



CYPEN & CYPEN

NEWSLETTER

for

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Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. IRS ANNOUNCES CONTRIBUTION AND BENEFIT LIMITS FOR 2019:

The Internal Revenue Service (IRS) announced cost of living adjustments affecting dollar limitations for pension plans and other retirement-related items for tax year 2019. According to [Notice 2018-83](#), the contribution limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan is increased from \$18,500 to \$19,000. The catch-up contribution limit for employees aged 50

and over who participate in 401(k), 403(b), most 457 plans and the federal government's Thrift Savings Plan remains unchanged at \$6,000. The limit on annual contributions to an individual retirement account (IRA), which last increased in 2013, is increased from \$5,500 to \$6,000. The additional catch-up contribution limit for individuals ages 50 and older is not subject to an annual cost-of-living adjustment and remains \$1,000. Effective January 1, 2019, the limitation on the annual benefit under a defined benefit plan under Section 415(b)(1)(A) is increased from \$220,000 to \$225,000. For a participant who separated from service before Jan. 1, 2019, the limitation for defined benefit plans under Section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2018, by 1.0264. The limitation for defined contribution plans under Section 415(c)(1)(A) is increased in 2019 from \$55,000 to \$56,000. The Code provides that various other dollar amounts are to be adjusted at the same time and in the same manner as the dollar limitation of Section 415(b)(1)(A). After taking into account the applicable rounding rules, the amounts for 2019 are as follows:

- The annual compensation limit under Sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from \$275,000 to \$280,000.
- The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan is increased from \$175,000 to \$180,000.
- The dollar amount under Section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a five-year distribution period is increased from \$1,105,000 to \$1,130,000, while the dollar amount used to determine the lengthening of the five-year distribution period is increased from \$220,000 to \$225,000.
- The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) is increased from \$120,000 to \$125,000.
- The dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals ages 50 or older remains unchanged at \$3,000.
- The annual compensation limitation under Section 401(a)(17) for eligible participants in certain governmental plans that, under the plan as in effect on July 1, 1993, allowed cost of living adjustments to the compensation limitation under the plan under Section 401(a)(17) to be taken into account, is increased from \$405,000 to \$415,000.

- The compensation amount under Section 408(k)(2)(C) regarding simplified employee pensions (SEPs) remains unchanged at \$600.
- The limitation under Section 408(p)(2)(E) regarding SIMPLE retirement accounts is increased from \$12,500 to \$13,000.
- The limitation on deferrals under Section 457(e)(15) concerning deferred compensation plans of state and local governments and tax-exempt organizations is increased from \$18,500 to \$19,000.
- The limitation under Section 664(g)(7) concerning the qualified gratuitous transfer of qualified employer securities to an employee stock ownership plan remains unchanged at \$50,000.
- The compensation amount under Section 1.61 21(f)(5)(i) of the Income Tax Regulations concerning the definition of “control employee” for fringe benefit valuation remains unchanged at \$110,000. The compensation amount under Section 1.61 21(f)(5)(iii) is increased from \$220,000 to \$225,000.
- The dollar limitation on premiums paid with respect to a qualifying longevity annuity contract under Section 1.401(a)(9)-6, A-17(b)(2)(i) of the Income Tax Regulations remains unchanged at \$130,000.

The Code provides that the \$1,000,000,000 threshold used to determine whether a multiemployer plan is a systemically important plan under Section 432(e)(9)(H)(v)(III)(aa) is adjusted using the cost-of-living adjustment provided under Section 432(e)(9)(H)(v)(III)(bb). After taking the applicable rounding rule into account, the threshold used to determine whether a multiemployer plan is a systemically important plan under Section 432(e)(9)(H)(v)(III)(aa) is increased for 2019 from \$1,087,000,000 to \$1,097,000,000. The Code also provides that several retirement-related amounts are to be adjusted using the cost-of-living adjustment under Section 1(f)(3). After taking the applicable rounding rules into account, the amounts for 2019 are as follows:

- The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the retirement savings contribution credit for married taxpayers filing a joint return is increased from \$38,000 to \$38,500; the limitation under Section 25B(b)(1)(B) is increased from \$41,000 to \$41,500; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$63,000 to \$64,000.
- The adjusted gross income limitation under Section 25B(b)(1)(A) for determining

the Retirement Savings Contribution Credit for taxpayers filing as head of household is increased from \$28,500 to \$28,875; the limitation under Section 25B(b)(1)(B) is increased from \$30,750 to \$31,125; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$47,250 to \$48,000.

- The adjusted gross income limitation under Section 25B(b)(1)(A) for determining the Retirement Savings Contribution Credit for all other taxpayers is increased from \$19,000 to \$19,250; the limitation under Section 25B(b)(1)(B) is increased from \$20,500 to \$20,750; and the limitation under Sections 25B(b)(1)(C) and 25B(b)(1)(D) is increased from \$31,500 to \$32,000.
- The deductible amount under Section 219(b)(5)(A) for an individual making qualified retirement contributions is increased from \$5,500 to \$6,000.

PLANSPONSOR, November 1, 2018.

2. STATEWIDE RACES SHINING SPOTLIGHT ON PUBLIC FUNDS:

Although much of the midterm election attention is focused on control of Congress, there are key statewide races across the country that will influence state pension systems.

Retirement issues are not a key factor in every one of the 36 gubernatorial elections on Nov. 6, but winners in a select number of states will collectively make decisions that will affect retirement for millions of Americans. Several gubernatorial candidates are advocating a switch to defined contribution plans. And in other elections, voters will weigh in on a candidate's plan to tax the large endowments of private non-profit colleges and universities, as well as state treasurer races that could shape the future of state pension investments.

Here is a look at gubernatorial races to watch:

Oregon

In Oregon, the \$75.5 billion [Oregon Public Employees Retirement Fund](#) is a frequent topic of discussion for incumbent Democratic Gov. Kate Brown and her challenger, Republican state Rep. Knute Buehler. In March, the Oregon Legislature passed a bill championed by Ms. Brown aimed at reducing the system's unfunded liability, which was \$22.3 billion as of Dec. 31. The bill set up two new funds, a side account for school districts to be invested alongside pension assets to reduce school district pension contributions, and an incentive

fund to match certain lump-sum employer contributions to the pension plan. The bill also directed the state treasurer to study the feasibility of borrowing money from the Oregon Short Term Fund, a \$15.7 billion short-term cash investment pool in which a number of local governments and state agencies participate, to be redeployed into investments. The state treasurer is to report the results of the study to the Legislative Assembly no later than Sept. 30, 2019. Ms. Brown set up a task force in 2017 to bring down PERS' unfunded actuarial liability and has said she will work with the group to continue that mission, if elected. In November 2017, the task force put out a report recommending a number of measures, including harvesting some of the state's timberland, selling state-owned real estate and privatizing state universities, which could bring in \$4.2 billion to \$6.4 billion to reduce the system's unfunded actuarial liability. Mr. Buehler would like to take PERS in a different direction. While protecting pension benefits that have already been earned, he wants to enroll new employees and move current employees to a 401(k)-type plan with an unspecified "reasonable match," cap the salary amount used to calculate benefits at \$100,000 a year, and require all state and local government employees to contribute toward their own retirement benefits. Public employees in Oregon already are required to contribute 6% of their salary into the state's individual account program, a supplemental defined contribution plan that belongs to the employee. Mr. Buehler wants all or at least of portion of that 6% contribution to be redirected to PERS.

Colorado

In Colorado, Republican Treasurer Walker Stapleton is running against Democratic U.S. Rep. Jared Polis. Mr. Stapleton is proposing big changes to the \$49 billion Colorado Public Employee Retirement Association, including allowing all employees to choose a 401(k)-style plan instead of the current plan, raising the retirement age and reducing the fund's assumed rate of return to 5% to 5.5% from 7.25%, which he said is more realistic. In June, Gov. John W. Hickenlooper signed a pension reform measure that will increase the contribution rate for most PERA participants by an additional 2% of pay phased in beginning July 1, 2019, totaling 10% for most participants by July 1, 2021; require a three-year delay before receiving a cost-of-living adjustment; and set the COLA cap at 1.5% (the current annual COLA for participants who started receiving benefits prior to Jan. 1, 2007, is 2%), among other measures. The law will also direct the state to allocate \$225 million each year to the pension fund to reduce the unfunded liability (PERA was 61.3% funded

as of Dec. 31, 2017, according to the most recent information on the pension fund's website); and establish an automatic adjustment provision designed to fully fund PERA in 30 years. On his campaign website, Mr. Polis said the law placed too much burden on retirees and that he would "reject efforts to reform PERA on the backs of our teaching professionals and state or local employees in the future."

New Mexico

U.S. Reps. Michelle Lujan Grisham, a Democrat, and Steve Pearce, a Republican, are running for governor of New Mexico. The state has two major pension funds — the \$15.4 billion Public Employees Retirement Association of New Mexico and the \$13 billion [New Mexico Educational Retirement Board](#). Mr. Pearce said in a statement to *Pensions & Investments* that "government pensions have stayed generous and lagged many changes. At a minimum, new employees coming into the government workforce are going to have a very different system. Employees many years away from retirement are going to have to see significant changes." Mr. Pearce also wants the \$24.3 billion New Mexico State Investment Council to invest more in the state but has not offered specific figures. The SIC oversees the New Mexico Private Equity Investment Program, which was created in 1993 and is legally authorized to invest up to 9% of the state's Severance Tax Permanent Fund in New Mexico companies. As of April 2017, the program had a target asset allocation of 5% of permanent fund assets, or \$235 million, for private equity investments in the state.

Massachusetts

Democratic gubernatorial candidate Jay Gonzalez, who is running against popular incumbent Republican Gov. Charles D. Baker, has a plan to tax endowments if elected. His plan calls for a 1.6% tax on the endowments of private, non-profit colleges and universities with endowment assets exceeding \$1 billion. The state has nine colleges and universities that fit the description, including [Harvard University's](#) \$39.2 billion endowment and the [Massachusetts Institute of Technology's](#) \$16.4 billion endowment. Mr. Gonzalez said his plan allows for a new investment of \$1 billion per year toward education and transportation priorities.

Rhode Island

In Rhode Island, public pension reforms proposed in 2011 by Gov. Gina Raimondo when

she served as general treasurer and passed into law have become a campaign issue for her challenger. Joseph Trillo, a former Republican state legislator now running as an independent, voted for those reforms, which included ending cost-of-living increases, raising the retirement age and reducing benefits for future retirees. Now he is campaigning on the promise of giving back part of the 3% COLA cut to retirees, and threatening to appoint a special counsel to investigate what he calls "high-risk" alternative investments made by the pension fund during Ms. Raimondo's tenure as treasurer.

Illinois

In Illinois, incumbent Republican Gov. Bruce Rauner is running against Democrat J.B. Pritzker, a businessman. The state's five pension funds faced \$137 billion in combined unfunded liabilities as of June 30, 2016. Illinois's pension funding ratio was 35.6% in 2016, the third lowest in the U.S. In June, Mr. Rauner signed a budget into law that allows current public workers to exchange their 3% compounded COLA for a lump-sum payment of 70% of the value and a 1.5% COLA that is not compounded. Also under the bill, vested former workers can opt to receive a lump-sum payment amounting to 60% of the value of their pension balance. In both cases, the lump-sum payments must be transferred to tax-qualified retirement plans or accounts. Mr. Pritzker, who has not released a detailed plan to tackle the state's pension issue, is leading Mr. Rauner in the polls.

In other races and ballot measures to watch:

Connecticut

Democrat Shawn Wooden and Republican Thad Gray are vying to be the next treasurer and the principal fiduciary of the \$34.2 billion Connecticut Retirement Plans & Trust Fund, Hartford. Denise L. Nappier, state treasurer for the past two decades, announced earlier this year that she would not seek re-election. Mr. Wooden is a partner at the law firm of Day Pitney LLP, where he currently leads the firm's public pension plan investment practice. Mr. Gray retired as chief investment officer of private equity manager [Abbott Capital Management](#) to seek the treasurer post.

Arizona

Arizona voters will decide on Proposition 125, which would allow the state Legislature to

make adjustments to the Arizona Corrections Officer Retirement Plan and the Arizona Elected Officials' Retirement Plan. If approved, cost-of-living adjustments would be capped at 2% for CORP participants and employees hired on or after July 1, 2018, would be required to enroll in a DC plan. EORP participants would also see COLA capped at 2%, down from the current 4% cap, if the measure is approved. This proposition comes after voters approved a similar measure in 2016 that replaced the permanent benefit increase for the \$9.8 billion [Arizona Public Safety Personnel Retirement System](#) with a cost-of-living adjustment. The proposition allowed employees hired on or after July 1, 2017, to have a defined contribution retirement plan or a defined benefit hybrid plan, while increases in the COLA were capped at 2%.

California

In California, Democrat Fiona Ma is running against Republican Greg Conlon for state treasurer. Mr. Conlon has called for new employees of CalPERS and CalSTRS to be enrolled in a defined contribution plan instead of a defined benefit plan. The treasurer serves on both of the state pension plan boards — the \$351 billion [California Public Employees' Retirement System](#), Sacramento, and the \$229.2 billion [California State Teachers' Retirement System](#), West Sacramento. The candidates are running to replace John Chiang, who sought the Democratic nomination for governor but was defeated in the primary. Mr. Chiang has been vocal as treasurer about CalPERS and CalSTRS strengthening policies on diversity, governance and divestment, and was instrumental in setting up the state's retirement program for private-sector employees without access to a plan.

New York

Incumbent [Thomas P. DiNapoli](#) is running for re-election in a crowded field for New York state comptroller against challengers Jonathan Trichter, Mark Dunlea and Cruger Gallaudet. Mr. DiNapoli, who is widely expected to win, is the sole trustee of the \$209.1 billion [New York State Common Retirement Fund](#), Albany. Mr. DiNapoli is a proponent of publicly traded companies disclosing environmental, social and governance information. He was one of several institutional investors who petitioned the Securities and Exchange Commission to order a uniform approach to how companies disclose and manage potential risks.

Colorado

In the race for Colorado treasurer, Republican Brian Watson is in favor of raising the retirement age to at least to 67 — to match Social Security — as well as reducing or freezing cost-of-living adjustments and dropping Colorado PERA's assumed rate of return from 7.25% to something more "realistic," according to his campaign website. The pension reform law the Colorado General Assembly passed in spring includes automatic adjustment provisions to ensure that PERA remains on the path to full funding in 30 years. The current annual COLA for participants that started receiving benefits prior to Jan. 1, 2007, is 2%. For 2018 and 2019, the pension reform reduces the COLA to zero. For each year thereafter, the COLA is 1.5%. The legislation also raises the retirement age to 64 for new employees hired on or after Jan. 1, 2020. On his campaign website, Mr. Watson said the law does not go far enough. Democratic candidate Dave Young voted against the bill earlier this year as a state legislator and is against raising the retirement age and cutting COLA increases. The Colorado treasurer has a seat on the PERA board. Brian Croce, *Pensions & Investments*, October 29, 2018.

3. RETIREMENT PLAN SPONSORS AND PROVIDERS GIVEN RELIEF BY DOL DUE TO HURRICANES:

The Department of Labor (DOL) has published compliance guidance and relief applying to employee benefit plans, plan sponsors, employers and employees, and service providers to such employers who were located in a county identified now or in the future for individual assistance by the Federal Emergency Management Agency because of Hurricane Florence or Hurricane Michael. In a statement announcing the relief, a DOL spokesperson says the department recognizes that plan fiduciaries, employers, labor organizations, service providers, and participants and beneficiaries may encounter issues complying with the Employee Retirement Income Security Act (ERISA) over the next few months as the consequences of Hurricane Florence and Hurricane Michael unfold. According to the announcement, the department "will not treat an employee pension benefit plan as failing to follow procedural requirements for plan loans or distributions imposed by the terms of the plan solely because the failure is attributable to Hurricane Florence or Hurricane Michael." As the DOL stipulates, this relief is only provided assuming the plan administrator "makes a good-faith diligent effort under the

circumstances to comply with those requirements, and makes a reasonable attempt to assemble any missing documentation as soon as practicable.” Echoing [relief guidance issued for 2016 and 2017](#) for hurricane disasters impacting U.S. coastal regions, the department further recognizes that some employers and service providers acting on employers’ behalf, such as payroll processing services, located in covered disaster areas eligible for individual assistance will not be able to forward participant payments and withholdings to employee pension benefit plans within required time frames. “In such instances, the department will not—solely on the basis of a failure attributable to Hurricane Florence or Hurricane Michael—take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan,” DOL pledges. “Affected employers and service providers must act reasonably, prudently, and in the interest of employees to comply as soon as practical under the circumstances.” Under normal circumstances, to comply with DOL regulations pertaining to “blackout periods,” in general, the administrator of a tax-qualified retirement plan is required to provide 30 days’ advance notice to participants and beneficiaries whose rights under the plan will be temporarily suspended, limited or restricted by a blackout period—of the type that is common [during a recordkeeper migration](#), for example. As the DOL points out, the regulations provide an exception to the advance notice requirement “when the inability to provide the notice is due to events beyond the reasonable control of the plan administrator and a fiduciary so determines in writing.” Based on this exception, with respect to blackout periods related to Hurricane Florence or Hurricane Michael, the DOL “will not allege a violation of the blackout notice requirements solely on the basis that a fiduciary did not make the required written determination.” In the statement announcing the hurricane relief, the DOL acknowledges that there may be instances when full and timely compliance with claims processing requirements by plans and service providers may not be possible. “Our approach to enforcement will be marked by an emphasis on compliance assistance and include grace periods and other relief where appropriate, including when physical disruption to a plan or service provider’s principal place of business makes compliance with pre-established time frames for certain claims’ decisions or disclosures impossible,” the spokesperson says. The relief announcement further notes that Form 5500 Annual Return/Report filing relief “is provided in accordance with Hurricane Florence and Hurricane Michael Internal Revenue Service (IRS) news releases listed on the [IRS disaster relief website](#).” The DOL will continue to monitor the situation, with the stated goal

of “addressing those issues that are most important in helping individuals, employers and plan sponsors recover from these disasters.” More information is available online for [employers and advisers](#), as well as for [workers and families](#); by contacting the DOL’s Employee Benefits Security Administration online at www.askebsa.dol.gov; or by calling 1.866.444.3272. Questions about IRS guidance should be directed to the IRS at 1.877.829.5500. John Manganaro, *Plansponsor*, October 29, 2018.

4. GENERALIZATIONS DO NOT SHOW THE TRUE PICTURE FOR PUBLIC PENSIONS:

Not all state and local defined benefit (DB) plans are in the same fiscal positions, face the same challenges or have the same funding histories, points out a report from the Center for State and Local Government Excellence (SLGE) and the Boston College Center for Retirement Research (CRR), “[Stability in Overall Pension Plan Funding Masks A Growing Divide.](#)” An analysis of the 2017 funded ratios of the 180 plans in the Public Plans Database (PPD) finds the average funded status remained steady under the traditional Government Accounting Standard Board (GASB) guidelines at 72%, which is largely unchanged from the past several years. However, separating the public pension plans into three groups by their 2017 funded status makes clear that underlying trends are not uniform. The analysis divided the universe of PPD plans into three equal groups based on their 2017 funded status. The funded-ratio boundaries for the three groups were 16% to 67% for the bottom third, 68% to 80% for the middle third, and 81% to 111% for the top third. The average 2017 funded ratio for each group was 55%, 73% and 90%, respectively. Looking over the past 17 years, plans that are well-funded had a larger portion of their required contributions paid, while contributions to the worst-funded plans have fallen far short of what is required to maintain reasonable funded levels. Over this same 17 year period, all plans, regardless of their cohort, have underperformed relative to their actuarial investment assumptions, but underperformance was greater for the lower-funded plans. The researchers conclude that the top third of plans should remain on track with continued maintenance, while the middle third can improve by adopting more stringent funding methods. However, they say the bottom third of plans likely will require intervention beyond traditional public pension plan reforms to stop their downward trend. Looking forward to 2018, the research indicates that the funded levels for plans likely will increase from 2017 levels due to the relatively strong market performance from July 2017

to June 2018. However, a market downturn threatens and could set back plan funding. Rebecca Moore, *Plansponsor*, October 24, 2018.

5. SOCIETY OF ACTUARIES SEES PENSION OBLIGATIONS SHRINKING SLIGHTLY:

A slight decline in life expectancy due to a rise in mortality rates from three of the top 10 causes of death has led the Society of Actuaries to believe pension plans could see their obligations reduced a bit compared to last year's scale. The organization's annual mortality improvement scale, or MP-2018, calculated that fund responsibilities could drop between 0.3% and 0.6% for men, and between 0.2% and 0.4% for women, when calculated using a 4% discount rate. The reason for the mortality change is a jolt in deaths over the year from unintentional injuries (up 9.7%), Alzheimer's disease (3.1%), and suicide (1.5%), according to the Centers for Disease Control and Prevention (CDC). The society's analysis determined that the life expectancy for private pension members decreased by a little less than a month for women (age 87.61), and just over a month in men (age 85.6), compared to 2017. This means the average beneficiary will receive their pensions for 22.61 and 20.6 years, respectively, on average. The yearly chart is made after data is collected and analyzed by the society from the Social Security Administration, the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, and the US Census Bureau. Dale Hall, the Society of Actuaries' managing director of research, said the new scale continued trends that began in 2010. But, he added, because the age groups show varied levels of mortality, it is "imperative for industry professionals to perform their own calculations, using the demographics of their pension population to determine the impact of implementing MP-2018 on their individual plan." *Chief Investment Officer*, October 24, 2018.

6. LUKASHENKO SIGNS DECREE TO RAISE RETIREMENT PENSIONS:

Starting from 1 November, retirement pensions in Belarus will rise by 5.3% on the average. It was formalized by Decree No. 419 signed by Belarus President Alexander Lukashenko on 23 October, BelTA learned from the press service of the Belarusian leader. In line with the decree, retirement pensions will be recalculated starting from 1 November 2018 following the increase in the average salary in the country. The actual earnings of pensioners will be recalculated based on the average salary in Belarus. eng.belta.by, Belta, October 24, 2018.

7. HOW STATES HAVE TRIED TO CLOSE THEIR PENSION FUNDING GAPS:

Teachers, firefighters, police and other government workers in states across America are facing a retirement crisis. Half of all states have not saved enough to pay the benefits they promised through public pensions. The bill — now in the trillions — is starting to come due. For more than a century, public workers accepted lower salaries on the promise of a safety net later in life. When their pension funds were flush with cash, some states cut back on payments. Then came the dot-com crash, the 2008 recession and state budget shortfalls, and those states suddenly found their pensions deep in the red. “The most common reason these things don’t turn out so well is because the state didn’t make the contributions,” said Richard Johnson, program director of retirement policy at the Urban Institute. States instead put that money into more immediate budget concerns, such as education, he said. As a result, some retirees are already seeing smaller monthly checks and current employees and new hires may see their pensions slashed further. Nationwide, public pensions are roughly 70 percent funded, falling below what [national standards](#) consider to be healthy. Only one state – Wisconsin – [has a fully funded pension](#). “One of the reasons that we accept the low salary is that we won’t have to despair of our retirement,” Randy Wieck, a public school teacher in Kentucky, told FRONTLINE in [The Pension Gamble](#). “It’s a promise and a good chunk of our salary is taken out from day one and deposited into a retirement plan.” Public pensions are about a third funded in Kentucky, according to state annual reports in 2016 [analyzed](#) by Bloomberg — a yawning gap that led to [large teacher protests](#) in March 2018 and a controversial new pension law that is [currently being challenged](#) in the state supreme court. Kentucky is not alone: New Jersey, Illinois and Connecticut are facing similar challenges, according to numbers by [Pew](#) and [Bloomberg](#). Since the recession, states have been scrambling to fix the problem — mostly by passing the shortfall on to their employees. That usually means employees must contribute more toward their pensions and get fewer benefits. Since 2009, 35 states have passed legislation increasing what employees have to pay into their pension plan, according to [research](#) by the National Association of State Retirement Administrators, an organization that supports traditional pensions. This change affected both current and new employees in most situations. More than half the states in the U.S. [now require](#) people to work longer or retire later before they can claim their benefit. For example Colorado, which [overhauled](#) its pensions earlier this year, raised the retirement age for new hires after

2020 to 64 years, from 60 and 58 for state employees and teachers, respectively. Plans in several states have also reduced how much they pay in pensions by changing how the pension benefit is calculated. It is more difficult to alter payouts for people who have already retired, since those benefits are usually legally protected. But some states have reduced what is called the cost of living adjustment paid to retirees, an annual increase that is supposed to shield payouts from inflation. In 2013, for example, Kentucky's largest public pension plan, with more than [350,000 members](#), [suspended](#) all cost of living adjustments until the system is 100 percent funded — a date that's still in question — or money is set aside by the state. At least 13 states have [passed laws](#) committing to bridging the financial gap. Some are taking creative approaches, like funneling earnings from cigarette taxes or state-owned casinos into their pension funds. In the past decade, government contributions to pensions have increased dramatically — by about 76 percent, according to the Urban Institute's Johnson, who made the calculation based on census data. Oregon, for example, [passed](#) a law in 2018 that earmarked taxes on alcohol and marijuana and lottery revenues, among other things, to help bankroll pensions. Last year, New Jersey [dedicated](#) all earnings from the state lottery to the public pension fund, a move that will generate \$1 billion per year, according to a [recent report](#) by the state's independent pensions commission. A handful of states have moved away from the traditional pension model altogether, toward a 401(k)-style plan. States find such models attractive because it can be cheaper. They contribute less toward an employee's retirement fund, and the financial risk is also passed to the employee in a 401(k) plan — as are the investment decisions. For employees, the plans have no guarantee: a person can save up a lifetime of earnings for retirement, only to lose it all in a stock market crash. The few states that have experimented with the switch have faced considerable backlash from public sector employees. When the Oklahoma governor [pushed for a 401\(k\) pension plan](#) in 2014, hundreds of teachers, firefighters, and other state employees took to the streets to rally against the proposed changes. Ultimately, new state employees would be [moved](#) to a 401(k) plan after November 2015. After Alaska switched to a 401(k) system in 2005, the state's public safety department said in [recent report](#) that prospective employees found jobs in other states more attractive because of the retirement benefits. "In Alaska, for example, one of the things they found is they cannot recruit and retain public safety officers," Diane Oakley, executive director of the pro-pension National Institute on Retirement Security, told FRONTLINE. "So, there's almost a dozen trooper

cars sitting outside the headquarters, with no trooper to fill them.” However, for the states that have the biggest funding gaps in their pension plans, the risk is not just that they’ll lose employees. “Long term, the biggest risk is to future taxpayers,” said Johnson. “They’re the ones who are either going to have to pay higher taxes... or going to have to accept fewer services, because a bigger share of their tax money will have to go to close this funding gap.” Marcia Robiou and Priyanka Boghani, South Florida PBS FRONTLINE, October 23, 2018.

8. STABILITY IN OVERALL PENSION PLAN FUNDING MASKS A GROWING DIVIDE:

Introduction

In fiscal year 2017, the aggregate funded ratio for state and local pension plans under traditional government accounting rules was 72 percent, largely unchanged from the past several years. However, this stability belies growing disparities in individual plan funding. While plans with extremely low funded ratios garner most of the public spotlight, a sizable share of plans is well-funded and financially stable. As such, much can be learned from analyzing trends for specific groups of plans that underlie the aggregate story. The discussion proceeds as follows. The first section provides an update of the aggregate funded level for 2017 based on the most recent reports from the 180 plans in the Public Plans Database. The second section divides the sample of plans into thirds based on their 2017 funded ratio, and traces the history of funding for each group. The data shows that the average funded ratios for each third were relatively similar in 2001, but have diverged since. The third section investigates potential reasons for this divergence by reviewing each group’s benefit levels, funding discipline, and investment returns from 2001-2017. The fourth section projects future funded levels in aggregate. The final section concludes that the top third of plans should remain on track if they maintain their current course while the bottom third will likely need to make major changes. One concern that all plans share is the possibility of a market downturn, which could set back funding for several years.

Conclusion

The 2017 funded ratios reported by public pension plans resulted in little change in their average funded status under the traditional GASB standards. However, separating the public pension universe into three groups by their 2017 funded status makes clear that

underlying trends for each group have not been uniform. The top third of plans now has an average funded ratio of 90 percent and should remain on track with continued maintenance. The average funded ratio for the middle third of plans has remained relatively steady around 70 percent since the crisis, and these plans can improve by adopting more stringent funding methods. However, the average funded ratio for the bottom third of plans is currently 55 percent and has continued to decline in the wake of the crisis. These worst-off plans will likely require intervention beyond traditional reforms to change the trajectory of their funded status. Looking forward, the 2018 funded levels for plans will likely increase from 2017 levels due to the relatively strong market performance from July 2017 to June 2018. However, if a market downturn occurs, it could set back plan funding for several years. Jean-Pierre Aubry is associate director of state and local research at the Center for Retirement Research at Boston College (CRR). Caroline V. Crawford is assistant director of state and local research at the CRR. Kevin Wandrei is a research associate at the CRR. The authors thank David Blitzstein, Keith Brainard and Joshua Franzel for helpful comments. Center for Retirement Research at Boston College, October 2018.

9. PUBLIC SAFETY LINE OF DUTY DEATH BENEFITS:

The Public Safety Officer Benefit (PSOB) for public safety officers killed in the line of duty or disabled increased effective October 1, 2018 to \$359,316. The benefit is adjusted annually for cost-of-living. For more information about the benefit for survivors (including educational assistance for children), visit the PSOB website. The Florida Line of Duty Death (LODD) is still under rule making. The benefit, which is adjusted annual for cost-of-living, is proposed to increase to \$69,801.94 for a line of duty death and to \$194,470.19 for those unlawfully and intentionally killed. The effective date will be July 1, 2018. For more information about benefits and educational assistance, visit the LODD website. Fred Nesbitt, Florida Public Pension Trustees Association, October 2018.

10. ABOVE THE LAW'S SUPREME COURT POWER INDEX:

When people talk about the power of Supreme Court justices, they are usually talking about their ability to shape laws over the course of a generation. Their opinions matter, their votes matter, they are powerful because of their official duties. The “hard power” of the Supreme Court is more than enough to make these nine people terrifyingly important

in American society, but the opinions and decisions analysis actually undersells how important these people are. A Supreme Court clerkship is the most important credential a lawyer can put on their résumé. Supreme Court clerkships act as a kind of legal finishing school for scores of people who will go on to develop, interpret and make laws throughout our society. Today's Supreme Court clerks are tomorrow's Supreme Court justices. They are tomorrow's attorneys general and United States attorneys. They are tomorrow's law professors and corporate GCs. Former Supreme Court clerks are incredibly powerful people in their own right, and they received their final training from a Supreme Court justice. *Above the Law* and [Major, Lindsey & Africa](#) reveal the [SCOTUS Power Index](#) that rates the justices based on the career success of their former clerks. We are looking at the jobs justices' former clerks have, with extra weight given for leadership positions. It is a little bit like looking at a "coaching tree" in sports. You can argue that Bill Belichick is the greatest NFL coach of all time... but his mentor, Bill Parcells, has trained three coaches who have won Super Bowls (Sean Payton, Tom Coughlin and Belichick himself), while Belichick has yet to have a former assistant raise the trophy. Similarly, while many have lauded the late Antonin Scalia as the most impactful Supreme Court justice of our era, our rankings place the recently retired Anthony Kennedy in the number one spot in terms of clerkship influence. What put Kennedy over the top? The elevation of his former clerk, Brett Kavanaugh, to the Supreme Court. The Index also looks at the most powerful justices by industry. While Anthony Kennedy is ahead overall, Clarence Thomas has placed the most former clerks in Biglaw. Thurgood Marshall — who has been dead for 25 years — is *still* the number one SCOTUS influencer in legal academia. [Check out the rankings](#). It is a novel look at an old question: who is the most important Supreme Court justice? Elie Mystal, *Above the Law*, Oct 30, 2018.

11. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:

"Well done is better than well said."

12. OXYMORONS:

Why does "fat chance" and "slim chance" mean the same thing?

13. INSPIRATIONAL QUOTES:

It is not the mountains ahead to climb that wear you out; it is the pebble in your shoe -

Muhammad Ali

14. TODAY IN HISTORY:

On this day in 2016, Republican Donald Trump is elected President of the United States of America, defeating democrat Hillary Clinton, who received 2.9 million more votes.

15. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.

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