



# CYPEN & CYPEN NEWSLETTER for August 6, 2020

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Stephen H. Cypen, Esq., Founding Editor  
Robert D. Klausner, Esq., Senior Editor

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

## **1. SUPREME COURT CLOSES DOOR TO PARTICIPANT CHALLENGES TO DEFINED BENEFIT PLAN INVESTMENTS:**

The extent to which a participant in a tax-qualified defined benefit plan has standing to sue the plan's fiduciaries for mismanagement of plan assets has long been unclear. The argument against standing is that the participant has not suffered any injury because the participant would receive the same benefit from the plan regardless of the outcome of the lawsuit.

The Supreme Court recently adopted this argument in ***Thole v. U.S. Bank N.A., 590 U. S. \_\_\_\_ (2020)***. In that case, two retired participants in a defined benefit plan sponsored by U.S. Bank sued the plan's fiduciaries for mismanagement of plan assets allegedly resulting in \$750 million of losses. Both participants were in pay status and receiving a fixed monthly payment.

In holding that the participants lacked standing to sue, the 5-4 majority opinion written by Justice Kavanaugh states:

Thole and Smith have received all of their monthly benefit payments so far, and the outcome of this suit would not affect their future benefit payments. If Thole and Smith were to *lose* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny less. If Thole and Smith were to *win* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny more. The plaintiffs therefore have no concrete stake in this lawsuit.

The court left open the possibility that a participant might have standing to sue if the plan were mismanaged so badly that it “substantially increased the risk that the plan and employer would fail and be unable to pay the participants’ future pension benefits.” In a footnote, the court suggests (without deciding) that even in such a case, a participant whose benefit is fully guaranteed by the PBGC might not have standing to sue.

This decision will likely substantially curtail litigation against defined benefit plans. However, investment fiduciaries should continue to have a good fiduciary process for selecting plan investments. While participants may find it difficult to sue, the Department of Labor still has the authority to enforce ERISA’s fiduciary obligations. Brady McDaniel and Christen Sewell, [www.insidecompensation.com](http://www.insidecompensation.com), July 28, 2020.

## **2. CALIFORNIA SUPREME COURT LEAVES THE CALIFORNIA RULE LARGELY INTACT IN HIGHLY ANTICIPATED OPINION CONCERNING PUBLIC EMPLOYEE PENSION RIGHTS:**

On July 30, 2020, the California Supreme Court issued its decision in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn. (Alameda)*. It was anticipated that the Court would address the continuing viability of the “California Rule.” Under the California Rule, a public employee is vested in a pension benefit at the start of employment. Under the traditional expression of the California Rule, benefits cannot be reduced even for prospective service, except in very limited circumstances. The modification of a pension benefit “must bear some material relation to the theory of a pension system and its successful operation,” and any modification that results in disadvantages to employees must be accompanied by comparable new advantages. While the Court asserted at the end of the decision that it was not reexamining the California Rule, the decision leaves the current legal framework largely intact, including the California Rule.

*Alameda* considered whether legislative changes made to the County Employees Retirement Law of 1937 (“CERL”) by the Public Employees’ Pension Reform Act of 2013 (“PEPRA”)

unconstitutionally impaired vested pension benefits of public employees employed at the time PEPRA was passed. PEPRA excluded some forms of compensation from the calculation of retirement benefits that had long been included. The exclusions were based on concerns related to pension spiking. Even though these changes had the effect of reducing retirement benefits of the employees impacted, the statute made no provisions for the employees to receive any alternative benefits to make them whole for these reductions. The Court held that the PEPRA changes were constitutionally permissible. However, the Court's determination that no comparable benefit needed to be provided largely hinged on its determination that eliminating pension spiking is a constitutionally proper purpose that would be defeated by providing a comparable advantage. Consequently, the decision was narrow in scope and does not resolve what other motivations for pension reform will be allowed.

The Court's ruling largely leaves the traditional California Rule and analysis intact with one deviation. Closely tracking existing case law concerning the California Rule, the Court determined that where pension benefits are protected by the contract clause of the California Constitution, any modification of a constitutionally protected pension benefit must be reasonable in that it "must bear some material relation to the theory of a pension system and its successful operation." Whereas traditionally, such a modification must be accompanied by other benefits, the Court found that where, as here, providing alternative benefits would be inconsistent with the purpose of the constitutionally proper modification, alternative benefits would not be required.

#### The Court's Analysis

Two different disputes were discussed in the decision. First, the Court considered whether the PEPRA amendments violated settlement agreements entered into following previous litigation involving several county retirement boards regarding compensation included in pension benefits. Second, the Court considered whether the PEPRA amendments impaired constitutionally protected rights, which was the issue implicating the California Rule.

#### Violations of the Settlement Agreements

For this question, the Court observed that the retirement boards' administrative powers are limited by the enabling legislation. The Legislature has final authority for establishing the provisions governing pensions and the judiciary has final authority to interpret the legislation. The Court concluded that the retirement boards had no authority to act inconsistently with the CERL and cannot disregard such amendments. Employees had no express contractual rights to have benefits calculated in a manner inconsistent with the CERL because the retirement board had no authority to confer benefits beyond those authorized by statute. Therefore, the Court rejected the contention that the settlement agreements precluded the legislative changes. The Court also rejected the plaintiffs' estoppel argument

(i.e., it rejected the contention that equitable or fairness grounds required inclusion of the compensation).

#### Impairment of Constitutionally Vested Rights

As the PEPRA amendments eliminated compensation that had previously been included in pension benefits for existing employees, the Court easily determined that the issue of constitutionally vested rights had been implicated.

As constitutionally protected rights were implicated and there were disadvantages caused by the modification, the Court turned to the purpose of the modification. The Court discussed the broad preexisting language of the CERL provisions defining what compensation may be included in pension benefits. The Court noted that the Legislature sought to limit pension spiking by eliminating practices that were “arguably” permitted under the previous broad statutory language. The Court determined that the changes in PEPRA were enacted for a constitutionally permissible purpose (i.e., closing loopholes such as spiking that distort pension calculations).

After determining that the modification was the result of a constitutionally proper purpose, the Court turned to whether the modification required the disadvantages to be offset by comparable advantages. The Court concluded that the constitutionally proper objective would be defeated if the California Rule was interpreted to require the pension plans to maintain the loopholes for increasing pension benefits for existing employees, or to provide comparable benefits that would perpetuate the advantages provided by the loopholes that were closed by PEPRA. Thus, the Court concluded that disadvantages did not have to be offset by comparable advantages.

Therefore, the Court held that the modifications to the CERL by the PEPRA amendments were constitutionally permitted and reversed the decision of the Court of Appeal.

#### Effect of the Decision

The Court’s decision will likely have little immediate impact on public agencies. A positive outcome for public employers is that the Court approved a modification impairing pension benefits without requiring offsetting advantages. However, the decision is limited in its application. The Court does not state explicitly that impairments motivated by cost savings alone would be impermissible, or if permissible, would require alternative benefits. However, the narrow scope of the ruling will require additional litigation should further pension reform impair benefits for purposes of cost savings. Michael Youril and Steven M. Berliner, [www.lcwlegal.com](http://www.lcwlegal.com), July 30, 2020.

### **3. WEST COVINA ISSUES NEW BONDS TO PAY UNFUNDED PENSIONS:**

West Covina issued new bonds to pay for its unfunded pension obligations, the city announced. The city approved to the lease revenue bonds at a July 8 City Council meeting, where council members voted 4-1 to take on over \$200 million in debt to pay for city employees' retirements.

"West Covina residents can rest easier today knowing that meaningful pension refinance is finally in place," Mayor Tony Wu said in a statement.

A city news release said West Covina will be issuing \$204.1 million in lease revenue bonds at a 3.7% interest rate, which is significantly lower than the 7% interest rate the city currently pays CalPERS, which handles the retirements of many public employees in the state.

The bonds were given an A+ rating by Standard & Poors, a national credit rating agency, indicating these bonds are a good investment, the news release says.

According to Assistant City Manager Mark Persico, these bonds are much more affordable for the city than paying a lump sum to CalPERS every year. "It's the taxpayers' money and the taxpayers are saving \$52.7 million over 30 years," he said by phone on Tuesday. "I think that's significant."

As a lease revenue bond, the city essentially would pledge its streets to a finance authority and then make lease payments on its own streets. The lease payments pay off the bonds with total repayment due within 25 years, according to the staff report.

Persico said leasing parts of the city's streets is just collateral for bond investors, which means the city pledges its streets to the lender as security to repay the loan. At the July 8 meeting, Brian Whitworth, director of Hilltop Securities, the bond's underwriter who presented the bond to City Council members, said there is no language in the bond agreement that would allow lenders to turn streets into toll roads.

"California municipalities must plan without delay for post-pandemic fiscal realities," City Manager Dave Carmany said in a statement. "This plan received widespread support from the City Council, and now with the investor community." Pierce Singgih, *San Gabriel Valley Tribune*, [www.sgvtribune.com](http://www.sgvtribune.com), July 28, 2020.

### **4. THE US SHOULD LOOK TO CANADA TO REFORM ITS PUBLIC PENSION SYSTEM:**

Observers of the diverse and often challenged American public pension system look north to Canada with a certain degree of admiration. Canadian public pension plans tend to be fully

funded - some even have healthy surpluses. Most U.S. plans are in deficit, and several are unlikely to be sustainable. So what makes the Canadian system better? The inevitable response has to do with better governance. But it goes a lot deeper. It is the legal structure of Canadian public pension plans that enables strong governance.

Based on a new, comprehensive study of the largest Canadian and U.S. public pension system - their design and performance - we found one feature of the Canadian model to be fundamental. If adopted in the U.S., it could reorient the relationship between employers and pension beneficiaries in the public sector, and even renew interest in defined benefit pensions for a significant group of private-sector employees.

Canadian public pension plans underwent a series of reforms starting in the late 1980s. Until then, many of them were not in good shape. In some cases, there was an unhealthy relationship between government pension sponsors and plan members. Sponsors were willing to grant benefit enhancements but did not match them with increases in pension contributions. So, both employers and employees became concerned about system solvency. Employers worried that they had made promises that would be difficult to honor. Employees worried that what seemed to be too good to be true actually was. Unions fretted that pension promises might be reneged when future governments realized they were simply not affordable.

Federal and provincial political leaders, for whom pension reform might have been fairly low on the priority list, were forced to reckon with design flaws in the pension system. Kicking the can down the road increasingly looked like a mug's game.

First in Ontario and then in other provinces, negotiations between government and unions reached a compromise, whereby public pension plans would be restructured under so-called "joint sponsorship." Rather than being unilateral promises from government employers to their employees, pensions would instead come under the joint control of both governments and unions.

Fundamentally, this was a shift from a paternalistic model to one in which employee representatives got a seat at the table alongside employers. Benefit and contribution levels would no longer be determined in a separate and distinct way. Unions cut back on unreasonable demands knowing they would be jointly on the hook for ensuring plan solvency if benefits were not matched by corresponding future increases in contributions.

In Canada, the joint sponsorship model was key to ensuring greater public pension sustainability. How is it relevant to the U.S.?

In both countries, there are few legal precedents for what happens when a public pension plan is unable to pay contractual pension benefits. By establishing a pension trust under joint sponsorship – independent of government – the responsibility for future funding is insulated from public finance. Market forces in public employment will help ensure that governments do not promise benefits they will be unable to pay, and that unions do not demand benefits future workers will be unlikely to receive.

There are many other features of the Canadian model of sustainable public pensions that bear consideration, but joint sponsorship is at the heart of the model. The governance advantage that pervades the Canadian system emanates from this feature, as each pension constituency selects trustees to represent its interests.

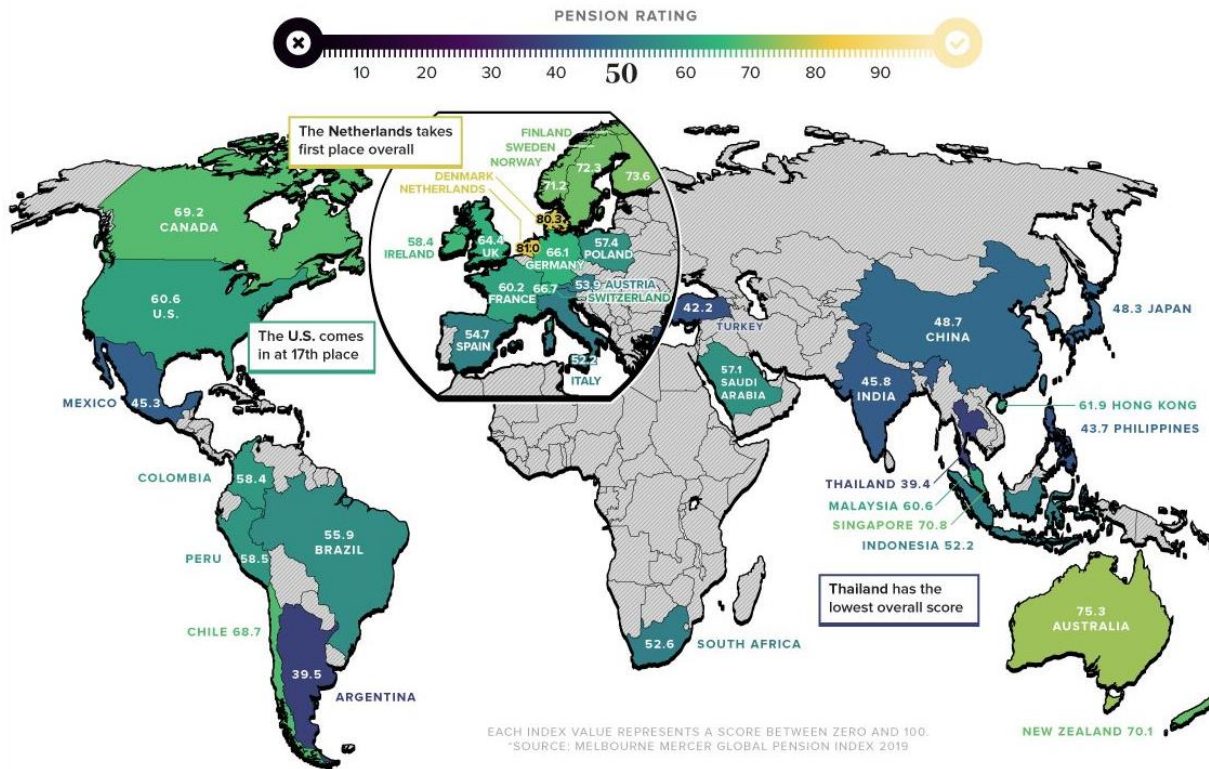
Potentially, the basic features of joint sponsorship could also be used to benefit certain private sector pensions. In the United States, ERISA was enacted in 1974 primarily to protect private sector workers from egregious corporate activities such as raiding of pension funds. But it had the unintended consequence of encouraging companies to discontinue defined-benefit pension plans because the obligation to cover pension liability gaps became extremely costly. If pensions were established as trusts - independent of the sponsor - benefit and contribution levels may well move in tandem, with employee unions assuming joint responsibility for adequate pension funding.

Retirement planning is complex for everyone. Defined-benefit plans have received bad press for decades, but if structured carefully they provide numerous benefits relative to self-directed savings. These include risk pooling, professional investment management, lower expenses and a more sensible approach to withdrawing pension assets during retirement (decumulation). The joint sponsorship model is worth considering in the public sector and perhaps even in the private sector as well. Ingo Walters and Clive Lipshitz, The Hill, [www.thehill.com](http://www.thehill.com), July 28, 2020.

##### **5. MARKETS RANKED; THE BEST AND WORST PENSION PLANS, BY COUNTRY:**

The global population is aging -- by 2050, one in six people will be over the age of 65.

As our aging population nears retirement and gets closer to cashing in their pensions, countries need to ensure their pension systems can withstand the extra strain.



This graphic uses data from the Melbourne Mercer Global Pension Index (MMGPI) to showcase which countries are best equipped to support their older citizens, and which ones aren't.

### The Breakdown:

Each country's pension system has been shaped by its own economic and historical context. This makes it difficult to draw precise comparisons between countries--yet there are certain universal elements that typically lead to adequate and stable support for older citizens.

MMGPI organized these universal elements into three sub-indexes:

- **Adequacy:** The base-level of income, as well as the design of a region's private pension system.
- **Sustainability:** The state pension age, the level of advanced funding from government, and the level of government debt.

- **Integrity:** Regulations and governance put in place to protect plan members.

These three measures were used to rank the pension system of **37** different countries, representing over **63%** of the world's population.

#### **The Importance of Sustainability:**

While all three sub-indexes are important to consider when ranking a country's pension system, sustainability is particularly significant in the modern context. This is because our global population is increasingly skewing older, meaning an influx of people will soon be cashing in their retirement funds. As a consequence, countries need to ensure their pension systems are sustainable over the long-term.

There are several factors that affect a pension system's sustainability, including a region's private pension system, the state pension age, and the balance between workers and retirees.

Click [here](#) to read the full report and to see how each country ranked. Carmen Ang, [www.visualcapitalist.com](http://www.visualcapitalist.com), August 1, 2020.

#### **6. PENSION BENEFIT GUARANTY CORPORATION ISSUES ADDITIONAL GUIDANCE ON DEFINED BENEFIT PLAN FUNDING RELIEF ENACTED BY THE CARES ACT:**

The U.S. Coronavirus Aid, Relief and Economic Security Act (the CARES Act) provided relief for sponsors of single-employer defined benefit pension plans in recognition of the economic impact of the COVID-19 pandemic. Specifically, the CARES Act permits plan sponsors to suspend minimum required contributions to their plans during 2020.

The Pension Benefit Guaranty Corporation (the PBGC), the federal agency responsible for insuring most private sector pension plans, recently published a series of questions and answers that provide further guidance on how it will implement the relief enacted by the CARES Act and, more broadly, how it will operate during the current economic downturn.

*Making required contributions after their original due date but no later than January 1, 2021, will not give rise to a reportable event.*

Sponsors of single-employer pension plans are required to make minimum contributions to their plans during each plan year. The entire amount of the contribution is generally due by September 15, but sponsors of underfunded plans must make quarterly installment payments throughout the year. The CARES Act suspended the due date of all required pension contributions (including quarterly installment payments) until January 1, 2021, whereupon all suspended contributions will be due with interest.

Typically, if a pension plan sponsor misses a required minimum contribution, it must report such missed contribution to the PBGC unless a waiver applies. This reporting obligation allows the PBGC to monitor the financial health of private-sector pension plans in connection with its role as the insurer of such plans.

The PBGC confirmed that if a plan sponsor makes its required contribution by January 1, 2021, no reportable event will occur. If, however, the plan sponsor fails to make the entire contribution, including interest, by such date, the event must be reported in accordance with the PBGC's normal procedures.

### ***Calculating variable rate premiums***

The PBGC collects premium payments from pension plan sponsors in order to fund benefit payments for participants in underfunded terminated plans. For ongoing underfunded plans, premiums include a variable rate premium that, for calendar-year plans, generally must be paid by October 15 of each year. The variable rate premium is determined based on a plan's unfunded vested benefits. The determination of such benefits may include any required contributions made to the plan before the date that the premium is paid.

As a result of the contribution suspension period authorized by the CARES Act, many plan sponsors will make no required contributions prior to October 15, 2020. Thus, such plan sponsors will not be able to take into account the value of their required contributions when calculating the plan's variable rate premium. The PBGC confirmed that it will not permit premiums to be recalculated once contributions are made and will not offer a refund to plan sponsors whose required contributions would have resulted in a lower premium had they been made prior to the due date.

Plan sponsors that owe a variable rate premium in 2020 should consult with the plan's actuaries to determine whether making their required contributions prior to the premium due date would decrease the amount owed.

### ***Distress terminations and the PBGC Early Warning Program***

In addition to the guidance above, the PBGC provided some updates on how it will operate in light of the current economic environment. In particular, the PBGC made the following statements:

- It will continue to process distress termination applications during the COVID-19 pandemic but encourages plan sponsors to schedule a pre-filing consultation prior to submitting an application given the current economic uncertainty. Where appropriate,

the PBGC will continue to consider involuntary plan terminations on a case-by-case basis.

- It will continue to review the funding status of pension plans and request information from plan sponsors under its Early Warning Program.
- It will work with plan sponsors that owe a termination liability in 2020 to resolve such liability, considering their ability to pay based on the facts and circumstances of each case.

SIDLEY, [www.sidley.com](http://www.sidley.com), July 24, 2020.

## **7. GIG AND OLDER WORKERS NEED TO TAKE CONTROL OF THEIR RETIREMENT:**

Several retirement trends have been brought into focus by the COVID-19 pandemic. One of the most disturbing is the number of workers between 50 and 65 who are in jobs without retirement benefits. Today half of all workers don't have access to a work sponsored retirement plan.

According to [a recent study](#) by Alicia H. Munnell and her colleagues at the Center for Retirement Research at Boston College, one-fifth of American workers in the 50 to 65 cohort are in non-traditional work arrangements. Matthew S. Rutledge, also at the Center for Retirement Research, [estimates](#) that a third of that group doesn't have health insurance or a retirement account.

Professor Munnell's analysis revealed that fully half of older Americans in no-benefit jobs stay in those jobs for years. Only 26 percent have used no-benefit jobs as a stop-gap between full-time jobs with benefits. One intriguing statistic: 24 percent of workers in non-traditional, no-benefit jobs have college degrees or higher.

It seems likely that new work arrangements, like remote work for full-time employees, will also increase the number of non-traditional, "1099 jobs" aka Gig workers. As the pandemic realigns the labor market in the U.S., the necessity for individuals to be aware of and plan for retirement will only increase.

The potential negative economic impacts of this trend are significant: Professor Munnell estimates that workers in nontraditional jobs for the duration of their fifties and early sixties will save 26 percent less than their peers who were in full-time jobs with a 401(k) plan.

The reason why these workers, who may make a significant amount of money as freelancers or consultants, either don't have retirement plans or under fund them is clear: independent contractors have enough on their plates without having to do the hard work of planning for

retirement.

The IRS has several plans for the self-employed to save for retirement, but picking one is just the first step. After you have a plan, calculating your contributions to it to minimize your tax liability is complicated, especially if you are trying to use several different software tools to manage planning and contributions.

### **Possible Solutions**

Decades of research into behavioral economics and finance has shown that the more complex operations become, the less likely people are to sit down and think through the implications. More often, we use mental shortcuts (called heuristics in the academic jargon) to make our decisions -- sometimes with disastrous, unintended results.

Very human traits like loss-aversion, hyperbolic discounting and the endowment effect mean savers are often too conservative with investment risk but also more likely to spend the money they have; reasoning they might not have it in the future anyway (perhaps due to inflation).

### **The Policy Solution**

Economists and policymakers have designed retirement plans to compensate for our inability to save for retirement. The first and most important of them all is still Social Security. But Social Security was designed during the height of the labor movement when workers had more leverage over their employers, and companies offered generous pensions to life-long workers.

Beginning with the Employee Retirement Income Security Act (ERISA) of 1974, the next wave of retirement policy shifted the burden of saving to individuals and away from government or business. The move has been good for asset managers and financial planners, but not, perhaps as good for individuals, especially those in non-traditional work arrangements.

The Obama administration recognized the need for a simple, government-sponsored retirement plan that would be both portable and affordable and so it created the myRA program in 2015. Unfortunately, not many people adopted the plans, and the Trump administration shut the program down in 2017.

Some states, like Oregon and Illinois, have state-level plans that are like the myRA, but as Professor Munnell told NPR, "without a mandate, without somebody saying, 'Mr. Small Businessman, you have to do something for your employees,' I don't think we're going to see much change."

Even though a “government option” like the myRA could significantly help the growing number of non-traditional workers who don’t have strong ties to their employers, without a profound political realignment, it seems unlikely that legislation will pass any time soon.

### **Better Tools, More Awareness**

Technology developed over the last decade based on the principles of behavioral economics has attempted to fill the gap left by politicians. You can link your bank and investment accounts to free retirement planning software that will model your retirement preparedness. And designers are building in features to help savers make better decisions intuitively.

Better technology has also lowered the cost of investing, so long as investors are smart about keeping advisors’, transaction and fund fees low. The trend toward low- to no-fee retirement products has accelerated over the last few years, and the widespread adoption of low-fee investment vehicles like ETFs has reduced the cost of investing.

The next technological innovation will capture the demand for retirement advice needed by workers in non-traditional, “1099 jobs” by making it easier and less costly to prepare for the future.

For now workers who find themselves without a work sponsored plan can create their own solution:

- Build a retirement plan
- Save & invest regularly (ideally > 15% and over a long period of time to take advantage of dollar cost averaging)
- Leverage pre-tax savings vehicles such as an IRA or Solo 401K
- Keep investment fees low
- Re-balance regularly
- Engage a fee only / hourly financial advisor who is a fiduciary if you need extra help

Stephen Chen, *Forbes*, [www.forbes.com](http://www.forbes.com), July 27, 2020.

### **8. ABLE ACCOUNTS - BUILDING UPON THE PROMISE OF THE AMERICANS WITH DISABILITIES ACT:**

Approximately one in five Americans has a disability. These Americans have the same hopes and dreams to participate in society as everyone else. On July 26, 1990, President George H.W. Bush signed into law the Americans with Disabilities Act. President Bush then said, “As the Declaration of Independence has been a beacon for people all over the world seeking freedom, it is my hope that the Americans with Disabilities Act will likewise come to be a

model for the choices and opportunities of future generations around the world.”

The American with Disabilities Act requires accessibility for people with disabilities and prohibits discrimination. It extends the promise of equal opportunity and full participation for those people living with a disability.

Full participation includes the opportunity to become economically self-sufficient. Yet, millions of people with disabilities and their families depend on programs such as Supplemental Security Income (SSI), Medicaid, and Supplemental Nutrition Assistance Program (SNAP) for food, housing, and other benefits. These programs are restricted to those people who have limited income, resources and savings. Historically, to continue receiving benefits under these and other programs, you cannot save money.

Achieving a Better Life Experience (ABLE) accounts help eligible beneficiaries save and have power over their own money. The funds in an ABLE account are not counted by most federally-funded means-tested benefit programs like Medicaid and SNAP. SSI does not count up to \$100,000 in an ABLE account.

Disability-related expenses can lead to financial stress. Savings and contributions made to an ABLE account by the account owner, their family, friends, employer or other sources, can be used for emergencies or to support education and the owner’s future retirement. The funds can also be used for qualified disability expenses including food, housing and maintenance, medical expenses, and expenses related to the coronavirus (COVID-19) pandemic. ABLE accounts add an additional layer of financial security, especially while navigating an uncertain future.

Over 63,000 individuals--out of an estimated eight million who are eligible--have opened ABLE accounts to date, making ABLE accounts one of the most under-used ways to save money and retain much needed benefits. For many people with disabilities, ABLE accounts have transformed their lives. Read our ABLE Ambassadors stories to learn what motivated them to take advantage of this opportunity and what advice they have for those who have not yet taken this important step.

To learn more about ABLE accounts and state ABLE programs, visit the ABLE National Resource Center (ABLE NRC), managed by National Disability Institute. The website has information on how to become ABLE ready and offers a state ABLE program comparison tool and guidance on setting financial goals. Building on the promise of the American with Disabilities Act, the ABLE Act can forever change lives by providing the opportunity to save money in an easy to open, low-cost, accessible, and tax-advantaged account. Miranda

Kennedy, ABLE Institute Director, <https://blog.ssa.gov/>, July 27, 2020.

## **9. RETIREMENT PLANNING - 4 CRUCIAL EXPENSES TO CONSIDER:**

Retirement planning can't be all about saving enough to see the world and spoil your grandkids, although you'll certainly want to make sure you have the cash to do those things.

The reality is that seniors continue to face a lot of expenses after leaving the working world. Unfortunately, many people forget to factor in some of the most costly and important ones when setting savings goals.

Whether you are decades away from giving notice or weeks away from leaving the workforce for good, you'll want to make sure you have a plan to cover these four big expenses.

**Health care:** For a senior couple retiring this year, healthcare could cost around \$325,000 in retirement, when factoring in Medicare premiums and out-of-pocket costs on prescription drugs. Medical care alone can be enough to drain almost your whole nest egg if you aren't prepared for it.

So it's a good idea to have a dedicated retirement account, such as a separate IRA or a health savings account if you're eligible for one, with money earmarked for medical needs in your later years. You should also research all your options for care in retirement, including Medigap and Medicare Advantage Plans to get coverage well suited to your needs.

**Taxes:** Taxes don't disappear once you're no longer getting a paycheck. In fact, as many as half of all seniors pay taxes on their Social Security benefits while most are also taxed on retirement account distributions.

Unfortunately, taxes can take a big bite out of your nest egg and many people forget to consider their impact. With close to one-third of retirees wishing they had planned better for their tax obligations, factoring them in when setting your retirement goals can save you from a lot of financial pain later in life. You can do this by investing in a Roth IRA to keep your tax bill lower, or by saving more in a traditional IRA or 401(k) to account for the extra you'll need to pay the government.

**Long-term care:** Long-term care could run you more than \$100,000 per year if you need to go into a nursing home and want a private room. Unfortunately, there's as much as a 70% chance you'll need some type of custodial care as a senior. And Medicare won't pay for any of it if you just need basic help instead of skilled medical services.

To prepare for this colossal expense, you'll either need to factor it in when setting retirement

savings goals and aim much higher, or you'll need a long-term care insurance policy.

***Providing family support:*** Studies have shown parents collectively provide more than \$500 billion in financial assistance to young adult children. This can quickly eat away at your retirement savings, but it's hard to say no if your loved ones need you. To make sure you don't drain your retirement accounts by providing for your kids, you'll either need to set firm limits on the support you offer or raise your savings goals to account for whatever financial help you want to give your children as a retiree.

### **Make sure you've got enough saved to cover these crucial expenses**

While it's easy to forget to save for healthcare, taxes, long-term care, or helping out the kids, not factoring in these costs can undermine all your careful retirement plans. As you set savings goals and determine how much to invest in your retirement accounts, consider the amount you'll need to cover these potentially substantial expenses. If you do, you'll ensure you have a nest egg that's large enough not to run out when you need it most. Christy Bieber, The Motley Fool, USA *TODAY*, [www.usatoday.com](http://www.usatoday.com), July 29, 2020.

### **10. BUSINESS GROUPS URGE CONGRESS TO PASS BOARD DIVERSITY BILL:**

A coalition of business associations urged passage of legislation aimed at increasing corporate board diversity.

In a letter sent to Senate Banking Committee Chairman Mike Crapo, R-Idaho, and ranking member Sherrod Brown, D-Ohio, 17 organizations including the Chamber of Commerce, the Real Estate Roundtable and the National Association of Investment Companies urged passage of H.R. 5084, the "Improving Corporate Governance through Diversity Act of 2019."

The bill, passed by the House with bipartisan support in November, would require companies to disclose the racial, ethnic and gender composition of their boards of directors and executive officers, and to identify any veterans in those positions. It also requires companies to disclose any plans to promote racial, ethnic and gender diversity among these groups.

The Securities and Exchange Commission would have to establish a diversity advisory group to report on strategies for increasing diversity.

The business groups said in the letter that they support efforts to increase diversity on corporate boards "as diversity has become increasingly important to institutional investors, pension funds and other stakeholders."

Passing the bill, the letter said, "would establish a model to organically boost diversity on

boards through disclosure." Hazel Bradford, *Pension & Investments*, [www.pionline.com](http://www.pionline.com), July 27, 2020.

#### **11. THE RETIREMENT SAVINGS COACH YOU ALREADY KNOW:**

When the pandemic was declared in March and the U.S. stock market plunged, Dr. Bryan T. Whitlow was surprisingly sanguine about his retirement investments. Unlike many Americans, he didn't radically cut his spending, didn't check his balances constantly and didn't yank money from the market.

"I have not even looked at my I.R.A. since this happened," said Dr. Whitlow, a fellow in pain medicine at the University of Kentucky. But that kind of detachment didn't happen by accident. Dr. Whitlow, 29, had talked with his father -- and with a colleague who has become something of a financial mentor to him. They reassured him that he had little cause for concern about his retirement investments losing value in the short term. (An emergency savings fund helped, too.)

At a time when companies are devoting significant attention to helping their employees plan for retirement, some workers are turning to their peers and colleagues for more personal guidance. Seeing the choices made by a friend or co-worker can help demystify investment options and offer an example to follow amid turbulent markets and a contracting economy.

Dr. Whitlow was benefiting from a project that his instructor, Dr. Ty L. Bullard, had begun at the University of North Carolina School of Medicine to encourage residents to start thinking about and planning for retirement early in their careers. Each year, Dr. Bullard schedules lectures and quarterly panel discussions for doctors to share some of their financial decisions, divulge mistakes and discuss investing.

Dr. Bullard has taken it on himself to help educate younger doctors by sharing what he has learned and start a longer-term financial conversation - he was available for residents' questions, for example, when they received their \$1,200 stimulus check and wondered what to do with it.

"Our residents now have a place they feel they can get unbiased, non-conflicted information and they feel comfortable asking those kinds of questions," he said.

The very act of selecting a financial mentor can be motivating, according to Sarah Newcomb, a director of behavioral science at Morningstar, who has studied financial mentors. Her findings suggest that people who admire and emulate someone's choices or habits -- such as frugality or financial security -- rather than focus on a specific monetary goal, can actually be

more successful in reaching their own targets.

“An aspirational comparison doesn’t ask, ‘Do I measure up to them now?’ but asks, ‘Can I measure up to them in the future and can I follow in their footsteps?’” Dr. Newcomb said.

Alannah NicPhaidin, a consultant in international trade compliance who lives in Aurora, Colo., has become an accidental adviser to her friends. She loves crunching numbers and reviewing investments, and eagerly shares her experience. “It made me realize the importance of financial security, particularly for women -- particularly making sure you have that protection for yourself,” she said.

Questions from friends tend to crop up when Ms. NicPhaidin, 32, declines invitations to expensive outings -- if she can’t afford them, she isn’t shy about saying so, which often prompts a discussion about saving and investing. If her friends are still interested, she helps them scour their financial statements, showing them the kinds of accounts she herself has set up for automatic investing.

Ms. NicPhaidin tries to make the conversation more palatable by serving wine or chocolates before getting into the spreadsheets. “If you’re excited about providing them with their financial security, and you’re able to show how you needed it and what it could do for them in the future, then they get pretty excited too,” Ms. NicPhaidin said. “And it doesn’t just have to be some boring thing of some old guy telling you, ‘You have to budget better.’”

Helping her friends feels personal. When she was 9, Ms. NicPhaidin said, she saw her mother struggle as a single parent after the two emigrated from Ireland with nothing more than one suitcase of clothes and one suitcase of teddy bears to start a new life in Florida. She remembers the hardships they encountered from her mother’s irregular income and how her paltry paycheck sometimes meant eating food discarded by their local supermarket.

Ms. NicPhaidin said she never wanted to experience that kind of financial insecurity again. Now, she saves 65 percent of her income, fueled by a frugality that began after she got her first job as a grocery bagger at Winn Dixie at age 14.

“I would get my paycheck and most kids would be like, ‘I’m going to the mall, I’m going to do this,’” she said. “And every paycheck was cashed and put into an envelope and not looked at again, and then if I was feeling stressed I would count it and go, ‘Oh I have a little bit more,’ so it was a kind of way to make sure that there was security.”

Ms. NicPhaidin’s enthusiasm for saving and investing was hard to resist for Juliet Swanson, a

landscape designer in her mid-20s from Falls Church, Va., who says Ms. NicPhaidin helped her turn her finances around.

When the two met in 2018, Ms. Swanson was reeling from the news that her roommate had collected her rent money, but never paid their landlord, leading to their eviction, she said. Ms. NicPhaidin not only took her friend in, but also combed through Ms. Swanson's financial documents and shared her own.

"I would tell her how I handle money and she would kind of say, 'OK, this is just my experience, and why don't we get together with a cup of tea and have a quick chat,' and saying it all with her lovely Irish accent and I would say 'Of course,'" Ms. Swanson said. "She would go over the books and she would give me a good plan."

Choosing a peer role model whose goals match your own is crucial, Dr. Newcomb said. First, make sure your prospective mentor has knowledge and skill -- and values that align with yours. As social creatures, she said, people tend to compare themselves -- to others -- especially a friend and family. She found a trend: If a person compared herself to someone who seemed to be doing better, the person tended to report lower savings and higher spending. But people who compared themselves to a financial role model broke the negative pattern and tended to save more.

"Regardless of income, in one sense who you compare yourself to may really have a strong impact on your emotional well-being," Dr. Newcomb said.

While focusing on her medical-school studies and clocking long hours in her residency at Johns Hopkins Hospital, Dr. Margaret Kott, 30, had little time to worry about retirement. It wasn't until a friend and co-resident asked her if she had started saving that she realized she had fallen behind.

"At 30, I realized how little I had saved, and I kind of panicked," Dr. Kott said. At her friend's urging, she opened her first Roth I.R.A. and has started contributing to a retirement fund within the last year. She has now become an advocate, helping her friends and colleagues.

"I'm doing what I can to spread this knowledge amongst my co-residents, who know little of retirement accounts and don't usually think twice about how to pay for retirement because they're too focused on paying back student loans," Dr. Kott said. "It's unbelievable that this was never taught to us in any school."

As chief resident in her department at Johns Hopkins, Dr. Kott has helped arrange lectures

over the last year and began booking financial advisers for talks, sometimes pivoting to Zoom sessions as the pandemic hit.

Dr. Kott said she realized that she was in a position uncommon for most residents: She has avoided student loan debt as much as she could. First, she picked the college that gave her a full scholarship for her undergraduate degree. Later, with her husband, she focused on paying down the medical school debt. She recently moved to Boston for a new role as a fellow in pain medicine at Massachusetts General Hospital.

Dr. Bullard, 43, sees a strong need for doctors to get solid financial advice sooner rather than later, because they usually start their careers later than most and typically carry high student loan debt. And they can be vulnerable to bad advice: It's only in retrospect that he sees how he and his wife mistakenly thought their best investment choice was a high-commission, permanent life insurance policy. But that misstep served as a warning to fellow doctors and residents about the pitfalls of not focusing on their financial acumen.

To that end, Dr. Bullard has developed and helps oversee a financial curriculum for students at the University of North Carolina, Chapel Hill. He is the division chief of ambulatory anesthesia at UNC Hospitals and instructs residents, but he also schedules regular money talks given by fellow doctors. The intention: to help residents and their peers start saving for retirement while protecting them from being pressured into buying high-commission products that might be wrong for their needs.

"One of our main objectives is, they don't have to worry someone is looking at them like an open wallet," he said.

Hearing from more experienced friends or colleagues in anesthesiology made financial planning more meaningful for Dr. Whitlow.

"When you hear it from someone who's in the same situation," he said, "I think it's more impactful because you know they just came from where you were." Elizabeth Harris, *The New York Times*, [www.nytimes.com](http://www.nytimes.com), July 25, 2020.

## **12. DEBUNKING THE MYTH OF LOWER TAXES IN RETIREMENT:**

If you want to build wealth, it is your responsibility to save on taxes legally and ethically. Even if you're not focused on becoming wealthy, why should you pay more income tax to the government than is necessary? Don't you want to keep those hard-earned dollars in your pocket?

Taxes can be the biggest drain on wealth if they're not planned for with the proper care. There is perhaps no time in our lives when this is more apparent than during retirement. When you shift from the accumulation phase into the distribution phase (spending what you saved), every dollar you give to the IRS unnecessarily is one less dollar you have for the second half of your life.

S. Joseph DiSalvo and Marie L. Madarasz, authors of the new book *Income for Life*, have been helping clients successfully prepare for retirement for more than two decades. In the course of their work, they debunk a lot of myths about retirement. One of the most widely believed myths is that you'll be in a lower tax bracket in retirement than you're in during your working years.

Where does this myth originate and why has it endured? And if it's not based in reality, what is the truth about tax brackets once you stop working? Where can you expect to end up? I recently caught up with DiSalvo and Madarasz to learn the truth about taxes in retirement.

### **Your Time in a Lower Bracket May Be Short**

According to the authors, it makes sense why people believe this retirement myth. They don't see themselves paying more in taxes because they're no longer earning money; rather, they're now living off what they've accumulated over a lifetime. With their income being lower than it was during their working years, the amount they'll owe to the IRS will be less, right?

Not necessarily, warns DiSalvo. For a short time after they finish working, many successful retirees typically are in a lower tax bracket. But that window can shut quickly.

Once required minimum distributions (RMDs) kick in (age 72 for IRA, 401(k), 403(b), etc.), in combination with other forms of income (investments, social security, rental income, etc.), successful retirees will quickly move into an equivalent tax bracket as they were in during their working years. They may also be pushed into Medicare surcharges and other ancillary tax.

By their mid- to late-70s, it's not uncommon to see these successful retirees be in even higher brackets than they were during their working years--a far cry from what they envisioned.

### **Multiple Layers to Tax Planning for Retirement**

Madarasz explained what tends to happen that causes this jump into a higher bracket later in life. In retirement, many people will have multiple streams of income coming from various sources, most of which are being taxed at different rates. Without proactive income, investment, and tax planning, they can get caught up in a complex system of multiple calculations.

Furthermore, many retirees accumulate in pre-tax retirement accounts: 401(k), IRA, 403(b), etc.

Pre-tax is the operative word here. This money--both the contributions and the growth--has never been taxed, and Uncle Sam has been waiting for his share for decades!

Bottom line: due to the complex nature of how various streams of income are taxed, and the ticking tax time bomb that is their pre-tax retirement accounts, many successful retirees will pay significantly more in taxes during retirement than they could've ever envisioned.

### **Taxes Could Go Higher Than You Think**

DiSalvo told me there's another piece to this puzzle we have to consider: the tax rate.

What we know right now: the current tax law is in effect until the end of 2025, at which point it will sunset, which means on January 1, 2026, taxes will go up to the rates in effect prior to TCJA. Many people mistakenly believe that the difference in rates between the old and the new law is just a few percentage points; however, that is another incorrect assumption.

Across most brackets, the difference between the current rates and the future rates on January 1, 2026 is between 9.7% and upwards of 25%. In other words, there is an opportunity right now through proactive tax planning to reduce your taxes between 9.7% and 25%.

However, looking to the future, the tax landscape is likely to change. Prior to COVID-19, the United States had a staggering amount of national debt. After this pandemic and the massive stimulus bill that was passed, that debt level surpassed \$24 trillion as of April 7, 2020.

At some point, our country must pay for that debt. The federal government has multiple tools for paying our debt down, one of which is raising taxes higher than they are today. You could argue that we will see significantly higher taxes in the years ahead because of our debt problem.

What many Americans don't realize is just how high taxes can go. In 1944 and 1945, the top marginal rate was a staggering 94%. It was 91% from 1954 to 1963, and it didn't drop below 70% until 1981. Marginal rates in the 30th percentile is a fairly recent development. As much as we want to, we can't dismiss the possibility that taxes will reach those heights in the future.

Now imagine if the tax rate goes even higher than where it's expected to go. That would make the value of proactive tax planning during those "penalty-free years" and the expiration of

TCJA even greater and help ensure that you give less of your hard-earned money to the IRS. Garrett Gunderson, Forbes, [www.forbes.com](http://www.forbes.com), July 23, 2020.

### **13. DIRTY DOZEN PART 1 - TAXPAYERS SHOULD BE ON THE LOOKOUT FOR THESE SCAMS:**

All tax scams put taxpayers at risk. This is the first of two tips taking a closer look at the [IRS Dirty Dozen](#) tax scam list. This year, taxpayers should be especially watchful for aggressive schemes related to COVID-19 relief, including Economic Impact Payments.

#### **Here is a recap of the first six scams in this year's Dirty Dozen.**

**Phishing:** Taxpayers should be alert to potential fake emails or websites looking to steal personal information. The IRS will never initiate contact with taxpayers through email about a tax bill, refund or Economic Impact Payment. Don't click on links claiming to be from the IRS. Be wary of emails and websites – they may be nothing more than scams to steal personal information.

**Fake charities:** Criminals frequently target natural disasters and other situations, such as COVID-19, by setting up fake charities to steal from well-intentioned people trying to help in times of need. Fraudulent schemes normally start with unsolicited contact by phone, text, social media, email or in-person using a variety of tactics.

**Threatening impersonator phone calls:** IRS impersonation scams come in many forms. A common one remains fake threatening phone calls from a criminal claiming to be with the IRS. The agency will never threaten a taxpayer or surprise them with a demand for immediate payment. Scam phone calls include those threatening arrest, deportation or license revocation if the victim doesn't pay a fake tax bill.

**Social media scams:** Taxpayers need to protect themselves against social media scams, which frequently use events such as COVID-19 to try tricking people. Social media enables anyone to share information with anyone else on the Internet. Scammers use this information as ammunition for a wide variety of scams. These include emails where scammers impersonate someone's family, friends or co-workers.

**Economic Impact Payment or refund theft:** This year, criminals turned their attention to stealing Economic Impact Payments. Many of these scams are identity theft-related. Criminals file false tax returns or supply false information to the IRS to divert refunds to wrong addresses or bank accounts.

**Senior fraud:** Senior citizens, their friends and family need to be on alert for tax scams

targeting older taxpayers. Their growing comfort with technology, including social media, gives scammers another means of taking advantage of them. Phishing scams linked to COVID-19 have been a major threat this year. Seniors should be on alert for a continuing surge of fake emails, text messages, websites and social media attempts to steal personal information.

Share this tip on social media -- #IRSTaxTip: Dirty Dozen part 1: Taxpayers should be on the lookout for these scams. <https://go.usa.gov/xfPGz>. IRS COVID Tax Tip 2020-96, [www.irs.gov](http://www.irs.gov), August 4, 2020.

#### **14. FDIC ISSUES LIST OF BANKS EXAMINED FOR CRA COMPLIANCE:**

The Federal Deposit Insurance Corporation (FDIC) issued its list of state nonmember banks recently evaluated for compliance with the Community Reinvestment Act (CRA). The list covers evaluation ratings that the FDIC assigned to institutions in May 2020.

The CRA is a 1977 law intended to encourage insured banks and thrifts to meet local credit needs, including those of low- and moderate-income neighborhoods, consistent with safe and sound operations. As part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Congress mandated the public disclosure of an evaluation and rating for each bank or thrift that undergoes a CRA examination on or after July 1, 1990.

You may obtain a consolidated list of all state nonmember banks whose evaluations have been made publicly available since July 1, 1990, including the rating for each bank, or obtain a hard copy from FDIC's Public Information Center, 3501 Fairfax Drive, Room E-1002, Arlington, VA 22226 (877-275-3342 or 703-562-2200).

A copy of an individual bank's CRA evaluation is available directly from the bank, which is required by law to make the material available upon request, or from the FDIC's Public Information Center.

#### **Attachments:**

- [August 2020 List of Banks Examined for CRA Compliance](#)
- [Monthly List of Banks Examined for CRA Compliance](#)

FDIC PR-90-2020, [www.fdic.gov](http://www.fdic.gov), August 4, 2020.

#### **15. FOR THOSE WHO LOVE WORDS (LOGOPHILES):**

I'm reading a book about anti-gravity. I can't put it down.

**16. EVER WONDER:**

Why don't you ever see the headline 'Psychic Wins Lottery'?

**17. INSPIRATIONAL QUOTE:**

“Often when you are at the end of something, you're at the beginning of something else.” -  
*Fred Rogers*

**18. TODAY IN HISTORY:**

On this day in 1965, US President Lyndon B. Johnson signs the Voting Rights Act prohibiting voting discrimination against minorities.

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