



CYPEN & CYPEN NEWSLETTER for May 7, 2020

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

1. PUBLIC PENSION FUNDS ARE A NET GAIN FOR STATE AND LOCAL REVENUE:

Public pension funds were net revenue generators for state and local governments in 2018, surpassing taxpayer contributions by \$179 billion, according to a biennial study released Tuesday by the National Conference on Public Employee Retirement Systems.

That represents a 30.6% increase from the original study covering 2015-2016. In 2018, pension funds generated about \$341.4 billion in state and local revenues through investments and retiree spending, while the taxpayer contribution to those pension plans was \$162 billion. For 40 states, public pensions were net revenue positive above taxpayer contributions, up from 38 in the earlier study. In the remaining 10 states, public pension funds were either revenue neutral or a significant subsidy for the taxpayer contributions in 2018, according to the study, "[Unintended Consequences: How Scaling Back Public Pensions Puts Government Revenues at Risk.](#)"

The study methodology traced the economic impact of public pension fund investments and public retiree spending on state and local economies, using historical data from the U.S. Census Bureau, the Bureau of Economic Analysis and the Department of Labor's Bureau of Labor Statistics. Together, those two measures contributed \$1.7 trillion to the U.S. economy, the study found. Given the 30.6% increase over the past two years, "if public pensions didn't exist, policymakers would need to increase taxes on their constituents to sustain the current level of public services," said Michael Kahn, NCPERS research director and the architect of the study, in a statement.

Hank H. Kim, NCPERS executive director and counsel, said in the same statement that public pension funds "are often cast as a pawn in political dramas over short-term spending," but that efforts to diminish them would backfire. "This study underscores that breaking faith with public pensions is actually a costly strategy for state and local government," Mr. Kim said. NCPERS represents more than 500 funds in the U.S. and Canada that collectively have more than \$4 trillion in pension fund assets. Hazel Bradford, *Pension & Investments*, www.pionline.com, May 5, 2020.

2. PUBLIC PENSION FUNDS TRIM COSTS IN 2019 - NCPERS SURVEY:

Public retirement systems managed to shave their administrative and investment expenses and took other cost-efficiency measures in 2019, according to an annual study released Monday by the National Conference on Public Employee Retirement Systems.

The [2019 NCPERS Public Retirement Systems Study](#), conducted with Cobalt Community Research, covered the most recently concluded fiscal year. Of the 155 state and local pension systems responding, 62% were local systems and the rest were state systems, with a collective 12.6 million participants and more than \$1.4 trillion in assets.

In the latest fiscal year, the pension systems averaged 0.55% in administrative costs and investment manager fees, down from 0.6% the year before. Lowering assumed rates of return was also a trend, with 59% of respondents doing so, and another 23% considering it. NCPERS also found that 45% raised their benefit age and service requirements, and 34% increased employee contributions. Many responding funds did not offer a cost-of-living adjustment in the most recent fiscal year, and the average adjustment was 1.6%, slightly lower than the previous year.

Weaker than expected one-year returns saw funding levels drop to 71.7%, from 73.6% the previous fiscal year. Average annual returns were 4.5% for one year, 7.1% for five years, 7.7% for 10 years and 11.2% for 20 years. NCPERS is the largest trade association for

public-sector pension funds, representing more than 500 funds throughout the U.S. and Canada with a collective \$4 trillion in pension assets. "Pension systems are constantly looking for ways to strengthen their performance and provide a secure income for millions of public servants," said Hank H. Kim, executive director and chief counsel of NCPERS, in a statement. Hazel Bradford, *Pension & Investments*, www.pionline.com, January 27, 2020.

3. PUBLIC PENSION FUND DEBT EXPECTED TO REACH ALL-TIME HIGH:

US pension funds, burdened with precarious funding ratios before the COVID-19 outbreak and large drops in the public equity market value, are finding their debt loads climbing, according to a new report from Pew Research.

"Absent positive returns in the next three months, overall state pension debt, currently \$1.2 trillion, could increase by \$500 billion, reaching an all-time high," the report said. "The pressure to meet pension funding targets will be most acute in jurisdictions that had severely underfunded pension systems before the pandemic took hold. In Illinois, for example, nearly one in five state tax dollars is already going to pay for pensions before factoring in any revenue declines."

Public pension funds are generally expected to struggle with meeting the required contribution targets they've established to keep their portfolios solvent as a result of their declines in revenue, but there's an underlying issue that could extend the time frame for recovery, the organization said. The funds must adhere to their contribution targets that are usually set at least one year in advance, meaning an appropriate target commensurate with the current status of the pension fund will lag until the pension's board approves it for the following period. "This means this effect will not be immediate," Pew said.

A pattern of reduced assumed rates of return, a fundamental calculation that pension funds use to determine how to adjust their operations and targets to become or remain solvent, are expected in the near term as well. "These reductions would continue the three-year trend [of reduced assumed rates of return], which already saw assumed annual return rates decline from 7.5% to 7.2%," Pew said. The organization suggests that long-term returns would be closer to 6.5%, even before factoring in the pronounced effects of the coronavirus fallout. Steffan Navedo-Perez, Chief Investment Officer, www.ai-cio.com, May 1, 2020.

4. HOW TO LOSE 90% OF YOUR MONEY IN 14 YEARS:

The freedom to dabble in financial markets is a luxury few can afford in times like these,

with the virus crisis unleashing a crippling recession, soaring unemployment and a rise in mortality. Some who have this freedom seem eager to fritter it away on complex and costly bets on an eventual oil price recovery, which, so far, have been an excellent way to part punters from their cash. Handling a barrel of crude is risky and dangerous work, but so is trading on its price from home.

One of the most popular and simple ways for retail investors to bet on oil is to invest in United States Oil Fund LP, an optically cheap and liquid exchange-traded fund that doesn't require any expert knowledge or ability to store barrels of oil - just having a brokerage account is enough. The fund does the hard work of buying U.S. benchmark oil futures contracts and rolling them over monthly before they expire. All investors have to do is decide when to get in on the opportunity. With half of the world in lockdown, and no cars in the streets, betting on an eventual oil price recovery may have seemed like a no-brainer: An estimated \$1.6 billion flowed into USO last week.

It's doubtful whether many of those investors could have guessed what was coming next: A crash in West Texas Intermediate crude futures for May delivery to below \$0, precipitated by the global oil glut meeting a lack of available space to store it all.

If even the experts were stunned by the revelation that zero was no longer the worst possible outcome, it's hard to believe recent arrivals to the USO ETF had a clue. One such investor, evidently still hoping for a turnaround, told the Wall Street Journal: "I'm either going to get my ass handed to me, or I'm going to be really smart." Only an estimated 13% of the fund was held by traders betting on a fall in the price, according to S3 Partners. Even more remarkably, the fund's sheer size and wide availability became self-defeating: USO had accumulated one-fifth of all outstanding May futures contracts in recent weeks. When it rolled over its position into June contracts last week, it only served to exacerbate the market slide. This isn't just about one ETF - there are plenty of ways for investors to lose money on oil. Online broker Interactive Brokers said on Tuesday that "several" of its customers' losses on crude futures had decimated their accounts. Earlier this month trading platform CMC Markets Plc's chief executive officer, Peter Cruddas, pointed to the trend: "Normally (customers) trade shares and indices but there has been a big focus on oil lately."

But it's the size, structure and stock-like trading that makes commodity ETFs like USO so problematic. The fact that the fund is now changing how it functions - due to "ongoing extraordinary market conditions" it may invest in any monthly contract available, or in varying percentages of them - should be of no comfort to wannabe oil traders. A change to strategy on the fly may be helpful for an immediate market dislocation, but it's not good for

transparency and it doesn't preclude future price plunges if the oversupply of oil persists. "The same drop we've just seen could happen again," says Ole Hansen, a commodities strategist at Saxo Bank.

More information and more health warnings for investors would be good. But many are already out there, and have been summarily ignored. Eric Balchunas, of Bloomberg Intelligence, [warned](#) in 2016 that USO was a "disaster waiting to happen" for novice traders who didn't understand how the hidden costs of rolling a futures contract from one month to the next could hurt. Even in the good times, it's a pricey proposition: That year, the spot price of oil rose 45%, yet USO rose just 6%. Any investor willing to dig into the archives would see that the fund's cumulative losses since its inception in 2006 came to 93.7% at end-March, [according](#) to ETF company USCF. Greed can often dismiss signals as noise.

Until those warnings get louder, expect people to keep flocking to brokerage platforms on the hope big gains are right around the corner. The volatility is good news for brokers' trading commissions: CMC Markets expects net trading revenue to double for the year ended March 31. Maybe it is brokerage profits - CMC's share price is up 41% in one month - that will be the lucrative flip side of oil's finger-burning collapse. Lionel Laurent, Bloomberg, www.WealthManagement.com, Apr 23, 2020.

5. SECURE ACT - WHAT PROVISIONS ARE UNIQUE TO DEFINED BENEFITS PLANS?:

This is the final article in a series describing key provisions of the SECURE Act, with a focus on provisions unique to defined benefit plans. With the recent enactment of the CARES Act that President Trump signed into law on March 27, 2020, it is understandable that employers are not focused on the numerous changes implemented by the SECURE Act.

However, some of its more immediate changes require employers to modify certain aspects of plan administration (and potentially financial planning decisions) to align with the Act's requirements. Some of the changes under the SECURE Act became effective immediately on December 20, 2019, while others became effective in plan or tax years beginning on or after January 1, 2020. The Act provides for a remedial plan amendment period that does not end until the last day of the 2022 plan year (the 2024 plan year for governmental plans). Therefore, employers generally have sufficient time to amend plan documents to comply with any required or optional changes. And they need to understand these changes to prepare themselves for the resulting effects.

Here are provisions in the Act that are unique to defined benefit plans.

Earlier in-service withdrawal age

The Further Consolidated Appropriations Act, 2020, which includes the SECURE Act, also includes the Bipartisan American Miners Act of 2019. This sister legislation amends Code Section 401(a)(36) to lower the age at which in-service withdrawals may be taken from defined benefit plans. Specifically, employers may now allow in-service withdrawals at age 59½ (rather than age 62).

This is an optional change that employers can implement for plan years beginning on or after January 1, 2020. Employers choosing to add such an option or to modify an existing plan provision will need to revise participant communications, notices and forms to reflect the appropriate information. In addition, employers must adopt a plan amendment in connection with implementing or revising this withdrawal option.

Increased age for beginning required minimum distributions

Prior to the passage of the SECURE Act, plans were required to begin making required minimum distributions (RMDs) by April 1 of the calendar year following the later of the calendar year in which an employee attained age 70½ or the calendar year in which the employee terminated employment. The Act amends Code Section 401(a)(9)(C) to increase this age to 72 - a required change.

The increase in the required beginning date age applies to individuals who reach age 70½ on or after January 1, 2020. An individual who attained 70½ prior to January 1, 2020, is required to begin RMDs under the prior rule. An individual who reaches age 70½ on or after January 1, 2020, however, is required to begin RMDs by April 1 of the calendar year following the later of the calendar year in which the employee attains age 72 or terminates employment. (It is worth noting that while the CARES Act provides a waiver for RMDs that otherwise are due in 2020, the waiver applies only to defined contribution plans. The waiver does not apply to defined benefit plans.)

The Tax Code also requires that if an employee continues to work after he or she attains age 70½, a defined benefit plan must provide for an actuarial increase to his or her accrued benefit for the period after age 70½ until the employee retires.

The SECURE Act did not amend this portion of the Tax Code. Thus, the age at which a defined benefit plan must provide an actuarial increase remains 70½.

In connection with the RMD rules, employers should update participant communications,

forms, and notices, including the special tax notice under Code Section 402(f), to ensure that such materials accurately describe the new rules, and to ensure that distributions are treated appropriately for tax purposes. Plan amendments also must be adopted.

Nondiscrimination testing and participation relief

As the cost of funding defined benefit plans has increased, many employers that sponsor them have taken action to limit future benefit accruals under them. Employers deciding to limit future benefit accruals generally do so in one of two ways, either: (1) closing the plan to any new participants, so that participation is limited to a specific group of existing participants as of a specific date, who continue to accrue benefits - sometimes called a “soft freeze” or a “closed” plan; or (2) amending the plan to suspend any new benefit accruals for all participants - sometimes referred to as a “hard freeze” or “frozen” plan.

Both soft-frozen and hard-frozen plans can experience compliance testing issues over time as the participant population becomes older or decreases in size. Thus, these plans may find it difficult to satisfy the Tax Code’s nondiscrimination and minimum participation requirements. The SECURE Act offers nondiscrimination and participation testing relief for certain closed or frozen defined benefit plans, subject to specific requirements.

Benefits, rights, and features test: A soft-frozen defined benefit plan limits future benefit accruals to a select group of “grandfathered” employees. Over time, the composition of the group that continues to accrue benefits may shift, so that it consists of more highly compensated employees. As a result, it becomes more difficult for the plan to satisfy the Code Section 401(a)(4) benefits, rights, and features test.

Under the SECURE Act, however, a defined benefit plan is deemed to satisfy the benefits, rights, and features test if: (1) the plan satisfied these nondiscrimination requirements in the plan year that it was closed and the two subsequent plan years; (2) the plan is not later amended to significantly favor highly compensated employees (e.g., by modifying the closed class or changing the benefits, rights, and features available to them under the plan); and (3) the plan was closed before April 5, 2017, or the plan did not have a substantial increase in coverage or in the value of benefits during the five-year period before the closure date.

Testing on benefit accrual basis: Employers that sponsor both a defined benefit plan and a defined contribution plan may aggregate those plans when performing nondiscrimination and coverage testing.

Testing the aggregated plan as if it were a defined benefit plan sometimes improves the

chances of satisfying these tests. However, current regulations make it difficult to use this approach.

The SECURE Act allows an employer with a defined contribution plan and a closed or frozen defined benefit plan to aggregate the plans and test the aggregated plan on a benefits basis in some cases. The defined contribution plan generally must provide for contributions to make up (in part) for the loss of benefits the defined benefit plan participants expected to earn under the closed or frozen defined benefit plan. The defined benefit plan must; (1) provide benefits to a closed class of participants; (2) have passed the nondiscriminatory classification test for the plan year of the closure and the two subsequent plan years; and (3) not be amended later to significantly favor highly compensated employees.

In addition, the defined benefit plan cannot have a substantial increase in coverage or in the value of benefits during the five-year period before the closure date, or the plan must have closed before April 5, 2017.

Minimum participation requirement: Closed or frozen defined benefit plans may also have difficulty satisfying the Code Section 401(a)(26) minimum participation requirements as participation in the plan decreases over time due to death or retirement.

Under the SECURE Act, a plan is deemed to satisfy the minimum participation requirement if it: (1) is amended to freeze all benefit accruals, or provide future benefit accruals to only a closed class of participants; (2) satisfied the minimum participation test as of the effective date of the closure or benefit freeze; and (3) was closed before April 5, 2017, or did not have a substantial increase in coverage or in the value of benefits during the five-year period before the closure date. The testing relief described above is already effective. Employers may elect to apply these provisions to plan years beginning on or after January 1, 2014.

Plan amendments and administrative changes

While the impact of the SECURE Act on defined benefit plans is more limited than on other retirement plans, implementing the applicable changes - required and optional - can be complex.

As described above, plans generally must be amended to include the mandatory SECURE Act changes by the end of the first plan year beginning on or after January 1, 2022. (For collectively bargained and governmental plans, the amendment deadline is January 1, 2024). Beth Miller, www.benefitspro.com, May 1, 2020.

6. SUPREME COURT FINDS INSURERS ENTITLED TO MILLIONS IN ACA

PAYMENTS:

On April 27, the U.S. Supreme Court held that the federal government is on the hook for \$12 billion it failed to pay insurers under the Affordable Care Act (ACA) risk-mitigation program known as the Risk Corridors Program. The decision, [*Maine Community Health Options v. United States*](#), likely has significant implications for ongoing litigation over the government's obligations under the ACA, especially for cost-sharing reduction payments that the Trump administration has suspended since October 2017.

Statutory Background

The ACA expanded health care coverage to many Americans by, among other things, establishing online marketplaces where every American could buy coverage regardless of individual medical history. To incentivize insurers to enter those marketplaces, the ACA also created several risk-mitigation programs, including the Risk Corridors Program.

The Risk Corridors Program was designed to address the insurance underwriting risk of new marketplaces without historical data to guide pricing actuaries. To dissuade insurers from raising rates to consumers with defensive risk premiums built into their pricing, the ACA created a "risk corridor" in which the government agreed to share the risk with insurers for the first three years of the new marketplaces (2014-2016). The statutory scheme was structured to collect money from profitable insurers and distribute money to unprofitable insurers. Per the statutory formula, insurers kept profits and losses within a 3 percent underwriting margin. If an insurer's gains exceed the 3 percent threshold, the statute demands that the insurer "shall pay" its excess back into the program. Alternatively, for insurers with losses exceeding this threshold, the statute demands that the government "shall pay" them in order to partially reimburse these losses.

Each of the program's three years ended in a deficit in which the profitable insurers' payments into the program were substantially less than the amounts owed by the government. In fact, the deficit over three years totaled more than \$12 billion. Also each year, Congress enacted appropriations bills with riders stating appropriations could not be used to bridge this gap.

Supreme Court's Decision

The petitioners - four health insurance companies that participated in health care exchanges - sued the federal government for damages in the U.S. Court of Federal Claims in four separate cases, alleging that the Risk Corridors Program required the government to reimburse their losses as calculated by the statutory formula. The trial

courts reached conflicting decisions. Thereafter, in each appeal, the U.S. Court of Appeals for the Federal Circuit found for the government, holding that although the statute initially created a government obligation to pay amounts as determined by the statutory formula, the subsequent congressional appropriations riders “repealed or suspended” that obligation.

The Supreme Court granted certiorari to consider: (1) whether the Risk Corridors Program obligated the government to pay participating insurers the full amount calculated using the statutory formula, (2) whether any obligation survived Congress’s appropriations riders, and (3) whether petitioners may sue the government under the Tucker Act. By an 8-1 margin, the Court answered yes to each question and reversed the Federal Circuit.

First, “[T]he Risk Corridors statute created a [g]overnment obligation to pay insurers the full amount set out in [the statutory] formula.” Key to the Court’s holding was the plain language of the statute, which without any language tying the obligation to the availability of funds, provided that the government “shall pay” insurers that suffered certain losses during the three-year program. The Court noted that Congress can “create an obligation directly by statute, without also providing details about how it must be satisfied.” Accordingly, the use of the word “shall” “imposed a legal duty on the United States” that was “neither contingent on nor limited by the availability of appropriations or other funds.”

Second, Congress did not impliedly repeal the obligation through its appropriations riders. The Court noted that repeals by implication are disfavored, and that Supreme Court precedent establishes that the “mere failure to appropriate does not repeal or discharge an obligation to pay.” Like its earlier precedent, the Court explained that where, as here, “Congress ‘merely appropriated a less amount’ than that required to satisfy the [g]overnment’s obligation, without ‘expressly or by clear implication modif[y]ing it,’” the government’s payment obligation stands.

Third, the petitioners properly relied on the Tucker Act to sue for damages. The Tucker Act permits certain claims against the United States, but does not create substantive rights; rather, the action must be premised on “‘other sources of law.’” Whether a claim is permitted under the Tucker Act generally turns on a “fair interpretation” test, though there are some exceptions. Here, the Court found, “Petitioners clear each hurdle: The Risk Corridors statute is fairly interpreted as mandating compensation for damages, and neither exception to the Tucker Act applies.” The Court concluded, “These holdings reflect a principle as old as the Nation itself: The [g]overnment should honor its obligations.”

Implications

Justice Alito's lone dissent warns that this decision will "have a massive immediate impact," in that "billions of taxpayer dollars will be turned over to insurance companies that bet unsuccessfully on the successes of the program in question." In addition, "its potential consequences go much further"; the phrase the "Secretary shall pay," which the Court construes as creating a cause of action, "appears in many other federal statutes."

More directly in the context of the ACA, beginning in October 2017, the federal government stopped making mandatory cost-sharing reduction payments (CSRs) to insurers under the ACA, based on the lack of a specific appropriation for this obligation. Numerous insurers then filed suit in the Court of Federal Claims, including in a class action. The trial courts ruled in favor of the insurers, and four cases are now consolidated on appeal before the Federal Circuit. The insurers' argument in the CSR cases mirrors the claim in the Risk Corridors dispute: that the lack of an appropriation does not defeat the payment obligation created by the ACA. And unlike the temporary three-year Risk Corridors Program, the CSR program - which helps pay for reduced co-payments and deductibles for lower-income insureds - is permanent. Barak A. Bassman, Sara B. Richman, Leah Greenberg Katz, Virginia Bell Flynn and Tracy Rhodes, www.pepperlaw.com, April 29, 2020.

7. NEW YORK STATE TEACHERS CHALKS UP 13.5% DROP IN ASSETS:

[New York State Teachers' Retirement System](#), Albany, reported that estimated assets, net of fees, were \$109.5 billion for the quarter ended March 31, a drop of 13.5% from the \$126.6 billion in the quarter ended Dec. 31.

"The decline in our net position is simply a reflection of current market conditions," spokesman John Cardillo said in an email. He didn't provide additional information. The fiscal third-quarter results were announced Wednesday at the pension system governing board's quarterly meeting, held remotely because of concerns about the coronavirus pandemic. The pension system reported a return, net of fees, of 5.6% for the three months ended Dec. 31, the second quarter of the current fiscal year. Return information for the January-March quarter wasn't available.

The board renewed agreements with three investment managers, each for one year:

- [LSV Asset Management](#) to manage a total of \$1.3 billion in assets, as an active ACWI ex-U.S. international equity manager and as a global equity manager benchmarked to the MSCI ACWI index, effective July 25.
- Wellington Management to manage \$1.1 billion in assets for a global aggregate

fixed income mandate effective June 20.

- Adelante Capital to manage \$345.4 million as an active manager of real estate investment trusts and real estate operating companies, effective July 1.

The pension system's funded status was 101% based on market value of assets and 99% based on actuarial value of assets, Mr. Cardillo said. Robert Steyer, *Pension & Investments*, www.pionline.com, April 30, 2020.

8. SOME COMFORTING LESSONS FOR RETIREMENT PLAN INVESTORS:

Data from leading retirement plan recordkeepers shows 401(k) and IRA accounts have seen smaller losses than many broad market indices, thanks in no small part to the efforts of plan sponsors and their advisers. Corporate pensions have also fared better than their public counterparts.

At this stage, reports abound showing the damage done to the equity markets by the coronavirus pandemic. After a record-breaking bull run, investors at one point in the first quarter saw the S&P 500 touching levels 30% below its February 19 peak. The [markets have rebounded some](#) since that time, but they remain depressed and volatile.

Indeed, according to Fidelity's internal analysis of first quarter performance, the coronavirus market downturn caused average 401(k), individual retirement account (IRA) and 403(b) balances to drop. The average 401(k) balance was \$91,400, down 19% from the record high of \$112,300 in Q4 2019, but still higher than the Q1 2010 balance of \$71,500 seen in the wake of the Great Recession.

The average IRA balance was \$98,900, a 14% decrease from last quarter but also higher than the Q1 2010 balance of \$66,200. The average 403(b)/tax exempt account balance was \$75,700, down 19% from last quarter but still above the average balance of \$50,000 in Q1 2010.

Discussing these figures with PLANADVISER, Katie Taylor, Fidelity vice president for thought leadership, says the numbers are painful to see in one sense, but at the same time they actually underscore the fantastic work being done by retirement plan sponsors and advisers. "The numbers show that people in the defined contribution (DC) marketplace have access to some very well-designed plans that allow them to diversify and protect their investments," Taylor suggests. "It is also encouraging that we see very clear evidence that people are sticking with their long-term strategies within retirement plans, in no small part due to the communication and education efforts of plan sponsors and advisers."

One remarkable fact in the Fidelity reporting from Q1 is that investors actually opened IRAs at record pace, with more than 407,000 new accounts opened at Fidelity alone. And, according to Fidelity's data, contributions to IRAs among Millennials increased a whopping 64% over Q1 2019. "It is so encouraging to see that many investors stayed the course and did not make drastic changes to their asset allocations, with some investors increasing contributions to their retirement accounts," Taylor observes. "However, we know that investors continue to be concerned about how the economic environment and global pandemic may impact their health and financial futures, and we are already seeing the impact of the market downturn on our clients."

Another bright spot in the markets has been the relative outperformance of investment funds with environmental, social and governance (ESG) mandates, as observed by Nigel Green, the chief executive and founder of deVere Group. Economic and social upheaval, plus the collapse of oil prices, have pushed responsible and impactful investing further into mainstream finance, he says.

"Even before the start of the COVID-19 pandemic, ESG investments often outperformed the market and had lower volatility over the long run," Green says. "What is perhaps more impressive is that those investments with robust ESG credentials are still typically continuing to outperform throughout the coronavirus-triggered stock market crashes where major indices were extremely volatile, with some plummeting 20%. Clearly, this is going to increasingly attract both retail and institutional investors seeking decent returns in turbulent times."

Green speculates that the collapse of oil prices, which he says are likely not to rebound to pre-crisis levels in the short term, has also helped drive ESG investments to the top of the performance charts and keep them there.

"This is because ESG funds circumnavigate oil stocks, so their performance will not be adversely impacted by the fall in share prices," he says. "There is a wider and growing force behind the rise of environmental, social and governance investing. The current situation has acted as a wake-up call in many respects. It underscores that human health is reliant upon healthy ecosystems, that we need to ensure the sustainability of supply chains and that those companies with robust corporate governance and good business practice fare better in difficult times and are ultimately best-positioned for the future."

On the pension front, there are also some bright spots amid the pain. Of the three institutional segments tracked by the Northern Trust, corporate pension plans subject to

the Employee Retirement Income Security Act (ERISA) performed the best, with a reported median return of negative 8.1%. This compares favorably with public funds, which had a median return of negative 12.6%, and foundations/endowments, which produced a negative 11.6% median return in the quarter.

According to Northern Trust analysts, ERISA plans benefited from a large allocation to fixed income securities. U.S. fixed income exposure was 40.4% for the median ERISA plan at the end of the first quarter, a 4% increase from the end of last year. Meanwhile, the median U.S. equity allocation for ERISA plans declined almost 5%, to 23.6% at the end of the first quarter. While U.S. equity exposure remains significant for the Northern Trust-tracked plans, it is down from 33.9% five years prior. John Manganaro, Plan Adviser, www.planadviser.com, April 28, 2020.

9. PERSISTENCY OF DEBT AMONG OLDER AMERICANS:

A recent study by EBRI titled "[The Impact of Rising Household Debt Among Older Americans](#)" reports that older households have become more leveraged over time. But how does the distribution of debt among the elderly play out by socio-economic factors, and how persistent is this debt as people grow older?

To answer these questions, EBRI created three groups of debtholders based on the household's total debt at age 55:

- **Low Debtholder:** debt at age 55 is less than or equal to the sample's median.
- **Middle Debtholder:** debt at age 55 is more than the median and less than or equal to the sample's third quartile.
- **High Debtholder:** debt at age 55 is more than the sample's third quartile of total debt at age 55.

The analysis shows that the high and middle debtholders look fairly similar in their racial composition, with 80 percent being white. In contrast, low debtholders were more likely to be black (23 percent). Further, while high debtholders were more likely to be married (82 percent), low debtholders were more likely to be single females (23 percent). Also, high debtholders had the highest level of income at age 55 (\$127,000 at the median), while low debtholders had the lowest level of income, at a median level of \$54,000. High debtholders also had the highest level of wealth at age 55 (\$290,000 at the median), while low debtholders had the lowest level of wealth at that same age (\$101,000 at the median). This is not surprising, as those with higher levels of financial means are associated with higher levels of spending. While most of the debt of high and middle debtholders was in the form of mortgage debt, for low debtholders, consumer debt was a much larger

proportion of the debt held.

Our findings also show that low debtholders had more persistent debt than high and middle debtholders. As Figure 3A shows, the average debt of high debtholders, who are also the wealthiest, started at \$280,000 at age 55, steadily declining to \$111,000 by age 75 - a 60 percent decline. In contrast, low debtholders who start out with an average debt level of \$21,000 actually experience increases in the average debt as they age, peaking at age 65, where average debt grows to \$37,000, a 76 percent increase. By age 75, average debt for this group remained higher than it was at age 55.

The relatively persistent nature of low debtholders' debt burden shows average debt over time as a function of average debt level at age 55. While high debtholders age 75 saw average debt decline to 40 percent of their age 55 average debt levels, at age 75, low debtholders' average debt increased by 8 percent relative to initial average debt. This analysis indicates that low debtholders, who also have low wealth, assume additional debt as they reach retirement age (65). And while they do pay down debt over time, on average, debt levels remain higher at age 75 than they were at age 55. In contrast, middle and high debtholders with higher wealth levels succeed in dramatically reducing their debt levels as they age. As carrying debt and the ability to service that debt at older ages has a direct impact on households' financial wellness, incorporating these findings into policies and retirement plan design could result in more targeted policies and products and improved financial security of older Americans. EBRI, Fast Facts No. 353, www.ebri.org, April 30, 2020.

10. U.S. DEPARTMENT OF LABOR ISSUES COVID-19 RELIEF AND GUIDANCE FOR EMPLOYEE BENEFIT PLANS:

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) today issued deadline relief and other guidance under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to help employee benefit plans, plan participants and beneficiaries, employers and other plan sponsors, plan fiduciaries, and other service providers impacted by the coronavirus outbreak.

"EBSA will continue to safeguard the employee benefits of American workers while ensuring that employers and plans have the flexibility they need to continue delivering benefits during this challenging time," said Assistant Secretary of Labor for EBSA, Preston Rutledge.

A Department of Labor notice, jointly issued with the Department of the Treasury and Internal Revenue Service, extends certain time frames affecting participants' rights to

healthcare coverage, portability, and continuation of group health plan coverage under COBRA, and extends the time for plan participants to file or perfect benefit claims or appeals of denied claims. These extensions provide participants and beneficiaries of employee benefit plans additional time to make important health coverage and other decisions affecting their benefits during the coronavirus outbreak. The joint notice is posted on EBSA's website and will be published in an upcoming edition of the Federal Register.

[EBSA Disaster Relief Notice 2020-01](#) extends the time for plan officials to furnish benefit statements, annual funding notices, and other notices and disclosures required by ERISA so long as they make a good faith effort to furnish the documents as soon as administratively practicable. The notice explains that good faith includes the use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication, including email, text messages, and continuous access websites. The notice also includes compliance assistance guidance on plan loans, participant contributions and loan payments, blackout notices, Form 5500 and Form M-1 filing relief, and other general compliance guidance on ERISA fiduciary responsibilities. The Disaster Relief Notice is posted on EBSA's website.

The department also issued a set of [Frequently Asked Questions](#) (FAQs) on health benefit and retirement benefit issues to help employee benefit plan participants and beneficiaries, plan sponsors, and employers impacted by the coronavirus outbreak understand their rights and responsibilities under ERISA.

EBSA's mission is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. EBSA accomplishes this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.

The mission of the Department of Labor is to foster, promote and develop the welfare of the wage earners, job seekers and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. U.S. Department of Labor, News Release 20-649-NAT, www.dol.gov, April 28, 2020.

11. QUESTION EVERYTHING YOU KNOW ABOUT BONDS VERSUS STOCKS:

While everyone was consumed with the coronavirus, something remarkable happened in U.S. markets: When March ended, bonds had outpaced stocks over the last two

decades. That's right. The Bloomberg Barclays U.S. Aggregate Bond Index beat the S&P 500 Index by 0.3 percentage points a year over the last 20 years through the first quarter, including dividends. As it turned out, investors would have made more money and lost less sleep if they had just stuck with boring old bonds.

It's not supposed to work that way, as every investor has been told tirelessly. Bonds are for stability and stocks are for growth. The price of stability is lower returns relative to stocks, and the price of growth is higher risk relative to bonds. That trade-off between stocks and bonds is known in technical parlance as the equity risk premium.

The premium was once shockingly reliable over long periods. From 1926 to 1999, the longest period for which numbers are available, long-term government bonds beat the S&P 500 just 2% of the time over rolling 20-year periods, counted monthly. And all those victories were clustered around a short period from 1948 to 1950, the aftershock of stocks' tumult during the Great Depression.

But the equity risk premium has been less bankable since then. Bonds have beaten stocks 26% of the time over rolling 20-year periods ending in 2000 or later. While it's not easy to draw neat causal lines around markets, there are some obvious contributors to bonds' recent success. The historic decline in interest rates from record highs in the 1980s to record lows today has bolstered bonds. Also, stocks stumbled on an unusual succession of extreme shocks, beginning with the bursting of the biggest stock market bubble in U.S. history in 2000, followed by a near collapse of the financial system in 2008 and now a global pandemic that has shut down the economy.

What is clear is that stocks' sagging performance over the last two decades is a challenge to three burgeoning investing theories. The first is that the cyclically adjusted price-to-earnings, or CAPE, ratio, once a vaunted barometer of future stock returns, has lost its predictive power. From 1881 to 1999, the average CAPE ratio for U.S. stocks hovered around 15, according to numbers compiled by Yale professor Robert Shiller. When the CAPE drifted meaningfully higher during that period, subsequent stock returns tended to be lower than usual, and vice versa.

Then the CAPE seemed to break down. After the fierce bull market of the late 1990s, the CAPE stood at a record high of 44 when 2000 began, an unmistakably bearish signal. The S&P 500 was cut roughly in half during the ensuing market crash, but the CAPE bottomed at 21 in early 2003, still well above its historical average. Nevertheless, a new bull market took hold and, except for a brief period around the financial crisis, the CAPE has been higher ever since.

Those who waited for the CAPE to dip back below its historical average missed the bull market that followed the financial crisis, by some measures the second longest on record. And they're still waiting. Not even the coronavirus has been able to subdue the CAPE, which now stands at 23. Many investors have concluded from the last two decades that the CAPE has become more noise than signal. That now appears to be hasty. In addition to losing to bonds, the S&P 500 has returned 4.8% a year over the last 20 years through March, which is roughly half its long-term average. Perhaps the CAPE's warning rang true after all.

A second and related theory is that intervention by central bankers is a boon for stocks. When the dot-com bubble popped in 2000, the Federal Reserve jumped in to dampen the fallout by gradually lowering short-term interest rates to 1% from 6.5%, a level not seen in the U.S. since the 1950s. Subsequent interventions have been more brazen. The Fed cut rates to near zero and purchased roughly \$4 trillion worth of bonds during the financial crisis, the most ambitious stimulus effort in the Fed's history. And in recent weeks, the Fed cut rates to near zero again and [pledged](#) to prop up bond markets, expanding its balance sheet to a record \$6 trillion. Many investors credit the Fed for keeping stock valuations elevated over the last two decades. Whatever one thinks of the wisdom of those moves, however, the results haven't been a windfall for stock investors.

The third theory is that value investing is dead. While value stocks have historically paid a premium relative to growth, U.S. growth stocks have beaten value over the last 12 years and have held up better during the current downturn. For many investors, it's a sign that value stocks can no longer be expected to pay. But if 12 years of underperformance for value relative to growth means that the value premium is dead, what does 20 years of underperformance for stocks relative to bonds say about the equity risk premium?

Not much, apparently. Investors have handed a net \$36 billion to U.S. equity exchange-traded funds since the S&P 500 tumbled from its peak on Feb. 19, according to Bloomberg Intelligence. Still, it's early days. With the CAPE perched at 23, more than double its financial crisis low, the market appears to be signaling that the coronavirus shutdown will be short-lived. But if it proves otherwise, bonds are likely to extend their lead over stocks, and investors may have to second-guess some newly embraced ideas. Nir Kaissir, Bloomberg, www.WealthManagement.com, April 21, 2020.

12. IMPACT OF COVID-19 ON RETIREMENT SAVINGS MIGHT BE FELT FOR NEXT 20 YEARS:

As the [coronavirus](#) pandemic ravages the economy, retirement savings plans are taking a

hit -- and the damage may last long after COVID-19 has been eradicated. The stock market's plunge has reduced the savings accrued in 401(k) and other [retirement plans](#), and that, combined with unemployment, corporate cost-cutting and incentives to dip into those accounts could delay retirement for many individuals.

"This is a big setback," said Richard Barrington, senior financial analyst at MoneyRates.com, which conducted a [survey](#) last month of 1,000 individuals ages 45 to 64 on the status of their retirement plans. "We're in fairly early days yet, and this looks like it will have a decades-long impact." The Russell 3000 index, a benchmark for the entire U.S. stock market, found that \$3.8 trillion in retirement savings were gone by April 3, a drop of 25%, although that rebounded some this month.

The MoneyRates.com survey, which took place less than a month into widespread lockdowns across the country, originally had planned to ask how much people had saved for retirement. But MoneyRates.com ended up analyzing the impact of COVID-19 on a subset of 500 people, Barrington said. The results, he said, "ended up being a big eye opener to us." The survey found that 36.4% of individuals in the age group 20 years from retirement said their plans to retire now would be delayed.

Employers are temporarily suspending 401(k) contributions, and 43.8% of individuals surveyed reported losses of at least 10%. Half that number said losses were more than 20%, Barrington said. Another 25% don't know how their investments are doing, and 12% were "too scared to look."

"That sounds humorous, but also it's kind of serious," Barrington said. "That's 37% of people within 20 years of retirement age who don't know what their investments are doing in this crisis. It's like flying blind in stormy weather." Stocks continued a rebound on Monday, as some states announced plans to roll back lockdown orders and reopen businesses, despite the U.S. COVID-19 death toll exceeding 50,000.

On April 23, the Labor Department updated its unemployment figures, estimating 26.5 million people in the United States had filed claims in the past five weeks. The survey found that 37.4% of workers nearing retirement either lost their jobs or some of their income. Of those who reported losing their job or some income in the survey, 29.4% expected to dip into their retirement savings to make ends meet. The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, passed on March 27, temporarily waives a 10% penalty for withdrawing investments of up to \$100,000 for those before age 59.5, Barrington said. But future investments, he said, will be making up for losses, not adding to savings.

“The problem is you’re still taking money out of the market,” he said. “It’s going to take people years to potentially put that money back in.” And it’s not just defined contribution plans impacted. Social Security, funded by payroll taxes, and defined-benefit pension plans, often in government jobs, could face financial problems, wrote Richard Johnson, director of the Program on Retirement Policy at the Urban Institute, in a [blog post](#) called, “Seven Ways the COVID-19 Pandemic Could Undermine Retirement Security.”

Many of those plans already are reeling from the 2008 recession. “Most plans still haven’t recovered more than a decade later, and many states have cut benefits for recently hired public employees,” he wrote. “Pension plans in both the private and public sectors weren’t as well funded in 2019 as they were in 2008, so financial losses could have a bigger impact today.” Amanda Bronstad, www.benefitspro.com, April 29, 2020.

13. MILLIMAN ANALYSIS; CORPORATE PENSION FUNDING RATIO AT 87.5% IN 2019 YEAR-END DESPITE BEST ASSET PERFORMANCE IN 16+ YEARS:

Milliman, Inc., a global consulting and actuarial firm, released the results of its 2020 Corporate Pension Funding Study (PFS), which analyzes the 100 largest U.S. corporate pension plans. In 2019, these plans experienced their second-highest asset performance in PFS history, with aggregate gains of 17.3% – second only to 2003’s investment return of 19.5%.

However, the improvement in the market value of assets was offset by a huge 94 basis-point drop in discount rates, raising pension liabilities and causing the overall pension funding ratio for 2019 to climb only a few percentage points, from 87.1% at 2018 year-end to 87.5% as of December 31, 2019. Now four months into 2020, it remains to be seen how the recent market volatility from the COVID-19 pandemic and implementation of the CARES Act by Congress will affect these plans.

“Corporate pensions have experienced a lot of turbulence so far in 2020, and plan sponsor strategies in response to the recent economic stressors and the CARES Act are just beginning to take shape,” says Zorast Wadia, co-author of Milliman’s Pension Funding Study. “Organizations that are considering deferring contributions this year should keep in mind the resulting impact on funded status, tax deductions, PBGC premiums and pension expense.” Results from this year’s PFS show that employers contributed less than expected to corporate pensions in 2019, with contributions totaling \$34.0 billion for the year, compared to the record-setting amounts contributed in 2018 and 2017 (\$59.5 billion and \$61.8 billion, respectively).

Milliman's 2020 study also includes an analysis of pension funding across business sectors and found that, for instance, plans in the financial services sector had an average funding ratio of 101% for 2019, while corporate pensions in the industrials and energy sectors had an average funding ratio below 83%. To view the complete 2020 Milliman Corporate Pension Funding Study, go to www.milliman.com/pfs. Milliman, Inc., Press Release, April 2020.

14: WORLD HEALTH ORGANIZATION Q&A ON COVID-19 AND MASKS:

- What is WHO's view on masks?
- What is WHO recommending to countries that are considering public mask use in community?
- What are non-medical masks and what is their use?
- Does WHO recommend the use of non-medical masks in the community?
- What individuals should wear medical masks to prevent the spread of COVID-19 according to WHO?
- How did WHO reach its scientific conclusions on mask use?
- Does WHO recommend the use of gloves in the community to prevent transmission of COVID-19?
- What types of masks are used against the spread of COVID-19?

Find the answers [here](#). World Health Organization, www.who.int, April 26, 2020.

15. ECONOMIC IMPACT PAYMENTS CONTINUE TO BE SENT, CHECK IRS.GOV FOR ANSWERS TO COMMON QUESTIONS:

As Economic Impact Payments continue to be successfully delivered, the Internal Revenue Service today reminds taxpayers that IRS.gov includes answers to many common questions, including help to use two recently launched Economic Impact Payment tools.

The IRS is regularly updating the [Economic Impact Payment](#) and the [Get My Payment tool](#) frequently asked questions pages on IRS.gov as more information becomes available. Get My Payment shows the projected date when a deposit has been scheduled. Information is updated once daily, usually overnight, so people only need to enter information once a day. Those who did not use direct deposit on their 2018 or 2019 tax return can use the tool to input information to receive the payment by direct deposit into their bank account, so that they can get their money faster.

The [Non-Filers Enter Payment Info tool](#) is helping millions of taxpayers successfully

submit basic information to receive Economic Impact Payments quickly to their bank accounts. This tool is designed only for people who are not required to submit a tax return. It is available in English through Free File Fillable Forms and in Spanish through ezTaxReturn.

Frequently asked questions continually updated on IRS.gov

Taxpayers should check the FAQs often for the latest additions; many common questions are answered on IRS.gov already, and more are being developed. Here are answers to some of the top questions people are asking.

Get My Payment says that my Economic Impact Payment was sent to an account I don't recognize. Why is that, and how do I get my payment?

When some taxpayers file their tax return, they may choose an option available from their tax preparer or software provider to help them pay their fees, get their refund more immediately or even load the refund onto a direct debit card. This group of different products is referred to as refund settlement products. In these situations, taxpayers may:

- Use a banking product to help them complete the tax filing transaction, sometimes referred to as a Refund Anticipation Loan (RAL) or a Refund Anticipation Check (RAC).
- Choose to have their tax refund loaded onto a debit card provided by a variety of groups in the tax and financial communities.

When you filed your tax return, if you chose a refund settlement product for direct deposit purposes, you may have received a prepaid debit card. In some cases, your Economic Impact Payment may have been directed to the bank account associated with the refund settlement product or prepaid debit card.

If the refund settlement product or the associated account is closed or no longer active, the bank is required to reject the deposit and return it to the IRS. Once the returned payment to the IRS is processed, the "Get My Payment" app will be updated.

Once the returned payment is processed by the IRS, the payment will automatically be mailed to the address on the 2019 or 2018 tax return, or the address on file with the U.S. Postal Service – whichever is more current. The status in Get My Payment will update accordingly. Timing of this process depends on several variables, including when and how the payments are rejected and returned to the IRS, when "Get My Payment" updates, and when taxpayers check the tool.

The IRS also noted that it has resolved a reporting error that some taxpayers may have experienced, which inaccurately indicated rejected payments were being sent back to the same taxpayer account a second time. They are actually being mailed to the taxpayers. The IRS has quickly taken steps to correct this reporting error. "Get My Payment" was updated starting Tuesday, April 21 to reflect that the taxpayer's payment has actually been mailed, and not rerouted to a closed bank account.

Why am I receiving an error message when entering my personal information or tax information?

To ensure the information is entered correctly, please use the help tips provided when entering the information requested to verify your identity. If the information you enter does not match our records, you will receive an error message. Check the information requested to ensure you entered it accurately.

You may want to check your most recent tax return or consider if there is a different way to enter your street address (for example, 123 N Main St vs 123 North Main St). You may also verify how your address is formatted with the US Postal Service (USPS) by entering your address in the [USPS ZIP Lookup tool](#), and then enter your address into Get My Payment exactly as it appears on file with USPS.

If you receive an error when entering your Adjusted Gross Income (AGI), refund amount, or amount you owed, make sure you are entering the numbers exactly as they appear on your Form 1040 or tax transcript. If the numbers from your 2019 tax return are not accepted, try the numbers from your 2018 tax return instead.

If the information you enter does not match our records three times within 24 hours, you will be locked out of Get My Payment for 24 hours for security reasons. You will be able to access the application again after 24 hours. There is no need to contact the IRS.

I think the amount of my Economic Impact Payment is incorrect. What can I do?

If you did not receive the full amount to which you believe you are entitled, you will be able to claim the additional amount when you file your 2020 tax return. This is particularly important for individuals who may be entitled to the additional \$500 per qualifying child dependent payments.

For VA and SSI recipients who don't have a filing requirement and have a child, they need to use the [Non-Filers tool](#) on IRS.gov by May 5 in order to have the \$500 added automatically to their \$1,200 Economic Impact payment. We encourage people to review our "[How do I calculate my EIP Payment](#)" question and answer.

Quick links to the Frequently Asked Questions on IRS.gov:

- Economic Impact Payments: [IRS.gov/eipfaq](https://www.irs.gov/eipfaq)
- Get My Payment tool: [IRS.gov/getmypaymentfaq](https://www.irs.gov/getmypaymentfaq)

No action needed by most taxpayers

Eligible taxpayers who filed tax returns for 2019 or 2018 will receive the payments automatically. Starting this week, automatic payments are going to those receiving Social Security retirement, or disability (SSDI), and Railroad Retirement benefits, and recipients of SSI and Veterans Affairs or survivor benefits should receive their payments by mid-May.

Watch out for scams related to Economic Impact Payments

The IRS urges taxpayers to be on the lookout for scams related to the Economic Impact Payments. To use the new app or get information, taxpayers should visit IRS.gov. People should watch out for scams using email, phone calls or texts related to the payments. Be careful and cautious: The IRS will not send unsolicited electronic communications asking people to open attachments, visit a website or share personal or financial information. Remember, go directly and solely to IRS.gov for official information. IRS News Release, IR-2020-85, www.irs.gov, April 30, 2020.

16. DID YOU KNOW ALBERT EINSTEIN SAID THIS?:

"It's not that I'm so smart, it's just that I stay with problems longer."

17. INSPIRATIONAL QUOTE:

"How wonderful it is that nobody need wait a single moment before starting to improve the world." - *Anne Frank*

18. TODAY IN HISTORY:

On this day in 1789, was the first US Presidential inaugural ball for George Washington in NYC.

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