



# CYPEN & CYPEN NEWSLETTER for June 6, 2019

Copyright, 1996-2019, all rights reserved  
Stephen H. Cypen, Esq., Founding Editor  
Robert D. Klausner, Esq., Senior Editor

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

## **1. HURRICANE SEASON BEGAN JUNE 1:**

Tips from the FTC on how to prepare for, deal with, and recover from weather emergencies. The Federal Trade Commission has free information to help people prepare for, deal with and recover from extreme weather events like hurricanes, tornadoes and other natural disasters. The mobile-friendly website, [ftc.gov/weatheremergencies](https://ftc.gov/weatheremergencies), has four sections:

- [Preparing for a Weather Emergency](#)
- [Staying Alert to Disaster-related Scams](#)
- [Getting Back on Your Feet Financially](#)
- [Resources](#)

The site also provides [Picking Up the Pieces after a Disaster](#), a customizable one-page handout, which includes key tips for consumers from the site. The handout lets people and organizations add local consumer protection and emergency service contacts, print copies, and distribute them throughout their communities. The Federal Trade Commission works to promote competition, and [protect and educate consumers](#). You can [learn more about consumer topics](#) and file a [consumer complaint online](#) or by calling 1.877.FTC.HELP (382.4357). Federal Trade Commission.

## **2. CURRENT POPULATION SURVEY -- CHECKING IN ON THE RETIREMENT PLAN PARTICIPATION AND RETIREE INCOME ESTIMATES:**

The Annual Social and Economic Supplement to the Current Population Survey (CPS), conducted by the U.S. Census Bureau, has traditionally been one of the most often used data for the sources of income for those who are near or at retirement age. As described in previous Employee Benefit Research Institute (EBRI) publications, the U.S. Census Bureau redesigned the CPS questionnaire in 2014 with several changes to its income questions. This was done in an attempt to capture more income that it has been missing. The survey redesign resulted in lower retirement plan participation estimates -- which some policy advocates have misinterpreted as actual changes in the employment-based retirement plan system. This *EBRI Issue Brief* compares the 2017 results with the previous findings. Furthermore, it looks at the relative percentages of retirement plan participation among key demographic characteristics to see if they have held since the questionnaire redesign. In addition to the retirement plan participation estimates, changes in the sources of income for those ages 65 or older are examined. A comparison between the aggregate pension income found in the CPS and the aggregate pension income found in Internal Revenue Service (IRS) data is also discussed. This study finds:

- **The overall percentage of workers participating in a retirement plan leveled off:** For the first time since the questionnaire was redesigned, a significant decline was *not* found for the retirement plan participation estimates from the year before. Full-time, full-year wage and salary workers ages 21–64 participating in an employment-based retirement plan held steady in 2017 at 41.4 percent compared with 41.0 percent in 2016. This was after a drop from 54.5 percent in 2013 before the questionnaire redesign.
- **The survey estimates do not conform to trends in another government survey:** Under the Bureau of Labor Statistics' National Compensation Survey (NCS), the percentage of private-sector wage and salary workers at establishments with 500 or more employees participating in an employment-based retirement plan remained relatively flat between 2013 and 2017 at around 76 percent. In contrast, similar numbers from the CPS found that the percentage

participating *decreased* from 64 percent in 2013 before the redesign to 47 percent in 2017. The flattening out in 2017 did nothing to lessen this discrepancy.

- **The ratio of participation within demographic groups remained the same after the redesign:** When comparing the participation levels within various demographic groups, the ratio of participation for various cohorts relative to the highest participation cohort remained nearly identical before and after the survey redesign. For example, the ratio of the participation level of workers ages 45–54 to that of workers ages 55–64 was 0.97 in 2011 and 0.98 in 2017.
- **The survey redesign did not fully capture retiree income:** Even after the redesign, the CPS total retirement income amounts for 2015 and 2016 were only 63.1 percent of the IRS's 2015 reported amount and 65.4 percent of the 2016 level. However, this is up from 32.3 percent before the questionnaire redesign.

The estimates of employment-based retirement plan participation that resulted from the CPS questionnaire redesign persisted in the 2018 CPS, even though the downward trend in participation did level off. Given the issues with the data and the amount of income that is NOT being captured by CPS, improved data are called for to allow for a better understanding of what income retirees have and how they spend their income throughout their retirement. These two topics determine the income adequacy of retirees throughout retirement, which has become a critical policy issue. EBRI, Craig Copeland, May 30, 2019.

### **3. SUPREME COURT TO CONSIDER TAKING ON 2 RETIREMENT CASES:**

The U.S. Supreme Court said it is considering taking two retirement-related cases involving IBM and the Roman Catholic Archdiocese of San Juan. In *Retirement Plans Committee of IBM et al. vs. Larry W. Jander*, International Business Machines is appealing an appellate court decision, arguing that the court incorrectly interpreted the standards for making fiduciary breach claims about company stock in defined contribution plans. Taking the case would require the Supreme Court to revisit a unanimous 2014 ruling in [\*Fifth Third Bancorp et al. vs. Dudenhoefter\*](#), which established a series of guidelines for lower courts to use in assessing stock-drop complaints. In its March 8 petition to the Supreme Court, the Retirement Plans Committee of IBM said the appeals court decision "reopens the door to lawyer-driven class actions that spring up after every stock drop." The plaintiff, a participant in an IBM 401(k) plan, asked the Supreme Court to reject IBM's request, saying the appeals court correctly followed the litigation guidelines. "Lacking any basis to criticize" the decision, "petitioners make a variety of bombastic claims about the parade of horrors about to descend on the federal courts" due to the ruling, according to court documents. A District Court judge had originally rejected the complaint by participants that IBM's fiduciaries should have protected their retirement accounts when the company's

stock fell after IBM's efforts to sell its microelectronics unit in 2014. The Supreme Court will also consider a petition from the Roman Catholic Archdiocese of San Juan, Puerto Rico, to decide if courts can override a religious organization's legal structure and force affiliates to face joint and several pension liability as a single entity. The Roman Catholic Archdiocese of San Juan filed for bankruptcy after a \$4.7 million judgment in a case brought by pension plan participants against the Superintendent of Catholic Schools of the Archdioceses of San Juan. After the Puerto Rico Supreme Court authorized immediate seizure of church assets, the archdiocese tried but failed to seek bankruptcy protection. *Pensions & Investments*, Hazel Bradford, May 30, 2019.

#### **4. LACK OF EMERGENCY SAVINGS AMONG BIGGEST FINANCIAL REGRETS:**

A new [survey](#) from Bankrate.com suggests three in four Americans say they have serious financial regrets. In this group, the survey data show, more than half (56%) are disappointed with their overall savings, including 27% who wish they had started saving earlier for retirement, 19% who [lament not saving enough for emergencies](#) and 10% who say they have not saved enough for their child's education. Greg McBride, chief financial analyst for Bankrate.com, observes that a failure to save adequately for retirement was the most commonly cited regret of all surveyed Americans (21%). Baby Boomers were most likely to feel this way (33%), followed by 23% of the Silent Generation (ages 74 and older) and 22% of Generation X. Given their career stage and the growing price of higher education, Millennials feel the most remorse about their [student loan debt](#) (17%). According to Bankrate.com's survey, their regret is more than twice that of Gen Xers (7%) and more than three times that of Baby Boomers (4%) when it comes to the level of student debt. McBride notes that Generation X and older Millennials had the highest incidence of [regret about not saving enough for emergencies](#) (both at 19%), taking on too much credit card debt (both at 16%), and not saving enough for their child's education (both at 12%). "Everyone makes mistakes in life, financial or otherwise," McBride says. "The key is to acknowledge those blunders and address them, so that there's minimal damage. Sadly, 21% have no plans to address their financial regrets." The Silent Generation and Older Boomers (ages 65 to 73) are the most likely to say they have no financial regrets (37% and 31%, respectively). *Plansponsor*, John Manganaro, May 29, 2019.

#### **5. GENERATION X HAS A BIG NEED FOR RETIREMENT READINESS IMPROVEMENT:**

The Protected Lifetime Income Index Study from the Alliance for Lifetime Income (ALI) shows 65% of Americans younger than 55 are concerned that their retirement income will not last through their lifetime, while 45% of those older than 55 are similarly concerned. A [new report](#) extends the analysis of retirement readiness--and the financial

circumstances associated with that--by examining the portion of the adult population who are old enough to begin seeing the approach of retirement--those at least 45 years old who have not yet retired. Among this group, ALI noticed a difference between those who have \$75,000 in assets (in addition to a home) and those who don't. Michael Finke, with The American College and an ALI fellow, based in Bryn Mawr, Pennsylvania, tells *Plansponsor* that \$75,000 was just a natural cut off where attitudes were different. In addition, he suggests that \$75,000 is an indicator that Americans in this demographic have saved regularly, while having less than \$75,000 indicates a lack of saving. Nearly half of people in the analysis (47%) fall below this target. By the numbers, their retirement saving is falling short. He says the biggest takeaway from the analysis is that among those with less than \$75,000 in assets, three-quarters (77%) don't expect their retirement savings and income to last their lifetime, compared to only one-third (32%) of those with at least \$75,000 in assets. Generation X is really the first generation to have to support their retirement lifestyle on their own, as they are less likely to have pensions, Finke notes. The low-asset group anticipates being heavily dependent on Social Security for retirement income, expecting it to account for a median of 62% of their income. The higher-asset group expects Social Security to be just one-quarter of their income on average, with the rest filled in by savings, pensions, annuities and other financial resources. According to the report, two characteristics top the list of tangible drivers behind savings for retirement income: current income and pensions. Higher-asset households have substantially higher incomes on average. Only two in ten (18%) higher asset households have current incomes less than \$75,000, and only 3% have incomes less than \$35,000. By contrast, seven in ten (69%) low-asset households have incomes less than \$75,000 annually and nearly one-third (31%) have incomes less than \$35,000. In addition, half of high asset households (50%) have a pension compared to just one in five (20%) of those with low assets. The analysis also finds that 20% of the lower-asset households have a high amount of debt, compared to just 3% of higher-asset households. And, 40% of lower-asset households say their current financial priority is paying off debt, compared to 19% of higher-asset households. The report notes that even those with higher accumulated assets do not seem to be financially comfortable, as their highest financial priority is covering expenses.

### **How plan sponsors and advisers can help**

Finke concedes that \$75,000 will not buy enough income for retirement. He says the first thing most economists would tell defined contribution (DC) retirement plan sponsors is to automatically enroll employees in the plan and at a [high enough rate to save enough to fund a base level of income in retirement](#). Plan sponsors should also consider automatic escalation and educating employees about the importance of saving in the retirement plan. "Automatic features have created a lot of movement towards adequate retirement

income,” he says. But, Cyrus Bamji, head of communications for ALI, in Washington, D.C., notes that the focus for DC plan participants has been on accumulating assets, and they have confidence in big savings numbers, but there hasn’t been much focus on educating participants about how much income their savings will produce. “[Participants] don’t understand what they can draw down from their savings,” he says. Finke says a colleague wrote a paper showing that when participants see a translation of their account balance into retirement income, it motivates them to save more. Of course, ALI is big believer in having a part of savings carved out to buy protected lifetime income, Bamji says. And, according to Finke, for a long time economists have said one of the big problems with the DC plan system is it doesn’t provide employees with a benefit like defined benefit (DB) plans that participants can count on to not run out of money in retirement. “Participants will have a difficult time deciding how to pull income out of their assets to last a lifetime. Most economists agree annuities are best for that,” he says. Finke notes that the [big barrier to adoption of guaranteed lifetime income products in DC plans](#) is many plan sponsors feel the fiduciary liability is too great, but [new legislation](#) provides a push for plan sponsors to feel more comfortable. “This is especially important for [developing innovative default investments](#) Sthat the average employee will be placed in. It will make workers feel more secure,” he says. “If given a choice to add some kind of protected lifetime income they would be able to count on regardless of market movement, I’m pretty sure most employees would choose that option,” Bamji says. He also believes having good financial advice is important. “Back in my day, there was very little guidance. Participants didn’t know how much to save or how to invest. Financial advice early on would have been helpful. Plan sponsors need to provide that kind of advice and counsel,” Bamji says. “Advisers can help employees navigate very complex decisions about how much to save and how to invest that money to be able to match retirement goals,” Finke says. “I would love to see in the future more workers having access to professional financial advice to help them feel more comfortable that their actions today will lead to adequate retirement income.”

*Plansponsor*, Rebecca Moore, May 28, 2019.

## **6. DC PLAN PARTICIPANTS HELD STEADY IN 2018 DESPITE VOLATILE MARKETS:**

Despite market volatility in 2018, most defined contribution plan participants stayed the course with their asset allocations, according to a report from the Investment Company Institute released Thursday. In 2018, 9.7% of DC plan participants changed the asset allocation of their account balances and 5.1% changed the asset allocation of their contributions. The results compare with reallocation activity levels of 9.3% and 5.5%, respectively, in 2017. Participants also remained committed to saving for retirement. Almost all kept contributing to their plans throughout 2018, with only 2.3% stopping contributions, down from 2.7% the previous year. Meanwhile, withdrawal activity remained

low. Only 3.4% of DC plan participants took withdrawals in 2018 and even fewer -- 1.6% -- took hardship withdrawals, down slightly from 1.7% in 2017. Participant loan activity also remained flat. At the end of 2018, 16.7% of DC plan participants had plan loans outstanding, the same share as in 2017. ICI's report is based on DC plan record keeper data covering more than 30 million employer-based DC retirement plan participant accounts as of December 2018. *Pensions & Investments*, Margarida Correia, May 23, 2019.

## **7. CORPORATE PENSION PLAN BUYOUT SALES HIT RECORD \$4.7 BILLION IN FIRST QUARTER – LIMRA:**

U.S. corporate pension plan buyout sales totaled about \$4.7 billion during the first quarter, a LIMRA Secure Retirement Institute sales survey found. The first-quarter total is the highest for any first quarter in more than 30 years, a news release containing the survey results said. In the first quarter of 2018, pension buyout sales were \$1.4 billion. Sales in the fourth quarter of 2018 totaled \$10.5 billion. Traditionally, the majority of buyout sales take place in the third and fourth quarters of calendar years. The spike in sales for the first quarter was driven by strong small and mid-sized deals and one large deal, said Mark Paracer, assistant research director, LIMRA Secure Retirement Institute, in the news release. Sales were strong across the board among the 17 financial services companies surveyed. The companies provide all the group annuity contracts for U.S. corporate pension plans. "The increase in sales was not limited to just one company. Two-thirds of companies reported higher first-quarter sales compared to the previous year," Mr. Paracer said. Total assets of buyout products totaled \$139 billion in the first quarter, up 15% from the first quarter of 2018. Survey participants reported as of March 31, a historic total of 29,417 contracts have been sold. First-quarter highlights included [Avery Dennison Corp.](#), Glendale, Calif., purchasing a group annuity contract from American General Life Insurance Co. to transfer \$750 million in U.S. pension plan liabilities to complete its termination of that plan, and S&P Global Inc., New York, purchasing a group annuity from Pacific Life Insurance Co. to transfer about \$370 million in U.S. pension plan liabilities. *Pensions & Investments*, Rob Kozlowski, May 22, 2019.

## **8. DO BENEFIT CUTS ENCOURAGE PUBLIC EMPLOYEES TO LEAVE?:**

### **Introduction**

A number of state and local pension systems have persistently low levels of funding. These poorly funded plans in places like Kentucky, Illinois, and New Jersey may eventually reduce benefits not only for new hires, but also for current employees. The question is: do cuts to pension benefits encourage a state's public sector workers to leave for the private sector? This brief, based on a recent paper, evaluates a 2005 reform of the Employees' Retirement System of Rhode Island (ERSRI) that cut core benefits for state

employees and teachers without raising salaries to compensate.<sup>1</sup> It examines whether these benefit cuts for current employees encouraged them to separate from the government, investigates whether teachers (an important and often-studied group) reacted differently to cuts than other workers, and explores the possible consequences for public services. The discussion proceeds as follows. The first section outlines Rhode Island's history of pension reforms and describes the 2005 legislation. The second section introduces the evaluation methodology and quantifies the effect of the 2005 reform on employee separation. The third section addresses the potential costs of an employee exodus. The final section concludes that benefit cuts encourage government workers to leave their jobs – particularly non-teachers who may have more options in the private sector – but that the size of the response is small relative to the budgetary savings from the reform. Nevertheless, government employers should consider the human resource cost of reduced compensation when analyzing potential pension reforms.

### **Conclusion**

State and local governments with financially troubled pension systems may consider benefit cuts as a way to ease budgetary pressures. This brief shows that pension cuts for current employees induce affected workers to leave for the private sector. Specifically, it examines the experience of Rhode Island, which in 2005 achieved an estimated \$243 million in budgetary savings by reducing the benefits of non-vested state employees and teachers. This pension reform caused a 2.4-percentage-point increase in the fraction of nonvested employees separating over the next four years. Although the cost of separation was small relative to the fiscal savings, these findings suggest that governments should also consider the human resource costs of cutting benefits. In particular, human resource costs are likely to be concentrated in the government occupations that have clear private sector alternatives, such as lawyers, accountants, and engineers. When pension cuts are necessary, governments may be able to mitigate human resource costs by offsetting the benefit cut with less-expensive salary enhancements. The degree to which workers are willing to trade wages for pensions is left as a question for future research. See full brief [here](#).

Center for Retirement Research at Boston College, Laura D. Quinby and Gal Wettstein, State and Local Pension Plans, Number 65, May 2019 May 2019.

### **9. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:**

Having been poor is no shame, but being ashamed of it, is.

### **10. PONDERISMS:**

How much deeper would the ocean be if sponges didn't grow in it?

**11. INSPIRATIONAL QUOTES:**

When we seek to discover the best in others, we somehow bring out the best in ourselves.

- William Arthur Ward

**12. TODAY IN HISTORY:**

On this day in 1944, Operation Overlord: D-Day begins as the 150,000 strong Allied Expeditionary Force lands in Normandy, France, during World War II.

**13. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.**

Copyright, 1996-2019, all rights reserved.

Items in this Newsletter may be excerpts or summaries of original or secondary source material, and may have been reorganized for clarity and brevity. This Newsletter is general in nature and is not intended to provide specific legal or other advice.