dollar amounts placed by employers into pension funds. These amounts may be from cash, stock, corporate bonds, and other financial instruments. For private industry estimates, the National Compensation Survey does not collect actuarial estimates or actual costs of pension benefits paid to retirees.

Benefit costs collected by the survey are converted to hourly rates by dividing the annual costs by the annual hours worked, thus producing the employer costs for employee compensation estimates. These estimates measure compensation costs in cents per hour worked for a specific point in time (for example, the March reference period). The estimates include all employees regardless of access to benefits; this calculation produces lower costs than when eligibility is considered. Benefit incidence rates can be applied to benefit costs estimates to obtain a measure that shows how providing access to a benefit may affect an employer's hourly labor costs. Costs for only those employees with access to a benefit (called access costs) can be derived by dividing the benefit costs estimate by the benefit access rate.[2] For example, if the benefit costs were 48 cents per employee hour worked and 12 percent of employees had access to the benefit then the costs for employees with access would be $0.48 ÷ 12% = $4.00 per employee hour worked.[3]

Table 1. Average costs to employers per employee hour worked for providing access to defined benefit plans by industry, private industry, March 2008–15

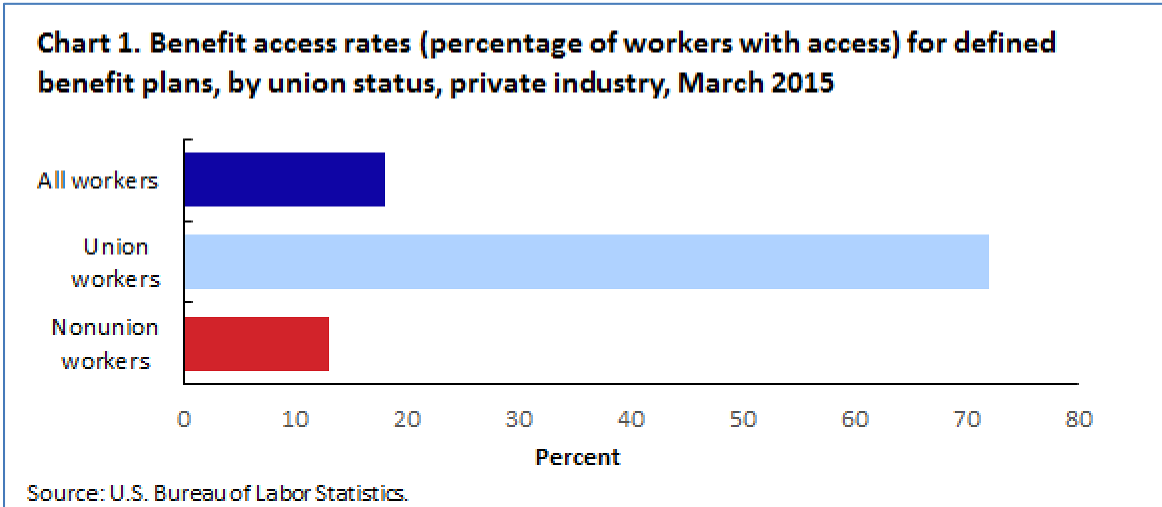
Characteristic	Year							
	2008	2009	2010	2011	2012	2013	2014	2015
All goods-producing industries	$2.73	$2.74	$2.90	$3.18	$3.04	$3.28	$4.00	$4.48
Construction	5.61	5.63	5.94	6.88	6.59	7.18	7.00	6.20
Manufacturing	2.00	1.91	2.00	2.28	2.00	2.15	3.04	3.52
All service-providing industries	1.79	1.68	1.74	1.78	2.06	2.24	2.29	3.00
Trade, transportation, and utilities	1.77	1.59	2.00	1.95	2.00	2.32	2.32	2.42
Information	2.14	1.78	1.26	1.30	3.35	3.43	1.32	8.00
Financial activities	1.31	1.28	1.47	1.55	1.39	1.17	1.10	1.19
Professional and business services	2.92	2.85	2.67	2.75	2.83	3.08	3.43	4.07
Education and health services	1.29	1.29	1.35	1.50	1.44	1.56	2.24	2.50
Leisure and hospitality	0.67	0.67	0.67	1.33	1.33	2.50	2.33	2.67
Other services	1.88	2.44	2.70	2.50	4.67	5.89	7.63	6.67

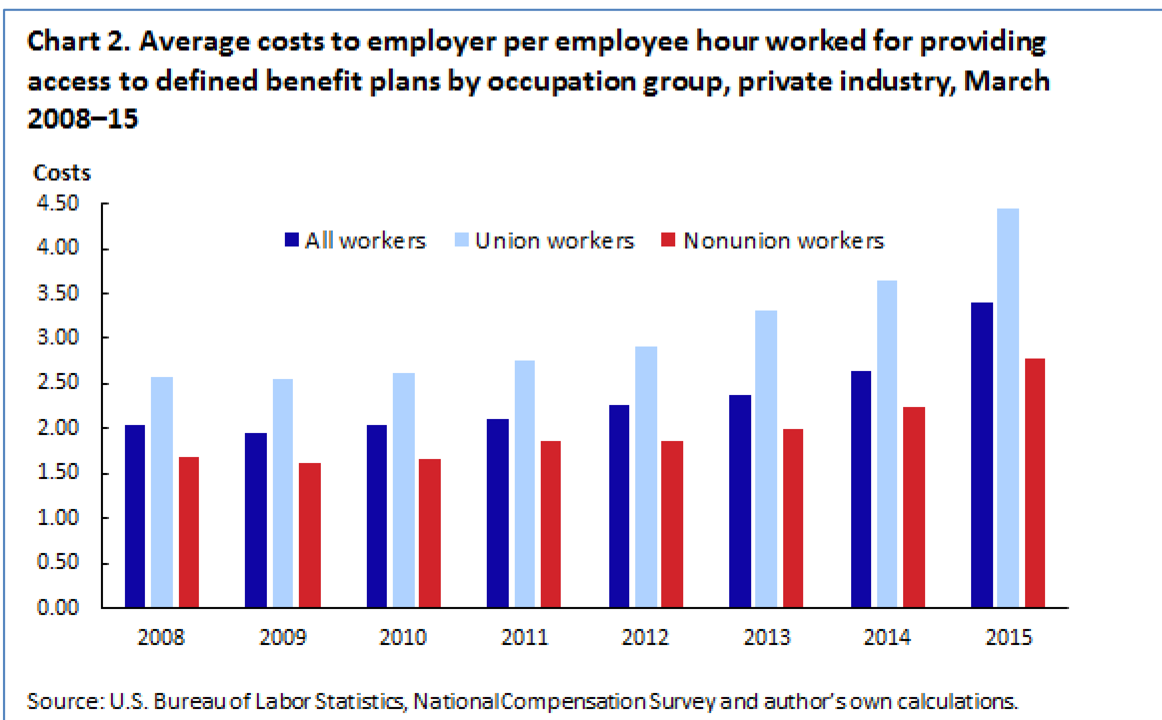
Source: U.S. Bureau of Labor Statistics, National Compensation Survey and author's own calculations.

Unionization

Employees covered by unions tend to have greater access to employee benefits, including retirement plans. Therefore, unionization may affect an employer's costs for defined benefit plans. Higher unionization increases the likelihood that employees will have access to benefits

such as defined benefit plans. Data show that 72 percent of union workers had access to defined benefit plans in March 2015, compared with 13 percent of nonunion workers with access. (See chart 1.) However, the access costs for union workers were $4.44 in March 2015, compared with $2.77 for nonunion workers. For all workers combined, employer costs for employees with access to defined benefit plans were $3.39 in March 2015, which is an increase from $2.05 in March 2008. (See chart 2.) This indicates that other factors, such as the differences in the generosity of the plan and funding, may contribute to increased costs.





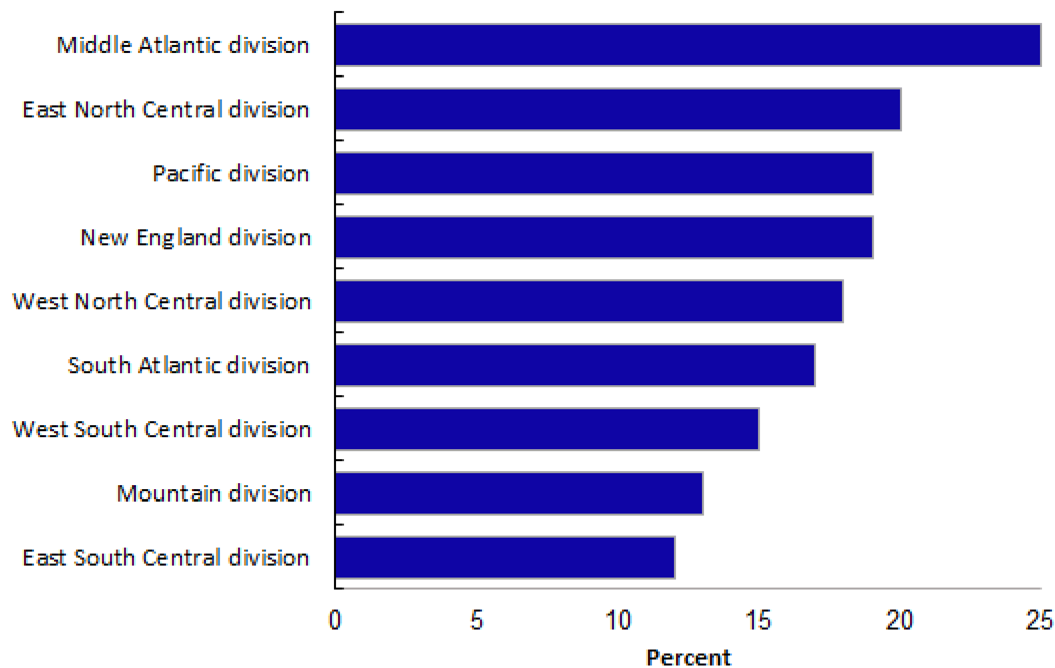
Among the industry sectors with a union presence in 2015, higher levels of representation were found within transportation and utilities (20 percent), construction (14 percent), and manufacturing (10 percent).[4] However, only 7 percent of the private industry as a whole had union representation in 2015. From the higher unionized industries in 2015, transportation and utilities employed 5.7 million workers, construction employed 7.1 million, and manufacturing employed 14.5 million workers.[5] The breakdown of the trade, transportation, and utilities sector shows a strong union presence in transportation and utilities, and a smaller union presence in retail and wholesale trade. However, more people are employed in retail and wholesale trade and therefore it represents a larger portion of the trade, transportation, and utilities sector. (See table 2.)

Table 2. Total employed and percentage represented by unions, private industry, 2015

Industry	Total number of employed people	Percentage of the employed represented by unions
Private industry	113,152,000	7
Transportation and utilities	5,722,000	20
Transportation and warehousing	4,765,000	20
Utilities	957,000	22
Construction	7,109,000	14
Manufacturing	14,547,000	10
Wholesale and retail trade	18,798,000	5
Wholesale trade	3,346,000	4
Retail trade	15,452,000	5

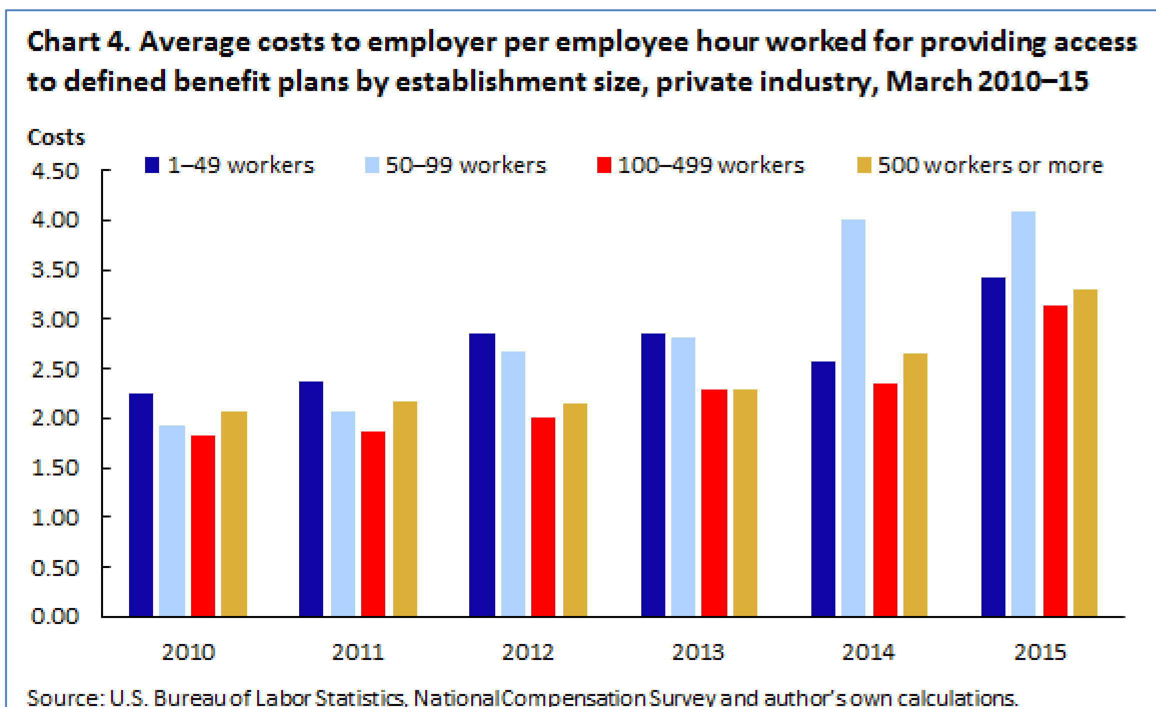
Source: U.S. Bureau of Labor Statistics.

States in the Middle Atlantic and Pacific census divisions had union membership rates that were higher than the national average (11.1 percent) in 2015.[6] States in the East and West South Central divisions had rates lower than the national average. The states with the largest numbers of union members were California (2.5 million) and New York (2 million).[7] Data show that 25 percent of workers in the Middle Atlantic had access to defined benefit plans in March 2015, compared with 13 percent of workers who had access in the Mountain division. The South region, which consists of the South Atlantic, West South Central, and East South Central divisions, had relatively low levels of access to pension plans despite being the most populated region in the country. (See chart 3.)



Costs by establishment size

The costs for providing access to defined benefit plans do not necessarily increase as employer's establishment size increases. Chart 4 shows that costs were at $4.08 for establishments with 50 to 99 workers in March 2015, compared with $3.14 for establishments with 100 to 499 workers. This is an increase from $1.93 for establishments with 50 to 99 workers and an increase from $1.83 for establishments with 100 to 499 workers in March 2010. Data show relative stability in the change in costs for establishments with 500 or more workers.



As mentioned earlier, the Middle Atlantic census division has above-average unionization rates and high levels of access to defined benefit plans. Substantial changes in access costs have been recorded for establishments with 50 to 99 workers and goods-producing industries. In addition, goods-producing industries have been shown to account for higher levels of unionization in 2014, even though unionization rates were on the decline.[8]

Generosity and funding

Employers typically pay monthly premiums for benefits such as health insurance, but defined benefit plans are different. Employers have some latitude in deciding when to make payments, although they still must follow legal and accounting guidelines and requirements. Required employer contributions for defined benefit pension plans may fluctuate depending on a company's investment returns. In defined benefit plans, those responsible for managing the plan must act in the interest of plan participants. Therefore, certain investments are restricted by regulation.[9] For example, a large percentage of funds cannot be invested in a company's own stock. The investment performance of the pension fund plays a role in determining the amount and frequency of employer contributions, data about which are collected through the National Compensation Survey. When plans are underfunded, employers have to catch up and may make additional contributions. When plans are overfunded, employers might not make regular contributions. If a plan earns a rate of return that is equal to or greater than the rate of return promised to retirees, then the plan may become fully funded without additional contributions made by the employer.[10]

More generous plans have higher associated costs. Employers may offer both a defined benefit plan and a defined contribution savings and thrift plan to provide more generous retirement benefit to their employees. For defined contribution plans, an employee usually contributes a percentage of his or her salary to an individual account with a savings and thrift plan, and employers may offer to match an employee's contribution up to a set maximum amount. These activities promote retirement saving as employees increase their retirement savings with additional funds from their employer. More generous plans contribute larger amounts in relation to employee contributions. Other factors that may influence employer contributions include how long an employee has worked for the company and whether the employer chooses a flat rate or a variable rate when matching the employee's contribution.

Traditional defined benefit plan types use different formulas to calculate the annuity payment. One formula plan type provides retirees with an annuity based on a predetermined percentage of their final earnings. Another formula uses a percentage of wages earned throughout an employee's entire career at the establishment. A final formula calculates an annuity payment by multiplying the years of service by a specified dollar amount. In addition, employer-contribution formula plans vary based on the policy set forth by employers regarding their specified contribution within the formula.

Nontraditional defined benefit plan types include cash-balance and pension-equity plans. Cash-balance plans promise an employer contribution equal to a percentage of each year's earnings and a rate of return on that contribution, whereas the traditional defined benefit plans typically promise a flat dollar amount.[11] A pension-equity plan provides an annuity benefit in terms of a current lump-sum value determined by providing a schedule of percentages that are accumulated throughout the career of the retiree. Accrual rates may vary based on the employee's age and length of service.[12]

The costs for defined benefit plans of union workers tend to be higher than those for nonunion workers. In March 2014, data show that 91 percent of union workers participated in a traditional pension plan, compared with 52 percent of nonunion workers. In contrast, 48 percent of nonunion workers participated in a nontraditional plan, compared with 9 percent of union workers. Both union and nonunion workers participate in plans with a formula that calculates annuities using the percentage of final earnings; however, plans using a formula that multiplies years of service by a specified dollar amount are shown to have 51 percent of union workers participating, compared with 21 percent of all workers combined. (See table 3.)

Table 3. Percentage of workers participating in defined benefit plans: select detailed provisions, private industry, March 2014

Type of plan	All workers	Union workers	Nonunion workers
Traditional defined benefit plan	67	91	52
Percent-of-final-earnings formula	34	27	39
Percent-of-career-earnings formula	8	–	10
Dollars-times-year formula	21	51	–
Employer-contribution formula	4	–	–
Nontraditional defined benefit plan	33	9	48
Cash balance plan	30	8	43
Pension equity plan	3	–	5

Note: Dash indicates data not available or not applicable.

Source: U.S. Bureau of Labor Statistics.

Eligibility

Eligibility and features of a plan also affect participation and therefore costs. For example, an employee cannot participate in a defined benefit plan if it is frozen to particular employees, making them ineligible for the benefit. Frozen defined benefit plans are closed to employees not previously participating, or limits are placed on future benefits for some or all active participants. Some frozen plans may no longer allow participants to accrue benefits. Others may change the prospective benefit formula to limit future accruals.[13] A soft freeze means that a plan is closed to new entrants, but benefit accruals continue for current participants. A hard freeze indicates that a plan is closed to new entrants, and benefits are no longer being accrued for current participants.[14] To reduce costs, employers may freeze plans and provide less generous plan provisions, benefits, and features.

Conclusion

Many factors influence costs to employers that provide access to a defined benefit plan to employees. Administrative aspects, such as policies surrounding a specific plan (generosity, investment, eligibility, etc.), greatly influence the price employers pay for these plans. Such information is employer-specific and may be difficult to collect. Unionization is a useful way to look at the trends in pension costs and access. Data show that lower unionization levels decrease relative access to defined benefit plans, and as the percentage of workers with access decrease, the costs to employers for these plans increase moderately.

[1] "Retirement costs for defined benefit plans higher than for defined contribution plans," *Beyond the Numbers: Pay and Benefits* (U.S. Bureau of Labor Statistics, December 2012), www.bls.gov/opub/btn/volume-1/pdf/retirement-costs-for-defined-benefit-plans-higher-than-for-defined-contribution-plans.pdf.

[2] Thomas G. Moehrle, John L. Bishow, and Anthony J. Barkume, "Benefit Cost Concepts and the Limitations of ECEC Measurement," *Monthly Labor Review* (U.S. Bureau of Labor Statistics, July 2012), www.bls.gov/opub/mlr/cwc/benefit-cost-concepts-and-the-limitations-of-ecec-measurement.pdf.

[3] Significance testing for access costs was unable to be conducted for this paper as relative standard errors specifically for access costs are not available. The National Compensation Survey provides relative standard errors for cost estimates, as well as for incidence rates. However, relative standard errors are not provided for the calculated estimate of access costs as used in the following comparisons.

[4] "Union affiliation," U.S. Bureau of Labor Statistics, http://www.bls.gov/news.release/union2.t03.htm.

[5] "Industries at a glance," U.S. Bureau of Labor Statistics, www.bls.gov/iag/home.htm.

[6] The Middle Atlantic division consists of New Jersey, New York, and Pennsylvania. East North Central division consists of Illinois, Indiana, Michigan, Ohio, and Wisconsin. Pacific division consists of Alaska, California, Hawaii, Oregon, and Washington. New England division consists of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. West North Central division consists of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. South Atlantic division consists of Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, Washington DC, and West Virginia. West South Central division consists of Arkansas, Louisiana, Oklahoma, and Texas. Mountain division consists of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. East South Central division consist of Alabama, Kentucky, Mississippi, and Tennessee.

[7] "Union Members Summary," U.S. Bureau of Labor Statistics, www.bls.gov/news.release/union2.nr0.htm.

[8] "Union membership rate in private industry was 6.6 percent in 2014," U.S. Bureau of Labor Statistics, www.bls.gov/opub/ted/2015/union-membership-rate-in-private-industry-and-public-sector-in-2014.htm.

[9] William Wiatrowski, "Changing landscape of employment-based retirement benefits," *Monthly Labor Review* (U.S. Bureau of Labor Statistics, September 2011), www.bls.gov/opub/mlr/cwc/changing-landscape-of-emplo yment-based-retirement-benefits.pdf.

[10] Kenneth R. Elliott and James H. Moore, Jr., "Cash Balance Pension Plans: The New Wage," *Compensation and Working Conditions* (U.S. Bureau of Labor Statistics, Summer 2000), www.bls.gov/opub/mlr/cwc/cash-balance-pension-plans-the-new-wave.pdf.

[11] Ibid.

[12] L. Bernard Green, "What is a Pension Equity Plan," *Compensation and Working Conditions* (U.S. Bureau of Labor Statistics, October 2003), www.bls.gov/opub/mlr/cwc/what-is-a-pension-equity-plan.pdf.

[13] "'Frozen' defined-benefit plans," *Program Perspectives* (U.S. Bureau of Labor Statistics, April 2010), www.bls.gov/opub/btn/archive/program-perspectives-on-frozen-defined-benefit-plans-pdf.pdf.

[14] Scott F. Curtin, "Alternatives to frozen defined benefit pension plans," *Monthly Labor Review* (U.S. Bureau of Labor Statistics, August 2009), www.bls.gov/opub/mlr/cwc/alternatives-to-frozen-defined-benefit-pension-plans.pdf.

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Fewer Retirees are Living Alone

Men are living longer, so women are less likely to become widows.

A job outside the home provides many opportunities to make friends and socialize, but those social opportunities often disappear when you retire. With few reasons to leave the house, loneliness is a commonly felt emotion during the retirement years, especially once a spouse

passes away. But recent research indicates that a smaller share of seniors will be spending their retirement years alone.

The proportion of people age 65 and older living alone increased dramatically from 6 percent in 1900 to 29 percent in 1990, according to a recent Pew Research Center analysis of Census Bureau data. However, over the past 25 years the share of older adults living alone declined by 3 percentage points to 26 percent in 2014.

It is primarily older women who live alone. Women tend to live several years longer than men. They comprise 69 percent of the 12.1 million older Americans living alone, but this is down from 79 percent in 1990.

The life expectancy of men has recently been increasing faster than that of women and narrowing the longevity gap. The proportion of women 65 and older living alone declined from 38 percent in 1990 to 32 percent in 2014. The share of older men living alone actually increased from 15 percent to 18 percent over the same time period. "An increase in life expectancy, especially among men, has made it more likely that older women would be living with their spouses rather than as widows," according to the Pew report.

A recent Urban Institute study observed a similar trend. The analysis found that, due to a shrinking gender gap in longevity, women are becoming less likely to outlive their husbands, and there is a smaller proportion of widows in the older population. The Urban Institute projects that older women will be more likely to live with a spouse in 2060 than they were in 2000. Nonetheless, they expect that about half of women will spend at least 10 years without a spouse after age 65 over the next 50 years.

Many older adults are choosing to live alone. A 2014 Pew Research Center survey of 1,692 adults found that, if they could no longer live on their own, 61 percent would prefer to stay in their own home and have someone care for them there. Far fewer adults want to move into an assisted living facility (17 percent), reside with a family member (8 percent) or relocate to a nursing home (4 percent). The proportion of older Americans living in nursing homes or group quarters at age 85 or older has declined from 24 percent in 1990 to 11 percent in 2014, Pew found.

But living alone is often more expensive than living with others. Single seniors only have one Social Security check coming in instead of two, and there's no one to split expenses with. The Pew survey found that people 65 and older who are living alone are more likely to have difficulty covering basic expenses. Only a third of older adults living alone say they live comfortably, compared to half of people the same age who live with others. "Your financial security is much greater when you are married than when you are living alone," says Richard Johnson, a senior fellow and director of the program on retirement policy at the Urban

Institute. "Your expenses don't decline that much when you lose a spouse, but you lose that Social Security check and you could potentially lose a pension check."

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United States: UPDATED: DOL Releases 2015 Form 5500 Including New IRS Compliance Questions

In December 2015, the Department of Labor released the 2015 version of the Form 5500, the annual report which must be filed by certain employee benefit plans subject to ERISA. Three of the Schedules to the 2015 version include new IRS compliance questions for retirement plans. The IRS has recently announced that because these questions were not approved by the Office of Management and Budget when the Forms 5500 were published, the questions should not be completed for the 2015 plan year. In this updated client alert, we discuss why employers who sponsor retirement plans will want to review these questions now even though they should not complete them for the 2015 plan year.

I. The New Questions
The new questions are found on Schedule H (Financial Information), Schedule I (Financial Information - Small Plans) and Schedule R (Retirement Plan Information).
Schedules H and I now address additional issues related to the plan's financial transactions:
Whether the plan incurred unrelated business taxable income. Whether in-service distributions were made during the plan year. The name and phone number of the plan's trustee or custodian.
Schedule R further addresses the plan's satisfaction of certain qualification requirements under the Internal Revenue Code:
How the plan satisfies the applicable coverage and nondiscrimination tests. Whether and when the plan has been amended for required tax law changes. The date of the plan's last favorable determination, opinion, or advisory letter. Whether the plan is maintained in a U.S. territory.

II. Steps Employers Can Take Now
As noted above, the IRS has recently stated that the new questions should not be completed for the 2015 plan year. Nonetheless, reviewing and answering them now, even if only internally and informally, can serve at least two purposes for employers who sponsor retirement plans.
The new questions can serve as a "mini-audit" which may identify issues that can be addressed either through self-correction or through a formal submission to the IRS Employee Plans Compliance Resolution System prior to any IRS-initiated enforcement action. Although the scope of any IRS audit need not be limited to the new questions, they can nonetheless provide a guide to the types of issues that might arise on audit.

This client alert has discussed how employers can make use of the new questions in advance of any requirement that they be formally answered on Form 5500.

This article is designed to give general information on the developments covered, not to serve as legal advice related to specific situations or as a legal opinion. Counsel should be consulted for legal advice.

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Proposed Amendments to Code § 401(a)(4) Regulations Offer Relief for Closed Plans, Discourage QSERPs, and Ease Combined Testing Rules

[Nondiscrimination Relief for Closed Defined Benefit Pension Plans and Additional Changes to the Retirement Plan Nondiscrimination Requirements, 26 CFR Part 1, 81 Fed. Reg. 4976 (Jan. 29, 2016)]

The IRS has proposed amendments to the Code § 401(a)(4) nondiscrimination regulations that would, among other things, modify the cross-testing and combined defined benefit and defined contribution (DB/DC) testing rules and add a reasonable business classification requirement for some amounts testing. As background, Code § 401(a)(4) sets forth the general nondiscrimination requirement that a plan's contributions, benefits, and other features must not disproportionately favor highly compensated employees (HCEs). (The nondiscrimination rules governing 401(k) plans are a subset of these general nondiscrimination requirements.) While the proposed amendments would primarily provide relief for benefits under or related to certain "closed" defined benefit plans, the proposal includes changes that would affect defined contribution plans (including 401(k) plans) that use cross-testing or combined testing for their profit-sharing contributions (whether or not the employer has a closed plan) and tighten the amounts testing rules to discourage qualified supplemental executive retirement plans (QSERPs). Here are highlights affecting defined contribution plans:

• General Test Rate-Group Limitation Would Affect QSERP Design. Profit-sharing contributions that do not satisfy a safe harbor are considered nondiscriminatory if they pass an objective test, known as the "general test," which applies the coverage testing rules to rate groups based on each HCE's allocation rate. The purely mathematical nature of the general test has led to plan designs that take advantage of low ratio percentage minimums to provide individualized benefits for HCEs. The proposed amendment would allow minimums lower than 70% to be used only when the allocation formula uses a reasonable business classification based on bona fide objective criteria, making it more difficult for QSERPs (and other individualized designs) to pass.

• Cross-Testing and Defined Benefit Replacement Allocations (DBRAs). Under cross-testing, profit-sharing contributions are "converted" to defined-benefit-type accrual rates for testing purposes (see our article). Generally, to be eligible for cross-testing, a plan must satisfy one of three thresholds: The plan must have broadly available allocation rates, provide age-based allocation rates that rise gradually, or provide a minimum gateway allocation to each non-HCE. The proposed regulations would allow more DBRAs to be disregarded when determining broadly available or age-based allocation rates, in part by adding a rule that would end minimum coverage testing of the DBRA group five years after the related defined benefit plan closes.

• Combined DB/DC Testing: Additional Options. Combined DB/DC plans must satisfy a threshold to cross-test accrual rates. One alternative is a minimum aggregate allocation gateway similar (though not identical) to the gateway used for regular cross-testing. The proposed regulations would make it easier for DB/DC plans to satisfy the gateway by expanding an averaging rule (with certain caps) for determining non-HCE allocations and allowing an average of matching contributions actually made for non-HCEs (up to a certain amount) to be counted. The proposal would also allow a DB/DC plan to avoid the gateway either by determining equivalent benefits using a lower interest rate of 6% or, if the DB/DC plan includes a closed plan, by relying on a special five-year testing rule.

• Benefits, Rights, and Features. Qualifying benefits, rights, and features for grandfathered participants in a closed plan, including matching contributions that are DBRAs, would get an indefinite pass on benefits-rights-and-features testing after the fifth anniversary of the plan's closure date if they satisfy specified consistency, five-year testing, and amendment requirements. [EBIA Comment: The enhanced matching contributions, however, must be included in the plan's actual contribution percentage (ACP) test and would likely preclude using an ACP safe harbor design.]

EBIA Comment: Plan sponsors whose 401(k) plan designs require cross-testing or combined testing under Code § 401(a)(4) for their profit-sharing contributions, have related closed plans, or offer QSERPs will want to consult their benefit experts about these proposed amendments. Many of the proposals can be applied for plan years beginning on or after January 1, 2014. However, the proposed changes to DB/DC plan testing relating to averaging allocation rates, taking credit for average matching contributions, and the 6% interest-rate gateway alternative cannot be applied until the rules are finalized. For more information, see EBIA's 401(k) Plans manual at Sections IX.B ("Matching Contributions"), XX.B ("Code § 401(a)(4): Basics"), and XX.F.2 ("Cross-Testing: Amounts Testing on a Benefits Basis").

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