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ISSUES IMPACTING PUBLIC PENSION FUNDS

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Courts Back Public Employees Opposing Pension Changes

Courts across the country are siding with state and local government workers in interpreting federal and state law, saying that the pensions they were promised when they were hired cannot be reduced without giving them a new compensating benefit.

The California Supreme Court ruled in November that health benefits for government retirees may not be eliminated if state and local governments had clearly promised workers those benefits.

The court ruled that once a city or county government has pledged retirement health care benefits at a certain level, it cannot go back on its promise and cut benefits for employees.

A New Jersey State appeals court said in November it would let stand a lower court ruling that found higher retirement contributions from judges effectively would be a reduction in judicial pay, which violates the state constitution.

The case stems from a new law that requires all public employees to contribute a greater share toward their health care and pension costs.

And the Rhode Island Supreme Court has declined to hear the state's appeal of a Superior Court ruling in September that benefits that the state has promised workers in the retirement system constitute contractual obligations.

In that case, labor unions argued that the General Assembly's amendments to the pension law in 2009 represent a breach of contract.

All these cases arise from legal challenges to states' efforts to change their public pensions to reduce underfunded future liabilities.

"Employees are entitled to benefits in place during their employment," the California Public Employees' Retirement System said in a July report. "Public employees obtain a vested right to the provisions of the applicable retirement law that exist during the course of their public employment.

Promised benefits may be increased during

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employment, but not decreased, absent the employees' consent.

“The courts have established that this rule prevents not only a reduction in the benefits that have already been earned, but also a reduction in the benefits that a member is eligible to earn during future service.”

On the Web at: <http://www.governing.com/news/state/California-Court-Ruling-Limits-Cuts-to-Public-Pensions.html>, <http://www.pbn.com/Court-lets-pension-change-suit-proceed,62771>, <http://www.latimes.com/health/la-me-1122-health-benefits-20111122,0,7003079.story>, http://www.plansponsor.com/Court_Rules_against_Higher_Retirement_Contributions_for_NJ_Judges.aspx, http://blogs.sacbee.com/the_state_worker/2011/11/californians-for-retirement-security-california-pension-reform-proposal-changes.html, <http://www.latimes.com/news/local/la-me-cap-pensions-20111114,0,1935002.column> and <http://www.calpers.ca.gov/eip-docs/about/> 

Defined Benefit Pensions Help to Recruit and Retain Teachers, While Saving Money, Report Finds

A new report by the National Institute on Retirement Security (NIRS) finds that pensions play a critical role in teacher effectiveness and save money by reducing teacher turnover costs.


The vast majority of public school teachers in the United States participate in a traditional defined benefit (DB) pension plan. The report analyzes the effectiveness of DB pensions on teacher retention and overall teacher productivity, and draws policy conclusions about the ideal design of teacher retirement systems.

The “retention effects” of DB pension plans save school districts money, according to “The Three Rs of Teacher Pension Plans: Recruitment, Retention, and Retirement.” In 2003, DB pensions saved school districts \$273.2 million nationally in teacher turnover costs.

In addition, DB pensions helped to retain an additional 22,000 teachers nationwide in 2003, the report found. “Because longer tenured teachers are more effective teachers, the increased retention that DB pensions bring increases the overall quality of public education,” the report noted.

It also found that DB pension plans help to recruit high quality teachers, and to retain highly productive teachers longer, when compared with defined contribution plans.

“Education policy literature is clear: teachers become more effective as they gain experience,” said Ilana Boivie, report author and economist with NIRS. “Research also shows that DB pension benefits, which provide a modest, reliable income in retirement, are an essential tool for retaining these highly effective teachers. Moreover, pensions help reduce the high cost of teacher turnover to school districts and taxpayers. These cost savings are a particularly important consideration for state and local policymakers striving to improve education, yet continuing to struggle with highly strained budgets.”

On the Web at: http://www.nirsonline.org/storage/nirs/documents/3R%20Teacher%20Pensions/final_oct_31_3rs_issue_brief.pdf. 

SEC Charges UBS with Faulty Record-keeping Related to Short Sales

The Securities and Exchange Commission (SEC) has charged UBS Securities LLC for inaccurate recording practices when providing and recording “locates” to customers seeking to execute short sales.

Broker-dealers are routinely asked by customers to locate stock for short selling, and a “locate” represents a determination by a broker-dealer that it has borrowed, arranged to borrow, or reasonably believes it could borrow the security to settle the short sale. Broker-dealers are required under Regulation SHO to accurately record the basis upon which it has given out locates.

UBS employees routinely recorded the name of a lender's employee even when no one at UBS had actually contacted the employee to confirm availability, according to the SEC charges. The SEC's investigation found that UBS employees sourced thousands of locates to lender employees who were out of the office and could not have provided any information to UBS on those days.

UBS settled the enforcement action by agreeing to pay an \$8 million penalty and retain an independent consultant.

On the Web at: <http://www.sec.gov/litigation/admin/2011/34-65733.pdf>. 

Many See Silver Lining in Super Committee's Failure to Reach Deficit-Reduction Deal

Social Security, Medicaid, food stamps, veterans' benefits and other politically sensitive programs should be spared the budget ax now that the congressional "super committee" has failed to forge a deficit-reduction deal.

But the failure sets in motion a new timetable for achieving \$1.2 trillion in spending reductions – and Congress has vowed to try to find the savings before automatic cuts take place across domestic and defense programs starting in January 2013.

Those automatic cuts would spare the large entitlement programs, but they would affect almost everything else, including all non-Medicaid aging services such as transportation, subsidized housing and information services. The cuts also would include a 2 percent reduction in Medicare spending, which must come from payments to hospitals, doctors, nursing homes, and other providers and not in benefits.

Congress could decide to step in before the automatic cuts take place and target entitlement programs. Edward F. Coyle, executive director of the Alliance for Retired Americans, said votes to cut these programs could be imminent.

"This was not the first threat that retirees have faced to their Social Security, Medicare, and Medicaid – and it will not be the last," Coyle said. "There may even be votes to cut these programs in December. At a time when so many retirees are struggling to get by, and when today's workers wonder if they will ever be able to retire, it is unconscionable that Republicans continue to eye cuts to these programs as a way to fund an extension of tax cuts for the wealthiest Americans."

But for the most part, the lack of an agreement by the Joint Select Committee on Deficit Reduction was good news for retirees because Social Security, Medicare and Medicaid will be spared the budget ax, for now, he said.

Randi Weingarten, president of the American Federation of Teachers, also blamed Republicans for the committee's failure to reach a deficit deal.

"There is not equal blame to go around. While Democrats tried to find common ground for the common good, Republicans insisted on protecting the 1 percent from any additional taxes.... it is clear that Republicans refused to compromise."


The looming across-the-board cuts will especially hurt teachers, Weingarten added. The Congressional Budget Office projects that education will suffer a 7.8 percent cut, forcing "massive reductions to education programs."

These cuts would compound other education cuts that have already resulted in the layoff of nearly 300,000 teachers, larger class sizes, fewer resources for early childhood education, the elimination of libraries, art, music, foreign languages and physical education, Weingarten said.

Max Richtman, president and CEO of the National Committee to Preserve Social Security & Medicare, said the super committee's failure to reach an agreement "could be the first indication that Washington has begun to listen to the American people who've said they don't want their benefits cut for deficit reduction."

Most Americans do not favor cuts in programs like Social Security and Medicare, Richtman said.

"In the case of the super committee, failure to support a flawed deficit deal that would target our social insurance safety net while protecting the wealthy isn't a failure at all – it could be Washington's first successful step in closing the growing disconnect and economic gap between America's haves and have-nots," he said.

On the Web at: http://www.ncpssm.org/news/archive/supercommittee_no_deal_release/, <http://www.aft.org/newspubs/press/2011/112111a.cfm>, <http://www.retiredamericans.org/newsroom/press-releases/view/2011-11-retiree-leader-end-of-super-committee-good-news-for>, and <http://www.aarp.org/about-aarp/press-center/info-11-2011/aarp-reacts-to-super-committees-announcement.html>. 

Numerous Pension Plan Dollar Limits Will Increase In 2012

The IRS has released the 2012 cost-of-living adjustments (COLAs) to retirement plan limits. As a result of the new COLAs, many dollar limitations on benefits and contributions, annual compensation limits, and other dollar limitations applicable to retirement plans will increase in 2012.

Employee benefit plans are subject to annually adjusted dollar limitations on benefits, contributions, compensation and other items. Annual benefit limits are generally calculated based on inflation data from the third fiscal quarter of each year. Adjustments in the limits are rounded down and may not take effect until certain minimum dollar amounts are reached.

Highlights of the 2012 maximum dollar limitations announced by the IRS include:

- Annual defined benefit limit: \$200,000, an increase from \$195,000 in 2011;
- Annual defined contribution limit: \$50,000, an increase from \$49,000 in 2011;
- Annual compensation limit: \$250,000, an increase from \$245,000 in 2011;

On the Web at: <http://www.irs.gov/newsroom/article/0,,id=248482,00.html>. 

Consultancy Outlines How to Plan a Successful Public Pension Plan Funding Policy

The actuarial and consulting firm The Segal Company has released its second Public Sector Letter in a series on retirement topics. It focuses on governmental pension plan costs and how stakeholders can be assured that their plan's funding approach will result in adequate assets to pay benefits – in particular through reviewing and updating the plan's funding policy.

The report analyzes the key elements of a funding policy: the actuarial cost method, the asset-smoothing method and amortization of the unfunded actuarial accrued liability (UAAL). It also discusses the role of assumptions in plan funding and negative amortization. The goals of a pension plan funding policy – from contributions and budgetary predictability and benefit payment to the elements of a funding policy – are discussed in detail.

The report, "Planning a Successful Pension Funding Policy," concludes with comments about why plan sponsors may want to conduct a funding policy review. "A well-conceived funding policy can do more than ensure a well-funded plan; it can enlighten benefit policy," the company states.

On the Web at: <http://www.segalco.com/publications/publicsectorletters/nov2011.pdf>. 

Social Security COLA: A 3.6 Percent Benefit Increase for 2012

The monthly Social Security and Supplemental Social Security Income benefits for more than 60 million Americans will increase 3.6 percent in 2012 – the first cost-of-living adjustment (COLA) since 2009. The 3.6 percent COLA will begin with benefits that nearly 55 million Social Security beneficiaries receive in January 2012. Other changes that take effect in January of each year are based on the increase in average wages. Based on that increase, the maximum amount of earnings subject to the Social Security tax (taxable maximum) will increase to \$110,100 from \$106,800. Of the estimated 161 million workers who will pay Social Security taxes in 2012, about 10 million will pay higher taxes as a result of the increase in the taxable maximum. The Social Security Act provides for how COLA is calculated.

On the Web at: www.socialsecurity.gov/cola. 

Legislation Imposing Financial Transaction Tax Revived by Democrats

Democrats in Congress introduced legislation in November that would impose a tax on financial transactions, refocusing attention on an idea that has so far gained little traction.

The Wall Street Trading and Speculators Tax Act (H.R. 3313/S. 1787), sponsored by Sen. Tom Harkin (D-Iowa) and Rep. Peter DeFazio (D-Ore.), would place a 0.03% levy on financial trading in stocks and bonds at their market value. It also would cover derivative contracts, options, puts, forward contracts and swaps at their purchase price.

The goal of the legislation is to curb high-frequency trading and force Wall Street to contribute a bigger share to the federal budget. If adopted, it would take effect on Jan. 1, 2013.

“This trading tax would help raise necessary funds to invest in our infrastructure and the education of our children, among other priorities, and would do so without hurting job creation,” Harkin said. “There is no question that Wall Street can easily bear this modest tax.”

Similar bills in recent years have made no progress in Congress. But in September, the European Commission proposed an EU-wide transaction tax. Several countries there indicated they would only go along with the idea if it were adopted globally.

But there are opponents. In addition to the United States, countries opposing the proposed tax include China, Britain, Australia, Canada and India. In the United States, the Securities Industry and Financial Markets Association (SIFMA) said the measure would harm financial firms, as well as their clients.

“A financial transaction tax is essentially a sales tax on investors,” said Kenneth E. Bentsen, Jr., executive vice president of public policy and advocacy at SIFMA. “Such a tax will impede the efficiency of markets and impair depth and liquidity as well as raise costs to the issuers, pensions and investors who help drive economic growth.”

But Dean Baker, a co-director with the Center for Economic and Policy Research, said the new tax would raise tens of billions of dollars a year while reining in dangerous speculative trading.

“This would have a minimal effect on individual 401(k) or mutual funds, however, it would impose substantial costs on those who are engaged in short-term trading strategies that can lead to disruptions in markets, such as last spring’s flash crash. This tax would have no effect on ATM withdrawals, short term revolving loans, or other everyday financial transactions.”

The congressional Joint Committee on Taxation has not determined how much the bill might produce in new taxes, but proponents of the plan estimate that it could bring in around \$100 billion annually.

As of press time, the legislation had 15 cosponsors in the House and two in the Senate.

On the Web at: http://www.defazio.house.gov/index.php?option=com_content&task=view&id=735&Itemid=70, <http://www.govtrack.us/congress/bill.xpd?bill=h112-3313>, <http://www.govtrack.us/congress/bill.xpd?bill=s112-1787>, <http://www.cepr.net/index.php/press-releases/press-releases/senator-harkin-and-representative-defazio-introduce-financial-transactions-tax-proposal>, and <http://www.sifma.org/news/news.aspx?id=8589936210>.



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Report Examines Proposals to Fix Social Security

A new report by the National Center for Policy Analysis examines the different proposals that have been suggested for fixing Social Security.

The report compares the implications of maintaining Social Security's current benefit schedule with three changes that would reduce spending in different ways and one that would raise revenues immediately. It analyzes the extent to which each provision would reduce the program's long-run deficits, affect spending, and change the distribution of benefits and taxes.

The four reforms considered are:

- **Progressive price indexing.** This option would substantially reduce the long-run funding gap to \$3.2 trillion from the current law funding gap of \$16.1 trillion. As a result, it would only require a modest solvency tax increase equal to 0.6 percent of taxable payroll. But in terms of long-run spending, it would result in the second smallest program, about 82 percent of the size of the current program, according to the report, "How Reforms Would Affect Social Security's Funding Shortfalls, Total Spending, and Distribution of Benefits and Taxes."
- **Changing the benefit formula.** This would essentially eliminate the long-run funding gap and require no additional solvency tax. It also would produce the most dramatic reduction in spending on benefits, equal to 23 percent of long-run spending under the current benefit formula, according to the report. In addition, it would retain the progressive nature of the benefit formula, but would reduce the degree of progressivity relative to the current formula.
- **Raising the retirement age.** This would reduce Social Security's unfunded obligations for retiree benefits to \$6.3 trillion and require a solvency tax of 1.3 percent of taxable payroll. It would result in the third-largest program, with about 87 percent of the current law spending, the report found. Moreover, though the distribution of net taxes would still be progressive, of the four potential changes considered it would reduce the degree of progressivity the most relative to current law.
- **Eliminating the taxable maximum.** This provision would reduce Social Security's unfunded obligation for retiree benefits to \$8.3 trillion and require a 1.3 percent payroll tax increase. It would result in the largest program in terms of long-run spending, and would increase the progressivity of the program.

"The current program and the changes considered in the study all require benefit cuts and/or tax increases to reduce Social Security's unfunded obligations," the report stated. "Several of the provisions, including raising the retirement age and progressive indexing, can be part of a reform that includes individually-owned accounts funded by savings. Funding the accounts would require additional savings during a transition period, but in the end the reformed program would provide retirement benefits that are partially prepaid."

On the Web at: <http://www.ncpa.org/pdfs/st337.pdf>. 

Important Dates to put on your calendar ...

- 23rd Annual Conference registration begins soon. Expect an invitation sent to your email with details!
- **December:**
 - Dec. 23-Jan. 2: Merry Christmas & Happy New Year! (office closed)
 - Registration begins for the 23rd Annual Conference in Corpus Christi
- **January:**
 - Jan. 3: Normal office hours resume
- **March**
 - Sunday, March 25 - TEXPERS Annual Members Meeting

Report Discusses Upside, Downside of Teacher Pension Reform

A new report by the Thomas B. Fordham Institute contains a series of essays that highlight both the upside and downside of pension reform as it has been undertaken by various organizations, companies and governmental entities, with a focus on extracting insights and strategies for the public education sector.

The report discusses Utah, which closed its existing defined benefit (DB) plan to new workers and created a choice (a defined contribution (DC) plan or a hybrid DB/DC plan) for employees hired after July 1, 2011. It also covers Alaska, which closed its DB plan to new employees in 2005 and created a mandatory DC plan for all new state hires, including school teachers. Oakland County, Mich., instituted a DC plan in the 1990s – even though its DB plan was still relatively healthy. Finally, the report discusses pension changes at IBM and at four charter schools.

The report, “Halting a Runaway Train: Reforming Teacher Pensions for the 21st Century,” reaches three basic conclusions: “First, this is messy, complicated work, fraught with challenges. Yet smart organizations can prepare for them.” “Second, cost savings from pension reform may be real but not immediate.” “Third, employers need not choose between saving money and disregarding employee concerns.”

On the Web at: http://www.edexcellencemedia.net/publications/2011/20111020_HaltingARunawayTrain/20111020_HaltingARunawayTrain_FINAL.pdf

Some Plans May Lose Their Governmental Status under IRS Definition of ‘Governmental Plan’

The IRS has issued two advanced notices of proposed rulemaking on the definition of “governmental plan” under Code Sec. 414(d).

“These proposed regulations are a very big deal,” the National Council on Teacher Retirement (NCTR) said in a statement. “If the possible proposed regulations are adopted as they now stand, many plans that believed they were governmental plans could lose their governmental status.”

The draft proposed regulations would define key terms under Code Sec. 414(d), such as “United States,” “State,” “political subdivision of a State,” and “agency or instrumentality of a State or political subdivision of a State.” In addition, the proposed regulations would provide guidance on whether a governmental entity has established and maintained a governmental plan for purposes of Code Sec. 414(d) and guidance on the rules that would apply when a plan sponsor changes its status from a governmental entity to a private entity or vice-versa.

The guidance contains anticipated proposed regulations and requests for comments. One draft proposed set of regulations would provide general guidance on the determination of governmental plan status. The other draft set of proposed rules would provide guidance on the determination of whether a plan of an Indian tribal government is a governmental plan within the meaning of Code Sec. 414(d).

NCTR said, “it appears that there will be no ‘de minimus’ rule when it comes to non-governmental employees, and the coverage of employees of a non-government entity would cause a plan to lose its governmental status unless these individuals were also union employees/representatives in the case of a collectively bargained plan, or employees of the plan itself.

“And if an employee benefit plan fails to meet the definition of a governmental plan, then ERISA title I (Federal protection of employee benefit rights, administered by the DOL’s Employee Benefits Security Administration) and IV (plan termination insurance, enforced by the PBGC) would technically apply to it.

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“In addition, the nondiscrimination and minimum participation rules of the Federal tax code would also apply, as would the minimum funding standards.”

NCTR and the National Association of State Retirement Administrators (NASRA) are planning to prepare joint comments on the proposed rules, and are seeking public comments by February 6, 2012.

On the Web at: <http://www.irs.gov/retirement/article/0,,id=249179,00.html> and http://www.nctr.org/Federal%20Governmental%20Relations/ThreePresent_



Research Debunks Myth of Early Retirement

The average retirement age is higher than traditional measures suggest, according to a new paper by the Economic Policy Institute (EPI). Contrary to popular belief, most American workers do not retire shortly after becoming eligible for Social Security benefits at age 62. The paper debunks the myth that these individuals could make up for proposed cuts to Social Security by working longer.

In “The Myth of Early Retirement,” economist Monique Morrissey explains why existing measures of the average retirement age are misleading and puts forth a new, more accurate measure.

Existing measures of the average retirement age are problematic because they either include people still working for pay or because they count people who are not in the workforce to begin with, such as disabled people and full-time caregivers. A better measure calculates the average retirement age as occurring when the labor force participation rate of the non-disabled workforce is at half its peak, according to the paper. Using this measure, the average retirement age is currently 65.5.

Over the past quarter century, the postwar trend of early retirement has reversed. In fact, the share of 55-64 year-olds currently in the labor force is the highest on record, and the share of workers who are 55 or older is now the same as it was a half century ago.

On the Web at: <http://www.epi.org/publication/myth-early-retirement/>. 

UPCOMING TEXPERS CONFERENCES

TWENTY-THIRD ANNUAL CONFERENCE

Omni Corpus Christi
Corpus Christi, Texas
March 25-28, 2012

SUMMER EDUCATIONAL FORUM

Grand Hyatt
San Antonio, Texas
August 19-21, 2012

TWENTY-FOURTH ANNUAL CONFERENCE

Sheraton Austin
Austin, Texas
March 3-6, 2013

SUMMER EDUCATIONAL FORUM

Grand Hyatt
San Antonio, Texas
August 4-6, 2013

TWENTY-FIFTH ANNUAL CONFERENCE

Renaissance Worthington
Fort Worth, Texas
March 23-26, 2014

SUMMER EDUCATIONAL FORUM

Omni Houston Hotel
Houston, Texas
August 8-12, 2014

TWENTY-FIFTH ANNUAL CONFERENCE

Sheraton Austin Hotel
Austin, Texas
March 29-April 1, 2015