



# CYPEN & CYPEN NEWSLETTER for August 1, 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. TAXPAYERS CAN CHECK ONLINE TO GET UPDATES ABOUT THEIR TAX REFUND:**

Taxpayers who filed an extension and are submitting their 2018 tax return this summer might be waiting for their tax refund. It's easy for these taxpayers to check on the status of their money. They can just zip over to [IRS.gov](https://www.irs.gov) and use "Where's My Refund?" This tool is [available on IRS.gov](https://www.irs.gov) and through the [IRS2Go app](#). Taxpayers can use Where's My Refund? to start checking the status of their tax return within 24 hours after the IRS receives an e-filed return. For a paper return, it's four weeks after the taxpayer mailed it. The tool has a tracker that displays the progress of a tax return through these three stages:

- Return received
- Refund approved
- Refund sent

All a taxpayer needs to use “Where’s My Refund?” are these three things:

- Their Social Security number
- Their tax filing status
- The exact amount of the refund claimed on their tax return

Taxpayers should remember “Where’s My Refund” is only available on the IRS website or through the IRS2Go app. “Where’s My Refund?” updates once every 24 hours, usually overnight, so there’s no need to check the status more often. Taxpayers should only call the IRS tax help hotline on the status of their tax refund if:

- It has been 21 days or more since the tax return was e-filed
- It has been six weeks or more since the return was mailed
- When “Where’s My Refund?” tells the taxpayer to contact the IRS

Taxpayers who owe should pay as much as possible to minimize interest and penalty charges. These taxpayers can visit [IRS.gov/payments](https://www.irs.gov/payments) to explore their payment options. Taxpayers should also watch out for email or text [scams](#) asking for personal information in order to check the status of an IRS refund. This IRS does not contact taxpayers in this way. Taxpayers can check online to get updates about their tax refund [here](#). Issue Number: Tax Tip 2019-89, IRS Tax Tips, July 9, 2019.

## **2. DOES “FIDUCIARY” MATTER ANYMORE?**

With the SEC’s new Regulation Best Interest (“Reg BI”), the term “fiduciary” seems to have taken a back seat. But that may not mean what it appears. This may be a sign the market is growing weary of all things “fiduciary.” On the other hand, it may be that “fiduciary” has now become the *de facto* standard in a large portion of the marketplace. Has “fiduciary” peaked? And, if so, when might that peak have occurred? There are those that say “fiduciary” saw its acme just as the DOL unveiled its Conflict-of-Interest (a.k.a. “Fiduciary”) Rule. Some look fondly back at era in history. Others scorn it. Richard Reyes of The Financial Quarterback in Lake Mary, Florida, falls in this latter group. He says the “fiduciary” peak was “probably on or about 2016 when the Obama Administration was trying to shove the DOL ruling down the throat of the industry.” But the DOL’s attempt to create a uniform fiduciary standard had a beginning and an end. Quite a few people look

at the now vacated Rule's demise as the crest of "fiduciary." "The term peaked about a year ago, around the time the DOL's 'Fiduciary' Rule died," says Jeffrey Burg, Partner at DB Financial Partners in Phoenix, Arizona. Modern science, however, provides the definitive answer. "The general public's collective interest in Fiduciary peaked in early 2017 according to data from Google Trends and I would concur," says Timothy Hooker, Investment Manager at Dynamic Wealth Solutions LLC in Southfield, Michigan. Indeed, according to Google Trends, searches on the term "fiduciary" spiked to their highest levels the first week of February, 2017. It was on February 3, 2017 that President Trump issued a memo directing the acting Secretary of Labor to reevaluate the Obama DOL's Fiduciary Rule. Ironically, the incoming Obama administration did the same thing to another DOL Rule promulgated during the waning months of the predecessor Bush administration. What might explain the apparently ebbing interest in "fiduciary" over the last couple of years? Certainly, oversaturation could be cited as one reason. "The term peaked because it was being used constantly in both the media and advertising," says Burg, "but the majority of the public had no idea what it meant and they got tired of hearing it. Prospective clients roll their eyes when they hear the word fiduciary and say that the word doesn't mean anything to them, but that they hear it everywhere." Overuse tends to devalue the term, and this may have been the case with "fiduciary." "It peaked because everybody was discussing the issues of plan fiduciaries and it became commoditized like fees," says Jairo Gomez, the Director of Retirement Plan Services at Allworth Financial, formally Hanson McClain Advisors, a California-based financial advising firm. As with all overworked terms, the public airwaves eventually decide enough is enough and quit using the term. This absence can be quite noticeable to some. "I feel like it has peaked because the mainstream media rarely talks about it," says Hooker, who adds, "consumers get lost in the jargon if it doesn't directly impact them so interest has gone away." But the media alone does not explain it. Certainly, the industry – or, rather, a specific segment of the industry – had a vested interest to fight "fiduciary." "The big money banks, brokers, mutual funds are not in favor," says David S. Thomas Jr., CEO at Equitas Capital Advisors, LLC in New Orleans, Louisiana. "It is very difficult to retrain a salesman to stop pushing a product, and to start working in the best interest of the investor." Marc Smith, Managing Partner at Marc Smith Investments in Dillsburg, Pennsylvania, says, "If it has peaked, I would argue it's because the large firms have made a push to convince the public it doesn't matter. Non-fiduciary advisors make a lot of money on commissions from placing clients in high-fee products. They have every interest in making people believe the fiduciary standard isn't that important." It's not necessarily due to industry malevolence, though. It could simply be that other topics have taken the forefront. "The focus (or interest) on fiduciary issues has seemingly diminished, probably as a result of recordkeepers' and consultants' efforts to market and/or highlight other concepts such as promoting greater savings (for example, by implementing automatic enrollment and/or

automatic escalation),” says John C. Hughes, an ERISA/benefits attorney with Hawley Troxell in Boise, Idaho, says. And this changing of the topical guard may be more important. It may not be that “fiduciary” has peaked. It may be that it has now become mainstream, second-nature in fact. “I don’t feel that it has peaked,” says Chris Shankle, Senior Vice President at Argent Retirement Plan Advisors in Shreveport, Louisiana. “It’s still a valid issue although for differing reasons depending on perspective (advisor, plan sponsor, regulator).” Hughes, considers even asking why “fiduciary” may have peaked to be “a very interesting question.” He points out “the importance of recognizing one’s fiduciary duties and fulfilling them has not diminished. As such, the interest in fiduciary concepts having peaked is curious and dangerous. There have been no changes to those duties or the associated consequences. If anything, it is more important than ever to recognize and attempt to fulfil fiduciary duties given the increased amounts of money at issue, increased government enforcement, and the increase in lawsuits brought against fiduciaries by plan participants.” Not even the SEC’s Reg BI, try as it might, can really take the luster from “fiduciary.” “I don’t agree at all with the term Fiduciary taking a back seat to the term Best Interest,” says Derek S. Taddei, Client Services – 401k Plan Marketplace at Stellar Capital Management in Phoenix, Arizona. “Regulation BI is brand new, and has yet to be sorted out. Brokerage firms may tout BI as the latest and greatest, but at present it is but a better version of the suitability standard.” It is this continued affiliation with the suitability standard – even if it a “better version” of it – that may prove Reg BI’s undoing. And this may mean “fiduciary” isn’t going downhill for a while. “I don’t believe we’ve hit peak interest in fiduciary duty,” says Smith. “I think this is the most critical thing consumers should know before hiring an advisor. A fiduciary standard means I legally have to act in a client’s best interest. That’s very important when it comes to over-priced or high-commission financial products. Regulation Best Interest simply means the advisor has to put you in ‘suitable’ investments. That is a very vague and broad term. All manner of high-fee products could be deemed ‘suitable.’” As Thomas says, “Fiduciary is not dead, just had a bucket of political cold water poured on it.” Though perhaps verging on the cliché, “fiduciary” remains ascendant where it counts. “Certainly, for employers, it seems that they have become callused to the issue from its usage in sales pitches,” says Shankle. “Its relevance, however, is still quite high in the industry and is definitely still on the minds of regulators. I believe the DOL will still propose a rule, although different and possibly more focused than previously. Of course, too, there are the state proposals that are popping up. If we are to have multiple distinct rules proposed by states, we may have a peak in interest to come.” So, yes, “fiduciary” still matters. It may not appear in superficial headlines at the rate it has in the past, but it is solidly ensconced in the hearts of those that matter most. Christopher Carosa, *Fiduciary News*, July 9, 2019.

### **3. DC PARTICIPANTS MOVE AWAY FROM EXTREME INVESTMENT CHOICES:**

Defined contribution plan participants have become less extreme in their investment strategies, moving away from lopsided allocations of equities or fixed income to a more diversified investment lineup. Although participants are acting in part on their own accord, record keepers that track clients' investing behavior say plan design changes over the years are the driving force. At [Fidelity Investments](#), Boston, extreme portfolios -- either 100% equity or zero equity -- have declined dramatically since 2006, the year the Pension Protection Act was enacted. Among other things, the law established qualified default investment alternatives, which have spurred the growth of target-date funds. Balanced funds and managed accounts are the other QDIAs endorsed by the law. The PPA also encouraged greater use of auto enrollment by providing a safe harbor for sponsors. "Since the PPA, a lot of sponsors have really changed their plan designs," said Katie Taylor, Fidelity's vice president of thought leadership. Increased implementation of auto enrollment and auto escalation also have led to fewer extremes and greater diversification in participants' account balances, she said. By year-end 2006, Fidelity said 34.7% of participants among its record-keeping clients had extreme portfolios. Since then, the rate has dropped every year, falling to 10.5% in 2018. For the first quarter of 2019, the extreme portfolio rate was 10%. Among its clients, Fidelity said 8% of plans used a target-date series as a QDIA in 2006; by the first quarter of 2019, the rate had jumped to 90%. Also, 6% of participants invested all of their retirement money in target-date funds in 2006. By the first quarter of 2019, the rate was up to 52%, based on Fidelity's analysis of 22,800 corporate DC plans -- including adviser-sold DC plans -- covering 16.8 million participants as of March 31. When it analyzed six age categories, Fidelity found that extreme portfolio allocations steadily increased with age -- from 5.2% of those in the 20-29 group to 25.2% in the 70-plus category. Older workers are less likely to be in target-date funds and more likely to be self-directed investors, Ms. Taylor said.

### **Equity allocations**

Alight Solutions, Lincolnshire, Ill., has found that DC plan participants have maintained essentially stable rates for 100% equity allocations in recent years, but the rates for participants with zero equities has declined. "Equities have been outperforming, so maybe they are chasing winners," said Robert Austin, the Charlotte, N.C.-based director of research. He suggested that some participants might be emboldened to allocate more to equities if they also are covered by a defined benefit plan. From Jan. 1, 2014, to Jan. 1, 2019, the annual rate of 100% equity allocations for active participants drifted slowly to 4.8% from 5.1%. During the same period, the rate of participants with zero equity allocations dropped steadily to 2.7% from 5.4%. When Alight examined allocations by demographics, it found that the percentage of participants holding zero equities increased with age -- 0.5% for workers under 20 to 5.6% for those 60 and older, according to Jan. 1, 2019, data that measured six age categories. It also found that the percentage of

participants going all in on equities rose steadily in five of six age categories -- starting at 2% among people younger than 20, rising to 5.6% in the 50-59 group. The 60-plus group's 100% equity rate was 4.8%. Some older participants "are more engaged" in their investing, Mr. Austin suggested. "There will always be extremes." Alight data also show that higher all-equity allocations are reflected in the size of participants' accounts. Those with higher balances had higher percentages of 100% equity allocations. Tracking 11 account balance categories from less than \$10,000 to \$100,000 or more, Alight found that the largest balance categories -- those individuals with balances of \$70,000 or more -- had extreme equity portfolio rates ranging from 7.3% to 8.4%. Alight's latest research covers 121 DC plans, most of which are clients, with \$378 billion in assets, covering more than 3 million participants. [Vanguard Group](#) Inc., Malvern, Pa., also found that participants in its record-keeping plans retreated from holding extreme portfolios with the passage of the Pension Protection Act thanks to "professionally managed allocations," which Vanguard defines as target-date funds, managed accounts or balanced funds. The percentage of participants investing solely in equities dropped to 6% last year vs. 19% in 2006. The percentage of participants holding no equities fell to 3% from 13% during the same period, according to Vanguard's annual report, *How America Saves 2019*. The report said Vanguard had more than \$1.4 trillion in DC assets under management as of March 31, 2019. It is the record keeper for plans with more than 5 million participants.

### **Target-date funds**

Before the growth of target-date funds, "young people always skewed risk averse," said Jean Young, senior research associate with the Vanguard Center for Investor Research and the lead author of "How America Saves." "They were allocating like 60-year-olds." In 2004, for example, Vanguard detected a "humped-shape" allocation trend line "with younger participants adopting more conservative allocations," the report said. Middle-aged participants had the highest equity exposure, "and older participants having equity exposure on par with younger participants," the report said. By 2018, the equity allocation trend line was "downward sloping by age," according to the report, which noted this reflected the growing use of target-date funds and managed accounts. One encouraging sign about investors' behavior is that many participants are choosing target-date funds on their own, Ms. Young said. Among all target-date investors last year, 31% voluntarily invested all of their retirement money in a target-date series. Also, 18% voluntarily enrolled in target-date funds and other investments. Another subject of extreme investing tracked by Vanguard is company stock. Vanguard noted that Department of Labor says for retirement accounts any single investment in a company or industry exceeding 20% indicates a lack of proper diversification. Among plans offering company stock, the Vanguard report said the percentage of participants avoiding company stock was 64% last year, up from 45% in 2009. Participants holding 20% or less in their accounts was 17%

last year, down from 25% in 2009. Still, some participants still hold giant amounts, including 5% owning more than 80% of company stock in their accounts. The Vanguard report said large holdings may be due to participants believing that company stock is a safer investment and to employers issuing stock as a company match. Last year, plans offering company stock as an investment option but making employer contributions in cash had an average of 11% of assets invested in company stock, the report said. Plans offering company stock as an investment option and making employer contributions in stock had an average of 23% of assets in company stock. Still, the overall approach to reducing company stock's impact "is really improving," Ms. Young said. The reasons: Employers are restricting how much company stock a participant can own, removing company stock as a corporate match and reminding participants of the DOL's 20% recommendation.

Robert Steyer, *Pensions & Investments*, July 8, 2019.

#### **4. THE DISAPPEARING DB PENSION PLAN:**

The use of defined benefit pension plans continues to decline as sponsors look to de-risk pension strategies. Governing a defined benefit (DB) pension plan and its investment strategy has always been challenging. Over the past decade it's also become increasingly complex, not to mention costly, spurring many plan sponsors to reevaluate their pension plan approaches. A new survey of 155 U.S. senior finance executives conducted by CFO Research, in collaboration with Mercer, found that 77% of those DB plan sponsors expect to change how their plan is managed over the next two years. That was up from 60% the last time the survey was conducted in 2017. (Mercer and CFO Research have been conducting a DB risk management survey on a biennial basis since 2011.) Meanwhile, 63% conceded their organizations were struggling to find the time and expertise to fully meet their obligations relating to oversight of their DB plan investment strategy.

Historically high equity prices are causing some plan sponsors to question whether the stock market is due for a downturn that will impact pension strategy. In fact, 35% of respondents identified expected market returns as the factor most likely to prompt them to modify their pension funding policies and practices over the next two years.

#### **De-Risking Paths**

Many employers have spent much of past two decades looking for ways to dial down the risks presented by their DB plans. They aim both to minimize the plan's impact on their organization's financial statements and to relieve management of duties that take their focus away from core business activities. For some, the "nuclear option" is increasingly popular. The survey found that 71% of plan sponsors were considering terminating their plans over the next 10 years, up from 59% in 2017 and 47% in 2015. Broadly speaking, those intent on de-risking have three levers to pull: funding strategy, investment strategy,

and risk-transfer strategy. Which are they using?

**Funding strategy.** The Pension Benefit Guarantee Corporation (PBGC) insurance premiums remain a key driver of pension funding strategies for many employers. Improving a plan's funded level can reduce its PBGC premiums. In the 2019 Mercer/CFO survey, 85% of survey respondents said they recently increased contributions to reduce the future cost of PBGC premiums or were considering doing so, up from 73% in 2017 and 57% in 2015. Other recent increases in contributions were motivated by the Tax Cut and Jobs Act of 2017, which not only lowered taxes but also raised the cost of financing pensions (for taxable corporations). Seven in 10 respondents said their organizations made a contribution beyond the minimum as a direct result of changes in corporate tax law. They included 29% that made a significant additional contribution.

**Investment strategy.** Strategies such as dynamic de-risking appeal to some plan sponsors because they may obviate the need to come up with additional cash for their plans. In dynamic de-risking, the sponsor maps out a "glide path" that specifies how a plan's asset allocation strategy will change as its funded status improves. The goal is to have assets and liabilities tightly matched once the plan reaches its maximum funding level. Doing so makes it easier to maintain the plan going forward or terminate it, if that is the desired outcome. In the 2019 survey, just slightly more than half of respondents said their organizations had a dynamic de-risking strategy in place, and 34% said they were considering one. Other investment-related risk-management strategies are available. For example, 37% of respondents said their organizations recently increased allocations to fixed-income investments, 30% adjusted the duration of their fixed-income investments to hedge plan liabilities, 28% made greater use of derivatives to hedge interest-rate risk, and 23% made greater use of options or related methods to manage tail risk.

**Risk-transfer strategy.** One of the most straightforward approaches for moving pension risk from the plan sponsor to another party (or to the employee) involves offering plan participants a lump sum in exchange for their standard pension benefit. In the 2019 survey, 57% of senior finance executives (compared with 33% in 2017) said their organizations have amended their plans to make a permanent lump-sum feature available when employees retire or are otherwise terminated. And 40% said they have offered at least one window during which certain participants could get a lump-sum payment. Greater enthusiasm for this method is evident — 76% of sponsors that have offered a one-time lump-sum payment to some or all plan participants said their organizations were satisfied or very satisfied with the outcome. Another risk-transfer option is to offload retiree obligations to an insurer through the purchase of an annuity. Many plan sponsors assumed that annuity purchases were too expensive to make economic sense. That's still

a common perception; in the latest survey, 39% of respondents said they think an annuity buyout for retirees would be expensive (e.g., 110% to 115% of the pension benefit obligation held) or very expensive (greater than 115% of the PBO). Despite that prejudice, more plan sponsors may be warming to the idea. The proportion of surveyed organizations that have completed or were considering an annuity purchase for some or all retiree obligations remained flat over 2017 (55%). A greater proportion (70%) said they're likely to transfer some or all of their retiree obligation from their DB plan through the purchase of an annuity in this year or next. That's up from 56% that were planning to do so two years ago.

### **The End State**

Every defined benefit plan in the U.S. is facing one of three end-states: sustainability, hibernation, or termination. Right now, termination appears to be the most popular option. Regardless of the ultimate goal, plan sponsors will need to pay attention to data, transaction costs, and plan management.

**Data.** Right now, plan sponsors are highly confident in their plan data. Nearly all (95%) of the survey respondents said their plan's data were either pristine (meaning they would be able to execute a plan termination immediately) or in good shape (meaning they would be able to execute a termination in a matter of weeks). That was up from 85% in 2017.

**Transaction Costs.** Many plan sponsors (65%) believed that buying annuities to cash out plan participants was expensive. In practice, this may not be the case. Sponsors contemplating an annuity purchase should be planning now for what the actual costs may be, and exploring alternative payment strategies that may make de-risking via an annuity more attractive.

**Plan Management.** A majority of plan sponsors have already consolidated their service providers to some degree, allowing for more streamlined plan management. Currently, 62% of sponsors use a single provider for all DB services or use the same provider for at least two DB services.

Chris Schmidt, Issue 2019-06 CFO, *Chief Financial Officers (CFO)*, June 28, 2019.

## **5. TRAVELING? YOU CAN STILL ACCESS SOCIAL SECURITY ONLINE RESOURCES:**

Summer is officially here and you might be planning a vacation or trip. Social Security is here for you when you're traveling, whether it's just a state away or when you're overseas. Our [online services](#) page directs you to a wide variety of useful links. Through our online services, you can:

- Apply for Social Security benefits
- Get your *Social Security Statement*
- Request a replacement Social Security card
- Appeal a decision
- Find out if you qualify for benefits

Some of these features require you to have a *my Social Security* account, which is something everyone should have no matter what stage they are at in their working life. And if you receive Social Security benefits or Medicare, you can create or log in to your personal [my Social Security](#) account to:

- Get your [benefit verification letter](#) (includes Medicare and SSI)
- Check your information, benefits, and earnings record
- [Change your address](#) and telephone number
- Start or change your [direct deposit](#)
- [Request a replacement Medicare card](#)
- [Get a replacement SSA-1099 or SSA-1042S](#) for tax season
- [Report your wages if you work and receive Disability Insurance benefits](#) or [Supplemental Security Income \(SSI\)](#)

Create a [my Social Security](#) account today to take advantage of these easy-to-use features. Also, share our online services page with friends and family, who might not know how easy and secure our website is. Darlynda Bogle, Acting Assistant Deputy Commissioner, Social Security Administration, June 27, 2019.

## **6. SUMMARY OF THE QUARTERLY SURVEY OF PUBLIC PENSIONS FOR 2019, Q1:**

For the 100 largest public-employee pension systems in the country, assets (cash and investments) totaled \$3,858.2 billion in the first quarter of 2019, increasing by 6.2 percent from the 2018 fourth quarter level of \$3,634.5 billion. Compared to the same quarter in 2018, assets for these major public-pension systems increased 1.8 percent from \$3,791.9 billion. The main driver of the increase in assets is gains on investments, which totaled \$230.9 billion during the first quarter of 2019. Earnings on investments is a critical contributor to the sustainability of pension plans. In the first quarter of 2019, positive earnings on investments mitigated the deficit between contributions and benefits paid out. The summary highlights the major asset categories (equities, debt instruments, and cash equivalents) and does not reflect all of the categories published for the Quarterly Survey of Public Pensions. United States Census Bureau, Report Number G19-QSPP1, June 27, 2019.

## 7. CITY BUDGET CUTS JOBS AND RAISES PARKING RATES TO OFFSET

### SHORTFALLS:

Santa Monica's 2019-2021 budget is 7% or about \$108 million smaller than its last biennial budget, marking the beginning of a decade where the city will have to pay down a \$448 million pension liability while adjusting to tepid revenue growth. Although the city is [tightening its belt](#), the almost \$1.6 billion biennial budget City Council adopted Tuesday boosts funding for homeless services, rental assistance for low-income seniors and a new website officials call a "digital City Hall." It also maintains funding for a \$77 million annex at City Hall, a \$115 million reboot of City Yards and new water infrastructure to wean Santa Monica off imported water by 2023, protecting the city from future droughts and higher water rates. A \$9.3 million payment to CalPERS, the state pension fund, kicks off the city's 13-year plan to pay off the pension liability ahead of time. CalPERS fell into crisis following the 2008 recession and jurisdictions across California now have to make up a massive shortfall between the pensions the state promised to workers and the balance of the fund. Santa Monica's accelerated repayment plan will save more than \$100 million in interest, said finance director Gigi Decavelles-Hughes. Even so, the pension liability and eroding revenues from sales tax as consumers shop online instead of in Santa Monica's brick-and-mortar stores could put the city \$50 million in the red over the next 10 years if it doesn't cut costs. A looming recession would only make matters worse. The 2019-2021 budget takes the first steps toward those long-term savings, eliminating 29 vacant jobs, trimming administrative costs and diverting local students from some poorly attended childcare programs. It also includes metrics to measure the effects of funding levels on city services. "With this budget, we continue to invest in the exceptional services, programs and public facilities for which Santa Monica is known while also preparing for harder economic times," said Mayor Gleam Davis. "Budgeting based on performance and continually measuring how we're doing will maintain our strong financial standing and allow us to continue to innovate to meet regional and global challenges like homelessness and climate change." The budget city manager Rick Cole [proposed](#) last month included other cuts, including extending the winter closure of the Santa Monica Swim Center, ending a contract with KCRW to broadcast City Council meetings and halting enforcement of the city's leaf blower ban, but the council rejected those cost-cutting measures. The council also asked that the budget incorporate \$100,000 for hospitality ambassadors in Reed Park. Since last fall, the city's Recreation and Parks Commission has called on the council to prevent people experiencing homelessness from relieving themselves, using drugs or committing crimes in the park. The council decided to launch a six-month pilot program in which Downtown Santa Monica, Inc. ambassadors, who are already present in other downtown parks, will work with the homeless population in Reed Park. The budget also renews funding for outreach teams that work with homeless individuals on the streets

and expands the Preserving Our Diversity (POD) program to provide rental assistance to 200 to 400 low-income seniors with the goal of preventing homelessness. To bring in more revenue, the budget raises parking rates across the city, including a parking meter rate increase of \$0.50 per hour downtown and near the beach, \$0.25 per hour in all other areas and Main Street parking lots and a \$15 increase in the monthly permit price for the Main Street lots. Hourly and daily parking rates will also increase at the Santa Monica Pier deck and the central beach lots. Madeleine Pauker, Santa Monica Daily *Press*, June 26, 2019.

#### **8. NOT ALL CITIES HAVE A PENSION PROBLEM:**

With so much well-deserved negative attention focused on cities with huge unfunded pension overhangs, it's probably a good time to draw attention to the cities that are not burdened by pension liabilities. Cities, which maintain adequate pension set-aside contributions based on reasonable actuarial assumptions, usually fit the bill of practicing responsible management and earn a pat on the back. Only about three percent (3%) of all cities with populations of at least 30,000 have fully funded their total pension liabilities. Some of these have even overfunded their plans. Another 18% of these cities have funded their pension liabilities in the 90% to 99% range. That means that approximately 21% of all cities are in very good to excellent shape on pensions. Beyond the best funded cities, 19% of all cities bear a marginally fair to good funding ratio of 80% to 89%. In contrast to the top group of cities which have fully funded pensions, the pie chart below shows that an equal 3% of cities have consolidated pension plan funding ratios of less than 50%. By all measures, those plans are the most challenged and face the potential of eventual insolvency if the worst-case scenarios play out. The remainder of all cities in the study carry a funding ratio between 50% and 80%. This assessment of pension funding status is based on a new study of 1271 cities by Merritt Research Services, LLC, an independent municipal bond data and research company. The Merritt Research city funding ratio is calculated by deriving a consolidated funding position for each city by accounting for all of a city's pension plans, regardless of whether they are the sole responsibility of that city (single or agent plans) or if they are a participant in a multiple employer plan, usually sponsored by the state. All of the funding percentages are preliminary and likely to change somewhat since the analysis is based on the most recent city audits available to Merritt Research as of June 21, 2019. At the time of this study, 57% of the city audits included as the most recent end of year reports in the study related to fiscal year 2018 and the remainder applied to Fiscal Year 2017. As the new audits become available, the pension funding medians will adjust accordingly. Because most city government audits take six months to a year, or longer, to be completed and reported, a large number of cities with fiscal years closing on December 31, 2018 are just becoming available. To make matters more complicated, but without impacting the final analysis

materially, city audit fiscal year end periods may differ from their individual pension plan audits. In those cases, the pension funding measurement period may lag the city audit fiscal year end by one year.

### **Which Cities Are The Best Funded?**

The table below lists the top 25 funded pension plans in the United States for cities with populations over 30,000 based on the most recent fiscal year audit available. At the top of the list is the city of Bristol, Connecticut with a substantial 2018 fiscal year end funded ratio of 148.2%. Although an optimistic discount rate used by a plan could cause the funding ratio to be higher than would be typically expected, Bristol's Merritt derived weighted average discount rate of 7.3% on its total pension liability falls close to middle of the pack among city pension plans nationally. Following Bristol on the best funded pensions list are three cities in Michigan (Kalamazoo, Pontiac, and Troy), one in Missouri (Blue Springs), one in the state of Washington (Lakewood), and one in California (Fresno). Of those mentioned, Troy is the only one with a median household income that is significantly higher than the national average. Pontiac may be a surprise city on the best funded list because it has been subject in recent years to the State of Michigan Treasury office's financial emergency supervision program. Fresno, California, the largest city with an overfunded pension position, had its pension funding status substantially enhanced when it issued a large pension funding bond issue in 2002. Issuing pension bonds to pay down pension liabilities normally transfers risk to bondholders in place of pension plan beneficiaries.

### **A Cautionary Note**

Much to their credit, cities with well-funded pension plans can look forward to less uncertainty relative to potential tax increases and threatening budget squeezes to offset the possibility of future economic downturns or pension actuarial assumptions that are not realized. Best practice in public finance calls for organizations with defined pension plans to have match their pension liability amortization schedule with the time in which a public employee is expected to be providing active services to a community. When pensions are underfunded, the burden is more likely to fall onto the next generation of city taxpayers. That's a big reason why an optimally appropriately funded pension program makes sense in the long-term and poses the least stress to cities at the end of the day. Although full pension funding is ideal, some caution is always advisable if the funding ratio is artificially propped up by mistaken actuarial assumptions, like the investment discount or mortality rates. So too, observers have to be careful about the use of pension bonds, especially if they don't provide strong assurance of a complete package to reduce the overall pension liability. Pension bonds don't necessarily relieve financial stress in the long run if they just shift the risk to bondholders since debt service is just as much of a future fixed cost

burden as pension contributions, maybe even more so. Lastly, if a community covers its pension costs fully and underfunds essential services or infrastructure requirements, there are obvious potential negative implications sooner or later.

Richard A. Ciccarone, President & CEO of Merritt Research Services, LLC and Co-Owner of MUNINET, LLC, MuniNet Guide, June 26, 2019.

#### **9. BILL TO GIVE FIREFIGHTERS 5-YEAR WINDOW FOR CANCER TIED PENSIONS:**

Under legislation pending in Albany, city firefighters would be granted a five-year post-retirement period in which they could revise their retirement option if they developed cancer that may be linked to carcinogens they were exposed to on the job.

Epidemiological studies have established the firefighting-cancer link for several years. A 2013 study published in the Journal of Occupational Environmental Medicine, based on the review of the health records of 30,000 firefighters from Chicago, Philadelphia and San Francisco, found “evidence of a relation between firefighting and cancer” and a new finding that found evidence of “excess malignant mesothelioma” as well. Since 2002, cancer was the cause in almost two out of every three firefighter line-of-duty deaths, according to the International Association of Fire Fighters. Uniformed Fire Officers Association President James Lemonda said in a phone interview, “Both the [Uniformed Firefighters Association] and UFOA have been pursuing this. Every firefighter in New York State has already been afforded this protection with the exception of New York City Firefighters...who are exposed to the same carcinogens on a daily basis.” On June 18, the City Council passed a home-rule message in support of the measure, and union officials were optimistic they could win passage in the Assembly and Senate by the end of the session June 20. “This is a recognition that these job-related cancers can manifest long after the exposure,” Council Member Andrew Cohen, chair of the Committee on State and Federal Legislation, said during a City Hall interview. “This is a benefit available across the state, and it is only just that New York City Firefighters have the same protection.”

#### **Cuomo Not Tipping Hand**

Governor Cuomo's Press Office said he would review the legislation. “If a Firefighter retires tomorrow and up to five years later gets diagnosed with cancer, that would be attributed to his work as a Firefighter,” UFA President Gerard Fitzgerald said in an interview at City Hall. “All of us that were there for the World Trade Center, we have this. This is for future retirees who were not involved with the World Trade Center who would get cancer protection for up to five years after they retire.” Also included would be any WTC firefighter who developed cancer subsequently but was told by officials that they developed it too soon after 9/11 to claim it was job-related under the Zadroga Act. Mr. Fitzgerald said that ironically, it was the high incidence of cancer among the FDNY's World Trade Center responders that prompted medical researchers to take a closer look

at the potential linkage.

### **Toxic Building Materials**

“One of the things that came out of the World Trade Center was the fact that firefighters were coming down with cancers at a younger age than the normal public, so that piqued the interest by different universities, hospitals, and cancer researchers across the world,” he said. “What they came up with was that a lot more plastics, a lot more carcinogens” are being used in construction “because almost everything today is made either with woods that are held together with glues that are poison, or plastics that when they burn are also toxic.” The U.S. Centers for Disease Control and Prevention cited formaldehyde, asbestos and arsenic as problematic. Mr. Fitzgerald pointed out that while the incidence of structural fires has been trending down, the ones that firefighters now respond to can be more toxic. “They burn at a higher temperature than in the old days, when everything was made of natural materials, wools and woods, whereas these new materials are burning at an excessive rate because they have their own fuel in the material,” he said. The growing scientific evidence linking firefighting with higher incidences of cancer has already produced significant changes in how firefighters wrap up their calls.

### **Decontaminate Quickly**

“With knowledge comes change, so the unions are advocating that our Firefighters and fire officers decon [decontaminate] after any job,” Mr. Fitzgerald said. “So rather than put it off, hit the showers and get the toxic ash and carcinogens off of you and off your gear and off the rig.” Mr. Lemonda said that the unions were pushing for members at every firehouse to have access to washing machines, “because it would be more conducive to removing the contamination from their gear.”

Bob Hennelly, *The Chief Leader* (New York), June 25, 2019.

## **10. FORMALIZING LABOR’S AND IRS’S COLLABORATIVE EFFORTS COULD STRENGTHEN OVERSIGHT OF PROHIBITED TRANSACTIONS:**

### **Why GAO Did This Study**

IRA owners are able to invest in a wide variety of assets, but they are prohibited from engaging in certain transactions involving IRA assets. IRA owners who engage in prohibited transactions may incur increased income tax liability, additional taxes, and the loss of the tax advantaged status of their accounts. DOL can grant exemptions from the prohibited transaction rules. IRS enforces tax laws relating to IRAs and can assess additional taxes. GAO was asked to examine (1) DOL’s process for granting exemptions for prohibited IRA transactions and outcomes of that process, and (2) the extent to which DOL and IRS collaborate on oversight of prohibited transaction rules for IRAs. GAO reviewed relevant federal laws and regulations; examined agency guidance, exemption

process documentation, and application case files; assessed interagency coordination using internal control standards and prior work on interagency collaboration; and interviewed DOL and IRS officials.

### **What GAO Recommends**

GAO is recommending that DOL and IRS establish a formal means--such as a memorandum of understanding or other mechanism--to collaborate on oversight of prohibited IRA transaction exemptions. GAO is also recommending that DOL document policies and procedures for managing the exemptions process. DOL and IRS generally agreed with GAO's recommendations.

### **What GAO Found**

The Department of Labor (DOL) has a process to grant administrative exemptions for individual retirement account (IRA) transactions that would otherwise be prohibited by law, such as an IRA buying investment property from the IRA owner. DOL evaluates applications using statutory criteria and follows administrative procedures codified in regulations. Applications for proposed transactions that are substantially similar to certain other transactions previously granted exemptions may follow an expedited process. A EXPRO is the common name for a class exemption that allows DOL to authorize relief from the prohibited transactions rules on an expedited basis, generally a shorter period of time than it takes to review individual applications. As shown in the figure, GAO found that roughly half (56) of the IRA prohibited transaction exemption applications it reviewed were withdrawn by the applicant before the review process was completed. In reviewing processed applications, GAO found that most of the prohibited transactions for which an exemption was sought involved the sale of IRA assets. With regard to DOL's application review process, GAO found that DOL has not sufficiently documented internal policies and procedures to help ensure effective internal control of its process. Documenting procedures could increase transparency about how applications are handled, reduce the risk of DOL employees carrying out their duties inconsistently, and provide a means to retain organizational knowledge should key personnel leave unexpectedly. Although DOL and the Internal Revenue Service (IRS) share some information as part of their oversight responsibility for prohibited IRA transactions, no formal mechanism exists to help guide collaboration between the agencies. Of the 124 IRA applications GAO reviewed, only eight reflected DOL contact with IRS. GAO found that DOL has information about requested exemptions to prohibited IRA transaction rules that could be useful to IRS in carrying out its oversight responsibilities. For example, DOL does not share information on denials -- information that could be useful as prohibited transaction examples for IRS examiner training and educational outreach to IRA owners. In prior work on interagency collaboration, GAO has found that formal agreements, such as a memorandum of

understanding, can help agencies monitor, evaluate, and update interagency collaboration. Formalizing the sharing of information between DOL and IRS regarding IRA prohibited transaction exemptions could help the agencies better support their current coordination efforts and identify additional opportunities for greater collaboration. Highlights of GAO-19-495, Committee on Finance, U.S. Senate.

**11. DID YOU KNOW BENJAMIN FRANKLIN SAID THIS?:**

When you're finished changing, you're finished.

**12. PONDERISMS:**

Why do you recite at a play but you play at a recital?

**13. INSPIRATIONAL QUOTES:**

Your big opportunity may be right where you are now. - Napoleon Hill

**14. TODAY IN HISTORY:**

On this day in 2001, Alabama Supreme Court Chief Justice Roy Moore has a Ten Commandments monument installed in the judiciary building, leading to a lawsuit to have it removed and his own removal from office.

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