



CYPEN & CYPEN NEWSLETTER for July 16, 2020

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

1. RETIREMENT IN THE WAKE OF COVID-19:

Despite the COVID-19 jump in global mortality rates, rising longevity and falling fertility continue to spur the growth of aging populations in most nations. Accordingly, we must move now to reform retirement systems, if they are to provide secure old-age income for Baby Boomers and their offspring.

Even Before COVID-19, Many Pensions Were Not Sound

Recent review of global pension systems showed that some of the most troubled retirement plans even before the pandemic were traditional defined benefit pensions offered by state/local governments and a shrinking of large corporations around the world. These are in dire straits because plan sponsors have long failed to contribute what they

should have, and also because these plans invested in risky assets, leaving them at the mercy of market shocks. Long term low investment returns have also taken a toll.

Defined contribution plans, the engine of growth for pensions in the U.S. and most other developed countries, have fared better in the past decade. Nonetheless, pre-COVID-19, low rates of coverage and contributions were problematic, particularly in developing countries where much of the workforce is informal. And the rise of “gig” work – part-time, self-employment, contract jobs – has also meant rising numbers of workers lack access to firm-based retirement plans.

Yet the biggest problem threatening retirement security around the world is the fact that many national social security systems face near-term insolvency. Pre-crisis, the U.S. Social Security Trustees predicted that system revenues would cover only 75% of scheduled benefits within a dozen years, due to underfunding estimated at \$53 trillion in present value.

The Pandemic Made It Worse

While it is premature to provide a forecast about the long-term global economic impact of the COVID-19 pandemic, there is evidence that capital markets may not recover for 40 years. As a result, pension systems cannot expect to earn enough from their (diminished) investments to return to full funding any time soon. Additionally, due to very high unemployment and jobless rates, payrolls shrank and tax collection dropped precipitously. As a result, the U.S. Social Security program’s insolvency may be now occur in just nine years, rather than more than a decade from now as the Trustees projected last year; at that point, benefits to all must be cut by about 25%. In Europe things are not much better: Dutch pension, which had been overfunded at 105%, now have only 70% of the assets needed to cover benefits, likely to result in benefit cuts.

Defined contribution plans have also been challenged in the pandemic. In the U.S., many employers have suspended their matching contributions to workers’ accounts in the interest of maintaining free cash flows. While most firms are likely to reinstate the matches post-pandemic, the lost contributions cannot be recovered. Moreover, several governments have permitted participants to pull out retirement assets early, due to the COVID-19 shock, including the US and Spain. Lawmakers in Chile and Peru have also proposed giving savers early access to their pension assets to help tide them over, and in Australia, politicians asked pension savers to “bail out” struggling local companies. These developments, although politically expedient, bode ill for retirement prospects in our aging economics.

What Can Be Done?

Research and analysis suggests several key areas where retirement systems could use some help. The following suggestions for plan sponsors, governments, employees, and retirees will help us redesign and strengthen resilient retirement systems around the globe:

- De-link benefits from individual employers. In many countries including the U.S., people lose their insurance and pension contributions when they lose their jobs. Yet pensions and other benefits could be offered by associations, multiple-employer programs and workplace platforms, allowing for more worker mobility and continued health insurance when people move between jobs.
- We can offer greater benefits flexibility so that the gig economy can provide all workers the chance to save and insure on flexible, part-time and other on-demand jobs.
- Encourage delayed retirement where possible. Longer work lives reduce the need to self-fund long retirement periods and delayed retirement can also be healthier.
- Generate better quality and more detailed data about mortality and morbidity patterns. These could help insurers seeking to price longevity risk more precisely.
- Develop a consistent and economically coherent set of guidelines for measuring and forecasting social security as well as pension assets and liabilities, along with long-term care needs of the aging population.

Olivia S. Mitchell, <https://pensionresearchcouncil.wharton.upenn.edu/>, July 13, 2020.

2. PUBLIC PENSION FUNDING JUMPS TO 71.2% IN SECOND QUARTER:

The funding ratio for the largest public pension plans in the U.S. rose to 71.2% from 66% over during the second quarter, according to Milliman. This represents the largest quarterly increase in the history of the Milliman 100 Public Pension Funding index.

Markets rallied in the second quarter, resulting in a \$308 billion in the market value of assets and reversing first-quarter losses for these pension funds, which in aggregate had investment returns of 10.7% in the second quarter.

Twelve plans were at least 90% funded as of June 30, up from four as of March 31. Meanwhile, seven plans moved above 60% funded, bringing the total number of plans under this mark to 28, down from 35 at the first quarter.

The total pension liability rose to an estimated \$5.398 trillion at the end of the second quarter, up from \$5.355 trillion at the end of the previous quarter.

"While public pension funding status has improved dramatically over the past three months, the longer-term economic impact of COVID-19 on funding remains uncertain," said Rebecca A. Sielman, principal and consulting actuary at Milliman and author of the Milliman 100 Public Pension Funding index, in a news release announcing the results. "Returns for the past 12 months ending June 2020 averaged just 3.84% -- markedly lower than plan sponsor reported funding interest rates -- which means the 2019-2020 reporting year will likely go into the books as a year of modest investment losses, despite the Q2 rally." James Comtois, *Pension & Investments*, www.pionline.com, July 13, 2020.

3. PUBLIC PENSION PLANS LIKELY TO SEE FLAT RETURNS FOR FISCAL YEAR:

Most U.S. public pension plans are likely to post flat returns for the fiscal year ended June 30 despite markets rallying in the second quarter, a report from Moody's Investors Service said. Moody's estimates that the effects of the COVID-19 pandemic will lead to the returns for most public plans being between zero and 1%, well below the average return target of 7%.

Although individual results will vary, Moody's projects that returns of zero for FY 2020 will result in the cost to maintain pension obligations rising by about 15% for the fiscal year ending June 30, 2021, and that reported unfunded liabilities and adjusted net pension liabilities will both rise by more than 20%.

"The pandemic-related economic shock has caused widespread declines in state and local governments' tax revenues, producing large budget gaps that will be especially challenging for those with high fixed costs for pensions and other debt," said Tom Aaron, vice president at Moody's, in a news release announcing the report. "Investment returns for FY 2020 fell short of targets, which will create higher unfunded pension liabilities and necessitate higher contributions to keep pension system assets from declining."

While many sponsors of public plans do not contribute enough to maintain their pension obligations, the actuarially determined contributions that their pension systems calculate will still rise next year due to investments underperforming in fiscal year 2020, the report said.

Moody's reports that an increasing number of underfunded public plans are reducing their annual investment return targets and making other actuarial changes that increase governments' actuarially determined contributions. Florida, Illinois, Michigan and Utah are states that have joined Indiana and South Dakota in cutting their return targets below 7%.

Still, with interest rates low and return targets high, plans like the \$396.9 billion California Public Employees' Retirement System, Sacramento, are relying on riskier investments to keep state contribution obligations from rising.

But Moody's notes that this strategy increases exposure to market losses, which could drive up contribution obligations. And while significant asset derisking could reduce the chances of sharp investment losses for poorly funded retirement systems, asset derisking is unlikely to materially improve a long-term funding trajectory of an underfunded pension system alone.

Unless state sponsors increase taxes, which is challenging and politically risky in an environment of increased unemployment, state revenues are unlikely to return to fiscal year 2019 levels even by fiscal year 2024. States that are dependent on sales, income and capital gains taxes will likely suffer more severe revenue challenges.

"For many U.S. public pension systems, particularly those with very negative non-investment cash flow, higher future contributions are key to improving pension funding trajectories," Mr. Aaron added. James Comtois, *Pension&Investments*, www.pionline.com, July 13, 2020.

4. COVID-19 HEROES MUST JUMP THROUGH HOOPS FOR WORKERS' COMP:

Lauded for their service and hailed as everyday heroes, essential workers who get the coronavirus on the job have no guarantee in most states they'll qualify for workers' compensation to cover lost wages and medical care.

Fewer than one-third of the states have enacted policies that shift the burden of proof for coverage of job-related COVID-19 so workers like first responders and nurses don't have to show they got sick by reporting for a risky assignment.

Debate over workers comp in the states is part of a much larger national discussion about liability for virus exposure, with Republicans in Congress seeking a broad shield for businesses in the next coronavirus relief bill.

And for most employees going back to job sites as the economy reopens, there's even less protection than for essential workers. In nearly all states, they have to prove they got the virus on the job to qualify for workers' comp.

Nurse Dori Harrington of Manchester, Connecticut, said she got COVID-19 caring for infected patients at a nursing home, with limited protective gear. Harrington was severely

ill and missed five weeks of work, yet her workers' comp claim was initially denied on grounds that her disease was not distinctively associated with, nor peculiar to her job.

It's great to be appreciated, but we need to be taken care of, too, said Harrington, who eventually won her claim with union help. Nobody should have to fight to be taken care of when they were simply doing their job taking care of other people. It's obnoxious to me.

Workers' compensation is not health insurance, or an unemployment benefit. The \$56 billion, state-level insurance system is one of the nation's oldest forms of a social contract. In exchange for coverage, workers give up the right to sue their employers for job-related harms. Employers pay premiums to support the system. Complex rules differ from state to state.

Dealing with job-related injuries is fairly straightforward, but diseases have always been trickier for workers' comp, and COVID-19 seems to be in a class of its own. You don't know per se where you inhaled that breath whereby you became infected, said Bill Smith, president of the Workers Injury Law & Advocacy Group, or WILG, a professional association of lawyers representing workers. You can still reach a logical conclusion, says University of Wyoming labor law professor Michael Duff.

When you are talking about certain kinds of frontline workers, out in the trenches, day in and day out, that person starts to look like the coal miner who is routinely exposed to a hazardous health condition because of their work, he explained. Think hospital and nursing home clinical staff, first responders, and meat packing workers, among others.

Acknowledging such realities, more than a dozen states have enacted policies known as presumptions that relieve essential workers like Dori Harrington, the nurse from Connecticut, of having to prove how they actually got COVID-19 on the job. The list includes liberal states like California and conservative states like Kentucky, according to WILG, the lawyers' group. California's policy stands out because it protects all workers, not just those in frontline roles.

At the federal level, there's a push to protect workers at the Transportation Security Administration and the Postal Service. Duff predicts most states will be reluctant to expand protections. The issue involves significant costs and hard lobbying. It pits workers, labor groups, lawyers, and social welfare advocates against employers, insurers, and even local and state governments that employ frontline workers.

In Colorado, a drive to enact a COVID-19 presumption for essential workers stalled in the

legislature over cost concerns. At a time of community spread of a disease like this, it is not appropriate for a workers' comp system to act as a public safety net," said Edie Sonn, head of public affairs for Pinnacol Assurance, Colorado's leading workers' comp insurer, which opposed the effort.

Certain businesses would have seen premiums rise up to 27%, she added. Industry expert Stefan Holzberger of the AM Best credit rating agency said there's a risk of significant losses for workers' comp insurers, but there are also potential mitigating factors. The bottom line isn't clear yet.

From what we see so far, the average claims cost associated with a COVID-19 claim is less than the loss associated with a typical workers' comp claim, said Holzberger. Going to the hospital and getting a test is a lot less than getting neck or back surgery.

Another mitigating factor: workplace injuries went down dramatically in the economic shutdown. For essential workers who got COVID-19 and suffered through fever, fatigue, shortness of breath, racking cough, and other symptoms, the denial or acceptance of a workers' comp claim can have a profound impact.

Fire alarm inspector Kenneth Larkin of Montevallo, Ala., said he was rebuffed by his former employer when he requested workers' comp for a coronavirus test. He had gotten sick soon after inspecting systems in the COVID-19 wing of a hospital.

I think a certain number of workers are being villainized because they want to take care of themselves, said Larkin, who's retained a lawyer. It's hard for me as a human being to swallow that, when you place the value of a person's health at less than the cost of a test.

But nurse Debbie Koehler of Warren, Ohio, said she felt validated when her claim was accepted by the insurer for the rehab hospital where she works. It's just knowing that my employer is actively admitting that this wrong happened and they are paying for my therapy, she said. Associated Press, www.advisen.com, July 11, 2020.

5. IRS ISSUES CARES ACT GUIDANCE AND EXPANDS DISTRIBUTION

ELIGIBILITY:

The Internal Revenue Service ("IRS") published [Notice 2020-50](#) ("Notice"), expanding the definition of a Qualified Individual ("QI") as well as providing helpful guidance on Coronavirus-Related Distributions ("CRDs") and plan loans under the [CARES Act](#). Below are some key takeaways from the Notice.

Qualified Individuals

The Notice expands the definition of a QI to include the following as eligible for CRDs and loans:

- Participants who experience a reduction in pay (or self-employment income) due to COVID-19 or a job offer rescinded or job start date delayed due to COVID-19;
- Participants whose spouse or a member of their household (as defined below) experiences adverse financial consequences as a result of:
 - being quarantined, furloughed or laid off, having work hours reduced or a reduction in pay (or self-employment income) due to COVID-19;
 - unable to work due to lack of childcare due to COVID-19;
 - having a job offer rescinded or start date for a job delayed due to COVID-19; or
 - the closing or reduction of hours of a business owned or operated by a spouse or a member of the participant's household due to COVID-19.
 - For purposes of the definition of QI, a "member of the household" is someone who shares the QI's principal residence.

Guidance for Retirement Plans

The Notice clarified that employers are not required to offer CRDs or loan relief under the CARES Act. An employer can elect to implement all the provisions, only part of the provisions, or none of them. Regardless of what an employer determines, QIs can take advantage of the tax benefits under the rules whether or not an employer chooses to adopt the relief provisions.

Tax Treatment of Coronavirus-Related Distributions

Distributions made to QIs that otherwise meet the CRD criteria will be treated as if it were a CRD for tax purposes. Employers are encouraged by the IRS to develop their own reasonable procedures for identifying which distributions should be treated as CRDs for tax reporting purposes. The Notice also provided a sample "self-certification" form for employers to use when issuing a CRD as well as clarified that employers may rely on a participant's self-certification without the responsibility to confirm if a participant has satisfied the CRD requirements.

In addition, the Notice provides helpful guidance and examples illustrating how employers and participants should handle the reporting of CRDs for tax, income and recontribution purposes.

CARES Act Loans

The Notice created a safe harbor for the suspension of loan payments. Under the safe harbor, a plan will be treated as satisfying the requirements of the CARES Act if a QI's obligation to repay a loan is suspended for payments due between March 27, 2020, and December 31, 2020. The term of a loan may be extended for up to one year from the date the loan was originally due, even though the suspension period was not a year. This is true even if this would extend the loan beyond the maximum 5-year term.

While the loan repayment period may be extended for the period of a year, loan payments should recommence as of January 1, 2021. The safe harbor provides that a loan should be re-amortized and repaid in equal installments over the remaining period of the loan. However, the IRS did indicate there may be additional ways employers can administer suspended loans and still be compliant.

6. CHASING EARLY RETIREMENT? HERE ARE 4 QUESTIONS TO ASK IN LIGHT OF THE PANDEMIC:

For Americans [pursuing financial independence or planning to retire early](#) (FIRE) the coronavirus pandemic has offered perhaps the ultimate stress test. Many FIRE adherents have watched their income take a big hit. Many have seen their investment portfolios drop sharply and remain volatile even after rebounding. Many have endured both.

Now, then, would be a good time for those pursuing FIRE strategies to evaluate their plans by asking themselves four crucial questions, says Michelle Underwood Gass, a certified financial planner and founder of Paradigm Advisors in Dallas, who works closely with FIRE clients.

Do I still want to retire early?

The crisis has created an opportunity for many investors to slow down and reflect about their goals and priorities. As they spend more time at home, they may even be getting a taste of the life they imagined enjoying in retirement--reaffirming plans for some but possibly causing others to rethink.

One of Gass' clients, a man in his early 30s with enough savings to retire, took a voluntary three-month furlough from his high-paying job in the tech industry, and he's found that his financial plan works but full retirement is less exciting than he expected.

The furlough "gave him a chance to test the waters and see if this is something he really wants to do before he pulls the plug and makes it permanent," she says. "He's realizing that he doesn't want to do that for the next 50 years."

Whether or not you can give retirement a trial run like Gass' client, the pandemic can help clarify the viability of your financial plan or it may help provide perspective on life and whether leaving the regular workforce early is the right move.

Are living costs manageable?

Many FIRE followers are used to cutting way back on discretionary spending, but some may not appreciate the cost of necessary expenses until their income is curtailed. Basic necessities such as rent, food, utilities, and insurance often amount to a sizable percentage of earnings even without taking an income hit.

The pandemic has been a wake-up call for many people, particularly for those who've lost a job or watched as friends and family have lost theirs. "It gives them a trial ride and the chance to consider, 'Do I need to make bigger adjustments to my fixed costs?'" Gass says.

Depending on your essential expenses and personal circumstances, cutting fixed costs might mean moving to a smaller house [to reduce your mortgage payment](#) or shopping around for lower-cost insurance policies.

Is my income strategy sustainable?

Volatile markets and an economic downturn offer a good opportunity to reconsider your withdrawal plan, Gass says. "The 4% rule" that says how much a person can safely afford to withdraw every year of retirement has long been considered conventional wisdom, but some now say it may be too aggressive to weather the current and future downturns safely. "We recommend a withdrawal rate closer to 3% to withstand the inevitable ebbs and flows of the market," she says.

The long bull market led some FIRE adherents to play down the importance of maintaining substantial cash savings. But the pandemic underscores the importance of having a deep emergency fund. At a minimum, investors should have enough to cover six to nine months of expenses—and preferably more for an early retiree, Gass says. Those who have enough cash to cover them for an extended period are less likely to worry about riding out a potential long-lasting downturn. If your cash cushion isn't there yet, now is a good time to focus on building that.

Do I need to adjust my timeline?

If the economic impact of the pandemic has thrown off your financial course, it may be time to revisit whether your FIRE timeline is feasible. To ensure you're ready for early

retirement, Gass says investors should keep their fixed costs low, have the security of a sizeable emergency fund, and only put long-term investable savings toward equity investments to avoid needing to sell at an inopportune time.

If those pieces aren't in place, consider amending your plan. "It may be prudent to re-adjust or delay planned financial freedom by a few years," she says, depending on how soon you aim to leave your day job. Emily Smith, Barrons Retirement, www.barrons.com, July 12, 2020.

7. WAVE OF CORONAVIRUS HARDSHIP DISTRIBUTIONS STILL BUILDING:

Low- to moderate-income (LMI) retirement plan participants have mostly turned to reducing their spending levels and using credit cards to find financial relief during the pandemic; however, more will be turning to their retirement plans for liquidity, according to [research from](#) the nonprofit Commonwealth and the Defined Contribution Institutional Investment Association (DCIIA) Retirement Research Center.

Seventy percent of LMI retirement plan participants have reduced their expenses. But, the researchers note, those making less than \$30,000 are less likely to have cut expenses, perhaps because there is little room to reduce expenses in their budget. Fifteen percent of respondents have turned to credit cards to meet expenses during COVID-19.

The research found that, so far, few LMI 401(k) participants have tapped their accounts. Only 5% of respondents have withdrawn from their account, but 7% said they plan to do so in the coming weeks. Eight percent of people whose income has been reduced as a result of the pandemic have withdrawn from their account versus 2% of those with unchanged income.

The Coronavirus Aid, Relief and Economic Security (CARES) Act created a new type of distribution, called a [coronavirus-related distribution](#) (CRD), for employees affected by the pandemic and expanded retirement plan loan limits. A survey of 137 401(k) plan sponsors--with no reported limit on plan size or participant base--by the Plan Sponsor Council of America (PSCA) found nearly two-thirds (63.5%) are allowing participants to take CRDs. Only about one-third (36.5%) of respondents increased plan loan limits.

One in five plan sponsors (19.7%) surveyed by the PSCA are still taking a wait-and-see approach, and fewer than 10% have already determined they will not implement any of the optional CARES Act provisions.

Ascensus looked at its own retirement plan client base of plan sponsors with 500 or fewer

employees, and [found](#) 11.7% have adopted the CRD option and 7.5% have adopted the expanded loan amount option. Ascensus found there has been 2.5 times the normal level of hardship distribution activity since the passage of the CARES Act, as retirement savers have begun taking CRDs. However, the overall number of savers taking CRDs remains fairly small at 12 per every 10,000, Ascensus reported.

The PSCA reports that among plans offering a CRD, nearly 40% indicated an average of just 1% to 5% of participants have taken one, and nearly as many said fewer than 1% of participants have done so. Eighteen percent reported that no participants have. Among plans that have increased the loan limits, most reported that fewer than 1% of participants have taken advantage of this option, and more than one-quarter stated that none have.

Among the more than 4 million participants on Alight's platform who are eligible for the CARES Act provisions, 2.2% took a CRD, and 52% of those participants took the maximum amount allowed.

The Savings Picture

Five percent of respondents to the PSCA survey have suspended matching contributions and fewer than 1% have suspended non-matching (or profit sharing) contributions. Larger organizations were somewhat more likely to have suspended the match. Three percent of plan sponsors are considering reducing or suspending contributions but had not made a decision as of mid-June when the survey ended.

Ascensus' look at plan sponsors with 500 or fewer participants found 11.8% of employers had stopped or decreased their match as of the end of May. The survey also found that 7.5% of employers that decreased their match in or after March returned to pre-March levels in May.

Ascensus found employer match or profit sharing contribution suspensions were driven by business interruptions or closures, and such suspensions happened in the smallest plans and in plans in certain industries more so than others.

The majority (93.1%) of participants made no change to their savings rates, and 3.8% increased their savings rate, according to Ascensus. However, 1.3% discontinued their retirement plan deferrals and 1.8% reduced their savings rates.

Commonwealth and the DCIIRA Retirement Research Center note that data from 2008 indicates that when plan sponsors pause matches, 20% of participants also stop contributions. Its survey found that LMI plan participants are more likely to have paused or

stopped retirement plan contributions (10%) than stopped paying bills (8%), borrowed from friends or family (7%) or sold any possessions (7%). The organizations also say offering [emergency savings along with retirement accounts](#) will help decrease withdrawals. Rebecca Moore, Planadviser, www.planadviser.com, July 1, 2020.

8. SMALL ADVISORY FIRMS MAY HAVE RECEIVED \$678 MILLION IN PPP LOANS:

Nearly 21,500 businesses that were classified as being in the investment advice space received approximately \$678 million in Paycheck Protection Program (PPP) loans under \$150,000 to help retain employees during the COVID-19 pandemic, [according to data released by the Treasury Department earlier this week](#).

Much of the news coverage has centered on large businesses (including large RIA firms) that were recipients of PPP loans. Even prior to this week's data release, large firms with a significant amount of assets under management (AUM) that disclosed they'd received a loan faced some criticism as to whether RIA firms, particularly those of their size, should be pursuing such funds in the first place, in contrast with other industries (though many found these critiques misguided).

But the majority of SEC-registered investment advisors are small businesses, according to [a 2019 report from Investment Adviser Association and National Regulatory Services](#) . The report showed that 56.9% of firms had 10 or fewer non-clerical employees, with 87.5% reporting they employed 50 or fewer non-clerical workers. This is not counting the more than 17,500 investment advisors with \$100 million or less in AUM that are regulated by state securities regulators, according to [a 2020 report by the North American Securities Administrators Association](#) .

According to Market Counsel CEO Brian Hamburger, the preponderance of small firms is a reminder that the PPP loan program could be extremely beneficial to an industry largely populated by small businesses.

“Because wealth managers by their name and definition work with wealthy individuals, I think people often assume they are universally wealthy,” he said. “I reject the arguments made by a very loud minority of folks out there who suggest that wealth management firms shouldn't have been eligible for PPP loans.”

While the Treasury Department data included business names and addresses of those companies that received a PPP loan of \$150,000 or greater, names and addresses were not disclosed for firms receiving loans that were less. However, an exact loan amount was disclosed for companies with a loan below \$150,000 (unlike the higher loan amounts,

which included only ranges of loan amounts).

While CNBC reported that 87% of the loans were for less than \$150,000, nearly 75% of the total dollar amount went to businesses with loans that were higher (and were thus named in the data), according to NPR. But \$150,000 or less can still go a long way, Hamburger said. “For some firms that have two, three or four employees, that’s a big deal,” he said.

WealthManagement.com constructed a full list of unnamed companies from the 50 states, District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands and the Northern Mariana Islands that were labeled as being in the “investment advice” category, according to their six-digit North American Industry Classification System (NAICS) code.

Some significant caveats apply. It is likely that this list includes companies that should not be considered investment advisors and does not include investment advisory firms with improperly labeled NAICS codes. This was also an issue with the higher loan amounts, but the \$150,000-plus loans included names of businesses, which enabled us to investigate (and excise) obvious errors; for smaller loans, the lack of names makes that impossible to do. Nevertheless, the data as given offers a partial picture of the number of investment advice businesses that received loans, as well as how much those businesses received.

In all, 21,492 businesses with the NAICS code for investment advice received PPP loans under \$150,000, for a cumulative total of \$677,836,878. The average amount of dollars received was \$31,539, with a median of \$20,800.

The state with the most loan recipients was California, with 2,459 businesses, followed by Florida with 1,616 recipients. New York and Texas followed, at 1,387 and 1,385 loans, respectively. Barring Guam, the U.S. Virgin Islands and the Northern Mariana Islands, which had recipient totals in the single digits, the District of Columbia had the fewest number of companies, at 19. Washington, D.C., was followed by Alaska and Wyoming (28), Puerto Rico (35) and Vermont (42).

The PPP loans were originally included in the CARES Act, which Congress passed in late March, and new applications are currently still being accepted. Originally, the program was set to expire last week, but there is still approximately \$130 billion in allocated funds that are unused. Therefore, the Small Business Association will be accepting applications through Aug. 8. Patrick Donachie, *Wealth Management*, www.wealthmanagement.com, July 10, 2020.

9. IN UNCERTAIN TIMES, THE MISSION OF CALIFORNIA'S PENSION FUNDS IS VITAL:

No one needs to be reminded that these are uncertain times. The course of the COVID-19 pandemic and its long-term effect on the economy is unknown. Financial markets are unpredictable. No one knows when people will again be able to gather, travel, work and spend as freely as they had before.

In times like these, the mission of CalPERS is more vital than ever. It must provide for its 2 million workers and retirees the certainty of a secure retirement income. CalPERS remains positioned to provide that certainty. It has taken steps over the last couple of years to prepare for an economic downturn – one that we all knew inevitably would come.

Having learned a hard lesson from the 2008 financial crisis, CalPERS increased the fund's liquidity to ensure that it can continue to pay benefits without having to sell assets in a depressed market. It increased the percentage of the fund managed by in-house investment professionals, saving about \$115 million annually in fees. And it is in the process of restructuring its portfolio to take full advantage of its comparative advantages as an investor.

The new approach has already produced positive results, enabling CalPERS to reduce the effects of the market downturn caused by COVID-19 by about \$11 billion. In addition, its increased liquidity is enabling it to access cash to take advantage of investment opportunities created by the downturn.

As the nation's largest pension fund, with nearly \$400 billion in assets, CalPERS has unique advantages. Because its obligation is to this and all future generations of workers, its investment horizon is infinite. It can set a smart course and stick to it, through all the up-and-down gyrations of uncertain markets. And because its investment fund is so large, it is able to fully diversify its holdings – not just in foreign and domestic stocks and bonds, but also in real estate, private equity and private credit.

The strategy mapped out last year is designed to enable CalPERS' to achieve sustained returns that will meet its targeted annualized investment return of 7% over the long term – a critical target not just to provide retirement certainty for its members, but also to prevent burdening state and local governments at a time when they are facing their own challenges with economic uncertainty.

The strategy will allow CalPERS to increase its holdings in assets such as private equity

and private credit that have the potential for higher returns than publicly traded assets such as stocks and bonds.

One element of this strategy is to take advantage of historically low interest rates to utilize leverage, or borrowing, and using that leverage to acquire more of those better-performing assets.

The strategy can be simply expressed: Generate more assets to invest in better assets. The prudent use of leverage will allow CalPERS to retain the appropriate level of risk-protected assets while also enabling it to pursue more aggressively higher returns in other segments of its portfolio.

This strategy cannot be implemented overnight. It takes time to fully assess market opportunities and to incorporate leveraged investments into the overall strategic asset allocation. The expectation is that a “more and better assets” portfolio can be built over the next three years.

Achieving the 7% average annual rate of return requires smart planning in these times of low interest rates, high valuation of stocks and low economic growth. In fact, experts last year predicted the existing portfolio would return about 6% over the next 10 years.

The new strategy puts the state's largest public employee pension fund in a stronger position to weather these uncertain times than it was a year ago. It has increased the probability of the fund achieving its targeted 7% annual return over the next decade, and it has positioned CalPERS to continue to provide certainty for the workers and retirees who rely upon it. Yvonne Walker, www.calmatters.org, July 11, 2020.

10. N.Y. PENSION FUND ONE OF WORLD'S MOST RESPONSIBLE:

There have been some calls lately for the New York state pension fund to divest from fossil fuel companies. They imply New York is a laggard in dealing with climate issues. As legendary radio broadcaster Paul Harvey would say: "Now for the rest of the story."

New York's pension fund is recognized by independent observers as a leader among investors in responsibly addressing the risks and opportunities presented by climate change. The Asset Owners Disclosure Project ranks New York as number 1 nationally and number 3 globally among public pension funds that incorporate climate risk in investment decisions.

Greenhouse gas emissions and global warming are real threats to our planet and a risk to

investors. That's why New York was the first state pension plan in the United States to develop and implement a comprehensive Climate Action Plan to respond to this challenge. The plan follows the recommendations of the Decarbonization Advisory Panel that was convened by Gov. Andrew Cuomo and I. After spending a year examining research and consulting with industry and investment experts, this panel recommended a multi-faceted approach inspired by the goals of the Paris Agreement, rather than a sole focus on divestment.

The Climate Action Plan uses a range of strategies: identification and assessment of risks and opportunities, investment and divestment of assets, and engagement and advocacy with companies, regulators and government policy makers.

Pursuant to our plan, I have doubled our commitment to sustainable investments to \$20 billion with an emphasis on climate solutions. I have appointed New York's first-ever director of Sustainable Investments and Climate Solutions, an investment professional with extensive experience in the area, who has already shepherded more than a \$1 billion in sustainable investments in his first six months on the job.

The plan also calls for the development of enhanced climate risk assessments for sectors that are at high risk from climate change. We use these standards to determine if companies are climate-resilient and prepared for the transition to a low-carbon economy. After a thorough assessment, the Fund has divested from 22 thermal coal mining companies that are not prepared to thrive, or even survive, in the low-carbon economy. We are currently evaluating the low-carbon transition readiness of oil sands extraction companies, and we will follow that with assessments of other industries that are at high risk from climate change, including other companies in the energy, utility and transportation sectors.

As trustee of the state pension fund, I have the fiduciary responsibility to protect the investment strategies that fund the lion's share of over \$1 billion in monthly pension payments to New York's state and local public retirees who depend upon their well-earned pensions. I am also mindful of the taxpayers who help pay for these benefits. Investment decisions must not be based on slogans or political agendas. To have the state Legislature micromanage the investments of the state pension fund would be a dangerous step that would threaten the independence of the comptroller's office to make investment decisions solely in the interest of retirees, current and future.

I am committed to keeping the New York plan one of the best-funded retirement systems in the nation and also one of the most responsible investors in the world. Thomas P.

DiNapoli, www.timesunion.com, July 12, 2020.

11. RISK FOR CYBERATTACKS HEIGHTENED AS REMOTE WORK CONTINUES:

The widespread move to remote work in light of the COVID-19 pandemic means plan sponsors should take a careful look at their cybersecurity measures. To drive the urgency home, lawsuits alleging cyberfraud negligence have been on the rise--[MandMarblestone Group \(MMG\)](#), [Nationwide](#), [Abbott Laboratories](#), [Alight Solutions](#) and [Estee Lauder](#) have all faced litigation in the past year.

In the case of *Leventhal v. MandMarblestone Grp. LLC*, plaintiffs said working remotely without a secured network exposed a plan participant's personal information. A cyberhacker allegedly obtained a copy of the participant's withdrawal information, falsified a duplicate and submitted the forged document by hacking into the office administrator's home network, notes Carol Buckmann, founding partner and ERISA [Employee Retirement Income Security Act] attorney at Cohen & Buckmann. The cyberhack resulted in a loss of \$400,000 to the participant's account. Nationwide, the service provider to the plan, submitted a counterclaim against the plan sponsor, alleging that MandMarblestone Group had been careless when it came to monitoring its computer/information technology (IT) systems and employment policies while allowing its employees and participants to work remotely.

"Having remote work adds a special challenge," Buckmann adds. "This is an illustration of the danger of not having control over the security of home computers."

Not every hack is done online, however. In the case of Abbott Laboratories and Alight Solutions, where the latter served as recordkeeper to the plan, an imposter allegedly spoke over the phone with a call center representative in order to process account withdrawals. The recordkeeper had failed to follow up with an email confirming the withdrawals, only sending confirmation via snail mail. By the time the participant received the letter, the money was already gone from the account, according to the lawsuit. "Some of these problems could be prevented if people were asked to provide real-time information," Buckmann notes. "Employers have phone numbers on file, email addresses, security questions, etc. There are real-time confirmation points."

But this abundance of participant information, with numerous storage points, can have critical side effects for participants, plan sponsors and service providers. Rob Projansky, a partner in the Employee Benefits group for Proskauer, explains that, aside from a hacker stealing money, there's the drawback that defined contribution (DC) plans have an extensive amount of sensitive employee data shared through multiple channels. This

distribution of information faces greater risk as plan professionals and participants access unsecured networks at home without proper security protocols.

Projansky says the personal material includes “Social Security numbers, birthdays, bank accounts, medical information, beneficiary information, etc.”

“And the other problem is that benefit plans don’t just hold the data themselves,” he adds. “They share it with service providers, and that creates numerous points of entry for cybercriminals. The cybercriminal doesn’t even need to fool the plan for a breach, it can fool the vendor or the participant, people for whom the plan has a lot less control.”

The economic fallout caused by the pandemic also encourages hackers to exploit these openings. The passage of the Coronavirus Aid, Relief and Economic Security (CARES) Act has eased the process of withdrawing assets from a DC plan and removed early withdrawal penalties. Jordan Mamorsky, of counsel at the Wagner Law Group, says he supposes that a portion of increased personal withdrawals from these accounts will be cyberattacks. “This is why it’s important for plan sponsors to realize that they are exposed, their participants are exposed, and they need to implement measures to make sure they are adequately protected under the law and under ERISA,” he states.

The [Cybersecurity and Infrastructure Security Agency \(CISA\)](#) has released free services and cyber resource hubs, along with telework guidance and resources to assist in combatting cyberattacks, especially in remote work environments. While plan sponsors can find tips and best practices for securing their networks, there is little guidance on what prudence looks like when it comes to protecting participants’ cybersecurity. Instead, the Department of Labor (DOL) expects plan administrators to already have security measures in place. “There are a lot of moving parts here, and there is no objective bright line practice that administrators can adhere to,” Mamorsky says.

While the DOL offers limited guidance, there are still best practices employers can use to [minimize their risk](#) of a cyberattack and any future litigation. Plan sponsors can send cyber tips on working remotely to participants, encourage workers to lock their computers, turn off personal electronic assistants, lock video conferences, hide personal information while on video, secure passwords, stay alert to phishing, and properly store and destroy documents, Projansky says.

Implementing two-factor authentication will also diminish cyberattacks, Buckmann adds. “People are now even thinking about other factors of authentication. They can do voice authentication, where they can match your voice--there’s all kinds of technical

advancements that can be helpful here,” she says.

When selecting a plan provider or partnering with third parties, Mamorsky recommends employers review plan documents and contracts with service providers to ensure they feel comfortable with the provisions of the plan. Employers also should implement a request for proposals (RFP) process that asks how a vendor is committed to data privacy and what their security process entails, Projansky advises.

Additionally, Projansky recommends combing through cyber-liability insurance with the help of an experienced broker and an insurance specialist attorney, who can take a look at the policy and suggest types of coverage that are essential and what to ask for.

It’s important to note that cyber insurance has certain key features distinctive from other plan policies, Projansky says. He says plan sponsors should ask if the policy covers data that is in control of independent contractors. Does it cover investigations? Does it cover social engineering? Are there any exclusions for ERISA violations? “People need to hone in on what those policies say to make sure that they have the coverage that they think they do, and the coverage that they want,” he says. “It’s an investment, but it’s a small investment relative to a large risk.” Amanda

Umpierrez, *PLANSPONSOR*, www.plansponsor.com, July 10, 2020.

12. SCAMMERS IMPERSONATE THE FTC, TOO:

Scammers never seem to run out of new ways to try to take your money or steal your identity, especially in times of crisis like the one we’re living through now.

One of the latest schemes involves an email that claims--falsely--that it came from me. It might say you’re entitled to some money from a phony “Global Empowerment Fund” and tell you to give your bank account number or credit card information.

These emails are not from me or anyone else at the FTC. They are a scam. The FTC will never send you an email asking you to share your bank account information. Or your Social Security number. Or your credit card number.

In fact, anyone who asks you to wire money or pay by gift card or with cryptocurrency is a scammer.

If you’ve encountered this scam or any other, report it to the FTC at ftc.gov/complaint so we can warn others. If you’ve given your personal information to someone you don’t know, you may be at risk for identity theft. Visit identitytheft.gov to learn what to do if a scammer

has your personal information. Juliana Gruenwald Henderson, Senior Public Affairs Specialist, FTC, www.ftc.gov, July 14, 2020.

13. SEC CHARGES APP DEVELOPER FOR UNREGISTERED SECURITY-BASED SWAP TRANSACTIONS:

The Securities and Exchange Commission today charged California-based Abra and a related firm in the Philippines for offering and selling security-based swaps to retail investors without registration and for failing to transact those swaps on a registered national exchange.

According to the SEC's order, Abra developed and owns an app that enabled users to bet on price movements of U.S.-listed equity securities. Using the app, individuals were able to enter into contracts that provide synthetic exposure to price movements of stocks and exchange-traded fund (ETF) shares trading in the U.S. through blockchain-based financial transactions with Abra or with related company Plutus Technologies Philippines Corp. The order finds that Abra told users they could choose securities whose performance they wanted to mirror, and the value of their contract would go up or down the same amount as the price of the underlying security. The order further finds that these contracts were security-based swaps subject to U.S. securities laws.

As described in the order, in February 2019 Abra started offering the contracts to investors in the U.S. and abroad. The order finds that Abra marketed its app to retail investors, yet Abra took no steps to determine whether users who downloaded the app were "eligible contract participants" as defined by the securities laws. According to the order, Abra stopped offering contracts in February 2019, after conversations with SEC staff, but resumed the business in May 2019, this time attempting to limit the offers and sales to non-U.S. people. Although Abra moved certain operations outside the U.S., the order finds that its employees in California designed and marketed the swap contracts, and screened and approved users who would be allowed to buy the contracts. The order further finds that Abra's U.S.-based employees effected thousands of stock and ETF purchases in the U.S. to hedge the contracts.

"Businesses cannot ignore the registration requirements designed to provide investors with the information necessary to evaluate securities transactions," said Daniel Michael, Chief of the SEC Enforcement Division's Complex Financial Instruments Unit. "Further, businesses that structure and effect security-based swaps may not evade the federal securities laws merely by transacting primarily with non-U.S. retail investors and setting up a foreign entity to act as a counterparty, while conducting crucial parts of their business in the United States."

The SEC's order finds that Abra and Plutus Technologies violated federal securities law provisions concerning unregistered offers and sales of security-based swaps and requiring that certain swap transactions occur on a registered national exchange. Without admitting or denying the findings in the order, Abra and Plutus Tech agreed to a cease-and-desist order and to pay a combined penalty of \$150,000. In a parallel action, the Commodity Futures Trading Commission announced a settlement with Abra and Plutus Technologies arising from similar conduct.

The SEC's investigation was conducted by Michael Baker and Deborah Tarasevich of the SEC's Cyber Unit and Brent Mitchell and Reid Muoio of the SEC's Complex Financial Instruments Unit and supervised by Mr. Michael and Kristina Littman, Chief of the Cyber Unit. The SEC appreciates the assistance of the CFTC. Securities and Exchange Commission, Press Release 2020-153, www.sec.gov, July 13, 2020.

14. U.S. EXECUTES FIRST FEDERAL INMATE SINCE 2003:

The Trump administration carried out the first federal execution since 2003, after a divided Supreme Court rejected inmate claims that using pentobarbital for lethal injections would be unconstitutional.

In an unsigned opinion, the court's five-member conservative majority sought to end the fusillade of litigation four condemned men and their allies filed since [Attorney General William Barr announced plans](#) a year ago to reactivate the federal death chamber in Terre Haute, Ind.

Daniel Lewis Lee was pronounced dead at 8:07 a.m. EDT after federal prisons officials injected him with a lethal dose of pentobarbital, a barbiturate. Two other convicted murderers are also set to be put to death this week, and another is scheduled for execution in August 2020.

President Trump strongly [supports capital punishment](#), and his administration has made resumption of federal executions a priority, putting it at odds with [national trends](#) that have seen both use of and public support for capital punishment decline. Mr. Trump's expected Democratic opponent, former Vice President Joe Biden, has said he would seek to repeal the federal death penalty and encourage states to follow suit.

Thirty-two states have abolished the death penalty or haven't carried out an execution in more than a decade, according to a report from the nonprofit [Death Penalty Information Center](#). In 2019, 22 inmates were executed, about half of the number of executions in

2010, and more than 75% lower than peaks in the 1990s, the report said.

Mr. Lee, 47, had been scheduled to die for the 1996 killings of an Arkansas gun dealer, his wife and her 8-year-old daughter. But U.S. District Judge Tanya S. Chutkan of the District of Columbia blocked the government from proceeding so that the inmates could present arguments that pentobarbital, the drug chosen for lethal injection, could cause “extreme pain and needless suffering during their executions.”

The U.S. Court of Appeals for the District of Columbia Circuit declined the government’s immediate request to reinstate the executions, but set an expedited schedule to hear the case. The Justice Department appealed to the Supreme Court, sending the justices into a late-night review of the death-penalty claims days after completing their annual term.

The conservative justices would have none of it. The court’s role was to “fairly and expeditiously” resolve challenges to lawful sentences, the court said, leaving the wisdom of capital punishment to the legislative process. The court’s four liberal justices dissented, with two of them suggesting the death penalty itself couldn’t be applied in accord with the Constitution.

Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh constituted the majority. “In keeping with that responsibility, we vacate the District Court’s preliminary injunction so that the plaintiffs’ executions may proceed as planned,” the court said.

Mr. Lee was seen strapped to a gurney wearing a brown shirt with an IV in his left arm, according to media accounts. A spiritual adviser was present. Asked if he wanted to make a final statement, he said, “I didn’t do it. I’ve made a lot of mistakes in my life, but I’m not a murderer.” “You’re killing an innocent man,” he said.

Mr. Lee was convicted in 1999 of crimes including three counts of murder in aid of racketeering, a federal crime. Prosecutors said he broke into the family’s home in rural Arkansas with another man, Chevie Kehoe. Together they suffocated the family before throwing their bodies in a bayou. Prosecutors said the men were on a quest to establish a whites-only republic in the Pacific Northwest using guns and money stolen from the victims. Mr. Kehoe was sentenced to life in prison.

“Lee finally faced the justice he deserved,” Mr. Barr said in a statement that recounted the inmate’s brutal crimes. “The American people have made the considered choice to permit capital punishment for the most egregious federal crimes, and justice was done today in

implementing the sentence for Lee's horrific offenses."

While the death penalty remains on the books in most of the country, public opinion has been moving away from capital punishment and its imposition has become increasingly confined to Texas and a few other states. Colorado repealed the death penalty earlier this year, following its abolition by New Hampshire, Washington state, Maryland, Connecticut and Illinois within the prior decade. During that time, the governors of California, Pennsylvania and Oregon have declared moratoriums on carrying out executions.

The Nebraska Legislature repealed the death penalty in 2015, overriding the governor's veto. The next year, voters reinstated capital punishment by approving a statewide ballot measure.

An October 2019 Gallup poll found that 56% of Americans approve of the death penalty for convicted murderers. When asked to choose, however, for the first time Americans said they favor life imprisonment without parole over execution, 60% to 34%.

Most of America's major allies, including the U.K., Canada and the European Union, have abolished capital punishment. Last week, the EU asked the Trump administration to call off the executions. The death penalty "is a cruel, inhuman and degrading punishment, incompatible with the inalienable right to life, fails to provide effective deterrence to criminal behavior, and is irreversible," the EU said.

The [other prisoners set to die](#) this week are Wesley Ira Purkey, convicted of raping and killing a 16-year-old girl then burning and dismembering her body, and Dustin Lee Honken, convicted of fatally shooting five people, including two children. A fourth man, Keith Dwayne Nelson, who was convicted of kidnapping and raping a 10-year-old girl before killing her, is scheduled to be executed Aug. 28.

In separate orders issued without opinions or noted dissent, the court also rejected Mr. Lee's claim that he had ineffective counsel, and a suit from Earlene Peterson, the 81-year-old mother of one of Mr. Lee's victims. She had contended the federal Bureau of Prisons hadn't taken adequate precautions to protect her and other execution witnesses during the coronavirus pandemic.

Ms. Peterson, along with her daughter and granddaughter, had urged Mr. Trump to commute Mr. Lee's sentence to life imprisonment. The challenge to pentobarbital was unworthy of consideration, the court said. States had for decades sought "new methods, such as lethal injection, thought to be less painful and more humane than traditional

methods, like hanging, that have been uniformly regarded as constitutional for centuries,” the court said.

The federal government followed that trend by selecting single-dose pentobarbital, which “has become a mainstay of state executions,” the court said. The barbiturate “has been repeatedly invoked by prisoners as a less painful and risky alternative to the lethal injection protocols of other jurisdictions,” the court said.

The inmates had cited experts who suggest that “pentobarbital causes prisoners to experience ‘flash pulmonary edema,’ a form of respiratory distress that temporarily produces the sensation of drowning or asphyxiation,” the majority opinion noted. But the government disputed those claims, and the eve of execution simply was too late to raise them, the high court concluded.

Dissenting Justice Sonia Sotomayor, joined by Justices Ruth Bader Ginsburg and Elena Kagan, said the majority was sidestepping necessary review to aid the government’s rush to the execution chamber. “The dangers of that practice are particularly severe here, where the grant of the Government’s emergency application inflicts the most irreparable of harms,” she wrote.

In a separate dissent, also joined by Justice Ginsburg, Justice Stephen Breyer raised broader questions about capital punishment that he said put its constitutionality in doubt. “The death penalty is often imposed arbitrarily,” he wrote. For instance, “Mr. Lee’s co-defendant in his capital case was sentenced to life imprisonment despite committing the same crime.”

An earlier challenge to the lethal injection protocol derailed Mr. Barr’s plans to begin executions last December, but in April the D.C. Circuit, by a 2-1 vote, rejected inmate arguments that the single-drug lethal injection protocol violated the federal Death Penalty Act, which requires that federal executions be conducted in the manner prescribed by the state where the prisoner was convicted, or an alternate state if the state of conviction has no death penalty. The Supreme Court declined to review that decision. Jess Bravin and Sadie Gurman, *The Wall Street Journal*, www.wsj.com, July 14, 2020

15. FOR THOSE WHO LOVE WORDS (LOGOPHILES): I wasn't going to get a brain transplant but then I changed my mind

16. INSPIRATIONAL QUOTE: "Try to be a rainbow in someone's cloud." -*Maya Angelou*

17. TODAY IN HISTORY: On this day in 1969, Apollo 11 launched, carrying the first men to land on the Moon.

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