# BCG Retirement News Roundup

May 2018 Volume 7, Issue 5

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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.

## Inside This Issue

### Public Sector/Government Plans



### Private Sector

# Public Sector/Government Plans

## Phil Murphy takes action on bill giving police, firefighters control over pensions

Gov. Phil Murphy said Thursday he's ready to hand over control of police and firefighters' pensions -- but only if state lawmakers agree to some minor changes to the controversial spinoff.

The governor conditionally vetoed the bill (S5) on Thursday, calling for "technical changes" to protect the pension fund and New Jersey taxpayers.

Police and fire unions in the state have long desired to divorce their more healthy pension fund from the much weaker funds for teachers and other state and local public workers.

The unions have feared lawmakers might someday pool assets to shore up those ailing funds and have disagreed with the state's investment strategy, namely its push into high-cost hedge funds, and watched as insufficient state contributions lifted unfunded liabilities.

In a message accompanying the conditional veto, Murphy said the unions are "rightly frustrated."

"I certainly sympathize with the motivations underlying the bill, which comes in response to years of partial and deferred state pension payments and mounting unfunded liabilities," the Democratic governor wrote.

Patrick Colligan, president of the Policemen's Benevolent Association, said the union has negotiated with Murphy over and agreed to the recommendations.

State Senate President Stephen Sweeney told NJ Advance Media the Legislature will adopt Murphy's suggestions formally on June 7.

It's taken two years for the union to wrest control of the Police and Firemen's Retirement System from the state, and it will be another year before the transfer is complete.

Currently, the fund is managed by the state Division of Pensions and Benefits while the

State Investment Council and Division of Investment direct the investments of its billions of dollars in assets.

A 12-member board of active and retired police and firefighters as well as representatives of state and local government will take over those functions.

"We have a lot of work to do, setting up an executive director and a board and getting this off the ground," Colligan said Thursday. "I'm excited to finally have no one to blame but ourselves. I'm tired of sitting back and watching."

The police and firefighters' pension system is funded through contributions from the state, local governments and employees.

The portion funded by counties and municipalities, which are required to make full contributions annually, is 73.1 percent funded, according to the state's statutory funding data. The smaller portion funded by the state, which has skipped or shorted contributions for more than two decades, is 41.8 percent funded.

While the bill gives the board authority to increase or cut retirement benefits and raise or lower employee contributions, it could only do so in consultation with actuaries and with support from eight board members.

Among Murphy's recommendations are one that would keep the fund's $26 billion in assets with the state Department of Treasury, rather than requiring the state to immediately divest and deposit those funds with the board of trustees.

Under another proposed change, Murphy wants the fund to use the same assumed rate of return for investments as the rest of the pension system. The bill would have allowed the board to set its own rate.

The state uses the assumed rate of return to calculate how much money state and local governments will need to pay our benefits to active and retired workers.

Former Gov. Chris Christie, a Republican, vetoed similar legislation last spring, saying it lacked adequate safeguards for taxpayers. While the state would be relinquishing management of the fund, state and local taxpayers would still have to pick up the tab if it goes south.

And while the bill had broad support in the Legislature, it also had a vocal opposition.
The state's League of Municipalities feared local government officials wouldn't have

enough say on a board that has the power to force higher employer contributions.

And like Christie, Sen. Declan O'Scanlon, R-Monmouth, warned the bill was flawed and dangerous. But he praised Murphy for making the same adjustments he'd suggested, saying the conditional veto shows "a genuine concern for taxpayers."

"I am glad that the governor heard our voices and did not capitulate to irresponsible union demands," O'Scanlon said.

Michael Darcy, executive director of the league, also thanked Murphy for boosting protections for employers, but it had hoped for even stronger safeguards.

"We are reviewing the conditional veto for its full impact but it is apparent that, at the very least, the governor's recommendations move the bill in the right direction," Darcy said in a statement.

Colligan has said the unions' goal is not to pad their pensions but to see the system to full funding.

"Today's changes establish a solid future funding of our pensions and an eventual pathway for the return of (cost-of-living adjustments) and the return of a single tier of employees," he said.

"No longer will PFRS members be forced to suffer from the poor decision making and political expediency that marked the State's stewardship of our pensions over the years."



## Colorado passes pension reform, increasing contributions and retirement age

The Colorado General Assembly reached a compromise to pass a pension reform bill on the last day of the legislative session on Wednesday, confirmed Katie Kaufmanis, spokeswoman for Colorado Public Employees' Retirement Association, in an email. Senate Bill 18-200, which was introduced on March 7 to improve the $49 billion Denver-based PERA's funded status, passed the Senate on March 29. On May 1, the bill passed in the House after modifications to the bill were made.

However, the Senate did not concur with the House amendments and members of both chambers were named to a conference committee.

On Wednesday, the General Assembly passed the bill by a vote of 34-29 in the House and 24-11 in the Senate. The bill moved to Gov. John W. Hickenlooper, who is expected to sign it.

The bill includes automatic adjustment provisions to ensure that PERA remains on the path to full funding in 30 years, in part by modifying the annual cost-of-living adjustment for retirees to offset any deviation from the 30-year funding time frame. PERA was 58.1% funded as of Dec. 31, 2016, according to the most recent information on the pension fund's website.

The current annual COLA for participants that started receiving benefits prior to Jan. 1, 2007, is 2%. For 2018 and 2019, the bill reduces the COLA to zero. For each year thereafter, the bill changes the COLA to 1.5%.

Other major provisions in the bill include increasing employee contributions by a total of 2 percentage points by July 1, 2021, and creating an automatic adjustment provision for employer and member contributions to remain on a path to full funding. The bill also raises the retirement age for new employees hired on or after Jan. 1, 2020.

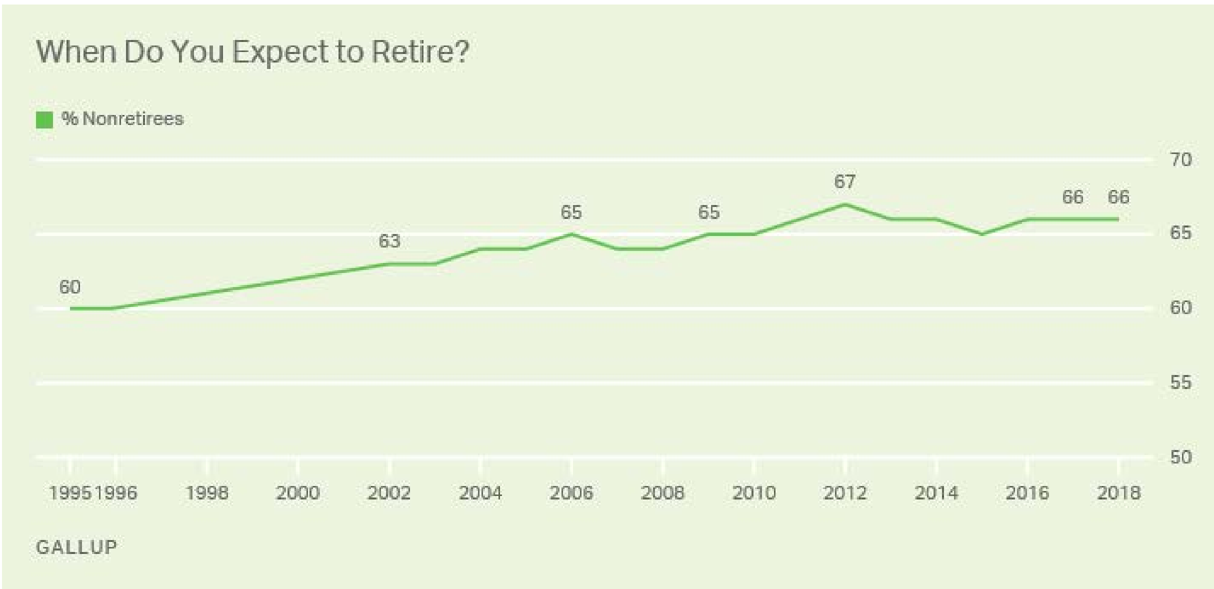
The bill would also require PERA to report to an interim legislative committee to ensure progress is being made toward full funding. This committee would also have the power to consider and recommend legislation regarding PERA to the full General Assembly.
In addition, new school district and local government employees will be able to choose between the PERA defined contribution plan and the hybrid defined benefit plan beginning Jan. 1, 2019. State employees have been able to choose since 2006.

And although not in the final version of the bill, provisions in the state's budget include an extra state contribution of $225 million to PERA and an increase of employer contributions by 0.25 percentage points for all employers excluding those in the local government division on July 1, 2019.

"We are pleased that the differences in the bill could be ironed out, and that this significant piece of legislation to ensure the retirement security of Colorado's current, future and retired public employees has been sent to the governor," said Ron Baker, PERA interim executive director, in a news release issued by the state pension plan.

## Snapshot: Average American Predicts Retirement Age of 66

Nonretired Americans, on average, say they will retire at age 66. This projected age of retirement has stayed about the same in recent years, but is up from previous decades. During the 1990s, the average American projected retiring at age 60.




Americans' projected age of retirement has stabilized between 65 and 67 since 2009. It was slightly lower, averaging 64, between 2002 and 2008, and lower still, at 60, in two Gallup surveys conducted in 1995.

Overall, 41% of nonretirees in the April 2-11 Gallup poll plan to retire at age 66 or older, by two percentage points the highest in Gallup's trend. In surveys conducted in 2004 and prior, less than 30% wanted to wait until after age 65 to retire, including just 12% in November 1995.
Meanwhile, the percentage wanting to retire before age 60 has dropped by more than half from 27% in 1995 to 12% today.

When Do You Expect to Retire?
Nonretirees

| | Under 59 | 60-64 | 65 | Over 65 |
|---|---|---|---|---|
| | % | % | % | % |
| 2018 Apr 2-11 | 12 | 15 | 24 | 41 |
| 2017 Apr 5-9 | 14 | 15 | 24 | 39 |
| 2016 Apr 6-10 | 12 | 19 | 24 | 37 |
| 2015 Apr 9-12 | 14 | 18 | 24 | 37 |
| 2014 Apr 3-6 | 10 | 18 | 26 | 36 |
| 2013 Apr 4-14 | 11 | 15 | 26 | 37 |
| 2012 Apr 9-12 | 13 | 13 | 27 | 39 |
| 2011 Apr 7-11 | 11 | 17 | 25 | 37 |
| 2010 Apr 8-11 | 11 | 18 | 27 | 34 |
| 2009 Apr 6-9 | 14 | 18 | 24 | 31 |
| 2008 Apr 6-9 | 16 | 19 | 24 | 32 |
| 2007 Apr 2-5 | 17 | 18 | 27 | 30 |
| 2006 Apr 10-13 | 14 | 20 | 26 | 29 |
| 2005 Apr 4-7 | 15 | 22 | 25 | 31 |
| 2004 Apr 5-8 | 20 | 21 | 26 | 26 |
| 2003 Apr 7-9 | 19 | 23 | 28 | 22 |
| 2002 Apr 8-11 | 22 | 21 | 26 | 21 |
| 1995 Dec 15-18 | 27 | 23 | 29 | 15 |
| 1995 Nov 6-8 | 27 | 20 | 34 | 12 |

GALLUP

Americans under age 30 project a significantly younger retirement age than those 30 to 64 years. This gap has been evident since 2002. Apparently, just as they are more optimistic about having enough money to be comfortable in retirement, young people are also more optimistic that they will retire at a fairly young age. But Americans appear to readjust their retirement projections upward once they cross the 30-years-of-age threshold.

When Do You Expect to Retire?

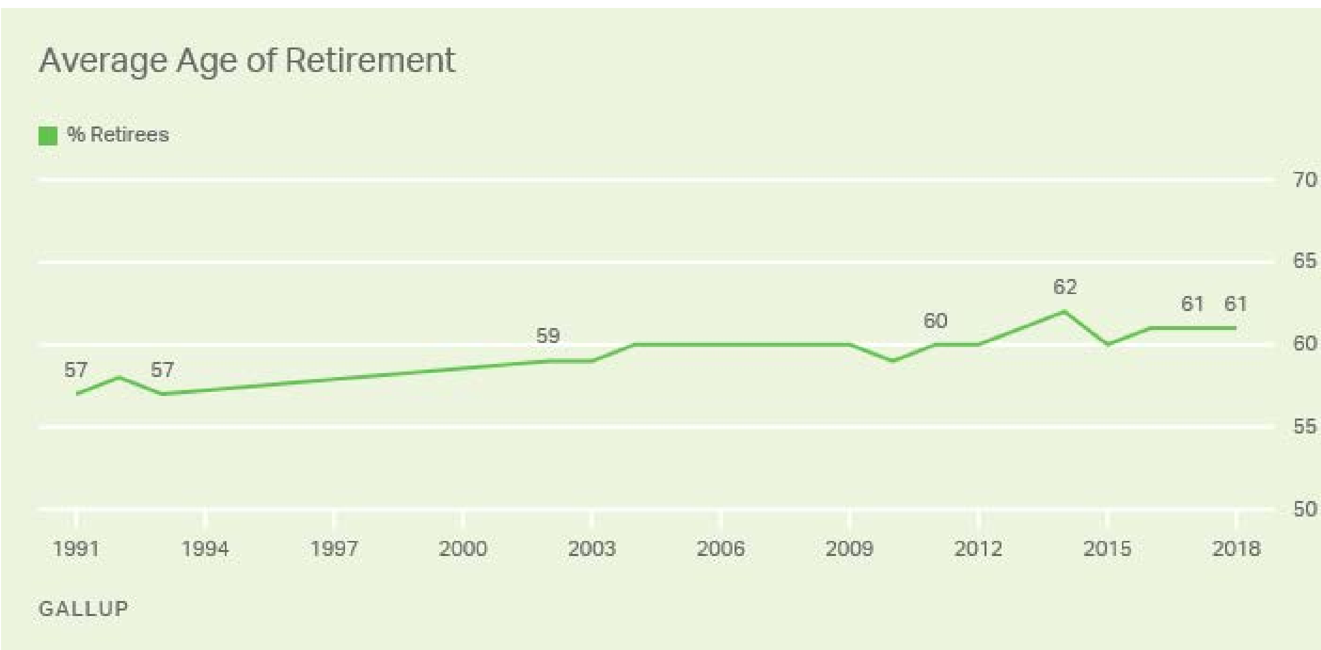
Nonretirees

| | Average age expect to retire |
|---|---|
| **Current age** | |
| 18-29 | 63 |
| 30-49 | 65 |
| 50-64 | 67 |

GALLUP, APRIL 2-11, 2018

The average reported retirement age for Americans who are currently retired is 61, considerably lower than the age at which current nonretirees say they will retire.

The age of retirement has risen slightly since Gallup began measuring it 27 years ago. In the five Gallup surveys conducted between 1991 and 2003, the average age of retirees was 58. From 2004 to 2010, the average retirement age among retirees rose to 60, and it has averaged 61 since 2011.



The gap between the higher projected and lower actual age of retirement has been evident for decades in Gallup's surveys. Still, the average retirement age of those in the retired pool today is not necessarily a strong predictor of when current workers will end up retiring in the future. For some nonretirees, retirement is 30 or more years away, and circumstances, including the economy, Social Security laws, healthcare and longevity, may be very different at that point in time. Some in the retired group actually retired 30 years ago, when the circumstances were also very different. Overall, however, the persistence of this gap suggests that at least some Americans may end up leaving the workforce earlier than they anticipated.



## Puerto Rico oversight board rejects bondholder agreement

A repayment agreement announced Monday by two major groups of Puerto Rico bondholders was rejected by the federal oversight board implementing a new fiscal plan for the commonwealth.

The agreement between holders and insurers of general obligation bonds and so-called COFINA bonds, which are tied to sales tax revenue, was ordered by a federal court overseeing Puerto Rico's bankruptcy case. The parties said in a statement that the settlement framework "would significantly decrease the duration and cost of Puerto Rico's bankruptcy, while also providing for substantial deleveraging." The agreement calls for creating a trust and mechanism for exchanging the bonds.

In rejecting the agreement, the Financial Oversight and Management Board for Puerto Rico said in a statement Monday that the terms "were not crafted with any prior input from either the oversight board or the government and are completely unaffordable."

"The proposed terms would create large and recurring structural deficits over the long-run as compared to the long-term primary surpluses projected in the certified" plan, the board said.
While the proposed settlement terms do not align with the fiscal plan certified by the board on April 19, the board said it is "encouraged" that major creditors, even those with competing claims, are working together towards that same goal.

The board, which was given authority to enforce a fiscal plan by 2016's Puerto Rico Oversight, Management and Economic Stability Act, also noted that achieving any surpluses is "highly dependent" on the government fully implementing the fiscal plan, in particular the proposed labor reforms that Gov. Ricardo Rossello has refused to accept.

Those labor changes include pension reform that would freeze pension benefit accruals by July 1, 2019, and enroll all employees in defined contribution plans, as well as Social Security. Benefits would be reduced progressively to an average cut of 10%, except for participants below the poverty level.

The board on May 11 informed the government of Puerto Rico that its fiscal year 2019 budget does not comply with the new fiscal plan.

The same day, the board did approve a restructuring agreement between holders of $4.1 billion in debt from Puerto Rico's Government Development Bank. That agreement establishes two pools of bond claims, one for claims guaranteed by the commonwealth and one for non-guaranteed claims, with equal treatment for depositors, bondholders and general unsecured creditors.



## PENSION REFORM HURTS PUBLIC SECTOR COMPETITIVENESS:

Michael Katz writes about a new report exploring the effects of pension reform on state and local government competitiveness in the labor market that has found that pension benefit cuts have hurt governments' ability to attract new employees. "It is well known that pensions are a significant component of public sector compensation," said the report, which was published by the Center for State and Local Government Excellence, a non-partisan, non-profit organization. "Hence, without offsetting wage increases, recent pension cuts may make public sector employers less competitive in the labor market."

After the stock market crash of 2008 decimated the funded status of pension plans, many state and local governments enacted pension reform that reduced the benefits for new and current workers. The report tracked the number of benefit cuts made by the largest 160 pension plans on the Public Plans Data Website between 2005 and 2014, which are the plans and years for which data on benefit cuts were available. "Cuts were relatively uncommon before the stock market crash of 2008," said the report, "but quickly became more prevalent as plan sponsors realized the extent of the deterioration in their funded ratio." According to the report, common changes included increasing the normal retirement age, reducing the monthly benefit that workers will receive when they retire, requiring employees to contribute more to the pension fund and reducing post-retirement cost-of-living adjustments. It also found that most of the cuts applied only to new hires because many states consider future accruals of pension benefits for current workers to be contractual obligations that cannot legally be reduced.

The cuts aimed at newly hired workers typically increased the normal retirement age and reduced the final-average-salary and benefit multiplier. And because cutting benefits for current employees is more difficult, both legally and politically speaking, cuts for this group generally entailed lower cost-of-living adjustments, and requiring higher employee contributions. The report also noted that another change made by some pension plans was to add a defined contribution (DC) component to the traditional defined benefit plan. “Unlike the other reductions, it is unclear whether these new hybrid plans qualify as benefit reductions since workers—particularly the young and mobile—might prefer portable savings accounts to traditional pensions,” said the report. “Still, because plans often reduce defined benefit multipliers when adding a DC component, they may be viewed as cuts in many cases.”

Overall, the report found that the research results imply that the public sector had trouble hiring and retaining the same type of workers it used to after a benefit cut “While future research should continue to explore the effect of pension cuts,” said the report, “states and localities should at least consider how benefit cuts might affect worker recruitment and retention.”

# Private Sector

## Legislation Would Establish Retirement Benefits Commission

A press release about the bill mentions a Government Accountability Office report in which the GAO said: “Congress should consider establishing an independent commission to comprehensively examine the U.S. retirement system and make recommendations to clarify key policy goals for the system and improve how the nation promotes retirement security.”

U.S. Senators Todd Young (R-Indiana) and Cory Booker (D-New Jersey) introduced legislation to establish a federal commission charged with reviewing private retirement benefit programs and submitting a report to Congress on how to improve private retirement security in the United States.

A press release from Young notes that private retirement systems have undergone significant changes over the past 40 years as traditional pensions have become less common. Individuals must now prudently plan for their own retirement security through retirement savings accounts like 401(k) plans. In addition, Young notes that the economy is undergoing another shift, as workers are more likely to work in the ‘gig economy,’ defined by serial employment or the contingent workforce. For these workers, it is particularly difficult to save for their own retirement.

“With many individuals reaching retirement with little to no savings of their own, we must take a serious look at our current retirement programs and make the changes necessary to help secure the futures of so many hardworking Americans,” says Young. “Our bill would enact a commission to better understand how we can strengthen private benefit programs and ensure our current and future generations have the tools necessary to plan for retirement.”

The press release also mentions a Government Accountability Office report in which the GAO said: “Congress should consider establishing an independent commission to comprehensively examine the U.S. retirement system and make recommendations to clarify key policy goals for the system and improve how the nation promotes retirement security.” According to the GAO report, the three pillars of the current retirement system in the United States are anticipated to be unable to ensure adequate benefits for a growing number of Americans due, in part, to the financial risks associated with certain federal programs.

Specifically, the Federal Retirement Commission Act calls for the creation of a commission comprised of the Secretary of Labor, Treasury, Commerce, two presidential appointees, six U.S. Senate appointees, and six U.S. House of Representatives appointees. The commission would be charged with:

A comprehensive review of private benefit programs existing in the United States, with a particular focus on moving from defined benefit to defined contribution models;

A comprehensive review of private retirement coverage, individual and household accounts balances, investment trends, costs and net returns, and retention and distribution during

retirement;
A comprehensive review of societal trends, including wage growth, economic growth, unique small business challenges, serial employment, gig economy, health care costs, life expectancy, and shrinking household size, that could lead future generations to be less financially secure in retirement compared to previous generations;
A comprehensive review of other countries' retirement programs; and
Submitting to Congress recommendations on how to improve or replace existing private retirement programs upon the affirmative vote of at least three-quarters of the members of the Commission.



## Millennials Better Prepared for Retirement than Their Parents

Millennials are better prepared for retirement than their parents, J.D. Power learned in a survey. Of all of the demographic groups, Millennials are the most likely to have set specific retirement goals and to have the highest amount of savings, relative to age.

"The fact that many in the youngest generation of plan participants are actively preparing for retirement now sends a clear message to providers," says Mike Foy, senior director of the wealth management practice at J.D. Power. "They need to be focused on upping their game on their digital and mobile offerings to meet the expectations of this digitally enhanced customer segment, not only to help differentiate themselves with plan sponsors who make provider selection decisions on behalf of the employees, but to position themselves to benefit from rollover events when employees eventually leave their jobs."

The survey also found that 51% of Millennials have set specific retirement goals, compared to just 44% among Gen X and Boomer participants. Of the 51% of Millennials who have set goals, 83% say they are on track to meet them.

Sixty-one percent of Millennials have at least $25,000 in retirement savings, and 27% have more than $100,000, with an average of 30 to 35 years before retirement. By contrast, 75% of Boomers have more than $100,000 in savings, with an average of only three years before retirement.

Only 20% of plan participants of all ages plan to roll their assets over to their current provider. However, when they are digitally engaged, this rises to 48%.

## HSAs: Untapped for Retirement

Health Savings Accounts (HSAs) boast what other investment accounts cannot: triple tax benefits for eligible medical expenses. They also offer another way to save for retirement. However, investors may need to overcome some misconceptions to make the most of this largely untapped benefit. Retirement advisors can help with that.

HSAs Gain Popularity

HSAs are becoming more popular as employers seek ways to corral health care costs and give employees more control over medical decisions. According to HSA provider Devenir, 22.9 million accounts hold $49.8 billion in assets today. By 2019, those numbers are expected to rise to 27.5 million accounts with $64 billion assets.

Today, most HSAs are funded through employee contributions, but an increasing number of employers match or contribute a fixed amount. Individuals can open and contribute to an account on their own, however not many do. Either way, there is one stipulation: You must have a high deductible insurance plan to contribute.

Triple Tax Breaks for Medical

HSA money can cover numerous qualified out-of-pocket medical costs. Those include co-pays, deductibles, dental, vision, prescriptions, insurance premiums, in-home nursing, nursing homes and the list goes on. Those on Medicare can’t contribute to an HSA, but they can use previous savings for the same kinds of expenses.

Participants enjoy tax advantages in three ways:

- Contributions are income tax deductible
- Earnings grow tax-deferred
- Qualified medical expense withdrawals are tax free

And, HSA advantages extend into retirement and beyond. At death, a spouse may continue receiving the preferred tax treatment with a spousal rollover.

HSAs for Retirement

Beyond today’s benefits, HSAs can be used for medical expenses in retirement. Investors may be wise to take advantage of every savings option available, especially considering how much medical expenses could cost in retirement. Those costs are projected to soar for retirees, requiring up to 59 percent of what a couple receives from Social Security.

While the potential benefits may inspire investors to save with their HSAs, there are also a few drawbacks.

HSA Pros and Cons for Retirement

| ***Benefits*** | ***Challenges*** |
|---|---|
| **Flexible Contributions**<br><br>• Employers, relatives or anyone else may contribute to your HSA<br>• Contributions are not counted against 401(k)s, IRAs or other retirement account limits<br>• At age 55 you can make catch-up contributions | **Complex Financial Decisions**<br><br>• Participants find it difficult to decide between investing in a 401(k) pretax, 401(k) Roth, IRA or HSAs for retirement<br>• It can also be hard to project current versus future tax rates and medical expenses to know how much to save now |
| **Investment Variety**<br><br>• Options may include stocks, bonds, mutual funds, money markets, CDs, bank accounts and others<br>• Some plans offer self-directed brokerage windows | **Too Few or Too Many Investments**<br><br>• Depending on the provider, investment choices may be limited or unlimited<br>• Too few can hinder diversification needs<br>• Too many can overwhelm and lead to inertia |

| Tax-Deductible Limits | Investment Hurdles |
|---|---|
| • Contributions can be made up to April 15 of the following year<br>• Limits are $3,450 for individuals, $6,900 for families in 2018 ($3,500 and $7,000 for 2019) | • Typically, you must meet minimum thresholds before you can invest HSA money<br>• Investment decisions require you to consider when the funds will be used: in the short- and medium-term, in retirement or both |
| **Less Constrained Withdrawals** | **Cost Constraints** |
| • There are no time limits for using the money and no required distributions at age 70½<br>• After age 65, you can use the funds for any retirement expense—not just medical*<br><br>*Before 65, non-qualified medical expenses carry a 20 percent penalty. | • Investment prices and options tend to cost more than 401(k) plans<br>• Administrative fees can also be high |

Perception is an Obstacle

Confusion about HSAs is a barrier for retirement savings. Participants tend to treat their accounts like “use-it-or-lose-it” flexible savings accounts. According to the Employee Benefits

Research Institute, very few maximize their contributions, and most draw out all funds each year. Only three percent of HSA assets are investible (other than cash).

Advisors: You Have a Unique Opportunity

Advisors have a unique opportunity to assist both employers and employees with HSAs.

For employers, advisors can translate their retirement plan skills to help plan sponsors with HSA selection, plan design and investment menus. All of these influence employee retirement readiness, which is always a top priority for plan sponsors.

Participants need education, help prioritizing savings accounts, investment guidance and overall retirement planning. The industry has just begun to develop technology that helps participants sift through the decision process. Planning should include the very critical need of paying for medical expenses in retirement. For this, an HSA can play a role.



## What Expenses Can We Pay from Plan Assets? A Brief Review of the Legal Principles and Some Common Questions

ERISA plan expenses may be paid by the plan sponsor or, if certain requirements are met, reasonable plan administrative expenses may be payable from plan assets. This article provides an overview of the process for determining whether plan assets may be used to pay plan expenses, and highlights some specific concerns for plan fiduciaries related to using plan assets to pay plan expenses.

Legal Framework for Paying Plan Expenses

ERISA Section 404 is clear that plan assets are to be used for the exclusive purposes of providing benefits to participants and their beneficiaries, and defraying reasonable expenses of administering the plan. Any other use of plan assets can result in a breach of fiduciary duties under ERISA, a prohibited transaction under ERISA (which would trigger associated excise taxes), and a violation of the Internal Revenue Code’s exclusive benefit rule (which could result in plan disqualification). Therefore, how plan expenses are paid is an important compliance issue of which plan sponsors and plan fiduciaries should be aware.

The decision to use plan assets to pay for plan administrative expenses is a fiduciary decision. There are a few threshold questions that the plan fiduciary should consider in determining whether plan expenses can be paid by the plan:

What does the plan document say about using plan assets to pay for reasonable plan administrative expenses?

The plan document may state that plan expenses may be paid out of plan assets. In addition, the Department of Labor (DOL) takes the position that plan expenses may be paid out of plan assets if the plan document is silent, as long as all other requirements are satisfied.

However, the plan document may provide that the plan sponsor is obligated to pay the costs of plan administration (or may state that the plan sponsor pays certain specified administrative costs). Some plans limit how certain plan assets (e.g., forfeitures) may be used (e.g., forfeitures must be used first to reduce employer contributions, before they can be used to pay reasonable plan expenses). If the plan document limits the ability to use plan assets to pay for the costs of plan administration, the plan would need to be amended to broaden the purposes for which plan assets may be used going forward.

Is the expense a “settlor” expense or a “fiduciary” expense?

Only expenses that are “fiduciary” in nature can be paid from plan assets. Fiduciary expenses are those that relate to ongoing administration of the plan according to its terms and in compliance with the law (e.g., coverage and nondiscrimination testing, trustee and recordkeeping fees, costs associated with preparing and distributing mandatory participant disclosures, costs associated with preparing legally required amendments).

In contrast, “settlor” expenses are those that relate to the establishment, design and termination of a plan (e.g., plan design studies, projections to determine the financial impact of a design change, legal and consulting fees in connection with the decision to terminate a plan). The DOL views settlor expenses as for the benefit of the plan sponsor employer; therefore, the DOL’s position is that these types of expenses must be paid by the plan sponsor employer, not by the plan.

Note that it is not always clear whether an expense is “fiduciary” or “settlor” in nature, especially when an expense relates to the implementation of a settlor decision. For example, the decision to terminate a plan is a settlor decision, but certain expenses incurred to accomplish the plan termination are likely to be fiduciary expenses that are payable from plan assets. Plan sponsors who are faced with these types of judgment calls about whether a particular expense can be paid by the plan should consult their benefits counsel for guidance.

Is the expense prudent? Is the amount reasonable?

Expenses paid by the plan must be reasonable in light of the services performed, and relative to fees charged for the same services by other service providers in the marketplace. Before using plan assets to pay an administrative expense, the plan fiduciary should evaluate the reasonableness of the expense and document its basis for concluding that the expense is reasonable.

Common Questions Related to Paying Plan Expenses

Below are some of the common questions raised by plan sponsors that choose to pay plan administrative expenses with plan assets:

When can plan assets be used to pay for plan amendments?

The DOL distinguishes between mandatory/legally required amendments and discretionary amendments. In general, plan assets may be used to pay for the cost of preparing legally required amendments, while the plan sponsor must pay for the cost of preparing discretionary amendments. Where a plan amendment includes both discretionary and legally required changes to the plan, the DOL has stated that plan assets could be used to pay for the portion of the costs that relate to the legally required changes, but advised that plan fiduciaries would need to "obtain from the service provider a determination of the specific expense(s) attributable to the fiduciaries' implementation responsibilities" in order to do so.

Must plan administrative expenses be allocated to participant accounts on a pro rata basis?

How to allocate the cost of plan administrative expenses is a fiduciary decision – the DOL has not prescribed a single method of allocating charges for plan expenses to participant accounts in a defined contribution plan. Either pro rata allocation or per capita allocation may be an equitable method of spreading the costs of plan administration across participant accounts. In addition, expenses that are incurred by individual participants for plan administrative services (e.g., fees for reviewing hardship withdrawal requests and domestic relations orders, fees for processing plan distributions) may be charged against an individual participant's plan account, provided that the fees for such services are reasonable and proper plan administrative expenses. In addition, if participants will be charged fees for individual plan services, this needs to be disclosed to participants in the summary plan description.

Can a plan sponsor be reimbursed from the plan for paying plan administrative expenses?

Plan sponsors often pay plan administrative expenses and then seek reimbursement from the plan. Because the plan sponsor is a party-in-interest, the DOL views this type of arrangement as an interest-free loan that results in a prohibited transaction unless certain requirements are met:

The loan may be used only for payment of ordinary operating expenses or for a purpose incidental to the ordinary operation of the plan.

No interest or other fees may be charged on the loan.

The loan must be made from the plan sponsor to the plan (not from the plan to the plan sponsor).

The loan must be unsecured.

If the loan term is or could be 60 days or longer, there must be a written loan agreement in place that describes the material terms of the loan. Note that even if the intention is for reimbursement is to be made within 60 days, it may be prudent to have a written loan agreement in case the reimbursement is not made within the 60-day period.

Plan sponsors that have a practice of being reimbursed from the plan for the cost of plan administrative expenses (e.g., a plan sponsor that pays annual recordkeeping fees and is repaid the fees as they are deducted from participant accounts over the course of the plan year) should consult with benefits counsel to ensure the reimbursement arrangement is compliant.

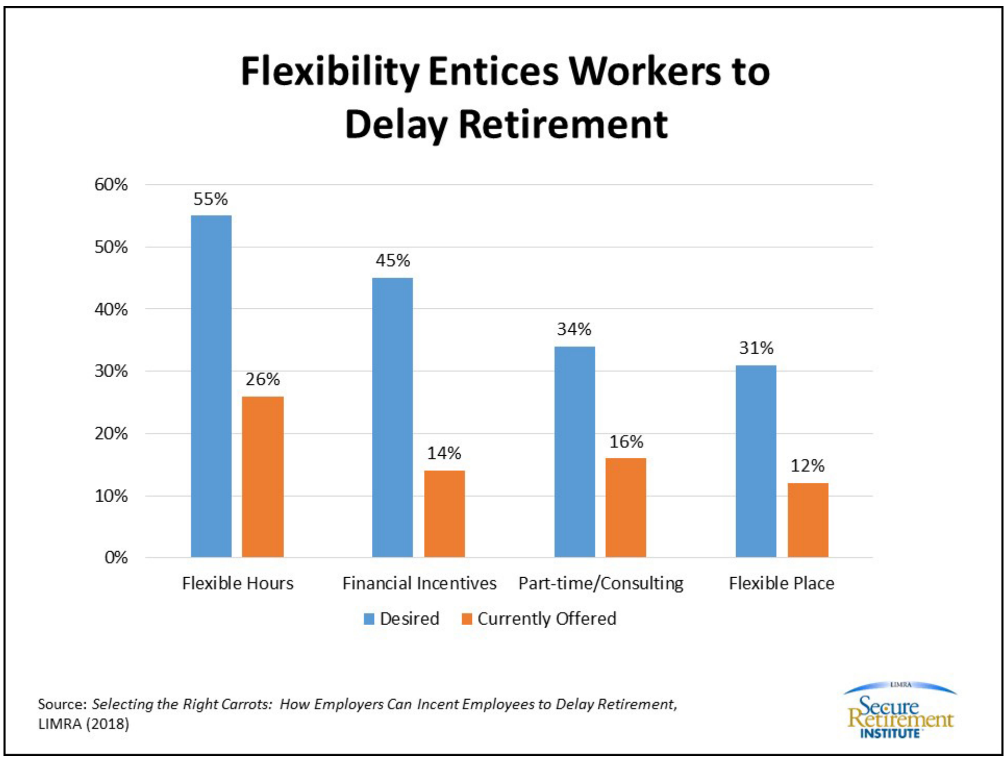
Is there a correction program available to address an error related to the payment of expenses from plan assets?

If a plan fiduciary determines that an expense was improperly paid from plan assets, the prohibited transaction aspect of the improper payment can be corrected through the DOL's Voluntary Fiduciary Correction Program (VFCP). Note that completing a VFCP correction protects plan fiduciaries only with respect to enforcement actions by the DOL, so there still could be potential for the IRS and/or a participant to raise complaints.

## Incentives to Delay Retirement Benefit Both Employers and Employees

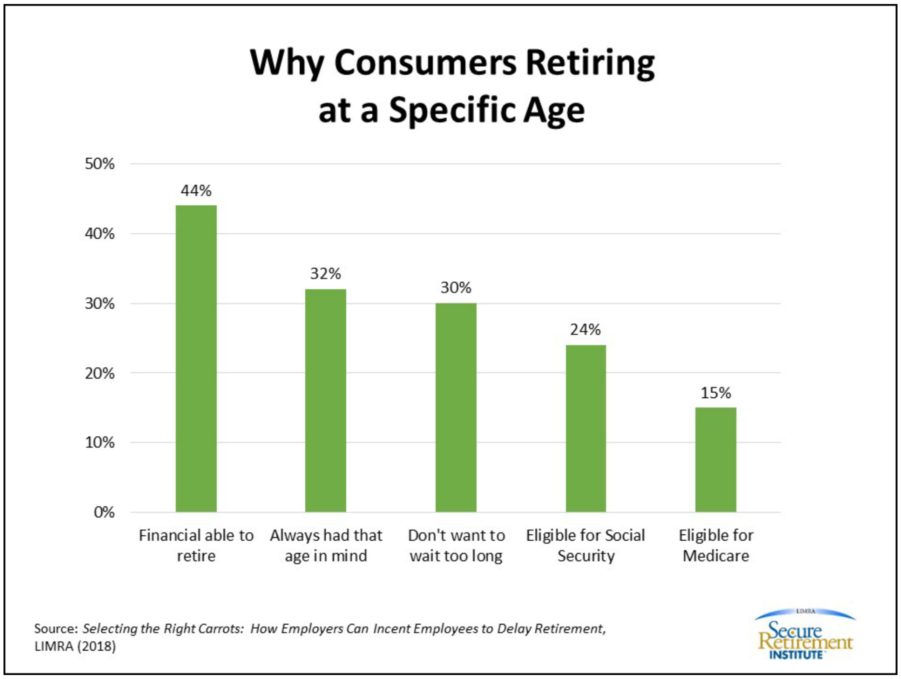
According to the U.S. Bureau of Labor Statistics, one-third of the U.S. labor force is 50 or older. As more employees begin to reach the traditional retirement age, employers need to examine their policies and procedures to address the potential loss of talented and experienced workers.

Encouraging employees to delay retirement not only improves their financial security in retirement but it also keeps experienced and productive employees on the job. While 4 in 10 current workers expect to work in retirement, current retirees are not showing a desire to work for pay. Only 17 percent of retirees are still working for pay, and only 13 percent of retirees not currently doing so say it's possible they will return to work. LIMRA Secure Retirement Institute (LIMRA SRI) research shows that if employers start using incentives, more employees are likely to stay working. Working longer can have significant financial benefits, retirement delays of as little as 3-6 months have the same impact on standards of living in retirement as saving an additional 1 percentage point of income over 30 years[1].




The study, Selecting the Right Carrots: How Employers Can Incent Employees to Delay Retirement, highlights flexible hours, part-time or consulting-based employment, flexible location and financial rewards top employees' list of desired incentives to delay retirement. LIMRA SRI finds that on average, workers who receive all of their desired incentives say they would work an additional 14 years.

Allowing employees the flexibility to work outside of the office is the most valued incentive and could result in those employees working an additional 15 years, on average. The next most valued incentives are having flexible hours and getting financial rewards. Employees who can have flexible work hours or financial incentives to work longer are likely to work an additional 13 years, on average. Allowing employees to drop to part-time or work as a consultant, on average, adds an additional 12 working years to the employee's commitment to the company.




LIMRA SRI research finds a third of workers' expectations were guided by having a specific age in mind when thinking about retirement. For Baby Boomers – who are closest to retirement – being eligible for Medicare and Social Security was more important than it was for younger generations. The primary reason workers expect to retire at a specific age is that they will be financially able to do so. This is especially true for men as half mentioned this as their driver of retirement. However, defining retirement by a particular age can be risky, as it doesn't account for the actual savings and assets available to support the person in retirement.

Workers across all generations reported one of the driving forces behind the timing of their retirement is a fear of waiting too long and not being able to do everything they had planned. Thirty percent of workers cite fear of missing out as a reason to retire at a certain time.

As employers continue to grapple with managing an aging workforce and all its implications, considering options to keep talented people is a worthwhile strategy. It not only helps the employer, it can bolster employees' financial security when they finally do decide to retire.

This study is based on a January 2018 survey, fielded by Ipsos, of 945 Americans.

[1] Source: The Power of Working Longer. Stanford Center for Economic Policy Research. January 2018, Gila Bronshtein, et al.