



CYPEN & CYPEN NEWSLETTER for July 23, 2020

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

1. BILL PUSHED FORWARD IN NEW YORK THAT WOULD MANDATE ALL OFFICERS HAVE PERSONAL LIABILITY INSURANCE:

New York state lawmakers have introduced a bill to require personal liability insurance for police officers as a way to deter abuses, claiming that the insurance would cover civil lawsuits filed against them for excessive force issues.

Sen. Alessandra Biaggi (D-Bronx), the author of the bill, wishes to end the practice of cities and counties paying out for misconduct of employees, often in frivolous lawsuits.

“Officers who have misconduct claims brought against them may see their premium go up and will be required to pay those costs. The purpose of this bill is to establish a financial disincentive for police misconduct and create accountability for abhorrent behavior,” she said.

Between July of 2017 and June of 2018, NYC paid out \$230 million in 6,472 cases for alleged misconduct or alleged wrongdoing by officers, according to stats obtained by the [New York Post](#).

“While taxpayers bailout law enforcement who engage in misconduct, those same officers too often evade meaningful accountability,” Biaggi said. Another bill was recently proposed that would strip officers of their pensions if they are found guilty of misconduct.

The moves come after the defunding of the NYPD went from a mere idea to a chilling new reality for officers, causing a breakdown in morale. LEO Affairs, www.leoaffairs.com, July 7, 2020.

2. SENATE PASSES FIREFIGHTER DISABILITY - PENSION BILL:

State senators voted to guarantee firefighters tax-free disability pensions if they get cancer and make it more difficult to revoke occupational licenses for criminal convictions. But Senate President Dominick Ruggerio said he does not support a move by the House of Representatives to send all Rhode Island voters mail ballot applications.

The [firefighter pension bill](#) would legally presume any cancer diagnosed in a firefighter or retired firefighter was caused by their work, entitling them to two-thirds of their pay in a lifetime tax-free pension. It passed 32 to 3.

The bill was inspired by a Supreme Court ruling last December in which the high court sided with the state’s argument that firefighters had to prove their cancers were caused by firefighting to get disability pensions.

The Rhode Island League of Cities and Towns argued that the bill is one of [“the most generous in the nation”](#) and would make it impossible for municipalities to deny disability pensions to firefighters even if their cancers appeared to be caused by other risk factors. State actuaries estimate that the change in the law will create one new disability pension across all municipalities every two years.

Sen. Frank Lombardi, D-Cranston, the bill’s sponsor, said there had been 11 cancer-related firefighter disability pension cases since 1986, of which six were approved. “I think we have to say thank you to our firefighters who have been recognized for at least 35 years for all the poisons and toxins they face in their lives,” Lombardi said.

Sen. Jessica De La Cruz, R-North Smithfield, tried unsuccessfully to amend the bill to end disability pensions for cancer survivors who make full recoveries and are able to return to

work. The occupational licensing bill, introduced by Sen. Harold Metts, D-Providence, would prohibit state licensing authorities from revoking or suspending licenses for prior convictions, unless those convictions “relate to the occupation to which the license applies.”

It passed unanimously and the House is expected to vote on it Thursday along with the firefighter bill. The Senate also confirmed Louis DeSimone to the state Board of Elections.

DeSimone, a former lawyer for then-secretary of state Ralph Mollis, replaces Board of Elections vice chairman Stephen Erickson. Sen. Sam Bell, D-Providence, said he was concerned Erickson was being replaced in retaliation for referring House Speaker Nicholas Mattiello’s former [campaign operative Jeff Britt](#) to the attorney general for prosecution.

Bell was one of six senators who voted against DeSimone’s confirmation. The Senate also passed a bill that will allow the state to [condemn land in state airport runway approaches](#) where there are obstacles to airplane takeoffs and landings.

The House introduced a new version of [an elections bill](#) that would make the secretary of state send all voters mail ballot applications for the upcoming primary and general elections. Mailing every voter a mail ballot application for both the September primary and November general election was supported by Common Cause Rhode Island as a way to encourage voting while preventing the spread of COVID-19.

But Ruggiero said he opposes moving to a predominantly mail ballot election because of the cost and problems the state had conducting the June presidential primary. “It did not work well last time when we had a presidential preference primary -- low voter turnout, results came in later,” Ruggiero told The Journal. “If people want a ballot, they know how to apply for it. If they want to go to their city or town hall, they can do that and it goes straight into the machine and goes straight to the Board of Elections.” Patrick Anderson, *Providence Journal*, www.providencejournal.com, July 13, 2020.

3. PUBLIC PENSIONS MAY RETHINK VACATION PAYOUTS AFTER COURT RULING:

Cities and states that let retiring public employees boost their pension benefits with payouts for unused vacation days may rethink that practice after a ruling late last week.

The Arizona Supreme Court [said a one-time](#) payout for unused vacation days doesn’t form part of an employee’s compensation when calculating pension benefits. Though the decision was specific to the city of Phoenix’s pension plan, attorneys and pension consultants say it could have broader implications as municipalities across the country struggle to maintain plans that are underfunded.

“This is a big victory for municipalities going forward,” said Eric M. Fraser, a partner at Osborn Maledon PA, who represented the city of Phoenix in the dispute. “First of all, the practice of pension spiking is significant, and ending pension spiking will save substantial taxpayer money.”

Past Practices

For decades the city of Phoenix allowed eligible employees to profit financially from forgoing vacations by cashing out for a lump sum payment up to two and one-half years of accrued leave. The city then counted the payouts as compensation, thereby allowing plan members to increase or “spike” their pension benefits, the Arizona Supreme Court explained in its decision.

When the city changed that long-standing practice in 2014 to reduce rising pension costs, individual plan members and the unions representing plan members sued, arguing the city had unlawfully redefined and limited the plan’s definition of “compensation.”

The Arizona Supreme Court said the government’s past practice doesn’t give unions a contractual right independent of the plan to include one-time payouts for accrued vacation leave in their compensation calculations for pension benefits.

The court said the terms that bind the unions, the employees and the plan are the plan terms themselves, not the unilateral decisions of the government, even if they were in place for many years, Fraser said. “That’s the way this case, I think, will be very important in the pension plan context,” he said.

The American Federation of State, County and Municipal Employees AFL-CIO Local 2384 didn’t respond to a request for comment. Attorneys for the union and plan members also didn’t respond to a request for comment or questions about whether the unions plan to appeal.

The city of Phoenix made these changes to the plan based on the recommendations of its Pension Reform Task Force, which was formed by the mayor and city council in 2011, Fraser said.

“We are not aware of other municipalities in the state counting retirement payouts for unused vacation as pensionable pay,” he said. “The city of Phoenix is unique, however, in that the City Charter establishes an independent retirement system for city employees specifically. Other municipalities typically do not have their own pension systems and instead participate in the state’s retirement plans.”

However, some consultants expect to see more lawsuits over how vacation is counted pop up as a result of this ruling. “I won’t be surprised if we see more challenges towards this or more people paying attention to it,” said Elliot Dinkin president and CEO of Cowden Associates Inc., a Pittsburgh-based consulting and actuarial firm that specializes in compensation, employee benefits, and retirement plans. “I think it’s enough of a big deal that it will definitely warrant some attention, and Arizona is not alone. There are other municipal pension plans that have similar provisions,” Dinkin said.

Pension Protection

Public pension plans are a key component of the fiscal health of state and local governments, holding just over \$4 trillion in assets for 20 million active and retired public sector employees in 2018, according to a 2019 analysis from the Center for Retirement Research at Boston College.

In May, the center was projecting that most state and local pension plans would end fiscal year 2020 with negative annual investment returns, reduced asset values, lower funded ratios and higher actuarial costs if markets remained at their current levels until June.

Not counting vacation payouts as compensation is not out of step with best practices, and the drive to limit pension spiking is relatively common, said Jean-Pierre Aubry, director of state and local research at the Center for Retirement Research at Boston College.

But in terms of pension finances, it’s not a huge amount, Aubry said. “It’s not like that’s what’s breaking the back of pension finances,” he said.

State and local pension plans are governed by state laws -- unlike pension plans in the private sector, which are governed by the Employee Retirement Income Security Act. Arizona is one of several states that have a pension protection clause in the Constitution, said Anna-Marie Tabor, an attorney and director of the Pension Action Center at the University of Massachusetts Boston.

“What that means is the state legislature in general can’t unilaterally change the rights that the participants have under the plan. So that matters because so many of these plans are underfunded and systems are grappling with what to do about this,” she said.

The plan documents govern how the plan counts unused vacation and that varies state by state and county by county, Dinkin said. “The plan document definition of ‘compensation’ for use for pension purposes is typically defined in the document, and if it’s not all inclusive,

somebody can take an interpretation either way,” he said. Lydia Wheeler, Bloomberg Law, www.bloomberglaw.com, July 15, 2020.

4. NEW JERSEY CONSIDERS TAPPING NEW FED BORROWING PROGRAM TO MEET PENSION CONTRIBUTIONS:

New Jersey lawmakers face an estimated \$10 billion [gap](#) in the state budget for fiscal years 2020 and 2021, attributable largely to sharp tax revenue declines linked to the COVID-19 pandemic. They are considering whether to tap into a new federal borrowing program to help close the shortfall and keep pace with required contributions to the state’s underfunded pension system--including scheduled payments of \$4.7 billion in the fiscal year that started July 1.

The money would come from the Federal Reserve’s recently announced [Municipal Liquidity Facility \(MLF\)](#), a first-of-its-kind borrowing option intended as a [last resort](#) for state and local governments experiencing cash flow pressures stemming from steps taken to shutter the economy and slow the pandemic’s spread.

The Fed [created](#) the facility in April as municipal credit markets came under stress. The board of governors agreed to purchase up to \$500 billion in short-term notes directly from state and local governments as a bridge to help these governments manage revenue losses and delayed collections. After initially offering loan terms of up to 12 months for repayment, the nation’s central bank [extended](#) the maximum term length available to borrowers, first to 24 months and then to three years. The extra time potentially gives states the option to finance parts of their current budgets over multiple fiscal years.

At the request of the New Jersey Legislature, The Pew Charitable Trusts recently conducted an analysis that determined that the MLF could be used to help close the state’s projected budget deficit and keep up with scheduled pension contributions. Pew’s analysis estimates that the facility could provide additional budget capacity of approximately \$1.4 billion under the current terms of the program, and up to \$4.5 billion if terms were extended to allow for borrowing over five years instead of three.

High borrowing costs, which include the Fed’s penalty rate above the typical market rate, may limit widespread use of the MLF as anything other than a last resort. However, MLF pricing as of early July is favorable for New Jersey and Illinois, the two states with the lowest credit ratings and largest unfunded pension liabilities per capita. Illinois was the [first](#) state to access the program. Lawmakers authorized borrowing up to \$5 billion from the MLF to balance the state budget, which includes making required pension contributions. In June, the state borrowed \$1.2 billion to help [reduce a multibillion-dollar backlog](#) of unpaid bills. Illinois officials

have indicated a willingness to borrow more to help cover the projected deficit in fiscal 2021 if the federal government does not provide additional direct aid.

Pew based the New Jersey assessment on a model designed to more evenly distribute projected state revenue over the next three to five years. The methodology assumes one-time borrowing this calendar year, to be repaid in fiscal 2023 to 2025, when the economy is expected to be in recovery.

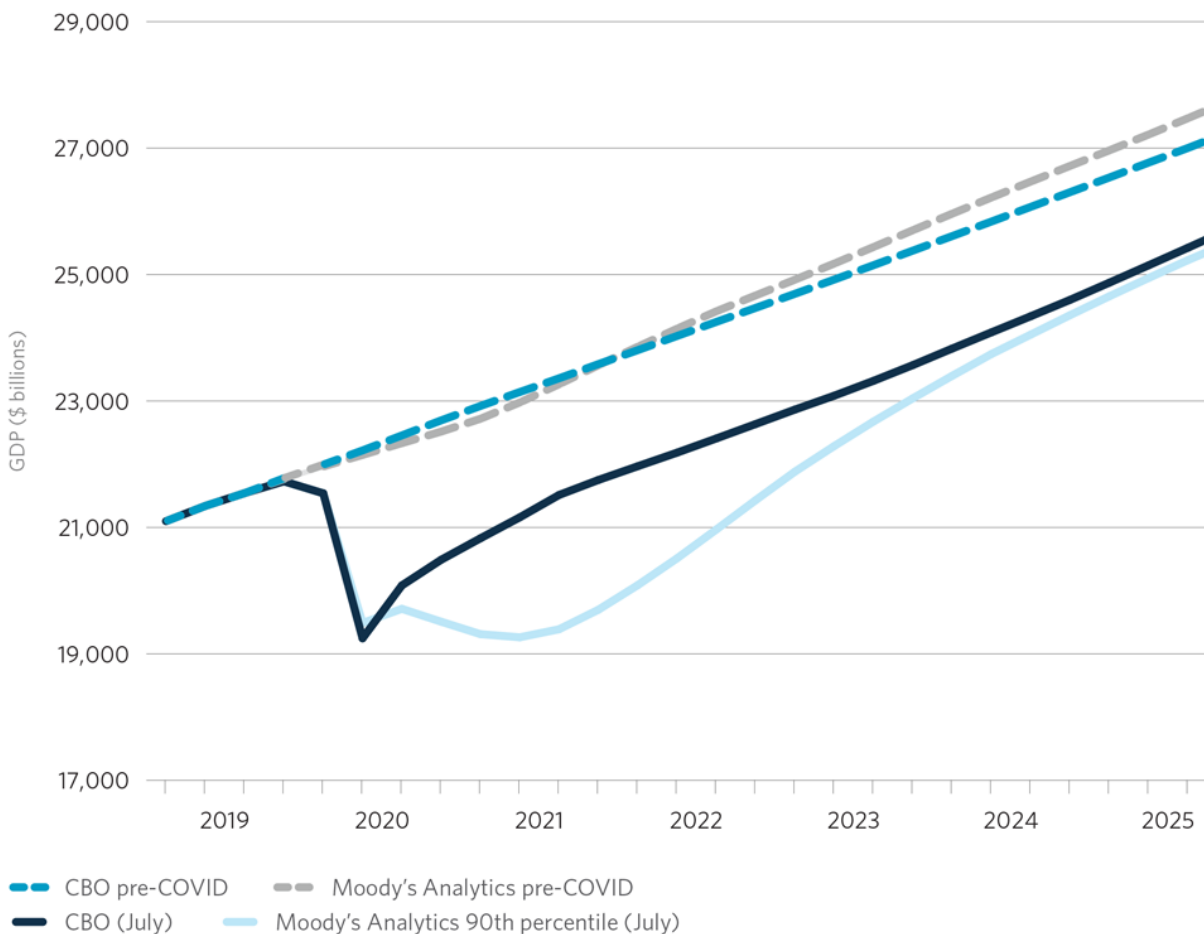
The latest national economic projections from the Congressional Budget Office (CBO) and a Pew-generated forecast of New Jersey's own-source revenue (OSR) over the next five years informed the findings. As tracked by the U.S. Census Bureau, OSR includes taxes and fees that are controlled by the state. The Fed also uses this calculation in determining MLF borrowing caps.

To successfully implement the program, New Jersey policymakers would have to develop a borrowing plan that follows state law and is fiscally prudent. The Pew analysis addresses both issues. Most crucial are potential constraints on deficit financing imposed by the state constitution, which limits its use to [emergencies](#).

Figure 1

Pandemic to Have Major Effect on Nation's Gross Domestic Product

Forecasts show starkly altered paths for economy as of the third quarter of 2020



Note: Moody's Analytics pre-COVID forecast is the baseline (50th percentile). Moody's Analytics 90th percentile forecast is a downside scenario, representing a 90th percentile outcome for GDP—or an outcome worse than 90% of all possible scenarios

Source: Pew analysis of data from the CBO and Moody's Analytics

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In addition, a viable repayment plan would have to account for the wide range of uncertainty about the length and shape of the economic recovery. Current forecasts for national gross domestic product (GDP) from the CBO and Moody's Analytics illustrate how the economy could take starkly different paths by the third quarter of 2020 from pre-pandemic projections. (See Figure 1.) This uncertainty calls for regular monitoring of the economic outlook as well as controls around spending to ensure timely repayment. This could include, for example, a more

limited use of borrowed funds this year if the outlook for state revenue improves.

Pew's analysis also describes how this type of revenue anticipation financing could be applied to the broader budgetary challenges every state is facing, including how to preserve essential government programs and replenish rapidly depleted reserves. In January, states reported rising revenues and record reserve levels that allowed officials to increase spending in key areas. However, as a result of the pandemic, state tax revenue could plunge by a total of more than 10% in fiscal 2020 and 2021, based on data published by the Center on Budget and Policy Priorities. That would be greater than the decline that states experienced in the two years after the Great Recession began in late 2007.

Despite the gradual reopening of the economy, the lost revenue will not be replaced immediately, but analysts are cautiously optimistic that the recovery could be faster than in the last recession. The stock market has already rebounded from heavy losses experienced in March, although pension funds are still expected to fall short of their target returns. For New Jersey, which has the lowest funded ratio among all 50 states, this means that making required contributions must be a top priority.

Still, the usual approaches for managing fiscal difficulties, many of which have already been [attempted](#) in New Jersey, may not be adequate to plug the staggering budget gaps stemming from the unusual shape of the COVID-19 downturn. If New Jersey and other states implement and follow disciplined controls, the MLF could prove to be an important policy instrument to help manage immediate budget problems until conditions improve and to ensure that contributions continue as planned to critical public employee pension funds. Greg Mennis & Ben Henken, PEW, www.pewtrusts.org, July 15, 2020.

5. FORTY PERCENT OF DB PLANS COULD ADOPT STRATEGIES TO LOWER PBGC PREMIUMS:

For thousands of defined benefit (DB) plan sponsors, sound pension management has become, in large part, management of Pension Benefit Guaranty Corporation (PBGC) premiums, October Three notes in its [fourth annual PBGC Premium Burden report](#).

PBGC premiums for single-employer plans are calculated as the sum of a flat-rate premium (\$83 per participant in 2020) plus a variable-rate premium (4.5% of unfunded PBGC liability in 2020, with a cap of \$561 per participant). The flat-rate premium (FRP) more than doubled between 2010 and 2019 (from \$35 to \$80 per participant), and the median plan saw its FRP double as well (from \$43,000 in 2010 to \$86,000 in 2019).

For the variable rate premium (VRP), while there was a decrease in 2017 and 2018,

premiums bounced back in 2019 due to poor 2018 asset performance. Other variables, such as employer contributions, benefit accruals and capital market fluctuations, also affect the VRP. Since 2010, the VRP rate has increased almost five-fold (from 0.9% in 2010 to 4.3% in 2019), while the median VRP paid has increased by more than seven times (from \$22,000 to \$167,000).

October Three notes that good asset performance in 2019 is expected to help offset 2020 premium increases, but it warns that premiums are likely to spike higher in 2021 based on adverse capital markets in the first half of 2020. The report's analysis focuses only on the roughly 5,000 plans that cover at least 250 participants.

A minority of plans (more than 30% in 2019) are overfunded and didn't owe any VRP. At the other extreme, 30% of plans saw premiums limited by the VRP cap in 2019, a percentage that has grown steadily. October Three notes that it is the plans in the middle, about 40% of plans in 2019, for which [adopting best practices regarding timing and recording of pension contributions](#) translates to millions of dollars in lower PBGC premiums.

"Minimizing PBGC premiums depends on plans' maximizing the use of 'grace period' contributions—amounts contributed to a plan after the end of the plan year but still attributable to that plan year. This is what we call best practices. Failure to adopt best practices around quarterly contribution requirements and applying funding balance has caused plan sponsors to pay higher PBGC premiums than necessary due to not maximizing and getting full credit for grace period contributions," the report explains. "In many cases, all or part of contributions made to satisfy quarterly contribution requirements could have been characterized as grace period contributions but weren't. So, plans often report lower asset values than they could have and, as a result, pay higher premiums than they need to."

October Three notes that, sometimes, this strategy for minimizing PBGC premiums can't be done. Plans that are less than 80% funded must make cash contributions to satisfy funding requirements, and other plans that don't satisfy prior year requirements until the funding deadline can't record grace period contributions optimally.

Another best practice the firm recommends involves modest acceleration of pension contributions. For a calendar year plan that was at least 80% funded in the prior year, it recommends:

- Accelerating quarterly contributions due on October 15 to September 15 and recording those contributions for the prior year.
- Accelerating residual minimum required contributions due on September 15 to April

- 15, which allows plans to record April 15 and July 15 contributions for the prior year.
- Accelerating quarterly contributions due on January 15 to September 15 and recording those contributions for the prior year; and
 - Accelerating voluntary year-end contributions to September 15 and recording those contributions for the prior year.

“The accelerations above are modest--from as little as one month to five months at the most. And, other than voluntary year-end contributions, these contribution amounts are usually known months in advance,” the report says. “But the payoff to plan sponsors could be huge. Our analysis indicates that failure to adopt these best practices has caused plan sponsors to pay \$1.2 billion more in premiums between 2011 and 2018 than they needed to.”

The election of the rate used to measure unfunded vested benefits (UVBs) may have a material effect on how much PBGC variable-rate premiums a DB plan sponsor must pay. October Three explains that the “standard” liability measurement for calculating PBGC premiums is based on the most recent monthly spot rates (December 2019 rates for 2020 premiums for calendar year plans), but PBGC allows an “alternative” liability measure based on 24-month average interest rates (with a 0- to 4-month lookback, depending on the plan’s minimum funding election). Plans may move from one method to the other but are “locked in” for five years after each move, so some plans may not have a chance to change their election for 2020.

According to October Three’s data, at least 120 plans with at least 250 participants changed to the standard method in 2019, reducing their premiums by an estimated \$130 million compared with the alternative method. However, interest rates fell dramatically during 2019, so that for 2020, the PBGC alternative method produces a much lower liability than the standard method. Barring unusual situations--for example, plan merger or termination, 2020 contribution to fully fund plan, significant headcount reductions triggering the VRP cap--many DB plan sponsors that elected the standard method for 2019 will see 2020 premium increases more than offset the 2019 savings.

“Given that the 2019 election was not due until October 15 and interest rates had already fallen by then, this unfortunate election could have been avoided by looking just one year ahead. Making matters worse, rates have continued to fall during 2020, so the standard method will likely produce a higher PBGC premium for 2021 as well,” the report states.

October Three recommends that plans that are free to elect the alternative method for 2020 should do so. However, it advises revisiting the interest rate environment in early October before making a final election. Rebecca Moore, *PLANSPONSOR*, www.plansponsor.com,

July 16, 2020.

6. STATE-RUN RETIREMENT PLANS ON THE RISE FOR RESIDENTS WITHOUT ACCESS TO WORKPLACE OPTIONS:

The [coronavirus](#) pandemic has made it even more challenging for Americans to save for [retirement](#) as millions cope with [job](#) losses, but some states are hoping to help their residents stash away cash with plans of their own.

At least seven states have already implemented their own retirement savings plans, while another 30 are considering legislation, according to data from the AARP.

State-run options may be particularly helpful as households look for ways to shore up their finances amid the pandemic.

More than one in three people were thinking about or had already decreased retirement savings contributions, according to data from TD Ameritrade. And others are putting retirement plans on hold. Forty-four percent of people said they would delay retirement as a means to cut costs, while 51 percent were open to picking up a job.

Meanwhile, prior to the pandemic, according to the [White House](#), 38 million Americans in the private sector did not have access to retirement plans through their employers as of last year. Workplace plans are a critical way many people can [bolster their savings](#).

Here's a look at plans offered, or to be offered, in some states, as compiled by AARP.

Auto IRA

Multiple states offer workplace retirement plans with automatic payroll deductions into an IRA, often for individuals without access to an employer-provided plan.

There are usually opt-out features for employees. However, qualified businesses may be required to offer the feature and can face penalties in some instances for failing to do so.

States offering an iteration of an auto IRA include California, Connecticut, Illinois, Maryland and Oregon.

Multi-employer plan

A multi-employer plan allows [small businesses](#) to band together to offer retirement benefits like 401(k) accounts.

By joining together, small businesses are more easily able to offer benefits that rival those awarded by larger corporations.

The program is generally voluntary for business owners that choose to participate. In some cases, enrollment may be automatic for workers at participating businesses – with opt-out available.

Massachusetts and Vermont are working on multi-employer plans.

Payroll Deduction Roth IRA

In New York, the state-run retirement plan features a Roth IRA. Contributions to a Roth are made after-tax, so withdrawals would be tax-free.

Participation is mandatory for some employers, and enrollment would be automatic for workers at firms that sign up. Brittany De Lea, www.foxbusiness.com, July 15, 2020.

7. NEARLY A THIRD OF WORKERS MAY DELAY RETIREMENT DUE TO COVID-19:

Recent survey results found that the economic fallout from COVID-19 has altered the perception of when many workers plan to retire, but retirement confidence levels appear to be rebounding somewhat.

The [Wells Fargo/Gallup Investor and Retirement Optimism Index](#), based on interviews of more than 1,000 investors conducted May 11-17, found that 30% of employed investors say it's "very or somewhat likely" they will delay the age at which they retire as a result of the recent economic downturn. A similar percentage (29%) think it's likely they will work more than they intended in their retirement.

The impact of the downturn has been especially pronounced on employed investors who are closer to retirement age--those aged 50 to 64. Wells Fargo notes that 40% of this group-- compared with 22% of investors aged 18 to 49--say they are very or somewhat likely to work more than they intended to in retirement as a result of the downturn. Not surprisingly, older, nonretired investors are also more likely than those under 50 to say they will have to retire later than they originally planned.

The pandemic has also compelled one in four investors to take on more financial responsibility for family members. The largest percentage (16%) reports providing greater financial assistance to an adult child, while 7% say they have assisted a parent and 7% another relative. As of the May survey, 27% of nonretired investors had suffered a loss of income or pay, 15% had been furloughed or temporarily laid off and 1% had been permanently let go.

On the plus side, the so-called economic shutdown has caused most investors (64%) to spend less than usual, and as a result, one-third say their savings increased during this period, while a smaller percentage (21%) say their savings decreased.

Most respondents also remain optimistic about reaching their five-year investing goals. Nearly 7 in 10 investors currently feel very (21%) or somewhat (48%) confident about investing in the stock market as a way to build wealth for retirement. Just 8% of investors see the current stock market environment as a time to decrease their stock holdings to protect against further losses. Nearly half say it's a time to hold what they have and wait for the market to come back, while 35% see it as a buying opportunity.

Additionally, most investors (64%) say setting aside more money in an emergency fund is a change they would make to their financial or investing strategy as a result of the coronavirus. Close to half say they are very or somewhat likely to spend more time creating a long-term financial plan.

Retirement Confidence

Meanwhile, a [similar survey](#) from Lincoln Financial shows that U.S. adults are feeling more financially confident about their retirement prospects, but there is some fluctuation. According to their findings, consumers' retirement confidence rose to pre-COVID levels in April, dropped drastically in early May, but then rebounded by June.

As of mid-June, 27% of working age U.S. adults felt very or extremely confident about three key aspects of retirement readiness:

- being able to accumulate enough money so they can retire when they want.
- being able to convert their savings when they retire into income that will last the rest of their lives; and
- having enough money to maintain the lifestyles they want in retirement.

The firm observes that a few factors may be at play: market performance, mixed feelings about the economy and unemployment rates. In March and April, the overall trend in retirement sentiment closely tracked stock market performance. The stock market hit a low in mid-March and saw another dip in early April, but rose during the remainder of April and throughout May.

Throughout the COVID-19 situation, the firm has also seen retirement confidence vary widely across age groups:

- **Pre-retirees:** The 55-64 age group saw the biggest drop in confidence, from a high of 33% in the beginning of March, to 27% in the second half of March, and remaining consistent in early April. In the second half of April, confidence rebounded as the stock market rallied. In May, confidence continued to drop steadily, ending at 24%.
- **Mid-career:** Those between 35 and 54 saw a smaller dip in confidence during March (23% in early March to 19% in the second half), but confidence shot up in April. In early May, confidence dropped to 17%, the lowest the firm has seen since the COVID-19 situation began. But by late May, confidence jumped to 27%.
- **Early career:** The 18-34 age group saw a six-point drop between January and early March, coinciding with early signs of market volatility, but confidence shot up in late May to 33%, the highest the firm has seen in 2020 for this age group.

Ted Godbout, NAPA, www.napa-net.org, July 13, 2020.

8. NEARLY HALF OF AMERICANS DON'T FORESEE MOVING BEYOND CURRENT FINANCIAL STATUS:

The COVID-19 pandemic and the resulting economic fallout have revealed how fragile financial security is for many Americans. It shrunk the portion of respondents to Prudential's Financial Wellness Census who qualified as financially confident to 36%, down from 40% in 2019, while increasing the number of the discouraged respondents to 33% from 31% only a few months prior. Prudential data shows that people of color, women, younger people, small business owners, gig workers and those employed in the retail industry were disproportionately impacted.

"The first months of the COVID-19 pandemic largely reversed nearly three years of financial gains in the United States, reducing the ranks of American adults who are objectively financially healthy to 50%," Prudential says.

But issues with financial wellness are not just COVID-19-related. Nearly half of Americans seem to perceive their financial mobility as fixed, according to Prudential's 2020 census report.

The percentage who had a "discouraged" or "pessimistic" view of their financial future stood at 49% in 2017--during the longest economic expansion in U.S. history--and 47% in 2020--in the throes of a global crisis--revealing a sense of persistent financial inertia. Prudential defines "discouraged" as those people who have a low level of financial health by objective measures and recognize it. Those who are "pessimistic" have a high level of financial health, but nonetheless have a negative view about their finances.

Offering a financial wellness program to employees has been considered a value-added benefit, but the pandemic suggests it is an urgent necessity. “This outbreak has just shone a light on an existing problem: Too many people are already living paycheck to paycheck,” Brian Hamilton, vice president at Smart Dollar, [previously told PLANSPONSOR](#). “American workers are up to their eyeballs in consumer debt. We’re spending more than we make. We have little to nothing saved, and we’re not putting money away for retirement. We will get through this, and when we do, everything must change.”

The Society of Actuaries (SOA) says financial wellness programs need to be designed so individuals of different fragility levels can connect to what is useful and important to their situation. The SOA interprets financial fragility as vulnerability to a financial crisis and having a negative outlook of personal finances.

Those with high fragility are much more likely to have short planning horizons and to prioritize everyday bills over retirement or emergency savings. Debt, especially credit card debt, is a major barrier, with 94% of those with high fragility holding some form of debt and 56% reporting credit card debt.

“Reducing financial fragility is an important step in helping individuals manage the priorities of today and those of the future, especially funding a secure retirement,” the SOA [says in its report](#), “Aging and Retirement: Financial Fragility Across the Generations.”

Prudential says employee benefits are essential to financial health. Asked to identify the workplace benefits and attributes they value most, census respondents most frequently selected retirement savings opportunities, paid time off, and comprehensive health care and prescription medicine coverage.

However, the federal government is viewed as the most common source of financial assistance in times of crisis, cited by 32% of all respondents. This was followed by family and friends (28%), state and local governments (27% and 17%, respectively) and current or former employers (14%).

Prudential suggests that to increase resilience, stakeholders should, among other things, ensure fair access to capital, financial advice and products, especially in communities of color; make affordable, accessible health insurance coverage available to more Americans; continue to invest in social safety nets; provide greater access to retirement plans; and increase access to guaranteed income solutions.

The 2020 Financial Wellness Census report may be downloaded from <https://news.prudential.com/census.htm>. Rebecca Moore, *PLANSPONSOR*, www.plansponsor.com, July 15, 2020.

9. IRS ISSUES ADDITIONAL GUIDANCE FOR RETIREMENT ACCOUNT WITHDRAWALS IN 2020:

The IRS recently released Notices [2020-50](#) and [2020-51](#), on June 19 and June 26, respectively, which offer important but temporary relief to individuals who took their Required Minimum Distributions (RMDs) in 2020 prior to the enactment of the CARES Act. The Notices also expanded the number of people eligible to withdraw “coronavirus related distributions” from their retirement accounts.

Relief for Individuals Who Received an RMD

Upon reaching age 72, individuals must start withdrawing RMDs from their retirement accounts. The CARES Act, which was signed into law on March 27, 2020, waived RMDs for most retirement accounts for the year 2020, including 401(k) plans, IRAs, and 403(b) plans. A summary of the key provisions of the CARES Act as related to individuals can be found [here](#). The RMD waiver included the following types of RMDs:

- 2020 RMDs for the account holder
- 2020 RMDs for inherited IRAs
- 2019 RMDs required to be taken by April 1, 2020 (i.e. for individuals who reached age 70 1/2 in 2019 (meaning the first distribution must be taken by April 1, 2020), and the individual had not yet taken the first RMD).

As a result of the guidance provided in the IRS Notices, if you took an RMD from one of the three categories above, you discovered you were not required to take the RMD, and you would like to put it back into a retirement plan (meaning you will not have to pay tax on it), there are three paths to accomplishing that result:

- **Repayment:** If the distribution came from an IRA, you could return it to the same account, tax-free, by August 31, 2020. This is true even if you are the non-spouse beneficiary of an inherited IRA. Typically, there is a limitation that you can only complete one IRA-to-IRA rollover every twelve months, but that rule does not apply to this repayment option. There is no option to return RMDs to other types of accounts, such as 401(k) accounts.
- **Rollover:** Typically, an RMD cannot be rolled over into another IRA account. However, an RMD that was taken in 2020, but which turned out not to be required due to the CARES Act, can be rolled over into an IRA. For an inherited account, this option

works only if the beneficiary of the inherited retirement account is the surviving spouse of the participant. If eligible, the RMD can be rolled over within 60 days or by August 31, 2020, whichever is later. This option is subject to the once-per-12-months limit on IRA-to-IRA rollovers.

- **Coronavirus-related distribution:** If the distribution qualifies as a coronavirus-related distribution (discussed below), you can roll it over any time within three years after you receive it. For an inherited account, this option works only if the beneficiary of the retirement account is the surviving spouse of the participant. This option is not subject to the once-per-12-months limit on IRA-to-IRA rollovers.

The above rules will not apply in the following circumstances:

- If you were born after June 30, 1949 and therefore did not attain age 70 1/2 prior to 2020, then 2021 will be the first year an RMD is required.
- If you did not take an RMD in 2020, these repayment options do not affect you. No RMD is required in 2020.
- If you took an RMD but want to or need to keep the RMD.
- If you are not required to take a distribution (but did), or if you withdraw more than your RMD, those distributions are still subject to the 60-day rollover period, and the once-per-12-months limit on IRA-to-IRA rollovers.
- An RMD that you missed in a prior year. The CARES Act does not provide relief for this situation.

Expansion of Those Eligible for Coronavirus-Related Distribution

A coronavirus-related distribution is a withdrawal from certain retirement accounts (including IRAs, 401(k) plans, 403(a) and (b) plans, and 457 plans) taken in 2020, up to an amount of \$100,000, by a person who was impacted by the coronavirus. The impact could be direct, through a COVID-19 diagnosis of the individual or a spouse, or various circumstances resulting in a financial impact, which were expanded under the Treasury Notices, such as the individual or spouse being quarantined, furloughed, or being unable to work as a result of childcare needs. An eligible coronavirus-related distribution is not subject to the 10% withdrawal penalty and will be included in the individual's income equally over 3 years, unless rolled over into a retirement account, as described above. Jacqueline L. Messler, *The National Law Review*, www.natlawreview.com, July 13, 2020.

10. IRS NEWSWIRE - SENIORS, RETIREES NOT REQUIRED TO TAKE DISTRIBUTIONS FROM RETIREMENT ACCOUNTS THIS YEAR UNDER NEW LAW:

The Internal Revenue Service today reminds seniors and retirees that they are not required to take money out of their IRAs and workplace retirement plans this year.

The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, waives required minimum distributions during 2020 for IRAs and retirement plans, including beneficiaries with inherited accounts. This waiver includes RMDs for individuals who turned age 70 ½ in 2019 and took their first RMD in 2020. [Roth IRAs](#) do not require withdrawals until after the death of the owner.

What if I already took my RMD?

If an individual has already taken an RMD in 2020, including someone who turned 70 ½ during 2019, the individual will have the option of returning the distribution to their account or other qualified plan.

Since the RMD rule is suspended, RMDs taken in 2020 are considered eligible for rollover. Therefore, RMDs can be rolled over to another IRA, another qualified retirement plan, or returned to the original plan.

An IRA owner or beneficiary who has already received an RMD in 2020 can also repay the distribution to the distributing IRA no later than Aug. 31, 2020, to avoid paying taxes on that distribution.

IRS [Notice 2020-51](#) also provides that the one rollover per 12-month period limitation and the restriction on rollovers to inherited IRAs do not apply to this repayment.

The CARES Act provisions apply to most retirement plans, including traditional IRAs, SEP IRAs, SIMPLE IRAs, 401(k) plans, 403(b) plans, 457(b) plans, profit sharing plans and other defined contribution plans. The RMD suspension does not apply to qualified defined benefit plans. IRS, Newswire IR-2020-162, www.irs.gov, July 17, 2020.

11. KEEP CALM AND AVOID CORONAVIRUS SCAMS:

One thing we know about scammers is that they follow the headlines. So, it's not surprising that we've seen so many Coronavirus-related scams recently. From scammers selling fake COVID-19 cures and treatments to people posing as government officials offering Coronavirus stimulus checks -- nothing seems to be off-limits.

How can you avoid these scams? Check out [these videos](#) for tips on spotting the scams and keeping your money and personal information safe.

And don't forget to check out ftc.gov/coronavirus/scams to stay updated on the latest news about Coronavirus-related scams. Sachit Gali, FTC, www.ftc.gov, July 17, 2020.

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

The Securities and Exchange Commission 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, www.sec.gov, July 13, 2020.

13. IRS TAX TIP - TAX WITHHOLDING ESTIMATOR:

Here is a video tax tip from the IRS:

IRS Tax Withholding Estimator [English](#) | [Spanish](#) | [ASL](#)

Subscribe today: The IRS YouTube channels provide short, informative videos on various tax related topics in English, Spanish and ASL.

- www.youtube.com/irsvideos
- www.youtube.com/irsvideomultilingua
- www.youtube.com/irsvideosASL

IRS, www.irs.gov, July 17, 2020.

14. IRS NEWSWIRE - IRS IS SENDING LETTERS TO THOSE EXPERIENCING A DELAY WITH ADVANCE PAYMENT OF EMPLOYER CREDITS:

The Internal Revenue Service has started sending letters to taxpayers who have experienced a delay in the processing of their [Form 7200](#), Advance Payment of Employer Credits Due To COVID-19.

A taxpayer will receive letter [6312](#) if the IRS either rejected Form 7200 or made a change to the requested amount of advance payment due to a computation error.

The letter will explain the reason for the rejection or, if the amount is adjusted, the new payment amount will be listed on the letter.

A taxpayer will receive letter [6313](#) if the IRS needs written verification from a taxpayer that the address listed on their Form 7200 is the current mailing address for their business. The IRS will not process Form 7200 or change the last known address until the taxpayer provides it.

For more information on the employer credits, see [Employer Tax Credits](#). IRS, Newswire IR-2020-158, www.irs.gov, July 15, 2020.

15. FOR THOSE WHO LOVE WORDS (LOGOPHILES): Have you ever tried to eat a clock? It's very time consuming.

16. EVER WONDER: Why do drugstores make the sick walk all the way to the back of the store to get their prescriptions, while healthy people can buy cigarettes at the front?

17. INSPIRATIONAL QUOTE: Someday is not a day of the week." -Denise Brennan-Nelson

18. TODAY IN HISTORY: On this day in 1829, William Austin Burt patents America's first "typographer" (typewriter).

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