

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

Unions sue Puerto Rico gov't over worker retirement accounts

Two unions representing teachers and other public employees in Puerto Rico, the American Federation of Teachers and the American Federation of State, County and Municipal Employees, filed a lawsuit on behalf of their members, whose retirement accounts were allegedly mismanaged by the Puerto Rican government.

The action was filed in Puerto Rico's Title III bankruptcy case under the Puerto Rico Oversight, Management, and Economic Stability Act (Promesa). It seeks declaratory and injunctive relief for the workers, "based on the commonwealth's admission that it failed to implement the provisions of Puerto Rico Law 106 of 2017, a law that was supposed to create and protect individual defined-contribution retirement accounts for thousands of union-represented workers," according to an AFT release.

"By the commonwealth's own admission, it—along with the Retirement Board of the Government of Puerto Rico, the Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF), and their responsible officials—has failed to create and administer Law 106's promised defined-contribution accounts, and instead has taken hundreds of millions of dollars of employee pension contributions and stashed more than \$300 million in government accounts at Banco Popular that earn virtually zero interest," the release reads.

Puerto Rico's government, the AFT said, "has been aided and abetted in this violation of statutory and fiduciary duties" by the Financial Oversight and Management Board and Banco Popular. "As a result, thousands of public servants have been deprived of untold millions of dollars in interest and investment income that they should have been earning over the past year."

Defendants include the commonwealth; its governor; its chief financial officer and secretary of the treasury; the retirement system and its voting members; AAFAF and its executive director; the oversight board; and Banco Popular.

"A year after Hurricane Maria hit and devastated Puerto Rico, educators have made countless sacrifices to protect their kids and their classrooms. During that year, investors, bankers and bondholders have had much of their interests protected. Meanwhile, teachers thought their retirement money was also being protected and invested fairly, the way the retirement law promised. They were mistaken. We have

learned that educator retirement funds have been sitting in Banco Popular bank accounts, collecting little or no interest, despite a statute that called for the money to be invested.

“These dedicated educators were promised that their pension contributions would be protected and wisely invested. That trust was betrayed.

“This lawsuit...asks the court to compel the commonwealth to do what it was required by law to do last year: to set up teachers’ individualized retirement accounts and provide restitution for damages they’ve suffered as their money sat dormant at Banco Popular,” said Randi Weingarten, president of the American Federation of Teachers.

“It is unconscionable that the oversight board turned a blind eye to the commonwealth’s failure to implement its July 1, 2017, mandate while the bank was unjustly enriched at the expense of hardworking Puerto Ricans,” added Lee Saunders, president of the American Federation of State, County and Municipal Employees.

“Those new teachers that entered the system after 2014 only have a defined contribution plan for their retirement. And once again, the government violates the law, affecting the rights of those teachers. The government’s inaction with Act 106-2017 prevents teachers from receiving the interests that such contributions can generate. It is a huge damage to our members.

“Also, we urge the government to start paying Social Security for teachers and to stop the intentions of the Financial Oversight Board to move active teachers to these defined contribution plans, since their retirement is protected by the 2014 Supreme Court ruling,” said Dr. Aida Díaz, president of the Association of Teachers of Puerto Rico.

“These accounts, in accordance with the statute and the mandates of all of the Oversight Board’s fiscal plans, are exclusively funded through deductions from public employees’ own wages, and the accounts’ owners should be able to invest to accumulate the necessary retirement savings for their future financial support,” said Annette González, president of Servidores Públicos Unidos.

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Public pensions look abroad for returns

U.S. public pension funds are boosting allocations to emerging market debt and international equities, recognizing they can't hit targets for investment returns by staying in domestic assets, a report shows.

Among the 50 largest public plans, about half have dedicated allocations to emerging market debt, while about 16 have exposure through other fixed-income mandates, a Goldman Sachs Asset Management report showed Tuesday. Some funds are shifting away from strategic bets on U.S. equities in favor of international stock investments, according to the report.

Public funds are contending with market volatility and low interest rates as they work to boost returns amid swelling liabilities. Michael Moran, a pension strategist at GSAM, said plan officials are looking for new investment areas after some already have ratcheted down their forecasts.

"They've come down a lot," Mr. Moran said in an interview. "But when you look at long-term return expectations across individual asset classes, it's going to be hard for them even to meet the lower return assumptions."

GSAM found that funds are interested in real assets. The \$739 million Omaha (Neb.) Police and Fire Retirement System and the \$51.5 billion Illinois Teachers' Retirement System, Springfield, have increased allocations to real estate over the past seven years, according to fiscal year 2017 data compiled by Boston College's Center for Retirement Research. The \$219.2 billion California State Teachers' Retirement System, West Sacramento, has signaled plans to allocate more to private equity, real estate and infrastructure.

GSAM warned some accounting proposals that would make funds use a lower discount rate when calculating liabilities could hurt the "perceived health" of state and local government retirement plans. Already, the Federal Reserve estimates the plans face an unfunded liability of more than \$4 trillion.


"It would make those liability numbers a lot larger," Mr. Moran said.

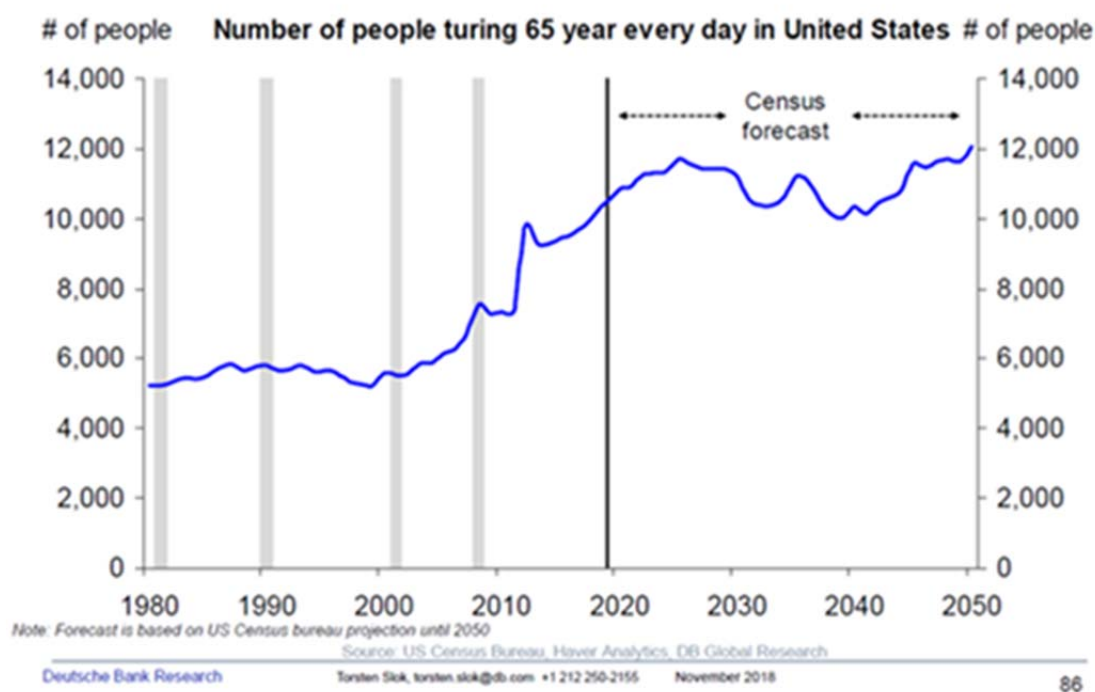
Not all alternative investments have benefited from the push by public plans to find higher-yielding assets. The pension plans have continued to reduce allocations to hedge funds this year, according to the GSAM report. In October, hedge funds reported the worst monthly performance in seven years amid a slump in stock markets.

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Americans are retiring at an increasing pace

The number of Americans retiring daily has nearly doubled since the year 2000. Currently, roughly 10,000 people turn 65 each day, the standard age for retirement, according to a Deutsche Bank note published Tuesday. And according to Census forecasts, that number is set to rise. It will reach nearly 12,000 people within the next 10 years. By 2030, according to the Census Bureau, all baby boomers will be older than 65.

About 10,000 people retire every day, up from around 5,000 in 2000 
 Census projects this will rise to 12,000 per day



The growth in retiring baby boomers will have a lot of knock-on effects, from health care to Social Security. (The Social Security Administration estimates its funds will be depleted by 2034.) It also means that fewer working-age people paying into Social Security and Medicare programs that support retirees; the Census estimates that by 2035, people age 65 and over will outnumber people under age 18. Relying on Social Security

Arielle O’Shea, NerdWallet’s investing and retirement specialist, says that Social

Security should still factor into retirement plans.

“That’s a widespread fear but it’s not one people need to have,” O’Shea said. “People are still paying into it. People can still expect to get Social Security. The income replacement might be lower than it was for your parents, but you shouldn’t count it out.”

“You want to factor it into your retirement planning,” she says.

Retiring baby boomers are expected to cause the cost of health care to rise. According to the National Institutes of Health, overall Medicare spending is projected to double by 2030.

This year, Fidelity Investments estimated that on average, a couple will need some \$280,000 for medical expenses in retirement. With health care one of the largest expenses in retirement, O’Shea says that it needs to factor in retirement planning.

“Health care is one of the biggest expenses,” O’Shea says. “So you need to anticipate that cost and anticipate how your health care coverage will change. All of those things should be factored into your planning. A lot of your expenses in retirement are going to change, so you need to look at your expenses and determine if it will go up or down, or if there will be new expenses in retirement.”

So how should baby boomers approach retirement?

Simply, “strategize,” O’Shea says. “A lot of people approach retirement with no plan at all. The amount of people who calculate how much they need is incredibly low.” Northwestern Mutual’s 2018 Planning & Progress Study found that 1 in 3 Americans have less than \$5,000 in retirement savings. And 21% had no retirement savings at all. “Once you’re over 50, you have an opportunity to contribute more to tax-advantaged account,” O’Shea said. “So you should be putting in more.”

In addition to making a plan for retirement, it’s important to figure out how your savings will be spent.

“There is a lot of coverage on how to save for retirement, but not a lot on how to spend the savings when you retire,” O’Shea explained. “It’s well worth getting plan in place on how much you can withdraw each year.”

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Most Retirement Risk Concerns Decrease With Age

The Society of Actuaries says individuals must first understand all the risks related to retirement so they can take steps to manage them

Retirees face many financially related risks, including living longer than their financial resources, a major long-term care event, investment and inflation risk and unexpected medical expenses.

The Society of Actuaries (SOA) analyzed financial risk management across five generations. It found some concerns around retirement-related risks are consistent across each generation, while others, such as the ability to deal with unexpected expenses, vary by age, and there is a significant amount of variation on how much planning and preparation individuals undertake to withstand financial risks.

The ability to handle unforeseen expenses increases with age, peaking with Early Boomers and then declining for the Silent Generation. Six in 10 Early Boomers say they could afford a \$10,000 expense using their savings or emergency funds. Only 46% of Millennials would use their savings, which is not surprising since they have lower assets and more competing financial priorities. Those in the Silent Generation are particularly vulnerable, with half not being able to use their savings for an unexpected \$10,000 expense. This is consistent with and may be reflective of the fact that only half of all respondents are prioritizing building up an emergency fund to safeguard against unexpected expenses.

Millennials are most concerned with having enough money to pay for health care in retirement (69%), and concern decreases with age—66% among Gen X, 62% among late Baby Boomers, 53% among early Baby Boomers and 49% among the Silent Generation. However, saving for the future medical costs is only a high priority for on average 36% of respondents. Nearly two-thirds (63%) of respondents are worried they might not have enough money to pay for a long period in a nursing home, yet saving for long-term care is a high priority for just one-third of respondents.

Two-thirds of respondents are concerned that the value of their savings and investments might not keep up with inflation in retirement. This concern also decreases with age, with almost three-quarters of Millennials (73%), compared to just over half of the Silent Generation

(53%), expressing high concern over inflation. The SOA says as Millennials have the longest time until retirement, and thus greater uncertainty, their concern over inflation risk is understandable.

While living longer than expected is desirable, it presents a financial risk because the longer retirement lasts, the more it costs, the SOA says. Also, a long life increases the likelihood of other risks, such as an increased need for long-term care or having high medical costs. The study found 63% of all respondents are concerned with not being able to maintain a reasonable standard of living for the rest of their lives, and 61% are concerned with depleting all of their savings. However both concerns decrease with age, ranging from 72% and 69% among Millennials to 47% and 46% among the Silent Generation, respectively.

One-quarter of all respondents indicate their level of debt is complicating their ability to manage their finances. Older generations are less likely to indicate this and are also more likely than younger generations to say they have no debt.

Managing retirement risks

According to the SOA report, there are many ways to manage the various risks that can hinder financial security in retirement. For example, sticking to a budget and a monthly savings plan can help mitigate the risks of unexpected expenses and longevity later in life. Currently, 61% of Millennials are sticking to a budget and another 45% are sticking to a monthly savings plan, both higher than older generations. Yet, members of the Silent Generation have a higher likelihood than Gen Xers or Boomers of sticking to a budget (53% versus 49% of Gen X, 48% of late Boomers and 46% of early Boomers).

Across all generations, one-third are making efforts to get their debt under control, with Millennials much more likely to be doing so (41%). Addressing debt, especially those with high interest rates prior to retirement, can alleviate pressure on savings and emergency funds and allow more focus on other risk management strategies, the SOA notes.

Putting money into an employer-sponsored retirement plan is a strategy about three in 10 Millennials, Gen Xers and Late Boomers are employing currently. In addition, targeting investments to grow money and produce income both now and in retirement is a strategy more likely being employed by Late Boomers (27%), the majority of whom are gearing up for retirement.

The SOA says a key goal of this body of research is to increase knowledge and encourage action to help individuals effectively protect against the financial consequences of each risk. "It is our hope that the insights this research has provided about each generation will lead to

further efforts to educate individuals on the key steps to financial security and enhanced protection against adverse events that pose a threat to that security,” it concludes.

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PUBLIC PENSION RETURN ASSUMPTIONS FALL TO ALL-TIME LOW

Despite already feeling the financial strain from their obligations to public pensions, state and local governments can expect to face increased commitments to their retirement systems as investment return assumptions have fallen to an all-time low this year. According to the National Association of State Retirement Administrators (NASRA), nearly 75% of the 128 public plans it has tracked have reduced their investment return assumptions since fiscal year 2010, which has resulted in an all-time low median investment return assumption of 7.45% as of November, from 8% eight years earlier. Since 1987, public pension funds have accrued approximately \$7 trillion in revenue, said NASRA, of which \$4.3 trillion, or 61%, is from investment earnings, with 27%, or \$1.9 trillion, coming from employer contributions, and the remaining 12%, or \$844 billion, coming from employee contributions.

Because public pensions rely on investment returns for a majority of their revenue, the lower the investment returns are, the more governments will have to spend to cover the shortfall. Of the 128 public pension plans tracked by NASRA, only six still have investment return assumptions at the 2010 median of 8.0%, which is the highest assumed rate of return among the plans, and only 22 have assumed rates of returns of 7.5% or higher. A majority of the plans (69) have assumed rates of return that range between 7.0% and 7.5%, and 37 plans have assumed rates that are 7.0% or lower. Kentucky’s Non-Hazardous Employee Retirement System pension registered the lowest assumed rate of return at 5.25%, and was the only plan among the 128 with an investment return assumption below 6.25%. Among the more high-profile pension funds lowering their investment return assumptions this year were the North Carolina Retirement Systems, which cut its assumed rate of return to 7% from 7.2%, the Teacher Retirement System (TRS) of Texas, which reduced its assumed rate of investment return to 7.25% from 8%, and Minnesota’s state pension, which cut its assumed rate of return to 7.5% from 8%. New Jersey also said it would lower its investment return assumption to 7% in fiscal 2023, after temporarily raising it to 7.5% from 7.0% in fiscal 2019. Michael Katz, Chief Investment Sponsor, November 14, 2018.

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Private Sector

Hatch, Brown Commit to Continued Work on Pension Crisis Past Nov. 30

Joint Select Committee on the Solvency of Multiemployer Pension Plans Co-Chairmen Orrin Hatch (R-Utah) and Sherrod Brown (D-Ohio) released the following statement today committing to continue their work to solve to the multiemployer pension crisis past Nov. 30. When the Joint Select Committee was created, it was expected members would vote on a package by this Friday. Hatch and Brown say that while they have made significant progress and a bipartisan solution is attainable, more time is needed and the committee will continue its work.

“The problems facing our multiemployer pension system are multifaceted and over the years have proven to be incredibly difficult to address. Despite these challenges and a highly-charged political environment, we have made meaningful progress toward a bipartisan proposal to address the shortcomings in the system to improve retirement security for workers and retirees while also providing certainty for small businesses that participate in multiemployer plans.

“While it will not be possible to finalize a bipartisan agreement before Nov. 30, we believe a bipartisan solution is attainable, and we will continue working to reach that solution.

“We understand that the longer that these problems persist, the more burdensome and expensive for taxpayers they become to address, and we are committed to working toward a final agreement as quickly as possible.

“We would like to thank all the members of the Joint Select Committee for their hard work and continued dedication to addressing the issues that plague the multiemployer system. It has not been an easy job and all of their contributions have been, and will continue to be, vital to our work.

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New Hardship Rules, Other Statutory Changes Reflected in Newly Proposed 401(k) Regulations

The Treasury Department has issued proposed regulations that provide guidance on changes to the hardship distribution rules made by the Bipartisan Budget Act of 2018 (BBA). The proposed regulations also include changes to reflect provisions of earlier legislation. Plan documents must be amended to delete any language that conflicts with required changes, and to adopt any optional rules, by the end of the second plan year that begins after final regulations are included in the Required Amendments List issued by the IRS.

Hardship Provisions. The proposed regulations expand the types of events that automatically qualify as a hardship and simplify the steps plans must take when deciding whether a distribution is necessary to meet a hardship. The regulations also provide guidance regarding the amounts that may be distributed from the participant's account to satisfy the hardship.

Expenses that qualify as a hardship. Existing regulations identify specific types of events that automatically qualify as a hardship (the "safe harbor" hardship events). Those include medical expenses, purchase of a principal residence, payment of tuition and room and board expenses for post-secondary education, prevention of eviction or foreclosure, funeral expenses, and casualty losses. Under the proposed regulations, (i) medical, educational and funeral expenses for a primary beneficiary who is not a dependent may constitute a hardship, (ii) hardship distributions for casualty losses can be made without regard to whether the casualty loss is attributable to a federally-declared disaster, and (iii) expenses incurred as a result of a federally-declared disaster now qualify as a safe harbor hardship event if the employee's principal residence or place of employment was, at the time of the disaster, located in an area designated for individual assistance by the Federal Emergency Management Agency (FEMA). The regulations retain a plan's ability to permit distributions for expenses other than the safe harbor events based on a review of the relevant facts and circumstances. The expanded list can be implemented for distributions made on or after January 1, 2018.

The stance taken by the IRS with regard to hardship distributions for casualty losses was unexpected. As background, prior to enactment of the 2017 Tax Cuts and Jobs Act, a taxpayer could claim a tax deduction for casualty losses that exceeded 10% of adjusted gross income. But, under that act, for tax years between 2018 and 2025, a casualty loss deduction is

permitted only for casualty losses associated with a federally-declared disaster. It was believed that a hardship distribution for a casualty loss would also have to be limited to casualty losses attributable to a federally-declared disaster. However, the proposed regulations provide that a casualty loss hardship distribution can be made even if the casualty loss is not attributable to a federally-declared disaster.

Determining whether a hardship distribution is necessary to meet a qualifying expense. Currently, plans can decide a distribution is necessary to meet a qualifying expense in one of two ways. First, the plan can review the relevant "facts and circumstances" to determine the employee does not have other resources to meet the need (usually including getting a representation from the employee that the need cannot be met by liquidation of assets, cessation of plan contributions, taking available distributions and plan loans, or borrowing from commercial sources). Alternatively, the plan can follow "safe harbor" rules that deem a distribution necessary if the employee first obtains all other currently available distributions and non-taxable loans and is prohibited from making contributions to all deferred compensation plans of the employer for at least six months following the distribution.

Under the proposed regulations, the "facts and circumstances" method has been eliminated. For hardship distributions made on or after January 1, 2020, a distribution is treated as necessary to meet a qualifying expense only if (i) the employee first obtains all currently available distributions from all qualified and non-qualified plans maintained by his or her employer and (ii) represents that he or she has insufficient liquid assets to satisfy the expense. The prior requirements to first take all available non-taxable loans, and to suspend contributions for six months, have been eliminated. A plan may continue to require the employee to first take other steps before granting a hardship (e.g., taking plan or commercial loans, liquidating assets, etc.) However, for hardship distributions made on or after January 1, 2020, a plan may not require the employee to stop contributions for six months in order to obtain a hardship distribution.

Note that the proposed regulations allow (but do not require) plans to eliminate the requirement to suspend contributions for six months on the first day of the first plan year beginning on or after December 31, 2018, even if the hardship distribution was made prior to that date.

Available Sources for Hardship Distributions. The proposed regulations reflect that hardship distributions made in plan years beginning after December 31, 2018 can now be made from

elective deferrals, Qualified Non-Elective Employer Contributions (QNECs) and Qualified Matching Contributions (QMACs) (including traditional safe harbor contributions), and earnings on those amounts, regardless of when contributed or earned. They clarify that safe harbor contributions to a qualified automatic contribution arrangement may also be a source for hardship distributions. The regulations do not require plans to make these additional sources available for hardship distributions: plans may limit the types of contributions from which hardship distributions can be made, and may include or exclude earnings.

As expected, the proposed regulations confirm that 403(b) plans (i) may not make earnings on elective deferrals available for hardship distribution, and (ii) QNECs and QMACs held in a 403(b)(7) custodial account may not be made available for hardship distribution (QNECs and QMACs in a 403(b)(1) annuity contract may be made available for hardship distribution). Many believe this was an oversight by Congress, and that future legislation will permit 403(b) plans to make hardship distributions from the same sources as may be made available under 401(k) plans.

Disaster Relief for Hurricanes Florence and Michael. The proposed regulations extend to victims of Hurricanes Florence and Michael the limited relief previously provided in Announcement 2017-15 to victims of Hurricane Maria. This means that a 401(k), 403(b), or governmental 457(b) plan may make a loan or a hardship distribution for a need arising from Hurricanes Florence or Michael even if the plan document does not currently provide for loans or hardship distributions. Only an employee or former employee whose principal residence or place of employment was located in one of the areas identified for individual assistance by FEMA (or whose lineal descendant or ascendant, dependent, or spouse had a principal residence or place of employment in one of those areas) on the dates specified in the emergency declaration may take advantage of this relief. You can determine whether a particular county was identified as eligible for individual assistance by going to <https://www.disasterassistance.gov> and entering the name of a city or state.

Under this disaster relief, only sources otherwise permitted to be distributed for hardship or unforeseeable emergency can be distributed, and the distribution must be limited to the maximum amount permitted for such distributions under current law. However, plans are not required to suspend employee contributions in connection with a hardship distribution, and can disregard procedural rules normally required in issuing loans or hardships (e.g., spousal consent, supporting documentation, etc.) so long as they make reasonable efforts to comply

with those requirements as soon as possible.

Other Changes. The proposed regulations also add language to reflecting changes made by prior legislation. For example, the proposed regulations provide that (i) a qualified reservist distribution is a permissible distribution event from a 401(k) plan, and (ii) a suspension of contributions imposed in connection with a distribution to a participant performing military service (who is treated as having a severance of employment) is permissible in a safe harbor plan.

Action Steps. Newport Group is currently assessing the proposed regulations and a feasible timetable for implementing related operational and administrative processes. Please contact your relationship manager for the most recent information regarding these changes.

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U.S. Department of Labor Releases Advance Copies of Form 5500 Annual Return/Report for 2018

The U.S. Department of Labor's Employee Benefits Security Administration, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) today released advance informational copies of the 2018 Form 5500 Annual Return/Report and related instructions. The "Changes to Note" section of the 2018 instructions highlights important modifications to the Form 5500 and Form 5500-SF, and their schedules and instructions. Modifications are as follows:

- **Principal Business Activity Codes.** Principal Business Codes have been updated to reflect certain updates to the North American Industry Classification System (NAICS).
- **Administrative Penalties.** The instructions have been updated to reflect an increase to \$2,140 per day in the maximum civil penalty amount assessable under Employee Retirement Income Security Act section 502(c)(2), as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The increased penalty under section 502(c)(2) is applicable for civil penalties assessed after January 2, 2018, whose associated violation(s) occurred after November 2, 2015.
- **Form 5500-Participant Count.** The instructions for Lines 5 and 6 have been enhanced to make clearer that welfare plans complete only Line 5 and elements 6a(1), 6a(2), 6b, 6c, and 6d in Line 6.

- List of Plan Characteristics Codes for Lines 8a and 8b (Lines 9a and 9b for SF filers). Plan characteristic code 3D, has been updated to reflect the IRS changes on the pre-approved plans as prescribed in Revenue Procedure 2017-41, 2017-29 IRB 92.
- Schedule MB-Contributions. The instructions for Line 3 have been modified to require an attachment in situations where a reported contribution includes a withdrawal liability payment.
- Schedule MB-Plan in Critical Status or Critical and Declining Status. The instructions for Line 4f (where plans expected to become insolvent or emerge from troubled status report the year in which such insolvency or emergence is expected to occur) have been modified to require an attachment providing additional information about how that year was determined. In addition, the instructions now include guidance about what to report if a troubled plan is neither projected to emerge from critical status nor become insolvent within 30 years.
- Schedule SB-Mortality Tables. Line 23, where filers check a box to indicate which set of mortality tables is used, has been updated to provide additional options available under Treas. Reg. § 1.430(h)(3). The instructions for Line 23 have been modified to reflect this change.
- Schedule SB. Schedule SB has been updated to reflect the issuance of Revenue Procedure 2017-56 with respect to change in funding methods. Line 23 has been updated to reflect final regulations prescribing mortality tables to be used by most defined benefit pension plans. Line 27, Codes 5 and 8 are no longer applicable and should not be used. Lines 42 and 43 have been removed; pursuant to the Pension Relief Act of 2010, there are no installment acceleration amounts or installment acceleration amount carryovers after the 2017 plan year.
- Schedule R. Schedule R has been updated to reflect the issuance of Revenue Procedure 2017-56, 2017-44 IRB 465, with respect to the change in funding methods. Also, the Schedule R instructions under "Who Must File" have been updated to reflect the removal from Schedule R of certain IRS compliance questions.

The advance copies of the 2018 Form 5500 are for informational purposes only and cannot be used to file a 2018 Form 5500 Annual Return/Report. Pension and welfare benefit plans that are required to file an annual return/report regarding their financial conditions, investments and operations each year generally satisfy that requirement by filing electronically the Form 5500 or Form 5500-SF and any required attachments under the all electronic EFAST2 system for submission, receipt, and processing of the Form 5500 and Form 5500-SF.

House Tax Bill Would Make Several Changes to IRAs and Retirement Plans

A tax bill has emerged from the House Ways and Means Committee, extending certain expiring tax provisions, addressing provisions of 2017 tax reform legislation and several recent disaster events (hurricanes and California wildfires), and proposing additional provisions that would affect tax-advantaged retirement savings arrangements. H.R. 88, titled the “Retirement, Savings, and Other Tax Relief Act of 2018,” is being reported as having bipartisan support.

How the legislation in its current form will be received in the Senate, if passed by the House, remains to be seen, although it is known that there have previously been negotiations on retirement provisions between leaders of both congressional bodies. Control of the House of Representatives will change with the start of the 116th Congress in January 2019, resulting from the November 2018 midterm elections. Leadership of the House Ways and Means Committee—the source of this bill—will shift from Rep. Kevin Brady (R-CA) to a Democratic House leader, widely expected to be Rep. Richard Neal (D-MA).

The following provisions of this legislation would in some manner impact retirement savings arrangements.

- Enhance retirement plan options related to distributions and repayments, plan loans, prorated tax treatment of distributions, etc., for several geographic areas recently affected by hurricanes, wildfires, typhoons, and volcanic eruptions
- Broaden options for employers to participate in multiple employer plans (MEPs) or a similar new design known as “pooled employer plan” (PEP)
- Extend the period within which a 401(k)-type plan may elect a safe harbor plan design
- Make Traditional IRA contributions an option for taxpayers of any age who have earned income
- Exempt \$50,000 of aggregate retirement savings from RMD requirement (to be COLA-adjusted)
- Allow graduate student fellowship and stipend payments to qualify as earned income for IRA purposes
- Prohibit credit card-enabled retirement plan loan programs
- Allow retirement plan lifetime income investments to be distributed and rolled over to another accepting retirement arrangement if the plan ceases to offer this investment option
- Allow a higher cap (15 percent) on deferral rates in certain automatic enrollment

401(k) type plans

- Increase the maximum tax credit for small employers that establish retirement plans (maximum of \$1,500 per year)
- Provide a tax credit incentive for employers to add automatic enrollment features to their retirement plans
- Allow 403(b)(7) custodial accounts to retain 403(b) status even if the plan is terminated by the sponsoring employer
- Permit recipients of military Ready Reserve compensation to make additional retirement plan salary deferrals
- Allow certain qualified retirement plans to be established through an employer's tax return deadline, including filing extensions
- Provide nondiscrimination testing relief to certain defined benefit pension plans that are closed to new participants
- Enhance the fiduciary safe harbor for employer selection of lifetime income retirement plan investments
- Require an annual projection of potential lifetime income based on a participant's retirement plan account balance
- Modify certain defined benefit pension plan insurance premiums paid to the Pension Benefit Guaranty Corporation (PBGC)
- Create a birth or adoption exemption to the 10 percent excise tax on early distributions from retirement plans

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Struggling multiemployer plans see help ahead at expense of healthy funds

With less than a week to produce a solution to a massive multiemployer pension underfunding problem, expectations of a special congressional committee are shifting from dramatic new ideas to some tough choices for plan sponsors.

An analysis of a draft proposal available as Pensions & Investments went to press shows the ideas being considered could help some of the 100-plus multiemployer plans in the most critical shape and shore up the finances of the Pension Benefit Guaranty Corp. However, it could also push currently healthy plans, which now number more than 1,200, into suddenly shakier condition and even prompt many to close their plans entirely. For some observers, it is an approach that protects retirees at the sake of active workers.

A source close to the process said negotiations are ongoing and that the document does not reflect a final agreement. Sherrod Brown, D-Ohio and select committee co-chairman, said in a statement that “the hardworking men and women who are counting on this committee deserve a solution, and Chairman Hatch and I continue to negotiate with other members of the committee to reach a bipartisan agreement.”

Members of the Joint Select Committee on Solvency of Multiemployer Pension Plans — 16 House and Senate members split evenly from both parties — have been at it since February, holding hearings and consulting with stakeholders, multiemployer pension experts, academics and PBGC officials, whose own multiemployer program hangs in the balance.

The draft proposal rejected the idea of a federal loan program, which did not gain political traction with the disparate group. Instead, it offers several measures to help struggling plans protect retiree benefits, including increasing the PBGC minimum guarantee level to \$70 per month per year of service, and at least \$3,000 per year.

It even undoes benefit cuts already authorized by the Treasury Department under the Multiemployer Pension Reform Act of 2014, but plans within five years of insolvency would cut to the minimum benefit level and then be terminated.

The PBGC would gain more authority and resources to take financial responsibility for struggling plans. The draft proposal calls for a 30-year promise of \$3 billion in federal funding per year to allow it to do more partitioning, a new variable rate premium for plan sponsors, a new "stakeholder" premium to be paid by retirees in struggling plans and a new exit premium for employers.

In addition to those new premium costs, healthy plans would also be squeezed by a requirement to use a more conservative discount rate when measuring liabilities. While 7.5% is a typical rate used by plans today, the proposal calls for a cap of the long-term corporate bond rate plus 2%, roughly 100 basis points lower. Those two changes have some multiemployer plan experts warning that many healthy plans could suddenly become classified as endangered and force employers to consider getting out or trustees to think about shifting to defined contribution plans.

The PBGC multiemployer program, which is headed toward insolvency by the end of fiscal year 2025, recently saw its deficit drop to \$53.9 billion from \$65 billion the previous year. But the agency continues to brace for what PBGC Director W. Thomas Reeder Jr. said will be "a wave of insolvencies" beginning in 2020.

According to actuarial firm Cheiron Inc., the number of multiemployer pension plans declaring

themselves likely to be insolvent within 20 years is now 121, with a collective \$48.9 billion in underfunding, up from 114 plans in 2017. Cheiron found that three plans account for 65% of the total unfunded liability: the \$16.1 billion Teamsters Central States, Southeast and Southwest Areas Pension Plan, Rosemont, Ill., with \$22.9 billion in unfunded liabilities; the \$4.4 billion Bakery and Confectionery Union and Industry International Pension Fund, Kensington, Md., with \$3.85 billion in unfunded liabilities; and the \$2.9 billion New England Teamsters and Trucking Industry Pension Fund, Burlington, Mass., with \$5.1 billion in underfunding.

Select committee members and staff appreciate what is at stake, said Joshua Shapiro, senior actuarial adviser at Groom Law Group in Washington. "While it is impossible to know if a compromise can be found, they are taking this issue extremely seriously. There is no doubt that people want to get something done."

The committee has until Nov. 30 to produce a report with recommendations and proposed legislation that, if approved by at least five members from each party, is guaranteed an expedited vote before this session of Congress adjourns.

Partition program

The centerpiece of the plan under discussion is giving the PBGC enough money to beef up its partition program, with the agency taking financial responsibility for a struggling plan's "orphans" — people who earned benefits working for employers no longer in the plan — while the plan itself keeps operating for the remaining employees.

So far, the cash-strapped PBGC has only been able to do one modest partitioning in recent years, for the \$51.3 million United Furniture Workers Pension Fund, Nashville, Tenn., which in 2017 was 27% funded. The select committee's proposal is expected to include significantly more federal funding to help finance more partitions.

All of these ideas come with both supporters and detractors, including retirees galvanized since passage of MPRA in 2014 to oppose benefit reductions allowed through application to the Treasury Department. But there is a lot at stake if the struggling plans' slide into insolvency is not stopped. As many as 2 million people — not just those in struggling plans but anyone backed by the PBGC — could lose their benefits if the PBGC multiemployer program runs out of money, while a taxpayer bailout of the PBGC would cost billions, and many small businesses could be on the hook for underfunding if the PBGC cannot make up the difference.

At the same time, select committee members, especially those critical of multiemployer pension funds, want to be sure other, healthier multiemployer plans don't risk repeating the

same problems, and that there is shared sacrifice.

That is understandable, said former PBGC Director Joshua Gotbaum, now a guest scholar at the Brookings Institution in Washington. "If Congress reaches a deal, it will do so by enabling the PBGC to do the job for which Congress created it — protecting the pensions of orphans. The trade-off has to be rules in place to ensure that this doesn't happen again."

While many multiemployer pension advocates held out hope that a federal loan program would be part of the equation, concerns over the chances of helping enough troubled plans and not doing enough to shore up the PBGC, mixed with perceptions of it as a government bailout, had dimmed its prospects.

The committee has some tough calls to make, said Charles Blahous, a senior research strategist at George Mason University's Mercatus Center. In addition to funding and withdrawal liability rule adjustments, the biggest change needed, Mr. Blahous said, is how multiemployer plans measure liabilities. He advocates for using rates no higher than those exhibited in a yield curve of corporate bond rates.

"The most important thing is to fix the measurement problem. What there should not be a debate about is whether to properly measure assets and liabilities. I think there is increased understanding of that," said Mr. Blahous.

While the discount rate plans use now to measure liabilities might be too high, "if you change the rules, you need to give plans time," said Mr. Gotbaum. He recalled a similar experience for single-employer plan sponsors during passage of the Pension Protection Act of 2006. The discount rate first was lowered to a long-term corporate bond rate, with a seven-year adjustment period that was repeatedly extended by Congress, ultimately to more than 20 years. The draft proposal offers a 30-year amortization period to absorb funding losses resulting from the lower discount rate.

Karen Friedman, executive vice president and policy director of the Pension Rights Center in Washington, said her retiree advocacy group is keeping a close eye on the committee to protect promised benefits to participants in multiemployer plans. "We hope that they are going to be able to reach a full and fair solution, not one that just protects plans and the PBGC. All we can do right now is hope."

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