



CYPEN & CYPEN NEWSLETTER for April 9, 2020

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

1. COVID-19 TAKES BITE OUT OF U.S. CORPORATE PENSION PLANS:

The funded status of the nation's largest corporate pension plans fell by eight percentage points during the first quarter of 2020, driven primarily by declines in equity markets, according to an analysis by Willis Towers Watson (NASDAQ: WLTW), a leading global advisory, broking and solutions company.

Willis Towers Watson examined pension plan data for 376 Fortune 1000 companies that sponsor U.S. defined benefit pension plans. Results indicate the aggregate pension funded status is estimated to be 79% as of March 31, 2020, compared with 87% at the end of 2019. That's the lowest funded status plans have experienced since 2012, when the year-end funded status stood at 77%. The analysis found the pension deficit is projected to be \$365 billion as of March 31, 2020, higher than the \$229 billion deficit at the

end of 2019. Unlike pension assets, pension obligations increased minimally from \$1.75 trillion at the end of 2019 to \$1.76 trillion at March 31, 2020.

“Corporate pension plans took a hit in the first quarter,” said Royce Kosoff, managing director, Retirement, Willis Towers Watson. “As a result, aggregate funding levels declined to a level we haven’t seen since 2012. Sponsors recently gained some reprieve with funding requirements deferred for 2020 but will likely face significant cost increases in 2021 and beyond. This serves as a fresh reminder for plan sponsors to carefully review their funding policy, investment allocation and overall risk management approach.” Pension plan assets decreased during the quarter from \$1.52 trillion at the end of 2019 to \$1.40 trillion as of March 31, 2020.

Overall investment returns are estimated to have fallen by 7% in the first quarter, although returns varied significantly by asset class. Domestic large capitalization equities dropped significantly by 20%, while domestic small/mid-capitalization equities fell by 30%. U.S. aggregate bonds recognized gains of 3%, while long corporate and long government bonds, typically used in liability driven investing strategies, realized drastically different results. Long corporate bonds realized losses of 5% while long government bonds realized gains of 21%.

“The fallout from a volatile first quarter was not uniform across plan sponsors,” said Richard McEvoy, U.S. lead, Delegated Integrated Solutions, Willis Towers Watson. “On the growth asset side, the composition of growth assets was the primary driver of results with diversified allocations mitigating drawdowns. Rates and credit spreads also had a wild ride, and liability-driven investment strategies limited the damage to funding levels in many cases. A key element was how plan sponsors allocated between Treasuries and credit. Overall, we saw significant variations of outcomes, reflecting the wider variation in pension strategies taken today than in years past.” Willis Towers Watson analyzed 376 Fortune 1000 companies for which complete data were available. First quarter 2020 figures are estimates of U.S. plan assets and liabilities. www.willistowerswatson.com, April 2, 2020.

2. DB PLAN RELIEF INCLUDED IN THE CARES ACT:

The CARES (Coronavirus Aid, Relief and Economic Security) Act signed into law March 27 not only includes provisions related to defined contribution (DC) plans, but it also provides relief for defined benefit (DB) plan sponsors.

Blogs and client alerts from multiple law firms report that Section 3608 of the CARES Act provides a delay for minimum annual required contributions (ARCs) that would otherwise

be due from single-employer DB plans during this calendar year. The new due date for any such contribution is now January 1, 2021. Any contributions that are delayed are increased by interest for the period beginning on the original due date to the actual payment date.

The CARES Act also provides relief for required benefit restrictions. For plan years beginning on and after January 1, 2008, the Pension Protection Act of 2006 (PPA) imposed new benefit restrictions on plans that do not meet specific funding percentage levels. If a plan's adjusted funding target attainment percentage (AFTAP) is less than 80%, there are restrictions on distributions that may be made to participants and on the ability to enhance benefit accruals. Under the CARES Act, a plan sponsor may elect to treat the plan's AFTAP for the previous plan year—the year ending before January 1, 2020—as the AFTAP for plan years which include calendar year 2020. This may allow some plans to avoid triggering certain benefit restrictions in 2020 that would otherwise apply. Rebecca Moore, *Plansponsor*, March 31, 2020.

3. FEDERAL AGENCIES ENCOURAGE MORTGAGE SERVICERS TO WORK WITH STRUGGLING HOMEOWNERS AFFECTED BY COVID-19:

The federal financial institution regulatory agencies and the state financial regulators issued a joint policy statement providing needed regulatory flexibility to enable mortgage servicers to work with struggling consumers affected by the Coronavirus Disease (referred to as COVID-19) emergency. The actions announced today by the agencies inform servicers of the agencies' flexible supervisory and enforcement approach during the COVID-19 pandemic regarding certain communications to consumers required by the mortgage servicing rules. The policy statement and guidance issued today will facilitate mortgage servicers' ability to place consumers in short-term payment forbearance programs such as the one established by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Under the CARES Act, borrowers in a federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 pandemic, may request forbearance by making a request to their mortgage servicer and affirming that they are experiencing a financial hardship during the COVID-19 pandemic. In response, servicers must provide a CARES Act forbearance, that allows borrowers to defer their mortgage payments for up to 180-days and possibly longer.

The policy statement clarifies that the agencies do not intend to take supervisory or enforcement action against mortgage servicers for delays in sending certain early intervention and loss mitigation notices and taking certain actions relating to loss

mitigation set out in the mortgage servicing rules, provided that servicers are making good faith efforts to provide these notices and take these actions within a reasonable time. To further enable short-term payment forbearance programs or short-term repayment plans, mortgage servicers offering these programs or plans will not have to provide an acknowledgement notice within 5 days of receipt of an incomplete application, provided the servicer sends the acknowledgment notice before the end of the forbearance or repayment period. The guidance also reminds servicers that there is existing flexibility in the rules with respect to the content of certain notices.

Finally, to assist servicers experiencing high call volumes from consumers seeking help, the policy statement also confirms that the agencies do not intend to take supervisory or enforcement action against mortgage servicers for delays in sending annual escrow statements, provided that servicers are making good faith efforts to provide these statements within a reasonable time. FDIC: Press Releases - PR-47-2020, www.fdic.gov, April 3, 2020.

4. THE CARES ACT EFFECT ON RETIREMENT PLANS:

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The Act largely stabilizes fragile industries, provides loans and tax credits to businesses tied to their retaining their workforces during these uncertain times, and offers additional unemployment relief to employees hurt by COVID-19. But the CARES Act does more. It significantly loosens the restrictions on loans and distributions from retirement plans, along with providing funding relief for defined benefit plans, giving employers important options to consider in these times of need.

These provisions are optional. Employers are not required to implement these new features. However, some aspects of the rules already may be captured in employer plans through the plans’ rollover contribution rules. Further, plan recordkeepers have started proactively implementing these changes programmatically, providing employers only with brief “opt out” periods. Thus, although retirement plans are not top of mind these days, employers should not deprioritize the review of plan-related communications from plan recordkeepers during this time, as they may contain important CARES Act details.

An overview of the key changes follows:

COVID-19 Related Distributions (CRD) – Sec. 2202(a) allows participants to have greater access to their retirement funds. Qualified participants are no longer subject to the 10% excise tax applicable to early withdrawal if the withdrawal is a CRD of no more than \$100,000. The Act defines a CRD as:

- Distributions made from an eligible retirement plan:
 - IRA
 - Tax-qualified retirement plans
 - Tax-deferred annuities 403(b) plans
 - Section 457(b) governmental sponsored deferred compensation plans
- During 2020
- To a “qualified participant”:
 - Diagnosed with COVID-19
 - Spouse or dependent diagnosed with COVID-19 or
 - Furloughed, laid off, reduced hours or unable to work because of COVID-19

Plan Administrators may rely on the participant’s certification as satisfaction of the criteria for eligibility. At the participant’s election, the CRD distribution either will: (A) not be taxable to the participant, subject to the participant repaying the amount to an eligible retirement plan any time within the immediately following 3- year period in one or more payments; or (B) taxed ratably over a 3-year period. Either way, these distributions will not be subject to mandatory 20% tax withholding but will be subject to 10% withholding unless voluntarily waived by the participant.

The devil is in the details here. Additional guidance is needed to determine exactly how this option is to be effectuated, administered, and reported. Further, employers will need to balance employees’ need for resources against the impact of depleting retirement savings in a down market, among other considerations.

Plan Loans – Sec. 2202(b) provides qualified participants with more plan loan flexibility. The CARES Act doubles the amount available for plan loans taken during the 180-day period beginning on March 27, 2020, to the lesser of \$100,000 or 100% of their vested account balance. Qualified Participants must meet the same criteria for a loan as required for an early distribution above. Sec. 2202(b) also provides qualified participants with loans in effect on or after the CARES Act enactment date of March 27, 2020, that would otherwise be due between March 27, 2020, and December 31, 2020 to suspend their loan repayment obligations for one year, akin to the rules involving suspensions for military leaves or unpaid leaves of absence. The interest continues to accrue during the suspension period and the statutorily allowed maximum of 5 years for repayment does not include the year of suspension.

The CARES Act provisions affecting plan loans modify provisions in Section 72(p) of the

Internal Revenue Code. If the loan does not meet the requirements of Section 72(p) and the implementing regulations, it is treated as a distribution and thus taxable. But a plan could always impose more rigorous requirements. Thus, even though the CARES Act modifies these plan loan rules, employers, committees, or administrators can decide whether or not to implement them. When making this decision, consideration should be given to factors such as a participants' ability to repay loans of this size and whether payroll and recordkeeping systems are in place to administer suspended loan repayments.

Required Minimum Distributions (RMD) – Sec. 2203 allows plans to waive RMDs otherwise due for 2020 for those participants reaching age 72 during 2020. This change is akin to the RMD suspension rules that date back to 2009.

Important Note About Plan Amendments: Employers desiring to implement any of the CARES Act changes discussed above will need to amend their retirement plans, as needed, to incorporate these provisions with operational compliance in the interim. The deadline for these plan amendments will not be earlier than the last day of the first plan year beginning on or after January 1, 2022 (i.e., December 31, 2022, for calendar year plans).

DOL authority to determine filing deadlines – Sec. 3607 extends the DOL's authority to defer for up to 1 year any deadline date set by ERISA (which may include notices, filings, etc.) for reasons because of public health emergencies such as the COVID-19 pandemic.

Defined Benefit Plans' Funding Rules for Single Employers – Sec. 3608 relaxes the minimum funding rules by extending the due date for all contributions (including quarterly contributions) originally due in 2020, until January 1, 2021. The extended payment is adjusted for any interest accrued. Plans also may use the adjusted funding target attainment percentage (AFTAP) from the last plan year ending before January 1, 2020, in applying the Internal Revenue Code Section 436 benefit restrictions.

Education Assistance – Sec. 2206 allows an employer to include payments to of an employee's qualified education loan, principal, and interest, as part of education assistance under Internal Revenue Code Section 127. The total allowed annual amount of \$5,250 does not change.

Executive Compensation – Sec. 4004 addresses parameters to which companies must comply to receive certain emergency direct lending relief through the CARES Act. Suzanne G. Odom and Allan S. Friedland, www.benefitslawadvisor.com, April 1,

2020.

5. COMMISSIONER OF SOCIAL SECURITY SHARES UPDATE ABOUT COVID-19 ECONOMIC IMPACT PAYMENTS FOR BENEFICIARIES:

The Department of the Treasury (Treasury) announced on April 1 that Social Security beneficiaries who are not typically required to file tax returns will not need to file an abbreviated tax return to receive an economic impact payment. The Internal Revenue Service (IRS) will use the information on the Form SSA-1099 to generate \$1,200 economic impact payments to Social Security beneficiaries who did not file tax returns in 2018 or 2019.

Treasury, not Social Security, will make automatic payments to Social Security beneficiaries. Beneficiaries will receive these payments by direct deposit or by paper check, just as they would normally receive their Social Security benefits. For updates from the IRS, visit their [web page](#).

Note for Supplemental Security Income (SSI) Recipients:

We are working closely with Treasury to address outstanding questions about our SSI recipients in an attempt to make the issuance of economic impact payments as quick and efficient as possible. We realize people are concerned, and the IRS will provide additional information on their [web page](#) when available. Please note that we will not consider economic impact payments as income for SSI recipients, and the payments are excluded from resources for 12 months.

We will continue to update Social Security's [Coronavirus COVID-19](#) web page as further details become available." Andrew Saul, Commissioner, Social Security Administration, [blog.ssa.gov](#), April 3, 2020.

6. AN ACTION PLAN FOR BETTER PERFORMANCE AUDITS IN THE PUBLIC SECTOR:

Recent Governing Institute research found state and local government auditors can't easily access the data they need and don't have the necessary resources to conduct effective performance audits. Technology can help fill these gaps, but many aren't using it to their benefit. On April 29 at 11am Pacific/2pm Eastern, Governing will bring together a panel of experts to discuss how governments can take advantage of the right tools, methods and partnerships to support continuous auditing that drives better performance and value for taxpayer dollars. This hour-long webcast will offer an action plan for expanding or establishing a performance auditing function. We'll cover:

- In-depth findings from the Governing Institute research
- How performance auditing differs from other types of auditing in the public sector
- The role of technology and data analytics in effective performance auditing

Speakers:

- Kip Memmott, Audits Director, Oregon Secretary of State
- Audrey Donovan, CIA, CGAP, CRMA, Senior Manager - Eide Bailly
- Jon Ault, Principal - Eide Bailly

[You can register at no cost here.](#) Lee Vang, www.governing.com, April 2, 2020.

7. ADVANCE DESIGNATION; CHOOSE A REPRESENTATIVE PAYEE FOR SOCIAL SECURITY TO CONSIDER BEFORE YOU MAY NEED ONE:

The future can be uncertain. However, Social Security's Advance Designation program can help put you in control of your benefits if a time comes when you need a representative payee to help manage your money. Advance Designation enables you to identify up to three people, in priority order, whom you would like to serve as your potential representative payee.

The following people may choose an Advance Designation:

- Adults applying for benefits who do not have a representative payee.
- Adult beneficiaries/recipients who do not have a representative payee.
- Emancipated minors applying for benefits who do not have a representative payee.
- Emancipated minor beneficiaries/recipients who do not have a representative payee.

If you fall into one of the above categories, you may provide and update Advance Designation information when you:

- File a claim for benefits online.
- Use the application available in your personal [my Social Security](#) account.
- Call us by telephone at 1-800-772-1213 (TTY 1-800-325-0778).

You may also change your Advance Designation(s), including the priority order, at any time while you are still capable of making your own decisions. In the event that you can no longer make your own decisions, you and your family will have peace of mind knowing

you already chose someone you trust to manage your benefits.

We have updated our [Frequently Asked Questions](#) to answer any questions you may have about Advance Designation. You may also find more information about representative payees in our [blog post](#). Erik N. Jones, Assistant Deputy Commissioner for Operations, blog.ssa.gov, April 3, 2020.

8. WILL IMPORTS AND ROBOTS PUSH OLDER WORKERS INTO NONTRADITIONAL JOBS?:

Recent research has called attention to workers in nontraditional jobs – defined here as jobs without retirement and health benefits, particularly those with volatility in hours or wages. At the same time, U.S. workers are facing growing competition from trade and automation. The question is: are trade and automation pushing more workers into nontraditional jobs? This issue may be a particular concern for older workers, who increasingly need longer careers with continued access to retirement plans and health coverage to secure an adequate retirement.

To explore the relationship between trade, automation, and nontraditional work, this *brief*, based on a recent study, tests whether workers are more likely to be in nontraditional jobs, or to transition to such jobs, in states that have greater exposure to trade and automation.

The results of this analysis suggest a positive relationship between automation – defined by an increased use of robots – and nontraditional jobs, with older workers seeing a larger impact than mid-career workers. On the other hand, import competition is not associated with greater use of nontraditional work. The main takeaway is that continuing growth in automation may reduce workers' bargaining power, which could allow employers to offer more lower-quality jobs. Older workers who have trouble extending their careers in traditional employment may find that they have to settle for jobs that do not include retirement saving and health insurance benefits, underscoring the need for alternative sources of coverage to help workers obtain a secure retirement. The full brief is [available here](#). Matthew S. Rutledge, Gal Wettstein, and Sara Ellen King, Center for Retirement Research at Boston College, IB20-6, crr.bc.edu, March 2020.

9. IRS ISSUES WARNING ABOUT CORONAVIRUS-RELATED SCAMS; WATCH OUT FOR SCHEMES TIED TO ECONOMIC IMPACT PAYMENTS:

The Internal Revenue Service today urged taxpayers to be on the lookout for a surge of calls and email phishing attempts about the Coronavirus, or COVID-19. These contacts can lead to tax-related fraud and identity theft. "We urge people to take extra care during

this period. The IRS isn't going to call you asking to verify or provide your financial information so you can get an economic impact payment or your refund faster," said IRS Commissioner Chuck Rettig. "That also applies to surprise emails that appear to be coming from the IRS. Remember, don't open them or click on attachments or links. Go to IRS.gov for the most up-to-date information."

Taxpayers should watch not only for emails but text messages, websites and social media attempts that request money or personal information. "History has shown that criminals take every opportunity to perpetrate a fraud on unsuspecting victims, especially when a group of people is vulnerable or in a state of need," said IRS Criminal Investigation Chief Don Fort. "While you are waiting to hear about your economic impact payment, criminals are working hard to trick you into getting their hands on it. The IRS Criminal Investigation Division is working hard to find these scammers and shut them down, but in the meantime, we ask people to remain vigilant."

Don't fall prey to Coronavirus tricks; retirees among potential targets.

The IRS and its Criminal Investigation Division have seen a wave of new and evolving phishing schemes against taxpayers. In most cases, the IRS will deposit economic impact payments into the direct deposit account taxpayers previously provided on tax returns. Those taxpayers who have previously filed but not provided direct deposit information to the IRS will be able to provide their banking information online to a newly designed secure portal on IRS.gov in mid-April. If the IRS does not have a taxpayer's direct deposit information, a check will be mailed to the address on file. Taxpayers should not provide their direct deposit or other banking information for others to input on their behalf into the secure portal.

The IRS also reminds retirees who don't normally have a requirement to file a tax return that no action on their part is needed to receive their \$1,200 economic impact payment. Seniors should be especially careful during this period. The IRS reminds retirees – including recipients of Forms SSA-1099 and RRB-1099 – that no one from the agency will be reaching out to them by phone, email, mail or in person asking for any kind of information to complete their economic impact payment, also sometimes referred to as rebates or stimulus payments. The IRS is sending these \$1,200 payments automatically to retirees – no additional action or information is needed on their part to receive this.

The IRS reminds taxpayers that scammers may:

- Emphasize the words "Stimulus Check" or "Stimulus Payment." The official term is economic impact payment.

- Ask the taxpayer to sign over their economic impact payment check to them.
- Ask by phone, email, text or social media for verification of personal and/or banking information saying that the information is needed to receive or speed up their economic impact payment.
- Suggest that they can get a tax refund or economic impact payment faster by working on the taxpayer's behalf. This scam could be conducted by social media or even in person.
- Mail the taxpayer a bogus check, perhaps in an odd amount, then tell the taxpayer to call a number or verify information online in order to cash it.

Those who receive unsolicited emails, text messages or social media attempts to gather information that appear to be from either the IRS or an organization closely linked to the IRS, such as the Electronic Federal Tax Payment System (EFTPS), should forward it to phishing@irs.gov. Taxpayers are encouraged not to engage potential scammers online or on the phone. Learn more about reporting suspected scams by going to the [Report Phishing and Online Scams](#) page on IRS.gov. Official IRS information about the COVID-19 pandemic and economic impact payments can be found on the [Coronavirus Tax Relief](#) page on IRS.gov. The page is updated quickly when new information is available. IRS Press Release IR-2020-64, www.irs.gov, April 2, 2020.

10. THE FTC KEEPS ATTACKING ROBOCALLS:

Have you noticed lately that you're getting fewer robocalls? Yes, way too many calls are still coming, and we're fully engaged on that issue. But we're seeing some promising developments. Some recent FTC actions might just have something to do with that. Let's review. In December 2019, the [FTC filed suit](#) against VoIP service provider Globex Telecom for helping scammers run a "reduce your credit card interest rate" con. In January, the FTC sent letters to [19 VoIP providers](#), warning them that consumer protection laws apply to them, too, and pointing out what could happen if they kept helping scammy telemarketers break the law. Then, just last week, the agency sent [nine warning letters](#) to VoIP providers that were helping Coronavirus scammers blast out robocalls during the current health crisis. The VoIP providers that straightened up accounted for billions of calls that we're all now not getting.

But today, [the FTC announced](#) still more warning letters – this time, bringing partners from the FCC along to double down on enforcement. Three VoIP providers got the warning letters this time, but there's a twist. This time, the two agencies also sent a letter to US Telecom — the industry's trade association — that identifies the entities transmitted the illegal robocalls, and, if they haven't cut it out in 48 hours, says the FCC will authorize providers to block traffic from them. So: either way, two days from now, there should be

still fewer illegal robocalls trying to rip people off.

But back to the smaller number of robocalls we're getting now. It's actually more than a feeling, as [FTC Do Not Call Registry data](#) released today shows. If you check out the data, you'll see that Do Not Call reports in December 2019 — right after the FTC's Globex lawsuit — dropped by a whopping 25%, compared to December 2018. (That drop would be even greater except for the government shut-down in 2018 – in fact, calculating the drop based on complaints per day says there was a 32% drop.) And after the January round of VOIP warning letters, reports in February 2020 were more than 30% lower than the previous year. And March of 2020 had 53% fewer robocall reports than March of 2019. So: the FTC lays down the law to a bunch of VoIP providers...and reports of calls drop precipitously. Coincidence? You be the judge.

Nobody's taking a full victory lap, because the fight goes on. We know you're still getting calls. And though there's a dent in the numbers, the FTC and its partner agencies won't relent until we've won this battle. Lois Greisman, Associate Director, Division of Marketing Practices, FTC, www.ftc.gov, April 3, 2020.

11. DID YOU KNOW SACHEL PAIGE SAID THIS?:

"I never threw an illegal pitch. The trouble is, once in a while I toss one that ain't never been seen by this generation."

12. INSPIRATIONAL QUOTE:

"Live as if you were to die tomorrow. Learn as if you were to live forever." — Mahatma Gandhi

13. TODAY IN HISTORY:

On this day in 1865, Confederate General Robert E. Lee and 26,765 troops surrender at Appomattox Court House to US Lieutenant General Ulysses S Grant.

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