



# **CYPEN & CYPEN NEWSLETTER for July 30, 2020**

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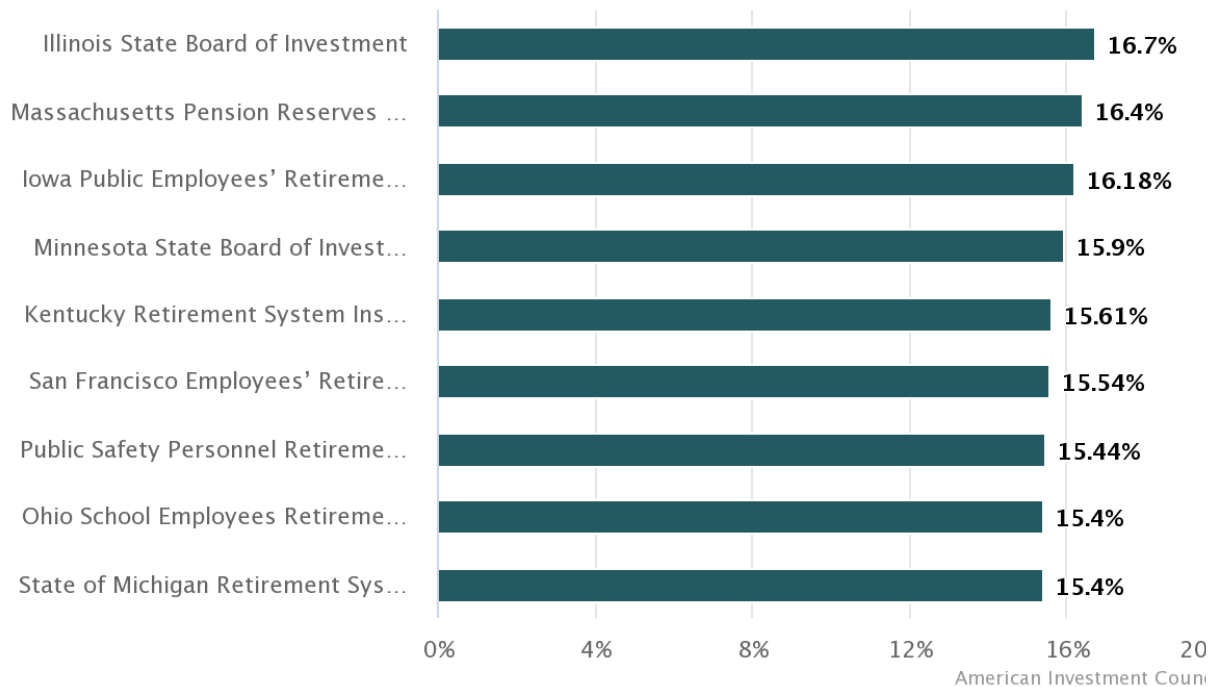
Never Forget September 11, 2001  
and  
Always Remember May 2, 2011

## **1. PRIVATE EQUITY TOPS PUBLIC PENSION ASSET CLASSES:**

Private equity has been good to U.S. public pensions. In the decade ended June 30, the asset class returned a median 13.7%, with the median return among the top 10 plans a bit higher at 15.6%.

## Top 10 pension plans in America by private equity returns

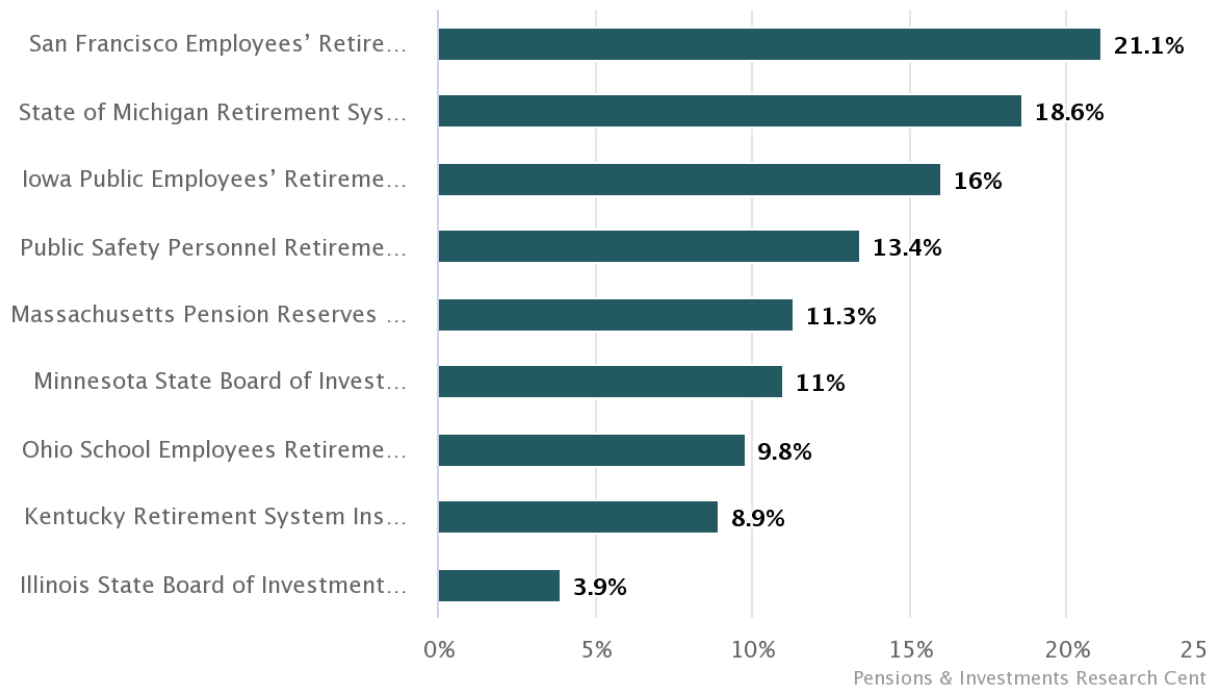
10-year annualized period



Recent data from the American Investment Council show the \$19 billion [Illinois State Board of Investment](#), Chicago, led the 176 plans surveyed with a 16.7% annualized return over the 10-year period, followed closely behind by the 16.4% posted by the \$76 billion [Massachusetts Pension Reserves Investment Management Board](#), Boston. The Illinois State Board of Investment's private equity allocation was about \$751 million according to *P&I's* [Top 1000 Plan Sponsor Survey](#), but only 3.9% of total plan assets. Perhaps recent performance will encourage the plan sponsor to increase its allocation.

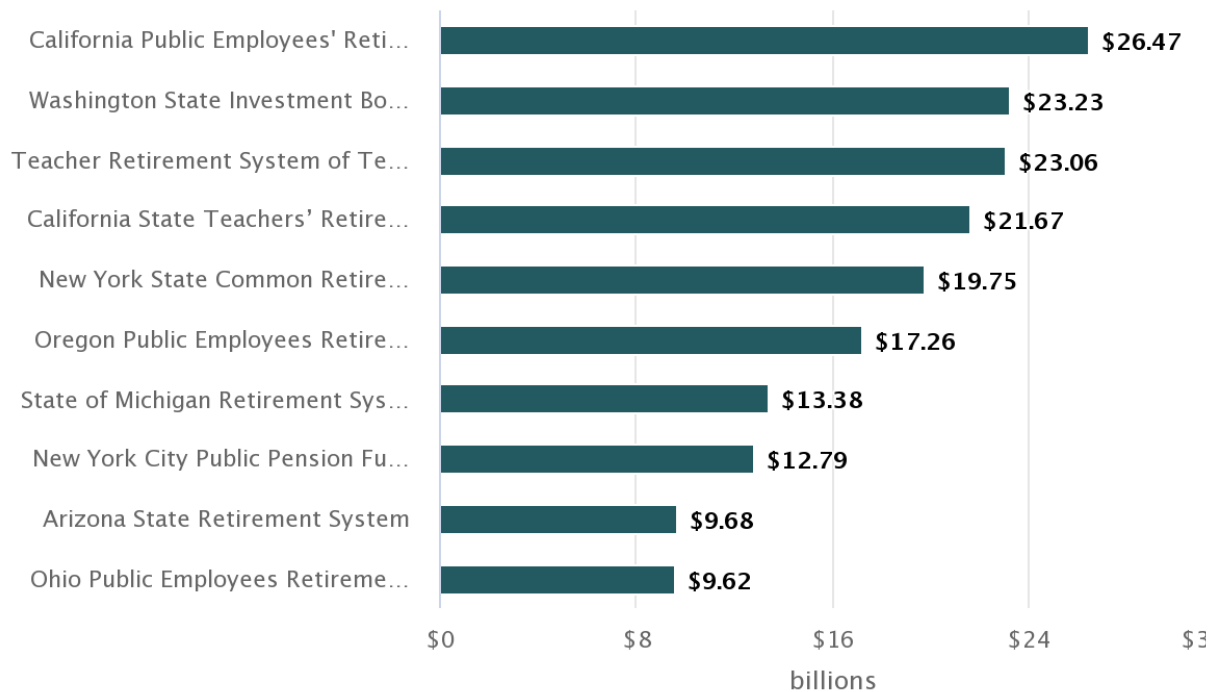
## Private equity allocation of top 10 private equity portfolios

September 30, 2019 private equity allocation (10-year annualized return)



Allocations varied widely among the top performing private equity portfolios compared to the more closely grouped returns. The \$25.9 billion [San Francisco City & County Employees' Retirement System](#) led with a 21.1% allocation according to *Pensions & Investments* data. The median allocation among these plans was 11.9%.

## Top 10 U.S. public pension plans by dollar investment



American Investment Coun

In dollar terms, [California Public Employees' Retirement System](#), Sacramento, with 2 million members, had about \$26.5 billion invested in private equity, leading the survey constituents. However the allocation represented only about 6% of its massive \$400 billion plan. Only the \$70.5 billion [Michigan Retirement Systems](#), East Lansing, was among both the top returning plans and the top plans by private equity allocation.

The median private equity return edged out the median public equity return of 12.7%. The median real estate portfolio return was an annualized 9.3% over the trailing 10-year period and fixed-income portfolios added 5.2% on an average annual basis. Charles McGrath, *Pension & Investments*, [www.pionline.com](http://www.pionline.com), July 23, 2020.

### 2. A POTENTIAL DEAL FOR STATE PENSION REFORM:

In 1972, NBC News aired a long-form investigation titled "[Pensions: The Broken Promise](#)," which highlighted the many ways in which traditional "defined benefit" (DB) pensions - now held out by some as the gold standard of retirement savings vehicles - had let down workers and retirees. Plans were allowed to set strict vesting requirements, which made

more difficult for employees to collect retirement benefits. A Congressional analysis found that 92% of employees who participated in a traditional pension failed to receive a benefit when they retired. Funding rules for pensions were also lax, putting workers' benefits at risk if their employer went out of business.

The prototypical case was the Studebaker auto company's plant in South Bend, Indiana, which closed in 1963. Though Studebaker itself was not bankrupt, the company shut down the plant's pension plan, which covered roughly 10,500 plant workers and retirees. While retired workers continued to receive their full benefits after the plan was shut down, employees aged 40 to 59 received just 15 cents for each dollar of benefits they were owed, despite averaging over 20 years on the job. Employees who had less than 10 years of service received nothing.

In response to cases like Studebaker, Congress in 1974 passed the Employee Retirement Income Security Act (ERISA). ERISA made benefit vesting rules more reasonable and tightened funding standards. In short, employers could no longer promise employees pensions without funding them and while denying benefits to many workers. ERISA also established the Pension Benefit Guaranty Corporation (PBGC). In exchange for premiums paid by employers, the PBGC provided employees with protection against benefit cuts, up to a limit, if a pension became insolvent. For 2020, the PBGC guarantees the first \$69,750 of annual pension benefits for individuals who retired at age 65.

ERISA set a basic standard: do it right or don't do it at all. If an employer wished to sponsor a DB pension, it needed to offer benefits employees could actually qualify for and then fund those benefits to ensure they could be paid. If the employer couldn't or wouldn't follow those standards, it could instead offer a 401(k) plan. And many employers in fact chose to switch to defined contribution plans. But the DB pensions that remain in the private sector are generally well-funded. Going into the Covid-19 downturn, corporate pensions in January 2020 were on average 85% funded assuming a low 2.85% interest rate.

But at the time ERISA was passed, state and local government pensions were exempted from regulation. While some had discussed including state and local government plans in ERISA, at the time excluding governmental plans may have seemed reasonable. Regulation of private pensions was seen as necessary because, while employers may run pensions on behalf of their employees, employers and employees sometimes have different goals and different incentives. As a result, private firms may not always keep employees best interests at heart, such as by not fully funding a retirement plan. But government is often seen as a model employer that, lacking a profit motive, would act on behalf of its employees. Moreover, at the

time, pensions were a small portion of government budgets: in 1972, pension benefit payments were equal to only 3.6% of state and local government budgets. Finally, half a century ago Americans had different views of the relationship between the federal government and state and local governments, such that federal regulation of pensions offered and run by the states may have been seen as improper. All-in, the benefits of regulation state and local government pensions probably just weren't seen as worth the political effort.

Nearly five decades later, things are different. State and local government pensions are three times larger as a share of government budgets today as they were in 1972, with rising pension costs putting pressure on resources for education, public safety, health and infrastructure. A major market downturn has reverberating impacts throughout public budgets, due to the need to make up for pension investment losses.

Worse, state and local government have not turned out to be the model employers one might have supposed at the time of ERISA. Governments have used overoptimistic investment return assumptions, taken excessive investment risk, and often failed to make their full annual contributions. Pension trustees often have not acted as true fiduciaries on behalf of pension participants, collaborating with government officials – often the very people who appointed them – to reduce current contribution costs, even if doing so left fewer resources available to pay future pension benefits.

In the face of rising public pension underfunding, some governments have increased benefit vesting requirements as way to prevent short-career employees from qualifying for benefits. A teacher in Connecticut or Massachusetts, for instance, who left her job just short of ten years would have accrued neither a state pension benefit nor Social Security benefits. Public pensions have taken excessive investment risk, so much that the President of the Society of Actuaries scolded “public sector plans [for] making choices about risk taking that go against basic risk management principles.” Moreover, the constitutional arguments against federal regulation of state and local government pensions today seem quaint. The federal government regulates state and local government labor practices in myriad way: federal rules dictate minimum wages, working conditions, the provision of health care insurance and other actions that state and local governments undertake as employers. It is no stretch to believe that federal regulation of state and local government pensions would be constitutional.

All of these problems with public employee pensions have existed for years. And all of them speak against the decision not to include state and local government plans under ERISA's regulation of employee pensions. Perhaps policymakers could not have known at the time, but

in 2020 the substantive case for allowing state and local government pensions to be effectively self-regulated is weak indeed.

Today, public sector pensions face more pressing problems. The COVID-19 pandemic has both hit pension investments and, perhaps more crucially, undermined the tax revenues state and local governments must use to make up for those investment losses. Before the crisis, Truth in Accounting found that the states had set aside only 66 cents to pay each dollar of promised benefits, with Illinois having only 39 cents and New Jersey having only 34 cents. Worse, the Center for Retirement Research at Boston College [projects](#) that seven major public pension plans could exhaust their assets by 2028, forcing governments to maintain benefit payments on a “pay-as-you-go” basis that would generally be substantially higher than the payments governments are making – or cannot even afford to make – today. Looking at the full universe of public plans, the Center for Retirement Research projected that average annual government contributions will rise from 19.7 percent of employee wages today to 29.1 percent of pay in 2025. Back in 2001, the average employer contribution was only around seven percent of pay. It is highly likely that the most fiscally-stressed state and local governments will fail to make their full pension contributions this year – or perhaps any pension contribution at all – which is the only way for plans to maintain funding amidst low interest rates and unstable stock market returns.

Over the last two decades, pension benefits have generated a fundamental change in the costs and composition of public employee compensation, one that many governments are ill-prepared to handle. Indeed, in a April 14 letter to Illinois’s U.S. Congressional delegation, the president of the state senate requested \$10 billion in federal money to bail out the state’s underfunded public pensions.

What then? If Illinois formally requested federal assistance for its pensions – a request that surely would be followed by New Jersey, Kentucky, Connecticut and other fiscally-stretched states – how should the federal government respond?

The most tempting answer, and one that would hardly be unjustifiable, is “Forget about it.” COVID may have been unforeseen, but state and local government pension funding problems have been brewing for ages, the result of decades of bad stewardship and denial of financial and fiscal realities. Just as a poorly-managed private firm must face bankruptcy, there is nothing inherently wrong with a poorly-managed state or city also doing so. And just as private investors lose money, municipal bond holders in an insolvent state would take a substantial financial hit. And that market discipline might cause municipal bond markets to pay closer

attention to public pension funding and general fiscal health, using interest rates as a way to reward well-run governments and punish malefactors. Congress would need to pass legislation to set up a bankruptcy process for states, but that's possible: in 2016 Congress passed legislation establishing a bankruptcy-like process for Puerto Rico, a U.S. commonwealth of three million residents that defaulted on its debt in that year. More recently, Senate Majority Leader Mitch McConnell has spoken approvingly of establishing bankruptcy procedures for states.

But it is the Puerto Rico experience that causes at least some pause with letting states fall into insolvency. After four years, the island still has not resolved its bankruptcy, amidst ongoing trench warfare between a reform-minded oversight board – of which one author is a member – and a succession of governors concerned more with their own re-elections than with resolving the government's financial problems and establishing fertile ground for economic growth. During this time the economy has weakened and outmigration has continued. The burden on federal means-tested welfare programs such as Medicaid and Food Stamps has increased. In short, allowing governmental bad actors to go insolvent is surely not unjust, but it also is not a panacea for states' financial problems.

For that reason, a pensions-only approach might make sense. To the degree a state's pension plan is what drives it toward insolvency, addressing pensions separately before things fall apart might avert a larger economic catastrophe. We propose, at least for discussion purposes, that if a state requests and receives federal aid for pension funding, they must agree to bring that public pension under federal regulation that was qualitatively similar to what private pensions work under.

Obviously federal pension assistance would be seen as a "bail out," and perhaps rightly so. But no one should pretend that a bailout isn't otherwise possible. During the 2008 crisis banks were deemed "too big to fail." Would states with millions of residents be seen differently? In addition, most Congressional Democrats – and a few Congressional Republicans – currently favor a bailout of so-called "multi-employer pensions," which are union-run plans that serve employees across industries such as trucking and mining. If Congress will bail out truckers and miners, what are the chances they won't propose the same for school teachers?

But unlike the proposed bailout of multiemployer pensions and the bailouts of the banks, our proposal has a flip side: much stricter funding rules and greater flexibility for pension sponsors. In return for financial assistance, states would need to demonstrate a plan to fund their pensions under the stricter federal rules that apply to private sector pensions. That

means assuming much more prudent returns on pension investments and addressing any unfunded liabilities much more quickly. It's those rules that make private sector pensions so much better-funded than state and local plans.

But there's a second part as well. ERISA sets rules that private pensions sponsors must live by. But it also gives employers who can't live by these rules other options, in particular the option to sponsor a defined contribution 401(k) plan. For some private sector employers a defined benefit pension still makes sense, and those plans are by and large well-funded. But for many other employers a 401(k) is the better option and ERISA sets rules for running those plans.

Many state governments effectively don't have those options. State constitutions and legal interpretations often state that, from the very first day an employee sets foot on the job, the terms of his pension cannot be changed. These rules make it very hard for states like Illinois or California to reform their plans, since even eliminating all retirement benefits for newly-hired employees would take decades to put a dent in their costs. In the private sector, by contrast, ERISA rightly forbids employers from taking back pension benefits that employees already have earned, but allows flexibility in changing the rate at which employees earn future benefits. As with any other form of employee compensation, private-sector employers may strike a balance between pensions that are too costly for them to afford and pensions that are insufficient to attract and retain the employees they need. It is bizarre that states assume much stronger pension protections than ERISA explicitly states for private sector employees, since ERISA strengthened pension protections for private sector workers.

Since federal law pre-empts state laws, a state government plan that were made subject to ERISA would not only have stricter funding rules but also greater flexibility to change the plan if elected officials decided that the existing benefit formula was unaffordable. Again, benefits already earned by employees could not be taken away, but the states would gain flexibility in setting the rate at which employees earn future benefits.

Put in simple terms, in exchange for near-term financial assistance, states would accept the same deal that federal law requires of private sector employers: Run your pensions right or don't run them at all. If a state chooses to continue running a defined benefit pension plan, it must do so using more prudent funding rules and more rapid repayment of unfunded liabilities. If the state can't run a traditional pension on those terms, federal law would give the state the leeway to shift its employees to defined contribution retirement plans. That may be a better option than waiting for states to declare bankruptcy. Andrew Biggs and Sheila A.

Weinberg, *Forbes*, [www.forbes.com](http://www.forbes.com), July 24, 2020.

### **3. ATTORNEY GENERAL REVIVES LAWSUIT AGAINST STATE PENSION OFFICIALS AND HEDGE FUNDS:**

Kentucky Attorney General Daniel Cameron has revived and expanded a lawsuit accusing hedge fund managers and Kentucky Retirement System officials of mishandling the state's troubled pension fund for public employees, which at [13 percent solvency](#) is among the worst funded in the country.

Cameron filed an [intervening complaint](#) joining the Mayberry et al. v. KKR & Co., L.P. et al case. In the original case, retired Kentucky State Policeman Jeffrey C. Mayberry and seven other Kentuckians who are entitled to KRS pensions accuse KRS employees and a group of hedge funds and hedge fund owners of mishandling the pension investments.

The hedge funds, the plaintiffs say, siphoned off money from Kentucky's public pension trust fund by selling secretive, costly investment products to KRS trustees who were in charge of managing the fund. According to the lawsuit, the KRS employees were eager to cover up - and eventually, improve - the disastrous financial shape of the fund, and were thus willing to take a chance on the hedge fund's risky investments.

That case was originally filed in December 2017 and dismissed earlier this month after the Kentucky Supreme Court ruled the plaintiffs didn't have standing to bring the lawsuit because they weren't harmed in a concrete way by the collapse of Kentucky's pension funds.

Now Cameron has joined as a plaintiff and added new allegations. Cameron's claims bring the Kentucky Teachers Retirement System (KTRS) into the mix by alleging funds sold to it by Blackstone and Prism were faulty. The new complaint also claims the CEOs of Blackstone and KKR enriched themselves personally through the relationship between KRS and their respective companies.

"Our goals in pursuing this litigation are straightforward: to protect the pensions of hardworking government employees and to safeguard taxpayer dollars," said Krista Locke, the deputy communications director for the Office of the Attorney General. KRS Director of Communications Shawn Sparks said the agency does not comment on ongoing litigation.

#### **Fund Mismanagement**

In his complaint, Cameron explains that, around 2009, Kentucky's retirement system was in

dire straits and looking for a quick fix. The fund had sustained massive losses in recent years, including a loss of \$2.2 billion in 2000 and another \$4.4 billion in 2009, amounting to half of the fund's assets.

The KRS trustees decided to gamble with so-called "alternative investments," which were being marketed to struggling public pension funds all over the country by the defendants: KKR & Co., Prisma Capital Partners, Pacific Alternative Asset Management and the Blackstone Group.

"It's surprising the Attorney General's office would pursue a case that has already been dismissed by the Kentucky Supreme Court," said Don Kelly, an attorney at Wyatt, Tarrant & Combs who is representing Blackstone in the case. "As we've demonstrated repeatedly, these claims have absolutely no merit. We delivered more than \$150 million in net profits to Kentucky pensioners – and exceeded by nearly three times the benchmark set by KRS itself." Kelly's statement was provided to KyCIR by a PR firm.

The funds were usually hedge funds that invest in other hedge funds, and they carried higher risks and higher fees than traditional investments. They also promised higher returns, but studies have shown these alternative investments often fail to live up to those promises and that steep management fees eat away at the profits.

The hedge funds designed plans specifically for Kentucky with names such as the "Daniel Boone Fund," "Henry Clay Fund," and "Newport Colonels Fund." Cameron's lawsuit claims that KRS, eager to cover up years of financial disasters that cut the pension fund's balances, bought these so-called "alternative investments" without scrutiny and covered it up when the funds performance didn't meet expectations. The bets placed on these funds were the largest single investments ever made by KRS.

KyCIR [investigated the secretive funds](#) back in 2014. The investigation found that, at the time, a quarter of the \$15.7 billion managed by KRS was parked in alternative investments, and KRS refused to disclose much about their performance or the cost of fees, calling the information proprietary.

Chris Tobe was a trustee of the Kentucky Retirement Systems from 2008 until 2012. He became a whistleblower in 2010 and in 2012, in his role as KRS trustee, hired an independent counsel to investigate abuses of public funds at KRS. He later wrote about Blackstone's relationship to KRS in his book, "Kentucky Fried Pensions - A culture of Coverup and

Corruption.”

Tobe said he is thrilled to see the Attorney General take up this case with the added allegations regarding KTRS investments and violations of fiduciary and transparency standards. “Hopefully, this involvement by the AG will finally lead to real reform on the investments,” Tobe said.

Cameron’s lawsuit claims that KRS “failed to follow legal mandates regarding the safeguarding and prudent investment of trust monies for which they were responsible.” As a result, Kentucky’s pension funds are still underfunded and nearing collapse even during the longest running “bull market” in history.

### **Kentucky Connections**

The case has the potential to shed light on an especially opaque and powerful side of Wall Street -- and carries significant political implications for Kentucky.

Cameron’s complaint accuses Steven Schwarzman, the CEO and co-founder of Blackstone, of arranging for his company to rent a corporate jet he owned to fly to Kentucky and arrange meetings with KRS officials. The complaint alleges Schwarzman netted millions of dollars this way.

Schwarzman is one of Kentucky Senator Mitch McConnell’s most generous supporters, having already donated \$10 million to the Senate Leadership Fund, a super PAC tied to McConnell this cycle alone. Schwarzman also gave \$3 million to a super PAC supporting President Donald Trump this cycle. KKR CEO and co-founder Henry Kravis, who Cameron says ran a similar private jet scheme as Schwarzman, is also a financial backer of Mitch McConnell. He gave a total of [\\$5,000 to McConnell in 2019](#).

Cameron served as McConnell’s legal counsel from 2015 until 2017 and has long been associated with the Senator. Gov. Andy Beshear’s former law firm, Stites & Harbison, represented the investment firm KKR while Beshear worked there. Cassandra Wiemken, an attorney who served directly as counsel for KKR worked closely with Beshear at the law firm.

Beshear declined as Attorney General to join the Mayberry lawsuit when it was filed in 2017. When the Supreme Court dismissed the case on July 9, Chief Justice John Minton Jr. [wrote in the court’s opinion](#) that the state Attorney General was better suited to bring the case but has so far declined to do so. The judge’s opinion says plaintiff’s provided the Attorney General a

copy of the complaint before filing, but he declined to join the suit.

Beshear's communications director, Crystal Staley, said in an email it is the Attorney General's decision to intervene on any case. "To the governor's knowledge, he did not perform any legal work for the entity," Staley said, referring to KKR. Staley also noted that Attorney General Cameron worked for Stites & Harbison. Jared Bennett, WFPL News, [www.wfpl.org](http://www.wfpl.org), July 23, 2020.

#### **4. PENSION FUNDS, OTHERS CALL FOR CLIMATE ACTION FROM REGULATORS:**

A group of investors with nearly \$1 trillion in assets joined other prominent voices in calling on U.S. regulators to consider climate change as a systemic financial risk.

A [letter](#) sent to regulators, including to the heads of the Federal Reserve and the Securities and Exchange Commission, said, "It is more clear than ever that the climate crisis poses a systemic threat to financial markets and the real economy, with significant disruptive consequences on asset valuations and our nation's economic stability."

The respective regulator's mandate to protect U.S. market stability and global competitiveness "carries with it a responsibility on the climate crisis right now and to guide our transition to a net-zero future," said the letter, which referred the regulators to more than 50 recommendations in a [June report](#) on addressing systemic risk from Ceres, the climate organization coordinating the letter.

The 72 signatories include the \$246 billion California State Teachers' Retirement System, West Sacramento; \$211.2 billion [New York City Retirement Systems](#); \$210.5 billion [New York State Common Retirement Fund](#), Albany; \$56.1 billion [Maryland State Retirement & Pension System](#), Baltimore; and the \$3 billion Seattle City Employees' Retirement System. Other signers represent companies, foundations, former regulators and members of Congress.

Along with the Federal Reserve and SEC, letter recipients include the Office of the Comptroller of the Currency, Federal Deposit Insurance Corp., Commodity Futures Trading Commission, state and federal insurance regulators, Federal Housing Finance Agency and Financial Stability Oversight Council.

Maryland state Treasurer Nancy K. Kopp, who also chairs the pension system, said in a statement that regulatory action is needed to manage climate risk that has the potential to compound other crises "in ways that could spell catastrophe."

New York City Comptroller Scott M. Stringer, trustee for the city's retirement funds, put it bluntly. "The message is simple: Do your job. The job of financial regulators is to protect the economy from systemic risks, and climate change is a systemic risk with the potential to wreak havoc on our economy." Hazel Bradford, *Pension & Investments*, [www.pionline.com](http://www.pionline.com), July 21, 2020.

## **5. BY THE NUMBERS; A LOOK AT MUNICIPAL BANKRUPTCIES OVER THE PAST 20 YEARS:**

*Editor's note: This analysis was updated on July 13, 2020, to clarify that the 21 local governments that filed for bankruptcy in Nebraska are special-purpose districts and on July 7, 2020, to clarify the reference to U.S. Steel operations in Fairfield, Alabama.*

On May 19, 2020, the city of Fairfield, Alabama, [filed for bankruptcy](#), becoming the first U.S. city or county to file for Chapter 9 in close to a year. The 10,500-person town is seeking protection from creditors while it comes up with a plan to adjust its debt.

Fairfield, located just southwest of Birmingham, has struggled to keep up with its funding obligations since U.S. Steel closed portions of a facility in [2015](#) and Walmart closed a Supercenter in [2016](#). After the closures, the [local transit authority stopped bus service](#), the [city faced a shut-off of water service](#) for failure to pay, and the county [took over the police force](#).

Fairfield's financial woes started well before the coronavirus pandemic. But as the economic effects of COVID-19 threaten municipal finances nationwide because of lost tax revenue and increased costs, more localities may look to bankruptcy as a means of extending the terms of debts, reducing the amount of principal or interest, or refinancing.

Municipal bankruptcies under Chapter 9 of the federal code [are relatively rare](#); the process can be costly and time-consuming and can cause long-term damage to a locality's reputation. Bankruptcies also commonly result in increased taxes, higher fees for services, reduced benefits for workers, payments to receivers and emergency managers, lawyers' fees, and elevated future borrowing costs. Although bankruptcy can be one way for a town or city to address financial distress, policymakers should strongly consider the potential costs.

Pew's research has found that by [monitoring local fiscal conditions](#), states often can identify problems early and provide assistance to local governments to try to avoid bankruptcy altogether.

***Click [here to learn more](#) about U.S. municipal bankruptcy since 2001: By the numbers.***

Note: Pew researchers gathered Chapter 9 bankruptcy filings from the Public Access to Court Electronic Records database as of May 2020. Researchers limited data collection to 2001 or later because some cases filed before then are sealed or archived by the court and do not show up in the database. Researchers excluded the Puerto Rico Chapter 9 bankruptcy filings in the database because those cases, filed in 2017 and 2019, are being dealt with through Title III of the Puerto Rico Oversight, Management, and Economic Stability Act. They also excluded mistaken filings, test filings, and transfers in the database. The number of filings includes cases that were later dismissed. Jeff Chapman, Adrienne Lu and Logan Timmerhoff, PEW Trusts, [www.pewtrusts.org](http://www.pewtrusts.org), July 6, 2020.

## **6. YOUR STATE PENSION IS BEING ROBBED:**

Expert forensic investigations reveal stealing from state pensions may be rampant, undermining the retirement security of workers. That's an inconvenient truth that neither the inexperienced board of directors overseeing your pension nor the Wall Streeters robbing it want you to know.

Over the past 35 years, I have conducted forensic investigations of \$1 trillion-plus in retirement plans, including many state pensions. That's more investigations of pensions than any forensics expert in the world.

In case you're not familiar with my work, I am a former SEC attorney who in 2018 secured the largest [CFTC](#) whistleblower award in history and in 2017 secured the largest [SEC](#) whistleblower award both related to a \$367 million JP Morgan Chase [JPM +0.2%](#) settlement. In 2016, I obtained the first whistleblower award from the State of Indiana. So, hopefully you'll agree at least these federal regulators believe my insights on potential illegalities are worth listening to, as well as paying for.

Every state pension investigation I've undertaken has uncovered, documented and reported to regulators and law enforcement myriad forms of widespread industry wrongdoing amounting to billions.

The culprits frequently are Wall Street money managers, investment consultants, lawyers, brokers and custodian banks. The victims--pension stakeholders--including taxpayers who contribute to these plans and state workers who are counting on them in retirement, are

paying the price. If you are a state worker, Wall Street wrongdoing may be undermining your already precarious retirement security.

What types of thievery am I talking about?

In my forensic investigations I have often, but not exclusively, focused upon state pension gambling on the highest cost, highest risk, least transparent investments ever devised by Wall Street--so-called "alternative" investments such as speculative hedge and private equity funds. For over a decade, I have researched alternative investment industry practices and concluded that state pension boards have granted these "lightly regulated" funds "licenses to steal."

Many state pensions are risking 25-50% of their assets in secretive "black box" alternative funds. If you think your state pension is not heavily invested in high-risk alternatives, think again.

In my investigations I have found the true percentages of state pension alternative holdings are, more often than not, misrepresented--i.e., understated--in the publicly available financial statements. The investment performance disclosed in recent years related to hedge and private equity funds has been ugly and the final results are likely to be far worse, in my opinion.

But poor performance based upon inflated, impossible to verify asset values is just the tip of the iceberg. In a [leaked intelligence bulletin](#) published recently, the FBI wrote that it has high confidence that hostile foreign powers and criminals could use hedge and private equity funds "to launder money, circumventing traditional anti-money laundering programs."

The FBI has noted that law enforcement and regulators are not equipped to investigate money laundering at the non-traditional asset managers. If law enforcement and regulators are not up to the task of ferreting out criminal money laundering, what are the chances your state pension is?

There is not a single state pension in the nation that fully understands the unique risks related to alternative investments and is capable safeguarding workers' retirement funds from the dangers. And money laundering by hostile foreign powers and criminals is only one example of Wall Street exposing state pensions unacceptable risks. All state pensions and their millions of participants are potential victims due to the lack of meaningful oversight.

As I explain in [\*Who Stole My Pension?\*](#) state pensions are overseen by boards of directors or trustees comprised of lay men and women who generally lack *any* knowledge or expertise in investment matters. There are a few state and local laws which require one or more board members of public pensions to possess some financial experience but such requirements are extremely rare.

Typically public pension boards include some individuals, such as active or retired teachers, cops, firefighters, and sanitation workers, who are supposed to (and, in my experience, rarely do) represent the interests of workers and pensioners. Other board members are appointed by politicians, such as governors and mayors who are supposed to (and, in my experience, rarely do) represent the interests of voters, aka taxpayers. Again, typically none of the worker or political representatives on state pension boards know anything about investing—yet they decide how trillions in public pension assets are invested.

What could possibly go wrong, you might ask? Everything and far more than you can imagine, I have observed. Given that state pension boards and staff are incapable of protecting assets in high-risk alternative funds, you might think that they would welcome, if not seek out knowledgeable experts. In my experience, state pension boards, at best, ignore leading experts and more-often-than-not respond hostilely when confronted with damning information which conflicts with self-serving recommendations from Wall Street intended to increase the fees pension pay.

The greater the fees an investment pays to Wall Street, the greater the marketing effort by Wall Street to sell that investment and the more likely state pensions will end up owning that high-cost product, i.e., get fleeced. Wall Street's solution to every pension problem is and will always be, "pay us more in fees."

With respect to hedge funds, over a decade ago Warren Buffett, the world's greatest investor warned state pensions against these speculative investments. Buffett also very publicly wagered \$1 million that hedge funds would not beat the S&P 500 over the next ten years. His pick, the S&P 500 gained 125.8% over ten years. The five hedge funds, picked by a firm called Protégé Partners, added an average of about 36%.

John Bogle, Founder of the Vanguard Group, in a 2013 Letter to the Editor of the Wall Street Journal also warned public pensions that "hedge funds are hardly a panacea."

America's state pensions ignored Buffett and Bogle's expert advice, resulting in hundreds of

billions in foreseeable, and indeed foreseen, hedge fund losses. Wall Street, on the other hand, profited handsomely from the exponentially greater fees these funds charge--2% of assets under management and 20 of profits--fees which Buffett regards as “obscene.” Buffett also warned pensions against investing in private equity.

“We have seen a number of proposals from private equity funds where the returns are really not calculated in a manner that I would regard as honest,” Buffett said at Berkshire Hathaway Inc. [BRK.B +0.2%](#)'s annual meeting in May 2019. “If I were running a pension fund, I would be very careful about what was being offered to me.”

Again, Buffett's advice has been almost universally ignored in America. Sadly, foreign pensions are now loading up on the same private equity and other toxic investments Made In America that have failed spectacularly in the USA. America remains the global leader in manufacturing and exporting toxic investments.

Buffett has a consistent history of blasting Wall Street firms for charging high fees for actively managed investments and has recommended pensions invest in low-cost passively managed index funds.

You might think that underfunded pensions struggling to pay benefits would heed Buffett's advice and seek to cut the fees they pay Wall Street. Embrace austerity. Tighten their belts. Trim the fat.

In fact, every forensic investigation I've ever undertaken has exposed that the nearer a pension is to insolvency, the *higher* the fees and the *greater* the risks the pension takes on.

Desperate measures--Hail Mary passes--are resorted to at desperate times.

In summary, ignoring Buffett's advice and choosing instead to follow what I call “gross malpractice generally practiced,” translates to pensions:

- Using overly optimistic investment return assumptions;
- Gambling in high-cost, high-risk hedge and private equity investments;
- Paying exponentially greater “obscene” fees to Wall Street;
- Entrusting assets to firms that Buffett regards as dishonest;
- Eschewing the lowest cost, passively managed investments; and

- Moving farther and farther away from transparency.

Again, in my opinion there is not a single state pension board that is competently safeguarding the pension assets it oversees. These lay boards are simply relying upon corrupt advice from Wall Street and ignoring expert opinions which conflict with Wall Street's agenda.

To protect your retirement security, you need to get involved in overseeing your state pension. Do not assume for a minute that someone else is doing that job for you. Edward Siedle, *Forbes*, [www.forbes.com](http://www.forbes.com), July 22, 2020.

## **7. FROZEN DB PLANS STILL REQUIRE MUCH ATTENTION:**

A frozen defined benefit (DB) plan is one in which there are no more accruals--no more growth in benefit--for any individual, says Ari Jacobs, senior partner and global retirement solutions leader at Aon in Norwalk, Connecticut. He clarifies that this is different from a closed DB plan, in which there are still accruals for participants who were already in the plan before it was closed to new participants.

With frozen plans, for the most part, plan sponsors still have to do everything they had to do with an ongoing plan, says John Lowell, Atlanta-based actuary and partner with October Three Consulting LLC. "They don't get a lot of breaks from that standpoint. That is where a lot of people go wrong; they think since they're not giving anything to employees anymore, the staff they had dedicated to the plan is not necessary," he says. "To a large extent, they stop paying attention to it. They're really just relying almost entirely on what advisers, including actuaries and accountants, tell them to do."

Lowell explains that DB plan sponsors may have relied heavily on advisers when their plans were open, but, when a plan is frozen, he says that is "a bit trickier." He says consultant firms are generally looking for relationships that are going to generate long-term revenue for them and long-term profitability. "If they don't think they will get that, the natural business reaction is to do what they can to generate revenue in the short-term," he says. "If a client wants to terminate the DB plan in the next three years, and after three years, the consultant will not have the business, it can do one of two things: bring ideas likely to generate revenue or sit back and wait for the client to ask questions. It probably is not going to bring a lot of creative solutions in the hopes of building a relationship."

A frozen DB plan still has a fixed set of promises based on when individuals will leave the company and get payments for life, Jacobs notes. Plan sponsors still need to continue to

manage the risk associated with those promises, which he explains is the asset/liability mismatch. “Assets will move with the market and liabilities change with discount rate moves, and these can lead to changes in funded status,” Jacobs says. He adds that plan sponsors also need to make sure they understand their amount of underfunding and what cash is needed to put into the plan to fill the gap.

As for expectations from service providers, Jacobs says the biggest change is that calculations for growing benefits are no longer needed. In many cases, benefit calculations that would have had to be done over years could be completed early. However, Jacobs notes, plan sponsors will still need to make required contributions each year.

“There is only somewhat less work to do with a frozen plan than an ongoing plan. There is a limited amount of information still needed from service providers. But, generally, a frozen plan should be managed the same as an open plan,” he says.

A plan sponsor may have saved money by not having a person or department dedicated to its DB plan, but Lowell contends the costs of not having such a person or department far exceed what they saved. “For example, if the sponsor is not paying attention, it can miss out on [strategies that might reduce](#) PBGC [Pension Benefit Guaranty Corporation] premiums,” he says. “For some, there may be no cost or some cost because they are not paying variable premiums or they are getting advice and getting it right, for some small cost, but I’ve seen some paying millions of dollars in premiums a year that didn’t have to. If someone was paying attention to the plan, the costs would have been less.”

As another example, Lowell says companies that are tight on cash this year that don’t have a conversation about that with an actuary may get a recommendation from the actuary to put a lot of money into the plan. “Plan sponsors expect actuaries to ask questions and know how to advise them, but actuaries are expecting plan sponsors to ask questions. This wouldn’t occur if a portion of someone’s job was to maintain the pension plan,” Lowell says. “Unnecessary costs for frozen plans come from omissions, things plan sponsors are not thinking about that a dedicated person would think about.”

A plan with no internal staffing may also not be getting a highly proactive actuarial consultant, Lowell adds. “It’s not that the plan sponsor is not taking opportunities presented to it, it’s that it is not asking questions and the consultant is not asking questions to get to know the sponsor’s situation,” he says.

Lowell also warns about “random advice.” For example, a consultant company may push [liability-driven investing](#) (LDI) for all clients or push lump-sum windows. He says plan sponsors should ask, “Is that right for our plan? Why do you think so? Show me how you determined this is right for us.” Consultant companies have initiatives for every client, Lowell says, so plan sponsors should determine if the advice is for them or for random company X.

Over time, a frozen plan will get to the point where it is fully funded. Jacobs says plan sponsors need to think about [when the time is right to reduce its liability](#) by settling some of it through a lump-sum window or selling the liability to an insurance company. “It’s not a necessity, but plan sponsors would want to do that because, at some point, they will have something on their balance sheet that could be effectively managed by someone else,” he says. “Do they want to have that liability on their balance sheet and worry about investing and managing assets when there are organizations that do that for a living?”

Jacobs explains that there is limited difference on a plan sponsor’s balance sheet for a frozen versus an open plan. “There is a difference on the income statement because the service cost for accruing new value disappears for a frozen plan. But the promises of the plan still sit on the balance sheet the same way,” he says.

One challenge with keeping a frozen plan comes from what Jacobs calls a lack of “institutional knowledge.” The plan could be around a long time--until every participant is paid out, he notes. “Plan sponsors still need to [adhere to government requirements and continue filings](#). As time goes on, fewer will know the plan and its requirements, and the risk of operating appropriately can’t be ignored.

“What we’ve seen is that most frozen plans fall on the bottom of plan sponsors’ to-do lists when there are still many solutions to work through,” Jacobs says. “There needs to still be interaction between finance and HR [human resources] to understand the ownership of the plan. It’s important that the focus on it doesn’t drop. Plan sponsors should continue a strategic focus on asset/liability matching solutions, funding solutions and settlement solutions.” Rebecca Moore, *PLANSPONSOR*, [www.plansponsor.com](http://www.plansponsor.com), July 21, 2020.

## **8. UPDATED PBGC GUIDANCE FOR DEFINED BENEFIT PLANS:**

Earlier this year, the US Pension Benefit Guarantee Corporation (PBGC) issued a [final rule](#), modifying PBGC regulations that apply to defined benefit pension plans. Among those changes were revisions to: (i) the reportable event notification requirements; (ii) annual financial and actuarial information (Form 4010) reporting; (iii) single-employer plan termination

rules; and (iv) the premium rate calculation rules. The rule was generally effective on March 5, 2020, but some provisions have different applicability dates.

### **In-Depth - New Guidance on Reportable Events and Notification Requirements**

Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires that the PBGC be notified of certain “reportable events” that may signal financial issues with a plan or a contributing employer to the plan. The final rule includes a new method for counting participants. Under the prior PBGC rules, an active participant reduction reportable event generally occurs when, either as a result of a single event or through normal employee attrition, the number of active participants in a plan is reduced below 80% of the number of active participants at the beginning of the year (a “one-year lookback”) or below 75% of the number of active participants at the beginning of the prior year (a “two-year lookback”). The final rule revises this by:

- Clarifying that the participants who ceased to be active and were covered by a single-cause event reported in the same year are included in the year-end count, even though such participants are not active at year-end. (This prevents duplicative reporting by disregarding the earlier single-cause event if already reported to the PBGC.)
- Clarifying that multiple single events during a plan year must be reported separately.
- Eliminating the two-year lookback requirement.

A reportable event also occurs when a member of the pension plan’s controlled group is involved in a transaction to implement its complete liquidation. The final rule clarifies that a liquidation event occurs when a member of the plan’s controlled group “resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member’s board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations or a liquidation.” This change specifically adds to a liquidation event when “revenue-generating” business operations have stopped, capturing the fact a company is not earning revenue to enable it to support a pension plan.

### **Updates to Annual Financial and Actuarial Information Reporting (4010 Filings)**

Section 4010 of ERISA requires the reporting of actuarial and financial information by controlled groups with single-employer pension plans that have significant funding problems. The final rule eliminates a requirement that each controlled group member submits individual

financial information as part of a consolidated information report.

The PBGC also simplified the calculation for determining whether the \$15 million aggregate funding shortfall waiver applies. The final rule provides that the special rules for at-risk plans in Section 303(i) of ERISA and Section 430(i) of the Internal Revenue Code are disregarded for purposes of determining the funding target underlying the funding shortfall for a plan, even if the plan is in at-risk status.

### **Single-Employer Plan Termination Updates**

PBGC is providing more time to submit a complete PBGC Form 501 in the standard termination process. Generally speaking, the plan administrator of a plan undergoing a standard termination must certify to the PBGC that the plan's assets have been distributed to pay all benefits under the plan within 30 days after the final distribution of assets is completed. The final rule provides an alternative timeline to file the Form 501 by permitting a plan administrator to submit a completed Form 501 within 60 days after the last distribution date for any affected party if the plan administrator certifies to the PBGC that all assets have been distributed in accordance with Section 4044 of ERISA and 29 CFR part 4044 within 30 days after the last distribution date for any affected party.

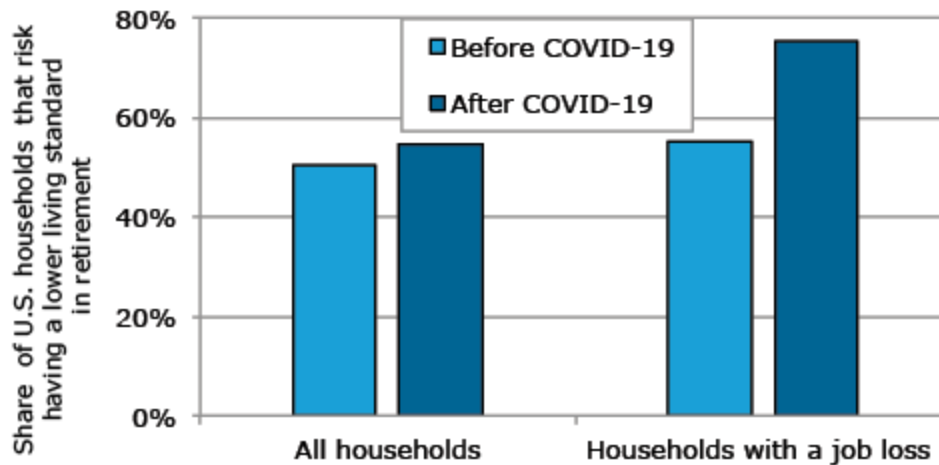
### **Premium Rate Calculation Guidance**

Lastly, the PBGC made clarifications to the premium rate calculation rules. First, the final rule amends the applicable regulation to expressly state that a plan does not qualify for the variable-rate premium (VRP) exemption for the year in which a standard termination is completed if the plan engages in a spinoff during the premium payment year (with an exception for *de minimis* spinoffs). Second, the final rule clarifies that in instances of plan-to-plan transfers, the participant count date of the transferee plan for determining the flat-rate premium for a plan year shifts to the first day of its plan year. Third, the final rule modifies the circumstances under which the premium is prorated for a short plan year resulting from a plan's termination to exclude situations where the plan engages in a non *de minimis* spinoff in that same year. The PBGC believes that where a completed termination is preceded in the same year by a non *de minimis* spinoff of a group of the plan's participants to another plan, the transferred participants remain in the insurance program and PBGC coverage of their benefits is still in effect. Jeffrey M. Holdvogt and Joshua Lerner, *The National Law Review*, [www.natlawreview.com](http://www.natlawreview.com), July 21, 2020.

## **9. PANDEMIC PUTS MORE RETIREMENTS AT RISK:**

Americans' retirement outlook has gone from bleak to bleaker.

## Worsening Retirement Outlook



Source: Center for Retirement Research.

The unemployment caused by COVID-19 has pushed up the share of working-age households not able to afford their current standard of living in retirement from 50 percent to 55 percent, according to a new analysis by the Center for Retirement Research.

The analysis updates a previous estimate, based on 2016 data, to include the harmful effects of surging unemployment. The researchers estimate that perhaps 30 percent of workers - far more than is reflected in the monthly jobless rate - could be affected by layoffs now and in the future. They did not factor in the recession's impact on the housing and financial markets, which could make things worse.

Unemployment hurts retirement in a variety of ways. Laid-off workers' paychecks vanish immediately, but they may also earn less in the next job. The depressed earnings, over months or years, reduce the money flowing into their 401(k)s, and the amount they'll receive in pensions and future Social Security benefits. It may also force some to spend down savings that, had they not lost their jobs, would've been preserved for retirement.

Interestingly, the impact on low-income workers is mixed. In one way, they're protected by Social Security's progressive benefit formula, which will replace a higher percentage of their earnings as their lifetime earnings decline. But low-income workers have had more layoffs, which widens the gap in their retirement savings - between what they can save and what they should be saving - more than for higher-income people.

The 2020 recession will impact retirement “in a very different way” than the Great Recession, the [researchers said](#). This time, “the destruction is occurring more through widespread unemployment and less through a collapse in the value of financial assets and housing.” However, the [lessons of the previous recession](#) can’t be dismissed either.

House prices are still holding up pretty well - so far. But the housing market will be vulnerable to a decline as the recession’s impact spreads. While 401(k) balances haven’t been battered like they were in the 2008 financial crisis, the stock market is still 7 percent below February’s record highs and continues to be volatile.

The best chance of stopping the deterioration in workers’ retirement prospects is to get them back to work. The tricky part of fully reviving the economy is getting better control of the virus. Center for Retirement Research at Boston College, <https://squaredawayblog.bc.edu/>, July 21, 2020.

#### **10. WILL COVID-19 CHANGE YOUR SOCIAL SECURITY STRATEGY:**

As the COVID-19 pandemic rages on, many seniors are facing some tough choices. Should they stop providing childcare to their grandchildren? Should they take a leave of absence from work for health-preservation reasons? And should they change their retirement plans -- either pull the trigger early or do the opposite?

All of these are very difficult questions, but here's another one you might be grappling with: Should the COVID-19 crisis make you change your [Social Security](#) filing strategy?

Your Social Security benefits are calculated based on your earnings during your top 35 years of wages, and you're entitled to your full monthly benefit based on that calculation once you reach [full retirement age](#), or FRA. FRA is either 66, 67, or 66 and a certain number of months -- depending on your year of birth.

Meanwhile, you're allowed to start collecting Social Security once you turn 62, but if you go that route, you'll reduce your benefit substantially (specifically, by 6.67% a year for the first three years you file early and then by 5% a year for each year after). If you're 62 right now and your FRA is therefore 66 and eight months, you'll shrink your monthly benefit by almost 30% by claiming right now.

But if you're out of work and having a hard time making ends meet, it pays to claim your

benefits early, even if that means reducing them on a permanent basis. If you fall back on credit cards to pay your bills in an effort to leave your benefits alone, the damage you cause yourself financially might well outweigh the damage you'll cause by shrinking your monthly Social Security income.

Claiming Social Security early might also allow you to leave your [retirement savings](#) alone while you ride out the pandemic. Many retirement plans lost value earlier this year when the stock market tanked. If yours hasn't fully recovered, filing for benefits could help you avoid permanent losses.

On the other hand, the pandemic might cause you to go in the opposite direction and [delay your Social Security filing](#). The upside of doing so is that for each year you hold off on claiming benefits past FRA, they go up by 8%, and that boost remains in effect for the rest of your life.

If your retirement savings have taken a major hit but you're able to continue working, you might consider waiting on Social Security as long as possible, as growing your benefits could compensate for a lower IRA or 401(k) balance. Even if your retirement plan isn't down all that much at this point (many plans have recovered pretty nicely since the stock market crash earlier this year), we don't know if a second stock market tumble is in store for the latter part of the year. And if your savings lose value at that point, a higher Social Security benefit can help make up for it.

Also, if you're out of work right now, and therefore aren't able to contribute to your retirement savings because you're barely getting by on unemployment, delaying benefits is, once again, a good way to make up for that income shortfall.

Should you change your Social Security plans? If you've been impacted financially by the pandemic, then you might need to change your approach to Social Security. And that's OK. While it's good to make a plan and stick it to, when circumstances change, it's important to be flexible. The most important thing to do in light of the pandemic is to use Social Security to your financial advantage, whether that means claiming benefits ahead of schedule or delaying them longer than you may have initially intended. Maurie Backman, *Mooreville Tribune*, <https://moorevilletribune.com/>, July 25, 2020.

## **11. PHASED RETIREMENT PROGRAMS OFFER PERKS FOR EMPLOYEES AND EMPLOYERS:**

A phased retirement program can ease the transition for some older workers who are

preparing to leave the workforce.

Phased retirement programs, widely used to assist workers in their shift away from the workforce, allow employees to modify their workload, either by transitioning to part-time work or by having their hours reduced. From there, workers will eventually “phase” into retirement. These programs allow employers to reduce staff and benefits costs, retain institutional knowledge held by those employees approaching retirement and create advancement opportunities for younger employees, says Christina Cutlip, senior managing director of client engagement and national advocacy at TIAA.

A phased retirement program gives employees a controlled path to retirement with a less demanding work schedule, she adds.

“Employees may choose a phased retirement approach due to financial readiness concerns or simply because they still enjoy the social and professional fulfillment from their work,” Cutlip explains. “It’s interesting to note that many employees [may not realize they are financially able to retire](#), but find they are in a much stronger financial position after running their retirement numbers.”

While the conventional retirement path means pre-retirees work one day and immediately retire the next, [increases in longevity](#), along with changes in health and diet, mean [pre-retirees have continued working](#), notes Scott Francolini, head of strategic relationship management and consulting at John Hancock Retirement. These workers may want to still contribute to the workplace in a meaningful way, but not necessarily by working a 40- to 50-hour workweek, he says.

“Increasingly, we see a desire to blend the two,” Francolini says. “Scaling back work somewhat, but not entirely, as an initial phase and then gradually transitioning out of the workplace over a period of perhaps a few years.”

### **The Pluses for Employees and Employers**

As employees face [furloughs, layoffs](#) and reductions in work hours and pay triggered by the economic downturn caused by COVID-19, employers may consider implementing a phased retirement program to workers retiring in the near future. Even before the pandemic, 43% of Baby Boomers in the workforce envisioned a gradual transition into retirement, according to [survey findings](#) featured in a report from Transamerica Center for Retirement Studies. Catherine Collinson, CEO and president of the center, says the option adds flexibility without

sacrificing costs.

“By offering opportunities for older workers to transition into retirement, employers may find that they have some takers -- which could alleviate some of their payroll-related pressures,” she says.

Beyond acting as an alternative to layoffs, phased retirement programs can be part of a regular retirement package, but the implementation of such a benefit depends on the employer and its goals. It’s also important for plan sponsors to consider how willing employees would be to participate in such a program, Francolini says.

Yet, he remarks, employers will likely be surprised at the number of workers willing to accept reduced hours or a lighter workload. As the world has shifted to remote work -- [and, for some, the possibility of working remotely permanently](#) -- implementing flexible arrangements can attract newer talent searching for flexibility.

“COVID-19 has opened that possibility in the minds of many people,” Francolini says. “Employers that proactively think about developing a path to phased retirement, or even for early-to-mid-career people who want time to pursue something else without completely stepping away, I believe will have a significant advantage going forward.”

### **Support Included in a Phased Retirement Program**

There are multiple moving parts to consider when offering a phased retirement program, and that includes answering the who, what, why and how questions, says Cutlip. Who is this program benefiting, and what employee groups will be eligible for the plan at what age? What is the length of the transition period between part-time employment and retirement? Why are employers adding these programs--to quickly reduce expenses or to open up career opportunities for younger workers? And how will the program work? Employers should consider how to define part-time work, the effect of existing benefits, such as defined benefit (DB) payout formulas and health care coverage, and the ability of part-time employees to receive retirement benefits based on age and other considerations.

Employers looking to successfully transition their workers into retirement must ensure employees have access to a competitive retirement benefits offering and an effective employee engagement program, Cutlip says. The benefits offering should include a diversified investment menu with guaranteed lifetime income options, educational resources and personalized advice options.

Cutlip says employee engagement programs must motivate participants to take part in the plan, seek personalized advice and education that lets them know their retirement readiness, create a comprehensive retirement savings and income plan, and periodically add reviews.

“Employees need the right building blocks and help implementing them to prepare for a lifetime of income in retirement,” Cutlip says. “Preparing for life in retirement extends beyond financial considerations, it should also take into consideration an employee’s emotional readiness and what comes after their professional life.”

Working with retirement plan providers and benefit advisers can also help employees smoothly transition out of the workforce, Collinson says. They can offer information about the plan’s distribution options, financial planning seminars and counseling on how to make savings last. “Plan sponsors who wish to implement a phased retirement program should work with their benefits advisers and retirement plan providers to identify any potential conflicts and harmonize their plan design with the program,” she recommends.

Plan sponsors may also want to provide the ability to participate in training, succession planning and mentoring, she says. Program design can come with a number of legal considerations, so Collinson suggests employers also seek the advice of legal counsel. Amanda Umpierrez, *PLANSPONSOR*, [www.plansponsor.com](http://www.plansponsor.com), July 23, 2020.

## **12. FINANCIAL WELLNESS BENEFIT LOOKS DIFFERENT POST-PANDEMIC:**

Financial wellness benefit programs are being offered by more employers. That used to be the financial wellness benefit headline pre-pandemic. Plan sponsors are concerned with the financial wellness benefit, but not the same as they were six months ago. [MassMutual released a study](#) in December 2019. This Study found that eight in 10 retirement plan sponsors believe their employees have financial difficulties, and 67% of sponsors are concerned about their workers’ financial readiness for retirement. In addition, that study found that plan sponsors are concerned; worried because they believe that workers’ retirement plan participation should be higher than it is. However, a lot of concepts such as Liquidity, Emergency Cash, and the CARES Act have cast a new light on Financial Wellness.

There is an endless buzz around the topic of a financial wellness benefit. Financial wellness benefit programs [reduce employees’ stress, improve workplace productivity, and drive down healthcare costs](#). All of these can result in a boost to the companies’ bottom line. Nonetheless, one issue remains for employers -- quantifying the benefits and return on

investment of their financial wellness benefit programs. It's challenging to put tangible data around how much a financial wellness benefit program has improved employees' financial security or their retirement readiness.

The Pandemic has wrapped financial wellness benefit programs in a shroud of reality. Every employees' situation and goals are different. Quantifying the success of financial wellness benefit programs requires intense engagement with employees. Employers must thoroughly understand their living situations, spending, and savings habits to understand how much they need to save for retirement and get a good picture of a financial wellness programs' effectiveness. This can be both time-consuming for employers, and potentially intrusive to employees.

A [BenefitsPro article](#) authored by Spencer Williams, President and CEO of retirement savings portability purveyor Retirement Clearinghouse, touts auto portability as a solution to the financial wellness ROI conundrum for employers. According to Mr. Williams, "Auto portability - the routine, standardized and automated movement of a retirement plan participant's 401(k) savings from their former employer's plan to an active account in their current employer's plan -- can significantly streamline the process of completing a roll-in transaction for employees as soon as they join a new employer."

The solution works by using algorithms designed to track down and identify participants with more than one 401(k) and begin the roll-in process. It's a benefit to plan sponsors because they don't have to spend money or engage participants as they would via traditional financial wellness programs. The auto portability roll-in process happens automatically, but it also gives participants the ability to opt-out.

Mr. Williams opined that seamless plan-to-plan auto portability is a much-needed financial wellness solution. He cited data from the [Employee Benefit Research Institute \(EBRI\)](#) that an estimated 14.8 million participants change jobs every year. In addition, nearly a third (31%) of 401(k) participants compromise their financial wellness by cashing out their retirement savings within a year of switching to a new employer, according to research from the largest plan recordkeepers cited by Mr. Williams in his article.

Auto portability for small balances or assisted roll-ins for larger balances has been shown to decrease cash-outs from retirement plans, thus improving financial wellness, Mr. Williams noted. And it appears to be something participants desire. He cited a proprietary 2018 Retirement Clearinghouse study, which found that 60% of participants would prefer an

automated process that enabled them to consolidate their 401(k) accounts and update their addresses in their current employer's plan.

In addition, EBRI estimates that auto portability would help to preserve up to \$2 trillion (in today's dollars) in the nation's retirement system, which would clearly improve financial wellness and eliminate retirement plan leakage due to cash-outs across the board. The ROI is also measurable, because, once implemented auto portability enables plan sponsors to demonstrate an average increase in average retirement plan account balances, as well as a reduction in cash-outs.

Pandemic or not, plan sponsors should consider committing to financial wellness benefit programs. That way employers are considering much broader solutions than improving outcomes for the retirement plans only. Steff Chalk, [www.401ktv.com](http://www.401ktv.com), July 23, 2020.

### **13. SOCIAL SECURITY STRATEGIES TO PROVIDE FLEXIBILITY IN RETIREMENT:**

When to collect Social Security and which strategy to use has become a popular topic over the last few years, and a lot of ink has been spilled on the subject. Usually it focuses on how much you might be able to collect through retirement by waiting, or perhaps how much you would give up by collecting early if you were to live a long time. One item that is not often mentioned is that by possibly waiting to collect, or at least planning ahead, can give you a lot of flexibility in retirement; especially if you have other retirement accounts such as IRAs or 401(k)s.

Often times people retire at 62 or so and say that they will start drawing their Social Security and perhaps not touch their retirement assets. While this can work for some people, it can potentially lock you into an inflexible spending plan in retirement. What that means is that once you turn your Social Security on, you only have a year to decide if you want to turn it off for some reason. After that, you are now stuck with your payments for the rest of your lifetime. Meanwhile, you have decided to not touch your retirement accounts, and they continue to grow. This is not necessarily a bad thing, but here's the catch, at 72 the IRS will require that you start taking your Required Minimum Distributions whether you want the money or not. The amount starts at 3.65% of the balance the first year and goes up from there. Remember, this is all income that you will be taxed on. A lot of times people find that they do not need the money, but are now paying taxes on it and need to either reinvest or save it.

Another option can be deciding to wait on Social Security and instead drawing on the

investment accounts to fund your retirement. For a lot of people, this can be a scary thought to draw on your retirement accounts and savings, and perhaps watch them drop a bit, but remember you are now waiting to eventually start collecting your Social Security. In the meantime, you can fill up your tax bracket and help manage your tax situation in retirement.

And because you still have control over how much you may want to take out of your retirement accounts, you can either use the money to enjoy retirement, or perhaps conduct a Roth conversion where you move some money from your pre-tax retirement accounts to Roth IRA accounts. If you haven't reached the upper limit of your current bracket, you may be able to move money to a Roth IRA at a fairly low rate now, and it would not be subject to Required Minimum Distributions down the road. A married couple can make approximately \$104,000 in a year and after taking the standard deduction still be in the 12% bracket. So, let's say \$70,000 covers living expenses, which leaves potentially \$30,000 or so that could be converted to a Roth IRA, now grow tax free, and no longer be subject to RMDs down the road. On the other hand, if someone had started collecting their Social Security at 62 and it was a \$2,300 dollar a month benefit then that would be about \$28,000 a year in added income and would now be eating up most of that 12% bracket, which would not leave much room to do a Roth Conversion at the lower rate.

By potentially converting \$30,000 a year to a Roth for 10 years, that is \$300,000 plus growth that will not be subject to RMDs in the future and is now in a tax free account. Another advantage is that if you would like to leave a legacy for future generations, they can now inherit this money tax free. With the new rules that they have to take the money out within 10 years, converting the 401(k) to a Roth provide a huge advantage.

There are many more options when deciding how to spend your money in retirement, which is why working with a fee only wealth manager cannot only help keep your investments on track, but also help with your legacy and tax planning as well. These overlooked details can add as much to your overall wealth as having the right investment allocation. As always, please remember to consult with a financial advisor when making these important decisions. David Kudla, *Forbes*, [www.forbes.com](http://www.forbes.com), July 24, 2020.

#### **14. IRS PROVIDES GUIDANCE ON RECAPTURING EXCESS EMPLOYMENT TAX CREDITS:**

The Internal Revenue Service issued a [temporary regulation](#) and a [proposed regulation](#) to reconcile advance payments of refundable employment tax credits and recapture the benefit of these credits when necessary.

The regulations authorize the assessment of erroneous refunds of the credits paid under both the Families First Coronavirus Response Act (Families First Act) and Coronavirus Aid, Relief and Economic Security Act (CARES Act).

The Families First Act generally requires employers with fewer than 500 employees to provide paid sick leave for up to 80 hours and paid family leave for up to 10 weeks if the employee is unable to work or telework due to COVID-19 related reasons. Eligible employers are entitled to fully refundable tax credits to cover the cost of the leave required to be paid.

The CARES Act provides an additional credit for employers experiencing economic hardship due to COVID-19. Eligible employers who pay qualified wages to their employees are entitled to an employee retention credit.

The IRS has revised or is in the process of revising the Form 941, Form 943, Form 944 and Form CT-1, so that employers may use these returns to claim the paid sick and family leave and employee retention credits.

Employers may also receive advance payment of the credits up to the total allowable amounts. The IRS has created [Form 7200](#), Advance Payment of Employer Credits Due To COVID-19, which employers may use to request an advance of the credits. Employers are required to reconcile any advance payments claimed on Form 7200 with total credits claimed and total taxes due on their employment tax returns.

Any refund of these credits paid to a taxpayer that exceeds the amount the taxpayer is allowed is an erroneous refund for which the IRS must seek repayment. For more information on the employer credits, see [Employer Tax Credits](#). IRS, Newswire IR-2020-169, [www.irs.gov](http://www.irs.gov), July 27, 2020.

**15. EXPLORE DATA TO FIND SCAMS NEAR YOU:** Scams happen everywhere: in every region, state, and community across the country, including your own. You might be wondering, “What kinds of scams are happening in my area?”

We have a tool to help you answer that question: [Explore Data](#). With Explore Data, you can find out what kinds of scams and identity theft people are reporting most in your community. You can also break it down to see how much different groups report losing, and how they paid scammers. You’ll also find interactive infographics about COVID-19 scams, government

imposter trends, and many other types of fraud topics.

Watch [this video](#) to find out how you can explore FTC data and learn about fraud in your area. It might help you spot and avoid a fraud in the future.

To stay up to date on scams that could affect you and your community, subscribe to the FTC's [Consumer Alerts](#). Spot a scam that should be added to our database? Report it at [ftc.gov/complaint](https://www.ftc.gov/complaint). Jabari Cook, FTC, [www.ftc.gov](https://www.ftc.gov), July 24, 2020.

**16. FOR THOSE WHO LOVE WORDS (LOGOPHILES):**

A man tried to assault me with milk, cream and butter. How dairy!

**17. EVER WONDER?:**

Why do we leave cars worth thousands of dollars in the driveway and put our useless junk in the garage?

**18. INSPIRATIONAL QUOTE:**

“We can’t help everyone, but everyone can help someone.” - *Ronald Reagan*

**19. TODAY IN HISTORY:**

On this day in 1965, Lyndon B. Johnson signs Medicare bill, which goes into effect in 1966

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